

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

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James O. Spence, Master-In-Equity

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Case No. 2010-CP-32-00514

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Chase Home Finance, LLC ..... Appellant,

v.

Cassandra S. Risher, individually, as Personal Representative and Legal  
Heir of the Estate of Sidney Allan Risher, Justin R., a minor, Sydney R., a  
minor, Ashley R., a minor, Sidney J. Risher, Pierre Risher and Drayton  
Holmes, as Legal Heirs to the Estate of Sidney Allan Risher and Highland  
Hills Homeowners Association, Inc. .... Defendants,

Of whom Cassandra S. Risher is ..... Respondent.

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**RECORD ON APPEAL**

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**SC Court of Appeals**

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STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Chase Home Finance LLC,

PLAINTIFF,

vs.

Cassandra S. Risher, individually, as Personal Representative and Legal Heir of the Estate of Sidney Allan Risher, Justin Risher, a minor, Sydney Risher, a minor, Ashley Risher, a minor, Sidney J. Risher, Pierre Risher and Drayon Holmes, as Legal Heirs to the Estate of Sidney Allan Risher and Highland Hills Homeowners Association, Inc.,

DEFENDANTS.

100268.00202

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-32-00514

MOTION AND ORDER OF REFERENCE AND  
ORDER OF DEFAULT

(Mortgage Foreclosure Action)

FILED  
2010 MAY 11 PM 2:42  
BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON SC

On motion of the undersigned counsel for the Plaintiff and after review of the pleadings in the Office of the Clerk of Court and pursuant to Rules 53 and 71, SCRCP, this matter involves a mortgage foreclosure action which may be mandatorily referred for a Hearing to the Honorable James O. Spence, Master in Equity for the within identified county with authority to enter a final judgment in the cause. Any appeal therefrom shall be directed to the South Carolina Court of Appeals.

IT IS THEREFORE ORDERED that this action be, and the same hereby is, referred to the Master in Equity for the within county to take the testimony arising under the pleadings and to make his/her findings of fact and conclusions of law, with authority to rule on all matters related to this action, including but not limited to, the authority to enter a final judgment in the cause and said Master in Equity is specifically granted and shall retain jurisdiction 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/or Rule 60. Motions and/or matters relating to the sufficiency of the successful bid and/or the marketability of title; and with the authority to sell the subject property at public auction on some convenient sales day hereafter as ordered with any appeal therefrom being directed and mandated to the South Carolina Court of Appeals.

Lexington, South Carolina

March 11, 2010

ISO MOVE:

SCOTT LAW FIRM, P.A.

By:

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County of Lexington

PAID

FILED

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STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF LEXINGTON ) Case No.: 2010-CP-32-00514  
Chase Home Finance, LLC, )  
Plaintiff, )  
vs. )  
Cassandra S. Risher, individually, as )  
Personal Representative and Legal )  
Heir of the Estate of Sidney Allan )  
Risher, Justin A. Risher, a minor, )  
Sydney Risher, a minor, Ashley )  
Risher, a minor, Sidney J. Risher, )  
Pierre Kisher and Drayon Holmes, )  
as Legal Heirs to the Estate of )  
Sidney Allan Risher and Highland )  
Hills Homeowners Association, Inc., )  
Defendants. )

ORDER

BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON SC

2011 JUL 14 P. 1:15

FILED

**FACTUAL/PROCEDURAL BACKGROUND**

A bifurcated proceeding regarding a disputed mortgage was tried May 12, 2011, pursuant to an May 11, 2010 Order of Reference issued by The Honorable Beth Carrigg, Clerk of Court for Lexington County. Jennifer N. Stone, Esquire, and Louis H. Lang, Esquire, represented the plaintiff, Chase Home Finance, LLC. H. Ronald Stanley, Esquire represented Defendant Cassandra S. Risher, individually and as P.R. of her husband's estate.

Plaintiff filed a Lis Pendens and Summons and Complaint on February 3, 2010 alleging in its First Cause of Action that it was entitled to foreclose a mortgage covering certain real property located at 135 Lochweed Drive, Columbia, South Carolina, that was executed and delivered to Midland Mortgage Corporation by Sidney A. Risher on July 7, 2008. In a Second Cause of Action,

the plaintiff alleged that it was entitled to an equitable lien on the undivided one-half (1/2) interest in the Lochweed Drive property owned by Cassandra S. Risher that was not mortgaged to Midlands Mortgage Corporation when the mortgage was executed and delivered by Sidney Risher. In a Third Cause of Action, the plaintiff alleged that it was entitled to a judgment against the defendant, Cassandra S. Risher, upon the theory of unjust enrichment.

Counsel for both parties stipulated at the hearing that the Order issued by the Chief Justice of the South Carolina Supreme Court on May 2, 2011, staying certain foreclosure actions would not operate as a stay to this bifurcated proceeding since the sole purpose of this proceeding was to determine whether the plaintiff is entitled to foreclose upon the undivided one-half (1/2) interest owned by Cassandra Risher in and to the property which is subject of this action.

### **ISSUE**

The issue before this Court is whether the plaintiff is entitled to foreclose upon the undivided one-half (1/2) interest owned by the defendant, Cassandra S. Risher, a/k/a Cassandra P. Risher, in and to the property which is subject of this action, upon the theory of equitable lien and/or unjust enrichment, notwithstanding the fact that Mrs. Risher did not sign the mortgage that was executed and delivered by her husband, Sidney A. Risher, to Midland Mortgage Corporation on July 7, 2008.

### **FINDINGS OF FACT**

Having observed the witnesses and exhibits presented at the hearing and having closely passed upon their credibility, taking into account the burden of

persuasion by the parties, I now make, pursuant to Rule 52, SCRPC, the following Findings of Fact by a preponderance of the evidence:

1. Notice of the date, time, place and nature of the hearing was timely given to all parties.

2. On June 17, 2008, Sidney A. Risher and his wife, Cassandra S. Risher, also known as Cassandra P. Risher, entered into a real estate contract with Robert Beagle and Debra Beagle to purchase a house and lot owned by Mr. & Mrs. Beagle at 135 Lochweed Drive in the City of Columbia, County of Lexington, State of South Carolina. The purchase price stated in the contract was \$505,000.00.

3. After the contract between the Rishers and the Beagles was signed, Sidney Risher met with Gina Busch, a loan officer at Midland Mortgage Corporation in Columbia, South Carolina, to apply for a loan. Cassandra Risher was present with her husband when he met with Gina Busch, but Mrs. Risher did not complete a loan application and did not participate in the loan application process.

4. The loan application made by Sidney A. Risher was subsequently approved by Midland Mortgage Corporation and the loan proceeded to closing on July 7, 2008 at the offices of The Georgaklis Company and Attorney Ronald C. Dodson. The Georgaklis Company is located at 900 Elmwood Avenue, Columbia, South Carolina, and is engaged in the business of preparing loan closing packages, performing title searches and preparing title commitments and title insurance policies. Attorney

Dodson is a member of the South Carolina Bar and maintains an office inside of the offices of The Georgaklis Company at 900 Elmwood Avenue, Columbia, South Carolina. The primary office for Mr. Dodson's law practice is located on Millwood Avenue in Columbia, South Carolina. Attorney Dodson was the designated closing attorney for the Sidney Risher loan.

5. On the date of the closing, Sidney A. Risher was present at the Elmwood Avenue offices of the Georgaklis Company and Attorney Dodson along with his wife, Cassandra S. Risher. Attorney Dodson was not present at the closing. Mr. Dodson testified at the hearing that he thought he was on vacation on July 7, 2008, when the Risher closing took place. Ursula G. Lucas, the owner of The Georgaklis Company, testified that she was present at the Risher closing and that the closing was conducted by Attorney Tynika Claxton. Ms. Claxton was contacted by Ms. Lucas and asked to come over to the offices of The Georgaklis Company and conduct the Risher closing in the absence of Attorney Dodson. Mr. Dodson testified that he did not know Ms. Claxton at the time of the Risher closing and that he did not believe he had ever physically met her.

6. The sellers, Robert Beagle and Debra Beagle, were not present at the closing but a deed was presented from Mr. and Mrs. Beagle titling the property which is subject of this action in the names of Sidney A. Risher and Cassandra P. Risher. The said deed was subsequently recorded in

the Office of the Register of Deeds for Lexington County in Record Book 13022 at Page 315.

7. At the closing, Sidney Risher executed and delivered a Note in favor of Midland Mortgage Corporation in the amount of \$479,750.00. Mr. Risher also executed and delivered to Midland Mortgage Corporation a mortgage covering the property at 135 Lochweed Drive, Columbia, South Carolina, also in the amount of \$479,750.00. The mortgage was subsequently recorded in the Office of the Register of Deeds for Lexington County in Mortgage Book 13022 at Page 317. Thereafter, the mortgage was assigned on the date of closing by Midland Mortgage Corporation to JPMorgan Chase Bank, N.A., by assignment dated July 7, 2008 and recorded in the Office of the Register of Deeds for Lexington County on July 24, 2008 in Record Book 13049 at Page 305. The mortgage was further assigned to Chase Home Finance, LLC, by assignment recorded in the Office of the Register of Deeds for Lexington County on March 5, 2010 in Record Book 1426 at Page 139.

8. Cassandra Risher signed several documents at the closing, but she did not sign the note and mortgage and was not asked to sign either of these documents.

9. Since the mortgage was not signed by the defendant, Cassandra Risher, the mortgage held by the plaintiff encumbers only the one-half (1/2) undivided interest owned by Sidney A. Risher in and to the property which is subject of this action. The undivided one-half (1/2) interest

owned by the defendant, Cassandra Risher, is not encumbered by the mortgage held by the plaintiff.

10. Sidney A. Risher died on or about August 23, 2009. Since his death, no payments have been made on the loan that Mr. Risher obtained from Midland Mortgage Corporation on July 7, 2008. The mortgage is now in default.

11. Tynika Claxton, the attorney who closed the Risher loan, did not testify at the hearing on May 12, 2011. Therefore, there is no testimony in the record regarding any discussions that may have taken place at the closing between Ms. Claxton and the Rishers, nor is there any testimony regarding Ms. Claxton's review of the title examination, the title commitment, the loan closing instructions, the deed or the loan closing documents. Also, there is no testimony from Tynika Claxton as to why Mrs. Risher was not asked to sign the mortgage.

12. There was no testimony at the hearing from Gina Busch, or anyone else affiliated with Midland Mortgage Corporation, regarding the loan application of Mr. Risher or the intent of the parties. Also, there is no testimony from anyone affiliated with Midland Mortgage Corporation as to why Mrs. Risher's name was not included on the mortgage or why there was no signature line on the mortgage for Mrs. Risher's signature.

13. There is no testimony in the record that the mortgage that Midland Mortgage obtained from Sidney Risher encumbering his undivided one-half (1/2) interest in the Lochweed Drive property was less than Midland

Mortgage Corporation contracted for or less than Midland Mortgage Corporation intended or expected to obtain.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, I conclude the following as a matter of law:

1. This Court has jurisdiction over this matter pursuant to Rules 53 and 71, SCRCP.
2. In weighing the evidence and deciding a contested case on the merits, this Court must make findings of fact and conclusions of law by a preponderance of the evidence. Wells Fargo Bank, NA v. Turner, 378 S.C. 147, 662 S.E. 2d 424 (2008); E. Sav. Bank, FSB v. Sanders, 373 S.C. 349, 644 S.E. 2d 802 (2007); Hayne Fed Credit Union v. Bailey, 327 S.C. 242, 489 S.E. 2d 47 (1997).
3. The mortgage that was executed by Sidney Risher to Midland Mortgage Corporation is unenforceable against the undivided one-half (1/2) interest owned by Cassandra Risher. A mortgage is only enforceable against a person who has signed the mortgage or a person who has become obligated on the mortgage through the signature of an authorized agent. A mortgage is not valid or effectual unless signed by the mortgagor or someone on his or her behalf with his or her consent. 59 Mortgages CJS §156 (2009). A mortgage covering property owned by joint owners is not binding on any who fail to sign and acknowledge it. 59 Mortgages CJS §157 (2009).

4. The plaintiff is not entitled to an equitable lien against the undivided one-half (1/2) interest of Cassandra Risher because the plaintiff has failed to establish the necessary elements for an equitable lien.

In order for an equitable lien to arise as to specific property, there must be a debt, a duty or obligation owing from one person to another, a res to which the obligation attaches, which can be described with reasonable certainty, and an intent, expressed or implied, that the property is to serve as security for the payment or obligation. Carolina Attractions, Inc., v. Courtney, 287 S.C. 140, 337 S.E. 2d 244 (Ct. App. 1985); First Federal Sav. & Loan Ass'n of Charleston v. Bailey, 316 S.C. 350, 450 S.E. 2d 77 (Ct. App. 1994).

The evidence fails to establish the necessary elements for an equitable lien. There is no debt, duty or obligation owed by Cassandra Risher to the plaintiff. Mrs. Risher did not sign a note or any other document obligating herself on the loan that was obtained by Sidney Risher from Midland Mortgage Corporation. Although there clearly was a debt and a duty or obligation owed by Sidney Risher to the plaintiff, the debt, duty or obligation of Sidney Risher cannot under these facts, become the debt, duty or obligation of Cassandra Risher. There is no expressed affirmative action on the part of Cassandra Risher to make the debt, duty or obligation owed by Sidney Risher to the plaintiff the debt, duty or obligation of Cassandra Risher.

Since there is no obligation owed by Cassandra Risher to the plaintiff, there can be no property to which the obligation attaches.

5. The plaintiff is not entitled to a judgment against the defendant, Cassandra Risher, under the theory of unjust enrichment. Unjust enrichment is a common law remedy wherein the plaintiff must show that (1) it had a reasonable expectation of payment; (2) the defendant should have reasonably expected to pay; or (3) that society's reasonable expectation of person and property would be defeated by nonpayment. Mason v. M. F. Smith & Associates, Inc., 158 F. Supp. 2d 673 (2001).

While plaintiff certainly had a reasonable expectation of payment from Sidney Risher since Mr. Risher signed its note and mortgage, the plaintiff had no reasonable right to expect payment from Cassandra Risher since the plaintiff knew or should have known that Cassandra Risher was not obligated to make any payments to the plaintiff since Mrs. Risher had not signed its note or mortgage.

The evidence shows that Plaintiff's own actions indicate that it did not expect Cassandra Risher to pay the debt. While Mrs. Risher was present at the closing, plaintiff did not require her to sign the note or mortgage which would have obligated her to make payments on the loan that was extended to her husband, Sidney Risher. Cf. South Carolina Code ¶ 20-5-30 (1976, as amended). (Wife's property is not subject to husband's debts.)

Society's reasonable expectation of person and property would not

be defeated by nonpayment by Mrs. Risher. In fact, to the contrary, it is reasonable to believe that society's reasonable expectation of person and property would be defeated if Mrs. Risher would be required to make payment to the plaintiff when she never obligated herself on the loan by signing the note and mortgage. The closing documents were prepared by the plaintiff's predecessor in interest and the note nor the mortgage included a line or space for the signature of Cassandra Risher. Mrs. Risher was present at the closing and signed certain closing documents, but never once was she asked to obligate herself on the loan by signing the note and mortgage.

6. The plaintiff is not entitled to any form of equitable relief because the plaintiff's predecessor in interest, Midland Mortgage Corporation, and the closing attorney, through their own due diligence, could have avoided the loss that has been suffered. Our courts have long followed the equitable doctrine that where there are two (2) innocent parties who must suffer, the law looks with disfavor upon the party who, through due diligence, could have avoided the loss. Myrtle Leach Lumber Co. v. Willoughby, 276 S.C. 3, 274 S.E. 2d 423 (1981); City Lumber Co., v. Nat'l Sur. Corp., 229 S.C. 115, 92 S.E. 2d 128 (1956); City of Charleston v. Ryan, 22 S.C. 339 (1884); Guardian Fid. Corp. v. First South Sav. Bank, 297 S.C. 63, 374 S.E. 2d 690 (Ct. App. 1988).

Mrs. Risher is an innocent party who has been embroiled in this foreclosure action through no fault of her own. The plaintiff's predecessor

in interest knew or should have known that the property was to be titled in the names of Sidney Risher and Cassandra Risher since the contract stated that the property was to be conveyed to both parties. The plaintiff's predecessor in interest prepared the closing documents including the mortgage and failed to include the name of Cassandra Risher as a mortgagor on the mortgage and also failed to include a signature line for her on the mortgage. The closing attorney and the plaintiff's predecessor mortgage company had several opportunities to discover that the mortgage was not executed by Mrs. Risher including when the deed and mortgage were recorded, when the title update was performed, when the final title policies were prepared and forwarded to the necessary parties and when the recorded deed and mortgage were forwarded to the necessary parties.

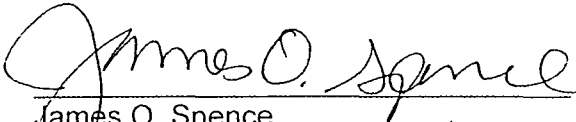
Mrs. Risher did nothing to cause or contribute to the loss of the plaintiff. The plaintiff's predecessor in interest, Midland Mortgage Company, the Georgaklis Company, Attorney Dodson and Attorney Claxton were in complete control of preparing the closing documents and supervising the complete and proper execution of the documents by all necessary policies. The exercise of due diligence by these parties would have avoided the controversy now before the Court.

**ORDER**

For the foregoing reasons, it is **ORDERED, ADJUDGED AND DECREED** that judgment be and hereby is entered in favor of the defendant, Cassandra S. Risher, and that plaintiff's prayer for relief be and hereby is denied.

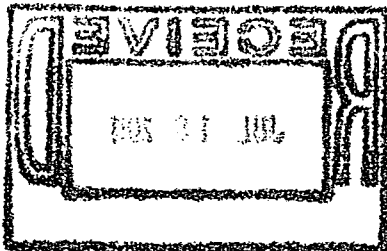
**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the plaintiff may proceed with its foreclosure action against the undivided one-half (1/2) interest formerly owned by Sidney A. Risher in and to the property which is subject of this action, but the plaintiff may not foreclose upon the undivided one-half interest owned by the defendant, Cassandra Risher.

**AND IT IS SO ORDERED.**

  
James O. Spence  
Master-In-Equity for Lexington County

Lexington, South Carolina

Dated: July 11, 2011



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|----------------------------|---|------------------------------|
| State of South Carolina    | ) | IN THE COURT OF COMMON PLEAS |
|                            | ) | CASE NO. 2010CP3200514       |
| County of Lexington        | ) |                              |
|                            | ) |                              |
| Chase Home Finance, LLC    | ) |                              |
| Plaintiff,                 | ) | ORDER DENYING                |
| vs.                        | ) | MOTION TO RECONSIDER         |
|                            | ) |                              |
| Cassandra S. Risher, et al | ) |                              |
| Defendants                 | ) |                              |
| _____                      | ) |                              |

**FACTS:**

This Court ruled July 14, 2011 that Plaintiff (hereinafter "Lender") could not foreclose on Defendant's (hereinafter "Mrs. Risher") 50% interest in the subject property. Thereafter, Lender filed this Motion to Reconsider.

Lender and Mrs. Risher do not dispute the basic facts. Dr. Risher borrowed money from lender to purchase property. The loan was prepared and closed pursuant to Lender's instruction. Title was conveyed to Dr. Risher and Mrs. Risher. Lender claims they should be able to foreclose on Mrs. Risher's unmortgaged 50% interest, while Mrs. Risher argues that lender cannot foreclose on her interest since the lender did not require her to execute note or mortgage.

The court notes that:

- 1 Neither the loan application nor Dr. Risher's underlying financial documentation was entered into evidence.
2. The loan officer did not testify.
3. Mrs. Risher was at loan closing and was not asked to sign note or mortgage.
4. The loan supervising attorney, Tamika Claxton did not testify.
5. Plaintiff did not plead mistake/reformation as theory of recovery.

Chase vs. Risher 2010CP3200514

### EQUITABLE LIEN:

Mrs. Risher argues that her 50% interest is not subject to Lender's lien because "it is black letter law that 'a mortgage is not valid or effectual unless signed by the mortgagor or someone on his or her behalf with or with his or her consent.'" See 59 C.J. S. Mortgages § 156 (2009), 54A Am. Jur. 2d Mortgages § 20 (2009), Jones on Mortgages, §85(b) (7<sup>th</sup> ed. 1915).

Lender seeks to create an exception to this rule.

Lender claims that because of the purchase money aspect of the transaction, it has an equitable lien on Mrs. Risher's unmortgaged 50% legal ownership of the subject property. An equitable lien requires a (1) debt (2) res (3) intent for res to serve as security.

Neither party cited any controlling South Carolina case regarding a co-tenant purchase money mortgage. The court asked both parties to research non-South Carolina authority as well as secondary sources such as AM JUR, CJS, and ALR et. al. to determine if there was any authority for a co-tenant failing to sign purchase money mortgage exception to the general rule.

Neither party found authority squarely on point. The following cited authority is useful for analysis of the issue.

(1) 51 AM Jur 2d Liens Sec. 49 (2011) "However, mere borrowing of money does not in itself give the lender a lien, and **in the absence of a showing an intention to create it,(my emphasis)** an equitable lien will not arise in favor of one who advances money to pay the purchase price of realty."

(2) MERS v Wilson, 2005 WL 1284047 (N.J. Super. Ct. CH. Div. 2005). This case contains a co-tenant purchase money mortgage, yet is distinguishable to this dispute. The MERS case is unpublished. The defendant was in default and did not contest the allegation that he was left off the mortgage. The court found that the parties clearly intended to create a mortgage. The fact that a party admits he was "left off" a mortgage is far different from a party who "never asked to be on mortgage." The MERS case turns on intent.

- (3) **De Saussure V Bollman**, 7 S.C. 329 (1876) : This case held that a purchase money mortgage (like a host of other lien interests) has priority over a wife's dower rights. These two ownership rights, dower right and legal interests are apples to oranges. A dower right rises only through marriage to a man; thus if the man borrowed money on the property such encumbrance would flow through to his spouse. However, Mrs., Risher gained her legal interest, not from her husband, but from the seller. Her ownership right was not contingent upon, nor derived from, her husband, Dr. Risher's title to the property. She gained it directly from the third party seller.

Therefore, the argument for an equitable lien must be carefully considered.

- **There is no debt.** There is no dispute that Mrs. Risher did not sign the note or mortgage. Therefore, there is no debt. Lender argues that the debt does not have to be Dr. Risher's, it can be Mrs. Risher's: "The underlying can discover no case law or secondary sources relating to equitable liens which contain a requirement that the debt, duty or obligation shown to prove the equitable lien must be the debt duty, or obligation of the party against whose property the lien is sought." ( Lender Memo Page 5)
- This theory is unpersuasive and troubling.
- **There is no res.** While all parties knew borrowed money was to be used to buy specific property, this knowledge, that of knowing purpose for loan, is not the same as intending that the property serve as security for the loan. The lender did not ask or require Mrs. Risher to mortgage her 50% interest when lender decided to make the loan to Dr. Risher.
- **Intent for Mrs. Risher's 50% interest to be mortgage was not proven..**

The court's dilemma is defined on Page 28 of Plaintiff's Memo:

"By grant to Plaintiff of the relief requested in the complaint, the court will merely place the parties in the positions **which they were intended to be placed** ( my emphasis) upon the closing of the transaction."

**First**, while lender now claims the parties intended for Mrs. Risher to sign the mortgage; it did not plead or argue mistake, nor argue that (1) lender made mistake in preparing loan package in Dr. Risher's name alone or (2) supervising attorney made mistake by failing to have Mrs. Risher execute note and mortgage.

How can Lender now claim, in the absence of pleading mistake, that (1) Lender intended to have Mrs. Risher sign the mortgage or (2) Mrs. Risher intended to sign the mortgage?

It would appear that one of three things happened: (1) Lender made a mistake in preparing or (2) closing the loan or (3) lender never intended to have Mrs. Risher sign the mortgage due to banking relationship with Dr. Risher's (or due to his financial status.)

**Second**, the court will never know because these theories were not plead or argued at trial. The purpose of trial pleading is to alert the parties what each side's legal claims are so they can prepare and try the case accordingly.

Lender did not plead mistake/reformation. Such pleading would require clear and convincing proof. More importantly, it would have allowed Mrs. Risher to conduct pre-trial discovery and trial strategy based upon that unpled theory. Allowing a party to claim relief based upon an unpled theory is fundamentally unfair. Plaintiff did not plead mistake, yet now seeks, in essence, the remedy following a unilateral or mutual mistake.

Our courts zealously protect property rights. Governmental actions such as Eminent Domain and tax sales are reviewed rigorously to ensure that the government does not take property from citizens without exacting compliance with due process.

Private actions involving title to real estate, such as adverse possession, reformation by mistake, require an elevated proof level. Clear and Convincing proof is required to reform documents based upon theory of mistake.

Lender, by failing to plead or argue mistake, admits that it contractually did not intend to have Mrs. Risher execute the mortgage.

Lender then argues the court should imply that Mrs. Risher intended to do exactly opposite from the express mortgage agreement.

Lender argues that the below series of actions show an implied intent on Mrs. Risher to mortgage the property. The court, by comparison, notes that the same arguments, if applied to lender loaning Dr. Risher money on an unsecured note to purchase property, would lead to conclusion that lender could claim equitable lien on property purchased with funds from an unsecured note.

| <u>Action</u>                                          | <u>Mortgage</u> | <u>Unsecured note</u> |
|--------------------------------------------------------|-----------------|-----------------------|
| Borrower goes to lender to borrow Money:               |                 |                       |
| Tells loan purpose: I want to buy Lot 1                | Yes             | Yes                   |
| Loan proceeds used to buy property                     | Yes             | Yes                   |
| Loan proceeds pay off existing debt                    | Yes             | Yes                   |
| Borrower knew proceeds were to be used to buy property | Yes             | Yes                   |
| Spouse knows all above                                 | Yes             | Yes                   |
| Borrower/spouse live on property                       | Yes             | Yes                   |
| Spouse gets benefit from living on property            | Yes             | Yes                   |

**Third**, the purchase money mortgage argument is not persuasive. Lender argues that purchase money aspect proves intent; therefore Lender has priority over Mrs. Risher's 50% legal ownership. While lender argues the purchase money mortgage shows intent, it makes the leap to then give lender the remedy the purchase money mortgage doctrine enjoys over other liens arising through the mortgagor when properly applied.

The purchase money mortgage doctrine is a **lien priority doctrine** that allows a lender to take priority over other liens that have arisen *through the mortgagor* (Dr. Risher). The Purchase money mortgage doctrine cannot be used to take the legal interest of a co-owner. A co-owner has a legal ownership interest in the property, not a judgment or lien.

For example, if Mr. Lee borrowed money from Lender to buy Blackacre from co-tenants Mr. Burnside and Mr. Hooker and Mr. Hooker failed to sign the deed. Lender could not claim he could foreclose on Mr. Hooker's 50% of Blackacre because the purchase money mortgage doctrine allows lender priority over liens that arose through Mr. Lee, not the legal interest of Mr. Hooker.

It may be inferred that the intent was to use the Midlands mortgage to purchase the property, but that is a different proposition entirely from intent to encumber Mrs. Risher's 50% ownership interest.

Lender attempts to find an implied yes (from Mrs. Risher's actions) in the face of an express no (Lender did not ask her to mortgage her interest) Cf. the following phrase, *expressum facit cessare tacitum*. ("That which is expressed makes that which is implied cease, that is, supersedes it or controls its effect. Thus an implied covenant in a deed is in all cases controlled by an express covenant. Where law sets down plainly its whole meaning the court is prevented from making it mean what the court pleases." Black's Law Dictionary 522 (6<sup>th</sup> ed.1991).

Lender's witnesses (attorney and paralegal) state "We never do 50% interest loans." Never doesn't mean cannot. The record is silent as to what occurred during loan negotiations between Dr. Risher and lender. Dr. Risher could have possessed sufficient liquid assets that satisfied the lender they had adequate security or their banking relationship could have justified making the loan to Dr. Risher alone. No one knows because there is no evidence before the court to explain why the lender did what they did.

The Lender's rights to this property are derivative through Dr. Risher, the person they loaned the money to for the purpose of buying the property. Dr. Risher could no more sell the property without his wife's signature than he could mortgage her interest. The lender, as 50% secured party of Dr. Risher, has no have greater rights to the property than Dr. Risher, as 50% owner had. Gutersmith v Ropiecki, 387 A.2d 385 (1977).

Lender saw the contract required that the property be conveyed to both Dr. Risher and Mrs. Risher. Lender met at least once with Mrs. Risher, and then continued remainder of loan negotiations with Dr. Risher alone. Lender prepared the loan package. There is no evidence to suggest that the loan was not closed in accordance with lender instructions. Cf “A mortgagee invoking the aid of estoppel must show that he has been vigilant in the protection of his own rights and interest. No protection will be given him against his own negligence and folly.” Jones on Mortgages, § 93 (7<sup>th</sup> Ed. 1915).

### **UNJUST ENRICHMENT:**

Lender argues, upon the same unpled, unproven inferences, that it should recover be granted judgment based on theory of unjust enrichment which requires (1) benefit conferred by Plaintiff on Defendant (2) realization of the benefit by defendant and (3) retention of the benefit by the Defendant under such circumstances that make it inequitable for him to retain without paying its value. The lender conferred a direct benefit on Dr. Risher when it negotiated with and loaned him money to buy the subject property. The money was not given to Mrs. Risher.

Since Lender did not loan money to Mrs. Risher it did not convey a benefit directly to her. Mrs. Risher is an indirect beneficiary of what Dr. Risher chose to do with the loan proceeds.

Retention makes it inequitable to retain benefit without paying its value. As stated earlier, there is no inequity in limiting lender to the deal they made with Dr. Risher. Lender can't negotiate a contract and then claim “now that I've thought about it, it's not fair.” Lender did not plead mistake. Lender has the remedy that they bargained for--the ability to foreclose on Dr. Risher's 50% interest and to pursue any valid claim it has against the estate.

Mrs. Risher's financial status is not controlling under the facts and circumstances of this case as pled and argued. By illustration, what if Dr. Risher borrowed money from Lender to buy a wedding ring, gave it to Mrs. Risher, and then died before

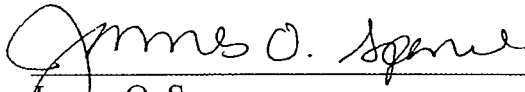
Chase vs. Risher 2010CP3200514

paying for the ring? By lender's logic, lender could take ring or force Mrs. Risher to pay for it.

**CONCLUSION:**

Therefore, under these case specific pleadings and facts, the Court declines to hold that Lender can foreclose on Mrs. Risher's unmortgaged 50% interest in the subject property.

Lexington, South Carolina  
November 29, 2011

  
James O. Spence  
Lexington County Master-In-Equity

**COPY**

1

State of South Carolina )

County of Lexington )

Chase Home Finance, LLC )

Plaintiff, )

vs. )

Cassandra S. Risher, et al )

Defendants )

FILED

IN THE COURT OF COMMON PLEAS

CASE NO. 2010CP3200514

DEC - 7 P 2:06

BETH A. CARRISS

CLERK OF COURT

LEXINGTON, SC

AMENDED

ORDER DENYING

MOTION TO RECONSIDER

**FACTS:**

This Court ruled July 14, 2011 that Plaintiff (hereinafter "Lender") could not foreclose on Defendant's (hereinafter "Mrs. Risher") 50% interest in the subject property. Thereafter, Lender filed this Motion to Reconsider.

