

ORIGINAL

19727

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph Stroman, Special Referee
Case No 2009-CP-26-12374

BANK OF NORTH CAROLINA

Respondent,

v

AMY BREUNIG,

Appellant

AMENDED RECORD ON APPEAL

William Isaac Diggs
LAW OFFICES OF WILLIAM ISAAC DIGGS
1700 Oak Street, Suite D
Myrtle Beach, SC 29577
(843)-626-4243
ATTORNEY FOR APPELLANTS

V Denise Hamilton, Esquire
Stacy L. Stanley, Esquire
STANLEY LAW FIRM
3303 Highway 9 East
Little River, SC 29566-7825
843-390-9111

ATTORNEY FOR THE RESPONDENT

Foreclosure Sale filed with the Court of Appeals	135
Respondent's Return to Petition for Supersedeas and Stay	156
Order of Judge Few Denying Supersedeas	165
Appellant's Petition for Full Panel Review of Order Denying Supersedeas	167
Respondent's Return to Petition for Full Panel Review of Order Denying Supersedeas	199
Order of Full Panel Affirming Judge Few's Denial of Supersedeas	210
Certificate of counsel	211

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO 09-CP-26-12374

)

)

;

55

)

) ORDER DENYING DEFENDANT'S
) MOTION FOR RECONSIDERATION
) OF ORDER ENTERED
) AUGUST 1, 2011

00001

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO 09-CP-26-12374

BANK OF NORTH CAROLINA,)
Plaintiff,)
vs)
AMY BREUNIG,)
Defendant)

**ORDER DENYING DEFENDANT'S
MOTION FOR RELIEF FROM
DEFAULT AND STAY OF
FORECLOSURE SALE**

FILED
AUG -1 PM 2 58
CLERK OF COURT
JOHN HUGGINS-WARD

This matter comes before the Court on June 30, 2011, upon Motion of Defendant for Relief from Default and Stay of Foreclosure Sale Present at the hearing was Stacy Stanley on behalf of the Plaintiff Also present at the hearing was William I Diggs on behalf of the Defendant.

Based on the information presented to this Court it appears that this Court has previously held the Defendant in default by Order dated July 7, 2010 The parties further agreed that the foreclosure sale would be scheduled for October 3, 2011

THEREFORE, IT IS ORDERED

That the Defendant's Motion for Relief from Default is denied and it is further ORDERED, that the property which is the subject of this action shall be sold at the foreclosure sale on October 3, 2011

IT IS SO ORDERED


RALPH STROMAN, SPECIAL REFEREE

July 13, 2011

Conway, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

BEACH FIRST NATIONAL BANK,

Plaintiff(s)

vs

AMY BREUNIG,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2009 CP 26 12374

(Please Print)

Submitted By Stacy L. Stanley

Address 3303 East Highway 9
Little River SC 29566

SC Bar #

13410

Telephone #

843 390 9111

Fax #

843 390 9187

Other

E-mail

sstanley@stanleylawfirm.com

NOTE The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely signed and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint ☒ NON-JURY TRIAL demanded in complaint
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules
☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules
☒ This case is exempt from ADR (certificate attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|--|--|
| Contracts
☐ Constructions (100)
☒ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☒ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Sexual Predator (510)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture (840)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb (610)
☐ Medical (620) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Other (699) | | |

Submitting Party Signature

Date

12 7 2009

Note Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP Rule 11 and the South Carolina Frivolous Civil Proceedings Sanctions Act S.C. Code Ann. §15-36-40 et seq.

000003

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT

You are required to take the following action(s)

- 1 The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
- 2 The initial ADR conference must be held within 300 days after the filing of the action.
- 3 Cases are exempt from ADR only upon the following grounds:
 - a Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition,
 - b Cases which are appellate in nature such as appeals or writs of certiorari,
 - c Post Conviction relief matters,
 - d Contempt of Court proceedings,
 - e Forfeiture proceedings brought by the State,
 - f Cases involving mortgage foreclosures, and
 - g Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
- 4 Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

**Please Note You must comply with the Supreme Court Rules regarding ADR
Failure to do so may affect your case or may result in sanctions**

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO 09-CP-26-_____

BEACH FIRST NATIONAL BANK,)
Plaintiff,)
vs)
AMY BREUNIG,)
Defendant)

CERTIFICATE OF
EXEMPTION/WITHDRAWAL

HORRY COUNTY
09 DEC 23 PM 3 01
CLERK OF COURT

I CERTIFY THAT THIS ACTION IS EXEMPT FROM ARBITRATION BECAUSE

_____ monetary relief requested in this case exceeds \$25,000 ,
_____ this is a class action,
_____ there is a substantial claim for injunction or declaratory relief requested in this case,
 X this case involves (check one or more of the following)
_____ title to real estate,
_____ wills, trusts and decedents' estates,
 X mortgage foreclosure,
_____ mechanic's lien foreclosure
_____ partition,
_____ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus or prohibition,
_____ monetary relief requested in this case is unspecified but exceeds \$25,000 00,
_____ this case is a companion or related to similar actions pending in other courts with which the action might be consolidated but for lack of jurisdiction or venue,
_____ this action is appellate in nature,
_____ this is a post conviction relief matter,
_____ this is forfeiture proceeding brought by the State, or
_____ this is a contempt of court proceeding

12-23, 2009

Stacy L Stanley
Attorney for the Plaintiff

NOTE Motion must be presented to the Court a hearing held and a finding made, for exemption or withdrawal from arbitration for strong and compelling reason sought pursuant to Rule 1(d) Rules of Circuit Court Arbitration

000005

NOTICE REQUIRED BY THE FAIR DEBT
COLLECTION PRACTICES ACT, (THE "ACT")
15 U S C SECTION 1601, AS AMENDED

- 1 The amount of the debt is stated in the Complaint attached hereto
- 2 The Creditor, to whom the debt is owed, is the Plaintiff as named in the
Summons and Complaint
- 3 The debt described in the attached Complaint will be assumed to be valid unless you, the Debtor, within thirty (30) days, dispute
the Creditor's law firm unless you, the Debtor, within thirty (30) days, dispute
in writing the validity of the debt or some portion thereon
- 4 If the Debtor notifies the Creditor's law firm in writing thirty (30) days from
receipt of this notice that the debt or any portion thereof 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
- 5 If the Creditor named in the attached letter is not the original Creditor, and if
you make a written request to the Creditor's law firm within thirty (30) days,
the name and address of the original Creditor will be mailed to you by the
Creditor's law firm
- 6 Written request should be addressed to the Stanley Law Firm, 3303 East
Highway 9, Little River, S C 29566
- 7 This notice should not be construed as a thirty (30) day grace period

Horry County
09 DEC 23 PM 3:07
RELAY OF DEBT
STANLEY LAW FIRM

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

000006

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO 09-CP-26-_____

BEACH FIRST NATIONAL BANK,)
Plaintiff,)
vs)
AMY BREUNIG,)
Defendants)

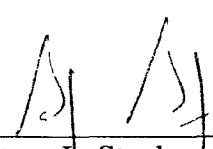
SUMMONS
(MORTGAGE FORECLOSURE)
(NON-JURY)

HORRY COUNTY
09 DEC 23 PM 3 07
CLERK OF COURT

TO THE DEFENDANT ABOVE NAMED

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer on the subscriber at his office at 3303 E Highway 9 Little River, South Carolina 29566, within THIRTY (30) DAYS after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint

STANLEY LAW FIRM



Stacy L. Stanley
3303 East Highway 9
Little River, SC 29566
(843) 390-9111
Attorney for the Plaintiff

December 23, 2009

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO 09-CP-26- 12374

BEACH FIRST NATIONAL BANK,)
Plaintiff,)
vs)
AMY BREUNIG,)
Defendant)

COMPLAINT
(MORTGAGE FORECLOSURE)
(NON-JURY)

HORRY COUNTY
09 DEC 23 PM 3 07
CLERK OF COURT
MELANIE HUSGINS-WARD

NOW COMES the Plaintiff, by and through the undersigned attorney, and would respectfully show and allege unto this Honorable Court as follows

1 The Plaintiff, Beach First National Bank, is organized under the laws of the State of South Carolina

2 Upon information and belief, the Defendant is a citizen and resident of the State of South Carolina, and is the owner of real property located in Horry County, South Carolina, which is the subject of this action

3 The subject of this action is real property located in the County of Horry, State of South Carolina That upon information and belief, this Court has jurisdiction over the parties and subject matter of this action, and that venue is proper in Horry County, South Carolina

4 That on or about April 18, 2005, the Defendant, Amy Breunig, (hereinafter "Mortgagor") made, executed and delivered to the Plaintiff a certain Note in writing, wherein and whereby she promised to pay to the Plaintiff the principle sum of Two Hundred Fifty-Five Thousand Four Hundred Fifty and 00/100ths (\$255,450 00) Dollars, along with interest at the rate of six and three-quarters (6 75%) percent per annum A copy of said

Note is attached hereto and incorporated by reference as Exhibit "A"

5 That on April 18, 2005, in order to secure the above-referenced Promissory Note, the Defendant did deliver to Plaintiff a Mortgage for said real property The mortgage was thereafter recorded in the Office of the Register of Deeds for Horry County in Mortgage Book 4009 at Page 1486 A copy of said Mortgage is attached hereto as Exhibit "B"

6 That on or about May 1, 2008, the Defendant entered into a renewal Note made, wherein and whereby she promised to pay to the Plaintiff the principle sum of Two Hundred Forty-Six Thousand Seven Hundred Five and 68/100ths (\$246,705 68) Dollars, along with interest at the rate of six and three-quarters (6 75%) percent per annum A copy of said Note is attached hereto and incorporated by reference as Exhibit "C"

FOR A SECOND CAUSE OF ACTION

7 That on or about February 9, 2007, the Defendant made, executed and delivered to the Plaintiff a certain Note in writing, wherein and whereby she promised to pay to the Plaintiff the principle sum of One Hundred Thirty-Five Thousand and 00/100ths (\$135,000 00) Dollars, along with interest at a variable rate with an initial rate of nine and one-quarter (9 25%) percent per annum A copy of said Note is attached hereto and incorporated by reference as Exhibit "D"

8 That on February 9, 2007, in order to secure the above-referenced Promissory Note, the Defendant did deliver to Plaintiff a Mortgage for said real property The mortgage was thereafter recorded in the Office of the Register of Deeds for Horry County in Mortgage Book 4848 at Page 2889 A copy of said Mortgage is attached hereto as Exhibit "E"

9 That on or about January 28, 2008, the Defendant entered into a Mortgage and Note Modification Agreement with the Plaintiff wherein the interest rate was modified A copy of the Mortgage and Note Modification Agreement is attached hereto as Exhibit "F"

10 That the Plaintiff is the owner and holder of said Notes and Mortgages, and that said Mortgages constitutes a first and second mortgage lien on the property set forth and described in the attached Mortgage

11 That pursuant to the terms of the Notes, it is agreed between Plaintiff (Mortgagee) and Defendant that upon default, the holder may declare the entire outstanding indebtedness, principal and interest, immediately due and payable

12 That the last regularly scheduled payment made on the Note dated May 1, 2008 was in July of 2009, and on the Note dated February 9, 2007 was in September of 2009

13 That despite due demand made by the Plaintiff, the Defendant has failed to pay the Notes as required, and that due to the Defendant's default, the Plaintiff has exercised its option to declare all sums secured by the Mortgage immediately due and payable As of December 15, 2009, there is currently due and owing the sum of Two Hundred Fifty Thousand One Hundred Eighty-Six and 04/100ths (\$250,186 04) Dollars, with a daily accrual of Forty-Five and 14/100ths (\$45 14) Dollars on the first Note, and the sum of One Hundred Thirty-Six Thousand Eight Hundred Eighty Four and 48/100ths (\$136,884 48) Dollars, with a daily accrual of Eighteen and 56/100ths (\$18 56) Dollars

14 The Notes and Mortgages referred to herein provide that if the Plaintiff is required to hire an attorney to collect the sums due, it shall be entitled to an award of reasonable attorney's fees The Plaintiff is informed and believes that it is entitled to foreclosure of the real estate Mortgage and the barring of any equity of redemption of the Defendant in the property

(15) That the Plaintiff herein specifically demands deficiency judgment against the Defendant

16 That in addition, the Plaintiff requests an Order of this Court granting it the right to

have the Sheriff of Horry County, or other duly designated law enforcement officer place the Plaintiff, or the Plaintiff's agent, in possession of the property pursuant to the judgment of foreclosure if the Plaintiff is the successful bidder at foreclosure sale

17 That the Plaintiff is participating in the Home Affordable Modification Program (HMP), however, this loan is not subject to modification under the HMP

18 The notice of consumer's right to cure, as contemplated under S C Code Section 37-5-110 and 37-5-111, has been given or is not required, and all conditions precedent to the acceleration of the debt and foreclosure of the mortgage have been performed or have occurred

WHEREFORE, the Plaintiff prays judgment that

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

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

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

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

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

Third, the surplus, if any, be distributed according to laws, and

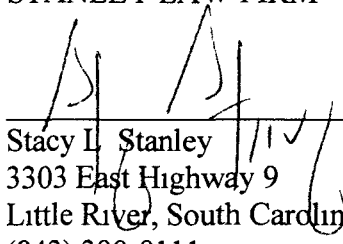
Fourth, Plaintiff have judgment against the Defendant for the full amount due Plaintiff on

the Note and Mortgage,

(d) For pre-judgment interest,

(e) For such other and further relief as this Court may deem just and proper

STANLEY LAW FIRM



Stacy L. Stanley
3303 East Highway 9
Little River, South Carolina 29566
(843) 390-9111
Attorney for the Plaintiff

December 23, 2009



NOTE

04/18/2005
10:11

MYRTLE BEACH
SC 29582

3307 PALM STREET NORTH MYRTLE BEACH SC 29582
(Party Address)

South Carolina
10:11

65
W. Bell



1 BORROWER'S PROMISE TO PAY

In return for a loan that I have received I promise to pay U.S. \$255,450.00 (this amount is called Principal) plus interest to the order of the Lender. The Lender is BEACH FIRST NATIONAL BANK, organized and existing under the laws of the United States of America.

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 6.750%. Interest will be charged beginning on 04/18/2005.

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) Periodic Payments

I will pay principal and interest by making periodic payments when scheduled.

☐ I will make payments of \$ _____ each on the _____ of each _____ beginning on _____.

☒ I will make payments as follows:

35 monthly payments of \$1,863.96 beginning 05/18/2005.

☒ In addition to the payments described above, I will pay a Balloon Payment of \$248,132.98 on 04/18/2008.

The Note Holder will deliver or mail to me notice prior to maturity that the Balloon Payment is due. This notice will state the Balloon Payment amount and the date that it is due.

(B) Maturity Date and Place of Payments

I will make these payments as scheduled until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My periodic payments will be applied as of its scheduled due date and will be applied to interest before Principal. If on 04/18/2008 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 periodic payments at 1550 OAK STREET, MYRTLE BEACH, SC 29577.

or at a different

place if required by the Note Holder.

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 periodic payments due under this Note.

I may make a full Prepayment or partial Prepayments without paying any 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 periodic 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 periodic payment by the end of 10 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each periodic 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

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 mailing it by first class mail to the Note Holder at the address stated in Section 3(B) on page 1 of this Note 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 SECURED NOTE

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 04/18/2005 protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

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

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

11 BALLOON PAYMENT DISCLOSURE

[Complete the Balloon Payment notice below if this Note provides for a Balloon Payment at Section 3(A) on page 1 of this Note.]

THIS LOAN IS PAYABLE IN FULL ON April 18, 2009

AT MATURITY I MUST REPAY THE

ENTIRE PRINCIPAL BALANCE OF THE LOAN AND UNPAID INTEREST THEN DUE, WHICH MAY BE A LARGE PAYMENT. LENDER IS UNDER NO OBLIGATION TO REFINANCE THE LOAN AT THAT TIME. I WILL THEREFORE BE REQUIRED TO MAKE PAYMENT OUT OF OTHER ASSETS THAT I MAY OWN OR I WILL HAVE TO FIND A LENDER, WHICH MAY BE THE LENDER I HAVE THIS LOAN WITH, WILLING TO LEND ME THE MONEY. IF I REFINANCE THIS LOAN AT MATURITY, I MAY HAVE TO PAY SOME OR ALL OF THE CLOSING COSTS NORMALLY ASSOCIATED WITH A NEW LOAN EVEN IF I OBTAIN REFINANCING FROM THE SAME LENDER.

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


AMY BREUNIG

(Seal)
Borrower

(Seal)
Borrower

[Sign Original Only]

Murray Law Offices, PA
Keener Professional Center Ste 103
2208 Highway 17 South
North Myrtle Beach SC 29582

FILED
Horry County SC
2005 APR 20 AM 8:02
BALLERY V SKIPPER
REGISTRAR OF DEEDS



[Space Above This Line For Recording Data]

MORTGAGE

DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated 04-18-2005 together with all Riders to this document.

(B) Borrower is ~~XXXXXXXXXXXXXXXX~~ Amy Breunig

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is BEACH FIRST NATIONAL BANK

Association
the United States of America

Lender is a

organized and existing under the laws of

Lender's address is 1550 OAK STREET MYRTLE BEACH SC 29577

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated 04-18-2005

Note states that Borrower owes Lender two hundred fifty five thousand four hundred fifty and no/100

Dollars (U S \$ 255,450.00)

plus interest. Borrower has promised to pay this debt in regular periodic payments and to pay the debt in full not later than 04-18-2008.

(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]:

☐ Adjustable Rate Rider

☐ Condominium Rider

☐ Second Home Rider

☒ Balloon Rider

☐ Planned Unit Development Rider

☐ Other(s) [specify]

☒ 1st Family Rider

☐ Biweekly Payment 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) 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. §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.

(P) "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 Horry County, South Carolina.

SEE ATTACHED EXHIBIT A

MORTGAGE

4009 1486

Form 3041 1/01

SOUTH CAROLINA—Single Family—Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Baker System Inc. St. Cloud MN Form MD 1-SC 8/20/2000
of 1/2001

(page 1 of 7 pages)



C K 3 A 0

000015

which currently has the address of 3307 PALM STREET

NORTH MYRTLE BEACH

(City)

South Carolina 29582

(St.)

(Zip C d)

(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 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 instrumentally or entity; or (d) Electronic Funds Transfer.

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

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

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

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

3. **Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note until the Note is paid in full a sum (the Funds) to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property; if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called Escrow Items. At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees, and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly when and where payable the amounts due for any Escrow Items for which payment of Funds has been waived by Lender, and if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts that are then required under this Section 3.

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

The Funds shall be held in an institution whose deposits are insured by a federal agency instrumentally 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 deemed to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

SOUTH CAROLINA—Single Family—Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3041 1/01

Bankers Trust Co., Inc. St. Cloud, MN Form MD 1 SC 8/20/2000

(page 2 of 7 pages)

000016

misleading or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include but are not limited to representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate for condemnation or forfeiture for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations) or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument including protecting and/or assessing the value of the Property and securing and/or repairing the Property. Lender's actions can include but are not limited to (a) paying any sums secured by a lien which has priority over this Security Instrument (b) appearing in court and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument including its secured position in a bankruptcy proceeding. Securing the Property includes but is not limited to entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters or other third parties retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

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

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

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

8 Borrower's Loan Application Borrower shall be in default if during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false

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

20. Sale of Note Change of Loan Servicer, Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the Loan Servicer) that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note this Security Instrument and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

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

21. Hazardous Substances. As used in this Section 21 (a) Hazardous Substances are those substances defined as toxic or hazardous substances pollutants for 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:

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

23. Release. Upon payment of all sums secured by this Security Instrument this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall 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.

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

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

SOUTH CAROLINA—Single Family—Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 Borrower's Right to Reinstate After Acceleration If Borrower meets certain conditions Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument (b) such other period as Applicable Law might specify for

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

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

Signed sealed and delivered in the presence of

Dawn Small
Katharine M. Kator

[Signature]
AMY BREUNIG
XXXXXXXXXXXX

(Seal)
Borrower

(Seal)
Borrower

_____[Space Below This Line For Acknowledgment]_____

STATE OF SOUTH CAROLINA HOBBS

County ss

Before me personally appeared

the undersigned witness

saw the within named Borrower sign seal and as
written Mortgage and that
witnessed the execution thereof

and made oath that
his/her/their

he/she/they

act and deed deliver the within
with *the undersigned notary*

Sworn before me this 18th

day of April 2005

Katharine M. Kator
Notary Public for South Carolina

Dawn Small

My commission expires

9-25-13

PAYMENT RIDER

THIS PAYMENT RIDER is made this 18th day of April 2005 and is incorporated into and shall be deemed to amend and supplement the Mortgage Deed of Trust or Security Deed (the "Security Instrument") of the same date given by the undersigned (the Borrower) to secure Borrower's Note to BEACH FIRST NATIONAL BANK 1550 OAK STREET MYRTLE BEACH, SC 29577

(the Lender) of the same date and covering the property described in the Security Instrument and located at 3307 PALM STREET, NORTH MYRTLE BEACH SC 29582

[Property Address]
ADDITIONAL COVENANTS In addition to the covenants and agreements made in the Security Instrument Borrower and Lender further covenant and agree as follows

A PERIODIC PAYMENTS OF PRINCIPAL AND INTEREST

The Note provides for periodic payments of principal and interest as follows

3 PAYMENTS

(A) Periodic Payments

I will pay principal and interest by making periodic payments when scheduled

☐ I will make payments of \$

each on the

of each

beginning on

☒ I will make payments as follows

35 monthly payments of \$1 663 96 beginning 05-18-2005

☒ In addition to the payments described above I will pay a Balloon Payment of \$ 248 332 99 on 04-18-2008

The Note Holder

will deliver or mail to me notice prior to maturity that the Balloon Payment is due. This notice will state the Balloon Payment amount and the date that it is due

(B) Maturity Date and Place of Payments

I will make these payments as scheduled until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My periodic payments will be applied to interest before Principal if on 04-18-2008

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 periodic payments at 1550 OAK STREET, MYRTLE BEACH, SC 29577

or at a different place if required by the Note Holder

MULTIPURPOSE FIXED RATE PAYMENT RIDER (MULTISTATE)

Bankers Systems Inc St Cloud MN Form MPFR PR 6/15/2004

ref MPFR MN

(page 1 of 2 pages)

000022

☒ **B FUNDS FOR TAXES AND INSURANCE**

Uniform Covenant 3 of the Security Instrument is waived by Lender

BY SIGNING BELOW Borrower accepts and agrees to the terms and covenants contained
in this Payment Rider

AMY BREUNIG

(Seal)
Borrower

BRUNIG BREUNIG

(Seal)
Borrower

Exhibit A

ALL AND SINGULAR, all those certain pieces parcels or lots of land with improvements thereon, situate, lying and being in Little River Township County of Horry, State of South Carolina and being represented as LOTS ELEVEN (11) and TWELVE (12) BLOCK FOUR (4), on a plat or map made for Windy Hill Beach, a Corporation, by N C Hughes, Jr, Engineer, revised March 25 1947, and recorded in the Office of the Clerk of Court for Horry County South Carolina in Plat Book 5-A at Page 111 reference in which is made a part and parcel hereof

The two parcels of land are contiguous to each other and are bounded generally on the North by Fourth Avenue, on the East by Lot Ten (10), on the South by Lots Four (4) and Three (3) and on the West by Lot Thirteen (13) in said Block Four (4) all as will more fully appear upon the above referenced plat

THIS BEING THE IDENTICAL PROPERTY conveyed to Amy Breunig by Deed dated April 18 2005 and recorded on April 20, 2005 in Deed Book 269 at Page 899, Horry County Register of Deeds Office

1495



NOTE

6540

[Signature]

05 01 2008
[D t]

MYRTLE BEACH
[City]

South Carolina
[St t]

3307 PALM STREET NORTH MYRTLE BEACH SC 29582
[P pe ty Address]



1 BORROWER S PROMISE TO PAY

In return for a loan that I have received I promise to pay U S \$246 705 68 (this amount is called Principal) plus interest to the order of the Lender The Lender is BEACH FIRST NATIONAL BANK organized and existing under the laws of the United States of America

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 7 75 % Interest will be charged beginning on 05 01 2008

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) Periodic Payments

I will pay principal and interest by making periodic payments when scheduled

☐ I will make payments of \$ _____ each on the _____ of each _____ beginning on _____

☒ I will make payments as follows

35 monthly payments of \$1 607 28 beginning 06 01 2008

☒ In addition to the payments described above I will pay a Balloon Payment of \$ 239 588 88 on 05 01 2011

The Note Holder will deliver or mail to me notice prior to maturity that the Balloon Payment is due This notice will state the Balloon Payment amount and the date that it is due

(B) Maturity Date and Place of Payments

I will make these payments as scheduled until I have paid all of the principal and interest and any other charges described below that I may owe under this Note My periodic payments will be applied as of its scheduled due date and will be applied to interest before Principal If on 05-01-2011 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 periodic payments at 1550 OAK STREET MYRTLE BEACH SC 29577

or at a different

place if required by the Note Holder

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 periodic payments due under this Note

I may make a full Prepayment or partial Prepayments without paying any 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 periodic 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 periodic payment by the end of 10 calendar days after the date it is due I will pay a late charge to the Note Holder The amount of the charge will be 5 000 % of my overdue payment of principal and interest I will pay this late charge promptly but only once on each late payment

(B) Default

If I do not pay the full amount of each periodic 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

MULTIPURPOSE FIXED RATE NOTE (MULTISTATE)

Banker Sy rms Inc 5 Cloud MN Form MPFR MN 2/19/2002 V08 10
1 MPFR-PR

(page 1 of 2 pages)

[Signature]

000025

(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 mailing it by first class mail to the Note Holder at the address stated in Section 3(B) on page 1 of this Note 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 SECURED NOTE

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 04/18/2005 protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

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

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

11 BALLOON PAYMENT DISCLOSURE

[Complete the Balloon Payment notice below if this Note provides for a Balloon Payment at Section 3(A) on page 1 of this Note.]

THIS LOAN IS PAYABLE IN FULL ON Mar 01 2011

AT MATURITY I MUST REPAY THE ENTIRE PRINCIPAL BALANCE OF THE LOAN AND UNPAID INTEREST THEN DUE, WHICH MAY BE A LARGE PAYMENT. LENDER IS UNDER NO OBLIGATION TO REFINANCE THE LOAN AT THAT TIME. I WILL THEREFORE BE REQUIRED TO MAKE PAYMENT OUT OF OTHER ASSETS THAT I MAY OWN OR I WILL HAVE TO FIND A LENDER, WHICH MAY BE THE LENDER I HAVE THIS LOAN WITH, WILLING TO LEND ME THE MONEY. IF I REFINANCE THIS LOAN AT MATURITY, I MAY HAVE TO PAY SOME OR ALL OF THE CLOSING COSTS NORMALLY ASSOCIATED WITH A NEW LOAN, EVEN IF I OBTAIN REFINANCING FROM THE SAME LENDER.

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

AMY BREUNG

(Seal)
Borrower

(Seal)
Borrower

[Sign Original Only]

BEACH FIRST NATIONAL BANK
3751 GRISSOM PARKWAY SUITE 100
MYRTLE BEACH SC 29577

AMY BREUNIG
3307 PALM STREET
NORTH MYRTLE BEACH SC 29582

Loan Number 61006110
Agreement Date 02-09-2007
Credit Limit \$135,000.00
Maturity Date 02-09-2022



Lender

Borrower

BEACH FIRST HOME EQUITY

1 DEFINITIONS In this Agreement these terms have the following meanings

A Pronouns The pronouns I, me, and my refer to all Borrowers signing this Agreement jointly and individually and each other person or legal entity that agrees to pay this Agreement. You and your refer to the Lender, or any person or legal entity that acquires an interest in the Line of Credit.

B Agreement Agreement refers to this BEACH FIRST HOME EQUITY and any extensions, renewal, modifications or substitutions of it.

C Billing Cycle Billing Cycle means the interval between the days or dates of regular periodic statements.

D Credit Limit Credit Limit means the maximum amount of principal you will permit me to owe you under this Line of Credit at any one time. My Credit Limit is stated at the top of this Agreement.

E Line of Credit Line of Credit refers to this transaction generally including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures and this Agreement.

F Loan Account Balance Loan Account Balance means the sum of the unpaid principal balance advanced under the terms of this Agreement, finance charges, fees, and other charges that are due and other amounts advanced to me or others under the terms of this Line of Credit.

G Property Property means any real or personal property that secures my obligations under this Line of Credit.

Other important terms are defined throughout this Agreement.

2 PROMISE TO PAY I promise to pay to you or your order at your address or at such other location as you may designate, so much of the Credit Limit as may be advanced under this Agreement, plus finance charges, fees, charges, costs, and expenses as described in this Line of Credit.

3 AGREEMENT TERM This Agreement begins on the Agreement Date and continues until the Maturity Date. I may request advances for 15 years (Draw Period) beginning on the Agreement Date.