Lender and Mrs. Risher do not dispute the basic facts. Mr. Risher borrowed money from lender to purchase property. The loan was prepared and closed pursuant to Lender's instruction. Title was conveyed to Mr. Risher and Mrs. Risher. Lender claims they should be able to foreclose on Mrs. Risher's unmortgaged 50% interest, while Mrs. Risher argues that lender cannot foreclose on her interest since the lender did not require her to execute note or mortgage.

The court notes that:

1 Neither the loan application nor Mr. Risher's underlying financial documentation was entered into evidence.

2. The loan officer did not testify.

3. Mrs. Risher was at loan closing and was not asked to sign note or mortgage.

4. The loan supervising attorney, Tamika Claxton did not testify.

5. Plaintiff did not plead mistake/reformation as theory of recovery.

Chase vs. Risher 2010CP3200514

### EQUITABLE LIEN:

Mrs. Risher argues that her 50% interest is not subject to Lender's lien because "it is black letter law that 'a mortgage is not valid or effectual unless signed by the mortgagor or someone on his or her behalf with or with his or her consent.'" See 59 C.J. S. Mortgages § 156 (2009), 54A Am. Jur. 2d Mortgages § 20 (2009), Jones on Mortgages, §85(b) (7<sup>th</sup> ed. 1915).

Lender seeks to create an exception to this rule.

Lender claims that because of the purchase money aspect of the transaction, it has an equitable lien on Mrs. Risher's unmortgaged 50% legal ownership of the subject property. An equitable lien requires a (1) debt (2) res (3) intent for res to serve as security.

"Neither party cited any controlling South Carolina case regarding a co-tenant purchase money mortgage. The court asked both parties to research non-South Carolina authority as well as secondary sources such as AM JUR, CJS, and ALR et. al. to determine if there was any authority for a co-tenant failing to sign purchase money mortgage exception to the general rule.

Neither party found authority squarely on point. The following cited authority is useful for analysis of the issue.

(1) 51 AM Jur 2d Liens Sec. 49 (2011) "However, mere borrowing of money does not in itself give the lender a lien, and **in the absence of a showing an intention to create it,(my emphasis)** an equitable lien will not arise in favor of one who advances money to pay the purchase price of realty."

(2) MERS v Wilson, 2005 WL 1284047 (N.J. Super. Ct. CH. Div. 2005). This case contains a co-tenant purchase money mortgage, yet is distinguishable to this dispute. The MERS case is unpublished. The defendant was in default and did not contest the allegation that he was left off the mortgage. The court found that the parties clearly intended to create a mortgage. The fact that a party admits he was "left off" a mortgage is far different from a party who "never asked to be on mortgage." The MERS case turns on intent.

- (3) **De Saussure V Bollman**, 7 S.C. 329 (1876) . This case held that a purchase money mortgage (like a host of other lien interests) has priority over a wife's dower rights. These two ownership rights, dower right and legal interests are apples to oranges. A dower right rises only through marriage to a man; thus if the man borrowed money on the property such encumbrance would flow through to his spouse. However, Mrs. Risher gained her legal interest, not from her husband, but from the seller. Her ownership right was not contingent upon, nor derived from, her husband, Mr. Risher's title to the property. She gained it directly from the third party seller.

Therefore, the argument for an equitable lien must be carefully considered.

- **There is no debt.** There is no dispute that Mrs. Risher did not sign the note or mortgage. Therefore, there is no debt. Lender argues that the debt does not have to be Mr. Risher's, it can be Mrs. Risher's: "The underlying can discover no case law or secondary sources relating to equitable liens which contain a requirement that the debt, duty or obligation shown to prove the equitable lien must be the debt duty, or obligation of the party against whose property the lien is sought." ( Lender Memo Page 5)
- This theory is unpersuasive and troubling.
- **There is no res.** While all parties knew borrowed money was to be used to buy specific property, this knowledge, that of knowing purpose for loan, is not the same as intending that the property serve as security for the loan. The lender did not ask or require Mrs. Risher to mortgage her 50% interest when lender decided to make the loan to Mr. Risher.
- **Intent for Mrs. Risher's 50% interest to be mortgage was not proven.**

The court's dilemma is defined on Page 28 of Plaintiff's Memo:

"By grant to Plaintiff of the relief requested in the complaint, the court will merely place the parties in the positions **which they were intended to be placed** ( my emphasis) upon the closing of the transaction."

**First**, while lender now claims the parties intended for Mrs. Risher to sign the mortgage; it did not plead or argue mistake, nor argue that (1) lender made mistake in preparing loan package in Mr. Risher's name alone or (2) supervising attorney made mistake by failing to have Mrs. Risher execute note and mortgage.

How can Lender now claim, in the absence of pleading mistake, that (1) Lender intended to have Mrs. Risher sign the mortgage or (2) Mrs. Risher intended to sign the mortgage?

It would appear that one of three things happened: (1) Lender made a mistake in preparing or (2) closing the loan or (3) lender never intended to have Mrs. Risher sign the mortgage due to banking relationship with Mr. Risher or due to his financial status.

**Second**, the court will never know because these theories were not plead or argued at trial. The purpose of trial pleading is to alert the parties what each side's legal claims are so they can prepare and try the case accordingly.

Lender did not plead mistake/reformation. Such pleading would require clear and convincing proof. More importantly, it would have allowed Mrs. Risher to conduct pre-trial discovery and trial strategy based upon that unpled theory. Allowing a party to claim relief based upon an unpled theory is fundamentally unfair. Plaintiff did not plead mistake, yet now seeks, in essence, the remedy following a unilateral or mutual mistake.

Our courts zealously protect property rights. Governmental actions such as Eminent Domain and tax sales are reviewed rigorously to ensure that the government does not take property from citizens without exacting compliance with due process.

Private actions involving title to real estate, such as adverse possession, reformation by mistake, require an elevated proof level. Clear and Convincing proof is required to reform documents based upon theory of mistake.

Lender, by failing to plead or argue mistake, admits that it contractually did not intend to have Mrs. Risher execute the mortgage.

Lender then argues the court should imply that Mrs. Risher intended to do exactly opposite from the express mortgage agreement.

Lender argues that the below series of actions show an implied intent on Mrs. Risher to mortgage the property. The court, by comparison, notes that the same arguments, if applied to lender loaning Mr. Risher money on an unsecured note to purchase property, would lead to conclusion that lender could claim equitable lien on property purchased with funds from an unsecured note.

| <u>Action</u>                                          | <u>Mortgage</u> | <u>Unsecured note</u> |
|--------------------------------------------------------|-----------------|-----------------------|
| Borrower goes to lender to borrow Money:               |                 |                       |
| Tells loan purpose: I want to buy Lot 1                | Yes             | Yes                   |
| Loan proceeds used to buy property                     | Yes             | Yes                   |
| Loan proceeds pay off existing debt                    | Yes             | Yes                   |
| Borrower knew proceeds were to be used to buy property | Yes             | Yes                   |
| Spouse knows all above                                 | Yes             | Yes                   |
| Borrower/spouse live on property                       | Yes             | Yes                   |
| Spouse gets benefit from living on property            | Yes             | Yes                   |

**Third**, the purchase money mortgage argument is not persuasive. Lender argues that purchase money aspect proves intent; therefore Lender has priority over Mrs. Risher's 50% legal ownership. While lender argues the purchase money mortgage shows intent, it makes the leap to then give lender the remedy the purchase money mortgage doctrine enjoys over other liens arising through the mortgagor when properly applied.

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For example, if Mr. Lee borrowed money from Lender to buy Blackacre from co-tenants Mr. Burnside and Mr. Hooker and Mr. Hooker failed to sign the deed. Lender could not claim he could foreclose on Mr. Hooker's 50% of Blackacre because the purchase money mortgage doctrine allows lender priority over liens that arose through Mr. Lee, not the legal interest of Mr. Hooker.

It may be inferred that the intent was to use the Midlands mortgage to purchase the property, but that is a different proposition entirely from intent to encumber Mrs. Risher's 50% ownership interest.

Lender attempts to find an implied yes (from Mrs. Risher's actions) in the face of an express no (Lender did not ask her to mortgage her interest) Cf. the following phrase, *expressum facit cessare tacitum*. ("That which is expressed makes that which is implied cease, that is, supersedes it or controls its effect. Thus an implied covenant in a deed is in all cases controlled by an express covenant. Where law sets down plainly its whole meaning the court is prevented from making it mean what the court pleases." Black's Law Dictionary 522 (6<sup>th</sup> ed.1991).

Lender's witnesses (attorney and paralegal) state "We never do 50% interest loans." Never doesn't mean cannot. The record is silent as to what occurred during loan negotiations between Dr. Risher and lender. Mr. Risher could have possessed sufficient liquid assets that satisfied the lender they had adequate security or their banking relationship could have justified making the loan to Mr. Risher alone. No one knows because there is no evidence before the court to explain why the lender did what they did.

The Lender's rights to this property are derivative through Mr. Risher, the person they loaned the money to for the purpose of buying the property. Mr. Risher could no more sell the property without his wife's signature than he could mortgage her interest. The lender, as 50% secured party of Mr. Risher, has no have greater rights to the property than Mr. Risher, as 50% owner had. Gutersmith v Ropiecki, 387 A.2d 385 (1977).

Lender saw the contract required that the property be conveyed to both Mr. Risher and Mrs. Risher. Lender met at least once with Mrs. Risher, and then continued remainder of loan negotiations with Mr. Risher alone. Lender prepared the loan package. There is no evidence to suggest that the loan was not closed in accordance with lender instructions. Cf. "A mortgagee invoking the aid of estoppel must show that he has been vigilant in the protection of his own rights and interest. No protection will be given him against his own negligence and folly." Jones on Mortgages, § 93 (7<sup>th</sup> Ed. 1915).

### **UNJUST ENRICHMENT:**

Lender argues, upon the same unpled, unproven inferences, that it should recover be granted judgment based on theory of unjust enrichment which requires (1) benefit conferred by Plaintiff on Defendant (2) realization of the benefit by defendant and (3) retention of the benefit by the Defendant under such circumstances that make it inequitable for him to retain without paying its value. The lender conferred a direct benefit on Mr. Risher when it negotiated with and loaned him money to buy the subject property. The money was not given to Mrs. Risher.

Since Lender did not loan money to Mrs. Risher it did not convey a benefit directly to her. Mrs. Risher is an indirect beneficiary of what Mr. Risher chose to do with the loan proceeds.

Retention makes it inequitable to retain benefit without paying its value. As stated earlier, there is no inequity in limiting lender to the deal they made with Mr. Risher. Lender can't negotiate a contract and then claim "now that I've thought about it, it's not fair." Lender did not plead mistake. Lender has the remedy that they bargained for--the ability to foreclose on Mr. Risher's 50% interest and to pursue any valid claim it has against the estate.

Mrs. Risher's financial status is not controlling under the facts and circumstances of this case as pled and argued. By illustration, what if Mr. Risher borrowed money from Lender to buy a wedding ring, gave it to Mrs. Risher, and then died before

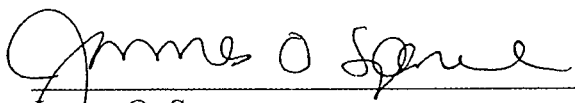
Chase vs. Risher 2010CP3200514

paying for the ring? By lender's logic, lender could take ring or force Mrs. Risher to pay for it.

**CONCLUSION:**

Therefore, under these case specific pleadings and facts, the Court declines to hold that Lender can foreclose on Mrs. Risher's unmortgaged 50% interest in the subject property.

Lexington, South Carolina  
December 7, 2011

  
\_\_\_\_\_  
James O. Spence  
Lexington County Master-In-Equity

FILED  
2011 DEC - 7 P 2:07  
BETH A. CARRIG  
CLERK OF COURT  
LEXINGTON SC

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Chase Home Finance LLC,

PLAINTIFF,

VS.

Cassandra S. Risher, individually, as Personal Representative and Legal Heir of the Estate of Sidney Allan Risher, Justin Risher, a minor, Sydney Risher, a minor, Ashley Risher, a minor, Sidney J. Risher, Pierre Risher and Drayon Holmes, as Legal Heirs to the Estate of Sidney Allan Risher and Highland Hills Homeowners Association, Inc.,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-32-

2010 FEB - 3 P 3:03

BETH A. CARRIGG  
CLERK OF COURT

COMPLAINT LEXINGTON SC

Foreclosure - Non-Jury  
(Deficiency waived)

2010CP3200514

(100268.00202)

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

1. This is an action for foreclosure of a mortgage upon certain real estate in Lexington County, South Carolina.
2. Plaintiff is a corporation or other legal entity doing business in the State of South Carolina and is the current holder of the Note and Mortgage described herein.
3. The servicer for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program (HMP), but the loan is not subject to an HMP modification because it is guaranteed by the Department of Veterans Affairs.
4. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.

**FOR A FIRST CAUSE OF ACTION  
(Foreclosure of Mortgage)**

5. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of Section 15-35-840 of the Code of Laws of South Carolina (1976).
6. Heretofore, under date of July 7, 2008, Sidney A. Risher made, executed and delivered to Midland Mortgage Corporation a certain mortgage note ("Note") in writing wherein

and whereby Sidney A. Risher promised to pay to Midland Mortgage Corporation the principal sum of \$479,750.00.

7. In order to secure the payment of said note, the said Sidney A. Risher did on the same date, to-wit, July 7, 2008, make execute and deliver to Midland Mortgage Corporation, its successors and assigns, a certain mortgage ("Mortgage") covering real property located in the County and State aforesaid, which said mortgage was recorded in the Office of the Clerk of Court/Register of Deeds for Lexington County, on July 10, 2008, in Book 13022, at Page 317; subsequently, the Note and Mortgage were assigned to JPMorgan Chase Bank N.A. by assignment instrument dated July 7, 2008 and recorded on July 24, 2008 in Book 13049 at Page 305. Thereafter, the Note and Mortgage were assigned to Chase Home Finance LLC.

The description of the premises as contained in said mortgage is as follows:

All that certain piece, parcel or lot of land, situate, lying and being in the County of Lexington, State of South Carolina, containing .67 acres, more or less, and designated as Lot 6 on a Master Plat of Highland Hills Subdivision, Phase I, dated April 2, 1998, which has not been recorded. Being further shown and delineated on a plat of property prepared for Wilkins Family Limited Partnership by Whitworth & Associates, Inc., dated July 23, 2003 and recorded in the Office of the ROD for Lexington County in Book 8565 at page 6. For a more accurate description of said lot reference is made to latter mentioned plat.

This being the same property conveyed to Sidney A. Risher and Cassandra S. Risher by deed of Robert L. Beagle and Debra A. Beagle dated July 2, 2008 and recorded on July 10, 2008 in the Office of the Lexington County Register of Deeds in Book 13022 at Page 315.

TMS No. 001848-01-026

Property address: 135 Lockweed Drive  
Columbia, SC 29212

8. That the mortgagor Sidney Risher died on or about August 23, 2009 according to the records of the Lexington County Probate Court in Estate File Number 2009-ES-32-1004.

9. Plaintiff is informed and believes that its mortgage herein described constitutes a first mortgage lien on the subject real estate and improvements thereon, including any mobile home located thereon. Plaintiff would further allege and avail itself of the Purchase Money Mortgage Doctrine as may apply to the facts of this action as well as the After Acquired Property Doctrine.

10. That the Plaintiff has complied with its obligation(s) as required under the specific terms of the Note and Mortgage being foreclosed as well as any applicable Federal or State statutes or regulations including but not limited to, the furnishing of any notices required to be given to the obligor(s) which gives to such person(s) the right to cure any default arising under the specific terms of the recited Note and Mortgage herein; the review of this mortgage loan for

compliance with the Home Affordability Modification Program (HMP), if applicable, and that moreover and prior to the filing of this judicial proceeding, the Defendant(s) had not raised any compliance defenses or objections as to any applicable banking laws by the Plaintiff.

11. 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 and interest or any portion thereof when due, or if any of the conditions and requirements in the mortgage securing the same be not 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.

12. In and by the terms of the said note it is further provided that the maker thereof shall pay a reasonable attorney's fee if the note be placed in the hands of an attorney for collection after default. Any notice or compliance required by the terms of the Mortgage or by state or federal statutes has been given or complied with prior to the commencement of this action and the Defendants shall be forever barred from raising such notice or compliance.

13. The installments of principal and interest falling due from and after September 1, 2009 have not been paid although demand for the payment thereof has been made and the Plaintiff, as the 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 \$474,385.05, together with interest thereon at the rate of 6.5000% percent per annum from August 1, 2009, together with reasonable attorney's fees for the collection thereof and the costs of this action. Pursuant thereto, the Plaintiff has employed the undersigned legal counsel to prosecute these actions herein and add the fees and costs of said counsel to the amount of the total debt as provided for in the Note and Mortgage.

14. Upon information and belief, the Defendants below named claim or may claim a subordinate lien or junior interest upon or interest in the subject property, 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 the Circuit Court Rules 53 and/or 71. The subject Defendant are further made a party due to the similarity in name(s) to the primary defendants against whom they claim or may claim a lien and in order to clear title to this property as follows:

(a) The Defendant, Cassandra S. Risher, as Personal Representative and Legal Heir of the Estate of Sidney Allan Risher in such fiduciary capacity as representative of any person or entity that may be a creditor or claimant against such Estate, and by virtue of the

powers granted by Decedent's Will or by statute and by virtue of any interest claimed under the law of succession (S.C. Code §62-2-109) or under decedent's will.

(b) The Defendant(s), Justin Risher, a minor, Sydney Risher, a minor, Ashley Risher, a minor, Sidney J. Risher, Pierre Risher and Drayon Holmes, as Legal Heirs to the Estate of Sidney Allan Risher by virtue of any interest claimed under the law of succession (S.C. Code §62-2-109) or under decedent's will.

(c) The Defendant, Highland Hills Homeowners Association, Inc., by virtue of any lien or enforceable assessments against the subject property.

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

16. Plaintiff may be forced to pay sums for taxes and insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.

17. In the event the subject property is sold at Judicial Sale and the successful bidder is a third party, neither the Plaintiff nor Plaintiff's counsel make any warranties or representations as to the subject property on behalf of the third party bidder.

**FOR A SECOND CAUSE OF ACTION  
(EQUITABLE LIEN)**

18. Plaintiff realleges and incorporates the allegations of the preceding paragraphs as if fully contained herein.

19. That the mortgagor, Sidney A. Risher, borrowed \$479,750.00 for the purchase of the real estate described herein.

20. Cassandra S. Risher and Sidney A. Risher received an equitable benefit from the money loaned by the Plaintiff in that the proceeds from the Plaintiff's loan were used to purchase the real property.

21. That the aforesaid created a debt, duty or obligation owing from Cassandra S. Risher and Sidney A. Risher to the Plaintiff,

22. That the debt, duty, and obligation of Cassandra S. Risher and Sidney A. Risher to the Plaintiff attaches to the above real property.

23. That the parties intended, expressly or impliedly, that the above-described real property serve as security for the payment of the obligation.

24. That the aforesaid establishes an equitable lien in favor of the Plaintiff upon the Defendants' interest in the above described real property.

25. Plaintiff is entitled to an Order of the Court establishing equitable lien upon the Defendants', Cassandra S. Risher, interest in the subject property and foreclosing Plaintiffs equitable lien.

**FOR A THIRD CAUSE OF ACTION  
(Unjust Enrichment)**

FILED  
2010 FEB -3 P 3:03

BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON SC

26. Plaintiff realleges and incorporates the allegations of the preceding paragraphs as of fully contained herein .

27. Plaintiff conferred a nongratuitous benefit upon the Defendant Cassandra S. Risher.

28. That the Defendant realized the nongratuitous benefit bestowed upon her by the Plaintiff in that the Defendant Cassandra S. Risher purchased her interest in the subject property using the proceeds of Plaintiffs mortgage loan.

29 It would be inequitable for Defendant Cassandra S. Risher, to retain this benefit without paying the Plaintiff its value, and Plaintiff is entitled to judgment against the Defendant for the benefit of the value so conferred.

WHEREFORE, having fully set forth its Complaint, Plaintiff prays that this Honorable Court inquire into the matters as set forth herein and that:

1. 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 the costs of this action.

2. Plaintiff's mortgage be declared a first lien (and purchase money mortgage first lien as does apply under the specific facts of this action as well as the After Acquired Property Doctrine) 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 and/or costs for inspecting and securing the property which may be due or which may be or have been paid by Plaintiff, with a reasonable attorney's fees, and for the costs of this action.

3. The mortgaged premises be sold according to law and the practice of this Court, the equity of redemption as to all defendants be barred and the lien or interest claimed by any defendant be extinguished 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, the surplus, if any, be distributed according to law.

4. Appoint a Receiver to collect the rents, issues, profits or designated sums from the mortgagor(s) and/or the grantee(s) of the mortgagor(s) and or tenants occupying or exercising control over the mortgaged premises and hold said assets or the same subject to further Order of this Court.

5. Issue an order directing the Sheriff of Lexington County, South Carolina to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary; and issue an order, if necessary, directing the South Carolina Department of Motor Vehicles to issue a Certificate of Title on any mobile home collateralized under the security documents of the Plaintiff.

6. The Honorable Court declare that the Plaintiff holds an equitable lien upon the real property described herein.

7. The Honorable Court award the Plaintiff a judgment against the Defendant, Cassandra S. Risher, for the benefit of the value conferred upon him by its mortgage loan.

7. For such other and further equitable and/or legal relief as the Court may deem just and proper.

SCOTT LAW FIRM, P.A.

By: 

Ronald C. Scott, SC Bar #4996  
Elizabeth R. Polk, SC Bar #11673  
Brett F. Kline, SC Bar #15661  
Angelia J. Grant, SC Bar #78334  
ATTORNEYS FOR THE PLAINTIFF  
2712 Middleburg Drive, Suite 200  
Columbia, SC 29204  
(803) 252-3340

February 2, 2010

NOTICE REQUIRED BY THE FAIR DEBT  
COLLECTION PRACTICES ACT  
15 U.S.C. Section 1601, As Amended

FILED

2010 FEB -3 P 3:03

1. The amount of the debt is as stated and defined in the Complaint attached hereto.
2. The Plaintiff as named in the attached Summons and Complaint is the creditor to whom the debt is owed.
3. If the original creditor is different from the current creditor, the creditor's law firm will provide the debtor with the name and address of the original creditor if requested by the debtor, in writing, within thirty (30) days of the receipt of this notice.
4. The debt described in the Complaint attached hereto and evidenced by the Note and Mortgage described therein will be assumed to be valid by the creditor's law firm unless the debtor, within thirty (30) days after the receipt of this notice, disputes, in writing, the validity of the debt or some portion thereof.
5. If the debtor notifies the creditor's law firm in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereon is disputed, the creditor's law firm will obtain a verification of the debt, and a copy of the verification will be mailed to the debtor by the creditor's law firm.
6. Written requests should be addressed to Scott Law Firm, PA, Attorneys at Law, Post Office Box 2065, Columbia, South Carolina 29202-2065.
7. This notice shall not be construed or interpreted as a thirty (30) day grace period or an extension. The Creditor may pursue collection efforts immediately and not wait thirty (30) days.

**THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL  
BE USED FOR THAT PURPOSE.**

) IN THE COURT OF COMMON PLEAS

**Case No.: 2010-CP-32-00514**

[illegible]

),

),

),

## FOR A FIRST DEFENSE

1. That the defendants deny each and every allegation of the Complaint not hereinafter specifically admitted, qualified or explained.
2. That the defendants admit the allegations set forth in Paragraphs 1 and 2 of the Complaint.
3. That the defendants are without sufficient information or knowledge to form a belief as to the allegations set forth in Paragraph 3 of the Complaint and, therefore, deny same and demand strict proof thereof.
4. That the defendants admit the allegations set forth in Paragraph 4 of the Complaint.
5. That the defendants are without sufficient information or knowledge to form a belief as to the allegations set forth in Paragraph 5 of the Complaint and, therefore, deny same and demand strict proof thereof.

6. That the defendants admit the allegations set forth in Paragraphs 6, 7 and 8 of the Complaint.
7. That as to the allegations set forth in Paragraph 9 of the Complaint, the defendants admit that the plaintiff has a first mortgage lien on the 1/2 interest that was owned by Sidney A. Risher but the defendants deny that the plaintiff has a mortgage lien on the 1/2 interest owned by the defendant, Cassandra S. Risher. 
8. That the defendants are without sufficient information or knowledge to form a belief as to the allegations set forth in Paragraph 10 of the Complaint and, therefore, deny same and demand strict proof thereof.
9. That the defendants admit the allegations set forth in Paragraphs 11, 12 and 13 of the Complaint.
10. That the defendants admit the allegations set forth in Paragraph 14 of the Complaint except that portion that may allege or assert that the interest of the defendant, Cassandra S. Risher, is subordinate or junior to the mortgage lien of the plaintiff.
11. That the defendants admit the allegations set forth in Paragraphs 15, 16 and 17 of the Complaint.
12. That the defendants would respectfully show that no response is required to Paragraph 18 of the Complaint.
13. That the defendants admit the allegations set forth in Paragraph 19 of the Complaint.
14. That the defendants deny the allegations set forth in Paragraphs 20, 21, 22, 23, 24 and 25 of the Complaint.
15. That the defendants would respectfully show that no response is required to Paragraph 26 of the Complaint.
16. That the defendants deny the allegations set forth in Paragraphs 27, 28 and 29 of the Complaint.

#### FOR A SECOND DEFENSE

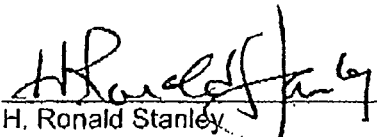
17. That the defendants incorporate the allegations of the First Defense above as fully as if repeated verbatim here.
18. That the defendants would respectfully show that the property which is subject of this action was owned by the decedent, Sidney A. Risher,

and defendant, Cassandra S. Risher, as tenants in common with the said Sidney A. Risher owning an undivided 1/2 interest and the defendant, Cassandra A. Risher, owning an undivided 1/2 interest.

19. That the defendants would further show that the decedent, Sidney A. Risher, mortgaged his undivided 1/2 interest to the plaintiff herein but the defendant, Cassandra A. Risher, never mortgaged her undivided 1/2 interest to the plaintiff.
20. That the defendants are informed and believe that the plaintiff has a valid mortgage lien on the undivided 1/2 interest owned by the decedent, Sidney A. Risher, but the plaintiff has no valid interest in or lien upon the undivided 1/2 interest owned by the defendant, Cassandra S. Risher.
21. That the defendants are informed and believe that the mortgage instrument which was executed and delivered by the decedent, Sidney A. Risher, to the plaintiff was prepared by the plaintiff and that the plaintiff knew or should have known that the instrument prepared by the plaintiff for execution by the said Sidney A. Risher only granted to the plaintiff a lien upon a 1/2 interest in the subject property.
22. That the defendants would further show that the mortgage was executed and delivered by Sidney A. Risher to the plaintiff on July 7, 2008 and at no time between July 7, 2008 and the date of this Answer has the plaintiff sought to obtain a mortgage on the 1/2 interest owned by the defendant, Cassandra S. Risher.
23. That the defendants are informed and believe that the plaintiff is bound by the lien documents that it prepared and should now be barred from attempting to claim any lien interest in or upon the property which is subject of this action other than the lien interest held by the plaintiff in and to the undivided 1/2 interest owned by the decedent, Sidney A. Risher.

**WHEREFORE**, the defendants, having fully answered, pray that the Complaint of the plaintiff be dismissed with prejudice and cost or, in the alternative, that the foreclosure action of the plaintiff, if granted by this Honorable Court, be limited to the foreclosure of the 1/2 interest owned by the decedent, Sidney A. Risher, in and to the property which is subject of this action.

The defendants pray for such other and further relief as this Court may  
deem just and proper.

  
H. Ronald Stanley  
ATTORNEY FOR DEFENDANTS,  
Cassandra S. Risher, Justin A. Risher,  
Sydney A. Risher and Ashley A. Risher  
1418 Park Street  
Post Office Box 7722  
Columbia, South Carolina 29202  
(803) 799-4700

Columbia, South Carolina

Dated: 3/5/10

COPY

STATE OF SOUTH CAROLINA )  
)  
COUNTY OF LEXINGTON )

IN THE COURT OF COMMON PLEAS

Case No. 2010-CP-32-00514

Chase Home Finance, LLC, )  
)  
Plaintiff, )

vs. )

**PLAINTIFF'S NOTICE OF MOTION  
AND MOTION TO ALTER OR  
AMEND JUDGMENT**

Cassandra S. Risher, individually, as )  
Personal Representative and Legal )  
Heir of the Estate of Sidney Risher, )  
Justin Risher, a minor, Sydney )  
Risher, a minor, Ashley Risher, )  
a minor, Sidney J. Risher, Pierre )  
Risher and Drayon Holmes, as Legal )  
Heirs to the Estate of Sidney Allan )  
Risher and Highland Hills )  
Homeowners Association, Inc., )  
)  
Defendants. )

FILED  
2011 JUL 29 P 1:21  
JEROME A. GARRIGS  
CLERK OF COURT  
LEXINGTON SC

TO: H. RONALD STANLEY, ESQUIRE, ATTORNEY FOR DEFENDANT CASSANDRA S. RISHER, INDIVIDUALLY AND AS P.R. OF THE ESTATE OF SIDNEY ALLAN RISHER:

YOU WILL PLEASE TAKE NOTICE that ten days after the service hereof, or as soon thereafter as counsel may be heard, the Plaintiff in the above-referenced matter, Chase Home Finance, LLC, by and through its undersigned counsel, will move pursuant to Rule 52(b) and Rule 59(e), SCRCF, for an order reconsidering and/or altering and amending the Court's Order dated July 11, 2011, filed July 14, 2011 in the Office of the Clerk of Court for Lexington County (the "Order") and received by counsel for Plaintiff on July 18, 2011.

Grounds for said motion are that, based upon the pleadings filed in this action, arguments of counsel, the evidence presented in conjunction with the Court's hearing, together with supporting

memoranda, briefs, deposition testimony of the Defendant Cassandra Risher and other information attached thereto, as well as upon the applicable South Carolina law on this issue and the following:

1. The Court erred in holding that the mortgage executed by Sidney Risher in favor of Midland Mortgage Corporation (the “Mortgage”) is unenforceable against the undivided one-half (1/2) interest of Defendant Cassandra Risher in the subject property. Plaintiff presented undisputed evidence that the Mortgage is a purchase money mortgage. A purchase money mortgage is a “mortgage or security device taken back to secure the performance of an obligation incurred in the purchase of the property.” BLACK’S LAW DICTIONARY 861 (6th ed. 1991). A purchase money mortgage is recognized at common law and in equity where a purchaser of land, contemporaneous with the acquisition of the legal title or afterward, but as a part of the same transaction, executes a mortgage to secure the purchase money. *C&S Nat’l Bank of SC v. Smith*, 277 S.C. 162, 284 S.E.2d 770 (1981); *Crystal Ice Co. of Columbia v. First Colonial Corp.*, 273 S.C. 306, 257 S.E.2d 496 (1979); 55 Am.Jur.2d *Mortgages* § 349 (1971). In a purchase money mortgage transaction, “[t]he deed and mortgage, although in themselves separate and distinct instruments, nevertheless. . . are regarded as parts of the same contract.” *Groce v. Ponder*, 63 S.C. 162, 41 S.E. 83, \*85 (1902).

For example, in *Desaussure v. Bollmann*, 7 S.C. 329, 1876 WL 5969, \*5 (1876), the South Carolina Supreme Court held that a purchase money mortgage prevailed over the dower rights of a wife. It stated as follows:

The rights of dower and homestead stand on much higher grounds relative to the mortgages for the purchase money than a judgment lien, and are therefore more carefully guarded; but time and again has it been decided that a conveyance and a mortgage back by the vendee for the purchase money was too instantaneous a seizin for either of these rights to attach as against the mortgagee.

The Court justified its holding, stating:

All of these decisions relative to dower, homestead and judgments are based upon the clearest principle of justice, not of justice only, but of common honesty, - that the creditors of a debtor cannot take the property of another, for which the debtor has not paid, to pay his debts to them. Such a proceeding could and would not be tolerated; for the very terms upon which the debtor held the property was upon the condition that he should pay for it; and, in case he should fail to do so, the property should be primarily liable for the debt. The thing sold must remain as a security for the payment of its own price, for, were it otherwise, all transactions in real estate must necessarily be in cash, and, that being impossible, the change of property from hand to hand, which creates its principal value, would be most effectually stopped and its value destroyed.

*Id.* at \*6.

In addition, “[t]he common law recognition of the simultaneous effect of the conveyance to the purchaser of an interest capable of being encumbered with the conveyance by the purchaser of the purchase money mortgage establishes the priority.” *Friarsgate, Inc. v. First Federal Sav. & Loan Ass’n of SC*, 317 S.C. 452, 454 S.E.2d 901 (Ct.App. 1995).

The Mortgage loan provided financing for the purchase of the subject property, without which the Rishers would not have been able to purchase the subject property. Defendant Cassandra Risher admits that the loan from Midland Mortgage Corporation was to purchase the Property. *Cassandra S. Risher Dep.* at 13-14, 19. She admits further that she and her husband could not have purchased the Property without the Loan from Midland Mortgage Corporation. *Cassandra S. Risher Dep.* at 19. Witness testimony at trial by Ursula Lucas and Ronald Dodson and Plaintiff’s Exhibits 11, 18 and 19 to the hearing transcript clearly show that the loan funds were used to pay off prior loans to the sellers on the subject property. Therefore, Defendant Cassandra Risher could not have obtained any interest in or title to the subject property without the loan from Midland Mortgage Corporation. The fact that the Mortgage was executed at the same time the deed to the subject property was executed is evidence of the parties’ intent to secure the Mortgage loan from Midland Mortgage Corporation to the Rishers using the subject property as collateral. As such, no portion of

or interest in the subject property was conveyed unencumbered by the Mortgage. Defendant Cassandra Risher's interest in the property did not intervene between the subject property and the mortgagee's rights thereto as security for the Mortgage loan.

2. The Court erred in holding that the Plaintiff is not entitled to an equitable lien against the undivided one-half (1/2) interest of Cassandra Risher. For an equitable lien to arise as to specific property, there must be a debt, a duty or obligation owing from one person to another, a res to which the obligation attaches, which can be described with reasonable certainty, and an intent, expressed or implied that the property serve as security for the payment or obligation. *Carolina Attractions, Inc. v. Courtney*, 287 S.C. 140, 145, 337 S.E.2d 244, 247 (Ct.App. 1985). In other words, for an equitable lien to arise there must be a debt owing from one person to another, specific property to which the debt attaches, and an intent, express or implied, that the property will serve as security for the payment of the debt. *First Federal Sav. & Loan Ass'n of Charleston v. Bailey*, 316 S.C. 350, 356, 450 S.E.2d 77, 80-81 (S.C.App. 1994) (citing *Perpetual Federal Sav. & Loan Ass'n v. Willingham*, 296 S.C. 24, 370 S.E.2d 286 (S.C.App. 1988)).

The late Sidney Risher owed a debt to Plaintiff as shown by the promissory note introduced into evidence as Plaintiff's Exhibit Number 9 at the hearing. Midland Mortgage Corporation took back a Mortgage from Sidney Risher at the time of closing. The Mortgage is a purchase money mortgage, intended to be one transaction with the deed of the subject property to Sidney Risher and Cassandra Risher. The Mortgage describes with particularity the real property to which the obligation owed by Sidney Risher to Plaintiff attached. The property is described in full and is not limited to the one-half undivided interest of Sidney Risher. The Mortgage and other closing documents evidence the intent of the parties that the property described therein serve as security for said obligation.

In its Order, the Court held, “There is no expressed affirmative action on the part of Cassandra Risher to make the debt, duty or obligation owed by Sidney Risher to the plaintiff the debt, duty or obligation of Cassandra Risher.” South Carolina law, however, does not require the showing of an expressed affirmative action by Defendant Cassandra Risher to assume the debt or obligation of Sidney Risher for an equitable lien to attach to the real property described in the Mortgage. The crux of the issue is the fact that the subject property is intended to be collateral for the funds used by Sidney Risher and Cassandra Risher to purchase that same subject property. The Plaintiff is not seeking to have Defendant Cassandra Risher assume the debt under the theory of equitable lien, but merely seeks in equity that the intended collateral be used to fulfill the obligations owed Plaintiff by Sidney Risher, as intended by the parties as a part of the purchase money transaction in which the deed and mortgage are one transaction.

Further, there is no need to show express intent on the part of Cassandra Risher to prove Plaintiff’s entitlement to an equitable lien. Intention of the parties may be inferred from conduct and the general surrounding circumstances. 1 *The Law of Debtors and Creditors* § 9.13 *Equitable Liens* (West 2011). Equitable liens will be applied particularly to avoid unjust enrichment. *Id.* “The intention also may be found from the failure of the parties to properly create a lien upon the equitable maxim that ‘equity heeds substance, not form’ or upon the maxim that ‘equity treats as done that which ought to be done.’” *Id.* In the current action, intent can be inferred from the circumstances of a real estate closing whereby Sidney Risher and Defendant Cassandra Risher obtained title to the subject property with the use of the purchase money funds borrowed from Midland Mortgage Corporation.

As such, Plaintiff has presented evidence to establish the necessary elements to prove an equitable lien exists against the subject property in favor of Plaintiff.

3. The Court erred in holding that Plaintiff is not entitled to a judgment against Defendant Cassandra Risher under the theory of unjust enrichment. South Carolina state courts have long held that unjust enrichment is an equitable doctrine which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the Plaintiff. *Dema v. Tenet Physician Services-Hilton Head, Inc.*, 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009); *Ellis v. Smith Grading & Paving, Inc.*, 294 S.C. 470, 473, 366 S.E.2d 12, 14 (Ct.App. 1988); *Barrett v. Miller*, 283 S.C. 262, 264, 321 S.E.2d 198, 199 (Ct.App. 1984). A party may be unjustly enriched when it has and retains benefit or money which in justice and equity belong to another. *Dema*, 383 S.C. at 123, 678 S.E.2d at 434. Unjust enrichment is an equitable doctrine that “provides the general theoretical framework for all damages awarded in the context of implied and constructive contracts.” 13 S.C.Jur. *Implied Contracts* §6 (2011). The terms “restitution” and “unjust enrichment” are modern designations for the older doctrine of quasi-contracts. *Ellis*, 294 S.C. at 473, 366 S.E.2d at 14; *Martin v. Bozeman*, 173 So.3d 382 (La.Ct.App. 1965). “[Q]uantum meruit, quasi-contract, and implied by law contract are equivalent terms for an equitable remedy.” *Gignilliat v. Gignilliat, Savitz & Bettis, LLP*, 385 S.C. 452, 466, 684 S.E.2d 756, 764 (2009)(citing *Myrtle Beach Hosp., Inc. v. City of Myrtle Beach*, 341 S.C. 1, 8, 532 S.E.2d 868, 872 (2000)).

The essential elements to recover under unjust enrichment, otherwise designated as quasi-contract or quantum meruit, are: “(1) a benefit conferred by the plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention by defendant of the benefit under conditions that make it inequitable for him to retain it without paying its value.” *Gignilliat*, 385 S.C. at 466, 684 S.E.2d at 764 (2009)(citing *Myrtle Beach Hosp., Inc. v. City of Myrtle Beach*, 341 S.C. at 8-9, 532 S.E.2d at 872); *Columbia Wholesale Co., Inc. v. Scudder May N.V.*, 312 S.C. 259, 261, 440 S.E.2d 129, 130 (S.C. 1994); *Webb v. First Federal Sav. & Loan Ass’n of Anderson*, 300 S.C. 507,

510, 388 S.E.2d 823, 825 (S.C.App. 1989); *Ellis*, 294 S.C. at 474, 366 S.E.2d at 15; 26 Williston on Contracts § 68:5 (4<sup>th</sup> ed. 2011); 66 Am.Jur.2d *Restitution and Implied Contracts* § 4 (1973). “In quasi-contracts the obligation arises, not from the consent of the parties as in the case of contracts express or implied in fact, but from the law of natural immutable justice and equity.” *Webb*, 300 S.C. at 510, 388 S.E.2d at 825 (citing 66 Am.Jur.2d *Restitution and Implied Contracts* § 2 (1973)). As otherwise stated, “[a] quasi contract, or one implied in law, is no contract at all, but an obligation created by the law in the absence of any agreement between the parties.” *Stanley Smith & Sons v. Limestone College*, 283 S.C. 430, 435 n.1, 322 S.E.2d 474, 478 n.1 (Ct.App. 1984).

Plaintiff conferred a benefit upon Defendant Cassandra Risher by loaning funds to Sidney A. Risher which funds were used by Sidney Risher and Defendant Cassandra Risher to purchase the subject property. Defendant Cassandra Risher realized that benefit by taking title to a one-half undivided interest in the subject property at closing. It is inequitable to allow Defendant Cassandra Risher to retain her interest in the subject property without paying Plaintiff the value of her interest in the subject property. Defendant Cassandra Risher will be unjustly enriched if she retains the benefit of ownership of the subject property at the expense of the Plaintiff.

The Court’s order sets forth the elements of the federal common law theory of unjust enrichment developed under federal ERISA case law, under which the Plaintiff must show: (1) it had a reasonable expectation of payment; (2) the defendant should have reasonably expected to pay; or (3) that society’s reasonable expectation of person and property would be defeated by nonpayment. *Mason v. M.F. Smith & Assoc., Inc.*, 158 F.Supp.2d 673 (2001). Except when federal questions are involved, the courts of this state are not controlled by decisions of the federal courts. *Ford v. Atlantic Coast Line R. Co.*, 169 S.C. 41, 168 S.E. 143, 156 (1932); *Key v. Carolina & N.W. Ry. Co.*, 150 S.C. 29, 147 S.E. 625, 626 (1929); *State v. George*, 119 S.C. 120, 111 S.E. 880 (1921). There is no

federal question at issue in the current action and, therefore, this Court is not controlled by the decision in *Mason*. Even if the federal common law elements of unjust enrichment applicable under ERISA were the appropriate standard in the within action, Plaintiff has clearly established those elements:

(1) Plaintiff assumed a loan from Midland Mortgage Corporation that it had granted to Sidney A. Risher. Plaintiff, as the holder of the note and Mortgage, has a commercially reasonable expectation of repayment of the loan pursuant to the terms of the note and Mortgage. Plaintiff paid valuable consideration for the loan with the expectation of repayment.

(2) A reasonable person would have expected to pay a fair market or some other negotiated value to purchase the subject property. A reasonable person would also expect to repay any monies loaned for the purpose to allow said purchase.

(3) It is rare in this state that a residential closing takes place where a lender, institutional or otherwise, has not participated in the closing by loaning the funds used to complete the purchase. In South Carolina, closings must be performed under the supervision of an attorney. *Doe v. McMaster*, 355 S.C. 306, 585 S.E.2d 773, 777-778 (2002); *Doe Law Firm v. Richardson*, 371 S.C. 14, 636 S.E.2d 866, 868 (2006). Although the closing attorney does not necessarily represent the lender, as set forth in the arguments below, the lender does provide closing instructions to the closing attorney, which contain conditions under which the lender will loan funds, and the lender relies on the attorney to close the loan and purchase transaction in accordance with those instructions. When the closing attorney fails to abide by those instructions, the party that is represented by the closing attorney is the proper party to bear the resulting loss. *Motley v. Williams*, 374 S.C. 107, 112, 647 S.E.2d 244, 247 (Ct.App. 2007). Lenders have an expectation of repayment of monies loaned to individuals to purchase real property. If those monies are not repaid, the Lender has an expectation of the

availability of a remedy to be made whole. If lenders must bear the risk that an error of the closing attorney, who represents parties to the transaction other than the lender, will result in a loss to the lender of its legal or equitable remedies under law, the liability and cost of doing business increases exponentially for lenders. As a result of increased liability and cost, lenders make fewer loans, or increase fees, charges and interest rates, making eligibility requirements for loans increasingly more difficult for hopeful buyers, impacting the entire real estate market. The interests of society would be served by allowing lenders an equitable remedy under facts present in the within action. To hold otherwise would discourage some lenders from doing business in this state, adversely affecting society as a whole and defeating the reasonable expectations of society, including would-be lenders and borrowers.

4. The Court erred in holding that Plaintiff is not entitled to any form of equitable relief. The Court's Order states that "[P]laintiff is not entitled to any form of equitable relief because the [P]laintiff's predecessor in interest, Midland Mortgage Corporation, and the closing attorney, through their own diligence, could have avoided the loss that has been suffered." Midland Mortgage Corporation did not prepare or review the deed conveying the subject property to Sidney Risher and Defendant Cassandra Risher. Pursuant South Carolina law, the borrower selects the "legal counsel that is employed to represent the debtor in all matters of the transaction relating to the closing of the transaction." S.C. CODE ANN. § 37-10-102 (2011). The South Carolina Ethics Advisory Committee rendered the opinion that, in a standard real estate closing where a buyer or borrower has chosen and retained an attorney, absent additional facts and circumstances, that attorney does not represent the lender. S.C. Ethics Adv. Comm., Op. 09-07 (2009). The Committee further opined that the mere supplying of closing instructions to an attorney by lender does not, in and of itself, create an attorney-client relationship between the lender and the attorney. *Id.* "A 'standard real estate closing' means a

residential real estate closing where Borrower has chosen and retained Lawyer and a sophisticated institutional Lender is providing financing evidenced by a loan package prepared in advance by the Lender and forwarded to the closing attorney for execution.” *Id.* “While the Lawyer has an obligation to explain the documents proffered by Lender to the Borrower, Lender’s instructions that Lawyer ensure that its documents be properly executed does not, in and of itself, create an attorney-client relationship between Lender and Lawyer.” *Id.*

The closing whereby Sidney Risher and Defendant Cassandra Risher purchased the subject property was a “standard real estate closing.” As the record shows in the within action, two closing attorneys participated in the transaction at hand. The closing attorneys did not have an attorney-client relationship with Midland Mortgage Corporation but, instead, represented the purchasers, Sidney A. Risher and Defendant Cassandra Risher.

South Carolina case law holds, “[a]cts of an attorney are directly attributable to and binding upon the client.” *Motley v. Williams*, 374 S.C. 107, 112, 647 S.E.2d 244, 247 (Ct.App. 2007); *Hillman v. Pinion*, 347 S.C. 253, 257, 554 S.E.2d 427, 429-430 (Ct.App. 2001); *Greenville Income Partners v. Holman*, 308 S.E. 105, 107, 417 S.E.2d 107, 108 (Ct.App. 1992); *Mitchell Supply Co. v. Gaffney*, 297 S.C. 160, 375 S.E.2d 321 (Ct. App. 1988). The general rule is that the neglect of the attorney is the neglect of the client, and no mistake attributable to an attorney can be successfully used as a ground for relief, unless it would have been excusable if attributable to the client. *Simon v. Flowers*, 231 S.C. 545, 99 S.E.2d 391, (1957); *Hillman*, 347 S.C. at 257, 554 S.E.2d at 429-430; *Mitchell Supply Co.*, 297 S.C. at 163-164, 375 S.E.2d at 323. The acts and omissions of the attorney in such case are those of the client. *Simon*, 231 S.C. at 551, 99 S.E.2d at 394; *Mitchell Supply Co. v. Gaffney*, 297 S.C. 160, 163-164, 375 S.E.2d at 323.

The closing took place on July 7, 2008. Both Sidney and Cassandra Risher were present at closing. Defendant Cassandra Risher admitted at her deposition that she was present at closing to purchase the property located at 135 Lochweed Drive in Lexington County, South Carolina. *Cassandra S. Risher Dep.* at 12 -14, 18. Defendant Cassandra Risher further admitted in her deposition that she and Sidney Risher decided to use the closing attorney that the Beagles, the previous owners of the subject property, were using in connection with the transaction. *Cassandra S. Risher Dep.* at 18. The Rishers had and exercised their right to choose the closing attorney. The Lender had no voice in the selection of the closing attorney.

To the extent error or negligence on the part of the closing attorney(s) resulted in either (1) Defendant Cassandra Risher's name being erroneously added to the deed or (2) Defendant Cassandra Risher's name being erroneously omitted from the Mortgage, that error or negligence is attributable directly to Defendant Cassandra Risher as the act or omission of her legal counsel. As such, we are not dealing with two innocent parties, but one innocent party, being the Plaintiff, and one party, Defendant Cassandra Risher, who is attributed with the error of her legal counsel at closing resulting in the current legal action. As such, equity favors the Plaintiff.

In its Order, the Court cites to an equitable maxim, the origination of which is that, "[t]here is no doctrine of equity jurisprudence better supported by reason as well as authority than this, that when one of two innocent persons must suffer loss, it must fall on the party who by incaution or misplaced confidence has occasioned it, or placed it in the power of a third party to perpetrate the fraud by which the loss has happened." *City Council of Charleston v. Ryan*, 22 S.C. 339, 348 (1885) (citing *State Bank of S.C. v. Herman Cox & Co.*, 11 Rich. Eq., 350, 32 S.C.Eq. 344, 372 (1860)). Notwithstanding the foregoing argument, in the within action, Defendant Cassandra Risher placed confidence in her closing attorney(s) in connection with the purchase of the subject property. Due to

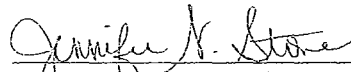
the negligence or error of the closing attorney or attorneys for the Rishers, the Plaintiff will suffer a loss should the Court deny it equitable remedies. Even this equitable maxim recognizes that misplaced confidence should not protect a party who has occasioned a loss. As the cause of the potential loss to the Plaintiff originates with the error of the closing attorney, which error is attributable to Defendant Cassandra Risher, equity favors protection of the Plaintiff against loss resulting from that error. More fundamentally, this equitable maxim applies to situations in which a fraud has been perpetrated and a loss sustained. Here there was no fraud, only mistake.

Further, if the subject property is found to be encumbered by an equitable lien in favor of Plaintiff, then neither party will have suffered a loss. By the grant to Plaintiff of the relief requested in its Complaint, the court will merely place the parties in the positions in which they were intended to be placed upon the closing of the transaction had no error occurred. The grant of Plaintiff's requested relief would be a judicial exercise of the equitable maxim that "equity treats as done that which ought to be done." A loss will only occur if this Court denies Plaintiff the requested equitable remedies and continues to hold that Plaintiff is not entitled to lien on Defendant Cassandra Risher's one-half undivided interest in the subject property under the theory of equitable lien or unjust enrichment/quasi contract.

Based upon the foregoing, the Plaintiff respectfully requests that the Court reconsider the above rulings and alter or amend its previous Order.

Respectfully submitted,

CALLISON TIGHE & ROBINSON LLC



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Facsimile: 803-252-3346

**ATTORNEYS FOR PLAINTIFF**

Columbia, South Carolina  
July 28, 2011

Plaintiff's Notice of Motion and Motion to Alter or Amend  
Case No. 2010-CP-32-00514

COPY

1 STATE OF SOUTH CAROLINA  
2 COURT OF COMMON PLEAS  
3 COUNTY OF LEXINGTON  
4 CHASE HOME FINANCE, LLC,  
5 Plaintiff,  
6 vs. CASE NO. 2010-CP-32-00514  
7 CASSANDRA S. RISHER, Individually,  
8 as Personal Representative and  
Legal Heir of the Estate of  
Sidney Risher, et al.,  
9 Defendants.

CERTIFIED COPY

10 TRIAL  
11  
12 BEFORE THE HONORABLE JAMES O. SPENCE  
13  
14 DATE: Thursday, May 12, 2011  
15  
16 TIME: 9:04 a.m.  
17  
18 LOCATION: Lexington County Courthouse  
205 East Main Street  
Lexington, South Carolina  
19  
20 REPORTED BY: JANNI S. JARDINE  
Court Reporter

FILED  
2011 JUN 14 AM 11:44  
BETHA CAMPBELL  
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(INDEX AT REAR OF TRANSCRIPT)

1 (PLF. EXH. 1, Agreement to Buy and Sell  
2 Real Estate, CTR.RFP.0001-0004, was marked for  
3 identification.)

4 (PLF. EXH. 2, Century 21 Home Protection  
5 Plan, CTR.RFP.0005, was marked for identification.)

6 (PLF. EXH. 3, Acknowledgement,  
7 CTR.RFP.0029, was marked for identification.)

8 (PLF. EXH. 4, Important Notice Regarding  
9 Real Estate Taxes, CTR.RFP.0028, was marked for  
10 identification.)

11 (PLF. EXH. 5, Closing Disclaimer,  
12 CTR.RFP.0030, was marked for identification.)

13 (PLF. EXH. 6, Representation Disclaimer,  
14 CTR.RFP.0031, was marked for identification.)

15 (PLF. EXH. 7, Privacy Policy Notice,  
16 CTR.RFP.0032, was marked for identification.)

17 (PLF. EXH. 8, Photocopy of the Drivers'  
18 Licenses of Sidney Risher and Cassandra Risher,  
19 CTR.RFP.0033, was marked for identification.)

20 (PLF. EXH. 9, Note, was marked for  
21 identification.)

22 (PLF. EXH. 10, Title to Real Estate,  
23 CTR.RFP.0007,0006, was marked for identification.)

24 (PLF. EXH. 11, Settlement Statement,  
25 CTR.RFP.0008-0009, was marked for identification.)

1 (PLF. EXH. 12, July 7, 2008 Mortgage,  
2 CTR.RFP.0010-0026, was marked for identification.)

3 (PLF. EXH. 13, Assignment of Mortgage, was  
4 marked for identification.)

5 (PLF. EXH. 14, Assignment of Real Estate  
6 Mortgage, was marked for identification.)

7 (PLF. EXH. 15, March 15, 2005 Mortgage, was  
8 marked for identification.)

9 (PLF. EXH. 16, August 16, 2006 Mortgage,  
10 was marked for identification.)

11 (PLF. EXH. 17, Inventory and Appraisement,  
12 was marked for identification.)

13 (PLF. EXH. 18, Photocopy of a Check to Bank  
14 of America in the Amount of \$353,456.33,  
15 CTR.RFP.0063-0037, was marked for identification.)

16 (PLF. EXH. 19, Photocopy of a Check to Bank  
17 of America in the Amount of \$157,388.81,  
18 CTR.RFP.0034-0035, was marked for identification.)

19 (PLF. EXH. 20, Excerpts from the Deposition  
20 of Cassandra S. Richer on October 4, 2010, was marked for  
21 identification.)

22 \* \* \* \* \*

23 MS. STONE: Good morning, Your Honor. If  
24 it please the Court?

25 THE COURT: Yes, ma'am.

1 MS. STONE: My name is Jennifer Stone. I'm  
2 here today on behalf of the plaintiff, Chase Home  
3 Finance, in the within action.

4 To give you a little bit of background  
5 about this case, this case involves a loan that was given  
6 to Sidney Risher, and the amount of that loan was  
7 \$479,750. And the loan -- the purpose of the loan was  
8 allow him to purchase a property located at 135 Lochweed  
9 Drive here in Lexington County.

10 The bank that granted that loan intended  
11 that property to be the collateral and the security for  
12 the loan. But at closing, the property was deeded to  
13 Sidney Risher and Cassandra Risher, but only Sidney  
14 Risher signed the mortgage at that time.

15 Unfortunately, Mr. Sidney Risher has passed  
16 away. And after that time, Chase has stopped receiving  
17 installment payments under the loan. And, thereafter,  
18 Chase instituted a foreclosure action, now the  
19 foreclosure of the mortgage lien. I think it has been  
20 stated under the administrative order that was issued by  
21 the Court, Supreme Court, May 2nd of this year, but we're  
22 moving forward today to show the Court that the plaintiff  
23 is entitled to an equitable lien over the entire  
24 property.

25 There is a debt owing to Chase. The debt

1 was intended to encumber the property located at 135  
2 Lochweed, and it was the intent of the parties at the  
3 time of closing, as evidenced by the mortgage that was  
4 filed, that that property be used as security for the  
5 debt.

6 We would further show that the plaintiff is  
7 entitled to relief through unjust enrichment, that  
8 Ms. Risher would be unjustly enriched if she were  
9 entitled to retain the property without paying the value.

10 Therefore, the plaintiff paid the money  
11 that was used to purchase the property. She retained a  
12 one-half interest in the property as the benefit from  
13 that loan and has not paid the value for the property.

14 THE COURT: Thank you.

15 Mr. Stanley.

16 MR. STANLEY: Thank you, Your Honor. If it  
17 please the Court?

18 Your Honor, our position in this case is  
19 very simple. We acknowledge that Chase has a mortgage  
20 covering an undivided one-half interest in this property.  
21 Ms. Richer is a titleholder in addition to her husband.  
22 Ms. Risher did not execute the mortgage, so they do not  
23 have a lien on the one-half interest owned by Ms. Risher.

24 We think the law is very clear that a  
25 mortgage is not valid or effectual unless signed by the

1 mortgagor or someone on behalf of the mortgagor pursuant  
2 to a power of attorney or some agency.

3 When there are joint mortgagors, there is a  
4 law that says that a mortgage intended to be executed by  
5 joint mortgagors is not binding on any fail to sign and  
6 acknowledge it.

7 Ms. Risher has not signed the mortgage. It  
8 is clear that the mortgage is not effective -- is not  
9 valid with respect to her one-half interest.

10 And that is our position in this case. We  
11 acknowledge that they have a right to foreclose on the  
12 one-half interest, and we invite them to go ahead and  
13 proceed to do that, but they cannot foreclose on her  
14 one-half interest.

15 THE COURT: All right. Thank you.

16 And do you agree with Ms. Stone that the  
17 chief's order of last week does not state us proceeding  
18 going forward on the issue of determining if there is an  
19 equitable lien or not?

20 MR. STANLEY: Yes, sir, I do.

21 THE COURT: All right. Thank you.

22 MR. STANLEY: Yes, sir.

23 THE COURT: Call your first witness,  
24 please.

25 MS. STONE: Judge, my case will -- if I

1 may --

2 THE COURT: Certainly.

3 MS. STONE: -- will be -- a majority of it  
4 will be introduced through evidence, documentary evidence  
5 I would like to put into evidence and present to the  
6 Court at this time.

7 MR. COURT: All right. Mr. Stanley?

8 MR. STANLEY: I'm sorry. You intend to do  
9 what now?

10 MS. STONE: To put into evidence the  
11 documents, and I'll go through them one at a time.

12 MR. STANLEY: That would be fine.

13 THE COURT: When you introduce them, if  
14 they have been recorded, if you will just say, for  
15 example, Exhibit 1D recorded, record book,  
16 blankety-blank, that will make it easier for everybody to  
17 follow it on the record and me when I'm reviewing.

18 MS. STONE: Okay. Yes, sir.

19 The first document that I would  
20 introduce -- a number of the documents that I have are  
21 documents from the closing of the loan when the Rishers  
22 did purchase the property. The first document I would  
23 introduce is the Agreement to Buy and Sell Real Estate,  
24 which has been marked as Exhibit Number 1. It has been  
25 marked as Exhibit 1. I don't believe there is any

1 objection.

2 MR. STANLEY: Judge, no objection.

3 THE COURT: Thank you.

4 MS. STONE: The next document that I have  
5 from the closing is a Century 21 Home Protection Plan.  
6 It's marked as Exhibit 2. I believe there is no  
7 objection.

8 MR. STANLEY: No objection.

9 MS. STONE: The third closing document that  
10 I have to present into evidence has been marked as  
11 Exhibit 3, is an Acknowledgment. I believe there is no  
12 objection there.

13 MR. STANLEY: No objection.

14 MS. STONE: This is an Important Notice  
15 Regarding Real Estate Taxes. It was executed at closing.  
16 It has been marked as Exhibit 4. I believe there is no  
17 objection.

18 MR. STANLEY: No objection.

19 MS. STONE: And I have a Closing Disclaimer  
20 that was executed at closing, and it has been marked as  
21 Exhibit 5. I believe there is no objection.

22 MR. STANLEY: No objection.

23 MS. STONE: I have a Representation  
24 Disclaimer that was executed at closing. It has been  
25 marked as Plaintiff's Exhibit 6. I believe there is no

1 objection to this document.

2 MR. STANLEY: No objection, Your Honor.

3 Can you slow down one second? I thought --  
4 I was thinking that you had marked them at the bottom,  
5 but this is a deposition.

6 MS. STONE: Oh, yes. I'm sorry.

7 MR. STANLEY: So I need to mark mine as you  
8 go then. I wasn't marking them.

9 MS. STONE: The next document I have is a  
10 Privacy Policy Notice that was executed at closing. It's  
11 been marked as Plaintiff's Exhibit Number 7. I believe  
12 there is no objection to this document.

13 MR. STANLEY: No objection.

14 MS. STONE: From the closing file, I have  
15 copies of the drivers licenses of Sidney and Cassandra  
16 Risher -- that has been marked as Plaintiff's Exhibit  
17 8 -- I would like to introduce into evidence.

18 MR. STANLEY: Without objection.

19 MS. STONE: At closing, a note was signed.  
20 I would like to introduce that into evidence. This note  
21 has been marked as Plaintiff's Exhibit Number 9. I  
22 believe we can enter it without objection. Mr. Stanley?

23 MR. STANLEY: No objection.

24 MS. STONE: I would like to enter into  
25 evidence the Title to Real Estate Deed that was executed

1 by Robert and Debra Beagle in favor of Sidney and  
2 Cassandra Risher at closing. And this document is  
3 recorded in the Lexington County Register of Deed's  
4 Office, Deed Book 13022 at Page 315. It's been marked as  
5 Plaintiff's Exhibit 10. I would like to introduce this  
6 as evidence.

7 MR. STANLEY: No objection, Your Honor.

8 MS. STONE: I have the settlement statement  
9 that was executed at closing. This has been marked as  
10 Plaintiff's Exhibit Number 11. I would like to introduce  
11 this into evidence at this time.

12 MR. STANLEY: No objection.

13 MS. STONE: In connection with the closing,  
14 a mortgage was executed. This mortgage has been recorded  
15 in the Lexington County Register of Deed's Office,  
16 recorded on July 10th, 2008, Book 13022, at Page 317. I  
17 would like to introduce this mortgage into evidence.  
18 It's been marked as Plaintiff's Exhibit Number 12.

19 MR. STANLEY: No objection, Your Honor.

20 THE COURT: Thank you.

21 MS. STONE: The mortgage that has been  
22 marked as Exhibit 12 has been assigned to JPMorgan Chase  
23 Bank by assignment of mortgage recorded in the Lexington  
24 County Register of Deeds Office in Book 13049 at Page  
25 305. I would like to introduce this assignment of

1 mortgage into evidence. It has been marked as  
2 Plaintiff's Exhibit Number 13.

3 MR. STANLEY: No objection.

4 MR. STANLEY: JPMorgan Chase Bank assigned  
5 its interest in the mortgage or assigned the mortgage  
6 over to Chase Home Finance, LLC, the plaintiff in the  
7 current action. That assignment of real estate mortgage  
8 is recorded in the Lexington County Register of Deeds  
9 Office. It was recorded March 5th, 2010, in Book 14126  
10 at Page 139. It's been marked as Plaintiff's Exhibit  
11 Number 14. I would like to introduce this assignment  
12 into evidence at this time.