4 ADVANCES I may request advances by the following methods:

☒ **A** I write a check.

☐ **B** I draw my transaction account below \$_____ (Triggering Balance). Transaction account number _____.

☒ **C** I request a withdrawal in person, by phone, by mail or via the internet.

☐ **D** I make a purchase or withdrawal with my _____.

☐ **E** I authorize you to make a payment to a third person or another account.

You will make the advance by advancing the amount directly to me depositing it in my transaction account or by paying a designated third person or account. You will record the amount as an advance and increase my Loan Account Balance.

5 ADVANCE LIMITATIONS You do not have to make any advances during any period in which I have a right to cancel. My ability to request and access advances is also subject to the following additional limitations:

☐ **A Initial Advance** On _____ I will receive an Initial Advance of \$_____.

☐ **B Maximum Advance** Subject to the limitations contained in this Agreement, when I request an advance, You will advance exactly the amount I request.

☐ **C Maximum Amount of Advances** I may not request advances totaling more than \$_____ per _____.

☐ **D Maximum Number of Advances** I may not request more than _____ advances per _____.

☐ **6 MINIMUM BALANCE** I agree to maintain a principal balance outstanding during the term of this Agreement of at least \$_____ (Minimum Balance).

7 CREDIT LIMIT Subject to the terms and conditions of this Agreement, I may borrow on this Line of Credit up to the Credit Limit. I agree not to request or obtain an advance that will cause the unpaid

principal of my Loan Account Balance to exceed the Credit Limit. I understand that you will not ordinarily grant a request for an advance that would cause the unpaid principal of my Loan Account Balance to be greater than the Credit Limit, but that you may, at your option, grant such a request without obligating yourselves to do so in the future. My Credit Limit will not be increased if I overdraw the Line of Credit. If I exceed the Credit Limit, I agree to pay the amount by which the unpaid principal of my Loan Account Balance exceeds the Credit Limit immediately, even if you have not yet billed me. Any sums in excess of the Credit Limit will not be secured by the Property, unless they are for accrued but unpaid interest or expenditures made pursuant to the security instrument securing the Property.

8 COMPUTATION OF FINANCE CHARGES Finance charges begin to accrue immediately when you make an advance to me. Finance charges will be computed as follows:

To figure the finance charge for each Billing Cycle, a daily periodic rate is multiplied by the Average Daily Balance of my Loan Account Balance. You then multiply that amount by the number of days in the Billing Cycle. To figure the Average Daily Balance, you first take my Loan Account Balance at the beginning of each day and add any new advances and subtract any payments or credits that apply to debt repayment and any unpaid finance charges, fees, and charges. This gives you the daily balance. Then you add up all the daily balances for the Billing Cycle and divide the total by the number of days in the Billing Cycle. This gives you the Average Daily Balance.

9 PERIODIC RATE AND ANNUAL PERCENTAGE RATE The periodic rate used in calculating the **FINANCE CHARGE** is 0.025342% and the corresponding **ANNUAL PERCENTAGE RATE** is 9.250%. The annual percentage rate includes interest and not other costs.

10 VARIABLE RATE The annual percentage rate may change. It will be based on the value of the Index described as the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks known as the Wall Street Journal Prime Rate.

plus 1.000 percentage points.

☒ **A Rounding** This rate will be rounded to the nearest .001.

B Rate Changes The annual percentage rate may increase if the Index rate increases. An Index rate increase will result in a higher finance charge and it may have the effect of increasing my periodic Minimum Payment. A decrease in the Index rate will have the opposite effect as an increase. An Index rate increase or decrease will take effect on the first of the month.

The annual percentage rate can increase or decrease Monthly (☒ after remaining fixed for 1 Month). If the Index rate changes more frequently than the annual percentage rate, you will use the Index rate in effect on the day you adjust the annual percentage rate to determine the new annual percentage rate. In such a case, you will ignore any changes in the Index rate that occur between annual percentage rate adjustments.

☐ **C Carryover** Any annual percentage rate increases or decreases not implemented by you either because of periodic annual or lifetime rate caps or because of a statutory limitation may be carried over to subsequent rate adjustment periods and may be implemented to the extent not offset by opposite movement in the Index rate. If this occurs, the annual percentage rate will not relate to the Index rate in the manner described. When you have adjusted the annual percentage rate to take advantage of all increases or decreases in the Index rate, the initial relationship between the Index rate and the annual percentage rate will resume.

D Rate Change Limitations Annual percentage rate changes are subject to the following limitations: Initial discount or premium rates are not taken into consideration in applying interest rate limitations.

☐ **(1) Periodic Limits** The **ANNUAL PERCENTAGE RATE** cannot increase by more than _____ percentage points (☐ or decrease by more than _____ percentage points).

☒ **(2) Lifetime Floor** The **ANNUAL PERCENTAGE RATE** will never be lower than 9.250%.

☐ **(3) Lifetime Cap** The **ANNUAL PERCENTAGE RATE** will never be higher than 18.000%.

11 FEES AND CHARGES I agree to pay or have paid the fees and charges listed in the FEES APPENDIX that appears at the end of this Agreement.

12 **PAYMENT DATE** During the term of this Agreement a Minimum Payment will be due on or before the Payment Date indicated on my periodic statement for a Billing Cycle in which the due date is an outstanding balance on my account. My Minimum Payments will be due Monthly.

13 **MINIMUM PAYMENT** On or before each Payment Date I agree to make a payment of at least the Minimum Payment amount. The Minimum Payment will equal the following:

Any amount past due, any fees and charges that are due, and the amount of accrued finance charges on the last day of the Billing Cycle.

A ☒ **Rounding** The Minimum Payment will be rounded to the nearest ¢.

B ☐ **Payment Of Balance** If my Loan Account Balance at the end of a Billing Cycle is less than \$_____ my Minimum Payment will equal the entire outstanding Loan Account Balance.

C ☐ **Payment At Maturity** On the Maturity Date I must pay the entire outstanding Loan Account Balance.

14 ☒ **PRINCIPAL REDUCTION** The Minimum Payment ☒ will not reduce ☐ may not fully repay the principal balance outstanding on my Loan Account Balance.

15 ☒ **FINAL PAYMENT** At maturity I ☐ may have to ☒ will repay the entire outstanding Loan Account Balance in a single payment. At that time you may, but are not obligated to, refinance this Line of Credit. If you do refinance this Line of Credit at maturity, I understand that I may have to pay some or all of the closing costs normally associated with a new loan.

16 **ADDITIONAL PAYMENT TERMS** If my Loan Account Balance on a Payment Date is less than the Minimum Payment amount, I must pay only the amount necessary to reduce my Loan Account Balance to zero or to any required Minimum Balance. If I otherwise fail to fully pay the Minimum Payment amount, you may, but are not required to, advance money to me to make the payment. All the terms of this Agreement will apply to such an advance. Subject to any required Minimum Balance, I can pay off all or part of what I owe at any time. I must continue to make my periodic Minimum Payment so long as I owe any amount. Unless otherwise agreed or required by applicable law, payments and their credits will be applied first to any charges I owe other than principal and finance charges, then to any finance charges that are due, and finally to principal. No late charge will be assessed on any payment when the only delinquency is due to late fees assessed on earlier payments and the payment is otherwise a full payment.

17 ☐ **NEGATIVE AMORTIZATION** Under some circumstances, my payments will not cover the finance charges that accrue and negative amortization will occur. Negative amortization will increase the amount that I owe you and reduce my equity in my home. In the event that negative amortization occurs, the unpaid portion will be:

18 **SECURITY** You have secured my obligations under this Line of Credit by taking a security interest (by way of a separate security instrument dated 02/09/2007) in the following Property:

2ND REM 3307 PALM STREET
NORTH MYRTLE BEACH SC 29582

Property securing any other loans that I have with you may also secure this Agreement.

19 **PROPERTY INSURANCE** I will insure or retain insurance coverage on the Property and abide by the insurance requirements of any security instrument securing this Line of Credit. I may obtain property insurance from anyone I want that is reasonably acceptable to you. If I get the insurance from or through you, I will pay \$_____ for _____ of coverage.

20 **COMMISSIONS** I understand and agree that you (or your affiliate) will earn commissions or fees on any insurance products and may earn such fees on other services that I buy through you or your affiliate.

21 **DEFAULT** I will be in default if any of the following occur:

A **Payment** I fail to make a payment as required by this Agreement.

B **Property** My action or inaction adversely affects the Property or your rights in the Property.

C ☐ **Fraud** I engage in fraud or material misrepresentation in connection with this Line of Credit.

22 **REMEDIES** After I default and after you give any legally required notice and opportunity to cure, you may at your option do any of the following:

A **Termination and Acceleration** You may terminate this Line of Credit and make all or any part of the amount owing by the terms of this Agreement immediately due.

B **Advance** You may temporarily or permanently prohibit any additional advances.

C **Credit Limit** You may temporarily or permanently reduce the Credit Limit.

D **Additional Security** You may demand additional security or additional parties to be obligated to pay this Agreement.

E **Insurance Benefits** You may make a claim for any and all insurance benefits or refunds that may be available on my default.

F **Payments Made On My Behalf** You may make amounts advanced on my behalf immediately due and you may add these amounts to the Loan Account Balance.

G **Sources** You may use any and all remedies you have under applicable law or any agreement securing this Agreement.

Except as otherwise required by law, by choosing a remedy you do not give up your right to use another remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

23 **COLLECTION EXPENSES AND ATTORNEYS FEES** On or after default to the extent permitted by law, I agree to pay the following:

All expenses of collection, enforcement or protection of your rights and remedies under this Agreement. Expenses include, but are not limited to, reasonable attorneys' fees not in excess of 15 percent of the unpaid debt after default and referral to an attorney who is not your salaried employee. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of this Agreement. All fees and expenses will be secured by the Property I have granted to you. To the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorneys' fees you incur to collect this debt as awarded by any court exercising jurisdiction under the Bankruptcy Code.

24 **SUSPENSION OF CREDIT AND REDUCTION OF CREDIT LIMIT** You may temporarily prohibit me from obtaining additional advances or reduce my Credit Limit during any period in which any of the following are in effect:

A The value of the Property securing this Line of Credit declines significantly below its appraised value for purposes of this Line of Credit.

B You reasonably believe that I will not be able to meet the repayment requirements under my Line of Credit due to a material change in my financial circumstances.

C I am in default of a material obligation under this Line of Credit. I understand that you consider all of my obligations to be material. Categories of obligations that you consider material include, but are not limited to, my obligation to not commit fraud or misrepresentation in connection with this Line of Credit, my obligation to meet the repayment terms of this Line of Credit, my obligation to not adversely affect the Property or your rights in the Property, my obligation to pay fees and charges, my advance obligations, my obligation to fulfill the terms of the instrument securing this Agreement, and any other security instruments on the Property, my obligation to notify you, and my obligation to provide you with information.

D Government action prevents you from imposing the annual percentage rate provided for in this Agreement.

E The priority of your security interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of my Credit Limit.

F The maximum annual percentage rate allowed under this Agreement is reached.

G You are notified by a regulatory agency that continued advances constitute an unsafe and unsound practice or.

H Any Borrower requests a suspension of credit privileges.

In order to reinstate my credit privileges under the original terms of this Agreement, I must send you a written request to that effect. My credit privileges will only be reinstated if you determine that the condition which caused you to prohibit additional extensions and/or reduce the Credit Limit no longer exists. If appraisal or credit report fees are incurred in making this determination, you may (if allowed by applicable law) charge me such fees. If credit privileges were suspended at my request, they need not be reinstated unless all Borrowers request reinstatement.

25 **SET OFF** You may set off any amount due and payable under the terms of this Agreement against my right to receive money from you unless prohibited by applicable law. For example, your right of set off will not apply if I may obtain credit under this Agreement by using a credit card.

26 **AMENDMENTS** Generally the terms of this Agreement cannot be changed. You may however make the following changes:

- A You may make changes that I agree to in writing at the time of the change.
- B You may make changes that will unequivocally benefit me.
- C You may make insignificant changes.
- D You may change the Index and margin if the original Index becomes unavailable. Any new index will have an historical movement substantially similar to the original Index and together with the new margin produce an annual percentage rate substantially similar to the rate in effect at the time the original Index became unavailable.
- E You may make changes that are described elsewhere in this Agreement.

27 **TERMINATION** I may terminate this Line of Credit at any time upon written notice to you. Termination by one Borrower terminates the Line of Credit for all Borrowers. Termination will not affect my obligation to repay advances made prior to the termination nor will it alter my duties to perform under the terms of an instrument securing this Agreement until such instrument is released. Upon termination I will return to you any remaining access devices in my possession that were issued or used in connection with the Line of Credit.

28 **WAIVERS AND CONSENT** To the extent not prohibited by law and except for any required notice of right to cure for the failure to make a required payment, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor. To the extent not prohibited by law, I and any other party to this Line of Credit also consent to the following actions that you may take and waive defenses that may be available based on these actions or based on the status of a party to this Line of Credit:

- A You may renew or extend payments on this Agreement regardless of the number of such renewals or extensions.
- B You may release any Borrower or other person who may be liable for the indebtedness under this Agreement.
- C You may release, substitute or impair any Property securing this Agreement.
- D You may invoke your right of set off.
- E You may enter into any sales or repurchases of this Agreement to any person in any amounts and I waive notice of such sales or repurchases.
- F I agree that any Borrower is authorized to modify the terms of this Agreement or any other Line of Credit document.
- G You may inform any party who guarantees this Line of Credit of any loan accommodations, renewals, extensions, modifications, substitutions or future advances.

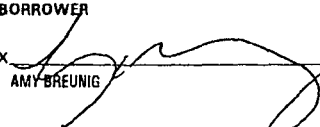
No delay or forbearance on your part in exercising any of your rights or remedies will be construed as a waiver by you, unless such waiver is in writing and is signed by you.

29 **TAX DEDUCTIBILITY** I should consult a tax advisor regarding the deductibility of interest and charges under this Line of Credit.

30 **PERIODIC STATEMENTS** If I have an outstanding balance on my account or have any account activity, you will send me a periodic statement at the end of each Billing Cycle. This periodic statement will reflect among other things, credit advances, finance charges, other charges, payments made, other credits, my previous account balance and my new account balance. The periodic statement will also identify my Minimum Payment for the cycle and the date it is due (Payment Date).

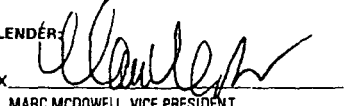
SIGNATURES I understand that terms following a ☐ only apply if checked. By signing, I agree to the terms of this Agreement and acknowledge receipt of a copy of this Agreement.

BORROWER

X  X _____ X _____
AMY BREUNIG

X _____ X _____ X _____

LENDER

X  _____
MARC MCDOWELL, VICE PRESIDENT

31 **JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS** My obligation to pay this Line of Credit is independent of the obligation of any other person who has also agreed to pay it. You may sue me alone or anyone else who is obligated on this Line of Credit or any number of us together to collect on this Line of Credit. Extending this Line of Credit or new obligations under this Line of Credit will not affect my duty under this Line of Credit and I will still be obligated to pay this Line of Credit. The duties and benefits of this Line of Credit will bind and benefit the successors and assigns of you and me.

32 **INTEGRATION AND SEVERABILITY** This Agreement is the complete and final expression of the agreement. If any provision of this Agreement is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

33 **INTERPRETATION** Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Agreement.

34 **NOTICE FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS** Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address above or to any other address designated in writing. Notice to one Borrower will be deemed to be notice to all Borrowers. I will inform you in writing of any change in my name, address or other application information. I will provide you any financial statement or information you request. All financial statements and information I give you will be correct and complete. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Line of Credit and to confirm your lien status on any Property. Time is of the essence.

35 **CREDIT INFORMATION** I agree to supply you with whatever information you reasonably feel you need to decide whether to continue this Line of Credit. You will make requests for this information without undue frequency and will give me reasonable time in which to supply the information.

36 **APPLICABLE LAW** This Agreement is governed by the laws of South Carolina, the United States of America and to the extent required by the laws of the jurisdiction where the Property is located.

37 **OTHER TERMS** If checked, the following addenda are attached to and made a part of this Agreement:

- A ☐ Automatic Withdrawal
- B ☐ Conversion Option
- C ☐ Credit Insurance
- D ☐ Initial Rate
- E ☐ Preferred Rate
- F ☐ _____

38 **ADDITIONAL TERMS**

**MY BILLING RIGHTS
KEEP THIS NOTICE FOR FUTURE USE**

This notice contains important information about my rights and your responsibilities under the Fair Credit Billing Act.
Notify You in Case of Errors or Questions About My Bill

If I think my bill is wrong or if I need more information about a transaction on my bill, I will write you at the address listed on my bill. I will write to you as soon as possible. You must hear from me no later than 60 days after you sent me the first bill on which the error or problem appeared. I can telephone you, but doing so will not preserve my rights. In my letter, I will give you the following information: (a) My name and account number; (b) The dollar amount of the suspected error; (c) Describe the error and explain, if I can, why I believe there is an error. If I need more information, I will describe the item I am not sure about. If I have authorized you to pay my bill automatically from my savings, checking, share draft or other account, I can stop the payment on any amount I think is wrong. To stop the payment, my letter must reach you three business days before the automatic payment is scheduled to occur.

My Rights and Your Responsibilities After You Receive My Written Notice

You must know I get my letter within 30 days unless you have corrected the error by then. Within 90 days you must either correct the error or explain why you believe the bill was correct.

After you receive my letter, you cannot try to collect any amount I question or report me as delinquent. You cannot sue to bill me for the amount I question, including finance charges, and you can apply any unpaid amount against my Credit Limit. I do not have to pay any questioned amount while you are investigating, but I am still obligated to pay the parts of my bill that are not in question.

If you find that you made a mistake on my bill, I will not have to pay any finance charges related to any questioned amount. If you do not make a mistake, I may have to pay finance charges, and I will have to make up any missed payments on the questioned amount. In either case, you will send me a statement of the amount I owe and the date that it is due.

If I fail to pay the amount that you think I owe, you may report me as delinquent. However, if your explanation does not satisfy me, I will tell you within ten days, telling you that I still refuse to pay. You must tell anyone you report to me that I have a question about my bill. And you must tell me the name of anyone you reported me to. You must tell anyone you report me to that the matter has been settled between us when it finally is. If you don't follow the rules, you can't collect the first \$50 of the questioned amount, even if my bill was correct.

Special Rule for Credit Card Purchases

If I have a problem with the quality of property or services that I purchased with a credit card, and I have tried in good faith to correct the problem with the merchant, I may have the right not to pay the remaining amount due on the property or service. There are two limitations on this right: (a) I must have made the purchase in my home state or, if not within my home state, within 100 miles of my current mailing address; and (b) The purchase price must have been more than \$50.

These limitations do not apply if you own or operate the merchant, or if you mailed me the advertisement for the property or services.

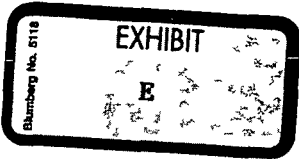
FEES APPENDIX

OTHER CHARGES

Late Charge: 5.000% of the late amount with a min of \$5.80 and a max of \$14.50 if more than 10 days late. You may charge the maximum late fee authorized by law. The minimum late fee will increase or decrease by \$0.20 and the maximum late fee will increase or decrease by \$0.50 on July 1st of each even-numbered year in which the permitted late fee changes pursuant to sections 37-1-109 and 37-3-203 of the South Carolina Consumer Protection Code.

Returned Check Charge: I agree to pay a fee not to exceed \$29.00 for each check, negotiable order of withdrawal or draft I issue in connection with this Line of Credit that is returned because it has been dishonored.

DEEMED TO BE A TRUE AND
FAITHFUL COPY OF ORIGINAL
RECORDED BY MURRAY LAW OFFICES PA BY DS



Please Record and Return to
MURRAY LAW OFFICES PA
3775 Sea Mountain Hwy
Little River, SC 29566
File No 11407

This document was prepared by
MURRAY LAW OFFICES
3775 SEA MOUNTAIN HWY
LITTLE RIVER SC 29566

____ State of South Carolina _____ Sp e Above This Lin For R cording Dat _____

MORTGAGE
(With Future Advance Clause)

1 **DATE AND PARTIES** The date of this Mortgage (Security Instrument) is 02/09/2007
The parties and their addresses are

MORTGAGOR
AMY BREUNIG
3307 PALM STREET
NORTH MYRTLE BEACH SC 29582

☐ If checked, refer to the attached Addendum incorporated herein for additional Mortgages, their signatures and acknowledgments.

LIENDER
BEACH FIRST NATIONAL BANK
Organized and existing under the laws of the United States of America
3751 GRISSOM PARKWAY SUITE 100
MYRTLE BEACH SC 29577

2 **CONVEYANCE** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined below) and Mortgagor's performance under this Security Instrument, Mortgagor grants, bargains, conveys and mortgages to Lender the following described property:
SEE ATTACHED EXHIBIT A

The property is located in _____ at 3307 PALM STREET
(County) _____
(Address) _____ (City) _____ South Carolina (Zip Code) _____

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, ditches, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now or at any time in the future be part of the real estate described above (all referred to as "Property").

3 **MAXIMUM OBLIGATION LIMIT** The total principal amount secured by this Security Instrument at any one time shall not exceed \$ 270,000.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to 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. Interest under the Note will be deferred, accrued or capitalized, however, Mortgagor shall not be required to defer, accrue or capitalize any interest except as provided in the Note.

4 **SECURED DEBT AND FUTURE ADVANCES** The term "Secured Debt" is defined as follows:
A Debt incurred under the terms of all promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all their extensions, renewals, modifications or substitutions. (You must specifically identify the debt(s) secured and you should include the final maturity date of such debt(s).)
BEACH FIRST HOME EQUITY LINE AGREEMENT DATED 02/09/06 IN THE AMOUNT OF \$135,000.00 EXECUTED BY AMY BREUNIG

B All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty or other evidence of debt executed by Mortgagor in favor of Lender after this Security Instrument, whether or not this Security Instrument is specifically referred to, shall be secured by this Security Instrument. If more than one person signs the Security Instrument, each Mortgagor agrees that this Security Instrument will secure all future advances and other obligations that are given to or incurred by any one or more Mortgagors or any one or more Mortgagors and others. All future advances and other future obligations are secured by this Security Instrument even though all or part may not yet be advanced. All future advances and other future obligations are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment must be agreed to in a separate writing.

C All other obligations Mortgagor owes to Lender which may later arise to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.

D All additional sums advanced and expenses incurred by Lender for to wit: preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

In the event that Lender fails to provide any required notice of the right of rescission, Lender waives any subsequent equity interest in the Mortgagor's principal dwelling that is created by this Security Instrument.

5 **MORTGAGE COVENANTS** Mortgagor agrees that the covenants in this section are material obligations under the Secured Debt and this Security Instrument. If Mortgagor breaches any covenant in this section, Lender may refuse to make additional extensions of credit and reduce the credit limit. By not exercising either remedy on Mortgagor's breach, Lender does not waive Lender's right to later consider the event a breach if it happens again.

Payments Mortgagor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt and this Security Instrument.

Prior Security Interests With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees to make all payments when due and to perform or comply with all covenants. Mortgagor also agrees not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written approval.

Claims Against Title Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

Property Condition, Alterations and Inspection Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor shall not commit or allow any waste, impairment or deterioration of the Property. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims and actions against Mortgagor and of any loss or damage to the Property.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender shall give Mortgagor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

Authority to Perform If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument.

Leaseholds, Condominiums, Planned Unit Developments Mortgagor agrees to comply with the provisions of any lease if the Security Instrument is on a leasehold. If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by laws or regulations of the condominium or planned unit development.

Condemnation Mortgagor will give Lender prompt notice of any pending or threatened action by private or public entity to purchase or take any or all of the Property through condemnation, eminent domain or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

Insurance Mortgagor shall keep the Property insured against loss by fire, flood, theft and other hazards and risks reasonably associated with the Property due to its type and location. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding two sentences can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Mortgagor, subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may at Lender's option obtain coverage to protect Lender's rights in the Property according to the terms of this Security Instrument.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause and, where applicable, a loss payee clause. Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premium and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

Unless otherwise agreed in writing, all insurance proceeds shall be applied to the restoration or repair of the Property or to the Secured Debt, whether or not then due, at Lender's option. Any application of proceeds to principal shall not extend or postpone the due date of the scheduled payment nor change the amount of any payment. Any excess will be paid to the Mortgagor. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

Financial Reports and Additional Documents Mortgagor will provide to Lender upon request any financial statement or information Lender may deem reasonably necessary. Mortgagor agrees to sign, deliver and file any additional documents or certifications that Lender may consider necessary to perfect, continue and preserve Mortgagor's obligations under this Security Instrument and Lender's lien status on the Property.

- 6 **WARRANTY OF TITLE** Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell and mortgage the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.
- 7 **DUE ON SALE** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, a transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591) as applicable.
- 8 **DEFAULT** Mortgagor will be in default if any of the following occur:

Payments Any Consumer Borrower on any Secured Debt that is an open end home equity plan fails to make a payment when due.

Property Any action or inaction by the Borrower or Mortgagor occurs that adversely affects the Property or Lender's rights in the Property. This includes, but is not limited to, the following: (a) Mortgagor fails to maintain required insurance on the Property; (b) Mortgagor transfers the Property; (c) Mortgagor commits waste or otherwise destructively uses or fails to maintain the Property such that the action or inaction adversely affects Lender's security; (d) Mortgagor fails to pay taxes on the Property or otherwise fails to act and thereby causes a lien to be filed against the Property that is senior to the lien of this Security Instrument; (e) a sole Mortgagor dies; (f) if more than one Mortgagor, any Mortgagor dies and Lender's security is adversely affected; (g) the Property is taken through eminent domain; (h) a judgment is filed against Mortgagor and subjects Mortgagor and the Property to action that adversely affects Lender's interest; or (i) a prior lienholder forecloses on the Property and as a result, Lender's interest is adversely affected.

Executive Officers Any Borrower is an executive officer of Lender or an affiliate and such Borrower becomes indebted to Lender or another lender in an aggregate amount greater than the amount permitted under federal laws and regulations.

- 9 **REMEDIES ON DEFAULT** In addition to any other remedy available under the terms of this Security Instrument, Lender may accelerate the Secured Debt and foreclose this Security Instrument in a manner provided by law if Mortgagor is in default. In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure, or other notices and may establish time schedules for foreclosure actions.

At the option of the Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable after giving notice if required by law upon the occurrence of a default or anytime thereafter. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it happens again.

- 10 **EXPENSES, ADVANCES ON COVENANTS, ATTORNEYS FEES, COLLECTION COSTS** If Mortgagor breaches any covenant in this Security Instrument, Mortgagor agrees to pay all expenses Lender incurs in performing such covenants or protecting its security interest in the Property. Such expenses include, but are not limited to, fees incurred for inspecting, preserving, or otherwise protecting the Property and Lender's security interest. These expenses are payable on demand and will bear interest from the date of payment until paid in full at the highest rate of interest in effect as provided in the terms of the Secured Debt. Mortgagor agrees to pay all costs and expenses incurred by Lender in collecting, enforcing or protecting Lender's rights and remedies under this Security Instrument. This amount may include, but is not limited to, reasonable attorneys' fees of not more than 15% of the unpaid debt when it is referred for collection to an attorney who is not a salaried employee of the Lender, court costs and other legal expenses allowed by law. To the extent permitted by the United States Bankruptcy Code, Mortgagor agrees to pay the reasonable attorneys' fees Lender incurs to collect the Secured Debt as awarded by any court exercising jurisdiction under the Bankruptcy Code. This Security Instrument shall remain in effect until released. Mortgagor agrees to pay for any recordation costs of such release.

- 11 **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES** As used in this section: (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.) and all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as hazardous material, toxic substances, hazardous waste or hazardous substance under any Environmental Law.

Mortgagor represents, warrants and agrees that:

- A Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance is or will be located, stored or released on or in the Property. This restriction does not apply to small quantities of Hazardous Substances that are generally recognized to be appropriate for the normal use and maintenance of the Property.
- B Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been and shall remain in full compliance with any applicable Environmental Law.
- C Mortgagor shall immediately notify Lender if a release or threatened release of a Hazardous Substance occurs on, under or about the Property or there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor shall take all necessary remedial action in accordance with any Environmental Law.
- D Mortgagor shall immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any pending or threatened investigation, claim or proceeding relating to the release or threatened release of any Hazardous Substance or the violation of any Environmental Law.
- 12 **ESCROW FOR TAXES AND INSURANCE** Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

13 **JOINT AND INDIVIDUAL LIABILITY CO SIGNERS SUCCESSORS AND ASSIGNS BOUND** All duties under this Security Instrument are joint and individual. If Mortgagor signs this Security Instrument but does not sign an evidence of debt, Mortgagor or does only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. If the Security Instrument secures a guaranty between Lender and Mortgagor, Mortgagor agrees to waive any right that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation. These rights may include but are not limited to any anti-deficiency or anti-action law. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Mortgagor and Lender.

14 **SEVERABILITY INTERPRETATION** This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments or any agreement related to the Secured Debt that conflicts with applicable law will not be effective unless that law expressly or impliedly permits the variation by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. This is the entire agreement between the parties.

15 **NOTICE** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument or to any other address designated in writing. Notice to the mortgagor will be deemed to be notice to all mortgagors.

16 **WAIVERS** Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

17 **LINE OF CREDIT** The Secured Debt includes a revolving line of credit. Although the Secured Debt may be reduced to a zero balance, this Security Instrument will remain in effect until released.

18 **APPLICABLE LAW** This Security Instrument is governed by the laws as agreed to in the Secured Debt, except to the extent required by the law of the jurisdiction where the Property is located, and applicable federal laws and regulations.

19 **RIDERS** The covenants and agreement of each of the riders checked below are incorporated into and supplement and amend the terms of this Security Instrument.

[Check all applicable boxes]

☐ Assignment of Leases and Rents ☐ Other

20 ☐ **ADDITIONAL TERMS**

SIGNATURES By signing below, Mortgagor agrees to the terms and covenants contained in this Security Instrument and in any attachments. Mortgagor also acknowledges receipt of a copy of this Security Instrument on the date stated on page 1.

(Signature) AMY BREUNIG

(Date) (Seal)

(Signature)

(Date) (Seal)

Signed, sealed and delivered in the presence of

(Witness)

PROBATE

STATE OF South Carolina

COUNTY OF Horry

I personally appeared before me the undersigned, with us being duly sworn, and said that (the law the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 9th day of February 2007

My commission expires 4/25/13

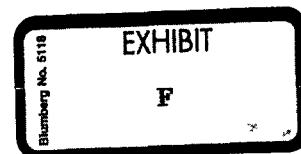
Exhibit A

ALL AND SINGULAR all those certain pieces parcels or lots of land with improvements thereon situate lying and being in Little River Township County of Horry State of South Carolina and being represented as LOTS ELEVEN (11) and TWELVE (12) BLOCK FOUR (4) on a plat or map made for Windy Hill Beach a Corporation by N C Hughes Jr Engineer revised March 25 1947 and recorded in the Office of the Clerk of Court for Horry County South Carolina in Plat Book 5 A at Page 111 reference in which is made a part and parcel hereof

The two parcels of land are contiguous to each other and are bounded generally on the North by Fourth Avenue on the East by Lot Ten (10) on the South by Lots Four (4) and Three (3) and on the West by Lot Thirteen (13) in said Block Four (4) all as will more fully appear upon the above referenced plat

THIS BEING the identical property conveyed to Amy Breunig from Jeffrey A Finkley by Deed dated April 18 2005 and recorded on April 20 2005 in Book 2896 Page 0899 Office of the Register of Deeds of Horry County South Carolina

13



**BEACH FIRST NATIONAL BANK
MORTGAGE AND NOTE MODIFICATION**

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

BORROWER Amy Breunig
EFFECTIVE DATE 01/28/08
NOTE NUMBER 61006110
NOTE DATED 02/09/07
NOTE AMOUNT \$135,000.00
SECURED BY MORTGAGE
DATED 02/09/07
RECORDING DATE _____
BOOK _____ PAGE _____

WHEREAS, this agreement made and entered into this January 28, 2008, by and between hereinafter referred to as Mortgagor and/or Borrower, and **BEACH FIRST NATIONAL BANK**, hereinafter referred to as Mortgagee and/or Bank

Borrower and/or Mortgagor requests and Beach First National Bank/Mortgagee agrees for good and valuable consideration, which receipt is acknowledged, to modify the note and mortgage only as shown below. If not modified below, all other terms and conditions of the Note and Mortgage remain the same.

WITNESSETH

WHEREAS, the Mortgagor and Mortgagee have agreed to modify the terms of said note described above as follows:

XX INTEREST RATE WSJP + 1.0% the Floor should be changed to 5.00%

____ MATURITY DATE

____ PAYMENT FREQUENCY AND AMOUNT

____ CHANGE PAYMENT DUE DATE

The Undersigned Guarantor consents to the above modification.

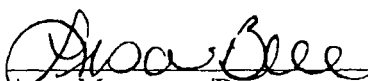
NOW, THEREFORE, it is agreed by and between the Mortgagor and the Mortgagee that the lien of the mortgage shall be continued in full force and effect, and that, except as modified

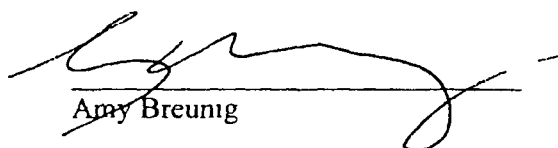
AB Initials

above by mutual consent of the parties hereto, all of the terms of the mortgage and the note shall be and remain in full force and effect

IN WITNESS WHEREOF, the undersigned, the Mortgagor/Borrower agrees to this mortgage note modification, has signed and sealed this mortgage note modification and the Mortgagee has caused this mortgage note modification to be executed by its duly authorized officer this January 28, 2008

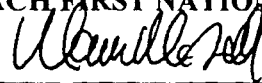
WITNESS


As to Mortgagor/Borrower


Amy Breunig


As to Mortgagee/Bank

BEACH FIRST NATIONAL BANK

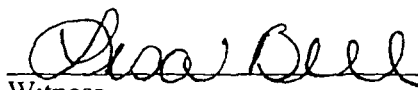
By 

Its Vice President

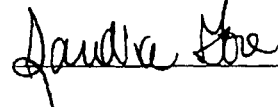
As To Mortgagee/Bank

**STATE OF SOUTH CAROLINA
COUNTY OF HORRY**

Personally appeared before me the undersigned witness, who being duly sworn, deposed and said that (s)he saw the Mortgagor/Borrower and as his/her act and deed, deliver the foregoing Mortgage Note Modification and that (s)he with the other witness signing above, witnessed the execution thereof


Witness

Sworn to and subscribed before me this 28th day of JANUARY, 2005

Notary Public 

 Initials

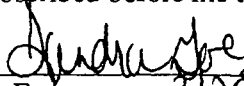
My Commission Expires 3/20/2011

**STATE OF SOUTH CAROLINA
COUNTY OF HORRY**

Personally appeared before me the undersigned witness, who being duly sworn, deposed, and said that (s)he saw the within named Beach First National Bank, by Marcus G McDowell its Vice President sign, seal and as the corporate act and deed deliver the within written Note and Mortgage Modification Agreement and that (s)he with the Notary whose name is subscribed above witnessed the execution thereof


Witness

Sworn to and subscribed before me this 28th day of January, 2005

Notary Public 
My Commission Expires 3/20/2011

 Initials

3
000008

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO 09-CP-26-_____

BEACH FIRST NATIONAL BANK,)
Plaintiff,)
vs)
AMY BREUNIG,)
Defendant)

NOTICE OF LIS PENDENS

5199

HORRY COUNTY
09 DEC 23 PM 3:07
CLERK OF COURT

NOTICE is hereby given that an action has been commenced by the Plaintiff above-named against the above-named Defendant to foreclose a certain mortgage given by Amy Breunig dated April 18, 2005 and recorded April 20, 2005 in Mortgage Book 4009 at Page 1486, and a Mortgage dated February 9, 2007 and recorded February 14, 2007 in Mortgage Book 4848 at Page 2889, in the Office of the Register of Deeds for Horry County

The following is a description of the premises subject of said mortgage

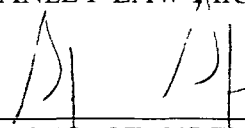
ALL AND SINGULAR, all those certain pieces, parcels or lots of land, with improvements thereon, situate, lying and being in Little River Township, County of Horry, State of South Carolina, and being represented as LOTS ELEVEN (11) and TWELVE (12), BLOCK FOUR (4), on a plat or map made for Windy Hill Beach, a Corporation, by N C Hughes, Jr, Engineer, revised March 25, 1947, and recorded in the Office of the Clerk of Court for Horry County, South Carolina in Plat Book 5-A at Page 111, reference to which is made a part and parcel hereof

This being the identical property conveyed to Amy Breunig by Deed of Jeffrey A Finkley dated April 18, 2005 and recorded April 20, 2005 in Deed Book 2896 at Page 899, Horry County records

TMS # 156-03-13-005

THIS PROPERTY ALSO INCLUDES ANY IMPROVEMENTS THEREON

STANLEY LAW FIRM



STACY L. STANLEY /s/ 
ATTORNEY FOR THE PLAINTIFF
3303 East Highway 9
Little River, South Carolina 29566
(843) 390-9111

December 23, 2009

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO 09-CP-26-12374

BEACH FIRST NATIONAL BANK,)
Plaintiff,)
vs)
AMY BREUNIG,)
Defendant)

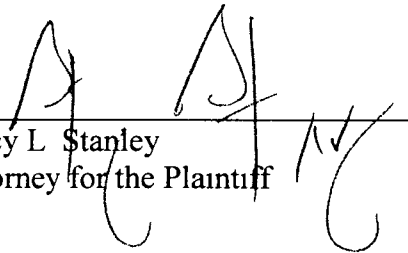
AFFIDAVIT OF DEFAULT

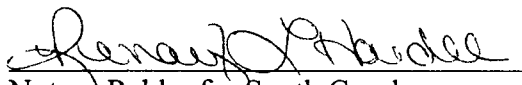
1111
10 MAR -8 PM 2 52
Clerk

PERSONALLY APPEARED BEFORE ME, Stacy L Stanley, who, being duly sworn, states that he is the attorney for the Plaintiff in the above action, that a Summons and Complaint, along with Lis Pendens were duly served on **Defendant, Amy Breunig** on January 7, 2010, by leaving a copy of same with Amy Breunig at 3307 Palm Street, North Myrtle Beach, South Carolina, as shown by the Affidavit of Service of Bryan Doyle, that more than thirty (30) days have elapsed since the service of said Summons and Complaint and that the Defendant has served no Answer, Notice of Appearance, Motion, or other pleading in this matter and now is in default This Affidavit is provided pursuant to the provisions of Circuit Court Rule 55, that Defendant is not a member of the military service, and Defendant is in default

In addition, Affiant is familiar with the requirements of the Servicemembers Civil Relief Action, as amended, and Defendant is not entitled to the protections granted therein as Defendant is not a member of the military service, and Defendant is in default

Plaintiff moves the Court for an Order adjudging Defendant to be in default for want of an appearance in this action, and, after a due hearing pursuant to the provisions of Circuit Court Rule 55, for a judgment against Defendant pursuant to the prayer for relief requested in the Complaint


Stacy L. Stanley
Attorney for the Plaintiff

SWORN to before me this
5th day of March, 2010

Notary Public for South Carolina
My Commission Expires 2 20 18

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY) CIVIL ACTION NO 09-CP-26-12374

BEACH FIRST NATIONAL BANK n/k/a)
BANK OF NORTH CAROLINA,)

Plaintiff,)

vs)

AMY BREUNIG,)

Defendant)

1
13
11
45
FILED - 1

MASTER'S REPORT
AND JUDGMENT OF FORECLOSURE AND SALE

Pursuant to Rule 53, SCRCP, the above entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in the case Any appeal from this Order is to the Supreme Court or the South Carolina Court of Appeals

Pursuant to the said Order of Reference, a hearing was held V Denise Hamilton of the Stanley Law Firm appears as attorney for the Plaintiff The Defendant also appeared at the hearing The testimony was taken, which is reported herewith, and from the testimony and evidence, I find and conclude as follows

FINDINGS OF FACT

1 The Lis Pendens, Summons and Complaint of the Plaintiff were filed on December 23, 2009

2 Service of the Lis Pendens, Summons and Complaint of the Plaintiff was made on the Defendant on January 7, 2010, as evidenced by the Affidavit of Service on file herein

FORM 4

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

JUDGMENT IN A CIVIL CASE

BEACH FIRST NATIONAL BANK n/k/a
BANK OF NORTH CAROLINA

CASE NO 09 -CP- 26 - 12374

AMY BREUNIG

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE

☐ **JURY VERDICT** This action came before the court for a trial by jury The issues have been tried and a verdict rendered

☒ **DECISION BY THE COURT** This action came to trial or hearing before the court The issues have been tried or heard and a decision rendered

☐ **ACTION DISMISSED** (CHECK REASON) ☐ Rule 12(b), SCRPC, ☐ Rule 41(a), SCRPC (Vol Nonsuit), ☐ Rule 43(k), SCRPC (Settled), ☐ Other _____

☐ **ACTION STRICKEN** (CHECK REASON) ☐ Rule 40(j) SCRPC, ☐ Bankruptcy, ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award, ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX)

☐ Affirmed ☐ Reversed, ☐ Remanded, ☐ Other _____

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

IT IS ORDERED AND ADJUDGED

☒ See attached order (Formal order to follow)

☐ Statement of Judgment by the Court

Master's Report and Judgment of Foreclosure and Sale

Dated at Conway South Carolina, this 7th day of July 2010

Cynthia S. Huggins
PRESIDING JUDGE

This judgment was entered on the 13th day of July 2010, and a copy mailed first class this day of _____ 2010 to attorneys of record or to parties (when appearing pro se) as follows

Stacy L Stanley

Amy Breunig

V Denise Hamilton

3307 Palm Street

3303 E Highway 9

North Myrtle Beach, SC 29582

Little River, SC 29566

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Melanie Huggins-Ward
CLERK OF COURT

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY) CIVIL ACTION NO 09-CP-26-12374

BEACH FIRST NATIONAL BANK n/k/a)
BANK OF NORTH CAROLINA,)

Plaintiff,)

vs)

AMY BREUNIG,)

Defendant)

FILED
16 JAN 13 PM 4:45
CLERK

MASTER'S REPORT
AND JUDGMENT OF FORECLOSURE AND SALE

Pursuant to Rule 53, SCRPC, the above entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in the case Any appeal from this Order is to the Supreme Court or the South Carolina Court of Appeals

Pursuant to the said Order of Reference, a hearing was held V Denise Hamilton of the Stanley Law Firm appears as attorney for the Plaintiff The Defendant also appeared at the hearing The testimony was taken, which is reported herewith, and from the testimony and evidence, I find and conclude as follows

FINDINGS OF FACT

1 The Lis Pendens, Summons and Complaint of the Plaintiff were filed on December 23, 2009

2 Service of the Lis Pendens, Summons and Complaint of the Plaintiff was made on the Defendant on January 7, 2010, as evidenced by the Affidavit of Service on file herein

3 The Defendant did not file an Answer and is therefore in default

4 For value received, the Defendant, Amy Breunig, made, executed and delivered unto Beach First National Bank a certain Promissory Note in writing, dated April 18, 2005 by which according to the terms and conditions as set out herein, Defendant promised to pay to the Plaintiff the principle sum of Two Hundred Fifty-Five Thousand Four Hundred Fifty and 00/100ths (\$255,450 00) Dollars, along with interest at the rate of six and three quarters percent (6 75%) per annum Other terms and conditions are stated in the Promissory Note held by the Plaintiff which was introduced into evidence without objection

5 That also on April 18, 2005, in order to secure the above-referenced Promissory Note, the Defendant did deliver to the Plaintiff a Mortgage for said real property with improvements thereon The Mortgage was thereafter recorded in the Office of the Register of Deeds for Horry County in Mortgage Book 4009 at Page 1486 This mortgage was introduced into evidence without objection

6 That also for value received, the Defendant also made, executed and delivered unto Beach First National Bank a certain renewal Note in writing dated May 1, 2008 by which according to the terms and conditions as set out herein, Defendant promised to pay to the Plaintiff the principle sum of Two Hundred Forty-Six Thousand Seven Hundred Five and 68/100ths (\$246,705 68) Dollars, along with interest at the rate of six and three quarters percent (6 75%) per annum Other terms and conditions are stated in the Promissory Note held by the Plaintiff which was introduced into evidence without objection

7 That also for value received, the Defendant also made, executed and delivered unto Beach First National Bank a certain Home Equity Variable Draw Agreement in writing dated February 9, 2007 by which according to the terms and conditions as set out herein, Defendant promised to pay to the Plaintiff the principle sum of One Hundred Thirty-Five Thousand and 00/100ths (\$135,000 00) Dollars, along with interest at a variable rate with an initial rate of nine and one quarter percent (9 25%) per annum Other terms and conditions are stated in the Home Equity Variable Draw Agreement held by the Plaintiff which was introduced into evidence without objection

8 That also on February 9, 2007, in order to secure the above-referenced Home Equity Variable Draw Agreement, the Defendant did deliver to the Plaintiff a Mortgage for said real property with improvements thereon The Mortgage was thereafter recorded in the Office of the Register of Deeds for Horry County in Mortgage Book 4848 at Page 2889 This mortgage was introduced into evidence without objection

9 That also for value received, the Defendant also made, executed and delivered unto Beach First National Bank a certain Mortgage and Note Modification Agreement in writing dated January 28, 2008 by which according to the terms and conditions as set out herein, the interest rate of the Home Equity Variable Rate Agreement was modified Other terms and conditions are stated in the Promissory Note held by the Plaintiff which was introduced into evidence without objection

10 A notice of default and right to cure was sent to the Defendant by the Plaintiff but to no avail

11 The title holder of record in and to the subject property as of the filing of the Lis Pendens of the Plaintiff in this action is the Defendant

12 Payments due on the Notes have not been made as provided therein and the Plaintiff has elected to accelerate payment of the entire indebtedness and has placed the note and mortgage in the hands of its attorney herein for collection

13 The sum of Two Thousand Five Hundred and 00/100ths (\$2,500 00) Dollars is a reasonable fee to allow as attorney's fees for the Plaintiff's attorney for services performed and anticipated to be performed until a final adjudication of the within matter, under the terms of the note and mortgage held by the Plaintiff for the foreclosure action in Horry County, South Carolina Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time, including any appeal which may be taken from this Order In setting these attorney's fees, I have taken into consideration

- 4
GHH
- (1) the nature, extent and difficulty of the legal services rendered,
 - (2) the time and labor necessarily devoted to the case,
 - (3) the professional standing of counsel,
 - (4) the contingency of compensation,
 - (5) the beneficial results accomplished, and
 - (6) the fee customarily charged in this court for similar legal services

14 The amount due and owing on the note due the Plaintiff, with interest as provided in the note and other costs and expenses of collection, including the attorney's fees awarded, secured by the note and mortgage is as follows

Principal and Interest as of 6/11/10	
1 st Note	\$254,973 72
Home Equity Agreement	\$139,293 69
Attorney's Fees	\$ 2,500 00

Costs Due \$ 975 03
TOTAL DEBT SECURED BY THE
NOTES AND MORTGAGES INCLUDING
INTEREST TO DATE SHOWN \$397,742 44

Interest for the period from June 11, 2010 through the date of compliance with the highest bid at the foreclosure sale shall comprise the total judgment debt due the Plaintiff Interest after June 11, 2010 in the amount of Forty-Four and 75/100ths (\$44 75) Dollars on the first Note and Eighteen and 50/100ths (\$18 50) Dollars on the home equity loan, per day is to be added to the above stated amount to comprise the judgment debt secured by the mortgage held by the Plaintiff

15 The Plaintiff hereby demands deficiency judgment in this matter

16 In the event of any surplus of funds which may be created at a sale of the mortgaged premises ordered herein, an additional hearing will be held at which time evidence may be presented to determine disposition of said surplus

CONCLUSIONS OF LAW

I therefore conclude as follows

The Plaintiff should have judgment of foreclosure of its mortgage and the mortgaged property should be ordered sold at public auction after due advertisement

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED

(a) That there is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of Three Hundred Ninety-Seven Thousand Seven Hundred Forty-Two and 44/100ths (\$397,742 44) Dollars representing the total debt due the Plaintiff as set out in Paragraph 14 supra, together with interest at the rate provided therein on the balance or principal for the period set out in said paragraph

(b) The amount in the precedent paragraph ("Total Debt") as set forth in Paragraph 14 supra, and later accrued interest on the principal, shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of Forty-Four and 75/100ths (\$44 75) Dollars on the first Note and Eighteen and 50/100ths (\$18 50) Dollars on the home equity loan

(c) That the Defendant shall on or before the date of the sale of the property hereinafter described pay to the Plaintiff or to the Plaintiff's attorney the amount of the Plaintiff's debt as aforesaid, together with costs and disbursements of this action

(d) That on default of payment at or before the time indicated, the mortgaged premises described in the Complaint as hereinafter set forth shall be sold by the undersigned Master in Equity at public auction at the Horry County Courthouse in the City of Conway, County and State aforesaid, on some convenient sales day hereafter on the following terms, that is to say

(1) FOR CASH the undersigned Master in Equity will require a deposit of five (5%) per cent on the amount of the bid (in cash or equivalent) same to be applied on the purchase price only upon compliance with the bid, but in the case of non-compliance within thirty (30) days, same to be forfeited and applied to the costs and the Plaintiff's debt

(2) Interest on the bid shall be paid to the date of compliance at the legal rate

(3) The sale shall be subject to taxes and assessments, existing easements and restrictions and all matters of record

(4) Purchaser shall pay for deed stamps and the cost of recording of the Deed

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

(f) As the Plaintiff has demanded deficiency judgment, the bidding will be held open for thirty (30) days

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

(h) That the undersigned Master in Equity will apply the proceeds of sale as follows

FIRST to the payment of the amount of the costs and expenses of this action,

NEXT, to the payment to the Plaintiff or its attorney the amount of the Plaintiff's

"Total Debt" or so much thereof as the purchase money will pay on same,

NEXT, any surplus will be held pending further Order of this Court

(i) It is further ORDERED, ADJUDGED AND DECREED that in the event that the successful bidder is other than the Defendant in possession herein, and a Writ of Assistance is presented, the Sheriff of Horry County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and to put the successful bidder or his assigns in such peaceable possession. All valid tenant rights shall be protected pursuant to the Protecting Tenants at Foreclosure Act of 2009.

(j) And it is further ORDERED, ADJUDGED AND DECREED that the Defendants and all other persons whomsoever claiming under them, them or it, be forever barred and foreclosed of all right, title, interest, and equity of redemption in the mortgaged premises so sold, or any part thereof.

8
684
(k) It is further ORDERED, ADJUDGED AND DECREED that pursuant to S C Code Ann §30-9-31 (Supp 1987) the deed of conveyance made pursuant to this sale shall be indexed in the grantor index by the ROD in the name of the owner of record of the subject property immediately prior to execution of the deed, as well as in the name of the undersigned Master in Equity, who executes such deed as grantor.

(l) The undersigned Master in Equity retains jurisdiction to do all the necessary acts incident to this foreclosure, including, but not limited to, the issuance of a Writ of Assistance and disposing of any surplus of funds pursuant to Rule 71(c), SCRCP.

(m) The following is a description of the premises ordered to be sold

ALL AND SINGULAR, all those certain pieces, parcels or lots of land, with improvements thereon, situate, lying and being in Little River Township, County of Horry, State of South Carolina, and being represented as LOTS ELEVEN (11) and TWELVE (12), BLOCK FOUR (4), on a plat or map made for Windy Hill Beach, a Corporation, by N C Hughes, Jr, Engineer, revised March 25, 1947,

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO 09-CP-26-12374

BEACH FIRST NATIONAL BANK n/k/a)
BANK OF NORTH CAROLINA,)

Plaintiff,)

vs)

AMY BREUNIG,)

Defendant)

NOTICE OF SALE

FILED
16 " 13 PM 45
11

BY VIRTUE OF A DECREE of the Court of Common Pleas for Horry County, South Carolina, heretofore issued in the case of Beach First National Bank v Amy Breunig, the undersigned, Master in Equity for Horry County, will sell on August 2, 2010, at 11 00 a m , at the Horry County Courthouse in Conway, South Carolina, to the highest bidder

The following is a description of the premises subject of said mortgage

ALL AND SINGULAR, all those certain pieces, parcels or lots of land, with improvements thereon, situate, lying and being in Little River Township, County of Horry, State of South Carolina, and being represented as LOTS ELEVEN (11) and TWELVE (12), BLOCK FOUR (4), on a plat or map made for Windy Hill Beach, a Corporation, by N C Hughes, Jr , Engineer, revised March 25, 1947, and recorded in the Office of the Clerk of Court for Horry County, South Carolina in Plat Book 5-A at Page 111, reference to which is made a part and parcel hereof

This being the identical property conveyed to Amy Breunig by Deed of Jeffrey A Finkley dated April 18, 2005 and recorded April 20, 2005 in Deed Book 2896 at Page 899, Horry County records

TMS # 156-03-13-005

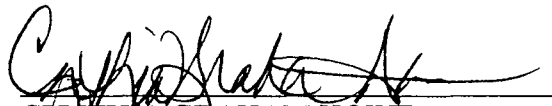
3307 Palm St, North Myrtle Beach, SC 29582

and recorded in the Office of the Clerk of Court for Horry County, South Carolina in Plat Book 5-A at Page 111, reference to which is made a part and parcel hereof

This being the identical property conveyed to Amy Breunig by Deed of Jeffrey A Finkley dated April 18, 2005 and recorded April 20, 2005 in Deed Book 2896 at Page 899, Horry County records

TMS # 156-03-13-005

THIS PROPERTY ALSO INCLUDES ANY IMPROVEMENTS THEREON


CYNTHIA GRAHAM HOWE,
MASTER IN EQUITY
ACTING WITH FINALITY

July 7, 2010

Conway, South Carolina

9
GPH

000054

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO 09-CP-26-12374

BEACH FIRST NATIONAL BANK n/k/a)
BANK OF NORTH CAROLINA,)

Plaintiff,)

vs)

AMY BREUNIG,)

Defendant)

AFFIDAVIT OF ATTORNEY'S FEE

PERSONALLY APPEARED before, V Denise Hamilton, who after being duly
sworn, deposes and states as follows in accordance with Blumberg v Nealco, Inc, 307 S.C.
537 (Ct App 1992)

1 That this is a collection action and that counsel has filed a Lis Pendens,
Summons and Complaint, served Defendant, answered numerous phone calls, written
numerous letters, prepared numerous documents and met with the client

2 That the Plaintiff will incur a flat fee of \$2,500 00 in attorney's fees, plus
costs

3 That this firm has committed significant time and labor in preparation of
this action

4 That she is a practicing attorney in Horry County, South Carolina That
she was admitted to the Bar in 1995, and that since said time, has devoted a substantial
portion of her practice to civil litigation and real estate law

5 That Defendant is subject to reasonable attorney's fees per the Note and that
\$2,500 00 is reasonable in a case such as this

THIS PROPERTY ALSO INCLUDES ANY IMPROVEMENTS THEREON

2
GTH

TERMS OF SALE For cash Interest at the rate of six and three-quarters (6 75) percent to be paid on balance of bid from date of sale to date of compliance The purchaser to pay for papers and stamps, and that the successful bidder or bidders, other than the Plaintiff herein, do, upon the acceptance of his or her bid, deposit with the Master in Equity for Horry County a certified check or cash in the amount equal to five (5%) percent of the amount of bid on said premises at the sale as evidence of good faith in bidding, and subject to any resale of said premises under Order of this Court, and in the event the said purchaser or purchasers fail to comply with the terms of sale within thirty (30) days, the Master in Equity shall forthwith resell the said property, after the due notice and advertisement, and shall continue to sell the same each subsequent sales day until a purchaser, who shall comply with the terms of sale, shall be obtained, such sales to be made at the risk of the former purchaser Since deficiency judgment has been demanded, bidding will be held open for thirty (30) days

If the Plaintiff or the Plaintiff's representative does not appear at the above-described sale, then the sale of the property will be null, void, and of no force and effect In such event, the sale will be rescheduled for the next available sales day Sold subject to taxes and assessments, existing easements, restrictions of record, and prior judgments


CYNTHIA GRAHAM HOWE
MASTER IN EQUITY

July 7, 2010

Conway, South Carolina

Stacy Stanley, Acty for Plaintiff

000016

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO 09-CP-26-12374

BEACH FIRST NATIONAL BANK n/k/a)
BANK OF NORTH CAROLINA,)
)
Plaintiff,)
)
vs)
)
AMY BREUNIG,)
)
Defendant)
_____)

TESTIMONY

FILED
10 JUL 13 PM 4 45
CLERK
J. L. AND
C. L. AND

Johnny Brown, being first duly sworn, testifies as follows

EXAMINATION BY V DENISE HAMILTON

Q Will you please state your name?

A Johnny Brown

Q What position do you hold?

A I am an authorized officer of Bank of North Carolina f/k/a Beach First National Bank

Q As such, I will ask whether or not a loan was made to Amy Breunig?

A Beach First National Bank made a loan to Amy Breunig on April 18, 2005 in the original principal amount of \$255,450 00, the promissory Note being dated April 18, 2005 Beach First National Bank also made a renewal loan to the Defendant on May 1, 2008 in the amount of \$246,705 68, the promissory Note being dated May 1, 2008

Q I will hand you these instruments and ask you what they are?