13 MR. STANLEY: No objection, Your Honor.

14 MR. STANLEY: I would like to introduce  
15 into evidence a mortgage from Robert Beagle and Debra  
16 Beagle to Bank of America, which is recorded in the  
17 Lexington County Register of Deeds Office. It was  
18 recorded on March 18th, 2005, in Book 9983 at Page 17.  
19 This mortgage has been marked as Plaintiff's Exhibit  
20 Number 15. I would move at this time to put this  
21 mortgage into evidence.

22 MR. STANLEY: No objection.

23 MS. STONE: There is a second mortgage from  
24 Robert L. Beagle and Debra A. Beagle to Bank of America.  
25 It was recorded in the Office of the Register of Deeds

1 for Lexington County. This was recorded October 3, 2006,  
2 in Book 11438 at Page 94.

3 I would like to move, at this time, to  
4 enter this mortgage into evidence. It has been marked as  
5 Plaintiff's Exhibit Number 16.

6 THE COURT: Is that correct? Is that  
7 number correct?

8 MR. STANLEY: I think it's correct, Your  
9 Honor. I was having it as 15, but I think I had two 14s.

10 MR. LANG: It should be 16.

11 MR. STANLEY: I think it's 16.

12 MR. LANG: It is. I believe it is correct,  
13 Your Honor.

14 THE COURT: Thank you. I'm one ahead,  
15 somehow, in my numbering.

16 MR. LANG: Judge, we have a list. Looks  
17 like for the plaintiff, on my list, that's Number 16.

18 THE COURT: Okay.

19 MR. STANLEY: I don't have any objection,  
20 Your Honor.

21 THE COURT: All right. Thank you.

22 MS. STONE: At this time, Your Honor, I  
23 have an inventory and appraisalment that's filed in the  
24 Office of the Probate Court in the matter of Sidney Allen  
25 Risher, Estate Number 2009-ES-01004 that I would like to

1 enter into evidence at this time.

2 MR. STANLEY: We do object to that  
3 document, Your Honor. We object on the ground that it's  
4 not relevant to this proceeding. And I understand it's a  
5 public document in the Probate Court, but we don't see  
6 the relevance in this particular proceeding as a probate  
7 document -- Probate Court document.

8 THE COURT: Okay. Ms. Stone.

9 MS. STONE: Well, we are looking for an  
10 equitable remedy in this case, and, a lot of times, the  
11 Courts will look to see if other parties are prejudiced  
12 as they proceed. And what this inventory and  
13 appraisement shows is that Ms. Risher is the beneficiary  
14 under certain life insurance policies, the value of which  
15 are over a million dollars, which would show to the Court  
16 her ability to pay the mortgage if we proceed in that  
17 direction.

18 THE COURT: All right.

19 MR. STANLEY: Your Honor, by the same  
20 token, if Chase is the plaintiff in this case, they  
21 certainly have the ability to absorb the loss that they  
22 are entitled to absorb because she didn't execute this  
23 mortgage. And so I don't think that's relevant as to how  
24 much money Chase has and whether or not they can absorb  
25 the mortgage, and so I don't think it's relevant as to

1    how much money Ms. Risher has as to whether she can pay  
2    the debt.

3                   THE COURT: All right. Thank you.

4                   I'm going to allow on this basis: it is a  
5    publicly recorded document. Both the objection against  
6    and the argument for are based on a relevancy ground, and  
7    after I hear the case and listen to the argument, I'll  
8    give it what weight deemed as necessary.

9                   MR. STANLEY: Thank you, Your Honor.

10                  MS. STONE: It has been marked as  
11   Plaintiff's Exhibit 17.

12                  MR. STANLEY: Your Honor, by the way, I  
13   don't believe that -- I mean, since she's put it in, I  
14   don't believe she's put in a correct one. I think there  
15   is an amended one that does not show that much money, and  
16   I would appreciate it, if you're going to put it in for  
17   the Court's consideration, that we put in the correct  
18   one. I think there's an amended inventory.

19                  THE COURT: All right. Well, I'll leave  
20   you all permission to exchange if it is to -- both of you  
21   all make sure the correct one gets in, and you can  
22   substitute if there is an amended one to this document.

23                  MR. STANLEY: Thank you, Your Honor.

24                  MS. STONE: Yes, sir.

25                  THE COURT: And just make sure that copies

1 go between each other, you copy the Court, and Madam  
2 Court Reporter gets the original back, because she'll  
3 have the exhibits.

4 MR. STANLEY: Thank you, sir.

5 THE COURT: Thank you.

6 MS. STONE: The next document I would like  
7 to place into evidence is a copy of a check issued from  
8 the trust account of Ronald C. Dodson, payable to Bank of  
9 America, a check in the amount of \$353,456.33. This has  
10 been marked as Plaintiff's Exhibit 18. Entered without  
11 objection, I believe.

12 MR. STANLEY: Without objection.

13 THE COURT: Thank you.

14 MS. STONE: The next document I would like  
15 to enter into evidence is a check issued to Bank of  
16 America from the trust account of Ronald C. Dodson in  
17 connection with the closing in the amount of \$157,388.81.  
18 This has been marked as Plaintiff's Exhibit 19. Entered  
19 without objection, I believe.

20 MR. STANLEY: Without objection.

21 MS. STONE: Okay. There are excerpts from  
22 the deposition of Cassandra Risher that I would like to  
23 enter into evidence. Would you like me to enter them  
24 collectively or separately? Do you have any preference?

25 THE COURT: As long as both counsel have

1 reviewed the excerpts and are satisfied, we can enter  
2 them in as a group. I don't have a problem with that.

3 Mr. Stanley?

4 MR. STANLEY: May I see what you have? Is  
5 this all of them, or is this just part?

6 MS. STONE: These are the substantive ones  
7 not the authentication ones.

8 MR. STANLEY: Your Honor, I don't have any  
9 objection to this.

10 MS. STONE: Okay. These are just excerpts  
11 from the deposition of Cassandra S. Risher, which was  
12 taken October 4, 2010. These are the pages cited in the  
13 pre-trial brief. These have been marked as Plaintiff's  
14 Exhibit Number 20.

15 THE COURT: Thank you. Without objection.

16 MR. STANLEY: No objection, Your Honor.  
17 Just for the record, though, I do reserve my right to  
18 require counsel for the entire deposition transcript, and  
19 I'll reserve that, and I'll let the Court know.

20 THE COURT: Thank you.

21 MS. STONE: If I may, Judge, I would like  
22 to call my first witness.

23 THE COURT: All right. Just one moment.

24 We've got Exhibits 1 through 20, as have  
25 been indicated, have all gone in by agreement of counsel,

1 with Mr. Stanley reserving the right to require that the  
2 deposition excerpts, Number 20, be supplemented, if he  
3 decides to make that decision later.

4 MS. STONE: Yes, sir.

5 MR. STANLEY: Well, Your Honor, I think  
6 there is one 1 through 16, and then 18 through 20 would  
7 be the agreement. I objected to 17.

8 THE COURT: That's correct. I'm sorry. As  
9 ruled, 1 through 20 are in, as noted. Yes, sir.

10 MR. STANLEY: I'm sorry. I didn't  
11 understand the Court's ruling.

12 THE COURT: You're correct. There were  
13 certain exhibits that came in by consent. You objected  
14 to certain, and I overruled the objection. So the  
15 exhibits that are in now are 1 through 20. 1 through 20.

16 MR. STANLEY: Right. Okay. Just as long  
17 as my objection is noted to Number 17.

18 THE COURT: Yes, sir.

19 MR. STANLEY: Yes, sir. Thank you.

20 THE COURT: All right. First witness.

21 MS. STONE: I would like to call Ursula G.  
22 Lucas to the stand, please.

23 THE COURT: Ms. Lucas, come forward and be  
24 sworn.

25 (Witness sworn.)

Direct Examination of Ursula G. Lucas by Mrs. Stone  
Hearing 5/12/2011

19

1 BAILIFF: Step up and give the Court your  
2 full name, please.

3 THE WITNESS: Ursula G. Lucas.

4 URSULA G. LUCAS, being first duly  
5 sworn, testified as follows.

6 EXAMINATION

7 BY MS. STONE:

8 Q. Ms. Lucas, can you please tell the Court  
9 what you do for a living.

10 A. I am a real estate paralegal and a licensed  
11 title insurance agent.

12 Q. Okay. And how long have you been in this  
13 business?

14 A. Thirty-two years.

15 Q. Okay. And is there a particular business  
16 for which you work?

17 A. The Georgaklis Company. I own the  
18 Georgaklis Company.

19 Q. Okay. And how long has that business been  
20 in existence?

21 A. January of 1996.

22 Q. Okay. Great.

23 And, as part of your business, what types  
24 of things do you do?

25 A. I do real estate closings for Ronald C.

1 Dodson. I prepare closing packages, do title searches,  
2 and we prepare title commitments and title policies.

3 Q. Okay. Great. Thank you.

4 And, based on your experience, have you  
5 ever participated in a real estate -- a residential real  
6 estate closing where a lender accepted a one-half  
7 interest in the property that was going to be used as  
8 collateral?

9 A. No.

10 Q. Okay. And are you familiar with a closing  
11 that took place on July 7th, 2008, where Sidney and  
12 Cassandra Risher purchased the property located at 135  
13 Lochweed Drive --

14 A. Yes.

15 Q. -- here in Lexington County?

16 And where did that closing take place?

17 A. 900 Elmwood Avenue, Columbia.

18 Q. Okay. And were you in the office at the  
19 time of closing?

20 A. Yes.

21 Q. Okay. You were in the office.

22 Were you present at the closing?

23 A. In the closing room, I may have been in and  
24 out from time to time, but no, I was not present during  
25 the entire process, closing process.

1 Q. Okay. Can you tell us who was present at  
2 the closing?

3 A. Tynika Claxton.

4 Q. Okay. And is she an attorney licensed in  
5 the State of South Carolina?

6 A. Yes.

7 Q. Thank you.

8 I would like to present to Ms. Lucas a  
9 settlement statement, which has been marked as  
10 Plaintiff's Number 11.

11 Ms. Lucas, are you familiar with this  
12 document?

13 A. Yes.

14 Q. And, as a real estate closing coordinator,  
15 are you familiar, in general, with settlement statements?

16 A. Yes.

17 Q. Okay. Great.

18 Based on the settlement statement that I've  
19 handed you, can you tell the Court the amount of the new  
20 loan obtained by the Rishers for the purposes of that  
21 closing?

22 A. \$479,750.

23 Q. Okay. Thank you.

24 And, based on the settlement statement, can  
25 you tell the Court whether there were any prior liens

1 paid at closing on behalf of the seller?

2 A. Yes.

3 Q. Okay. Great.

4 Can you tell the Court the amount or the  
5 sums paid on those prior liens at closing on behalf of  
6 the seller?

7 A. The first mortgage payoff was \$353,456.33.  
8 Payoff on the second mortgage was \$157,388.81.

9 Q. Okay. Great.

10 As a part of your job, do you disburse  
11 funds in accordance with the settlement statements at  
12 closings?

13 A. Yes.

14 Q. Okay. Great.

15 What I would like to present to Ms. Risher  
16 (sic) is a copy of a canceled check that has been entered  
17 into evidence as Plaintiff's Number 18.

18 Ms. Lucas, can you tell the Court what this  
19 document is?

20 A. It's a cancelled checked to Bank of America  
21 for payoff on the first mortgage.

22 Q. And can you tell the Court whose signature  
23 is on that check?

24 A. That is my signature.

25 Q. Okay. Thank you.

1 And can you tell the Court how or why that  
2 check was issued?

3 A. It was issued to pay off the first mortgage  
4 on the property that we did the closing on --

5 Q. Okay. Thank you.

6 A. -- to Bank of America.

7 Q. I would like to show Ms. Lucas what's been  
8 marked as Plaintiff's 19.

9 Ms. Lucas, can you tell the Court what that  
10 document is?

11 A. It's a payoff to Bank of America for payoff  
12 on the second mortgage that was on the property.

13 Q. Thank you.

14 And can you tell the Court whose signature  
15 is on that check?

16 A. My signature.

17 Q. Okay. Thank you.

18 And after the check was issued and  
19 executed, what was done with it?

20 A. It was put into Federal Express with a  
21 transmittal letter to pay off the loans, and it was sent  
22 overnight.

23 Q. Okay. Thank you.

24 And can you tell the Court whether any of  
25 the loan proceeds, the new loan proceeds, that were shown

1 in the settlement statement were used to pay those prior  
2 loans?

3 A. Yes, they were.

4 MS. STONE: Okay. Thank you.

5 I have no further questions for Ms. Lucas.

6 THE COURT: Cross, Mr. Stanley?

7 MR. STANLEY: Thank you, Your Honor.

8 EXAMINATION

9 BY MR. STANLEY:

10 Q. Ms. Lucas, you said you owned the  
11 Georgaklis Company.

12 A. Correct.

13 Q. Now, what is the Georgaklis Company?

14 A. It's an abstract and title insurance  
15 agency.

16 Q. All right.

17 A. We do title abstracts.

18 Q. All right. So you do title abstracts and  
19 you do title insurance?

20 A. Correct.

21 Q. Now, do you close loans?

22 A. I do not close loans.

23 Q. All right. Where is your office located?

24 A. 900 Elmwood Avenue in Columbia.

25 Q. And you are the 100-percent owner of that

1 business?

2 A. Yes.

3 Q. Is there an attorney that owns any interest  
4 in that business?

5 A. No.

6 Q. The loan in this case was made by Midland  
7 Mortgage. Is this correct?

8 A. Yes.

9 Q. Did the loan package come from Midland  
10 Mortgage to your office?

11 A. By e-mail, yes.

12 Q. It was sent over by e-mail to your office?

13 A. Correct.

14 Q. All right. Now, why was it sent to your  
15 office?

16 A. Mr. Dodson has an office located inside my  
17 office as well.

18 Q. Okay. How many employees does the  
19 Georgaklis Company have?

20 A. Today?

21 Q. Yes, ma'am.

22 A. There are three of us.

23 Q. Do you have title abstractors?

24 A. I have a title abstractor.

25 Q. In your office?

1 A. Yes.

2 Q. All right. Do you have a lawyer in your  
3 office?

4 A. Mr. Dodson has an office in my office, yes.

5 Q. As of today, he does?

6 A. Yes.

7 Q. And this loan took place in 2007, was it --  
8 2008?

9 A. That is correct.

10 Q. And, at that time, Mr. Dodson had an office  
11 in your office?

12 A. Yes.

13 Q. How long has Mr. Dodson had an office in  
14 your office?

15 A. Since November 2007.

16 Q. Now, this loan was closed by Ms. Claxton.  
17 Is that correct?

18 A. Correct.

19 Q. What is her first name?

20 A. Tynika.

21 Q. Tynika Claxton.

22 A. Yes.

23 Q. All right. In 2008, Tynika Claxton, where  
24 did she practice?

25 A. I do not know where her office was at the

1 time, to be honest with you. I do not recall.

2 Q. How did --

3 A. It was in Columbia.

4 Q. It was in Columbia?

5 A. Yes, in Columbia. I don't know exactly the  
6 location.

7 Q. Did Tynika Claxton come over to your office  
8 on a regular basis to close loans?

9 A. From time to time, she would fill in for  
10 Mr. Dodson.

11 Q. Now, Mr. Dodson has another office, does he  
12 not?

13 A. Yes.

14 Q. Where is that office?

15 A. Millwood Avenue in Columbia.

16 Q. And that's his primary office, isn't it?

17 A. I would say so, yes.

18 Q. How often is Mr. Dodson over at your  
19 location? That's 900 Elmwood Avenue?

20 A. Uh-huh.

21 Q. How often is he over there?

22 A. Often, quite often.

23 Q. But he is over there simply to close loans?

24 A. Some, and I think he does other stuff in  
25 his office -- in there, I'm sure. You would have to

1 refer to him on that.

2 Q. All right. Does he see clients over there?

3 A. Yes, he does.

4 Q. Now, does Mr. Dodson have staff over there  
5 in your office?

6 A. No, sir.

7 Q. All right. So he has no secretary over  
8 there?

9 A. No.

10 Q. There is no paralegal over there?

11 A. No.

12 Q. And your office simply writes title  
13 insurance and does title abstracting. Is that correct?

14 A. And we -- also, we'll prepare Mr. Dodson's  
15 closing packages, get them ready for him to close, to  
16 redo and close.

17 Q. Okay. And so Midland, in this case,  
18 e-mailed the closing package to you, not to Mr. Dodson.  
19 Is that correct?

20 A. I would have to go back and look, but it  
21 may have gone to Mr. Dodson's e-mail address.

22 Q. But it came over to your office at 900  
23 Elmwood Avenue?

24 A. Yes.

25 Q. And the package was prepared for closing by

1 the Georgaklis Company. Is that correct?

2 A. Correct.

3 Q. How does the Georgaklis Company make its  
4 money?

5 A. Mr. Dodson pays me a fee to do work for  
6 him.

7 Q. To do what work?

8 A. To do the closing preparation for him.

9 Q. Now, your father was a practicing lawyer in  
10 Columbia, was he not?

11 A. He was.

12 Q. All right. And you worked for your father  
13 while he lived?

14 A. I did.

15 Q. And you all did a lot of real estate  
16 closings?

17 A. Yes.

18 Q. All right. Now, your father is now  
19 deceased?

20 A. Correct.

21 Q. When did he pass?

22 A. January 1996.

23 Q. All right. And since January 1996, you  
24 have continued this business of closing real estate  
25 loans, have you not?

1           A.     Not closing real estate loans, no,  
2     preparing packages for an attorney to close a loan.

3           Q.     You all never stopped after your father  
4     died?

5           A.     No.

6           Q.     All right. And what you all have done is,  
7     from time to time, you go and get a lawyer that actually  
8     comes in and sits in the closing. Is that correct?

9           A.     Well, the closings come to the attorney,  
10    but, yes, he comes to our office.

11          Q.     All right. You all prepare everything, the  
12    lawyer comes in, sits in to the closing, does the  
13    closing, and then when the closing is done, gives the  
14    package back to you. Is this correct?

15          A.     Correct.

16          Q.     And then you all take care of recording the  
17    docs. Is that right?

18          A.     Correct.

19          Q.     And you all take care of paying off the  
20    mortgages. Is that correct?

21          A.     We send them out, correct.

22          Q.     You satisfy the liens at the courthouse?

23          A.     Not all the time. The lenders send them  
24    directly to the courthouse, in most occasions.

25          Q.     But if they don't, the Georgaklis Company

1 does that?

2 A. If it was sent to us, that is correct.

3 Q. All right. Mr. Dodson doesn't do that,  
4 does he? Mr. Dodson doesn't send out any payoffs, does  
5 he?

6 A. Not physically, no.

7 Q. All right. And Mr. Dodson doesn't satisfy  
8 any loans at the courthouse?

9 A. He has taken documents to the courthouse  
10 we're recording before, but I couldn't tell you  
11 specifically what they were.

12 Q. But when Mr. Dodson closes a loan in your  
13 office, when that closing is done, he leaves that file,  
14 and he goes back to Millwood Avenue, doesn't he?

15 A. Sometimes, yes.

16 Q. And your office actually has done  
17 everything up to the point of going into the closing  
18 room?

19 A. Yes.

20 Q. And then after you go to the closing room,  
21 come out, your office does everything from that point to  
22 the end. Is that correct?

23 A. Yes.

24 Q. All right. Now, your office also makes the  
25 fee for the title insurance. Is that correct?

1 A. Correct.

2 Q. And your office makes a fee for the title  
3 abstract. Is that correct?

4 A. Correct.

5 Q. And then Mr. Dodson pays your office a fee  
6 for preparing the document?

7 A. Correct.

8 Q. Now, the checking account that is used to  
9 pay the mortgages -- like in this case, there were two  
10 mortgages, a first and a second mortgage -- that checking  
11 account is in your office. Is that right?

12 A. Yes.

13 Q. All right. And you actually sign the  
14 checks on that account?

15 A. From time to time, yes.

16 Q. All right. In this case, you signed it?

17 A. Yes.

18 Q. All right. Now, that checking account has  
19 Mr. Dodson's name on it. Is this correct?

20 A. Yes.

21 Q. All right. Is he an authorized signature  
22 on that as well?

23 A. Yes.

24 Q. All right. So who all are authorized  
25 signatures on that account?

- 1           A.     Mr. Dodson and myself.
- 2           Q.     Who reconciles that account every month?
- 3           A.     A staff member that's not a signature on
- 4     the account.
- 5           Q.     Say that for me again.
- 6           A.     A staff member -- one of my staff members
- 7     who is not a signature on the account.
- 8           Q.     All right. So the account is reconciled
- 9     each month by an employee of the Georgaklis Company?
- 10          A.     Correct.
- 11          Q.     All account information is maintained at
- 12     your office at 900 Elmwood Avenue. None of it is
- 13     maintained at Mr. Dodson's office on Millwood Avenue. Is
- 14     that correct?
- 15          A.     No, it's at our office at 900 Elmwood
- 16     Avenue, both of our of offices.
- 17          Q.     You confused me. Both of your offices?
- 18          A.     Well, he has an office in my -- he has an
- 19     office at the same location, so it's kept in his office
- 20     and my office.
- 21          Q.     All right. Now let's go back to this
- 22     closing, now. Ms. Claxton came over.
- 23          A.     Correct.
- 24          Q.     And she went into the closing room.
- 25          A.     Yes.

1 Q. And actually supervised the signing of the  
2 documents. Is that correct?

3 A. Yes.

4 Q. And I believe there is a document here that  
5 says she did that to satisfy the requirements of South  
6 Carolina law.

7 A. Okay.

8 Q. Is that --

9 A. I haven't seen that document.

10 Q. Let me see if I can find that document for  
11 you.

12 MR. BRADLEY: You have this acknowledgment.  
13 What number is that?

14 MS. STONE: Is that number 3? Let me look  
15 real quick.

16 THE COURT: It may be 6. I think 3 was  
17 something about owner's title insurance. It may be 6.  
18 I'm not sure, though.

19 MS. STONE: And I can just put it in again,  
20 if it --

21 MR. STANLEY: Your Honor, if you would,  
22 indulge me one second. I'll see if I can find it.

23 MS. STONE: It should be Plaintiff's Number  
24 3. Is this it?

25 MR. STANLEY: No.

1 THE COURT: Take a look at 6.

2 MR. STANLEY: No, sir, that's not it. I'm  
3 not sure she put it in. Let me just ask her if I --  
4 Did you put that in?

5 MS. STONE: I don't think I did because it  
6 didn't have Ms. Risher's signature. I have no objection.

7 MR. BRADLEY: Okay. No objection?

8 MS. STONE: No objection.

9 MR. BRADLEY: All right. Your Honor, she  
10 didn't have an objection.

11 Let me mark this as Defendant's Exhibit  
12 Number 1.

13 (DEFTS. EXH. 1, Acknowledgement, was marked  
14 for identification.)

15 MR. STANLEY: No objection, Your Honor, so  
16 we can go ahead and move to admit this document. I have  
17 a copy for the Court. Let me give counsel a copy.

18 MS. STONE: Thank you.

19 MR. BRADLEY: Is it admitted, Your Honor?

20 THE COURT: Admitted, yes, sir, without  
21 objection.

22 MR. STANLEY: Thank you, Your Honor.

23 BY MR. STANLEY:

24 Q. Ms. Lucas, I want to show you -- I want to  
25 go over with you what has been admitted into evidence as

1 Defendant's Exhibit Number 1. And it says it's an  
2 acknowledgment.

3 Do you recognize this document?

4 A. I do.

5 Q. All right. The document is signed by  
6 borrower.

7 Do you recognize that signature?

8 A. No. I mean, I can look at other documents,  
9 but, I mean, off the top of my head, no, I don't  
10 recognize the signature.

11 Q. Okay. I will proffer to you that it is a  
12 document that was signed in connection with this closing  
13 by Sidney Risher.

14 A. Uh-huh. Okay.

15 Q. It came from the closing package.

16 A. Okay.

17 Q. All right. But I'm sure this is a typical  
18 document that you all use in every closing.

19 A. Only if Mr. Dodson has had someone fill in  
20 for him.

21 Q. All right. The document says, Borrower --  
22 Buyers/borrowers acknowledge that Attorney Ronald C.  
23 Dodson was not present for this real estate closing  
24 transaction and that for convenience purposes, Attorney  
25 Tynika A. Claxton has appeared in his place.

1 Now, for convenience purposes, can you tell  
2 me what that is?

3 A. I didn't -- I didn't -- I did not  
4 physically draw this up. I am assuming that would be to  
5 meet the requirements in attorney transaction -- conduct  
6 a closing.

7 Q. All right. Well, the next paragraph says  
8 that buyers/borrowers further acknowledge that Attorney  
9 Claxton is present for the limited purpose of satisfying  
10 the requirement that the real estate transaction be  
11 conducted by a South Carolina attorney.

12 A. Uh-huh.

13 Q. And so that's solely the reason she was  
14 there. Is that correct?

15 A. Yes.

16 Q. Now, do you know her?

17 A. Yes.

18 Q. But you don't know where she practices?

19 A. In Columbia. I just don't know the  
20 physical address of where her office is.

21 Q. Now, for a closing like the Risher closing,  
22 who would have gotten Ms. Claxton to come over to close  
23 this loan?

24 A. I would have called -- I am pretty sure I  
25 would have called her.

1 Q. All right. You had called her before?

2 A. Yes.

3 Q. All right. And you had called her when  
4 Mr. Dodson could not come over to be there?

5 A. With Mr. Dodson's approval, yes.

6 Q. Now, who would pay Ms. Claxton for her  
7 services?

8 A. Mr. Dodson.

9 Q. Would it come out of the account that you  
10 paid the mortgages off?

11 A. I don't think so. I don't recall, but I  
12 don't believe so.

13 Q. All right. So if I were to go get the  
14 check that Ms. Claxton was paid for this closing, it  
15 would come off an account of Mr. Dodson --

16 A. I believe -- I believe so.

17 Q. -- and not this account that we --

18 A. I believe so.

19 Q. -- that we used to pay off the mortgages in  
20 this case?

21 A. I believe so.

22 Q. Did you use anybody else for convenience  
23 purposes other than Ms. Claxton?

24 A. No.

25 Q. She was the only one?

1 A. Yes.

2 Q. Is she still coming over to your office to  
3 close loans?

4 A. No.

5 Q. Is there any reason why?

6 A. Mr. Dodson has not been unavailable.

7 Q. All right. Now, when Ms. Claxton came over  
8 to close the Risher loan, what did she do? Just come in  
9 and go into the closing and you had the package there  
10 waiting on her?

11 A. She would come in and review the file, and  
12 then go and conduct the closing, correct.

13 Q. Ms. Claxton didn't do any title work?

14 A. No.

15 Q. All right. Previous to coming over to your  
16 office on the day of the closing, Ms. Claxton hadn't seen  
17 this file, had she?

18 A. I don't believe so.

19 Q. When Ms. Claxton conducted the closing,  
20 after she finished, she would do like Mr. Dodson  
21 typically would do, and that would be to leave the file  
22 with the Georgaklis Company. Is that right?

23 A. Correct.

24 Q. And then Georgaklis Company then would be  
25 responsible for sending the package back to the mortgage

1 company. Is that correct?

2 A. Correct.

3 Q. And recording the documents?

4 A. Correct.

5 Q. In fact, this documents says, Attorney

6 Claxton does not prepare any real estate closing

7 documents nor will disburse any funds. Is that correct?

8 A. That is correct.

9 Q. Now, is it you all's belief over at the  
10 Georgaklis Company this is permissible under South  
11 Carolina law?

12 A. I'm sorry.

13 Q. Do you all believe that this is permissible  
14 under South Carolina law for Attorney Claxton just to  
15 come in, just -- not even have any knowledge of this  
16 closing at all and just close the loan and leave?

17 A. I don't know that I can give an answer to  
18 that.

19 MR. STANLEY: I'm going to object. He is  
20 asking for her -- for a legal opinion.

21 THE COURT: I'll sustain that.

22 MR. STANLEY: Thank you, Your Honor.

23 MS. STONE: Your Honor, I would also make  
24 an objection to this line of questioning. It appears  
25 that he's making some implication that this closing was

1 improper based on some lack of attorney supervision or  
2 something along those lines, but he has not pled any type  
3 of defense like this. So I would like to put that  
4 objection on the record for this line of questioning.

5 THE COURT: All right. Mr. Stanley?

6 MR. STANLEY: Your Honor, it is a loan that  
7 the lawyer did not get the defendant in this case to sign  
8 the mortgage, and so I'm kind of trying to find out why.  
9 I think that she didn't get her to sign it because,  
10 perhaps, she was not familiar with closing and what she  
11 was doing.

12 And I'm raising that to say -- and I think  
13 that comes in a general denial to say that, you know, if  
14 there is a mistake that has been made in this case and  
15 law to that, then it may go to the lawyer that did the  
16 closing and not to this innocent party because the lawyer  
17 didn't get her to sign the mortgage.

18 THE COURT: I'm going to overrule the  
19 objection because you've pled inequitable theory on that,  
20 and I'm going to allow that line of questioning.

21 MS. STONE: Yes, sir.

22 BY MR. STANLEY:

23 Q. Now, Ms. Lucas, on direct exam, the counsel  
24 asked you if you were in the closing room. Were you in  
25 there?

1           A.     Like I said, I may have been in and out of  
2     there. I'm not -- I was not in the closing for the whole  
3     closing. I don't recall, to be absolutely honest with  
4     you. Typically I am in there in and out, for whatever  
5     reasons. I don't -- I do not sit in a closing at any  
6     time.

7           Q.     Well, normally when you're in there, why  
8     are you in there?

9           A.     To get something out of the file, to get  
10    funding documents to send to the lender, to make -- to  
11    bring something in that needed to be changed.

12          Q.     The sellers in this case were the Beals --  
13    Beagle, B-E-A-G-L-E. Were they there?

14          A.     No.

15          Q.     They were not at the closing?

16          A.     They were not at the closing.

17          Q.     When did they sign their documents?

18          A.     I would have to -- I don't have any of  
19    those in front of me. I couldn't tell you.

20          Q.     Let me show you what has been marked as  
21    Exhibit Number 5.

22          A.     May I -- I was going to say something. Can  
23    I say something?

24                 THE COURT:    Sure.

25                 THE WITNESS:  This Exhibit 4 -- I believe

1 in the file there was also a HUD settlement statement  
2 that was actually signed by the Beagles.

3 Q. Okay. You mean separately?

4 A. Yeah.

5 Q. They were in Tennessee. Is that correct?

6 A. If I could see a copy of the deed, I could  
7 tell you.

8 Q. If you could see a copy of what now?

9 A. The deed.

10 The deed was signed in Tennessee on July  
11 2nd, 2008.

12 Q. All right. So it is your belief that they  
13 were not at the closing?

14 A. They were not at the closing.

15 Q. Do you know whether or not you sent any  
16 other documents to them for them to sign?

17 A. Yes.

18 Q. What else did you send them?

19 A. My office sent them what we call a deed  
20 package. It would be anything that was signed by them.  
21 I don't have a list in front of me.

22 Q. Okay. Let me show you a copy of what has  
23 been marked as -- introduced as Exhibit Number 5 --  
24 that's Plaintiff's Exhibit Number 5. That's just a copy.  
25 I don't know where the original is. It's up there, but

1 that's what is marked as Number 5. That is a document  
2 that doesn't have a heading. It just says Sidney A.  
3 Risher, Cassandra P. Risher, July 7, 2008, Midland  
4 Mortgage Corporation, and gives a property address.