A These are the promissory Notes that were executed by the Defendant

(Promissory Notes marked as Exhibits "A" and "B" and attached hereto)

Q I will ask you what this instrument is?

A This is the mortgage from Amy Breunig securing the promissory note, which mortgage was recorded April 20, 2005 in Mortgage Book 4009 at Page 1486 in the Office of the Register of Deeds for Horry County

(Mortgage was offered into evidence and marked as Exhibit "C")

Q I will ask whether or not any other loans were made to Amy Breunig?

A Beach First National Bank made a home equity loan to Amy Breunig on February 9, 2007 in the original principal amount of \$135,000 00, the promissory Note being dated February 9, 2007

Q I will hand you this instrument and ask you what it is?

A This is the Home Equity Variable Draw Agreement that was executed by the Defendant

(Home Equity Variable Draw Agreement marked as Exhibit "D" and attached hereto)

Q I will ask you what this instrument is?

A This is the mortgage from Amy Breunig securing the Home Equity Variable Draw Agreement, which mortgage was recorded February 14, 2007 in Mortgage Book 4848 at Page 2889 in the Office of the Register of Deeds for Horry County

(Mortgage was offered into evidence and marked as Exhibit "E")

Q I will hand you this instrument and ask you it is?

A This is the Mortgage and Note Modification Agreement wherein the interest rate on the Home Equity Variable Draw Agreement was modified and was executed by the Defendant

(Mortgage and Note Modification Agreement marked as Exhibit "F" and attached hereto)

Q I will ask you if the payments as provided in said promissory notes have been made by the Defendant?

A The Defendant has not made payments as agreed upon, and as of June 11, 2010, there is due the sum of \$254,973 72 on the first Note and \$139,293 69 due on the equity line agreement

Q Has demand been made for payment?

A Demand has been made and ignored

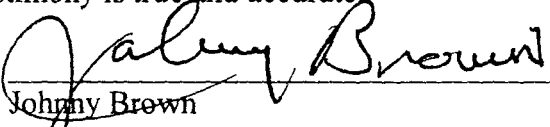
Q Do you desire deficiency judgment?

A Yes, deficiency is demanded

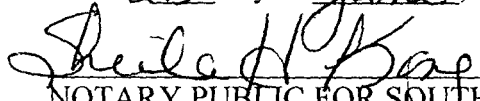
Q Does your note and mortgage provide for attorney's fees?

A The note provides that if an attorney is hired to collect the note, any fees and costs incurred by Beach First National Bank will be paid by Amy Breunig

I hereby certify that the foregoing testimony is true and accurate


Johnny Brown

SWORN TO and subscribed before
me this 21st day of June, 2010.

 (L S)
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires 5-26-16

000059

FORM 4

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

BEACH FIRST NATIONAL BANK n/k/a
BANK OF NORTH CAROLINA

JUDGMENT IN A CIVIL CASE

CASE NO 09 -CP- 26 - 12374

AMY BREUNIG

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE

- ☐ **JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON)** ☐ Rule 12(b), SCRPC, ☐ Rule 41(a), SCRPC (Vol Nonsuit), ☐ Rule 43(k), SCRPC (Settled), ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON)** ☐ Rule 40(j), SCRPC, ☐ Bankruptcy, ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award, ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**
☐ Affirmed, ☐ Reversed, ☐ Remanded, ☐ Other
 NOTE ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED

- ☒ See attached order (Formal order to follow)
☐ Statement of Judgment by the Court

Master's Report and Judgment of Foreclosure and Sale

Dated at Conway, South Carolina, this 7th day of July, 2010

[Signature]
PRESIDING JUDGE

This judgment was entered on the 13th day of July, 2010, and a copy mailed first class this day of July, 2010 to attorneys of record or to parties (when appearing pro se) as follows

Stacy L. Stanley

V. Denise Hamilton

3303 E Highway 9

Little River, SC 29566

ATTORNEY(S) FOR THE PLAINTIFF(S)

Amy Breunig

3307 Palm Street

North Myrtle Beach, SC 29582

ATTORNEY(S) FOR THE DEFENDANT(S)

[Signature]
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO 09-CP-26-12374

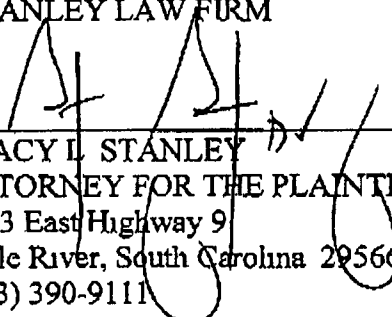
BANK OF NORTH CAROLINA, ,)
Plaintiff,)
vs)
AMY BREUNIG,)
Defendant)

CERTIFICATION OF MORTGAGOR
NON-COMPLIANCE
(Administrative Order 2011-05-02-01)

The Plaintiff by and through its undersigned attorney does hereby certify as follows

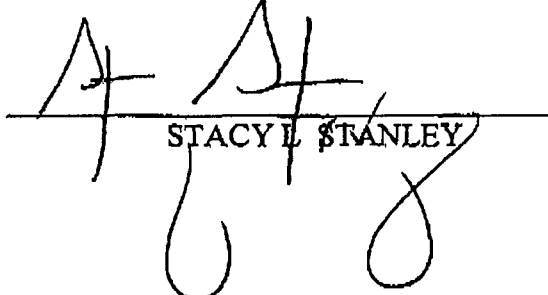
- 1) That this is an action for the foreclosure of owner occupied real property
- 2) That pursuant to Supreme Court Administrative Order 2011-05-02-01
 - a) The Mortgagor entered into a Forbearance Agreement with the Plaintiff or about January 31, 2011 as a part of a mortgage intervention plan to assist the Mortgagor in keeping her property
 - b) The Mortgagor has failed, refused, or voluntarily elected not to comply with the terms of the Forbearance Agreement as a part of a mortgage foreclosure intervention

STANLEY LAW FIRM


STACY L. STANLEY
ATTORNEY FOR THE PLAINTIFF
3303 East Highway 9
Little River, South Carolina 29566
(843) 390-9111

00001

I hereby certify that a copy of the foregoing was furnished by mail to the Defendant (addresses)
this 4th day of JUNE, 2011


STACY L. STANLEY

Ms Amy Breunig
3307 Palm Street
North Myrtle Beach, SC 29582

000062



3303 HIGHWAY 9 EAST LITTLE RIVER SC 29566-7821
PHONE 843 390 9111 LITIGATION FAX 843 390 9187 REAL ESTATE FAX 843 390 9188

June 7, 2011

The Honorable Cynthia Graham Howe
Post Office Box 1236
Conway, SC 29528

Re Beach First National Bank n/k/a Bank of North Carolina v Amy Breunig
Civil Action No 09-CP-26-12374

Dear Judge Howe

The parties in the above matter previously entered into a Forbearance Agreement, however, the Defendant has defaulted under the terms of the Agreement. Therefore, please find enclosed the following

- 1 Supplemental Master's Report and Judgment of Foreclosure and Sale,
- 2 Amended Notice of Sale,
- 3 Amended Affidavit of Attorney's Fees,
- 4 Certificate of Mailing

If these documents meet with your approval, please sign the Master's Report and Notice of Sale and return clocked copies to me in the enclosed envelope

Thank you for your help in this matter

Very truly yours,

STANLEY LAW FIRM

Stacy L. Stanley

SLS/rh

Enclosure As stated

cc Mr Johnny Brown, BNC (w/enclosure)

Ms Amy Breunig (w/enclosure)

STATE OF SOUTH CAROLINA

COUNTY OF Horry

Beach First National Bank n/k/a Bank of
North Carolina

Plaintiff,

vs

Amy Breunig

Defendant

IN THE COURT OF COMMON PLEAS
15th JUDICIAL CIRCUIT

CASE NO 2010-CP-26-12374
09

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney
Stacy L Stanley, Bar No 13410
Address
3303 East Highway 9
Little River, SC 29566
Phone 843 390 9111 Fax 843 390 9187
E-mail sstanley@stanleylawfirm.com Other

Defendant's Attorney
William Isaac Diggs Bar No 1689
Address
1700 Oak Street, Suite D
Myrtle Beach, SC 29577
Phone 843 626 4243 Fax 843 626 5123
E-mail william.diggs@myrtlebeachlaw.com Other

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I Hearing Information

Nature of Motion Motion for relief from default and stay of Proposed sale

Estimated Time Needed 45 minutes

Court Reporter Needed ☒ YES / ☐ NO

SECTION II Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

06/27/2011

Date submitted

SECTION III Motion Fee

☐ PAID - AMOUNT \$

☐ EXEMPT

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court, or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter

☐ Other

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached
order

☐ Other

JUDGE CODE

Date

CLERK'S VERIFICATION

Collected by Date Filed

☐ MOTION FEE COLLECTED \$

☐ CONTESTED - AMOUNT DUE \$

000004

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT
Case No 2010-CP-26-12374

Beach First National Bank n/k/a)
Bank of North Carolina)

Plaintiff,)

v)

Amy Breunig,)
Defendant)

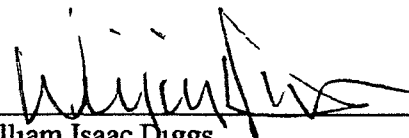
MOTION FOR RELIEF FROM DEFAULT
(Pursuant to Rule 60(b))
AND STAY OF PROPOSED SALE

TO THE PLAINTIFF AND ITS ATTORNEY OF RECORD, STACY L STANLEY, ESQUIRE

YOU WILL PLEASE TAKE NOTICE THAT THE DEFENDANT, Amy Breunig, hereby gives notice of her intent to request of the Master in Equity, the Court's proper Order granting relief from default in the above reference case pursuant to S C R C P 60(b), and, if applicable, a stay of the foreclosure sale requested by plaintiff to be scheduled for July 5, 2011 Said motion is based on the grounds that a forbearance agreement had been reached between the parties allowing for reinstatement of defendant's loan and the acceptance of a renewal note which agreement was wrongfully breached by plaintiff without just cause or excuse and for constitutionally prohibited considerations and (b) the property at issue is defendant's principal residence and the Court's Administrative Order dated May 2, 2011 has not been complied with by plaintiff

BE SO NOTIFIED'

LAW OFFICES OF WILLIAM ISAAC DIGGS



William Isaac Diggs
1700 Oak Street, Suite D

Myrtle Beach, SC 25977
843-626-4243 Tel
843-626-5123 Fax

**ATTORNEY FOR THE DEFENDANT AMY
BREUNIG**

This 27 day of June, 2011
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT
Case No 2010-CP-26-12374

Beach First National Bank n/k/a)
Bank of North Carolina)

Plaintiff,)

v)

Amy Breunig,)
Defendant)

**AFFIDAVIT IN SUPPORT OF
MOTION FOR RELIEF FROM DEFAULT
AND STAY OF FORECLOSURE SALE
(Pursuant to Rule 60(b))
OF DEFENDANT AMY BREUNIG**

COMES NOW THE UNDERSIGNED, who being duly sworn, deposes and
says as follows

1 My name is Amy Breunig and I am the defendant in the above captioned
action I am over the age of 18 years and I am qualified to make this affidavit

2 On May 14, 2008, I was involved in a motorcycle accident and received
head trauma and other physical bodily injury My treatment has been on-going and I am
still under a doctor's care

3 Shortly after this accident I began to miss my regular payments on the
notes and mortgages I had with Beach First National Bank However, I always had
sufficient incomes with which to pay these financial obligations I was just unable to
manage my own business affairs during that time frame and fell behind on my
obligations

4 In July, 2010, I met with plaintiff's attorneys and Danny Broach of the
plaintiff bank at the side room located off the courtroom used by the Master in Equity in
Horry County, South Carolina An agreement was reached between me and the bank and
I began making the payments required of me In addition to that, and as part of that

agreement, I was required to pay principal only payments of over \$53,000 00 to the bank to convince the bank to agree to allow me to make my regular payments

5 On or about October 12, 2010, I was arrested by the police at Atlantic Beach, South Carolina for charges which I assert are bogus. The charges all stem from a dispute I have had with the City officials at Atlantic Beach, regarding business license taxes and fees, and, to some extent, race considerations. Thereafter, I was arrested three additional times all related to similar allegations. All of the charges are bogus in my opinion and I have not been convicted of any offense.

6 Even though I have not yet been convicted even as of the date of this writing, at the time of my last arrest, I received an email from Danny Broach which said, inter alia, they were foreclosing after taking into consideration the arrests referenced above. This was so even though I had complied with the forbearance agreement we reached earlier. Additionally, the bank had stated to me in writing that a renewal note would be accepted in my case. I relied on this representation. Nevertheless, the bank thereafter refused to do so. I have endured this foreclosure process as a direct result thereof.

7 It appears to me that the plaintiff bank is working with the City of Atlantic Beach in order to deprive me of my ownership rights in my property.

8 Additionally, the properties plaintiff desires to be sold (lots 11 & 12 in the Windy Hill Section of North Myrtle Beach, South Carolina) contain my principal residence. I believe my home is covered by the Supreme Court's Administrative Order of May 2, 2011.

9 I have sufficient income with which to pay the financial obligations I have

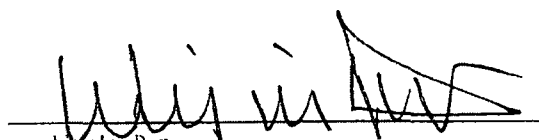
to the plaintiff bank and there is no reason the bank has to foreclose on the mortgages at issue in my cases

10 The last time my attorney checked the Court file in this matter, a signed order allowing for the sale of my property had not been filed. Even so, I am asking for a stay of foreclosure sale since plaintiff has requested a sale date of July 5, 2011

FURTHER I SAITH NOT'


Amy Breunig

Sworn to before me this 27th day of
June, 2011


WILLIAM D. 25
JURY PUBLIC FOR SOUTH CAROLINA
My Commission Expires 09-01-12

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT
Case No 2009-CP-26-12374

Beach First National Bank n/k/a)
Bank of North Carolina)

Plaintiff,)

v)

Amy Breunig,)
Defendant)

ANSWER AND COUNTERCLAIM

11 MAR 27 PM 1:12

COMES NOW THE DEFENDANT, Amy Breunig, who would responding to
the plaintiff's complaint, show unto this Court as follows

FOR A FIRST DEFENSE

Waiver, Estoppel, Laches and/or Unclean Hands

The parties had a course of dealing in this matter Plaintiff entered into conduct which amounts to a false representation or concealment of material facts regarding renewal notes, plaintiff did so with the intention that such conduct shall be acted upon by the defendant, and plaintiff had knowledge, actual or constructive, of the true facts Simultaneously therewith defendant, (1) lacked knowledge regarding plaintiff's intention to embark upon a new course of dealing to refuse to offer a renewal note, and defendant lacked the means or knowledge of the truth as to the facts in question, (2) there was justifiable reliance upon the plaintiff's conduct by the defendant, and (3) a prejudicial change in position by defendant Defendant was lulled into a false sense of security and therefore pleads equitable estoppel as a defense to the foreclosure

FOR A SECOND DEFENSE

Intervening Circumstances New Agreement

After the plaintiff filed this action the parties entered into a forbearance

agreement and plaintiff has breached this agreement

FOR A THIRD DEFENSE

Intervening Circumstances

(False Sense of Security Change of Course of Dealing by New Plaintiff)

Subsequent to the forbearance agreement entered into by and between the parties, the plaintiff Beach First National Bank was acquired by the plaintiff Bank of North Carolina. The present bank embarked on a different course of action without giving defendant reasonable and sufficient warning. Defendant pleads that she was lulled into a false sense of security regarding the acceptance of a renewal note and pleads such as an affirmative defense in this action.

FOR A FOURTH DEFENSE

The Plaintiff has failed to comply with the Supreme Court's Administrative Order dated May 2, 2011 and therefore affirmatively pleads the same as a defense to foreclosure.

FOR A FIFTH DEFENSE

Modification

1 Defendant admits that plaintiff is organized under the law of the State of South Carolina.

2 Defendant admits paragraph two of plaintiff's complaint wherein it alleges that she is a citizen and resident of the State of South Carolina and the owner of real property located in Horry County, South Carolina which is the subject of this action.

3 Defendant admits paragraph three of plaintiff's complaint regarding the location of the property at issue and the Court's jurisdiction.

4 Paragraph four of the complaint is admitted regarding the execution of the note referenced therein in the amount of \$255,450.00.

5 Paragraph five of the complaint is likewise admitted regarding the execution of a mortgage. However, defendant would show the Court that the mortgage was on Lots 11 & 12 in the Windy Hill Section of North Myrtle Beach. Defendant would show that and said property constitutes defendant's principal place of residency and is her residence as contemplated by the Court's Administrative Order dated May 2, 2011.

6 Paragraph six of the complaint is admitted regarding the execution of a Mortgage and Note Modification agreement.

7 Defendant admits paragraph 7 of plaintiff's complaint regarding the execution of a note of an amount up to \$135,000.00. However, Defendant would show that plaintiff's exhibit D is a home equity line of credit secured by a mortgage on her principal place of residence.

8 The allegations of paragraph eight are admitted regarding the execution of a Mortgage and Note Modification Agreement on February 9, 2007.

9 The allegations contained within paragraph nine of plaintiff's complaint are admitted regarding the execution of a Mortgage and Note Modification Agreement. Additionally, defendant would show that the following constitutes a listing of transactions regarding the specific property being foreclosed upon by plaintiff in this action:

- On April 18, 2005, defendant executed a note in the amount of \$255,450.00 with monthly payments in the amount of \$1,663.96 and a balloon payment due in 35 months in the amount of \$248,132.99.
- On May 1, 2008, defendant executed a new note which again called for monthly payments for 35 months in the amount of \$1,607.28 and a balloon payment of \$239,588.88 on May 1, 2011,

- On April 19, 2005 defendant Amy Breunig executed a mortgage on her lots 11 and 12 of Windy Hill Section of North Myrtle Beach, her principal place of residency,
- On February 9, 2007, defendant executed a Home Equity line of credit in the amount of \$135,000 00 and a cross collateralized mortgage on her principal place of residency,
- On January 28, 2008 defendant executed a Mortgage and Note Modification agreement modifying the interest rate on the home equity line of credit note establishing a 5% floor;
- In the spring of 2011, plaintiff refused to accept a renewal note without notice and after indicating to defendant in writing that a renewal note would be accepted

10 Paragraph ten of plaintiff's complaint is admitted regarding the fact that plaintiff is the holder of the note(s) referenced above

11 Paragraph eleven is admitted however, defendant would assert that the note(s) and / or mortgages at issue in this matter speak for themselves and contain the terms and conditions set out therein

12 Defendant admits that the allegations contained within paragraph "12" of the complaint were true at the time of the writing of said complaint, but that subsequent thereto, the parties' entered into a new agreement Pursuant to the new agreement, defendant paid to the plaintiff total payments in the amount of approximately \$53,000 00 in principal only payments and made regular monthly payments thereafter Defendant faithfully made the payments required of her thereafter until without just cause or excuse the plaintiff unilaterally began to refuse to accept defendant's tendered payments and refused to accept a renewal note even though it had previously stated in writing that it would do so

13 Paragraph 13 was true as of the date of the writing of plaintiff's complaint and as of the date of the filing of same However, defendant would show that the parties

entered into an agreement during July, 2010 as a result of which defendant paid to the plaintiff approximately \$53,000 00 in principal only payments and thereafter began to make regular payments on all obligations to plaintiff Defendant would show that plaintiff wrongfully breached the agreement and began to move forward on foreclosure efforts against plaintiff's property even though defendant was still willing and able to make timely payments on her obligations to the plaintiff

14 Defendant would assert that the documents referenced in this paragraph of the plaintiff's complaint speak for themselves The remaining portions of paragraph "14" are denied

15 Paragraph fifteen is denied Defendant would show that this plaintiff has wrongfully proceeded against the defendant in this matter and is not entitled to any deficiency judgment against the defendant and plaintiff has failed to comply with the Supreme Court's Order of May 2, 2011

16 Paragraph sixteen is denied and defendant would show that plaintiff is not entitled to foreclosure or any monetary judgment in this matter Defendant would further show that plaintiff has breached its agreement as set forth and described above in this responsive pleading

17 This paragraph seventeen is denied Defendant would show that the Court's Administrative Order of May 2, 2011 is applicable in this action because the property at issue is defendant's residence

18 Defendant denies paragraph 18 Defendant would show that the paragraph is misleading in that the parties negotiated a settlement of this litigation in which defendant paid over \$53,000 00 to plaintiff in total principal only payments and her

regular monthly payments thereafter until plaintiff unilaterally decided to stop accepting defendant's payments

FOR A SIXTH DEFENSE
BY WAY OF COUNTERCLAIM
Breach of Contract

19 Defendant incorporates the foregoing paragraphs and reasserts the same as if set out herein verbatim

20 On or about July 13, 2010, defendant met with plaintiff's attorney for a hearing scheduled before the Master in Equity During that meeting, defendant and plaintiff entered into a new agreement wherein and whereby defendant would pay the plaintiff a total of over \$53,000 00 in principal only payments and to pay regular monthly payments thereafter

21 Defendant made the necessary payments and in all respects complied with the terms of the agreement

22 During the month of April, 2011, in breach of the parties' agreement, plaintiff unilaterally decided not to accept defendant's payments any longer and proceeded with its attempt to foreclose on defendant's mortgage and seek a deficiency judgment against defendant Plaintiff refused to accept a renewal note from defendant even though it had indicated in writing that it would do so

23 As a direct and proximate result of plaintiff's breach of contract defendant has suffered damages and has been forced into foreclosure

WHEREFORE, defendant would request the following relief

a That the plaintiff's complaint be dismissed in its entirety and the plaintiff take nothing on its claim,

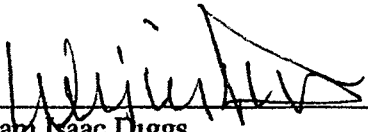
b the defendant be granted a stay of foreclosure in this matter and plaintiff ordered to reinstate the loan(s) secured by the property referenced in the plaintiff's mortgage as attached as an exhibit to the complaint filed in this action,

c an award of attorney's fees to the defendants as the prevailing party in this action as such is contemplated in the note and mortgage at issue in this litigation, and

d for any other and further relief deemed just and proper in this matter

Respectfully submitted,

**LAW OFFICES OF WILLIAM ISAAC
DIGGS**



William Isaac Diggs
1700 Oak Street, Suite D
Myrtle Beach, South Carolina
843-626-4243 Tel
843-626-5123 Fax

**ATTORNEYS FOR DEFENDANT AMY
BREUNIG**

This 27th day of June, 2011
Myrtle Beach, South Carolina

1 THE COURT FOR THOSE OF YOU WHO ARE HERE WITH
2 US I'M RALPH STROMAN I'VE BEEN
3 APPOINTED TO HEAR THIS AS SPECIAL
4 REFEREE AND WE WILL DO THE MOTION
5 HEARING BUT WE WILL NOT OF COURSE
6 HAVE THE FORECLOSURE HEARINGS ON
7 THOSE SO AT THE CONCLUSION OF THAT
8 I'LL LET Y'ALL LEAVE AND THEN WE'LL
9 STAY AND DO THE OTHER FORECLOSURES
10 AND WE WON'T DO THE FORECLOSURE
11 HEARING NOW THESE CASES ---
12 MR DIGGS YOUR HONOR I'M NOT FOLLOWING YOU
13 COMPLETELY
14 THE COURT HE'S GOT FOUR MOTIONS WITH YOU AND
15 HE'S GOT ANOTHER CASE THAT YOU ARE
16 NOT INVOLVED IN SO WE'LL DO THE
17 MOTIONS FIRST
18 MR DIGGS ALL RIGHT
19 THE COURT I'M GOING TO LET YOU MAKE ONE
20 ARGUMENT BECAUSE IT'S BASICALLY
21 FACTUALLY THE SAME THING IS IT NOT?
22 MR DIGGS I'VE GOT YOU WE'RE GOING TO LEAVE
23 BECAUSE YOU'VE GOT ANOTHER CASE
24 THE COURT IF YOU WANT TO YOU CAN STAY AND
25 LISTEN CERTAINLY

1 MR DIGGS NO I DON T THINK SO WE APPRECIATE
2 IT
3 THE COURT WE HAVE FOUR MOTIONS FOR RELIEF FROM
4 A DEFAULT AND THE CASES ARE BEACH
5 FIRST VERSUS AMY BREWING
6 MR DIGGS BREUNIG
7 THE COURT BREUNIG AND THE FIRST ONE IS 09-CP-
8 26-12374 AND IT'S REFERRED TO ME BY
9 THE HONORABLE LARRY B HYMAN
10 4/12/2010 THE SECOND ONE IS THE
11 SAME CAPTION BASICALLY THE CASE
12 NUMBER IS 12376 IT WAS ALSO
13 REFERRED TO ME BY JUDGE LARRY HYMAN
14 ON 4/12 THE THIRD ONE IS 10-CP-26-
15 318 SAME BASIC CAPTION ALSO
16 REFERRED BY JUDGE HYMAN ON 4/12
17 AND THE LAST ONE IS 09-CP-26-12375
18 SIGNED BY JUDGE HYMAN ON 4/22/10
19 ALL RIGHT YOU MAY PROCEED
20 MR DIGGS THANK YOU YOUR HONOR I'M HERE
21 THIS MORNING I HAVE AMY BREUNIG
22 WITH ME AT THE COUNSEL TABLE AND HER
23 MOM'S ALSO IN THE COURTROOM MS
24 BRIDGET BREUNIG SHE'S SEATED IN
25 THE BACK OF THE COURTROOM YOUR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HONOR WHAT WE HAVE BASICALLY AS
YOUR HONOR HAS OUTLINED WE HAVE
FOUR CASES HERE THAT STEM FROM
BASICALLY FOUR DIFFERENT NOTE TYPE
TRANSACTIONS INVOLVING PROPERTY OVER
IN NORTH MYRTLE BEACH HERE IN HORRY
COUNTY THE COURSE OF DEALING
BETWEEN THE PARTIES GOES BACK A
NUMBER OF YEARS TO ABOUT '06 OR '05
SOMETIME IN THAT TIMEFRAME THAT
PARTICULAR DATE IS NOT NECESSARILY
IMPORTANT I'M JUST GIVING THAT TO
YOUR HONOR AS KIND OF A PROCEDURAL
HISTORICAL OVERVIEW OF THE
RELATIONSHIP THAT THESE PARTIES HAVE
HAD ALSO WE STARTED OUT WITH THE
BANK IN THIS CASE IN THESE FOUR
CASES AS BEACH FIRST NATIONAL BANK
BUT SOMETIME DURING THE MONTH OF
AUGUST OF LAST YEAR BECAUSE OF
VARIOUS THINGS GOING ON IN THE
BANKING INDUSTRY AND SO FORTH THAT
ENTITY WAS I GUESS WENT OUT OF
BUSINESS OR CLOSED DOWN AND THAT
LEFT THE INTERESTS IN THESE CASES OF

1 THAT PARTICULAR BANKING ENTITY TO BE
2 ASSUMED BY THE BANK OF NORTH
3 CAROLINA WHO IS THE PLAINTIFF NOW
4 IN EACH OF THESE FOUR ACTIONS

5 YOUR HONOR WE GO BACK
6 GENERALLY AND I THINK PART OF THE
7 COURT'S FILES WE'RE GOING TO HAVE
8 THE DOCUMENTS THAT SHOW WHAT THE
9 NATURE OF THE RELATIONSHIP WAS
10 BETWEEN THE PARTIES THERE'RE
11 FAIRLY THE VARIOUS NOTES THAT WERE
12 ISSUED WERE SHORT TERM NOTES FOR THE
13 MOST PART BASICALLY LASTING ABOUT A
14 YEAR AND THEN RENEWAL NOTES BEING
15 ISSUED AND ACCEPTED BY THE BANK TO
16 RENEW THOSE LOANS WITH INTEREST
17 PAYMENTS BEING PAID ON MONTHLY BASIS
18 THEREAFTER BETWEEN THE ISSUANCE OF
19 THE NOTE AND THE RENEWAL NOTE
20 THERE IS ONE OF THE PROPERTIES
21 THAT'S LOCATED IN THE WINDY HILLS
22 SECTION THE OTHER THREE PROPERTIES
23 ARE LOCATED IN ATLANTIC BEACH
24 THERE IS THE PROPERTY THE CASE
25 CAPTION FOR THE NUMBER OF THAT CASE