5 A. Correct.

6 Q. And it says, The undersigned borrowers  
7 agree to allow a representative from the closing  
8 attorney's office or the Georgaklis Company to make any  
9 clerical correction or completion of loan closing  
10 documents.

11 And so you all, as a company, have a right  
12 to just make changes to closing documents after closing  
13 if there is a mistake or a problem with them?

14 A. There is another sentence in there that  
15 says, No changes will be made that will affect your  
16 interest rate, the amount of money you will have to pay  
17 or any other substantive right or obligation which you  
18 may have under the loan documents.

19 Would that --

20 Q. Okay. Does your signature appear on this  
21 document?

22 A. Yes, it does.

23 Q. All right. So does that kind of indicate  
24 that you were in the closing?

25 A. I probably was in there when this document

1 was signed. I honestly do not recall.

2 Q. All right. Now, you do know now that the  
3 mortgage in this case was not signed by Ms. Risher?

4 A. Correct.

5 Q. All right. Do you know why?

6 A. No, I do not.

7 Q. Do you know whether or not you were in  
8 there when the mortgage was being signed?

9 A. I do not -- I was not -- I must not have  
10 been, because I was not one of the witnesses on the  
11 mortgage.

12 Q. All right. If you look at the face of the  
13 mortgage, Exhibit Number 12 -- I'll just show you a copy  
14 of it. That's Plaintiff's Number 12.

15 That mortgage says the borrower is who?

16 A. Sidney A. Risher.

17 Q. And it says -- if you drop down a little  
18 bit further, it says the borrower is the mortgagor under  
19 this security instrument. Is this correct?

20 A. Correct.

21 Q. All right. Now, who supervised the signing  
22 of this document?

23 A. It would have been Tynika Adams Claxton and  
24 Tina Starks, which were the two witnesses.

25 Q. All right. So you didn't witness this

1 document?

2 A. No.

3 Q. All right. Who prepared the document?

4 A. The document was prepared by the lender.

5 Q. All right. Now, when the lender sends a  
6 document that has the name of only one person, like in  
7 this case, Sidney Risher, and you have the contract, and  
8 you know that title is being taken in two names, what do  
9 you normally do?

10 A. Normally -- normally what would happen is  
11 we would call the lender, ask them if we can add the  
12 other owner to the mortgage, add it to the mortgage, and  
13 have them sign it or, if -- and if they say no, we would  
14 remove the other person that cannot sign the mortgage  
15 from the deed.

16 Q. All right. Was that done in this case?

17 A. Was what done in this case?

18 Q. Was the lender called to ask if you could  
19 add Ms. Risher's name on the mortgage?

20 A. I do not know.

21 Q. All right. You didn't call her?

22 A. I do not remember.

23 Q. All right. Did Ms. Claxton call her?

24 A. I do not know.

25 Q. Was Ms. Risher's name removed from the

1 deed?

2 A. No.

3 Q. All right. Do you agree with me that if  
4 her name is on the deed, her name needs to be on this  
5 mortgage? Is that right?

6 A. Yes.

7 Q. It needs to be on the face of it.

8 A. Yes.

9 Q. Is that correct?

10 It needs to be on the signature page?

11 A. Yes.

12 Q. And she needs to sign it?

13 A. Yes.

14 Q. And, typically, that's what you would do  
15 with your experience in this business. Isn't that right?

16 A. Yes.

17 Q. All right. But you don't know why that was  
18 not done here in this case?

19 A. No, I do not.

20 Q. When was it discovered that it wasn't done?

21 A. Honestly, I do not know without looking at  
22 when it was -- when the title insurance company was  
23 notified.

24 Q. All right.

25 A. I think it was -- I'm not going to say. I

1 don't know.

2 Q. All right. You think -- you found out when  
3 this property went in foreclosure?

4 A. I found out when the title insurance  
5 company notified me, at whatever date that was. I do not  
6 recall that exact date.

7 Q. Now, when this -- after this document was  
8 filed in the Lexington County ROD -- and when I say this  
9 document, I'm referring to the mortgage -- it would have  
10 gone back to your office. Is that correct?

11 A. It would have gone back to 900 Elmwood,  
12 correct.

13 Q. And you -- and the deed would have come  
14 back to your office as well?

15 A. To 900 Elmwood, correct.

16 Q. So the Georgaklis Company then would have  
17 sent the deed to Mr. Risher. Is that correct?

18 A. Correct.

19 Q. And would have sent him his owner's policy?

20 A. No. The policies are issued at closing.

21 Q. Okay. He gets the owner's policy at  
22 closing?

23 A. Correct.

24 Q. All right. Now -- but when you got the  
25 mortgage, you would have then sent the mortgage to the

1 mortgage company?

2 A. Correct.

3 Q. Would you have, at that time, also sent the  
4 title policy?

5 A. No. It is sent at closing.

6 Q. At closing.

7 Just one final question.

8 On the closing statement, Exhibit Number  
9 11 -- do you have a copy there?

10 A. Yes, I do.

11 Q. All right. Items 1111 through 1116 shows a  
12 number of just charges, copies, courier fees paid to  
13 Ronald C. Dodson.

14 A. Correct.

15 Q. Does that go to Mr. Dodson, or does that go  
16 to your company?

17 A. It, eventually, goes to my company.

18 MR. STANLEY: All right. Thank you so  
19 much.

20 I don't have anything further, Your Honor.

21 THE COURT: Redirect?

22 MS. STONE: If I may?

23 THE COURT: Yes, ma'am.

24 RE-EXAMINATION

25 BY MS. STONE:

1           Q.     Ms. Lucas, in your capacity as real estate  
2 coordinator and through the Georgaklis Company, you  
3 explained that you do title abstracts, you have an  
4 abstractor, you document preparation, and you do  
5 post-closing -- handle post-closing matters as well.

6                 In that capacity, are you supervised by an  
7 attorney?

8           A.     Yes.

9           Q.     And what attorney is that?

10          A.     Ron Dodson.

11                 MS. STONE: Okay. Thank you, ma'am.

12                 I have no further questions.

13                 MR. STANLEY: Nothing further, Your Honor.

14                 THE COURT: Thank you. You may step down.

15                 THE WITNESS: Do I need to take these or  
16 leave these?

17                 THE COURT: I don't -- are any of those  
18 originals?

19                 THE WITNESS: Some of them have exhibits.  
20 Some don't.

21                 THE COURT: You probably should sort  
22 through that.

23                 MR. STANLEY: I think one of them had been  
24 the one that I admitted.

25                 (Off-the-record discussion.)

1 MR. LANG: We ask that this witness be  
2 excused, Your Honor.

3 THE COURT: All right. Mr. Stanley?

4 MR. STANLEY: No objection, Your Honor.  
5 Thank you.

6 THE COURT: All right. Thank you.

7 (Off-the-record discussion.)

8 THE COURT: Next witness.

9 MS. STONE: If I can call Ronald C. Dodson  
10 to the stand, please.

11 THE COURT: Come forward and be sworn,  
12 please.

13 (Witness sworn.)

14 BAILIFF: Have a seat and state your name.

15 THE WITNESS: Your Honor, I'm Ronald C.  
16 Dodson.

17 RONALD C. DODSON, being first duly  
18 sworn, testified as follows:

19 EXAMINATION

20 BY MS. STONE:

21 Q. Thank you for being here today, Mr. Dodson.

22 A. Yes.

23 Q. Can you tell the Court what you do for a  
24 living.

25 A. Practice law.

1 Q. Okay. And how long have you been  
2 practicing?

3 A. Since 1971.

4 Q. And what area of law do you primarily  
5 practice?

6 A. Primarily in commercial and residential  
7 real estate closings.

8 Q. Okay. Thank you.

9 Have you ever participated in a residential  
10 real estate closing where a lender has accepted a  
11 one-half interest in any property that was intended to be  
12 used as a collateral for a loan?

13 A. No.

14 Q. Okay. Thank you.

15 Are you familiar with a closing that took  
16 place on July 7th, 2008, whereby the Beagles transferred  
17 the property located at 135 Lochweed Drive here in  
18 Lexington County to Sidney and Cassandra Risher?

19 A. Well, my knowledge would be limited to  
20 having this litigation come up and, you know, I've  
21 reviewed certain documents. But, other than that, I have  
22 no personal knowledge because I probably was on vacation  
23 that week.

24 Q. Okay. So you would not be present at this  
25 closing?

1           A.     I was not present at this closing.

2           Q.     Okay. And I think the documents have been  
3 introduced to that effect. However, in connection with  
4 the -- not being present at the closing but in connection  
5 with the other matters that the Georgaklis Company  
6 handled at your request in connection with the closing,  
7 such as the title abstract, a document preparation,  
8 post-closing matters, did you supervise the Georgaklis  
9 Company in those matters?

10          A.     I supervise every closing.

11          Q.     Okay. Thank you.

12                 And I know I just listed a few of the  
13 broad-term type of items that you supervise, but can you  
14 tell the Court what other type of supervisory duties that  
15 you do?

16          A.     You mean with a particular closing, or in  
17 general?

18          Q.     In general, the way that -- with the way  
19 that that office runs, that -- your relationship with the  
20 Georgaklis Company?

21          A.     Well, I have two offices, and I spend --  
22 you know, it depends upon the case load. Sometimes 50  
23 percent at my Millwood office, sometimes 50 percent at my  
24 Elmwood office, you know, again, depending upon the time  
25 of the month, but, as a result, I'm back and forth.

1 During that time, I generally like to get a file. If I  
2 know it's closing in a week or so, we generally look at a  
3 contract. If I have questions, Ms. Lucas and I talk  
4 about it.

5 The problem with closings is, if you're  
6 familiar with the industry, loan packages sometimes don't  
7 arrive until the very last minute, so you're not always  
8 able to review those until shortly before closing. But I  
9 always -- if we have closings, I know of any problems  
10 that have come up, I always, if we can, a day before, try  
11 to review all the loan documents, be familiar with the  
12 closing procedure, know who my buyers are, know who my  
13 sellers are. I like to know where the funding is coming  
14 from, what lender is involved because certain lenders are  
15 more difficult to deal with than others. And you need to  
16 be generally familiar with that process.

17 And, certainly, in that regard, I rely  
18 heavily upon Ms. Lucas and the Georgaklis Company. I pay  
19 them to do, you know, some of the administrative work.

20 As far as the title abstract work, a  
21 gentleman in her office does the abstract work, which I  
22 review. I always go through that because, lots of times,  
23 we have questions about the tax prorations, any other  
24 liens that affect the property. We have a method in  
25 effect in this office on Elmwood as well as my other

1 office.

2 I review all the checkbooks monthly. We do  
3 a monthly reconciliation, as Ms. Lucas says. She has  
4 some other employee that does it, and then I review it  
5 and make sure all the disbursements, trust accounts are  
6 in order. And I sign off on the book at least once a  
7 month.

8 Q. Okay. Thank you.

9 In connection with this closing --

10 A. Yes.

11 Q. -- did you have an opportunity to review  
12 the title work?

13 A. You know, I can't recall. That was back in  
14 '08. I don't know. It was during the summer of '08. I  
15 probably, like I said, was on vacation. I can't -- I  
16 can't recall whether I ever reviewed the title work  
17 before this particular closing. I would not want to say  
18 that because I just don't have any recollection of that.

19 Q. All right. If I may, I would like to  
20 introduce -- or show to Mr. Dodson what has been marked  
21 as Plaintiff's Exhibit Number 10.

22 This is the deed from the Beagles to the  
23 Rishers. If you'll take a minute to look at that.

24 A. All right.

25 Q. And have you seen this document before?

1           A.     I may have. I can't recall. I've looked  
2     at so many documents, but I don't recall.

3           Q.     Okay. And can you tell from that document  
4     what property was transferred from the Beagles to the  
5     Rishers?

6           A.     It shows on here Lot 6, Highland Hills  
7     Subdivision. It, apparently, has an address of 135  
8     Lochweed Drive, Columbia 29212.

9           Q.     Okay. I would like to show Mr. Dodson what  
10    has been marked as Plaintiff's Number 17.

11                   This is a mortgage that was from Robert and  
12    Debra Beagle, the sellers in the transaction to Bank of  
13    America.

14           A.     Yes.

15           Q.     Have you seen this document before?

16           A.     I believe I have, and I'm sure this is one  
17    of the documents of one of the mortgages that we paid off  
18    at the time of the closing.

19           Q.     And, based on that document, can you tell  
20    the Court whether that mortgage encumbered the property  
21    that was transferred to the Rishers?

22           A.     Yes, it does refer to Lot Number 6, so  
23    that -- yes, that would be the same property.

24           Q.     Okay. Thank you.

25                   And I would also like to show to Mr. Dodson

1 what has been marked as Plaintiff's Number 18. It is  
2 also a mortgage, a separate mortgage, from the Beagles to  
3 Bank of America.

4 And, Mr. Dodson, based on that document,  
5 your review of it, does that also encumber the real  
6 property and improvements that were conveyed from the  
7 Beagles to Cassandra and Sydney Risher?

8 A. Yes. It's the same Lot Number 6 on the  
9 Highland Hills Subdivision property, so it is the same  
10 property. That was the other mortgage that was paid off  
11 out of this transaction.

12 Q. Okay. Thank you.

13 And, in connection with any disbursements  
14 from your trust account, do you supervise all those  
15 disbursements?

16 A. I do.

17 Q. So you would have supervised the payoff in  
18 this transaction?

19 A. Yes.

20 MR. LANG: Beg the Court's indulgence for a  
21 moment, Your Honor.

22 THE COURT: Certainly.

23 BY MS. STONE:

24 Q. Mr. Dodson, I would like to show you a  
25 document. You have stated to the Court you don't recall

1 whether this particular transaction -- if you reviewed  
2 the title work. Of course, like you said, it was back in  
3 the summer of 2008, so I would like to show you this  
4 document to refresh your recollection, to see if,  
5 perhaps, this would jog your memory or give you a firmer  
6 belief about whether you reviewed title in this instance.

7 A. I can't independently, you know, recall. I  
8 more than likely -- before I -- again, I don't know what  
9 day the -- before I went on vacation, I may have looked  
10 at title work and signed off on it. Generally, when I  
11 get title work, I go through just to look, primarily, at  
12 the liens that are going to be paid off. And I did sign  
13 off on this, so I probably looked at the title work  
14 before I left to go on vacation and signed off on it.

15 MS. STONE: Okay. That's fair. Thank you.

16 No further questions, Your Honor.

17 THE COURT: Mr. Stanley.

18 MR. STANLEY: Thank you, Your Honor.

19 EXAMINATION

20 BY MR. STANLEY:

21 Q. Mr. Dodson, you think you were on vacation  
22 when this loan was closed?

23 A. I can't recall, but it was during the  
24 summer, and, more than likely, I probably was. I don't  
25 miss very many closings. I'm usually there except maybe

1 a week in the summer.

2 Q. Now, when you do closings where the  
3 Georgaklis Company is involved, you actually go through  
4 the file, make sure that things are in order, do you not?

5 A. Absolutely.

6 Q. All right. Now -- and you do that prior to  
7 closing, don't you?

8 A. Oh, yes. I mean, we do it before, and I  
9 review the documents after closing when I can. I mean,  
10 sure. We try to make sure everything is in order.

11 Q. All right. Tynika Claxton, who is she?

12 A. She's an attorney here in Columbia. I  
13 think Ms. Lucas knew her at the time. And, you know,  
14 when you can't be present, you're looking for an attorney  
15 that you can work with and that you feel can do the job.  
16 And I think Ms. Lucas knew her, and I can't remember  
17 whether Ms. Lucas contacted her to see if she could be  
18 present when I was on vacation and cover for me,  
19 basically.

20 Q. Do you know her?

21 A. I do not.

22 Q. Have you ever met her?

23 A. I don't think I have. I may have talked  
24 with her on the telephone, but I don't think I've ever  
25 physically met her.

1 Q. If you were present at this closing and  
2 title was being put in the name of Sidney Risher and  
3 Cassandra Risher, you would have added Ms. Risher's name  
4 to the mortgage, wouldn't you?

5 A. If I had that knowledge, I certainly would  
6 have, yes.

7 Q. All right. You would have added her name  
8 to the front page?

9 A. I would have hoped that I would have done  
10 that, yes.

11 Q. And you would have gotten her to sign the  
12 signature page?

13 A. Yes, sir. I certainly know that's  
14 necessary.

15 Q. Do you know whether Ms. Claxton has the  
16 knowledge to know that that needs to be done when title  
17 is being put in two names?

18 A. Mr. Stanley, I can't -- I know she's a  
19 licensed attorney, or I would not have allowed her to  
20 handle that closing. So I presume that she should know  
21 that.

22 Q. Okay. Typically, you know, after the  
23 closing, documents are recorded, like in this case, and  
24 then that document comes back in your closings to the  
25 Georgaklis Company. Is that right?

1 A. Yes.

2 Q. Okay. From the courthouse?

3 A. Yes.

4 Q. Do they have a box at the courthouse?

5 A. I believe they do.

6 Q. And the box at the courthouse has the name  
7 of the Georgaklis Company?

8 A. I believe it does. I have a box there.  
9 Sometimes their documents end up in my box.

10 Q. Okay. Well, I think on this one it came  
11 back to them, did it not?

12 A. I can't recall. Sometimes -- we found  
13 miscellaneous documents that have Georgaklis Company  
14 stamped. They end up in my box. Sometimes my documents  
15 may end up in their box. I can't say.

16 Q. Now, on this one -- and I'm showing you my  
17 copy of Exhibit 12 -- the stamp of the Georgaklis Company  
18 is on the back.

19 A. Yes, sir. I understand that, but I'm still  
20 telling you I still find -- sometimes those end up in my  
21 box. I can't say why the clerk's office does that, but  
22 it's not often, but usually they get put in the correct  
23 box.

24 Q. But, I mean, the purpose of them stamping  
25 it --

1 A. Absolutely.

2 Q. -- is for them to put it in their box.

3 A. Absolutely.

4 Q. Okay.

5 A. That's because we have someone there daily  
6 that picks up the documents.

7 Q. Now, Ms. Lucas testified that, you know,  
8 when that document comes back to her office, in this case  
9 the mortgage, she would then send it to the mortgage  
10 company.

11 A. That's true.

12 Q. All right. She said something particularly  
13 interesting to me, and I want to see if you can help me  
14 with this, because I meant to ask her and didn't think  
15 about it. She said that at the closing, the title policy  
16 is sent with the closing packages, my understanding, the  
17 final title policy.

18 A. You're talking about as far as the lender  
19 policy?

20 Q. Yes.

21 A. I would have to defer to her because she's  
22 the title insurance agent. She issues those policies,  
23 but I know the final policy would have to have the  
24 recording information, I think, on that policy before  
25 that can be sent out.

1           Q.     Right. I just thought about that. I was  
2 particularly interested as to how could you send the  
3 title policy out without the recording information on the  
4 mortgage.

5           A.     Yes, sir, I think you would have to have  
6 the recording information on the loan policy.

7           Q.     And the reason I question that, because I'm  
8 just trying to determine the -- how many opportunities  
9 there were to discover that Ms. Risher's signature was  
10 not on this mortgage. And so, of course, there was an  
11 opportunity discovered prior to the closing. Is that  
12 right?

13          A.     Yes, sir.

14          Q.     All right. An opportunity to discover it  
15 at the closing?

16          A.     Yes, sir.

17          Q.     Opportunity to discovery it before the  
18 documents -- when the documents were being ready to file  
19 at the courthouse?

20          A.     Yes, sir.

21          Q.     And an opportunity to discover it when the  
22 document came back to Georgaklis Company?

23          A.     Yes, sir.

24          Q.     Okay. And then, typically -- I don't  
25 know -- does she -- does the Georgaklis Company do a

1 title update before they issue the final title policy?

2 A. Yes. Generally, we always do a title  
3 update, you know, to cover any kind of gap period in  
4 there.

5 Q. Yes, sir.

6 A. That's traditionally done, yes.

7 Q. So there would be an opportunity to  
8 discover it during the title updating process. Is that  
9 right?

10 A.. I'm not sure about that, but it's possible.

11 Q. When did you find out that there was a  
12 mortgage there that Ms. Risher had not signed?

13 A. Probably a couple of months ago, maybe.  
14 It's been fairly recently.

15 Q. All right. How did you find out?

16 A. I think Ms. Lucas advised me of that.

17 Q. All right. And that came from the title  
18 company?

19 A. I think so. I'm not -- I can't say where  
20 she -- where that came from, but, yes, it came from her.

21 Q. Do you know whether or not the title  
22 company has resolved this matter with the mortgage  
23 company?

24 A. No, sir, I have no knowledge of that.

25 Q. So you don't know who the real party of

1 interest is here?

2 A. I have no knowledge of that.

3 Q. Is Ms. Claxton still sitting in for you?

4 A. No, sir. I don't -- I can't, really,

5 recall missing a closing in at least a year. I have an

6 office -- like I said, I do other business at 900 Elmwood

7 Avenue, so I am there most of the time.

8 MR. BRADLEY: Thank you, sir.

9 MS. STONE: Nothing further.

10 THE COURT: Thank you. You may step down.

11 THE WITNESS: Thank you, Your Honor.

12 MS. STONE: I believe we rest, Your Honor.

13 THE COURT: Thank you.

14 MR. STANLEY: We have no witnesses, Your

15 Honor.

16 THE COURT: Okay. The defense has rested?

17 MR. STANLEY: Yes, sir, the defense has

18 rested.

19 THE COURT: Okay. Anything further from

20 the plaintiff?

21 MS. STONE: No, Your Honor.

22 THE COURT: All right. Thank you.

23 What I'm going to do is I'm going to ask

24 you all to submit a memo about this matter, and I would

25 like to ask you, if you will, to address the specific

1 things that have been pled today -- that were pled and  
2 the specific things that were argued today. I know we  
3 have -- there were equitable liens and unjust enrichment,  
4 and I know Mr. Stanley filed an answer. And make sure  
5 you differentiate between if there is any difference  
6 between what's been pled and what's been argued today.

7 Would you all like to do a brief closing,  
8 brief summary?

9 MS. STONE: If it please -- if you would  
10 like one.

11 THE COURT: I would like it, please.

12 MS. STONE: Well, in summary, then, Your  
13 Honor, I would just like to reiterate to the Court, based  
14 on the documents that have been entered into evidence and  
15 the testimony of our two witness today, this is a closing  
16 transaction that occurred, where it was the intent of the  
17 bank loaning the funds that the property that was  
18 mortgaged be mortgaged in full.

19 Ms. Risher received the benefit of the  
20 loan, paid off two prior loans, which actually exceeded  
21 the purchase price of this property. This was a purchase  
22 price -- purchase money mortgage as well, and so when  
23 those funds were used, she received a half interest, and  
24 now she is not paying any mortgage payment. She is not  
25 paying any rent. She is living in the home free and

1 clear for now, at least pending this action, your  
2 determination. It's inequitable for her to receive that  
3 benefit living in the home without paying for its value.

4 Further, there is a debt that is owed to  
5 Chase. That debt was intended to be secured by this  
6 property. There's a mortgage of record that shows that  
7 this property was intended to be tied back to this note.

8 And then we ask that you find an equitable  
9 lien against the entire property as to these loan funds  
10 for the benefit of the plaintiff and that that lien  
11 relate back to the original closing.

12 And, as testified by our witnesses, this  
13 loan was, indeed, supervised at all times by an attorney  
14 licensed in the State of South Carolina. It may have  
15 involved two separate attorneys, but they were very  
16 careful that they took all the steps that they needed to  
17 meet that requirement.

18 THE COURT: Okay. Thank you.

19 Mr. Stanley.

20 MR. STANLEY: Thank you, Your Honor. May  
21 it please the Court?

22 Your Honor, as I indicated in our  
23 closing -- in my opening remarks, our position in this  
24 case is very simple, and that is that we have title in  
25 two names. That is undisputed. The deed is in evidence,

1 and, as Your Honor well knows from your years of  
2 practicing law and closing real estate loans, of course,  
3 the mortgage must match the deed. And if the title is in  
4 two names, the mortgage must be signed, certainly, by  
5 everybody who has title.

6 There is not an abundance of case law in  
7 South Carolina directly on this issue because, I assume,  
8 that this doesn't happen that often, but there is some  
9 law that I have. I brought some with me today. Since  
10 Your Honor has asked for memorandums, I don't know if you  
11 prefer me just keep that and submit it at that time, but,  
12 you know, there are just some pure black letter law from  
13 CJS, from Am Jur, that basically says that a mortgage is  
14 not valid or effectual unless signed by the mortgagor.

15 There is some other that said a mortgage  
16 intended to be executed by joint mortgagors does not bind  
17 them on any who fail to sign.

18 There is some South Carolina law as  
19 recently as 1984 in a decision written by Judge Bell  
20 where he says, Failure to prove the signature of the  
21 mortgagor is fatal to the mortgagee's claim.

22 There is no evidence that's been put into  
23 the record to show any unjust enrichment. We can assume  
24 it, but there is no evidence from this witness stand to  
25 show how she's unjustly enriched. She has a right to

1 stay there. She has a one-half interest in the home. We  
2 have acknowledged that they have a mortgage on the  
3 one-half interest, and they are free to foreclose that  
4 one-half interest, but they can't foreclose her one-half  
5 interest without her signing the mortgage.

6 You know, when you come in an equity, there  
7 is an old axiom that says the first thing that you have  
8 to do is come in with clean hands, of course. And we  
9 take the position that they don't come in here with clean  
10 hands.

11 The lady who closed this loan is not even  
12 here today. She didn't testify. I don't know why, but  
13 she didn't come to tell us what happened at the closing  
14 that she did not get Ms. Risher's signature on the  
15 mortgage.

16 I don't know what her qualifications are,  
17 and so that's what -- when I talk about the unclean  
18 hands, I don't know that she's qualified. I don't think  
19 that they can bring -- that they can get someone who is  
20 not qualified to close a loan to let her go ahead and  
21 just go into the closing room and just be there to say,  
22 Sign here, sign there. And then she leaves, hands the  
23 package over, and takes off. We don't know what her  
24 qualifications are. We don't know if that was her first  
25 loan closing.

1                   Mr. Dodson had testified he had never met  
2 her. Doesn't know her. Doesn't know what her  
3 qualifications are. I don't think that you can come here  
4 and ask for equity when you are not able to show that the  
5 person closing the loan did everything that she was  
6 supposed to have done, and she's entitled to some mercy  
7 from this Court. There is no showing of that.

8                   And so, Your Honor, as harsh as it may be,  
9 I think that they got what they got. They got a  
10 half-interest in this, and I think the law is going to be  
11 clear, and I'll certainly summarize that in my memorandum  
12 to the Court, that they're not entitled to the  
13 foreclosure.

14                  THE COURT: Well, let me -- I would like to  
15 ask a question to both counsel. I've heard -- and you  
16 all can be seated -- you all can stand up or be seated,  
17 whichever one you prefer.

18                  MR. STANLEY: I'm always comfortable  
19 standing.

20                  THE COURT: We're at rest here.

21                  Are you all arguing a mistake has been  
22 made? Are you arguing error? I'm not sure, because I've  
23 heard questioning about the attorney saying it should  
24 have been done. You said -- you admit it should have  
25 been done. Are you arguing a mistake? Are you arguing a

1 mutual mistake? Are you arguing a unilateral mistake? I  
2 mean, you both said there's been a mistake.

3 MR. STANLEY: From our perspective, we're  
4 not arguing a mistake or anything. I'm arguing simply  
5 that her signature is not there, for whatever reason.

6 THE COURT: All right.

7 MR. STANLEY: And I'm not concerned with  
8 what the reason is, quite frankly. If you don't have her  
9 signature on the mortgage, you're not entitled to  
10 foreclose her interest.

11 THE COURT: All right. So it's your  
12 position, then -- let's assume that there is either a  
13 unilateral -- let's say it's a unilateral mistake --

14 MR. STANLEY: Yes, sir.

15 THE COURT: -- on the bank's part, that  
16 your argument is correct, they had an attorney who wasn't  
17 qualified, didn't understand what was going on, goofed,  
18 made a mistake, should have done it.

19 MR. STANLEY: Yes, sir.

20 THE COURT: All right. And didn't get the  
21 signature. Is it your argument, then, based on the South  
22 Carolina law, if that happens, there can be no  
23 application of equitable lien theory?

24 MR. STANLEY: Yes, sir. Yes, sir.

25 THE COURT: All right.

1 MR. STANLEY: There is not a South Carolina  
2 case on point on that, but there is a North Carolina case  
3 right on point on it.

4 THE COURT: All right.

5 MS. STONE: And while we have not pled  
6 mistake, if there was a mistake that was made at closing  
7 by the attorney that represented Ms. Risher and  
8 Mr. Risher, then that mistake would be attributable to  
9 the Rishers. So it becomes, maybe, a cyclical issue,  
10 mutual mistake. It would be at the highest level I think  
11 that could reach.

12 THE COURT: All right. So you're saying,  
13 then, the attorney who was not -- Ms. Claxton was their  
14 attorney.

15 MS. STONE: She was the attorney at  
16 closing. I think that the documents will show that she  
17 was their closing attorney.

18 THE COURT: All right. Who was  
19 representing the bank at the closing? Who was the bank's  
20 attorney?

21 MS. STONE: I don't know that the bank had  
22 an attorney at the closing.

23 THE COURT: All right.

24 MR. LANG: Just -- I hate to butt in,  
25 Judge, but there is an informal ethics opinion that says

1 in an ordinary real estate closing, the closing attorney  
2 does not represent the bank. Now, there are those of us  
3 who might somewhat disagree with that. But any closing  
4 attorney does represent, certainly, the borrower and has  
5 some duty to the bank. I mean, that's the best way I can  
6 put it, I think.

7 THE COURT: Thank you. That's my  
8 understanding, also.

9 All right. Anything further?

10 MR. STANLEY: Nothing further from us, Your  
11 Honor.

12 THE COURT: All right. Thank you.

13 Today is May 12th. How about -- how about  
14 June 14th. That's a Tuesday. Under the theory that  
15 nothing should ever be due on a Monday or Friday, June  
16 14th is a Tuesday. Would that be good?

17 MR. STANLEY: Yeah. Do you want a proposed  
18 order from us, or do you just want a memorandum?

19 THE COURT: I want a memo.

20 MR. STANLEY: June what? 14th?

21 THE COURT: June 14th, a Tuesday, and, if  
22 you will, send it to me in an e-mail, Word e-mail format.  
23 If you send transcript -- if you would, send the  
24 transcript in hard copy. Don't scan it in and send me a  
25 transcript as an attachment, but you can send an e-mail

1 in an attachment. If you want to send the transcript in  
2 any portion, just send that to me in hard copy.

3 Obviously, courtesy copy everybody. And I'll certainly  
4 take it under advisement.

5 Okay. Anything further?

6 MR. STANLEY: Nothing from us, Your Honor.

7 MS. STONE: No, Your Honor.

8 THE COURT: All right. I would ask -- I'm  
9 going to hand you all both back all the exhibits I have  
10 up here. I will ask you all if you all both review it  
11 and make sure that we have all the exhibits, and they're  
12 given to Madam Court Reporter.

13 I think we have a total of 20 Plaintiff and  
14 1 Defendant, is what my records indicate -- my notes  
15 indicate.

16 All right. Thank you.

17 MR. STANLEY: Thank you, Judge.

18 MR. LANG: Thank you, Your Honor.

19 (The hearing was concluded at 10:27 a.m.)  
20  
21  
22  
23  
24  
25



ASSIGNMENT TO DUTY AND FULL EMPLOYMENT  
RESORTS.