1 IS 2010-CP-26-12374 WHICH IS MY
2 CLIENT'S PRINCIPAL RESIDENCE AND WE
3 WOULD ASSERT FALLS WITHIN THE
4 APPLICATION OF THE SUPREME COURT
5 ADMINISTRATIVE ORDER FROM MAY OF
6 THIS YEAR OUR POSITION WE'LL GET
7 TO IT SHORTLY IS THAT THE PLAINTIFF
8 HASN T COMPLIED WITH THE
9 REQUIREMENTS OF THAT PARTICULAR
10 ORDER IN THAT PARTICULAR CASE
11 BECAUSE OF THE STATUS OF THAT
12 PROPERTY BEING A RESIDENCE THE
13 OTHERS OF COURSE ARE COMMERCIAL
14 PROPERTIES WHICH IMPEDE PROGRAM
15 MODIFICATION OR IF YOU'RE FAMILIAR
16 WITH THE PROGRAM I'M TRYING TO THINK
17 OF RIGHT NOW WOULD APPLICABLE TO
18 THOSE COMMERCIAL PROPERTIES
19 BUT TO GET TO THE
20 HEART OF WHAT OUR POSITION IS IN THE
21 CASE IS IN SHORTLY BEFORE WE BEGAN
22 TO SEE THE PROBLEMS IN THESE FOUR
23 CASES INVOLVED BEGIN TO OCCUR MY
24 CLIENT MS BREUNIG WAS INVOLVED IN
25 A VEHICLE ACCIDENT MOTOR VEHICLE

1 ACCIDENT SHE WAS ON A MOTORCYCLE
2 WITH ANOTHER INDIVIDUAL WHO WAS
3 DRIVING THERE WAS A COLLISION AND
4 SHE RECEIVED AN INJURY SHE WAS
5 AMONG OTHER THINGS SHE RECEIVED A
6 HEAD TRAUMA AND THERE'S NO DOUBT IF
7 YOU LOOK -- I HAVE ALL THOSE RECORDS
8 WITH ME YOUR HONOR BUT I CAN TELL
9 YOU AS AN OFFICER OF THE COURT
10 THERE'S A GOOD BIT OF PAPERWORK
11 THAT'S BEEN GENERATED ABOUT THIS
12 PARTICULAR COLLISION HER INJURIES
13 AND HER TESTIMONY I CAN GIVE YOU
14 REGARDING THE EFFECT THAT IT'S HAD
15 ON HER MENTAL ABILITY HER BRAIN AND
16 FUNCTION SHE'S A VERY INTELLIGENT
17 YOUNG LADY ADVANCED SOME GRADUATE
18 OR COLLEGE LEVEL WORK DONE I CAN'T
19 REMEMBER IF SHE WAS ACTUALLY A
20 STUDENT AT YALE OR WAS GOING TO BE
21 -- SHE SAYS SHE WAS A STUDENT AT
22 YALE UNIVERSITY IT GIVES YOU AN
23 IDEA OF THE ABILITY MENTAL ABILITY
24 THAT SHE HAD INTELLECTUAL CAPACITY
25 AT ONE TIME SHE STILL HAS FOR THE

1 MOST PART THAT ABILITY YOUR HONOR
2 BUT SHE'S NOT GOOD WITH DAY-TO-DAY
3 THINGS IN PRECISELY MAKING
4 PAYMENTS ON THESE TYPES OF LOANS
5 WHEN WE'VE GOT VARYING DUE DATES
6 AND YOU KNOW EACH ONE HAS A
7 DIFFERENT PAYMENT SCHEDULE AND OF
8 COURSE SHE WASN T ABLE TO DEVOTE
9 HER ATTENTION TO HER
10 RESPONSIBILITIES IN HER BUSINESSES
11 AND COMMERCIAL PROPERTIES THAT WERE
12 OPERATED AS BUSINESSES AND THERE
13 WERE TIMES WHEN SHE FELL BEHIND IN
14 THE PAYMENTS A COMBINATION OF THE
15 BRAIN TRAUMA THAT SHE HAD AND HER
16 INABILITY TO BETTER KEEP TRACK OF
17 HER OBLIGATIONS TO THE BANK AND TO
18 HER BUSINESS IN ADDITION TO THOSE
19 PROBLEMS THAT AROSE THERE WERE
20 CHALLENGES THAT CAME -- BEFORE I GET
21 AHEAD OF MYSELF AS A RESULT OF
22 THAT THE PLAINTIFF GO BACK TO
23 DECEMBER OF 2009 FILING ITS ACTION
24 TO FORECLOSE ON THESE NOTES AND THE
25 MORTGAGES THAT WERE GIVEN TO SECURE

1 AT THE VERY END OF 2009 WHEN WE GET
2 OVER INTO 2010 YOU CAN SEE IN THE
3 FILE THERE WERE PROCEEDINGS HELD UP
4 IN THIS COURT IN FRONT OF JUDGE
5 HOWE WHERE CERTAIN TESTIMONY WAS
6 TAKEN AND SO FORTH AND JUDGE HOWE
7 PRETTY MUCH SIGNED OFF ON ALL THE
8 REQUESTS THAT WERE BEING MADE BY THE
9 BANK AND PRESENTED MS BREUNIG AND
10 THE OTHER DEFENDANTS A COUPLE OF
11 OTHER DEFENDANTS IN THE CASES BUT
12 BASICALLY ALLOWING FOR THE
13 FORECLOSURE TO GO AHEAD AND PROCEED
14 FORWARD AND I THINK YOU CAN GLEAM
15 FROM THE FILE THAT DURING THE SUMMER
16 MONTHS OF LAST YEAR PRETTY MUCH
17 THERE WAS AN AGREEMENT THAT HAD BEEN
18 REACHED BETWEEN THE PARTIES THAT
19 WOULD ALLOW SOME TYPE OF FORBEARANCE
20 AGREEMENT TO BE ENTERED INTO AND
21 THIS BUSINESS RELATIONSHIP BETWEEN
22 THE PARTIES TO CONTINUE IN ALL THE
23 CASES ALL FOUR OF THEM WE HAVE
24 EVIDENCE AND I DON T THINK THE BANK
25 WOULD DISPUTE THIS THAT SOME TIME

1 DURING THE LATTER PART OF JULY 2010
2 THERE WAS A TOTAL AGGREGATE PAYMENTS
3 MADE TO THE BANK BY MS BREUNIG
4 DURING THAT TIME FRAME EXCEEDED
5 \$53 000 IN PRINCIPLE ONLY PAYMENTS
6 TO BRING EVERYTHING I GUESS I'M
7 SURMISING HERE CURRENT IF NOT
8 CURRENT TO THE SATISFACTION OF THE
9 BANK TO GO AHEAD AND GET HER INTO
10 THIS TYPE OF AGREEMENT TO CONTINUE
11 ON IN THEIR RELATIONSHIP

12 HOWEVER SHORTLY AFTER
13 THAT WE SEE THE PLAINTIFF'S CHANGE
14 AND BEACH FIRST ENTITY GOES OUT OF
15 BUSINESS AND BANK OF NORTH CAROLINA
16 COMES IN AND I DON T KNOW IF ANY
17 OF THE PERSONALITIES CHANGED IN THE
18 BANK OR I DON T KNOW IF IT'S COMING
19 FROM THE FEDERAL GOVERNMENT IN SOME
20 FASHION BUT WE BEGAN TO SEE EMAILS
21 AND WE'VE GOT A PRETTY EXTENSIVE
22 HISTORY HERE OF EMAILS BETWEEN THE
23 BANKING BETWEEN THE OFFICE BUT
24 BETWEEN THE BANK REPRESENTATIVES AND
25 MS BREUNIG TALKING ABOUT THE CASES

1 AND YOU KNOW WHAT THE STATUS OF
2 THINGS ARE WE SEE THINGS BEGIN TO
3 CHANGE THERE IT'S MY UNDERSTANDING
4 THAT EVEN THOUGH IT WAS KIND OF AN
5 AGREEMENT REACHED HERE IN THE
6 COURTHOUSE BETWEEN THE PARTIES AT
7 THAT TIME IN JULY OF LAST YEAR
8 THERE WAS A FORBEARANCE AGREEMENT
9 APPARENTLY THAT WAS SIGNED EXECUTED
10 SOMETIME IN JANUARY OF THIS YEAR
11 YOUR HONOR I HAVEN'T SEEN THAT
12 AGREEMENT BECAUSE MY CLIENT DIDN'T
13 HAVE A COPY OF IT AND FROM WHAT I
14 CAN TELL I WENT THROUGH AND LOOKED
15 IN ALL OF THE COURT FILES IN THESE
16 FOUR CASES I DIDN'T SEE THE
17 AGREEMENT IN THERE IF IT'S THERE
18 THEN I APOLOGIZE TO EVERYBODY I
19 DIDN'T SEE IT SO I DON T KNOW WHAT
20 THE SPECIFIC DETAILS WOULD BE IN
21 TERMS OF THE LANGUAGE IN THAT
22 AGREEMENT BUT THERE IS ONE EMAIL
23 THAT COMES OUT PRETTY EARLY
24 SOMETIME MAYBE IN THE FEBRUARY TIME
25 FRAME THAT TALKS TO MS BREUNIG

1 ABOUT I THINK THIS WOULD BE IN CASE
2 318 I APOLOGIZE IF I DON T HAVE
3 THIS CORRECT BUT THAT NOTE MATURED
4 IN JANUARY OF THIS YEAR AND LET'S
5 SAY IT'S CASE 318 BUT IF THE RECORD
6 IS DIFFERENT FROM THAT THEN I'LL
7 STAND CORRECTED BUT THERE WAS ONE
8 OF THESE CASES I KNOW IT WASN T THE
9 RESIDENCE AT THAT TIME MATURED IN
10 2011 IN JANUARY SOMETIME AROUND THE
11 21ST AND THERE WAS AN EMAIL FROM THE
12 BANK THAT SAID "LOOK THIS HAS GOT
13 TO BE REDONE WE'RE WORKING ON THE
14 PAPERWORK AND WE'LL LET YOU KNOW
15 WHEN YOU NEED TO COME DOWN AND SIGN
16 THIS NEW NOTE ON THIS CASE " THE
17 BANK DURING THAT TIME FRAME ALSO HAD
18 A -- THEY WERE CONCERNED ABOUT SOME
19 PERSONAL FINANCIAL INFORMATION THAT
20 THEY NEEDED ABOUT FROM MS BREUNIG
21 LIKE INCOME TAX RETURNS THE TAX
22 RETURNS WOULD BE FORTHCOMING BUT MS
23 BREUNIG WOULD TESTIFY AND I CAN
24 REPRESENT TO THE COURT THAT THIS IS
25 THE CASE THAT THE INTERNAL REVENUE

1 SERVICE BECAUSE OF THE INJURY AND
2 THE ACCIDENT HAD GIVEN HER A THREE
3 YEAR EXTENSION FOR THE FILING OF HER
4 TAX RETURNS IT'S UNFORTUNATE THAT
5 THAT HAPPENED YOU KNOW RIGHT NOW
6 DURING THE TIME FRAME THAT THIS
7 DISPUTE WITH THE BANK CAME UP BUT
8 IT'S A JUSTIFIABLE REASON FOR THAT
9 AND A REASONABLE EXPLANATION
10 BECAUSE OF THE INJURY SHE HAD THIS
11 EXTENSION ON THE RETURNS AND QUITE
12 FRANKLY I DON T KNOW IF SHE
13 COMMUNICATED THAT TO THE BANK OR NOT
14 BUT THAT'S WHAT THE CONDITION WAS
15 SO I THINK UNDER NORMAL
16 CIRCUMSTANCES AND IN TIME THAT COULD
17 BE EXPLAINED TO THE SATISFACTION OF
18 EVERYONE SO THAT THE BANK COULD GET
19 BACK INTO A POSITION WHERE IT WOULD
20 FEEL MORE COMFORTABLE ABOUT
21 CONTINUING ITS RELATIONSHIP WITH MS
22 BREUNIG

23 BOTTOM LINE ON
24 ALL OF THESE I THINK THERE WAS ONE
25 POINT THAT WAS REACHED ON THE CASE

1 318 WHERE MS BREUNIG WAS MAKING
2 PAYMENTS OR ATTEMPTED TO MAKE THE
3 INTEREST PAYMENTS THE BANK SAID
4 "NO " THEY ACTUALLY REFUSED THE
5 PAYMENTS BECAUSE THEY SAID "LOOK
6 THIS HAS EXPIRED MATURED WE WANT
7 TO GO BACK AND REDO THIS SO DON T
8 MAKE ANY MORE PAYMENTS UNTIL WE GET
9 THE PAPERWORK DONE AND IT'S RE-
10 EXECUTED " SO FOR THE MOST PART
11 THERE IS A SITUATION WHERE WE'VE GOT
12 ONGOING BUSINESSES IN ATLANTIC BEACH
13 WHERE MS BREUNIG HAS A SUBSTANTIAL
14 ABILITY TO COMPLY IN TERMS OF
15 MEETING HER OBLIGATIONS WITH RESPECT
16 TO THE NOTES THAT SHE HAS WITH THE
17 PLAINTIFF BANK IN THESE CASES
18 I'M ASKING THE
19 COURT TO SET FOR RELIEF SET ASIDE
20 THE DEFAULT LET HER RESPOND TO
21 THIS LET US DO A LITTLE BIT OF
22 DISCOVERY TO HELP UNDERSTAND EXACTLY
23 WHAT THE DATES ARE HERE YOU KNOW
24 WITH RESPECT TO EACH OF THE
25 ACCOUNTS SO THAT WE CAN LOOK

1 EXACTLY AT HOW MUCH DELINQUENCY
2 THERE IS AND AT EXACTLY WHAT THE
3 REASONS FOR THOSE WOULD BE YOUR
4 HONOR I'M TELLING YOU THAT YOU
5 KNOW IT'S IT'S A RULE 59
6 SITUATION I THINK I THINK THAT WE
7 DO HAVE GOOD CAUSE HERE BECAUSE OF
8 THE INJURY THE BRAIN INJURY THE
9 HEAD INJURY THAT MS BREUNIG
10 EXPERIENCED
11 THE COURT LET ME STOP AND INTERRUPT YOU FOR A
12 MOMENT
13 MR DIGGS YES SIR
14 THE COURT YOU'RE NOT CONTENDING THAT SHE'S
15 INCOMPETENT ARE YOU?
16 MR DIGGS YOUR HONOR NO I'M NOT CONTENDING
17 BUT SHE CAN'T DO DO THAT BUT I
18 THINK THERE'S A DIFFERENCE BETWEEN
19 BEING INCOMPETENT IN MY MIND I
20 MIGHT BE WRONG AND BEING ABLE TO DO
21 THE BEST JOB THAT YOU CAN DO WITH
22 HANDLING YOUR AFFAIRS AND MY
23 POSITION WOULD BE NOW THAT SHE IS A
24 LITTLE BIT BETTER THAN SHE WAS
25 IMMEDIATELY AFTER THAT ACCIDENT BUT

1 SHE'S PROBABLY GOING TO HAVE SOME
2 LASTING EFFECTS FROM IT WE GET TO
3 THE POINT WHEN WE COME TO THIS YEAR
4 IF I MIGHT I'M ALMOST THROUGH AND I
5 APPRECIATE YOU'RE BEARING WITH ME
6 JUDGE WHEN THE FORBEARANCE
7 AGREEMENT APPARENTLY WAS EXECUTED IN
8 JANUARY OF THIS YEAR IT WASN T IN
9 TERMS OF HOW THERE IS NON-COMPLIANCE
10 WITH THAT AGREEMENT WE DON T KNOW
11 I DON T KNOW THE SPECIFICS OF IT AT
12 THIS POINT BECAUSE AS I SAID EARLIER
13 I HAVEN'T SEEN THE AGREEMENT BUT I
14 KNOW SUBSTANTIALITY TO BE TRUE
15 SUBSTANTIAL ABILITY BY MS BREUNIG
16 TO COMPLY AGAIN AND TO MEET HER
17 OBLIGATIONS ON THE NOTES THAT SHE
18 HAS WITH THE BANK AND CERTAINLY WITH
19 RESPECT TO THE RESIDENCE I WOULD
20 SUBMIT SHOULD BE TREATED A LITTLE
21 BIT DIFFERENTLY BECAUSE OF THE
22 PRINCIPLE RESIDENCE CONCEPT OR IDEA
23 INVOLVED IN THAT MATTER THERE'S A
24 SUBSTANTIAL AGREEMENT WITH THE
25 COMPLIANCE WITH THE OBLIGATIONS THAT

1 MS BREUNIG HAS WITH THE BANK I
2 CAN TELL THE COURT I BELIEVE THAT
3 SHE CAN MEET THOSE OBLIGATIONS AND
4 I'M ASKING THAT THE JUDGMENT BE SET
5 ASIDE AND WE BE ALLOWED TO PROCEED
6 THROUGH DISCOVERY AND TO FACE AND
7 LOOK AT THE ALLEGATIONS OF THIS CASE
8 ON THE MERITS AND LOOK AT SPECIFICS
9 ABOUT HOW MUCH FAULT THERE IS IF
10 ANY WERE NON-COMPLIANCE WITH THE
11 OBLIGATIONS THAT WE HAVE SHORT OF
12 THAT I BELIEVE THAT MS BREUNIG
13 PRETTY MUCH COULD COMPLY BRING
14 EVERYTHING CURRENT THAT SHE IS
15 RESPONSIBLE FOR BEING LATE WITH
16 AND I THINK THAT WE'RE IN A POSITION
17 HERE IN PART BECAUSE OF THE BANK'S
18 ACTIONS IN TELLING HER NOT TO MAKE
19 PAYMENTS BECAUSE THEY'RE GOING TO
20 REDO THE PAPERWORK THIS WAS
21 EARLIER THIS YEAR AND ANOTHER
22 POINT I THINK REFLECTED IN THE
23 EMAILS MAKING THE DECISION NOT TO DO
24 ADDITIONAL BUSINESS WITH MS BREUNIG
25 BECAUSE OF HER ONGOING CONTROVERSIAL

1 RELATIONSHIP ADVERSARIAL
2 RELATIONSHIP SHE HAS WITH THE CITY
3 OF ATLANTIC BEACH BASICALLY THEY
4 HAVE COME OUT AND HAVE HER ARRESTED
5 ON NUMEROUS OCCASIONS FOR WHAT SHE
6 STATES IN HER AFFIDAVIT AS TRUMPETED
7 UP CHARGES THAT MAKE VERY LITTLE
8 SENSE AND I'LL POINT OUT NONE OF
9 WHICH SHE'S BEEN CONVICTED OF AT
10 THIS POINT AND THE BANK BASICALLY
11 SAYS IN ONE OF ITS AFFIDAVITS
12 BECAUSE OF THIS YOU KNOW WE DON T
13 WANT TO DO THIS THIS IT'S NOT THE
14 TYPE OF THING WE WANT TO DO THE
15 FORBEARANCE AGREEMENT HAS BEEN
16 BREACHED AND SO WE'RE GOING TO GO
17 AHEAD AND PROCEED WITH THE
18 FORECLOSURE

19 SO TO SUM UP
20 YOUR HONOR I THINK THAT WE'VE GOT
21 A CONFUSING SITUATION I DON T
22 BELIEVE THE COURT AT THIS POINT CAN
23 KNOW SPECIFICALLY WHETHER OR NOT MS
24 BREUNIG IS IN DEFAULT OR WHETHER
25 SHE'S NOT MADE PAYMENTS BECAUSE OF

1 ACTIONS AND STATEMENTS MADE TAKEN
2 AND MADE BY THE BANK WITH RESPECT
3 TO HER RESIDENCE CLEARLY AND WHEN I
4 LOOKED THROUGH THE FILE LAST WEEK
5 THERE WAS NO INDICATION IN THE
6 COURT'S FILE OF THE PLAINTIFF'S
7 COMPLIANCE WITH THE SUPREME COURT'S
8 ADMINISTRATIVE ORDER FROM MAY OF
9 THIS YEAR AND IT WOULD CERTAINLY
10 IT WOULD BE THAT WOULD BE A
11 JUSTIFICATION IF THE COURT DECIDED
12 TO NOT GRANT RELIEF UNDER RULE 59
13 THEN IT CERTAINLY WOULD BE
14 JUSTIFICATION AND REQUIRE THE COURT
15 IN FACT NOT TO PROCEED WITH THE SALE
16 OF THAT PROPERTY BECAUSE OF NON-
17 COMPLIANCE WITH THE ADMINISTRATIVE
18 RULE AND WHILE IN SOME FASHION THE
19 PLAINTIFF MIGHT SAY "WELL WE'VE
20 DONE THIS AND WE'VE DONE THAT " THE
21 PAPERWORK IS NOT THERE TO MY
22 KNOWLEDGE HAS NOT BEEN SERVICED ON
23 PLAINTIFF THE EXPLANATIONS AND
24 THOSE KINDS OF THINGS THAT THEY CAN
25 BE TRANSMITTED TO BE IN COMPLIANCE

1 WITH THE COURT ORDER OF THE SUPREME
2 COURT'S ADMINISTRATIVE ORDER I
3 THINK YOUR HONOR THAT BASICALLY
4 COVERS THE BASIS OF OUR MOTION
5 WE'VE GOT JUSTIFICATION OF GOOD
6 CAUSE BECAUSE OF THIS INJURY
7 CERTAINLY THE PLAINTIFF COULD DO
8 DISCOVERY ON THAT AND LOOK INTO IT
9 AND WE WOULD HAVE THE ABILITY TO
10 MAKE A RELIABLE DETERMINATION OF THE
11 EXTENT OF THAT INJURY AND THE ROLE
12 THAT IT PLAYED HERE AND HER ABILITY
13 TO CONTINUE TO MAKE OR CONDUCT
14 HERSELF IN A WAY THAT'S CONSISTENT
15 WITH HER OBLIGATIONS UNDER THESE
16 NOTES
17 THE COURT YOU MOVING TO BE ALLOWED TO ANSWER
18 BUT THERE'S NO JUDGMENT THAT'S BEEN
19 ISSUED SO FAR HAS IT?
20 MR DIGGS WELL YOUR HONOR I TAKE IT AS YES
21 THE COURT THESE AFFIDAVITS OF DEFAULT IS ALL
22 THAT'S BEEN FILED IS THAT CORRECT?
23 MR STANLEY YES SIR
24 THE COURT NOBODY HAS HAD ANY FORECLOSURE
25 HEARINGS AND NO ORDERS HAVE BEEN

1 ISSUED AND JUDGMENT OF FORECLOSURE
2 OF SALE TO DATE?
3 MR STANLEY NO SIR THERE WAS
4 THE COURT THERE WAS?
5 MR STANLEY THERE HAVE BEEN -- AND I DIDN T
6 THINK THAT WAS WHAT WE WERE HERE
7 FOR I THOUGHT WE WERE ONLY HERE TO
8 FOCUS ON THE FORBEARANCE AGREEMENT
9 AS I UNDERSTAND MR DIGGS' MOTION
10 BUT A HEARING WAS HELD ON JUNE THE
11 11TH OF 2010 AND IT WAS SET TO SELL
12 BY ORDER OF JUDGE HOWE ON AUGUST 2ND
13 OF 2010 FROM THAT DATE OF THE
14 HEARING WHEN TESTIMONY WAS HEARD
15 MS BREUNIG WAS PRESENT SHE DIDN'T
16 HAVE ANY DEFENSES DID NOT HAVE
17 COUNSEL AT THAT TIME AND HAD BEEN IN
18 DEFAULT FOR QUITE SOME TIME
19 THE COURT WHICH CASE IS THAT?
20 MR STANLEY YOUR HONOR ALL THE CASES
21 THE COURT ALL THE CASES
22 MR STANLEY YES SIR ALL FOUR OF THE CASES
23 WERE FILED -- WELL ONE CASE WAS
24 FILED ON JANUARY 14TH OF 2010 THE
25 OTHER THREE WERE FILED ON DECEMBER

1 23RD OF 2009 AND THEN ALL FOUR OF
2 THEM HAD HEARINGS ON JUNE THE 11TH
3 OF 2010 TESTIMONY WAS TAKEN BY THE
4 COURT MS BREUNIG WAS PRESENT
5 MET WITH JUDGE HOWE HAD THEIR
6 DEFENSES SHE SIGNED THE ORDER OF
7 SALE AND IT WAS SET TO SELL ON
8 AUGUST THE 2ND OF 2010 AND BETWEEN
9 THE DATE OF THE HEARING AND THE
10 SALE'S DATE BANK OF NORTH CAROLINA
11 AND MS BREUNIG ENTERED INTO AN
12 AGREEMENT WHERE SHE CAUGHT UP HER
13 PAYMENTS AND PAID AND THEY WERE
14 ENTERED INTO A FORBEARANCE
15 AGREEMENT AND THAT FORBEARANCE
16 AGREEMENT WAS ENTERED INTO ON
17 JANUARY 31ST OF THIS YEAR
18 SUBSEQUENT
19 THE COURT SO THOSE JUDGMENTS WERE NOT APPEALED
20 FROM?
21 MR STANLEY THAT'S CORRECT AND THAT'S WHY I
22 THOUGHT THAT WE WERE HERE ---
23 THE COURT YES I DON T KNOW THAT I CAN DO
24 ANYTHING ABOUT THAT I'D HAVE TO
25 OVERRULE JUDGE HOWE WHICH I CAN'T

1 DO
2 MR DIGGS WELL CERTAINLY I'M NOT ASKING YOU
3 TO DO THAT EITHER BUT I AM ASKING
4 THAT RULE 59 BE ---
5 THE COURT I DON T KNOW THAT YOU CAN AT THIS
6 STAGE OF THE GAME INTERPOSE AN
7 ANSWER AFTER SHE'S FINISHED THE
8 HEARINGS
9 MR DIGGS MY POSITION IS ---
10 THE COURT YOU CAN SET THE JUDGMENT YOU CAN
11 MOVE TO SET THE JUDGMENT ASIDE
12 MR DIGGS WELL BASICALLY ---
13 THE COURT BUT THAT'S NOT WHAT THIS IS THIS
14 IS JUST TO FILL OUT THE ANSWERS AS
15 I UNDERSTAND IT
16 MR DIGGS WELL WHAT WE'RE ASKING TO DO IS TO
17 SET ASIDE THE DEFAULT AND YOUR HONOR
18 WOULD BE NO DIFFERENT FROM ANY OTHER
19 KIND OF JUDGMENT
20 THE COURT WELL IT IS A FINAL JUDGMENT IT'S
21 A FINAL JUDGMENT ONCE SHE ENTERED IT
22 UP THE MOTIONS PROPERLY WOULD BE
23 IN FRONT OF HER NOT ME I MEAN
24 YOU'RE KIND OF STARTING OVER IT
25 SEEMS TO ME I THINK YOU'RE GOING

1 TO HAVE TO GO BACK IN FRONT OF JUDGE
2 HOWE AND MOVE FOR WHATEVER YOU WANT
3 TO DO BECAUSE SHE ISSUED THAT ORDER
4 AND I DON T HAVE JURISDICTION TO DO
5 THAT AS I SEE IT
6 MR DIGGS HERE'S A COUPLE OF CONSIDERATIONS
7 ONE IS WE GOT IN FRONT OF YOUR HONOR
8 BECAUSE I GUESS OF SOME SCHEDULING
9 DECISION THAT WAS MADE
10 THE COURT WELL WE'RE BACKED UP TREMENDOUSLY
11 MR DIGGS RIGHT OF COURSE
12 THE COURT I'M HEARING A LOT OF DEFAULT THINGS
13 AND I CAN HEAR THIS BUT I DON T
14 THINK THAT I CAN HEAR IT IN THE FACE
15 OF THOSE FINAL JUDGMENTS THAT SHE'S
16 ISSUED I THINK YOU'RE GOING TO
17 HAVE TO GET BACK IN FRONT OF HER AND
18 SEE IF SHE'LL LET YOU IF SHE CAN
19 I MEAN I DON T KNOW THAT THE PROPER
20 VEHICLE IS THE WAY YOU'RE GOING IT
21 MAY BE BUT I DON T THINK SO
22 MR DIGGS WELL THAT'S WHAT MAKES ---
23 THE COURT I THINK YOU CAN ALTER OR AMEND
24 JUDGMENT MAYBE AND I GUESS YOU
25 COULD DO THIS IF SHE WOULD AGREE TO

1 LET YOU BUT SHE'S GOING TO HAVE TO
2 REHEAR THE WHOLE THING
3 MR DIGGS RIGHT
4 THE COURT BUT I DON T KNOW IF SHE CAN DO THAT
5 MR DIGGS AND YOU KNOW IT'S A COMPLEX WELL
6 IT'S A COMPLEX SITUATION IT'S
7 UNUSUAL BECAUSE YOU'VE GOT A CASE
8 THAT PROCEEDS ON AND THEN ALL OF A
9 SUDDEN -- I MEAN WHAT MY
10 UNDERSTANDING IS THAT THE PLAINTIFF
11 WOULD INTRODUCE SOME ADDITIONAL
12 TESTIMONY AND SO FORTH I THINK
13 THEY'VE ENTITLED IT SUPPLEMENTAL
14 YOU KNOW THIS AND THAT WELL OF
15 COURSE THE JUDGE COULDN'T DO THAT
16 WITHOUT HAVING A HEARING
17 THE COURT YOU'LL HAVE TO HAVE ANOTHER HEARING
18 MR DIGGS YES
19 THE COURT BUT THAT WON'T BE IN FRONT OF ME I
20 DON T THINK I CAN MODIFY HER ORDERS
21 AND I DON T THINK THAT IF IT HADN'T
22 BEEN APPEALED OR WITHDRAWN I THINK
23 THE ORDERS ARE STILL ENFORCED IT'S
24 NOT UNUSUAL TO DELAY FORECLOSURES
25 FOR MONTHS FOR ONE REASON OR

1 ANOTHER AND THE ADMINISTRATIVE
2 THINGS YOU'LL HAVE TO LOOK BACK AT
3 TOAL'S ORDERS AND SEE EXACTLY WHEN
4 THE CUT DATE AND ALL THAT WAS
5 MR DIGGS MAY THE 9TH YOUR HONOR
6 THE COURT OKAY RATHER THAN MAKING BOTH OF
7 YOU WORK YOURSELF TO DEATH DOING A
8 PROPOSED ORDERS I THINK YOU'LL HAVE
9 TO RESCHEDULE THIS BACK IN FRONT OF
10 CINDY SINCE SHE HEARD IT AND ISSUED
11 THE ORDERS IF THE ORDERS ARE STILL
12 THERE ON THE RECORD AND THEY HAVEN'T
13 BEEN APPEALED I THINK YOU STILL
14 GOING TO BE BOUND UNDER THOSE AND
15 THEN WHATEVER MOTIONS YOU WANT TO
16 MAKE IF YOU WANT TO ARGUE THESE IN
17 FRONT OF HER I'M SURE SHE'LL HEAR
18 THEM FOR YOU I DON T HAVE
19 JURISDICTION TO DO THAT I DON T
20 THINK
21 MR DIGGS WE OF COURSE ARE HAPPY TO HAVE
22 YOUR HONOR TO HEAR IT OR ---
23 THE COURT WELL I DON T WANT TO DO IT AND THEN
24 YOU GET IN AN APPEAL AND SAY I
25 DIDN T HAVE JURISDICTION YOU KNOW

1 I THINK THAT'S TRUE I RAN INTO
2 THAT WITH JUDGE CROSS' WHEN I CAME
3 IN AFTER HE WAS SICK HE WOULD
4 ISSUE THINGS AND THEN I COULDN T DO
5 ANYTHING WITH THEM BECAUSE HE HAD
6 ISSUED THEM AND THEY HADN'T BEEN
7 APPEALED

8 MR DIGGS RIGHT I WANT YOUR HONOR TO
9 UNDERSTAND CLEARLY THAT WE DIDN'T
10 ASK FOR IT TO BE TRANSFERRED OVER
11 HERE WE JUST FILED THE MOTION WITH
12 THE CLERK'S OFFICE DOWNSTAIRS

13 THE COURT I UNDERSTAND

14 MR DIGGS THROUGH THE SCHEDULING WE END UP IN
15 THIS COURTROOM AT THIS TIME

16 THE COURT LET'S GO OFF THE RECORD FOR A LITTLE
17 BIT

18 OFF THE RECORD

19 (ON THE RECORD)

20 MR STANLEY YOUR HONOR IF IT PLEASES THE COURT
21 I'M STACY STANLEY FOR BANK OF NORTH
22 CAROLINA I JUST WANT TO ADDRESS
23 MR DIGGS' ARGUMENT TODAY IN REGARDS
24 TO WHAT HE IS ASKING THE COURT TO DO
25 AND THE WAY I UNDERSTAND HIS MOTION

1 IS HE WANTS RELIEF FROM DEFAULT AND
2 MS BREUNIG HAS BEEN IN DEFAULT ON
3 ALMOST ALL THESE CASES APPROXIMATELY
4 A YEAR AND A HALF AND SHE HAS BEEN
5 TO A HEARING SHE HAD HER
6 OPPORTUNITY TO TESTIFY AT THE
7 HEARING SHE DID NOT AND I DO NOT
8 THINK HE'S ASKING FOR AN APPEAL OR
9 ANY MOTION FROM RELIEF IN REGARDS TO
10 ANY OF THE JUDGE'S ORDERS HE IS
11 ONLY ASKING FOR A DEFAULT HEARING
12 AND I THINK THAT'S WHY WE'RE BEFORE
13 YOU BECAUSE THIS IS A DEFAULT THESE
14 ARE DEFAULT CASES SHE HAS BEEN IN
15 DEFAULT FOR A YEAR AND A HALF AND
16 ONLY NOW RIGHT BEFORE THE SALE IS
17 SHE ASKING FOR SOME RELIEF AND THE
18 RELIEF I THINK THAT'S BEFORE YOU IS
19 JUST A DEFAULT AND MOTION FOR RELIEF
20 FROM THE DEFAULT AGAINST HER THAT'S
21 BEEN THERE NOW FOR A YEAR AND HALF
22 THE COURT I AGREE BUT THE FACT IS SHE'S
23 ALREADY GOT A JUDGMENT ENTERED IN
24 THIS CASE YOU'VE ALREADY HAD YOUR
25 HEARING DO YOU SEE WHAT I'M

1 SAYING?
2 MR STANLEY YES SIR
3 THE COURT I THINK THAT THE JUDGMENT MIGHT BE
4 SUBJECT TO SOME MOTIONS OR WHATEVER
5 BUT I DON T THINK THIS IS THE WAY TO
6 DO IT I DON T THINK I'VE GOT
7 JURISDICTION I KNOW I DON T IF
8 THE JUDGE HAS ISSUED A FINAL DECREE
9 JUDGMENT OF FORECLOSURE AND SALE
10 THEN THERE MAY BE SOME COLLATERAL
11 SUIT YOU CAN BRING ON THE AGREEMENT
12 I DON T KNOW BUT I THINK YOU'RE
13 GOING TO HAVE TO GET BACK IN FRONT
14 OF JUDGE HOWE TO GET THIS STRAIGHT
15 NOT ME BECAUSE THIS IS CLEARLY NOT
16 A DEFAULT MATTER AS SUCH I MEAN
17 IT IS AS FAR AS THE JUDGMENT IS
18 CONCERNED BUT TODAY YOU WANT AN
19 OPPORTUNITY TO ANSWER AND LITIGATE
20 IT IS WHAT YOU REALLY WANT
21 MR DIGGS YES AND YOUR HONOR ---
22 THE COURT I DON T THINK I CAN DO THAT
23 MR DIGGS --- WITH ALL DUE RESPECT TO MR
24 STANLEY THE TIME THE YEAR AND A
25 HALF THAT HE MENTIONED I WOULD ARGUE

1 IS NOT CORRECT OUR TIME WOULD
2 BEGIN TO RUN FROM THE DATE OF THE
3 ENTRY OF THE JUDGMENT BY JUDGE HOWE
4 AND THAT WAS NOT UNTIL SOMETIME IN
5 AUGUST OF LAST YEAR

6 THE COURT WELL THAT'S WHAT YOU'RE GOING TO
7 HAVE TO MOVE AGAINST

8 MR DIGGS THAT'S WHAT I'VE DONE AND CERTAINLY
9 WE'RE WITHIN THAT ONE YEAR TIME
10 LIMIT OF RULE 59

11 THE COURT WELL SHE'LL HAVE TO MAKE THAT
12 DECISION AND YOUR OTHER ARGUMENT
13 IS ABOUT THE COMPETENCY AND IT DON T
14 HAVE ANYTHING TO DO WITH IT AS I CAN
15 SEE UNLESS YOU HAVE HER DECLARED
16 INCOMPETENT IT MIGHT BE IF YOU
17 HAVE TO TRY IT AGAIN SO I CAN'T DO
18 ANYTHING WITH IT I WANT TO TALK TO
19 BOTH OF YOU BEFORE YOU LEAVE BUT I
20 CAN'T ---

21 MR STANLEY I MAY BE MISUNDERSTANDING MR DIGGS'
22 ARGUMENT OR HIS MOTION BUT HIS
23 MOTION SAYS GRANTING RELIEF FROM
24 DEFAULT IT DOESN T SAY GRANTING
25 RELIEF FROM AN ORDER IT JUST SAYS

1 DEFAULT AND THAT WOULD APPEAR TO BE
2 THE FACT THAT SHE DIDN'T ANSWER HER
3 COMPLAINT AND THEN HE ATTACHES
4 BEHIND THAT AN ANSWER THAT HE WANTS
5 TO APPLY PLUS A COUNTERCLAIM
6 THE COURT WELL THAT WOULD BE AFTER THE
7 JUDGMENTS SO YOU CAN'T DO THAT
8 OBVIOUSLY YOU CAN'T GO BACK
9 WITHOUT ALTERING THE JUDGMENT IN
10 SOME SORT OF WAY GETTING
11 PERMISSION FROM THE JUDGE WHO ISSUED
12 THE ORDER TO GET IT UNTANGLED
13 THAT'S WHERE YOU HAVE TO GO BACK TO
14 GET IT STRAIGHT I DON T THINK I
15 CAN STRAIGHTEN THAT OUT I KNOW I
16 CAN'T STRAIGHTEN THAT OUT IF I
17 COULD I'D BE ON AN APPEAL LEVEL
18 YOU SEE WHAT I'M SAYING?
19 MR DIGGS YES SIR
20 THE COURT I CAN'T CORRECT HER STUFF OR NOT
21 CORRECT IT BUT I CAN'T GO IN BEHIND
22 HER AND CHANGE HER ORDER MAYBE SHE
23 CAN'T I DON T KNOW AFTER THIS TIME
24 LIMIT MAYBE SHE CAN'T CHANGE IT
25 MR STANLEY WELL I DON T THINK HE'S ASKING YOU

1 IN HIS MOTION TO GO BACK TO WHAT SHE
2 DETERMINED I THINK HE'S ASKING YOU
3 TO GO BACK FROM THE TIME THAT MS
4 BREUNIG DID NOT ANSWER THE LAWSUIT
5 WHEN IT WAS SERVED ON HER AND WAS IN
6 DEFAULT AFTER 30 DAYS OF SERVICE
7 THE COURT WELL THAT'S OVER WITH ONCE YOU HAD
8 THE HEARING
9 MR STANLEY EXACTLY
10 THE COURT I CAN'T GO BACK AND UNDO THAT
11 MR STANLEY I THINK YOU CAN MAKE THAT
12 DETERMINATION TODAY THAT IF HE'S
13 ASKING FROM DEFAULT FROM THE FACT
14 THAT SHE WAS SERVED THE COMPLAINT
15 AND DID NOT ANSWER WHICH IS THE WAY
16 HIS MOTION READS THEN YOU HAVE THE
17 AUTHORITY TO MAKE THAT DECISION THAT
18 YOU'RE NOT GOING TO GIVE HER RELIEF
19 FROM THE DEFAULT I DON T THINK IT
20 HAS ANYTHING TO DO WITH THE FACT
21 THAT THERE WAS A JUDGMENT FROM JUDGE
22 HOWE AND WHAT GOES MORE TO THAT
23 THAT HE'S JUST ASKING FOR RELIEF
24 FROM THE FACT THAT SHE DID NOT
25 ANSWER THE COMPLAINT WHEN IT WAS

1 SERVED ON HER IS THAT HE'S ALSO
2 ATTACHING ---
3 THE COURT YES
4 MR STANLEY --- SHOWING HIS INTENTIONS HE'S
5 ATTACHING AN ANSWER AND A
6 COUNTERCLAIM BEHIND THAT SO MR
7 DIGGS IS SPECIFICALLY THIS COURT FOR
8 RELIEF FROM HER DEFAULT THAT
9 HAPPENED ALMOST A YEAR AND A HALF
10 AGO
11 THE COURT WHICH RESULTED IN THE JUDGMENT OF
12 FORECLOSURE OF SALE BECAUSE SHE
13 DEFAULTED
14 MR DIGGS THERE HASN T BEEN A SALE
15 THE COURT I SAID THE JUDGMENT OF FORECLOSURE
16 OF SALE THERE HAS NOT BEEN A SALE
17 BUT THERE'S BEEN A FINAL JUDGMENT
18 MR DIGGS WE'RE ASKING THE COURT TO DO THAT
19 THAT'S RULE 59 IS DESIGNED TO DO
20 ADDRESS THE JUDGMENTS NOT MERELY
21 AFFIDAVITS OF DEFAULT BUT JUDGMENTS
22 AND IT'S NO DIFFERENT FROM A
23 PERSONAL INJURY CASE WHEN YOU'VE HAD
24 A DAMAGE HERE YOU GO IN LET'S SAY
25 IT FOLLOWED A DEFAULT AN ENTRY OF

1 DEFAULT IN A DEFAULT JUDGMENT AND A
2 DAMAGE HEARING WITHIN THAT YEAR
3 UNDER RULE 59 YOU CAN ALWAYS GO BACK
4 AND ASK FOR RELIEF FROM DEFAULT AND
5 IF THAT'S GRANTED YOU LITIGATE THE
6 CASE ON THE MERITS IT DOESN T
7 MATTER THAT THERE'S BEEN A JUDGMENT
8 ENTERED OR A CERTAIN AMOUNT OF MONEY
9 SET OR AN ORDER ENTERED TO SELL THE
10 PROPERTY
11 THE COURT WELL JURISDICTION MAKES THE
12 DIFFERENCE AND LIKE I SAID I DON T
13 HAVE JURISDICTION TO DO WHAT YOU'RE
14 ASKING I'M NOT SAYING YOU CAN'T
15 GET IT DONE SHE MIGHT DO IT FOR
16 YOU BUT I DON T THINK I CAN TO
17 START WITH IT'S CONTESTED
18 OBVIOUSLY LET'S GO TO CHAT A
19 MINUTE ABOUT PROCEDURALLY WHERE
20 WE'RE GOING BECAUSE Y'ALL WANT TO GO
21 FORWARD IT'S BEEN GOING ON A WHILE
22 AND MR DIGGS WANTS TO GET A BUNCH
23 OF DISCOVERY GOING AND HE WANTS TO
24 GO SLOW YOU WANT TO GO FAST LET'S
25 SEE WHAT WE'VE GOT TIME WISE AND ALL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THAT
(THIS HEARING CONCLUDED AT 10 42 A M)

Prestige Court Reporting, Inc.

413 Paul Street
Conway South Carolina 29527
(843) 248 5252

000110

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
) FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY) CIVIL ACTION NO 09-CP-26-12374

BANK OF NORTH CAROLINA,

Plaintiff,

VS

AMY BREUNIG,

Defendant

TESTIMONY

FILED
HAMILTON COUNTY
2011 AUG -1 PM 2:59
KELANIE HUGGINS-WARD
CLERK OF COURT

Johnny Brown, being first duly sworn, testifies as follows

EXAMINATION BY STACY L. STANLEY

Q Will you please state your name?

A Johnny Brown

Q What position do you hold?

A I am Vice President/Litigation Manager for Bank of North Carolina

Q Was a previous foreclosure hearing held in this matter?

A Yes, the foreclosure hearing was previously held on June 11, 2010

Q Prior to the foreclosure sale, did Bank of North Carolina reach an agreement with the Defendant regarding repayment of the loan?

A Yes, and the parties entered into a Forbearance Agreement with the Defendant

(Forbearance Agreement marked as Exhibit "A" and attached hereto)

Q I will ask you if the payments as provided in said Forbearance Agreement have been made by the Defendant?

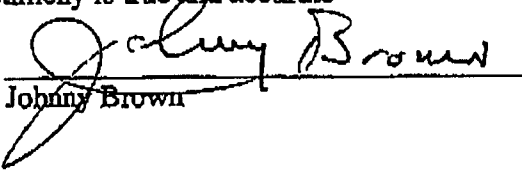
A The Defendant has not made payments as agreed upon, and as of June 30, 2011, there is due the sum of \$2249 932 47 on the first Note and \$139,274 31 on the second Note

Q Has Bank of North Carolina had to expend any additional funds on behalf of the Defendants in order to protect its interest in the property?

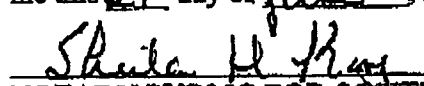
COPY

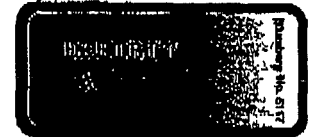
- A Yes, Bank of North Carolina has paid the 2009 and 2010 property taxes on the mortgaged property in the total amount of \$2,103 95 and the hazard insurance premium in the amount of \$2,199 36
- Q Do you desire deficiency judgment?
- A Yes, deficiency is demanded
- Q Does your note and mortgage provide for attorney's fees?
- A The note provides that if an attorney is hired to collect the note, any fees and costs incurred by Bank of North Carolina will be paid by the Defendant
- Q The attorney's fee to be charged for Bank of North Carolina's representation in this matter is \$3,500 00 Is that correct?
- A That is correct
- Q Is it your understanding that costs incurred to date for the bringing of this action is \$520 50?
- A That is correct
- Q What is the total amount due pursuant to the Note, including attorney's fees and costs to date?
- A The total amount due as of June 30, 2011, including attorney's fees and costs is \$390,727 28

I hereby certify that the foregoing testimony is true and accurate


Johnny Brown

SWORN TO and subscribed before
me this 29th day of June, 2011

 (L S)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires 5-26-14



FORBEARANCE AGREEMENT

THIS AGREEMENT made as of the 31st day of January, 2011 by Bank of North Carolina f/k/a Beach First National Bank, (hereinafter referred to as "Lender"), having an office located at 3751 Grissom Parkway, Myrtle Beach, South Carolina 29577 and Amy Breunig, (hereinafter referred to as "Borrower"), residing at 3307 Palm Street, North Myrtle Beach, South Carolina 29582

WITNESSED THAT

WHEREAS Lender is the owner and holder of a certain renewal note #6540 dated May 1, 2008, executed and delivered by Borrower in the principal amount of Two Hundred Forty-Six Thousand Seven Hundred Five and 68/100ths (\$246,705 68) Dollars (the "Note"), secured by that certain mortgage dated April 18, 2005 therewith (the "Mortgage") on property located at 3307 Palm Street, North Myrtle Beach, South Carolina 29582 (the "Premises"), the Note and Mortgage and any other documents executed in connection therewith are hereinafter collectively referred to as the "Loan Documents",

WHEREAS Borrower is in default in the payment of monthly installments of principal, interest, escrow, and other payments called for under the Loan Documents (the "Payments")

WHEREAS, as a result of the default, Lender has the right to require that Borrower make immediate payment in full of all monies remaining unpaid under the Loan Documents, and has already commenced foreclosures proceeding to foreclose the Mortgage,

WHEREAS, Borrower is not currently involved in a bankruptcy proceeding at any place in the United States,

WHEREAS, Borrower has advised Lender that she has suffered financial setbacks and has requested Lender's forbearance in exercising its rights and remedies under the default provisions of the Loan Documents and with regard to the ongoing foreclosure action, as well as requested certain debt relief; and

WHEREAS, Lender is willing to honor Borrower's requests by granting forbearance on the terms set forth herein

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto agree as follows

1 Lender's Forbearance Lender shall forbear from exercising any and all of its rights and remedies presently existing or arising during the term of this agreement under the Loan Documents, the ongoing foreclosure action or this agreement, provided that there exists no event of default as such term is defined herein at Paragraph 4

2 Borrower's Admissions Borrower admits the amounts owing to Lender under the Loan Documents as indicated in this agreement and represents and acknowledges that there are no defenses, offsets, or counterclaims of any nature whatsoever to any of the loan documents. Borrower acknowledges valid service of the Summons and Complaint in the foreclosure action, ~~that Borrower does not intend to enter any answer or defenses, therein, and specifically waives~~ any rights Borrower might otherwise have to do so. If Borrower has already answered, Borrower hereby withdraws her answer and defenses with prejudice.

3 Borrower's Payments of Payments Coming Due Commencing on December 1, 2010, Borrower shall make monthly payments of \$1,607.28 in certified funds, and Borrower shall make all future payments, in certified funds, as they become due, which payments may change in accordance with the terms of the Note and Mortgage.

4 Events of Default If the Borrower fails to make any of the payments pursuant to the terms of the Note and Mortgage, or if Borrower fails to keep a promise or agreement or perform or discharge any agreement, covenant, obligation or undertaking created or agreed to by Borrower in the loan documents and in this Agreement, same shall constitute an event of default hereunder and under the loan documents.

5 Lender's Rights and Remedies Upon Events of Default Upon and after the occurrence of an event of default all amounts then remaining unpaid under the loan documents and this Agreement shall be immediately due and payable and Lender shall be free to exercise any or all rights and remedies provided for under the loan documents, including, but not limited to continuance of the foreclosure action, which rights and remedies are incorporated herein by reference, as if fully set forth herein. By entering into this agreement, Lender shall in no way be considered to have waived or have been estopped from exercising any or all of its rights and remedies under the loan documents. Nothing contained herein shall constitute a waiver of any or all of the Lender's rights or remedies including the right to proceed with the foreclosure action. This Agreement shall not be construed as a discontinuance of the foreclosure action and any forbearance by the Lender and acceptance of monies hereunder shall not be deemed an estoppel, prejudice or waiver of Lender's right to proceed with the foreclosure action.

It is also agreed that the Lender may, without further notice to the Borrower, proceed ex parte with all further proceedings in the foreclosure action, inclusive of the Order of Reference, preparation of Master's Report and entering final Judgment of Foreclosure and Sale, except that the Lender agrees to forbear in scheduling the foreclosure sale as long as an event of default does not exist. In the event there is an event of default, the premise will be sold at a foreclosure sale for the unpaid balance of the monies due to Lender. In such event, notice of sale and notice of surplus monies shall be given to the Borrower.

6 Limited Modification Except as modified herein, the Loan Documents are ratified and confirmed and shall remain in full force and effect.

7 Method of Making Payments All payments shall be made to the Lender by the Borrower by bank check or certified check payable to the order of Bank of North Carolina

8 Application of Payments Unless the law requires otherwise, Lender may apply all sums received from Borrower during the term hereof, whether on account of payments or payment to any sums of money due to Lender from Borrower hereunder or under the Loan Documents, in any order, at its sole discretion

9 Assignment by Borrower Prohibited This Agreement shall be non-transferable by Borrower

10 Entire Agreement This Agreement sets forth all of the promises, covenants, agreements, conditions and understanding between the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implies, oral or written, with respect thereto, except as contained or referred to herein. This Agreement may not be amended, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of such amendment, waiver, discharge, or termination is sought

11 Severability If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law

12 Reinstatement In the event Borrower cures the default by making all payments required under Paragraph 3 for a period of six months from the date of execution of this agreement, is current with the payments then due, and no event of default exists under the loan documents and this Agreement, Lender shall reinstate the Note and Mortgage according to their original terms and conditions.

13 Billing Statements Borrower is to ignore any billing statements generated by Lender which are inconsistent with the payment terms of this Forbearance Agreement

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

Signed, sealed and delivered
in the presence of

Jammy Burgess
Witness #1

Amy Breunig
Amy Breunig

V. Dennis Hamilton
Witness # 2/Notary

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named Amy Breunig sign, seal and as her act and deed, deliver the within written Forbearance Agreement, and that (s)he, with the other witness subscribed above, witnessed the execution thereof

Jammy Burgess
Witness #1

SWORN TO before me this 31
day of January, 2011

V. Dennis Hamilton
NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires 5/23/2017

Signed, sealed and delivered
in the presence of

Bank of North Carolina
f/k/a Beach First National Bank

Witness 1

Witness 2/Notary

By

Its

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

PERSONALLY appeared before the undersigned witness and made oath that (s)he saw the within named corporation, by its duly authorized officer, sign, seal and as its act and deed, deliver the within written Forbearance Agreement, and that (s)he, with the other witness subscribed above, witnessed the execution thereof

Witness 1

SWORN TO before me this 17
day of February, 2011

NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires

5-26-16

000-17

BANK OF NORTH CAROLINA,
Plaintiff,
vs
AMY BREUNIG,
Defendant

FILED
HARRIS COUNTY
2011 AUG -1 PM 2 58
KELANIE HUGGINS WARD
CLERK OF COURT

Pursuant to Rule 53, SCRPC, the above entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in the case. Any appeal from this Order is to the Supreme Court or the South Carolina Court of Appeals.

Pursuant to the said Order of Reference, a hearing was held. Stacy L. Stanley of the Stanley Law Firm appears as attorney for the Plaintiff. The Defendant also appeared at the hearing and was represented by William I. Diggs. The testimony was taken, which is reported herewith, and from the testimony and evidence, I find and conclude as follows:

1 I find that by Order dated August 3, 2010, Bank of North Carolina as
Successor in Interest to Beach First National Bank was substituted as the Plaintiff in the
above entitled case

2 The Lis Pendens, Summons and Complaint of the Plaintiff were filed on
December 23, 2009

3 Service of the Lis Pendens, Summons and Complaint of the Plaintiff was made on the Defendant on January 7, 2010, as evidenced by the Affidavit of Service on file herein

4 The Defendant did not file an Answer and is therefore in default

5 For value received, the Defendant, Amy Breunig, made, executed and delivered unto Beach First National Bank a certain Promissory Note in writing, dated April 18, 2005 by which according to the terms and conditions as set out herein, Defendant promised to pay to the Plaintiff the principal sum of Two Hundred Fifty-Five Thousand Four Hundred Fifty and 00/100ths (\$255,450 00) Dollars, along with interest at the rate of six and three quarters percent (6 75%) per annum Other terms and conditions are stated in the Promissory Note held by the Plaintiff which was introduced into evidence without objection

6 That also on April 18, 2005, in order to secure the above-referenced Promissory Note, the Defendant did deliver to the Plaintiff a Mortgage for said real property with improvements thereon The Mortgage was thereafter recorded in the Office of the Register of Deeds for Horry County in Mortgage Book 4009 at Page 1486 This mortgage was introduced into evidence without objection

7 That also for value received, the Defendant also made, executed and delivered unto Beach First National Bank a certain renewal Note in writing dated May 1, 2008 by which according to the terms and conditions as set out herein, Defendant promised to pay to the Plaintiff the principal sum of Two Hundred Forty-Six Thousand Seven Hundred Five and 68/100ths (\$246,705 68) Dollars, along with interest at the rate of six and three quarters percent (6 75%) per annum Other terms and conditions are stated in the Promissory Note held by the Plaintiff which was introduced into evidence without objection

8 That also for value received, the Defendant also made, executed and delivered unto Beach First National Bank a certain Home Equity Variable Draw Agreement in writing dated February 9, 2007 by which according to the terms and conditions as set out herein, Defendant promised to pay to the Plaintiff the principal sum of One Hundred Thirty-Five Thousand and 00/100ths (\$135,000 00) Dollars, along with interest at a variable rate with an initial rate of nine and one quarter percent (9 25%) per annum Other terms and conditions are stated in the Home Equity Variable Draw Agreement held by the Plaintiff which was introduced into evidence without objection

9 That also on February 9, 2007, in order to secure the above-referenced Home Equity Variable Draw Agreement, the Defendant did deliver to the Plaintiff a Mortgage for said real property with improvements thereon The Mortgage was thereafter recorded in the Office of the Register of Deeds for Horry County in Mortgage Book 4848 at Page 2889 This mortgage was introduced into evidence without objection

10 That also for value received, the Defendant also made, executed and delivered unto Beach First National Bank a certain Mortgage and Note Modification Agreement in writing dated January 28, 2008 by which according to the terms and conditions as set out herein, the interest rate of the Home Equity Variable Rate Agreement was modified Other terms and conditions are stated in the Promissory Note held by the Plaintiff which was introduced into evidence without objection

11 A notice of default and right to cure was sent to the Defendant by the Plaintiff but to no avail

12 The title holder of record in and to the subject property as of the filing of the Lis Pendens of the Plaintiff in this action is the Defendant

13 Payments due on the Notes have not been made as provided therein and the Plaintiff has elected to accelerate payment of the entire indebtedness and has placed the note and mortgage in the hands of its attorney herein for collection

14 Further, prior to the foreclosure sale date on August 2, 2010, the parties entered into a Forbearance Agreement however, the Defendant has defaulted on the terms of said Forbearance Agreement

15 The sum of Three Thousand Five and 00/100ths (\$3,500 00) Dollars is a reasonable fee to allow as attorney's fees for the Plaintiff's attorney for services performed and anticipated to be performed until a final adjudication of the within matter, under the terms of the note and mortgage held by the Plaintiff for the foreclosure action in Horry County, South Carolina Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time, including any appeal which may be taken from this Order In setting these attorney's fees, I have taken into consideration

- (1) the nature, extent and difficulty of the legal services rendered,
- (2) the time and labor necessarily devoted to the case,
- (3) the professional standing of counsel,
- (4) the contingency of compensation,
- (5) the beneficial results accomplished, and
- (6) the fee customarily charged in this court for similar legal services

16 I further find that the Plaintiff has had to expend funds for property taxes and insurance on the mortgaged property in order to protect its interest in the property