This contract is not contingent upon producers ability to self-finance and/or any other person

1. NAME The body being investigated is June 17  
NAME Sidney A. and Geraldine P. Bisher  
NAME Robert and Debra Bayle  
ADDRESS The property is located in

~~THE DEPT. OF JUSTICE IS LISTED FROM THE LIST OF FURTHER COUNTRIES AT A 24. STATE~~  
~~DEPT.~~

- 第七百九十四號

Lot in Block Section Corner Highland Hills These I  
own 135 Lakewood Drive

TUGAN 05184F-01-026 di Columbia : 221212  
 WARGA Lexington : Asisten

一、姓名：王德明 性别：男 年龄：45 民族：汉族  
 二、籍贯：山东省临沂市 职业：教师  
 三、婚姻状况：已婚 配偶姓名：李秀英  
 四、子女情况：有一个儿子，现年12岁  
 五、工作单位：临沂市第一中学  
 六、联系电话：13800000000  
 七、电子邮箱：wdm123@163.com  
 八、其他信息：无不良嗜好，遵纪守法  
 九、声明：以上信息真实有效，如有变更，请及时通知  
 十、签名：王德明 日期：2023年10月27日

Non-petroleum based epoxy sealant for use on concrete. Put a coat on the floor.  
All floor reg. boards included between boxes, aligned over

- [illegible]

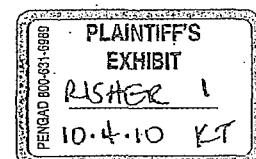
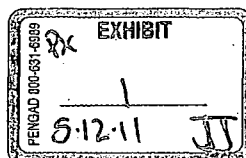
- [illegible]

5. PRINCIPAL INVESTOR: 505, 000

- THE UNIVERSITY OF CHICAGO PRESS

- [illegible]

121 BUYER 122 BUYER 123 BUYER 124 BUYER 125 BUYER HAVE READ THE PAGE FOR THE DAY: 50



[illegible][illegible]

12. How important is it to you to have a job?  
Extremely important. I need the money to support my family.

19. ~~REDACTED~~

On the other hand, the fact that the government has been able to maintain a high level of employment in the public sector, despite the fact that the private sector has been unable to do so, is a testament to the government's commitment to social justice and economic stability. This commitment has been a key factor in the government's success in maintaining a high level of employment in the public sector, and it is a testament to the government's commitment to social justice and economic stability.

[illegible][illegible]

一、凡在本行開辦之各項業務，均應遵守本行所定之規章，不得有違。

ALL FOUR CUBA FILES HAVE BEEN READ THE FILE

[illegible]

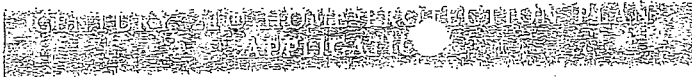
## 12. CONCLUSION OF PRESENTATION

[illegible][illegible][illegible][illegible]

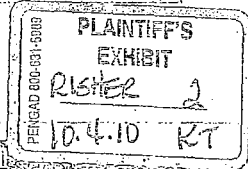
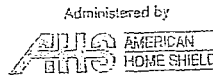
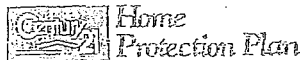
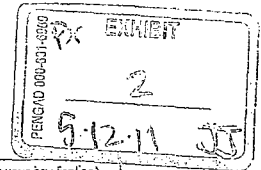
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Admission card for the  
1904-1905 season





CONTRACT # 81615072  
(To be provided when AHS receives your application)



**OPTIONAL COVERAGE AVAILABLE TO HOME BUYER AND SELLER**

Prices below are for single family dwellings under 5,000 sq. ft. Call to obtain a quote on alternative dwelling types.

- ☐ Buyer Coverage ..... \$469
- ☒ Buyer & Seller Coverage ..... \$529
- ☐ Condominium/Townhome Buyer Coverage ..... \$425
- ☐ Condominium/Townhome Buyer & Seller Coverage ..... \$485
- ☐ New Construction Coverage\* ..... \$615
- ☐ Condominium/Townhome New Construction Coverage\* ..... \$545

\$55 Trade service call fee per repair visit or actual cost of service, whichever is less. Additional charges may apply to certain repairs and replacements.

\*One time contract fee for a 3-year coverage period. Please call 1-866-797-4802 for the one time optional coverage fees for the 3-year coverage period.

**OPTIONAL COVERAGE AVAILABLE TO HOME BUYER AND SELLER**

Optional Coverage Available to Home Buyer and Seller

- ☐ Washer/Dryer ..... \$80
- ☐ Well Pump ..... \$85
- ☒ Swimming Pool or Built-in Spa Equipment ..... \$160
- ☐ Swimming Pool w/ Built-in Spa Equipment ..... \$160
- ☐ Additional Swimming Pool or Built-in Spa Equipment ..... \$160

Call for New Construction Options 1-866-797-4802.

**INDENTURES: Please check this agreement to make sure it is correct.**

I desire:

- ☐ The CENTURY 21 Home Protection Plan (selected above)
- ☐ Optional Coverage Total (selected above)

\$ 529

\$ 160

Contract Total  
\$ 689

*Vince Dimaria*  
SELLER  
*Debra A. Beagle*  
SELLER

12/1/07  
DATE  
12/1/07  
DATE

☐ To decline the benefits of this coverage, I agree not to hold the real estate company, broker and/or agents liable for the repair or replacement of a system or appliance that would otherwise have been covered by this warranty plan.

Signature: *Debra A. Beagle* Date: *7 July 08*

Please read contract for specific coverage, exclusions and limitations.  
Signature: *Vince Dimaria* Date: *7 July 08*

When a covered item breaks down due to normal wear and tear, contact American Home Shield. AHS will contact an authorized service contractor who will call you during normal business hours to schedule a convenient time to diagnose the problem. Please do not call a contractor yourself. AHS will not reimburse for work performed without its prior approval.

Online: [www.ahswarranties.com/century21](http://www.ahswarranties.com/century21) Phone: 1-866-797-4802 Fax: 1-800-FAX-AHS8 (1-800-329-2478) Mail w/ payment: AHS, P.O. Box 2893, Memphis, TN 38101-2893 Mail w/o payment: AHS, P.O. Box 849, Carroll, IA 51401-9901

PROPERTY ADDRESS TO BE COVERED: 135 LOCKWOOD DRIVE  
COLUMBIA, SC 29212-8936

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

Please check appropriate box for initiating agent.

**SELLER INFORMATION**

SELLER NAME: M/M ROBERT L. & DEBRA A. BEAGLE

PHONE NUMBER: (803) 744-1685 E-MAIL: BDBEAGLE@DTCLAN.NET

MAILING ADDRESS: SAME ABOVE

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

REAL ESTATE COMPANY: CENTURY 21 BOB CAPES REALTORS

MAIN OFFICE PHONE NUMBER: (803) 744-503 LISTING EXP. DATE: 1/31/08

AGENT NAME: VINCE DIMARIA E-MAIL: VINCE@C21BCK-CLM

**BUYER INFORMATION**

BUYER NAME: \_\_\_\_\_

PHONE NUMBER: ( ) E-MAIL: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

REAL ESTATE COMPANY: \_\_\_\_\_

MAIN OFFICE PHONE NUMBER: \_\_\_\_\_ LISTING EXP. DATE: \_\_\_\_\_

AGENT NAME: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

**CLOSING COMPANY INFORMATION**

CLOSING COMPANY NAME: \_\_\_\_\_

PHONE NUMBER: ( ) FAX: ( )

ESTIMATED CLOSING DATE: \_\_\_\_\_ CLOSING NO.: \_\_\_\_\_

CLOSING REP NAME: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

**AMERICAN HOME SHIELD®**

©2007 American Home Shield Corporation and its licensed subsidiaries. All rights reserved. Form No. 163159 SOUTHSC21/469 03/07

The total warranty plan fee (including basic coverage and any optional coverage items selected) is due and payable to AHS® and is to be paid at closing. The warranty plan fee may include a service fee payable to the above named real estate company for administrative and other services performed in the placement of the plan, including promoting, selling, processing, and advertising the plan. The service fee is a good faith estimate of the value of the above named real estate company's services and expenses in providing such services in the placement of the plan.

CTR. RFP. 0005

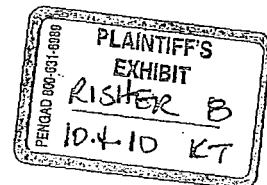
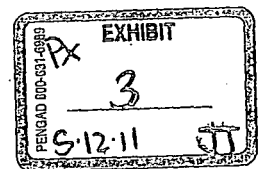
ACKNOWLEDGEMENT

The undersigned is a purchaser or mortgagor who has been referred by the above-named producer of title business or associate of such producer to the above-named agent. The undersigned acknowledges the financial interest of such producer as stated herein and further acknowledges that:

1. I hereby consent to an audit by Stewart Title Guaranty Company of the records related to this transaction as explained on the reverse side hereof.
2. I have read the disclosure on the reverse side hereof and I understand that a Mortgagee title insurance policy is required by my lender and that the mortgagee policy does not provide title insurance coverage for my separate ownership interest.
3. I have been given the opportunity to purchase an Owner's title insurance policy with the title insurance company of my choice to protect my separate ownership interest.
4. (CHECK ONE)
  - a. ☒ I would like to obtain an Owner's policy of title insurance for the total purchase price for an additional premium in the amount of \$314.00.
  - b. ☐ I do not want to obtain an Owner's policy.
  - c. ☐ I do not want to obtain a Comprehensive Owner's policy.

DATE: July 7, 2008

Sidney A. Risher  
Sidney A. Risher Borrower/Purchaser  
Cassandra Risher  
Cassandra P. Risher Borrower/Purchaser  
\_\_\_\_\_  
Borrower/Purchaser  
\_\_\_\_\_  
Borrower/Purchaser



**LAW OFFICE OF RONALD C. DODSON**  
**ATTORNEY & COUNSELOR AT LAW**

**IMPORTANT NOTICE REGARDING REAL ESTATE TAXES**

You will notice that the real property taxes for this year have been pro-rated to the date of closing. The seller has been charged their share of the real property taxes for this year and the purchaser has been given a corresponding credit. Therefore, payment of the real property taxes for this year is the ultimate responsibility of the purchaser. **BUT REMEMBER, THE TAX PRO-RATION AT CLOSING WAS BASED ON LAST YEAR'S TAX BILL BECAUSE THIS YEAR'S TAX BILL HAS NOT BEEN DETERMINED.** This is important for reasons to be discussed below.

However, please be advised that the first year of a home purchase is a transition period for the County Tax Office. When the real property tax bill comes out in the fall of this year, the bill will be in the name of the seller because they were the record owner of the property on January 1 of this year. Therefore the tax bill is mailed by the County to the seller at the property address. Many times the tax bill then ends up being forwarded by the US Postal Service to the seller's forwarding address leaving the purchaser without a copy of the bill. When this happens the seller should immediately get a copy of the tax bill to the purchaser so they can either pay the tax bill or forward it to their mortgage company for payment if they have set up a tax escrow account. The seller should also keep a copy of the tax bill for reasons to be discussed below.

The purchaser should be cognizant of this potential problem because it is their responsibility to see to it that the real property taxes for this year are paid. **DO NOT RELY ON THE SELLER ALONE TO GET YOU A COPY OF THE TAX BILL.** We suggest that the purchaser be in touch with their County Tax Office in the early fall and request a duplicate copy of the tax bill. That way you will be sure to get a copy of bill to either pay on time yourself or to forward to your mortgage company for timely payment if you have an escrow account. **PLEASE REMEMBER THAT ANY PENALTY INCURRED BY YOUR MORTGAGE COMPANY BECAUSE OF YOUR FAILURE TO TIMELY PRESENT A TAX BILL IS YOUR RESPONSIBILITY. YOUR MORTGAGE COMPANY WILL PAY YOUR TAXES BUT WILL NOT PAY THE PENALTY.**

Hopefully each of you now has a copy of this year's tax bill. This is very important. Each of you should now look at the copy of the HUD-1 SETTLEMENT STATEMENT you received at closing. Go to the 209 Section on page 1 where the tax pro-rations were calculated. **RECALL THAT THE PRO-RATION AT CLOSING WAS BASED ON LAST YEAR'S TAXES.** Why is this important? Because if this year's taxes are higher than last year's taxes, the seller has not been charged enough for their period of ownership and thus owes the purchaser the difference. Likewise, if this year's taxes are lower than last year's taxes the seller has been charged too much and consequently, the purchaser owes the seller the difference.

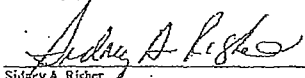
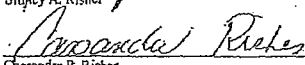
It is up to the parties as purchaser and seller to make this adjustment if requested by the other party. The pro-ration done at closing was based on last year's actual tax bill. This office makes no attempt to "guess" at what this year's tax bill may be or may not be. This office has no responsibility to either party regarding this adjustment. The purpose of this notice is simply to point out to the parties a potential problem regarding payment of the real property taxes during this transition period.

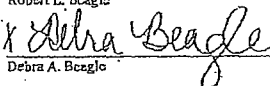
On January 1 of next year the purchaser will be shown as the owner of record on the tax rolls and subsequent real property tax mailings will be in their name. Each year thereafter you should be sure your mortgage company has received the original tax bill so they can pay it for you out of your escrow account.

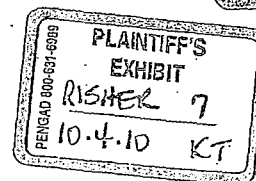
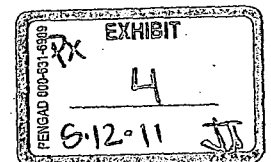
Important point #2: If this is Purchaser's new principal residence, purchaser must so advise the County Tax Assessor's Office in order to receive benefit of the 4% tax assessment rate. If purchaser does not notify the County Tax Assessor's Office it may result in your home being assessed at the higher 6% tax rate.

**THIS DISCLOSURE IS PROVIDED TO YOU AS A COURTESY FROM THIS LAW FIRM. THIS OFFICE MAKES NO REPRESENTATIONS TO YOU THAT THIS DISCLOSURE IS SUFFICIENT FOR YOUR PURPOSES AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES WHICH MAY BE IMPLIED BY THIS DISCLOSURE.**

Dated: July 7, 2009.

  
\_\_\_\_\_  
Sidney A. Risher  
  
\_\_\_\_\_  
Cassandra P. Risher

  
\_\_\_\_\_  
Robert L. Beagle  
  
\_\_\_\_\_  
Debra A. Beagle



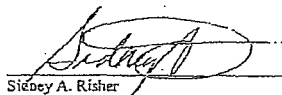
CTR. RFP. 0028

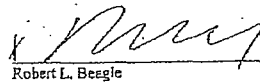
BORROWERS: Sidney A. Risher and Cassandra P. Risher,  
DATE: July 7, 2008  
LENDER: Midland Mortgage Corporation  
PROPERTY ADDRESS: 135 Lochwood Drive  
Columbia, South Carolina 29212

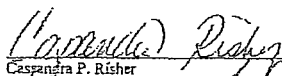
The Undersigned Borrower(s) agree to allow a representative from the closing attorney's office or The Georgekakis Company to make any clerical corrections or completion of loan closing documents, if deemed necessary by lender subsequent to the closing of the above referenced property. No changes will be made that will affect your interest rate, the amount of money you will have to pay or any other substantive right or obligation which you may have under the loan documents.

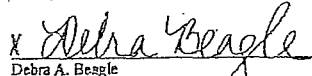
Also

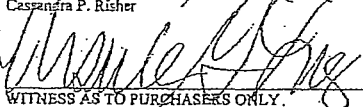
Buyer and Seller understand and agree that property taxes, water, sewer, and all other prorations shown on the HUD form are based on the most recent billing period and will make any adjustment necessary between themselves and hold above Law firm harmless for any adjustment which may be required.

  
Sidney A. Risher

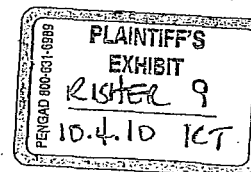
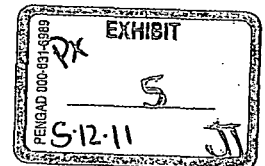
  
Robert L. Beagle

  
Cassandra P. Risher

  
Debra A. Beagle

  
WITNESS AS TO PURCHASERS ONLY

  
WITNESS AS TO SELLERS ONLY



CTR. RFP. 0030

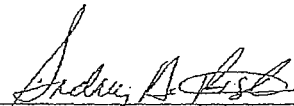
BORROWERS: Sidney A. Risher and Cassandra P. Risher  
DATE: July 7, 2008  
LENDER: Midland Mortgage Corporation  
PROPERTY ADDRESS: 135 Lochweed Drive  
Columbia, South Carolina 29212

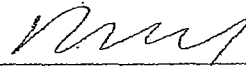
REPRESENTATION DISCLAIMER

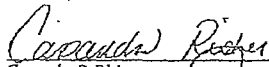
All parties acknowledge that The Law Office of Ronald C. Dodson, is representing the Buyer(s) in this transaction. The preparation of the deed and/or note and purchase money mortgage (if applicable) by The Law Office of Ronald C. Dodson, is solely to accommodate the Seller(s). The Law Office Ronald C. Dodson, does not represent the Seller(s) and has not provided the Seller(s) with any legal opinions as to these documents. The Law Office of Ronald C. Dodson, is not responsible for initiating or pursuing any action necessary to ensure the Seller(s) can convey marketable title nor for obtaining satisfactions of any liens which have not been recorded or which still appear to affect the property.

DISCLAIMER

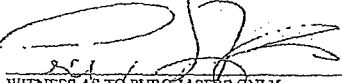
The Law Office of Ronald C. Dodson, and The Georgaklis Company makes no warranty as to the condition of the premises, the completion or quality of repairs, the accuracy of the termite letter, nor the accuracy of the survey.

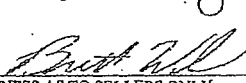
  
\_\_\_\_\_  
Sidney A. Risher

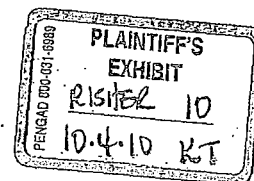
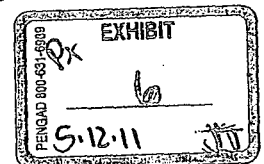
x   
\_\_\_\_\_  
Robert L. Beagle

  
\_\_\_\_\_  
Cassandra P. Risher

x   
\_\_\_\_\_  
Debra A. Beagle

  
\_\_\_\_\_  
WITNESS AS TO PURCHASERS ONLY

x   
\_\_\_\_\_  
WITNESS AS TO SELLERS ONLY



CTR. RFP. 0031

Stewart Title Guaranty Company, Stewart Title Insurance Company, Stewart Title Insurance Company of Oregon,  
National Land Title Insurance Company, Arkansas Title Insurance Company, Charter Land Title Insurance  
Company, Ronald C. Dodson, and The Georgia Title Company

PRIVACY POLICY NOTICE

PURPOSE OF THIS NOTICE

Title V of the Gramm-Leach-Bliley Act (GLBA) generally prohibits any financial institution, directly or through its affiliates, from sharing nonpublic personal information about you with a nonaffiliated third party unless the institution provides you with a notice of its privacy policies and practices such as the type of information that it collects about you and the categories of persons or entities to whom it may be disclosed. In compliance with the GLBA, we are providing you with this document, which notifies you of the privacy policies and practice of Stewart Title Guaranty Company, Stewart Title Insurance Company, Stewart Title Insurance Company of Oregon, National Land Title Insurance Company, Arkansas Title Insurance Company, Charter Land Title Insurance Company, Ronald C. Dodson, and The Georgia Title Company.

We may collect nonpublic personal information about you from the following sources:

Information we receive from you, such as in applications or other forms.

Information about your transaction we receive from our files, or from our affiliates or others.

Information we receive from a consumer reporting agency.

Information that we receive from others involved in your transaction, such as the real estate agent or lender.

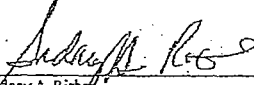
Unless it is specifically stated otherwise in an amended Privacy Policy Notice, no additional nonpublic personal information will be collected about you.

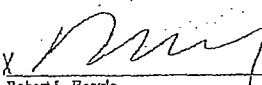
We may disclose any of the above information that we collect about our customers or former customers to our affiliates or to nonaffiliated third parties as permitted by law.

We also may disclose this information about our customers or former customers to nonaffiliated companies that perform services on our behalf.

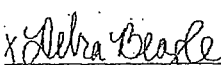
WE DO NOT DISCLOSE ANY NONPUBLIC PERSONAL INFORMATION ABOUT YOU WITH ANYONE FOR ANY PURPOSE THAT IS NOT SPECIFICALLY PERMITTED BY LAW.

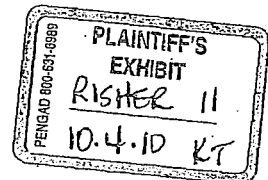
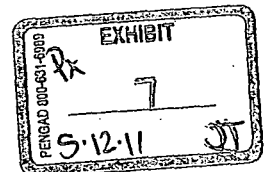
We restrict access to nonpublic personal information about you to those employees who need to know that information in order to provide products or services to you. We maintain physical, electronic and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

  
Sidney A. Risher

  
Robert L. Beagle

  
Cassandra P. Risher

  
Debra A. Beagle



CTR. RFP. 0032

**SOUTH CAROLINA**  
**RISHER, SIDNE ALLAN**  
 190 HILLSBOROUGH RD  
 COLUMBIA SC 292123644  
 Expires: 09-27-2017

Class: D Hgt: 5-10 Wgt: 180  
 Sex: M DOB: 09-27-1962  
 Issued: 07-26-2007 12087 R 4

*[Signature]*  
 None

*[Signature]*  
 Designer

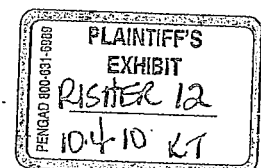
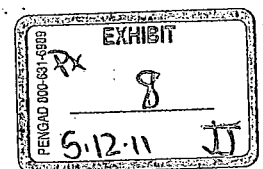


**SOUTH CAROLINA**  
**RISHER**  
**CASSANDRA TRINA STARKS**  
 180 HILLSBOROUGH RD  
 COLUMBIA SC 292123644  
 Expires: 04-04-2013

Class: D Hgt: 5-06 Wgt: 145  
 Sex: F DOB: 04-04-1971  
 Issued: 04-01-2008 12203 R 2

*[Signature]*  
 None

*[Signature]*  
 Designer

Loan Number: MID08061002884

NOTE

Case Number: 19-19-6-0374758

THIS LOAN IS NOT ASSUMABLE  
WITHOUT THE APPROVAL OF THE  
DEPARTMENT OF VETERANS AFFAIRS  
OR ITS AUTHORIZED AGENT.

JULY 7, 2008  
[Date]

COLUMBIA  
[City]

SOUTH CAROLINA  
[State]

135 LOCHWEED DRIVE, COLUMBIA, SOUTH CAROLINA 29212  
[Property Address]

**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$ 479,750.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is MIDLAND MORTGAGE CORPORATION, A SOUTH CAROLINA CORPORATION

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 of Principal has been paid. I will pay interest at a yearly rate of 6.500 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

**3. PAYMENTS**

**(A) Time and Place of Payments**

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on SEPTEMBER 1, 2008

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 AUGUST 1, 2038

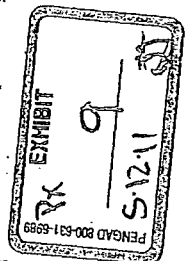
I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 1500 RICHLAND STREET, COLUMBIA, SOUTH CAROLINA 29201

or at a different place if required by the Note Holder.

**(B) Amount of Monthly Payments**

My monthly payment will be in the amount of U.S. \$ 3,032.35



#### 4. 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 a Prepayment charge. The Note Holder will use 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 date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

#### 5. 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.

#### 6. BORROWER'S FAILURE TO PAY AS REQUIRED

##### (A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 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 4.000 % of my overdue payment of principal, interest, and escrow for taxes and insurance. 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 to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

#### 7. 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 delivering it or 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.

### 8. 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.

### 9. 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.

### 10. 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; Acceleration; Assumption.** This loan may be declared immediately due and payable upon transfer of the property securing such loan to any transferee, unless the acceptability of the assumption of the loan is established pursuant to Section 3714 of Chapter 37, Title 38, United States Code. The acceptability of any assumption shall also be subject to the following additional provisions:

(a) **Funding Fee:** A fee equal to one-half of 1 percent of the balance of this loan as of the date of transfer of the property shall be payable at the time of transfer to the loan holder or its authorized agent, as trustee for the Department of Veterans Affairs. If the assumer fails to pay this fee at the time of transfer, the fee shall constitute an additional debt to that already secured by this instrument, shall bear interest at the rate herein provided, and at the option of the payee of the indebtedness hereby secured or any transferee thereof, shall be immediately due and payable. This fee is automatically waived if the assumer is exempt under the provisions of 38 U.S.C. 3729(c). (Note: The funding fee for loans assumed between 12/13/02 and 09/30/03 will be 1 percent.)

(b) **Processing Charge:** Upon application for approval to allow assumption of this loan, a processing fee may be charged by the loan holder or its authorized agent for determining the creditworthiness of the assumer and subsequently revising the holder's ownership records when an approved transfer is completed. The amount of this charge shall not exceed the maximum established by the Department of Veterans Affairs for a loan to which Section 3714 of Chapter 37, Title 38, United States Code applies.

(c) **Indemnity Liability Assumption:** If this obligation is assumed, then the assumer hereby agrees to assume all of the obligations of the veteran under the terms of the instruments creating and securing the loan. The assumer further agrees to indemnify the Department of Veterans Affairs to the extent of any claim payment arising from the guaranty or insurance of the indebtedness created by this instrument.

If the acceptability of the assumption of this loan is not established for any reason, and Lender exercises its option to declare all sums secured by this Security Instrument immediately due and payable, 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 14 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.

#### NOTICE TO BORROWER

Department of Veterans Affairs regulations at 38 C.F.R. 36.4334 provide as follows:

"Regulations issued under 38 U.S.C. Chapter 37 and in effect on the date of any loan which is submitted and accepted or approved for a guaranty or for insurance thereunder, shall govern the rights, duties, and liabilities of the parties to such loan and any provisions of the loan instruments inconsistent with such regulations are hereby amended and supplemented to conform thereto."

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

  
\_\_\_\_\_  
SIDNEY A. RISHER (Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

[Sign Original Only]

2008-07-10 16:05:28:913  
 REC FEE: \$10.00 ST FEE: \$1313.00  
 OF FEE: \$523.50 Pages: 2  
 Lexington County P.O.D. Debra K. Gunter  
 DEED Bk:Pg 156/2515

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

TITLE TO REAL ESTATE (DEED)

KNOW ALL MEN BY THESE PRESENTS THAT Robert L. Beagle and Debra A. Beagle (Grantor/s) in the State aforesaid, for and in consideration of Five Hundred Five Thousand dollars and Zero cents (\$505,000.00) dollars, to the Grantor herein paid at and before the sealing of these presents by Sidney A. Risher and Cassandra P. Risher (Grantee/s) in the state aforesaid, the receipt and sufficiency whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said Grantee/s.

All that certain piece, parcel or lot of land, situate, lying and being in the County of Lexington, State of South Carolina, containing .67 acres, more or less, and designated as Lot 6 on a Master Plat of Highland Hills Subdivision, Phase I, dated April 2, 1998, which has not been recorded. Being further shown and delineated on a plat of property prepared for Wilkins Family Limited Partnership by Whitworth & Associates, Inc., dated July 23, 2003 and recorded in the Office of the ROD for Lexington County in Book 8565 at page 6. For a more accurate description of said lot reference is made to latter mentioned plat.

This being the same property conveyed to Grantor(s) by deed of Advanced Building Systems, LLC recorded 03/18/05 in Book 9983 page 15.

TMS#: 001848-01-026

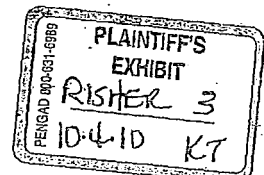
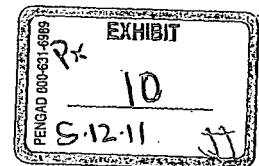
Grantee's Mailing Address: 135 Lochweed Drive  
 Columbia, South Carolina 29212

This conveyance is made subject to easements and restrictions of record and otherwise affecting the property.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said Premises belonging, or in anywise incident appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Sidney A. Risher and Cassandra P. Risher as hereinabove provided, Grantee/s' successors, heirs and assigns, forever.

Grantor/s hereby bind Grantors' successors, heirs, personal representatives and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Sidney A. Risher and Cassandra P. Risher, as hereinabove provided, Grantee/s' successors, heirs and assigns against Grantor/s and Grantor/s' successors, heirs and assigns, and all other persons whomsoever lawfully claiming, or to claim the same or any part thereof. Any reference in this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.



CTR. RFP. 0007

WITNESS Grantor/s' hand and seal this (1) 2nd day of July, 2008.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

(3) [Signature]  
Witness #1

(4) Marti Cole  
Witness #2

(2) [Signature]  
Robert L. Beagle Grantor

(2) Debra Beagle  
Debra A. Beagle Grantor

STATE OF (5) Tennessee  
COUNTY OF (6) White

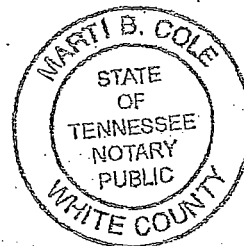
\*\*\*\*\*

ACKNOWLEDGMENT

I, (7) Marti Cole, (name of notary public) do hereby certify that Robert L. Beagle and Debra A. Beagle personally appeared before me this date and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this  
(8) 2nd day of July, 2008.

(9) Marti Cole [SEAL]  
Notary Public for (10) Tennessee  
My Commission Expires: (11) 7-29-09



7/7/2008 2:18 PM

CIAB No. 2502-0255

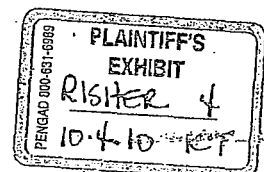
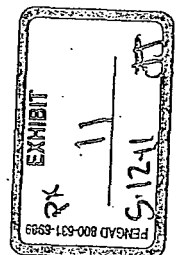
| A. U.S. Department of Housing and Urban Development                                                                                                                                                                                                                             |            | B. Type of Loan                                           |                                        |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|-----------------------------------------------------------|----------------------------------------|
|                                                                                                                                                                                                                                                                                 |            | 1. <input type="checkbox"/> FHA                           | 2. <input type="checkbox"/> FMAPA      |
|                                                                                                                                                                                                                                                                                 |            | 3. <input type="checkbox"/> Conv. Loans                   |                                        |
|                                                                                                                                                                                                                                                                                 |            | 4. <input checked="" type="checkbox"/> VA                 | 5. <input type="checkbox"/> Conv. Ins. |
|                                                                                                                                                                                                                                                                                 |            | 6. File Number                                            | 7. Loan Number                         |
|                                                                                                                                                                                                                                                                                 |            | 27023                                                     | MID09061002884                         |
|                                                                                                                                                                                                                                                                                 |            | 8. Mortgage Ins. Case No. 19-19-0374753                   |                                        |
| <b>Settlement Statement</b>                                                                                                                                                                                                                                                     |            |                                                           |                                        |
| C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(POC)" were paid outside the closing; they are shown here for information purposes and are not included in the totals. |            |                                                           |                                        |
| D. Name of Borrower: Sidney A. Fisher                                                                                                                                                                                                                                           |            |                                                           |                                        |
| E. Name of Seller: Robert L. Beagle<br>Debra A. Beagle                                                                                                                                                                                                                          |            |                                                           |                                        |
| F. Name of Lender: Midland Mortgage Corporation, 1500 Richland Street, Columbia, SC 29201                                                                                                                                                                                       |            |                                                           |                                        |
| G. Property Location: Lot 5, Highland Hills<br>135 Lochwood Drive, Columbia, SC 29212                                                                                                                                                                                           |            |                                                           |                                        |
| H. Settlement Agent: Ronald C. Dodson, Attorney at Law (803) 799-6152<br>Place of Settlement: 900 Elmwood Ave., Suite 102, Columbia, SC 29201                                                                                                                                   |            |                                                           |                                        |
| I. Settlement Date: 7/7/2008                                                                                                                                                                                                                                                    |            |                                                           |                                        |
| J. Proration Date: 7/7/2008                                                                                                                                                                                                                                                     |            |                                                           |                                        |
| K. Summary of Borrower's Transaction                                                                                                                                                                                                                                            |            | L. Summary of Seller's Transaction                        |                                        |
| 100. Gross amount due from borrower:                                                                                                                                                                                                                                            |            | 400. Gross amount due to seller:                          |                                        |
| 101. Contract sales price                                                                                                                                                                                                                                                       | 505,000.00 | 401. Contract sales price                                 | 505,000.00                             |
| 102. Personal property                                                                                                                                                                                                                                                          |            | 402. Personal property                                    |                                        |
| 103. Settlement charges to borrower (line 1400)                                                                                                                                                                                                                                 | 5,402.23   | 403.                                                      |                                        |
| 104.                                                                                                                                                                                                                                                                            |            | 404.                                                      |                                        |
| 105.                                                                                                                                                                                                                                                                            |            | 405.                                                      |                                        |
| Adjustments of Items Paid by Seller (Advances)                                                                                                                                                                                                                                  |            | Adjustments of Items Paid by Seller (Advances)            |                                        |
| 106. City/town taxes                                                                                                                                                                                                                                                            |            | 406. City/town taxes                                      |                                        |
| 107. County taxes                                                                                                                                                                                                                                                               |            | 407. County taxes                                         |                                        |
| 108. Assessments                                                                                                                                                                                                                                                                |            | 408. Assessments                                          |                                        |
| 109. Garbage                                                                                                                                                                                                                                                                    |            | 409. Garbage                                              |                                        |
| 110. Regime Pro-rata 7/7/2008 to 1/1/2009                                                                                                                                                                                                                                       | 121.58     | 410. Regime Pro-rata 7/7/2008 to 1/1/2009                 | 121.58                                 |
| 111.                                                                                                                                                                                                                                                                            |            | 411.                                                      |                                        |
| 112.                                                                                                                                                                                                                                                                            |            | 412.                                                      |                                        |
| 120. Gross amount due from borrower:                                                                                                                                                                                                                                            | 510,523.81 | 420. Gross amount due to seller:                          | 505,121.58                             |
| Adjustments of Items Paid by Seller (Advances)                                                                                                                                                                                                                                  |            | Adjustments of Items Paid by Seller (Advances)            |                                        |
| 201. Deposit or earnest money                                                                                                                                                                                                                                                   | 5,000.00   | 501. Excess deposit (see instructions)                    |                                        |
| 202. Principal amount of new loan(s)                                                                                                                                                                                                                                            | 479,750.00 | 502. Settlement charges to seller (line 1400)             | 43,484.50                              |
| 203. Existing loan(s) taken subject to                                                                                                                                                                                                                                          |            | 503. Existing loan(s) taken subject to                    |                                        |
| 204.                                                                                                                                                                                                                                                                            |            | 504. Payoff of first mortgage loan #: 6590735457          | 353,456.33                             |
| 205.                                                                                                                                                                                                                                                                            |            | 505. Payoff of second mortgage loan #: 68118000227495     | 157,388.81                             |
| 206.                                                                                                                                                                                                                                                                            |            | 506.                                                      |                                        |
| 207. Appraisal/Credit Report Credit                                                                                                                                                                                                                                             | 350.00     | 507.                                                      |                                        |
| 208.                                                                                                                                                                                                                                                                            |            | 508.                                                      |                                        |
| 209.                                                                                                                                                                                                                                                                            |            | 509.                                                      |                                        |
| Adjustments of Items Paid by Seller (Advances)                                                                                                                                                                                                                                  |            | Adjustments of Items Paid by Seller (Advances)            |                                        |
| 210. City/town taxes                                                                                                                                                                                                                                                            |            | 510. City/town taxes                                      |                                        |
| 211. County taxes 1/1/2008 to 7/7/2008                                                                                                                                                                                                                                          | 1,072.40   | 511. County taxes 1/1/2008 to 7/7/2008                    | 1,072.40                               |
| 212. Assessments                                                                                                                                                                                                                                                                |            | 512. Assessments                                          |                                        |
| 213.                                                                                                                                                                                                                                                                            |            | 513.                                                      |                                        |
| 214.                                                                                                                                                                                                                                                                            |            | 514.                                                      |                                        |
| 215.                                                                                                                                                                                                                                                                            |            | 515.                                                      |                                        |
| 216.                                                                                                                                                                                                                                                                            |            | 516.                                                      |                                        |
| 217.                                                                                                                                                                                                                                                                            |            | 517.                                                      |                                        |
| 218.                                                                                                                                                                                                                                                                            |            | 518.                                                      |                                        |
| 219.                                                                                                                                                                                                                                                                            |            | 519.                                                      |                                        |
| 220. Total paid by/borrower:                                                                                                                                                                                                                                                    | 486,172.40 | 520. Total reduction in amount due seller:                | 555,402.04                             |
| Adjustments of Items Paid by Seller (Advances)                                                                                                                                                                                                                                  |            | Adjustments of Items Paid by Seller (Advances)            |                                        |
| 301. Gross amount due from borrower (line 120)                                                                                                                                                                                                                                  | 510,523.81 | 501. Gross amount due to seller (line 420)                | 505,121.58                             |
| 302. Less amount paid by/borrower (line 220)                                                                                                                                                                                                                                    | 486,172.40 | 502. Less total reduction in amount due seller (line 520) | 555,402.04                             |
| 303. CASH (X) FROM QTO BORROWER                                                                                                                                                                                                                                                 | 24,351.41  | 503. CASH (X) FROM QTO SELLER                             | 50,280.46                              |

SUBSTITUTE FORM 1099 SELLER STATEMENT - The information contained in Blocks E, G, H and I and on line 401 (or, if line 401 is asterisked, lines 403 and 404), 406, 407 and 408-412 (applicable part of buyer's real estate tax reportable to the IRS) is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction will be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.

SELLER INSTRUCTION - If this real estate was your principal residence, file form 2119, Sale or Exchange of Principal Residence, for any gain, with your income tax return for other transactions, complete the applicable parts of form 4787, Form 6252 and/or Schedule D (Form 1040).

You are required by law to provide Ronald C. Dodson, Attorney at Law (803) 799-6152 with your correct taxpayer identification number. If you do not provide Ronald C. Dodson, Attorney at Law (803) 799-6152 with your correct taxpayer identification number, you may be subject to civil or criminal penalties.

Robert L. Beagle by  
Robert L. Beagle  
Timothy A. Dodson, Agent



CTR. RFP. 0008

| HUD-1 Settlement Statement                                                                                                                                                                                                                                                                                          |                                      |  | Fiduciary  | Fiduciary  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|--|------------|------------|
| 702. Total sales/leasing transaction based on: \$505,000.00 = \$25,818.50                                                                                                                                                                                                                                           |                                      |  | Buyer's    | Seller's   |
| Division of commission (line 702) is as follows:                                                                                                                                                                                                                                                                    |                                      |  | Funds of   | Funds of   |
|                                                                                                                                                                                                                                                                                                                     |                                      |  | Settlement | Settlement |
| 701. \$15,150.00 + (\$423.50)                                                                                                                                                                                                                                                                                       | to Century 21 Bob Capes Realtors     |  |            |            |
| 702. \$15,150.00                                                                                                                                                                                                                                                                                                    | to VPI Martin Realtors               |  |            |            |
| 703. Commission paid at settlement \$29,875.50                                                                                                                                                                                                                                                                      |                                      |  |            | 29,875.50  |
| 704. \$5,000.00 earnest money retained by Selling Broker as FOC.                                                                                                                                                                                                                                                    |                                      |  |            | 195.00     |
| 705. Admin Fee                                                                                                                                                                                                                                                                                                      | to Century 21 Bob Capes Realtors     |  |            |            |
| 706. Loan origination fee                                                                                                                                                                                                                                                                                           |                                      |  |            |            |
| 707. Loan discount                                                                                                                                                                                                                                                                                                  |                                      |  |            |            |
| 708. Appraisal fee                                                                                                                                                                                                                                                                                                  | to Midland Mortgage Corporation      |  |            | 325.00     |
| 709. Credit report                                                                                                                                                                                                                                                                                                  | to Midland Mortgage Corporation      |  |            | 23.50      |
| 710. Lender's inspection fee                                                                                                                                                                                                                                                                                        |                                      |  |            |            |
| 711. Mortgage insurance application fee                                                                                                                                                                                                                                                                             |                                      |  |            |            |
| 712. Assumption fee                                                                                                                                                                                                                                                                                                 |                                      |  |            | 80.00      |
| 713. Tax Service Fee                                                                                                                                                                                                                                                                                                | to Midland Mortgage Corporation      |  |            | 395.00     |
| 714. Underwriting fee                                                                                                                                                                                                                                                                                               | to Midland Mortgage Corporation      |  |            | 300.00     |
| 715. Processing Fee                                                                                                                                                                                                                                                                                                 | to Midland Mortgage Corporation      |  |            |            |
| 716. Flood Certification fee                                                                                                                                                                                                                                                                                        |                                      |  |            |            |
| 717. Yield Spread Premium                                                                                                                                                                                                                                                                                           |                                      |  |            |            |
| 718. Interest from 7/1/2008 to 8/17/2008 at 5.65% (30 days)                                                                                                                                                                                                                                                         |                                      |  |            | 2,135.87   |
| 719. Mortgage insurance premium for 1 year                                                                                                                                                                                                                                                                          | to Allstate Insurance                |  |            | 1,332.97   |
| 720. VA Funding Fee                                                                                                                                                                                                                                                                                                 | to Midland Mortgage Co               |  |            | 7,195.25   |
| 721. Hazard insurance 3 mo. @ \$111.00 per mo.                                                                                                                                                                                                                                                                      |                                      |  |            | 333.24     |
| 722. Mortgage insurance                                                                                                                                                                                                                                                                                             |                                      |  |            |            |
| 723. City property taxes 10 mo. @ \$173.98 per mo.                                                                                                                                                                                                                                                                  |                                      |  |            | 1,739.80   |
| 724. Annual assessments (main)                                                                                                                                                                                                                                                                                      |                                      |  |            |            |
| 725. Aggregate Adjustment                                                                                                                                                                                                                                                                                           | to Midland Mortgage Corporation      |  |            | (555.40)   |
| 726. Settlement at closing fee                                                                                                                                                                                                                                                                                      |                                      |  |            |            |
| 727. Abstract of title search                                                                                                                                                                                                                                                                                       | to The Georgia Title Company         |  |            | 101.75     |
| 728. Title examination                                                                                                                                                                                                                                                                                              |                                      |  |            |            |
| 729. Title insurance binder                                                                                                                                                                                                                                                                                         |                                      |  |            |            |
| 730. Document preparation                                                                                                                                                                                                                                                                                           | to Ronald C. Dodson, Attorney at Law |  |            | 150.00     |
| 731. Notary fees                                                                                                                                                                                                                                                                                                    |                                      |  |            |            |
| 732. Attorney's fees to Ronald C. Dodson, Attorney at Law                                                                                                                                                                                                                                                           |                                      |  |            | 425.00     |
| 733. Title insurance                                                                                                                                                                                                                                                                                                | to The Georgia Title Company         |  |            | 314.00     |
| 734. Lender's coverage \$479,750.00                                                                                                                                                                                                                                                                                 |                                      |  |            | \$1,040.00 |
| 735. Owner's coverage \$505,000.00                                                                                                                                                                                                                                                                                  |                                      |  |            | \$314.00   |
| 736. Copies and postage                                                                                                                                                                                                                                                                                             | to Ronald C. Dodson, Attorney at Law |  |            | 25.00      |
| 737. Courier fee                                                                                                                                                                                                                                                                                                    | to Ronald C. Dodson, Attorney at Law |  |            | 25.00      |
| 738. Express package                                                                                                                                                                                                                                                                                                | to Ronald C. Dodson, Attorney at Law |  |            | 50.00      |
| 739. Express payroll                                                                                                                                                                                                                                                                                                | to Ronald C. Dodson, Attorney at Law |  |            | 24.00      |
| 740. Wiring fee                                                                                                                                                                                                                                                                                                     | to Ronald C. Dodson, Attorney at Law |  |            | 12.00      |
| 741. Solar Wire - Datch Closing                                                                                                                                                                                                                                                                                     | to Ronald C. Dodson, Attorney at Law |  |            |            |
| 742. Recording fees: Deed \$10.00 Mortgage \$28.00                                                                                                                                                                                                                                                                  |                                      |  |            | 38.00      |
| 743. City/county levies/stamps: Deed \$1886.50                                                                                                                                                                                                                                                                      |                                      |  |            | 1,886.50   |
| 744. Record plat                                                                                                                                                                                                                                                                                                    |                                      |  |            |            |
| 745. Record Assignment                                                                                                                                                                                                                                                                                              | to Lexington County                  |  |            | 7.00       |
| 746. Certified copies                                                                                                                                                                                                                                                                                               |                                      |  |            |            |
| 747. Satisfaction fee                                                                                                                                                                                                                                                                                               | to The Georgia Title Company         |  |            | 10.10      |
| 748. Survey                                                                                                                                                                                                                                                                                                         |                                      |  |            |            |
| 749. Pest inspection                                                                                                                                                                                                                                                                                                | to Liberty Termite Control, Inc.     |  |            | 100.00     |
| 750. HVAC inspection                                                                                                                                                                                                                                                                                                | to Cool Care Heating & Air, Inc.     |  |            | 120.00     |
| 751. Home Warranty                                                                                                                                                                                                                                                                                                  | to American Home Shield              |  |            | 679.00     |
| 752. Repairs                                                                                                                                                                                                                                                                                                        | to J. M. Smith                       |  |            | 243.50     |
| 753. Repairs damaged rate edge shing to CMS, Inc.                                                                                                                                                                                                                                                                   |                                      |  |            | 20.00      |
| 754. Total settlement charges (entered on lines 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754) |                                      |  |            | 5,402.22   |
| 755. Total settlement charges (entered on lines 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754) |                                      |  |            | 43,484.50  |

CERTIFICATE: I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all charges and disbursements made on my account for me in this transaction. I further certify that I have received a copy of HUD-1 Settlement Statement.

Debra A. Risher  
Siderly A. Risher

Robert L. Beagle by Theresa A. Beagle  
Robert L. Beagle  
Theresa A. Beagle

To the best of my knowledge, the HUD-1 Settlement Statement which I have prepared is a true and accurate statement of the funds which were received and have been used by the undersigned as part of the settlement of this transaction.

Angela Adams for  
Ronald C. Dodson, Attorney at Law

7/1/08

SELLER AND/OR PURCHASER STATEMENT: Seller's and Purchaser's signatures, human or electronic, constitute their approval of the provisions and conditions of the underlying contract. The undersigned hereby certifies that the information provided herein is true and accurate to the best of their knowledge and belief. The undersigned further certifies that the information provided herein is true and accurate to the best of their knowledge and belief. The undersigned further certifies that the information provided herein is true and accurate to the best of their knowledge and belief.

Attorney, in its capacity as Escrow Agent, it has been authorized to deposit all funds it receives in this transaction in any financial institution, whether established or not. Such financial institution provides attorney complete accounting and will maintain custody of the funds until such time as the funds are disbursed to the parties. The attorney shall not be liable for any interest or other charges on the funds deposited and shall be entitled to the funds held by it at any time. Seller and Purchaser hereby acknowledge and consent to the deposit of the funds in the financial institution with which attorney has or may have other banking relationship and further consent to the retention by attorney of the funds of any and all benefits (including attorney's fees) interest (to be paid) attorney and/or its affiliates may receive from such financial institution by reason of their maintenance of said escrow accounts. The parties have read the above statement, recognize that the statements herein are material, agree to same, and recognize attorney is relying on the same.

Debra A. Risher  
Siderly A. Risher

Robert L. Beagle by Theresa A. Beagle  
Robert L. Beagle  
Theresa A. Beagle

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see Title 18, U.S. Code, Section 1024 and Section 1010.

CTR. RFP. 0009

2008-07-16 FILED, RECORDED, INDEXED  
2008-07-16 16:05:20347  
REC FEE: \$25.00 ST FEE: \$0.00  
DT FEE: \$0.00 Pages: 26  
Lexington County R.O.D. Debra H. Carter  
MORTGAGE SA:Pg 13022:317

After Recording Return To:

Loan Number: MID08061002884

Case Number: 19-19-6-0374758

[Space Above This Line For Recording Data]

### MORTGAGE

THIS LOAN IS NOT ASSUMABLE  
WITHOUT THE APPROVAL OF THE  
DEPARTMENT OF VETERANS AFFAIRS  
OR ITS AUTHORIZED AGENT.

#### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 10, 12, 17, 19 and 20. Certain rules regarding the usage of words used in this document are also provided in Section 15.

- (A) "Security Instrument" means this document, which is dated JULY 7, 2008, together with all Riders to this document.
- (B) "Borrower" is SIDNEY A. RISHER

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is MIDLAND MORTGAGE CORPORATION

Lender is a SOUTH CAROLINA CORPORATION organized  
and existing under the laws of SOUTH CAROLINA  
Lender's address is 1500 RICHLAND STREET, COLUMBIA, SOUTH CAROLINA 29201

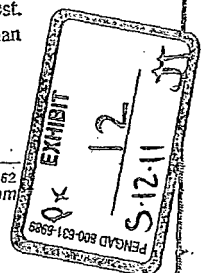
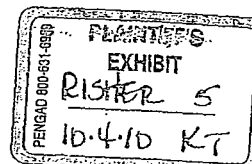
Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated JULY 7, 2008  
The Note states that Borrower owes Lender. FOUR HUNDRED SEVENTY-NINE THOUSAND  
SEVEN HUNDRED FIFTY AND 00/100 Dollars (U.S. \$ 479,750.00) plus interest.  
Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than  
AUGUST 1, 2038

SOUTH CAROLINA-Single Family-UNIFORM INSTRUMENT  
MODIFIED FOR DEPARTMENT OF VETERANS AFFAIRS  
(REV. 1/01)

Page 1 of 14

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www.documagic.com



CTR. RFP. 0010

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

- |                                                |                                                                            |
|------------------------------------------------|----------------------------------------------------------------------------|
| <input type="checkbox"/> Adjustable Rate Rider | <input checked="" type="checkbox"/> Planned Unit Development Rider         |
| <input type="checkbox"/> Balloon Rider         | <input type="checkbox"/> Biweekly Payment Rider                            |
| <input type="checkbox"/> 1-4 Family Rider      | <input type="checkbox"/> Second Home Rider                                 |
| <input type="checkbox"/> Condominium Rider     | <input checked="" type="checkbox"/> Other(s) [specify]<br>ASSUMPTION RIDER |

(H) "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.

(I) "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.

(J) "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.

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

(L) "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.

(M) "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.

(N) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §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 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.

(O) "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 Lender and Lender's successors and assigns the following described property located in the

COUNTY of LEXINGTON  
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

SAR

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS  
EXHIBIT "A"

This being the same property conveyed to mortgagor by deed of Robert L. Beagle and Debra A. Beagle  
executed 7-2-08 to be recorded.

DERIVATION: RECORDS BK 13022 PAGE 315

which currently has the address of 135 LOCHWEED DRIVE

COLUMBIA  
[City]

South Carolina

29212  
[Zip Code]

[Street]

("Property Address"):

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, 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 COVENANTS that Borrower is lawfully seized 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.

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 14. 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

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1987 AS CORP. 11/1/87

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; and (c) premiums for any and all insurance required by Lender under Section 5. 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 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 14 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.

*SMR*

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 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

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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 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 21 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

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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 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. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground 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. **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.

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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 18, 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.

**11. 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.

**12. 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 17, 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 19) and benefit the successors and assigns of Lender.

**13. 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,

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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.

14. **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.

15. **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.

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

17. **Transfer of the Property; Acceleration; Assumption.** This loan may be declared immediately due and payable upon transfer of the property securing such loan to any transferee, unless the acceptability of the assumption of the loan is established pursuant to Section 3714 of Chapter 37, Title 38, United States Code. The acceptability of any assumption shall also be subject to the following additional provisions:

(a) **Funding Fee:** A fee equal to one-half of 1 percent of the balance of this loan as of the date of transfer of the property shall be payable at the time of transfer to the loan holder or its authorized agent, as trustee for the Department of Veterans Affairs. If the assumer fails to pay this fee at the time of transfer, the fee shall constitute an additional debt to that already secured by this instrument, shall bear interest at the rate herein provided, and at the option of the payee of the indebtedness hereby secured or any transferee thereof, shall be immediately due and payable. This fee is automatically waived if the assumer is exempt under the provisions of 38 U.S.C. 3729(c).

(b) **Processing Charge:** Upon application for approval to allow assumption of this loan, a processing fee may be charged by the loan holder or its authorized agent for determining the creditworthiness of the assumer and subsequently revising the holder's ownership records when an approved transfer is completed. The amount of this charge shall not exceed the maximum established by the Department of Veterans Affairs for a loan to which Section 3714 of Chapter 37, Title 38, United States Code applies.

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(c) **Indemnity Liability Assumption:** If this obligation is assumed, then the assumer hereby agrees to assume all of the obligations of the veteran under the terms of the instruments creating and securing the loan. The assumer further agrees to indemnify the Department of Veterans Affairs to the extent of any claim payment arising from the guaranty or insurance of the indebtedness created by this instrument.

If the acceptability of the assumption of this loan is not established for any reason, and Lender exercises its option to declare all sums secured by this Security Instrument immediately due and payable, 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 14 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.

**18. 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 21 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 17.

**19. 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 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 14) 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 21 and the notice of acceleration given to Borrower pursuant to Section 17 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 19.

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20. **Hazardous Substances.** As used in this Section 20: (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.

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

21. **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 17 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 21, 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.

22. **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 pay 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.

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

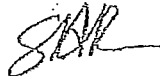
24. **Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the

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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 §12-37-250 of the South Carolina Code of Laws.

25. 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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THE GEORGAKIS COMPANY  
P.O. BOX 848  
900 ELMWOOD AVE, SUITE 102  
COLUMBIA, SC 29202

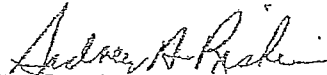
CTR. RFP. 0023

## NOTICE TO BORROWER

Department of Veterans Affairs regulations at 38 C.F.R. 36.4334 provide as follows:

"Regulations issued under 38 U.S.C. Chapter 37 and in effect on the date of any loan which is submitted and accepted or approved for a guaranty or for insurance thereunder, shall govern the rights, duties, and liabilities of the parties to such loan and any provisions of the loan instruments inconsistent with such regulations are hereby amended and supplemented to conform thereto."

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.

  
\_\_\_\_\_  
SIDNEY A. RISHER (Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

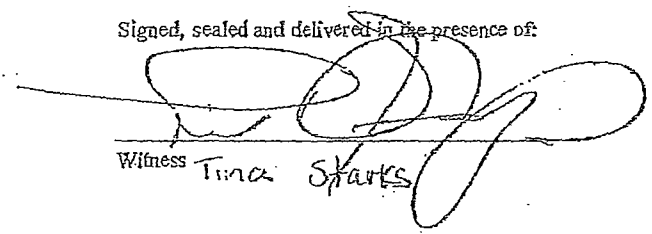
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-Borrower

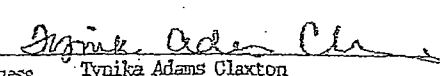
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(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

Signed, sealed and delivered in the presence of:

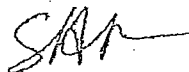
  
\_\_\_\_\_  
Witness Tina Sparks

  
\_\_\_\_\_  
Witness Tynika Adams Claxton

SOUTH CAROLINA—Single Family—UNIFORM INSTRUMENT  
MODIFIED FOR DEPARTMENT OF VETERANS AFFAIRS  
(REV. 1/01)

Page 13 of 14

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CTR. RFP. 0024

[Space Below This Line For Acknowledgment]

STATE OF SOUTH CAROLINA )

COUNTY OF Richland )

Personally appeared before me undersigned witness

(first witness) and made oath that he/she saw the within named SIDNEY A. RISHER

(grantor or maker) sign, seal, and as his/her act and deed, deliver the within written mortgage, and that he/she, with  
undersigned notary (second witness), witnessed the execution thereof.

Witness

SWORN to before me this 7th day of July 2008

Tynika Adams Claxton

Notary Public for South Carolina

Tynika Adams Claxton

My commission expires: 5-11-15

(Seal)

SAR

Exhibit "A"

All that certain piece, parcel or lot of land, situate, lying and being in the County of Lexington, State of South Carolina, containing .67 acres, more or less, and designated as Lot 6 on a Master Plat of Highland Hills Subdivision, Phase I, dated April 2, 1998, which has not been recorded. Being further shown and delineated on a plat of property prepared for Wilkins Family Limited Partnership by Whitworth & Associates, Inc., dated July 23, 2003 and recorded in the Office of the R.O.D. for Lexington County in Book 8565 at page 6. For a more accurate description of said lot reference is made to latter mentioned plat.

CTR. RFP. 0026

2008-07-24 10:27:28:027  
REC FEE: \$6.00 ST FEE: \$0.00  
CU FEE: \$0.00 Pages: 1  
Lexington County R.D.D. Debra M. Genter  
MORTGAGE ASST BK:Pg 13049:305

## ASSIGNMENT OF MORTGAGE

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

FOR VALUE RECEIVED, THE UNDERSIGNED, MIDLAND MORTGAGE CORPORATION DOES HEREBY  
TRANSFER, ASSIGN, SET OVER AND CONVEY TO JPMORGAN CHASE BANK N.A., 10151 DEERWOOD  
PARK BLVD., JACKSONVILLE, FLORIDA 32256

ITS SUCCESSORS AND/OR ASSIGNS, THAT CERTAIN MORTGAGE EXECUTED BY:

SIDNEY A. RISHER

TO MIDLAND MORTGAGE CORPORATION, 1500 RICHLAND STREET, COLUMBIA, SC 29201 WHICH  
MORTGAGE IS RECORDED ON \_\_\_\_\_ IN THE OFFICE OF THE REGISTER OF DEEDS

FOR LEXINGTON COUNTY, SOUTH CAROLINA, IN MORTGAGE BOOK 3022, AT PAGE 317

TOGETHER WITH ALL THE NOTES AND INDEBTEDNESS SECURED BY SAID MORTGAGE; AND THE  
UNDERSIGNED DOES HEREBY REMISE, RELEASE, QUIT CLAIM AND CONVEY TO THE TRANSFEREE HEREIN  
ALL RIGHT, TITLE, AND INTEREST OF THE UNDERSIGNED IN AND TO THE PROPERTY DESCRIBED IN AND  
CONVEYED BY SAID MORTGAGE. THE UNDERSIGNED IS NOW THE OWNER OF SAID DEBT AND MORTGAGE.

IN WITNESS WHEREOF, THE UNDERSIGNED MIDLAND MORTGAGE CORPORATION, AFFIXED ITS SEAL AND  
SIGNED BY ITS PRESIDENT ON THIS 7TH DAY OF JULY, 2008 HAS HEREUNTO SET ITS  
HAND AND SEAL.

SIGNED, SEAL AND DELIVERED  
IN THE PRESENCE OF

Jane Hall  
Glenda P. Bone

MIDLAND MORTGAGE CORPORATION  
BY: Mary Beth Gillis  
MARY BETH GILLIS  
ITS PRESIDENT

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

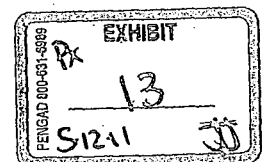
PERSONALLY APPEARED BEFORE ME JANE HALL AND MADE OATH THAT SHE SAW THE WITHIN NAMED  
MIDLAND MORTGAGE CORPORATION, BY MARY BETH GILLIS, ITS PRESIDENT EXECUTE, SEAL AND AS ITS  
ACT AND DEED, DELIVER THE WITHIN ASSIGNMENT, AND THAT SHE WITH GLENDA P. BONE, WITNESSED  
THE EXECUTION THEREOF.

SWORN TO BEFORE ME THIS

7TH DAY OF JULY, 2008

Glenda P. Bone  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: DECEMBER 14, 2010

Jane Hall



2010080725 FILED, RECORDED, INDEXED  
2010-03-05 09:14:44  
REC FEE: \$7.00 ST FEE: \$0.00  
CG FEE: \$0.00 Pages: 2  
Lexington County R.O.D. Debra M. Gunter  
MORTGAGE ASST BR:Pg 14125:139

STATE OF SOUTH CAROLINA )

COUNTY OF LEXINGTON )

ASSIGNMENT OF REAL ESTATE MORTGAGE

FOR VALUE RECEIVED, the sufficiency of which is hereby acknowledged, JPMorgan Chase Bank N.A., hereby sells, assigns, transfers and sets over unto Chase Home Finance LLC, that certain Mortgage dated July 7, 2008, executed by Sidney A. Risher, which said mortgage is in the original principal amount of \$479,750.00 and is recorded in the Office of the Clerk of Court/Register of Deeds for Lexington County, State of South Carolina, recorded on July 10, 2008 in Book 13022 at Page 317, together with the certain note(s) described therein, with all interest, all liens, and any rights due or to become due thereon.

LEGAL DESCRIPTION:

All that certain piece, parcel or lot of land, situate, lying and being in the County of Lexington, State of South Carolina, containing .67 acres, more or less, and designated as Lot 6 on a Master Plat of Highland Hills Subdivision, Phase I, dated April 2, 1998, which has not been recorded. Being further shown and delineated on a plat of property prepared for Wilkins Family Limited Partnership by Whitworth & Associates, Inc., dated July 23, 2003 and recorded in the Office of the ROD for Lexington County in Book 8565 at page 6. For a more accurate description of said lot reference is made to latter mentioned plat.

This being the same property conveyed to Sidney A. Risher and Cassandra S. Risher by deed of Robert L. Beagle and Debra A. Beagle dated July 2, 2008 and recorded on July 10, 2008 in the Office of the Lexington County Register of Deeds in Book 13022 at Page 315.

TMS No. 001848-01-026

Property address: 135 Lochweed Drive, Columbia, SC 29212

IN WITNESS WHEREOF, JPMorgan Chase Bank N.A., caused these presents to be executed this 16 day of Feb, 2010.

JPMorgan Chase Bank N.A.

BY: Beth Cottrell

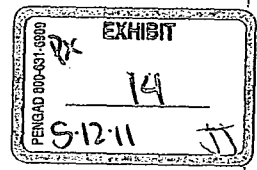
TITLE: Vice President

Witness #1 Vladimir Barsukov

Notary/Witness #2

Nicole Knisley

ASSIGNEE ADDRESS: 3445 Vision Drive, Columbus, OH 43219-6009



STATE OF Ohio  
COUNTY OF Franklin

ACKNOWLEDGMENT

I, Nicole Knisley a Notary Public for the State of Ohio do hereby certify that Beth Cottrell as Vice President of JPMorgan Chase Bank N.A. personally appeared before me this day and acknowledged the due execution of the foregoing Assignment.