17 The amount due and owing on the note due the Plaintiff, with interest as provided in the note and other costs and expenses of collection, including the attorney's fees awarded, secured by the note and mortgage is as follows

Principal and Interest as of 6/30/11	
1 st Note	\$243,129 16
Home Equity Agreement	\$139,274 31
Attorney's Fees	\$ 3,500 00
Costs Due	\$ 520 50
2009 & 2010 Property Taxes	\$ 2,103 95
Insurance Premium	\$ 2,199 36
TOTAL DEBT SECURED BY THE NOTES AND MORTGAGES INCLUDING INTEREST TO DATE SHOWN	\$390,727 28

Interest for the period from June 30, 2011 through the date of compliance with the highest bid at the foreclosure sale shall comprise the total judgment debt due the Plaintiff Interest after June 30, 2011 in the amount of Forty-Three and 47/100ths (\$43 47) Dollars on the first Note and Eighteen and 46/100ths (\$18 46) Dollars on the home equity loan, per day is to be added to the above stated amount to comprise the judgment debt secured by the mortgage held by the Plaintiff

18 Upon agreement between counsel for the Plaintiff and Defendant, this property shall be sold at the foreclosure sale on October 3, 2011

19 The Plaintiff hereby demands deficiency judgment in this matter

20 In the event of any surplus of funds which may be created at a sale of the mortgaged premises ordered herein, an additional hearing will be held at which time evidence may be presented to determine disposition of said surplus

CONCLUSIONS OF LAW

I therefore conclude as follows

The Plaintiff should have judgment of foreclosure of its mortgage and the mortgaged property should be ordered sold at public auction after due advertisement

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED

(a) That there is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of Three Hundred Ninety Thousand Seven Hundred Twenty-Seven and 28/100ths (\$390,727 28) Dollars representing the total debt due the Plaintiff as set out in Paragraph 17 supra, together with interest at the rate provided therein on the balance or principal for the period set out in said paragraph

(b) The amount in the precedent paragraph ("Total Debt") as set forth in Paragraph 17, supra, and later accrued interest on the principal, shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of Forty-Three and 47/100ths (\$43 47) Dollars on the first Note and Eighteen and 46/100ths (\$18 46) Dollars on the home equity loan

(c) That the Defendant shall on or before the date of the sale of the property hereinafter described pay to the Plaintiff or to the Plaintiff's attorney the amount of the Plaintiff's debt as aforesaid, together with costs and disbursements of this action

(d) That on default of payment at or before the time indicated, the mortgaged premises described in the Complaint as hereinafter set forth shall be sold by the undersigned Master in Equity at public auction at the Horry County Courthouse in the City of Conway, County and State aforesaid, on some convenient sales day hereafter on the following terms, that is to say

(1) FOR CASH the undersigned Master in Equity will require a deposit of five (5%) per cent on the amount of the bid (in cash or equivalent) same to be applied on the purchase price only upon compliance with the bid, but in the case of non-compliance within thirty (30) days, same to be forfeited and applied to the costs and the Plaintiff's debt

(2) Interest on the bid shall be paid to the date of compliance at the legal rate

(3) The sale shall be subject to taxes and assessments, existing easements and restrictions and all matters of record

(4) Purchaser shall pay for deed stamps and the cost of recording of the Deed

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

(f) As the Plaintiff has demanded deficiency judgment, the bidding will be held open for thirty (30) days

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

(h) That the undersigned Master in Equity will apply the proceeds of sale as follows

FIRST to the payment of the amount of the costs and expenses of this action,

NEXT, to the payment to the Plaintiff or its attorney the amount of the Plaintiff's
"Total Debt" or so much thereof as the purchase money will pay on same,

NEXT, any surplus will be held pending further Order of this Court

(i) It is further ORDERED, ADJUDGED AND DECREED that in the event that the successful bidder is other than the Defendant in possession herein, and a Writ of Assistance is presented, the Sheriff of Horry County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and to put the successful bidder or his assigns in such peaceable possession. All valid tenant rights shall be protected pursuant to the Protecting Tenants at Foreclosure Act of 2009

(j) And it is further ORDERED, ADJUDGED AND DECREED that the Defendants and all other persons whomsoever claiming under them, them or it, be forever barred and foreclosed of all right, title, interest, and equity of redemption in the mortgaged premises so sold, or any part thereof

(k) It is further ORDERED, ADJUDGED AND DECREED that pursuant to S C Code Ann §30-9-31 (Supp 1987) the deed of conveyance made pursuant to this sale shall be indexed in the grantor index by the ROD in the name of the owner of record of the subject property immediately prior to execution of the deed, as well as in the name of the undersigned Master in Equity, who executes such deed as grantor

(l) The undersigned Master in Equity retains jurisdiction to do all the necessary acts incident to this foreclosure, including, but not limited to, the issuance of a Writ of Assistance and disposing of any surplus of funds pursuant to Rule 71(c), SCRPC

(m) The following is a description of the premises ordered to be sold

ALL AND SINGULAR, all those certain pieces, parcels or lots of land, with improvements thereon, situate, lying and being in Little River Township, County of Horry, State of South Carolina, and being represented as LOTS ELEVEN (11)

000125

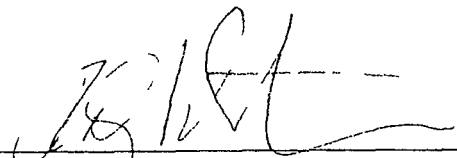
and TWELVE (12), BLOCK FOUR (4), on a plat or map made for Windy Hill Beach, a Corporation, by N C Hughes, Jr , Engineer, revised March 25, 1947, and recorded in the Office of the Clerk of Court for Horry County, South Carolina in Plat Book 5-A at Page 111, reference to which is made a part and parcel hereof

This being the identical property conveyed to Amy Breunig by Deed of Jeffrey A Finkley dated April 18, 2005 and recorded April 20, 2005 in Deed Book 2896 at Page 899, Horry County records

TMS # 156-03-13-005

STREET ADDRESS 3307 Palm Street, North Myrtle Beach, SC 29582

THIS PROPERTY ALSO INCLUDES ANY IMPROVEMENTS THEREON



RALPH STROMAN, SPECIAL REFEREE
ACTING WITH FINALITY

July 13, 2011
Conway, South Carolina

000126

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY COUNTY
IN THE COURT OF COMMON PLEAS
BANK OF NORTH CAROLINA

JUDGMENT IN A CIVIL CASE

CASE NO 09 -CP- CP - 12374

AMY BREUNIG

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE

- ☐ **JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON)** ☐ Rule 12(b), SCRPC, ☐ Rule 41(c), SCRPC (Vol Nonsuit), ☐ Rule 43(k), SCRPC (Settled), ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON)** ☐ Rule 40(j), SCRPC, ☐ Bankruptcy, ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award, ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**
☐ Affirmed, ☐ Reversed, ☐ Remanded, ☐ Other _____
- NOTE ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

FILED
HORRY COUNTY
2011 AUG - 1 PM 2:58
JELANE HUGGINS-WARD
CLERK OF COURT

IT IS ORDERED AND ADJUDGED

- ☒ See attached order (Formal order to follow)
☐ Statement of Judgment by the Court

SUPPLEMENTAL MASTER'S REPORT AND JUDGMENT OF FORECLOSURE AND SALE

Dated at Conway, South Carolina, this 13th day of July, 2011

[Signature]
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows

Stacy L Stanley
Stanley Law Firm, LLC
3303 E Highway 9
Little River, SC 29566
ATTORNEY(S) FOR THE PLAINTIFF(S)

Amy Breunig
3307 Palm Street
Little River, SC 29566
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO 09-CP-26-12374

BANK OF NORTH CAROLINA,)
)
Plaintiff,)
)
vs)
)
AMY BREUNIG,)
)
Defendant)

**AMENDED
NOTICE OF SALE**

FILED
HORRY COUNTY
2011 AUG - 1 PM 2.58
MELANIE HUGGINS-WARD
CLERK OF COURT

BY VIRTUE OF A DECREE of the Court of Common Pleas for Horry County, South Carolina, heretofore issued in the case of Bank of North Carolina v Amy Breunig, the undersigned, Master in Equity for Horry County, will sell on October 3, 2011, at 11 00 a m , at the Horry County Courthouse in Conway, South Carolina, to the highest bidder

The following is a description of the premises subject of said mortgage

ALL AND SINGULAR, all those certain pieces, parcels or lots of land, with improvements thereon, situate, lying and being in Little River Township, County of Horry, State of South Carolina, and being represented as LOTS ELEVEN (11) and TWELVE (12), BLOCK FOUR (4), on a plat or map made for Windy Hill Beach, a Corporation, by N C Hughes, Jr , Engineer, revised March 25, 1947, and recorded in the Office of the Clerk of Court for Horry County, South Carolina in Plat Book 5-A at Page 111, reference to which is made a part and parcel hereof

This being the identical property conveyed to Amy Breunig by Deed of Jeffrey A Finkley dated April 18, 2005 and recorded April 20, 2005 in Deed Book 2896 at Page 899, Horry County records

TMS # 156-03-13-005

STREET ADDRESS 3307 Palm Street, North Myrtle Beach, SC 29582

COPY²⁸

THIS PROPERTY ALSO INCLUDES ANY IMPROVEMENTS THEREON

TERMS OF SALE For cash Interest at the rate of six and three-quarters (6 75) percent to be paid on balance of bid from date of sale to date of compliance The purchaser to pay for papers and stamps, and that the successful bidder or bidders, other than the Plaintiff herein, do, upon the acceptance of his or her bid, deposit with the Master in Equity for Horry County a certified check or cash in the amount equal to five (5%) percent of the amount of bid on said premises at the sale as evidence of good faith in bidding, and subject to any resale of said premises under Order of this Court, and in the event the said purchaser or purchasers fail to comply with the terms of sale within thirty (30) days, the Master in Equity shall forthwith resell the said property, after the due notice and advertisement, and shall continue to sell the same each subsequent sales day until a purchaser, who shall comply with the terms of sale, shall be obtained, such sales to be made at the risk of the former purchaser Since deficiency judgment has been demanded, bidding will be held open for thirty (30) days

If the Plaintiff or the Plaintiff's representative does not appear at the above-described sale, then the sale of the property will be null, void, and of no force and effect In such event, the sale will be rescheduled for the next available sales day Sold subject to taxes and assessments, existing easements, restrictions of record, and prior judgments


CYNTHIA GRAHAM HOWE
MASTER IN EQUITY

July 15, 2011

Conway, South Carolina

Stacy L Stanley
Stanley Law Firm, LLC
3303 E Highway 9
Little River, SC 29566
(843) 390-9111
ATTORNEY FOR PLAINTIFF

2
GHA

000100

STATE OF SOUTH CAROLINA

COUNTY OF Horry

Beach First National Bank n/k/a Bank of
North Carolina

Plaintiff,

vs

Amy Breunig

Defendant

IN THE COURT OF COMMON PLEAS
15th JUDICIAL CIRCUIT

CASE NO 2010-CP-26-12374

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

11 AUG 16 11 14 AM '11

Plaintiff's Attorney
Stacy L Stanley, Bar No 13410
Address
3303 East Highway 9
Little River, SC 29566
Phone 843 390 9111 Fax 843 390 9187
E-mail sstanley@stanleylawfirm.com Other

Defendant's Attorney
William Isaac Diggs Bar No 1689
Address
1700 Oak Street, Suite D
Myrtle Beach, SC 29577
Phone 843 626 4243 Fax 843 626 5123
E-mail william.diggs@myrtlebeachlaw.com Other

- ☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I Hearing Information

Nature of Motion Motion to Reconsider denial of Relief from Default

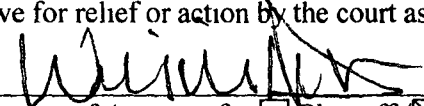
Estimated Time Needed 45 minutes

Court Reporter Needed ☒ YES / ☐ NO

SECTION II Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order


Signature of Attorney for ☐ Plaintiff / ☒ Defendant

August 16, 2011

Date submitted

SECTION III Motion Fee

- ☒ PAID - AMOUNT \$ _____
☐ EXEMPT (check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court, or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter _____
☐ Other _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order
☐ Other _____

JUDGE CODE _____

Date _____

CLERK'S VERIFICATION

Collected by _____ Date Filed _____

- ☐ MOTION FEE COLLECTED \$ _____
☐ CONTESTED - AMOUNT DUE \$ _____

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT
Case No. 2010-CP-26-12374

**MOTION FOR RECONSIDERATION OF
ORDERED ENTERED AUGUST 1, 2011**

v

Amy Breunig,)
Defendant)

NOV 14 2011

1 The property at issue in this matter is defendant's primary residence and
ff has not complied with the Supreme Court's Administrative Order dated May 2,
and

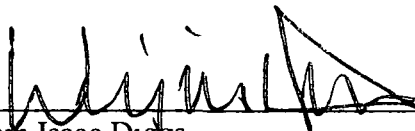
2 Defendant would ask this Court to reconsider the order entered on August
and grant Defendant's motion for relief from default on the grounds

- Defendant was not in default,
- plaintiff was in breach of its reinstatement agreement,
- Plaintiff violated defendant's constitutional rights by refusing to renew the note at issue based on a false arrest committed by the town of Atlantic Beach, and
- Any default had by defendant, Amy Breunig, which upon information and belief did not occur, was a result of a brain injury suffered by defendant in a motorcycle accident occurring in calendar year 2008

BE SO NOTIFIED!

Respectfully submitted

LAW OFFICES OF WILLIAM ISAAC DIGGS



William Isaac Diggs
1700 Oak Street, Suite D
Myrtle Beach, SC 25977
Tele 843-626-4243
Fax 843-626-5123

**ATTORNEY FOR DEFENDANTS AMY
BREUNIG**

This 16 day of August, 2011
Myrtle Beach, South Carolina

The South Carolina Court of Appeals

Bank of North Carolina,

Respondent,

v

Amy Breunig,

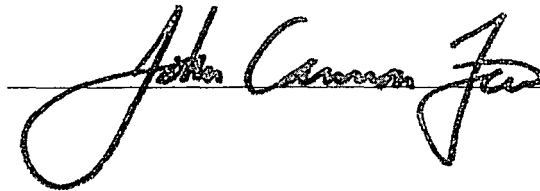
Appellant

The Honorable Ralph Stroman
Horry County
Trial Court Case No 2009-CP-26-12374

ORDER

Appellant petitions this Court to supersede Judge Stroman's order denying Appellant's motion for relief from default and stay of the foreclosure sale. Appellant requests the scheduled sale of Appellant's residence be stayed pending appeal because of Respondent's failure to comply with the Supreme Court's May 2, 2011 Administrative Order regarding foreclosure proceedings. The Petition for Supersedeas is temporarily granted pending a return from the Respondent, which must be served and filed within ten days.

IT IS SO ORDERED



Columbia, South Carolina

cc William I. Diggs, Esquire
Stacy L. Stanley, Esquire

FILED

Harter 9/30/11

000104

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph Stroman, Special Referee
Case No 2009-CP-26-12374

BANK OF NORTH CAROLINA

Respondent,

v

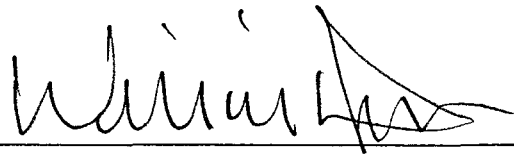
AMY BREUNIG,

Appellant

**PETITION FOR SUPERSEDEAS AND STAY OF
FORCLOSURE SALE OF APPELLANT'S RESIDENCE
SCHEDULED FOR OCTOBER 3, 2011**

CERTIFICATION BY COUNSEL

Counsel hereby certifies that he has sought supersedeas relief at the local trial level and that counsel's request for supersedeas relief has been denied. The attached Exhibit A contains a hand written denial by the office of the Court's chambers in Horry County South Carolina pursuant to the instructions of the Honorable Ralph P. Stroman, Special Referee.



William Isaac Diggs

This 30th day of September, 2011

COMES NOW THE DEFENDANT / PETITIONER, Amy Breunig, by and through her undersigned counsel, pursuant to S C A C R 241, who would petition this Court for a writ of supersedeas. Said petition is based on the following

SUPERSEDEAS / APELLATE ISSUE

**MUST THE SCHEDULED SALE OF APPELLANT'S RESIDENCE ON
OCTOBER 3, 2011 BE STAYED PENDING APPEAL BECAUSE OF PLAINTIFF'S
FAILURE TO COMPLY WITH THE REQUIREMENTS OF THE COURT'S
ADMINISTRATIVE ORDER DATED MAY 2, 2011**

INTRODUCTION

This is a foreclosure proceeding. On August 1, 2011, the Court entered an order of foreclosure regarding defendant's property at 3301 Palm Street, North Myrtle Beach, South Carolina. This is Defendant's residence which she occupies. The Court's order allows appellant's residence to be sold on October 3, 2011. Defendant's timely motion to reconsider was denied on September 5, 2011 and defendant's property is scheduled to be sold on October 3, 2011. Defendant now asks this Court to grant a supersedeas pursuant to SCACR 241 and stay the sale of defendant's property until the Administrative Order requirements have been met. This request is based on plaintiff's failure to comply with the Supreme Court's Administrative Order dated May 2, 2011. While there was an agreement entered by and between the parties in the summer/fall of calendar year 2010, that intervention dealt with four different foreclosure proceedings, of which one was defendant's residence. No intervention process has been had since that time, and defendant is capable of maintaining current payments on her residence. No intervention process was conducted even though this case was pending as of the date of the Court's Administrative Order on May 2, 2011.

Background

On April 18, 2005, defendant executed a note in the amount of \$255,450 secured

by a mortgage in favor of plaintiff's predecessor in interest. The mortgage identified the property as lots 11 and 12 in Windy Hill section of North Myrtle beach, with a street address of 3307 Palm Street. On February 9, 2007 defendant executed a mortgage on the same property which was given to secure a revolving line of credit. The Home Equity agreement extended a line of credit up to \$135,000.00 with a maturity date of February 9, 2022. On January 28, 2008, defendant executed a Mortgage Note and Modification regarding the property. On May 1, 2008 defendant executed a renewal note in the amount of \$246,705.68.¹

On December 23, 2009, plaintiff filed a Notice of Lis Pendens along with civil action 09-CP-26-12374. Service was effectuated on January 7, 2010. On March 8, 2010 an Affidavit of Default filed by plaintiff's attorney. On July 13, 2010, Testimony of one, Johnny Brown, was filed with the Court along with a Notice of Sale of 3307 Palm Street, a Master's Report and Judgment of Foreclosure and Sale, and a Judgment in a Civil Case Form 4. On August 4, 2010, an Order substituting counsel for the Plaintiff was entered. A forbearance agreement was entered following the July, 2010, hearing. That agreement involved four (4) foreclosure cases between these parties and others associated with this Defendant. Defendant paid approximately thirty eight thousand dollars on the note given in exchange for loan proceeds used to purchase the residence, and approximately thirty thousand (\$30,000.00) more dollars in principal payments to the plaintiff on the three (3) additional foreclosure actions as a result of that agreement.

¹ Defendant owned several business properties, some of which were financed by plaintiff. On May 14, 2008, Defendant was involved in a motor cycle collision. She suffered traumatic brain injury. While defendant was not hospitalized for an extended period of time, the injury did prohibit her thereafter from effectively running her businesses. She experienced trouble in keeping up with various mortgage payments, primarily as a result of her injury as opposed to problems with cash flow.

However, plaintiff again alleged that defendant fell delinquent on the residential account and the three (3) other accounts and sought a foreclosure hearing and sales date for the four (4) properties Defendant has since denied that she was delinquent Plaintiff scheduled a foreclosure hearing on the four pending actions for June 30, 2011 On June 27, 2011, Defendant filed a Motion for Relief from Default and Stay of Proposed Sale then tentatively scheduled for July 5, 2011 A hearing was held before the Honorable Ralph P Stroman, Special Referee, on June 30, 2011 At the hearing Defendant argued that one of the four (4) properties being foreclosed was her residence and that the Plaintiff had not complied with the Supreme Court's order of May 2, 2011, with regards to that property Notwithstanding, an order was entered on August 1, 2011, by Special Referee, Stroman, denying defendant's motion for relief from default A motion to reconsider was timely filed on August 16, 2011, by defendant and Judge Stroman denied that motion by order entered September 2, 2011 Written notice of the entry of the order of denial was received by counsel on September 12, 2011, and Defendant served a notice of appeal on September 27, 2011

Discussion

Defendant submits that the Plaintiff has not complied with the Supreme Court's Administrative Order entered May 2, 2011

On June 14, 2011, plaintiff's counsel executed what is entitled a "Certification of Mortgagor Non-Compliance (Administrative Order 2011-05-02-01)" The certificate states the following

The Plaintiff by and through its undersigned attorney does hereby certify as follows

- 1) That this is an action for the foreclosure of owner occupied real property

2) That pursuant to Supreme Court Administrative Order 2011-

05-02-01

- a The Mortgagor entered into a Forbearance Agreement with the Plaintiff or [sic] about January 31, 2011 as a part of a mortgage intervention plan to assist the Mortgagor in keeping her property
- b The Mortgagor has failed, refused, or voluntarily elected not to comply with the terms of the Forbearance Agreement as a part of a mortgage foreclosure intervention

This Certification does not comply with the Court's Administrative Order, we submit
The particular intervention process referenced by plaintiff's counsel predated the Court's
Administrative Order of May 2, 2011

Non-Compliance with the Administrative Order

Enumerated Factors a – e

The Mortgagor must be provided with a notice of the Mortgagor's right to foreclosure intervention This was not done in this instance Further, all proceedings in the foreclosure action shall be stayed until completion of such foreclosure intervention This Order does not exempt cases in which prior intervention efforts have been undertaken in the past The Order provides that, 'No foreclosure hearing or foreclosure sale may be held in the foreclosure action, inter alia, until the Mortgagee's attorney certifies

- a) that the Mortgagor has been served with a notice of the Mortgagor's right to foreclosure intervention for the purpose of seeking a resolution of the foreclosure action by loan modification or other means of loss mitigation,

The plaintiff has not complied with this section of the Order As noted above, plaintiff's counsel has apparently relied on the negotiation process that plaintiff admits was conducted *prior* to the Court's Order of May 2, 2011

Further the Order requires

- b) that the Mortgagee, or its designated agent, has received and examined all documents and records required to be submitted by the Mortgagor to evaluate eligibility for foreclosure intervention,

Counsel's *certification* provided in this instance fails to allege that all of the documents submitted by the mortgagor have been evaluated in order to determine her eligibility for intervention

Further the Order requires plaintiff to show the Court

- (c) that the Mortgagor has been afforded a full and fair opportunity to submit any other information or data pertaining to the Mortgagor's loan or personal circumstances for consideration by the Mortgagee,

Defendant (mortgagor) has not been provided with such an opportunity, and she was never given notice of such a right subsequent to the Court's Administrative Order. The plaintiff did not comply with this requirement.

Further, the Order requires particular standards to be applied to the individual case. The Order states

- (d) [mortgagee must show] that after completion of the foreclosure intervention process, the Mortgagor does not qualify for loan modification or other means of loss mitigation, in accordance with any standards, rules or guidelines applicable to the mortgage loan, and the parties have been unable to reach any other agreement concerning the foreclosure process,

The plaintiff has not shown the Court that the defendant does not qualify for a loan modification or other means of loss mitigation in accordance with any standards applicable to the mortgage loan. The defendant was not given the opportunity to reach any other agreement on this residential property foreclosure. The certification by plaintiff's counsel states only that the mortgagor has failed, refused, or voluntarily elected not to comply with the terms of the Forbearance Agreement as a part of a mortgage foreclosure intervention."

Lastly, the Administrative Order deals with the intervention denial process. The order states,

- (e) [mortgagee must show] that notice of the denial of loan modification or other means of loss mitigation has been served on the Mortgagor by mailing such notice to all known addresses of the Mortgagor, provided, that such notice shall also state that the Mortgagor has 30 days from the date of mailing of notice of denial of relief to file ***and serve an answer or other response to the Mortgagee's summons and complaint***

Emphasis added. This requirement was wholly omitted by the plaintiff. Defendant was never provided with an opportunity to file an answer after the alleged denial. Moreover, in a motion seeking relief from an alleged default, defendant submitted an answer that showed she had meritorious claims against the plaintiff which warranted being litigated on the merits.

General Provisions

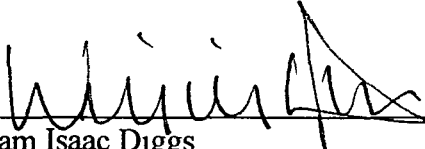
Additionally, the Administrative Order has general provisions which related to all cases pending regardless of when filed. The order states, "A Mortgagee's attorney, by proceeding with a foreclosure, represents to the Court that the Mortgagee has fully complied with all provisions of this Order." We respectfully submit that counsel has overlooked this provision of the Administrative Order and has failed to correctly or accurately represent to the Court the status of this proceeding.

CONCLUSION

For the foregoing reasons, the defendant asks this Court to issue the writ of supersedeas and stay the foreclosure sale of her residence presently scheduled for October 3, 2011.

Respectfully submitted

LAW OFFICES OF WILLIAM ISAAC DIGGS



William Isaac Diggs
1700 Oak Street, Suite D
Myrtle Beach, SC 25977
843-626-4243

**ATTORNEY FOR THE DEFENDANT, AMY
BREUNIG**

This 30th day of September, 2011
Myrtle Beach, South Carolina

Other Counsel of Record

Stacy L. Stanley, Esquire
Stanley Law Firm
3303 Highway 9 East
Little River, SC 29566-7825
843-390-9187

ATTORNEY FOR THE RESPONDENT

EXHIBIT A

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE 15TH JUDICIAL CIRCUIT
COUNTY OF HORRY) Case No. 2009-CP-26-12374

Beach First National Bank n/k/a)
Bank of North Carolina)
)
Plaintiff)
v) DEFENDANT'S
) PETITION FOR WRIT OF SUPERSEDEAS
) SCACR 241(b)
Amy Breunig)
Defendant)

*Obnied 9/30/11
By Ralph Herman
by Susan F. Stone with permission*

COMES NOW THE DEFENDANT / PETITIONER, Amy Breunig, by and through her undersigned counsel pursuant to S C A C R 241(b) who would petition this Court for a writ of supersedeas¹ Said petition is based on the following

SUPERSEDEAS / APPELLATE ISSUE

MUST THE SCHEDULED SALE OF APPELLANT'S RESIDENCE ON OCTOBER 3, 2011 BE STAYED PENDING APPEAL BECAUSE OF PLAINTIFF'S FAILURE TO COMPLY WITH THE REQUIREMENTS OF THE COURT'S ADMINISTRATIVE ORDER DATED MAY 2, 2011

INTRODUCTION

This is a foreclosure proceeding. On August 1, 2011, the Court entered an order of foreclosure regarding defendant's property at 3301 Palm Street, North Myrtle Beach, South Carolina. This is Defendant's residence which she occupies. The Court's order allows appellant's residence to be sold on October 3, 2011. Defendant's timely motion to

¹ SCACR 241 (d) entitled "Procedure for Obtaining Lift of Stay or Supersedeas" states in part: (1) Except where extraordinary circumstances make it impracticable, an application for an order lifting the automatic stay or for supersedeas must first be made to the lower court or administrative tribunal which entered the order or decision on appeal.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

15th JUDICIAL CIRCUIT

COUNTY OF Horry)

CASE NO 2010-CP-26-12374

09

Beach First National Bank n/k/a Bank of
North Carolina

MOTION AND ORDER INFORMATION

Plaintiff,)

FORM AND COVERSHEET

vs)

Amy Breunig)

Defendant)

Plaintiff's Attorney
Stacy L. Stanley, Bar No 13410
Address
3303 East Highway 9
Little River, SC 29566
Phone 843 390 9111 Fax 843 390 9187
E-mail sstanley@stanleylawfirm.com Other

Defendant's Attorney
William Isaac Diggs, Bar No 1689
Address
1700 Oak Street, Suite D
Myrtle Beach, SC 29577
Phone 843 626 4243 Fax 843 626 5123
E-mail william.diggs@myrtlebeachlaw.com Other

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I Hearing Information

Nature of Motion Motion for relief from default and stay of Proposed sale

Estimated Time Needed 45 minutes Court Reporter Needed ☒ YES/☐ NO

SECTION II Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

06/27/2011

Date submitted

SECTION III Motion Fee

☐ PAID - AMOUNT \$

☐ EXEMPT

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court, or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter _____

☐ Other _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached
order

☐ Other _____

JUDGE CODE _____

Date _____

CLERK'S VERIFICATION

Collected by _____ Date Filed _____

☐ MOTION FEE COLLECTED \$ _____

☐ CONTESTED - AMOUNT DUE \$ _____

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FOR THE 15TH JUDICIAL CIRCUIT
Case No 2010-CP-26-12374

Beach First National Bank n/k/a)
Bank of North Carolina)

Plaintiff,)

v)

Amy Breunig,)

Defendant)

MOTION FOR RELIEF FROM DEFAULT
(Pursuant to Rule 60(b))
AND STAY OF PROPOSED SALE

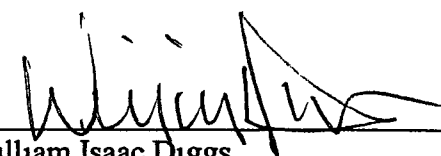
11 JUL 27 PM 1 42
JRI YED

TO. THE PLAINTIFF AND ITS ATTORNEY OF RECORD, STACY L STANLEY, ESQUIRE

YOU WILL PLEASE TAKE NOTICE THAT THE DEFENDANT, Amy Breunig, hereby gives notice of her intent to request of the Master in Equity, the Court's proper Order granting relief from default in the above reference case pursuant to S C R C P 60(b), and, if applicable, a stay of the foreclosure sale requested by plaintiff to be scheduled for July 5, 2011 Said motion is based on the grounds that a forbearance agreement had been reached between the parties allowing for reinstatement of defendant's loan and the acceptance of a renewal note which agreement was wrongfully breached by plaintiff without just cause or excuse and for constitutionally prohibited considerations and (b) the property at issue is defendant's principal residence and the Court's Administrative Order dated May 2, 2011 has not been complied with by plaintiff

BE SO NOTIFIED'

LAW OFFICES OF WILLIAM ISAAC DIGGS



William Isaac Diggs
1700 Oak Street, Suite D

Myrtle Beach, SC 25977
843-626-4243 Tel
843-626-5123 Fax

**ATTORNEY FOR THE DEFENDANT AMY
BREUNIG**

This 27 day of June, 2011
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FOR THE 15TH JUDICIAL CIRCUIT
Case No 2010-CP-26-12374

Beach First National Bank n/k/a)
Bank of North Carolina)
Plaintiff,)
v)
Amy Breunig,)
Defendant)

**AFFIDAVIT IN SUPPORT OF
MOTION FOR RELIEF FROM DEFAULT
AND STAY OF FORECLOSURE SALE
(Pursuant to Rule 60(b))
OF DEFENDANT AMY BREUNIG**

COMES NOW THE UNDERSIGNED, who being duly sworn, deposes and
says as follows

1 My name is Amy Breunig and I am the defendant in the above captioned
action I am over the age of 18 years and I am qualified to make this affidavit

2 On May 14, 2008, I was involved in a motorcycle accident and received
head trauma and other physical bodily injury My treatment has been on-going and I am
still under a doctor's care

3 Shortly after this accident I began to miss my regular payments on the
notes and mortgages I had with Beach First National Bank However, I always had
sufficient incomes with which to pay these financial obligations I was just unable to
manage my own business affairs during that time frame and fell behind on my
obligations

4 In July, 2010, I met with plaintiff's attorneys and Danny Broach of the
plaintiff bank at the side room located off the courtroom used by the Master in Equity in
Horry County, South Carolina An agreement was reached between me and the bank and
I began making the payments required of me In addition to that, and as part of that

agreement, I was required to pay principal only payments of over \$53,000 00 to the bank to convince the bank to agree to allow me to make my regular payments

5 On or about October 12, 2010, I was arrested by the police at Atlantic Beach, South Carolina for charges which I assert are bogus. The charges all stem from a dispute I have had with the City officials at Atlantic Beach, regarding business license taxes and fees, and, to some extent, race considerations. Thereafter, I was arrested three additional times all related to similar allegations. All of the charges are bogus in my opinion and I have not been convicted of any offense.