WITNESS my hand and official seal  
this 16 day of Feb, 2010.

[Signature]  
Notary Public for Ohio  
My Commission Expires: \_\_\_\_\_



Nicole Knisley  
Notary Public, State of Ohio  
My Commission Expires  
12/10/2013

Instrument 200501357-1

Book/Page R 9983-17

Date/Time 03/10/2005 10:20:49 AM

Document 03

Return To: LOAN # 6590735467  
 PLS-700-01-01  
 JACKSONVILLE POST CLOSING  
 BANK OF AMERICA  
 9000 SOUTHSIDE BLVD.  
 BLDG 700, FILE RECEIPT DEPT.  
 JACKSONVILLE, FL 32256

Prepared By: ALICE HALL  
 BANK OF AMERICA, N.A.  
 900 W. TRADE STREET  
 GATEWAY VILLAGE, 3RD FLOOR  
 CHARLOTTE, NC 28255-0001

2005013574 FILED, RECORDED, INDEXED  
 03/10/2005 10:20:49 AM  
 Rec Fee: \$24.00, St Fee: \$0.63  
 Co Fee: \$0.60, Page: 19  
 Lexington County Rtd Debra H. Gunter  
 Reference Book: 9983-17

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**MORTGAGE**

LOAN # 6590735467

**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 31. 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 MARCH 15, 2005 together with all Riders to this document.  
 (B) "Borrower" is ROBERT L. BEAGLE AND DEBRA A. BEAGLE

Borrower is the mortgagor under this Security Instrument.  
 (C) "Lender" is BANK OF AMERICA, N.A.

Lender is a NATIONAL BANKING ASSOCIATION  
 organized and existing under the laws of THE UNITED STATES OF AMERICA

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

BISCI 10-00

Page 1 of 19

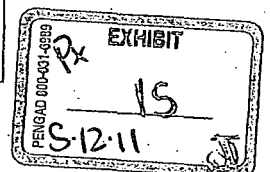
Title

03/14/05 11:12 PM 6590735467

VSP Mortgage Solutions, Inc. 0001821-7281



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Lender's address is 900 W. TRADE STREET, GATEWAY VILLAGE, 3RD FLOOR,  
CHARLOTTE, NC 28255-0001

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated MARCH 15, 2005

The Note states that Borrower owes Lender THREE HUNDRED FIFTY NINE THOUSAND SIX  
HUNDRED FIFTY AND 00/100 Dollars

(U.S. \$ 359,650.00 ) plus interest. Borrower has promised to pay this debt in regular

Periodic Payments and to pay the debt in full not later than APRIL 01, 2035

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

(F) "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.

(G) "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):

|                                                |                                                                    |                                              |
|------------------------------------------------|--------------------------------------------------------------------|----------------------------------------------|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider                         | <input type="checkbox"/> Second Home Rider   |
| <input type="checkbox"/> Balloon Rider         | <input checked="" type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider    |
| <input type="checkbox"/> VA Rider              | <input type="checkbox"/> Biweekly Payment Rider                    | <input type="checkbox"/> Other(s) (specify): |

(H) "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-appellable judicial opinions.

(I) "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.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction  
initiated 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.

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

(L) "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)  
misrepresentation of, or omission as to, the value and/or condition of the Property.

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

(N) "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.

(O) "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 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.

ESCROW - GISC

EVDC 03/14/05 1:12 PM 659073567

Page 2 of 10

Initials: *AB DAB*

Form 3044 1/01

EXHIBIT A

All that certain piece, parcel or lot of land, situate, lying and being in the County of Lexington, State of South Carolina, containing .67 acres more or less and designated as Lot 6 on a Master plat of Highland Hill Subdivision, Phase I dated April 2, 1998 which has not been recorded. Being further shown and delineated on a plat of property prepared for Wilkins Family Limited Partnership by Whitworth and Associates, Inc. dated July 23, 2003 and recorded in the Office of the Register of Deeds for Lexington County in Book 8565 at page 6.

Derivation: This being the same piece of property conveyed to ROBERT L. BEAGLE AND DEBRA A. BEAGLE by Deed of ADVANCED BUILDING SYSTEMS, LLC dated 15th day of March, 2005 and recorded in the Office of the ROD for Lexington simultaneously herewith.

DERIVATION: RECORD BK 9983 PAGE 15

RE-05-249

Debra A. Beagle

Lexington County Register of Deeds

STATE OF SOUTH CAROLINA,  
I,  
ROBERT L. BEAGLE AND DEBRA A. BEAGLE

County ss:  
do hereby certify that

personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 15 day of March 2005

Danise E. Mack  
Notary Public for South Carolina

My Commission Expires:

Danise E. Mack  
Notary Public  
State of SC  
County of Lexington  
My Comm. Expires 4-15-14

Debra A. Beagle

Lexington County Register of Deeds

CVS - 6/5/01 10:00

Page 1 of 15

CVSC 02/18/05 1:12 PM 6580735457

Form 3041 1/01

After Recording Return To:  
 Bank of America, NA  
 Consumer Post Closing Review  
 FL9-700-04-21 9000 Southside  
 Blvd, Bldg 700  
 Jacksonville, Florida 32256  
 Loan Number: 68118000227499

2003055574 FILED, RECORDED, INDEXED  
 10/03/2006 11:55:33 AM  
 Fee: \$28.00 St Fee: \$0.00  
 Co Fee: \$0.00 Page: 14  
 Lexington County, SC Debra A. Gunter  
 MORTGAGE Sk:Pg 11439:94

(Space Above This Line For Recording Date)

## MORTGAGE

### DEFINITIONS

- (A) "Security Instrument" means this document, which is dated, AUGUST 16, 2006, together with all Riders to this document.  
 (B) "Borrower" is ROBERT L BEAGLE, DEBRA A BEAGLE

the party or parties who have signed this Security Instrument.

Borrower is the Mortgagor under this Security Instrument.

(C) "Lender" is Bank of America, NA

Lender is a National Banking Association organized and existing under the laws of THE UNITED STATES OF AMERICA. Lender's address is 100 North Tryon Street, Charlotte, North Carolina 28255

Lender is the Mortgagee under this Security Instrument.

(D) "Agreement" means the Home Equity Line of Credit Agreement signed by the Borrowers.

(E) "Account" means the Home Equity Line of Credit Account pursuant to which the Lender makes Advances to the Borrower at the Borrower's direction, allowing the Borrower to repay those Advances and take additional Advances, subject to the terms of the Agreement.

(F) "Credit Limit" means the maximum aggregate amount of principal that may be secured by this Security Instrument at any one time. The Credit Limit is \$150,000.00. Except to the extent prohibited by Applicable Law, the Credit Limit does not apply to interest, Finance Charges, and other fees and charges validly incurred by Borrower under the Agreement and this Security Instrument. The Credit Limit also does not apply to other advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument.

(G) "Account Balance" is the total unpaid principal of the Account, plus earned but unpaid Finance Charges, outstanding fees, charges, and costs.

(H) "Maturity Date" is the date on which the entire Account Balance under the Agreement is due. The entire Account Balance on your Account, as defined in the Agreement and this Security Instrument, is due on AUGUST 16, 2031.

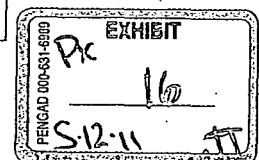
(I) "Property" means the Property that is described below under the heading "Transfer of Rights in the Property."

(J) "Secured Debt" means:

SOUTH CAROLINA HOME EQUITY LINE OF CREDIT MORTGAGE  
 SCHED.HLC 09/13/05 Page 1 of 12

DocId:31400000 2006-09-13  
 www.docmagic.com

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STATE OF SOUTH CAROLINA

PROBATE

COUNTY OF *Lexington*

PERSONALLY appeared before me the undersigned witness who, being duly sworn, deposes and says that (s)he saw the within named, ROBERT L. BEAGLE, DEBRA A. BEAGLE

sign, seal and as their act and deed, deliver the within written mortgage, and that deponent with the other witness named above, witnessed the execution thereof.

SWORN to before me this *16* day of *August*, *2006*

*[Signature]*  
(Seal)

*[Signature]* (LS)  
Notary Public for S.C.

My commission expires: *3/13/2012*

Deeds &amp; Grants

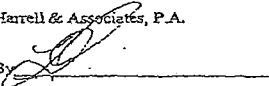
Lexington County Register of Deeds

Legal Description

All that certain piece, parcel, or lot of land, situate, lying and being in the County of Lexington, State of South Carolina, containing .67 acres more or less and designated as Lot 6 on a Master plat of Highland Hill Subdivision, Phase I dated April 2, 1998 which has not been recorded. Being further shown and delineated on a plat of property prepared for Wilkins Family Limited Partnership by Whitworth and Associates, Inc. dated July 23, 2003 and recorded in the Office of the Register of Deeds for Lexington County in book 8563 at page 6.

Dated the 8th day of  
July 2006 at 8:00 AM

Harrell & Associates, P.A.

By 

Re-06-1121

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All that certain piece, parcel, or lot of land, situate, lying and being in the County of Lexington, State of South Carolina, containing .67 acres more or less and designated as Lot 6 on a Master plat of Highland Hill Subdivision, Phase I dated April 2, 1998 which has not been recorded. Being further shown and delineated on a plat of property prepared for Wilkins Family Limited Partnership by Whitworth and Associates, Inc. dated July 23, 2003 and recorded in the Office of the Register of Deeds for Lexington County in book 8565 at page 6.

Derivation: This being the same property conveyed to Robert L. Beagle and Debra A. Beagle by deed from Advanced Building Systems, LLC dated March 15, 2005, and recorded in the Office of the ROD for Lexington County in Book 9983, at page 015.

Debra M. Gower

Lexington County Register of Deeds

STATE OF SOUTH CAROLINA

COUNTY OF: LEXINGTON

IN THE MATTER OF: SIDNEY ALLAN RISHER

IN THE PROBATE COURT

INVENTORY AND APPRAISEMENT

CASE NUMBER: 2009-ES-32-01004

☐ ORIGINAL

☒ SUPPLEMENTAL # THREE

Personal Representative (s): Cassandra S. Risher

Last Four Digits of Decedent's Social

Security Number: XXX-XX-8020

Decedent's Date of Death: August 23, 2009

Was there a will? ☐ YES ☒ NO

Domicile at death: Lexington  
(county)

South Carolina  
(state)

The undersigned, being sworn, states: That the following schedules contain a complete and accurate inventory and appraisal of all real and personal property of this estate so far as the undersigned is informed: that he/she has estimated and/or appraised all listed property at its fair market value, according to the best of his/her knowledge and ability.

SWORN to me this 6th day of  
December 20 10

Notary Public for South Carolina

My Commission Expires: 1/17/2013

Signature: Cassandra Risher

Name: Cassandra S. Risher

Address: 135 Lochweed Drive

Columbia, South Carolina 29212

E-Mail:

Telephone (O):

(H): (803) 781-1341

Attorney: H. Ronald Stanley

Address: Post Office Box 7722

Columbia, South Carolina 29202

E-Mail: hrstanley@sc.rr.com

Telephone: (803) 799-4700

Signature

Name:

Address:

E-Mail:

Telephone (O):

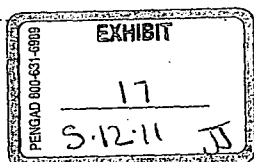
(H):

For estates of decedents, the gross fair market valuation of all assets, regardless of situs, should be given as of the date of death. List all out-of-state assets on appropriate schedules. A Supplemental Inventory should be utilized for correcting, adjusting or adding to an original inventory. A qualified and disinterested appraiser may be employed to ascertain the value of any asset, the value of which may be subject to reasonable doubt. If an appraiser is employed, his/her name and address should be indicated with the item or items he/she appraised.

Within ninety (90) days following appointment, a copy of the inventory and appraisal shall be sent to each interested person who requests it, and the original inventory filed with the Probate Court.

### RECAPITULATION

|                                                                     | Non-Probate   | Probate       |
|---------------------------------------------------------------------|---------------|---------------|
| Schedule A - Real Estate                                            | \$ -0-        | \$ 406,560.00 |
| Schedule B - Stocks and Bonds                                       | -0-           | -0-           |
| Schedule C - Notes Due Decedent and Cash                            | -0-           | 3,257.55      |
| Schedule D - Insurance on Person's Life: Part 1 - Payable to Estate | -0-           | -0-           |
| Part 2 - Payable to Beneficiary                                     | 535,000.00    | -0-           |
| Schedule E - Jointly Owned Property                                 | -0-           | 41.20         |
| Schedule F - Other Miscellaneous                                    | -0-           | 18,675.00     |
| Other Assets Payable to Estate                                      |               |               |
| Schedule G - Transfers during Decedent's life                       | -0-           | -0-           |
| Schedule H - Powers of Appointment                                  | -0-           | -0-           |
| Schedule I - Annuities and Retirement Accounts                      | -0-           | -0-           |
| TOTAL GROSS VALUE                                                   | \$ 428,533.75 | \$ 963,533.75 |
| ENCUMBRANCES                                                        | 653,851.59    |               |
| TOTAL NET WORTH                                                     | \$ 225,317.84 | \$ 309,682.16 |



FILED

DEC 6 - 2010

PROBATE JUDGE  
LEXINGTON COUNTY, S.C.

PA-542849255

FEE  
CONF

NOTE: WHEN COMPLETING THE FOLLOWING SCHEDULES, PLEASE REMEMBER TO LIST ALL ASSETS, REGARDLESS OF SITUS. ALL OUT-OF-STATE ASSETS MUST BE DISCLOSED.

**SCHEDULE A - Real Estate** (All interest in real property except those held with right of survivorship) (If none, so state.) (For jointly owned property with right of survivorship, see schedule E)

| Item No. | Description<br>(include county and state)                                                                                     | Tax Assessor's Fair<br>Market Value for year of<br>Decedent's Death | Appraised Value | Appraised Value of<br>Decedent's Interest |
|----------|-------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|-----------------|-------------------------------------------|
| 1        | an undivided one-half (1/2) interest in<br>and to 135 Lochweed Drive<br>Columbia, South Carolina 29212<br>TMS#: 001848-01-026 | \$428,600.00                                                        | \$450,000.00    | \$225,000.00                              |
| 2        | 190 Hillsborough Road<br>Columbia, South Carolina 29212<br>TMS#: 002759-01-049                                                | \$181,560.00                                                        |                 | \$181,560.00                              |
|          |                                                                                                                               |                                                                     |                 |                                           |
|          |                                                                                                                               |                                                                     |                 |                                           |
|          |                                                                                                                               |                                                                     |                 |                                           |
|          |                                                                                                                               |                                                                     |                 |                                           |
|          |                                                                                                                               |                                                                     |                 |                                           |
|          |                                                                                                                               |                                                                     |                 |                                           |
|          |                                                                                                                               |                                                                     |                 |                                           |
|          |                                                                                                                               |                                                                     |                 |                                           |

TOTAL SCHEDULE A \$ 406,560.00  
(also enter under recapitulation, page 1)

**SCHEDULE B - Stocks and Bonds** (If none, so state.) (For jointly owned property with right of survivorship, see schedule E)

| Item No. | Description | Face Value | Appraised Value |
|----------|-------------|------------|-----------------|
|          | None.       |            |                 |
|          |             |            |                 |
|          |             |            |                 |
|          |             |            |                 |
|          |             |            |                 |
|          |             |            |                 |
|          |             |            |                 |
|          |             |            |                 |
|          |             |            |                 |
|          |             |            |                 |

TOTAL SCHEDULE B \$ -0-  
(also enter under recapitulation, page 1)

**SCHEDULE C - Notes due to Decedent, and Money on hand and in banks** (If none, so state.) (For jointly owned property with right of survivorship, see schedule E)

| Item No. | Description                                                    | Value      |
|----------|----------------------------------------------------------------|------------|
| 1        | S51 Christmas Club with Palmetto Citizens Federal Credit Union | \$3,257.55 |
|          |                                                                |            |
|          |                                                                |            |
|          |                                                                |            |
|          |                                                                |            |
|          |                                                                |            |
|          |                                                                |            |
|          |                                                                |            |
|          |                                                                |            |
|          |                                                                |            |

## TOTAL SCHEDULE C

(also enter under recapitulation, page 1)

\$ 3,257.55

(If more space is required, insert tax schedules or additional sheets of same size.)

**SCHEDULE D - Insurance** (If none, so state.)

## Part 1 - Life Insurance Payable to the Estate

| Item No. | Description | Value |
|----------|-------------|-------|
|          | None.       |       |
|          |             |       |
|          |             |       |
|          |             |       |
|          |             |       |
|          |             |       |
|          |             |       |
|          |             |       |
|          |             |       |
|          |             |       |

## TOTAL PART 1

(also enter under recapitulation, page 1)

\$ -0-

## Part 2 - Life Insurance Payable to Beneficiaries

| Item No. | Description                     | Beneficiary         | Value        |
|----------|---------------------------------|---------------------|--------------|
| 1        | Nationwide Life Insurance       | Cassandra S. Risher | \$510,000.00 |
| 2        | American General Life Insurance | Cassandra S. Risher | \$25,000.00  |
|          |                                 |                     |              |
|          |                                 |                     |              |
|          |                                 |                     |              |
|          |                                 |                     |              |
|          |                                 |                     |              |
|          |                                 |                     |              |
|          |                                 |                     |              |

## TOTAL PART 2

(also enter under recapitulation, page 1)

\$ 535,000.00

**SCHEDULE E - Jointly owned Property** (with right of survivorship) (if none, so state.)

NOTE: You must complete Schedule E if the Decedent owned any property jointly with right of survivorship at the time of death, whether or not the decedent's interest is included in the gross estate.

Percentage includible:

1 - Joint interest held by decedent and spouse - the amount included is one-half (50%) of the value in all cases.

2 - Other joint interest - Generally you must include the full value of the jointly owned property in the gross estate. However, the full value should not be included if you can show that a part of the property originally belonged to the other tenant(s). The amount included is the amount of the decedent's contribution to the joint account(s).

| Item No. | Description                     | Joint Owner(s)                         | Percentage Includible | Appraised Value of Decedent's Interest |
|----------|---------------------------------|----------------------------------------|-----------------------|----------------------------------------|
| 1        | Money Market Acct. at BB&T      | Cassandra Risher & Sidney Allan Risher | 50%                   | -6.58                                  |
| 2        | Personal Saving Acct. with BB&T | Cassandra Risher & Sidney Allan Risher | 50%                   | 47.78                                  |
|          |                                 |                                        |                       |                                        |
|          |                                 |                                        |                       |                                        |
|          |                                 |                                        |                       |                                        |
|          |                                 |                                        |                       |                                        |
|          |                                 |                                        |                       |                                        |
|          |                                 |                                        |                       |                                        |

\$ 41.20

(If more space is required, insert tax schedules or additional sheets of same size.)

[illegible]

\$ 18,675.00

**SCHEDULE G - Transfers During Decedent's Life** - Transfers intended to take effect at death. United States Government Bonds "Payable on Death", Trust created by Decedent in which income for life was retained, power to revoke or other incidents of ownership retained, life insurance transfers. Lifetime transfers of real property in which decedent retains a life estate or other incidents of ownership.

If "yes" please give date and type of transfer and list total amount payable to estate:  
(If more space is required, insert additional sheet of same size.)

TOTAL SCHEDULE G

(also enter amounts payable to estate under recapitulation, page 1)

\$ -0-

(If more space is required, insert tax schedules or additional sheets of same size.)

**SCHEDULE H - Powers of Appointment** - Property, both real and personal, over which Decedent possessed a Power of Appointment whether Testamentary or otherwise.

Did Decedent possess a Power of Appointment? ☐ YES ☒ NO

If "yes", did Decedent exercise the power of appointment in favor of estate? ☐ YES ☐ NO

If "yes", please describe and list total amount payable to estate. \$ \_\_\_\_\_  
(If more space is required, insert additional sheets of same size.)

TOTAL SCHEDULE H

(also enter amounts payable to estate under recapitulation, page 1)

\$ -0-

**SCHEDULE I - Annuities and retirement (IRA's, 401(k), Etc.)**

Did Decedent own any accounts as described above? ☐ YES ☒ NO

If "yes", is the estate designated as the beneficiary of these accounts? ☐ YES ☐ NO

If "yes", please describe and list total amount payable to estate. \$ \_\_\_\_\_  
(If more space is required, insert additional sheets of same size.)

§ \_\_\_\_\_ - 0 -

-0-

(If more space is required, insert tax schedules or additional sheets of same size.)

**ENCUMBRANCES** - (e.g., mortgages, liens, judgments, etc., but not general debts of the estate) - List specific assets encumbered.

[illegible]

\$ 653,851.59

653,851.59

MANIFESTLY NON-TAXABLE

(To be executed by the Probate Court Judge in those cases where it appears that the estate is NOT REPORTABLE to the South Carolina Tax Commission under the provisions of the Estate Tax Laws of the State of South Carolina, i.e., the total gross value is indicated to be less than prescribed limits.)

It appears from the foregoing record of the above captioned estate on file in the Probate Court of this county, such estate is not reportable to the South Carolina Department of Revenue.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_, Probate Judge

(If more space is required, insert tax schedules or additional sheets of same size.)

\*053101121\*  
07/10/2008  
000002907756745

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original check.

053000196J 07/09/2008  
0620065650

|                                                                                                     |                 |                                     |
|-----------------------------------------------------------------------------------------------------|-----------------|-------------------------------------|
| Ronald C. Dodson, Attorney At Law<br>600 Elmwood Ave<br>Suite 102<br>Columbia, South Carolina 29201 |                 | DDST<br>COLUMBIA, SOUTH CAROLINA    |
| Pay Three Hundred Fifty Three Thousand Four Hundred Fifty Six and 33/100 Dollars                    |                 | 99-3603<br>7/8/2008<br>\$353,456.33 |
| To the order of Bank of America                                                                     | GSO PO Received | ESCROW ACCOUNT                      |
| JUL 09 2008                                                                                         |                 | Void after 180 days                 |
| File #: 27020                                                                                       | 6590735467      |                                     |

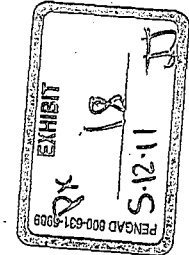
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CTR.RFP.0036

\*053101121\* 07/30/2008  
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ENDORSE HERE

Pay to the order of  
Bank of America  
JUL 09 2008  
US POSTAL SERVICE  
For Deposit Only  
666770039  
Bank of America

10:10 10

DATE OF DEPOSIT OR  
POSTAL SERVICE  
07/09/08  
666770039

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CTR.RFP.0037

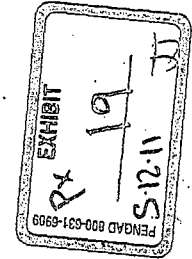
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of your check. You can  
use it the same way  
you would use the  
original check.

0530001963 07/09/2008  
06300980784

|                                                                                                                                    |                                                                   |                                        |
|------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|----------------------------------------|
| Ronald C. Dodson, Attorney At Law<br>900 Elmwood Ave<br>Suite 102<br>Columbia, South Carolina 29201                                |                                                                   | 80127<br>COLUMBIA, SOUTH CAROLINA      |
| Pay One Hundred Fifty Seven Thousand Three Hundred Eighty Eight and 81/100 Dollars<br><i>681100227499</i><br><i>68118000227499</i> |                                                                   | 99-3604<br>7/8/2008<br>\$ *5157,388.81 |
| To the order of Bank of America                                                                                                    | ESCROW ACCOUNT<br>GSO PO Received<br>JUL 09 2008<br>File #: 27028 | VOID after 180 days                    |

119936011 4:053201607: 00052207148121 00057388811



CTR.RFP.0034

\*053101121\* 07/10/2008  
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② COUNSEL TO THE

DO NOT WRITE IN THIS SPACE

FOR DEPOSIT ONLY  
BANK OF AMERICA, N.A.

JUL 09 2008

CONSUMER SERVICES 37  
CITY OF WASHINGTON, DC

IN-7

>053000196< 07/07/2008  
06300980784

CTR.RFP. 0035

1 weed"? Is that how you pronounce it?

2 A Yes, sir.

3 Q Do you remember being there at the closing?

4 A Yes, sir.

5 Q And do you recall where the closing took place?

6 A It was at a lawyer's office downtown, but I really

7 don't --

8 Q Okay.

9 A -- know location.

10 Q Do you remember the name of the lawyer that was

11 present?

12 A No, I don't.

13 Q Male or female?

14 A I think it was women.

15 Q Okay. All right. And in leading up to that

16 closing, what was the purpose of the closing? In

17 other words, what were y'all doing at the closing

18 or -- or attempting to do?

19 A Well, I know we were there to try to purchase a

20 house.

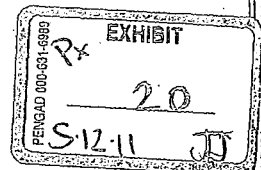
21 Q Okay. And -- and was the house to be purchased the

22 135 Lochweed?

23 A Right.

24 Q Okay. And do you remember any aspect of the

25 financing of that transaction? In other words, how



Page 14

1 it was going to be paid for -- how the purchase was  
2 going to be paid for.

3 A Yes, sir.

4 Q Okay. Tell me what you recall about that aspect of  
5 the transaction.

6 A The only thing that I knew, that it was going to be  
7 done through Midlands Mortgage.

8 Q Okay. Midlands Mortgage was going to lend the  
9 money to -- well, at least a part of the money to  
10 -- for y'all to purchase -- for the purchase of the  
11 home?

12 A Right.

13 Q Okay. Do you recall going to Midlands Mortgage and  
14 actually filling out any application or -- or any  
15 paperwork in regard to this transaction?

16 A No, sir.

17 Q Do you recall going there at all?

18 A Yes, sir.

19 Q Okay. Do you recall who you met with? Any loan  
20 processor or loan officer or anything of that  
21 nature?

22 A Gina Bush.

23 Q Okay. And how often -- how many times -- and I'm  
24 just talking about you. How many times did you  
25 meet with Ms. Bush?

Page 18

1 the home and the actual closing? Was it a long  
2 time/short time when you quit looking for homes and  
3 had decided to buy this particular home?

4 A I think we started looking like April, and I think  
5 the negotiating started, like, June.

6 Q Okay.

7 A Then, I guess, we closed, like, that July.

8 Q Okay. And who picked the attorney to close the  
9 transaction? Was that something y'all did, or  
10 something Midlands Mortgage did, or something your  
11 broker did -- your agent did, rather?

12 A No. The lawyer that we wanted to use was not  
13 available, so we used the Beagles' -- their lawyer.

14 Q Okay. Who was the lawyer that you wanted to use?

15 A I'm not sure.

16 Q Okay. But there was somebody that either you and  
17 your husband had in mind that wasn't --

18 A It was somebody --

19 Q -- available?

20 A -- that he had in mind.

21 Q Okay. Did you -- do you remember at the closing  
22 itself -- do you remember being there?

23 A Yes, sir.

24 Q Okay. Was there any discussion about who was  
25 actually borrowing the money or who was going to

1 take title to the property?

2 A No, sir.

3 Q Was it -- what was your understanding of the  
4 purpose of the loan from Midlands Mortgage?

5 A Purchase a house.

6 Q Okay. Could you have purchased the home without  
7 that loan from Midlands Mortgage? In other words,  
8 did you have enough cash laying around to pay  
9 \$550,000 -- or \$505,000 for the home?

10 A Not to my knowledge.

11 Q Okay. Did -- were you at all involved in any  
12 aspect of how the loan was -- or how the house --  
13 in whose name the house was to be titled? Do you  
14 --

15 A I'm sorry. Could you repeat the questions?

16 Q Okay. Well, let me -- that was probably a bad  
17 question.

18 Do you know who actually is on the title to  
19 your home?

20 A Me and my husband.

21 Q Okay. Do you know why that is? Do you remember  
22 any discussion of that, or is that just the way it  
23 happens?

24 A I was there, but I don't -- just like this: I  
25 don't remember what that --

Page 20

1 Q Okay. You don't recall any discussion about who  
2 was to --

3 A No.

4 Q -- take title or anything of that nature?

5 Do you recall any discussion about who was to  
6 actually be on -- actually sign the mortgage? And  
7 let me back up. Do you understand what a mortgage  
8 is?

9 A Yes, sir.

10 Q Okay. Tell me what you think it is.

11 A Where you actually borrow the money to pay for a  
12 house.

13 Q Okay. And do you remember there being any  
14 discussion about who was actually to sign the  
15 mortgage?

16 A No, sir.

17 Q Do you remember any discussion when you met with  
18 Ms. Bush about who was borrowing the money? Who  
19 was actually going to be the borrower for the --  
20 for the loan?

21 A No, sir.

22 Q Okay. Do you remember what y'all and Ms. Bush  
23 talked about?

24 A I just wanted the house. I know that they -- they  
25 discussed about -- the one meeting that I went to

1 was to discuss how much of a house we could  
2 possibly afford.  
3 Q Okay.  
4 A So --  
5 Q I take it there were other meetings that you're  
6 aware of between your husband and Ms. Bush or your  
7 husband and somebody at Midlands Mortgage?  
8 A Right. They talked often.  
9 Q Okay.  
10 A But I wasn't a part of --  
11 Q But you weren't there.  
12 A Right.  
13 Q You were there for that one meeting.  
14 A Yes, sir.  
15 Q Do you remember signing anything in that one  
16 meeting? A loan application or anything of that  
17 nature?  
18 A No, sir.  
19 Q Okay. On the day of the closing -- and I'll  
20 represent that date was July 7th, 2008 -- did --  
21 did y'all immediately move into the house, or was  
22 there a period of time between the time you  
23 actually closed on the transaction and moved in?  
24 A No. We didn't move in right away.  
25 Q How long after the closing did you move in?

Handwritten initials "D.H." with a large checkmark or flourish below them.

**ACKNOWLEDGEMENT**

Buyers/borrowers acknowledge that Attorney Ronald C. Dodson was not present for this real estate closing transaction and that for convenience purposes, Attorney Tynika A. Claxton, has appeared in his place.

Buyers/borrowers further acknowledge that Attorney Claxton is present for the limited purpose of satisfying the requirement that the real estate transaction be conducted by a licensed South Carolina attorney.

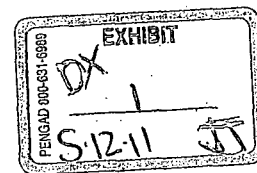
Attorney Claxton has not examined the title to the property nor will she record the required documents in the County ROD Office. Attorney Claxton has not prepared any real estate closing documents nor will be disburse any funds. These duties will be carried out by Attorney Dodson and his staff.

Date: July 7, 2008

Handwritten signature of the Buyer/Borrower.

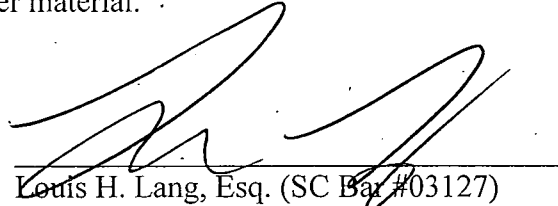
Buyer/Borrower

Buyer/Borrower



**CERTIFICATE OF COUNSEL**

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Louis H. Lang, Esq. (SC Bar #03127)  
Jennifer N. Stone, Esq. (SC Bar #72602)  
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Facsimile: (803) 404-6902

Attorneys for Appellant

July 9, 2012  
Columbia, South Carolina