6 Even though I have not yet been convicted even as of the date of this writing, at the time of my last arrest, I received an email from Danny Broach which said, inter alia, they were foreclosing after taking into consideration the arrests referenced above. This was so even though I had complied with the forbearance agreement we reached earlier. Additionally, the bank had stated to me in writing that a renewal note would be accepted in my case. I relied on this representation. Nevertheless, the bank thereafter refused to do so. I have endured this foreclosure process as a direct result thereof.

7 It appears to me that the plaintiff bank is working with the City of Atlantic Beach in order to deprive me of my ownership rights in my property.

8 Additionally, the properties plaintiff desires to be sold (lots 11 & 12 in the Windy Hill Section of North Myrtle Beach, South Carolina) contain my principal residence. I believe my home is covered by the Supreme Court's Administrative Order of May 2, 2011.

9 I have sufficient income with which to pay the financial obligations I have

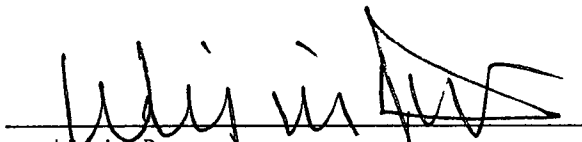
to the plaintiff bank and there is no reason the bank has to foreclose on the mortgages at issue in my cases

10 The last time my attorney checked the Court file in this matter, a signed order allowing for the sale of my property had not been filed. Even so, I am asking for a stay of foreclosure sale since plaintiff has requested a sale date of July 5, 2011

FURTHER I SAITH NOT'


Amy Breunig

Sworn to before me this 27th day of
June, 2011


Notary Public for South Carolina
My Commission Expires 09/2013

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE 15TH JUDICIAL CIRCUIT
COUNTY OF HORRY) Case No 2009-CP-26-12374

Beach First National Bank n/k/a)
Bank of North Carolina)
)

Plaintiff,)

v)

Amy Breunig,)

Defendant)

ANSWER AND COUNTERCLAIM

11 JUL 27 PM 1 42
JUL 27 2009

COMES NOW THE DEFENDANT, Amy Breunig, who would responding to
the plaintiff's complaint, show unto this Court as follows

FOR A FIRST DEFENSE

Waiver, Estoppel, Laches and/or Unclean Hands

The parties had a course of dealing in this matter Plaintiff entered into conduct which amounts to a false representation or concealment of material facts regarding renewal notes, plaintiff did so with the intention that such conduct shall be acted upon by the defendant, and plaintiff had knowledge, actual or constructive, of the true facts Simultaneously therewith defendant, (1) lacked knowledge regarding plaintiff's intention to embark upon a new course of dealing to refuse to offer a renewal note, and defendant lacked the means or knowledge of the truth as to the facts in question, (2) there was justifiable reliance upon the plaintiff's conduct by the defendant, and (3) a prejudicial change in position by defendant Defendant was lulled into a false sense of security and therefore pleads equitable estoppel as a defense to the foreclosure

FOR A SECOND DEFENSE

Intervening Circumstances New Agreement

After the plaintiff filed this action the parties entered into a forbearance

agreement and plaintiff has breached this agreement

FOR A THIRD DEFENSE

Intervening Circumstances

(False Sense of Security Change of Course of Dealing by New Plaintiff)

Subsequent to the forbearance agreement entered into by and between the parties, the plaintiff Beach First National Bank was acquired by the plaintiff Bank of North Carolina. The present bank embarked on a different course of action without giving defendant reasonable and sufficient warning. Defendant pleads that she was lulled into a false sense of security regarding the acceptance of a renewal note and pleads such as an affirmative defense in this action.

FOR A FOURTH DEFENSE

The Plaintiff has failed to comply with the Supreme Court's Administrative Order dated May 2, 2011 and therefore affirmatively pleads the same as a defense to foreclosure.

FOR A FIFTH DEFENSE

Modification

1 Defendant admits that plaintiff is organized under the law of the State of South Carolina.

2 Defendant admits paragraph two of plaintiff's complaint wherein it alleges that she is a citizen and resident of the State of South Carolina and the owner of real property located in Horry County, South Carolina which is the subject of this action.

3 Defendant admits paragraph three of plaintiff's complaint regarding the location of the property at issue and the Court's jurisdiction.

4 Paragraph four of the complaint is admitted regarding the execution of the note referenced therein in the amount of \$255,450.00.

5 Paragraph five of the complaint is likewise admitted regarding the execution of a mortgage. However, defendant would show the Court that the mortgage was on Lots 11 & 12 in the Windy Hill Section of North Myrtle Beach. Defendant would show that and said property constitutes defendant's principal place of residency and is her residence as contemplated by the Court's Administrative Order dated May 2, 2011.

6 Paragraph six of the complaint is admitted regarding the execution of a Mortgage and Note Modification agreement.

7 Defendant admits paragraph 7 of plaintiff's complaint regarding the execution of a note of an amount up to \$135,000.00. However, Defendant would show that plaintiff's exhibit D is a home equity line of credit secured by a mortgage on her principal place of residence.

8 The allegations of paragraph eight are admitted regarding the execution of a Mortgage and Note Modification Agreement on February 9, 2007.

9 The allegations contained within paragraph nine of plaintiff's complaint are admitted regarding the execution of a Mortgage and Note Modification Agreement. Additionally, defendant would show that the following constitutes a listing of transactions regarding the specific property being foreclosed upon by plaintiff in this action:

- On April 18, 2005, defendant executed a note in the amount of \$255,450.00 with monthly payments in the amount of \$1,663.96 and a balloon payment due in 35 months in the amount of \$248,132.99.
- On May 1, 2008, defendant executed a new note which again called for monthly payments for 35 months in the amount of \$1,607.28 and a balloon payment of \$239,588.88 on May 1, 2011,

- On April 19, 2005 defendant Amy Breunig executed a mortgage on her lots 11 and 12 of Windy Hill Section of North Myrtle Beach, her principal place of residency,
- On February 9, 2007, defendant executed a Home Equity line of credit in the amount of \$135,000 00 and a cross collateralized mortgage on her principal place of residency,
- On January 28, 2008 defendant executed a Mortgage and Note Modification agreement modifying the interest rate on the home equity line of credit note establishing a 5% floor;
- In the spring of 2011, plaintiff refused to accept a renewal note without notice and after indicating to defendant in writing that a renewal note would be accepted

10 Paragraph ten of plaintiff's complaint is admitted regarding the fact that plaintiff is the holder of the note(s) referenced above

11 Paragraph eleven is admitted however, defendant would assert that the note(s) and / or mortgages at issue in this matter speak for themselves and contain the terms and conditions set out therein

12 Defendant admits that the allegations contained within paragraph "12" of the complaint were true at the time of the writing of said complaint, but that subsequent thereto, the parties' entered into a new agreement Pursuant to the new agreement, defendant paid to the plaintiff total payments in the amount of approximately \$53,000 00 in principal only payments and made regular monthly payments thereafter Defendant faithfully made the payments required of her thereafter until without just cause or excuse the plaintiff unilaterally began to refuse to accept defendant's tendered payments and refused to accept a renewal note even though it had previously stated in writing that it would do so

13 Paragraph 13 was true as of the date of the writing of plaintiff's complaint and as of the date of the filing of same However, defendant would show that the parties

entered into an agreement during July, 2010 as a result of which defendant paid to the plaintiff approximately \$53,000 00 in principal only payments and thereafter began to make regular payments on all obligations to plaintiff Defendant would show that plaintiff wrongfully breached the agreement and began to move forward on foreclosure efforts against plaintiff's property even though defendant was still willing and able to make timely payments on her obligations to the plaintiff

14 Defendant would assert that the documents referenced in this paragraph of the plaintiff's complaint speak for themselves The remaining portions of paragraph "14" are denied

15 Paragraph fifteen is denied Defendant would show that this plaintiff has wrongfully proceeded against the defendant in this matter and is not entitled to any deficiency judgment against the defendant and plaintiff has failed to comply with the Supreme Court's Order of May 2, 2011

16 Paragraph sixteen is denied and defendant would show that plaintiff is not entitled to foreclosure or any monetary judgment in this matter Defendant would further show that plaintiff has breached its agreement as set forth and described above in this responsive pleading

17 This paragraph seventeen is denied Defendant would show that the Court's Administrative Order of May 2, 2011 is applicable in this action because the property at issue is defendant's residence

18 Defendant denies paragraph 18 Defendant would show that the paragraph is misleading in that the parties negotiated a settlement of this litigation in which defendant paid over \$53,000 00 to plaintiff in total principal only payments and her

regular monthly payments thereafter until plaintiff unilaterally decided to stop accepting defendant's payments

**FOR A SIXTH DEFENSE
BY WAY OF COUNTERCLAIM**
Breach of Contract

19 Defendant incorporates the foregoing paragraphs and reasserts the same as if set out herein verbatim

20 On or about July 13, 2010, defendant met with plaintiff's attorney for a hearing scheduled before the Master in Equity. During that meeting, defendant and plaintiff entered into a new agreement wherein and whereby defendant would pay the plaintiff a total of over \$53,000.00 in principal only payments and to pay regular monthly payments thereafter.

21 Defendant made the necessary payments and in all respects complied with the terms of the agreement.

22 During the month of April, 2011, in breach of the parties' agreement, plaintiff unilaterally decided not to accept defendant's payments any longer and proceeded with its attempt to foreclose on defendant's mortgage and seek a deficiency judgment against defendant. Plaintiff refused to accept a renewal note from defendant even though it had indicated in writing that it would do so.

23 As a direct and proximate result of plaintiff's breach of contract, defendant has suffered damages and has been forced into foreclosure.

WHEREFORE, defendant would request the following relief:

a That the plaintiff's complaint be dismissed in its entirety and the plaintiff take nothing on its claim,

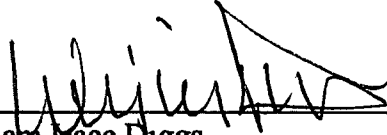
b the defendant be granted a stay of foreclosure in this matter and plaintiff ordered to reinstate the loan(s) secured by the property referenced in the plaintiff's mortgage as attached as an exhibit to the complaint filed in this action,

c an award of attorney's fees to the defendants as the prevailing party in this action as such is contemplated in the note and mortgage at issue in this litigation, and

d for any other and further relief deemed just and proper in this matter

Respectfully submitted,

**LAW OFFICES OF WILLIAM ISAAC
DIGGS**



William Isaac Diggs
1700 Oak Street, Suite D
Myrtle Beach, South Carolina
843-626-4243 Tel
843-626-5123 Fax

**ATTORNEYS FOR DEFENDANT AMY
BREUNIG**

This 27th day of June, 2011
Myrtle Beach, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph Stroman, Special Referee

Case No 2009-CP-26-12374

Bank of North Carolina,

Respondent,

v

Amy Breunig,

Appellant

RETURN TO PETITION FOR SUPERSEDEAS AND STAY OF FORECLOSURE
SALE OF APPELLANT'S RESIDENCE SCHEDULED FOR OCTOBER 3, 2011

Stacy L Stanley, Esquire
V Denise Hamilton, Esquire
STANLEY LAW FIRM
3303 Highway 9 East
Little River, South Carolina 29566
(843) 390-9111
Attorneys for Respondent

Pursuant to Rules 240 and 241, SCACR, Respondent files this Return in opposition to the Appellant's Petition for Supersedeas and Stay of Foreclosure Sale of Appellant's Residence Scheduled for October 3, 2011 in the case of Bank of North Carolina v Amy Breunig, Case No 2009-CP-26-12374

FACTUAL/PROCEDURAL BACKGROUND

Appellant Amy Breunig, made, executed and delivered unto Respondent Beach First National Bank n/k/a Bank of North Carolina, a certain Promissory Note in writing, dated April 18, 2005 by which Appellant promised to pay to Respondent the principal sum of Two Hundred Fifty-Five Thousand Four Hundred Fifty and 00/100ths (\$255,450 00) Dollars, along with interest at the rate of six and three quarters percent (6 75%) per annum. Additionally, on April 18, 2005, in order to secure the above-referenced Promissory Note, Appellant delivered to Respondent a Mortgage for Lots 11 and 12, Block 4, with improvements thereon, in Little River Township. The Mortgage was thereafter recorded in the Office of the Register of Deeds for Horry County in Mortgage Book 4009 at Page 1486.

Appellant also made, executed and delivered unto Respondent a certain Home Equity Variable Draw Agreement in writing dated February 9, 2007 by which Appellant promised to pay to Respondent the principal sum of One Hundred Thirty-Five Thousand and 00/100ths (\$135,000 00) Dollars, along with interest at a variable rate with an initial rate of nine and one quarter percent (9 25%) per annum. On that same date, in order to secure the above-referenced Home Equity Variable Draw Agreement, Appellant did deliver to Respondent a Mortgage for Lots 11 and 12, Block 4, with improvements thereon, in Little River Township. The Mortgage was thereafter recorded in the Office of the Register of Deeds for Horry County in Mortgage

Book 4848 at Page 2889 Thereafter, Appellant made, executed and delivered unto Respondent a certain Mortgage and Note Modification Agreement in writing dated January 28, 2008 by which the interest rate of the Home Equity Variable Rate Agreement was modified

On May 1, 2008, Appellant made, executed and delivered unto Respondent a certain renewal Note in writing by which Appellant promised to pay to Respondent the principal sum of Two Hundred Forty-Six Thousand Seven Hundred Five and 68/100ths (\$246,705 68) Dollars, along with interest at the rate of six and three quarters percent (6 75%) per annum This loan matured on May 1, 2011

Appellant defaulted on the loan in 2009 A right to cure was mailed on September 22, 2009, but Appellant failed to cure the default

The Lis Pendens, Summons and Foreclosure Complaint of Respondent were filed on December 23, 2009 Service of the Lis Pendens, Summons and Complaint of Respondent was made on Appellant on January 7, 2010, as evidenced by the Affidavit of Service Appellant did not file an Answer On March 8, 2010, an Affidavit of Default was filed by Respondent

A notice of default and right to cure was sent to Appellant by Respondent but to no avail A foreclosure hearing was held on June 11, 2010 before the Honorable Cynthia Graham Howe, at which the Appellant and the Respondent both appeared The court issued its Master's Report and Judgment of Foreclosure and Sale and Notice of Sale on July 7, 2010 The property was to be sold on August 2, 2010 On August 3, 2010, an Order substituting Bank of North Carolina as Plaintiff was entered

Prior to the sale, the parties verbally agreed Appellant would be allowed to make up delinquent payments. Subsequently, the parties memorialized the agreement and entered into a Forbearance Agreement dated December 13, 2010 and an amended Forbearance Agreement on January 31, 2011 wherein Appellant agreed to make monthly payments of \$1,607.28. In her Petition, Appellant contends she signed a Forbearance Agreement involving four different foreclosure cases. However, contrary to Appellant's assertion, she signed four separate Forbearance Agreements. A separate Forbearance Agreement was executed for each loan.

Appellant did not make payments in accordance with the Forbearance Agreement and, in fact, only paid \$7,770.00 total. As a result, Appellant was in default of the Forbearance Agreement. The Forbearance Agreement provided that, if Appellant defaulted under the Forbearance Agreement, the Respondent could resume the foreclosure proceeding at the point at which it was stopped prior to the Forbearance Agreement.

Due to Appellant's default on the Forbearance Agreement and Note which matured on May 1, 2011, Respondent proceeded with the foreclosure in this action, as well as three other foreclosures against Appellant. On June 7, 2011, Respondent mailed a letter to the Master in Equity advising that the parties had previously entered into a Forbearance Agreement, Appellant had defaulted under the terms of the agreement, enclosing a Supplemental Master's Report and Judgment of Foreclosure and Sale, Amended Notice of Sale, Amended Affidavit of Attorney's Fees, and Certificate of Mailing and asking the Master to sign the Report and Notice of Sale. The Master in Equity called and advised Respondent's attorney that, because it had been over a year since the previous foreclosure

hearing on this case, the Master required the Respondent to have another hearing, although the only material factors to change were the principal and interest amounts

The second foreclosure hearing was held on June 30, 2011 before the Honorable Ralph Stroman, Special Referee. Appellant appeared at the hearing with her attorney, William I. Diggs, who had filed a Motion for Relief from Default and Stay of Proposed Sale

At the hearing, Appellant argued that one of the four properties being foreclosed was her residence and that Respondent had not complied with the Supreme Court's Administrative Order dated May 2, 2011, with regard to her residence. Respondent requested that the property be sold on August 2, 2011. However, Appellant requested an additional sixty days before sale of the property such that the foreclosure sale would occur on October 3, 2011. Thus, at the June 30 hearing, Respondent, Respondent's counsel, Appellant and Appellant's attorney agreed to extend the sale of the property until October 3, 2011.

Special Referee Stroman memorialized this agreement in his Supplemental Master's Report and Judgment of Foreclosure and Sale dated July 13, 2011, which stated "Upon agreement between counsel for the Plaintiff and Defendant, this property shall be sold at the foreclosure sale on October 3, 2011." Judge Stroman denied Appellant's motion for relief from default and stay of foreclosure sale and ordered the property be sold at the October 3 foreclosure sale. In the Order, Judge Stroman stated "Based on the information presented to this Court, it appears that this Court has previously held the Defendant in default by Order dated July 7, 2010. The parties further agreed that the foreclosure sale would be scheduled for October 3, 2011." Thereafter, Judge Stroman denied Appellant's motion for

reconsideration and reiterated that the property “shall be sold at the foreclosure sale on October 3, 2011 ”

DISCUSSION

In her Petition, Appellant argues the scheduled sale of her residence on October 3, 2011 must be stayed pending appeal because Respondent has failed to comply with the requirements of the Supreme Court of South Carolina’s Administrative Order dated May 2, 2011 regarding mortgage foreclosure actions. This assertion has no merit.

First, the Administrative Order dated May 2, 2011 is not applicable to the instant case. The Master in Equity issued the Master’s Report and Judgment of Foreclosure and Sale and Notice of Sale on July 7, 2010, prior to the date the Administrative Order was issued on May 2, 2011. In addition, the first mortgage loan matured on May 1, 2011, eight days prior to the effective date of the Administrative Order. Thus, Respondent was not required to serve Appellant with a Notice of Foreclosure Intervention.

The second foreclosure hearing held on June 30, 2011 occurred at the Master in Equity’s direction because the previous hearing had been held over a year earlier. Judge Stroman issued a Supplemental Master’s Report and Judgment of Foreclosure and Sale on August 1, 2011. In his Order Denying Defendant’s Motion for Relief from Default, he stated “Based on the information presented to this Court, it appears that this Court has previously held the Defendant in default by Order dated July 7, 2010.” Accordingly, the default date as determined by the Special Referee was prior to the May 2, 2011 Administrative Order.

Second, Respondent had essentially complied with the terms of the Administrative Order regarding mortgage foreclosure intervention prior to its issuance on May 2, 2011. Respondent entered into a Forbearance Agreement with Appellant in an effort to assist Appellant in keeping her property. Respondent gave Appellant an opportunity to maintain the payments on her loan pursuant to the Forbearance Agreement. However, Appellant violated the Forbearance Agreement by defaulting on her payments. Appellant was under the terms of the Forbearance Agreement at the time the Administrative Order was issued. The Forbearance Agreement provided:

Upon and after the occurrence of an event of default all amounts then remaining unpaid under the loan documents and this Agreement shall be immediately due and payable and Lender shall be free to exercise any or all rights and remedies provided for under the loan documents, including, but not limited to continuance of the foreclosure action. By entering into this agreement, Lender shall in no way be considered to have waived or have been estopped from exercising any or all of its rights and remedies under the loan documents. Nothing contained herein shall constitute a waiver of any or all of the Lender's rights or remedies including the right to proceed with the foreclosure action. This Agreement shall not be construed as a discontinuance of the foreclosure action and any forbearance by the Lender and acceptance of monies hereunder shall not be deemed an estoppel, prejudice or waiver of Lender's right to proceed with the foreclosure action.

It is also agreed that the Lender may, without further notice to the Borrower, proceed ex parte with all further proceedings in the foreclosure action, inclusive of the Order of Reference, preparation of Master's Report and entering final Judgment of Foreclosure and Sale, except that the Lender agrees to forbear in scheduling the foreclosure sale as long as an event of default does not exist. In the event there is an event of default, the premise will be sold at a foreclosure sale for the unpaid balance of the monies due to Lender.

Thus, upon execution of the Forbearance Agreement, which was a "foreclosure intervention," Appellant agreed that upon default, Respondent could continue the foreclosure action from the point where the foreclosure action stopped just prior to the execution of the Forbearance Agreement.

Prior to the second foreclosure hearing on June 30, 2011, the first mortgage loan matured on May 1, 2011. Therefore, Appellant was further in default for failure to pay off the loan as required in the Note.

Finally, at the June 30, 2011 hearing while in Judge's chambers, Appellant asked for an additional sixty days to bring her payments current before the property would be sold at foreclosure sale. Respondent granted Appellant's request. Appellant specifically agreed that the foreclosure sale would be scheduled for October 3, 2011. Thus, Appellant should be estopped from now claiming the foreclosure sale should be stayed.

Although Appellant asked for an additional sixty days within which to bring her payments current before the sale of the property, she made no payments within the sixty day

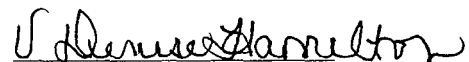
period This sixty day extension was essentially a second “foreclosure intervention ” Since Respondent had already provided Appellant with foreclosure interventions via the Forbearance Agreements and the subsequent sixty-day extension of time, was Respondent required to offer a third foreclosure intervention to Appellant? Respondent satisfied the spirit and intent of the Administrative Order through the Forbearance Agreements and subsequent grant of the requested sixty day extension before the specific sale date agreed to by Appellant

In her Affidavit in Support of the Motion for Relief from Default and Stay of Foreclosure Sale, Appellant asserted she has “sufficient income with which to pay the financial obligations [she has] to the plaintiff bank ” If this is an accurate assertion, why has Appellant not brought her account current?

Accordingly, the Order temporarily granting Appellant’s Petition for Supersedeas should be reversed, the stay of the foreclosure sale should be lifted, and the property at issue should be sold at the next foreclosure sale

October 11, 2011

Respectfully submitted,



V Denise Hamilton
Stacy L Stanley
STANLEY LAW FIRM
3303 Highway 9 East
Little River, South Carolina 29566
(843) 390-9111
Attorneys for Respondent

The South Carolina Court of Appeals

Bank of North Carolina,

Respondent,

v

Amy Breunig,

Appellant

The Honorable Ralph Stroman
Horry County
Trial Court Case No 2009-CP-26-12374

ORDER

Appellant petitions this Court to supersede Judge Stroman's order denying Appellant's motion for relief from default and stay of the foreclosure sale. Appellant requests the scheduled sale of Appellant's residence be stayed pursuant to the South Carolina Supreme Court Administrative Order 2011-05-02-01. This Court temporarily granted the petition for supersedeas pending a return from the Respondent. Respondent has now filed a return, and Appellant has filed a reply.

After careful consideration, Appellant's petition for supersedeas is denied. We note this foreclosure action began before the Administrative Order was signed. Although we find the Administrative Order is applicable because this action was pending on May 9, 2011, Appellant's rights under the Administrative Order were honored in substance and there was nothing the mortgagee could have done to further honor those rights.

IT IS SO ORDERED

Columbia, South Carolina

cc William L. Diggs, Esquire
Stacy L. Stanley, Esquire

A handwritten signature in cursive script, appearing to read "John Cannon", written over a horizontal line.

FILED

10/24/11

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph Stroman, Special Referee
Case No 2009-CP-26-12374

BANK OF NORTH CAROLINA

Respondent,

v

AMY BREUNIG,

Appellant

**PETITION FOR SUPERSEDEAS AND STAY OF
FORCLOSURE SALE OF APPELLANT'S RESIDENCE**

SUPERSEDEAS / APPELLATE ISSUE

MUST THE SALE OF APPELLANT'S RESIDENCE BE STAYED PENDING
APPEAL BECAUSE OF PLAINTIFF'S FAILURE TO COMPLY WITH THE
REQUIREMENTS OF THE COURT'S ADMINISTRATIVE ORDER DATED MAY 2,
2011

COMES NOW THE DEFENDANT / PETITIONER, Amy Breunig, by and through her undersigned counsel, pursuant to S C A C R 241(d)(2), who would petition this Court for a review of the Order entered by the Honorable John C. Few, Chief Judge, and a supersedeas and stay of the sale of her home in foreclosure pending the appeal of this case on the merits. This stay is necessary to preserve jurisdiction of the appeal or to

prevent a contested issue from becoming moot, to wit whether the Respondent should comply with the Court's Administrative Order entered May 2, 2011 Further, this petition is based on the following

S C A C R 241(d)(4)

A FACTUAL BACKGROUND

This is a foreclosure proceeding on a residence On August 1, 2011, the trial Court entered an order of foreclosure regarding defendant's property at 3301 Palm Street, North Myrtle Beach, South Carolina This is Appellant's residence which she has occupied at all times relevant to this case The trial Court's order allowed appellant's residence to be sold on October 3, 2011¹ Appellant's timely motion to reconsider was denied on September 5, 2011 and the property was scheduled to be sold on October 3, 2011 Appellant asked the Court of Appeals to grant a supersedeas pursuant to SCACR 241 and stay the sale of her property until the Administrative Order requirements had been met This request was based on the plaintiff bank's failure to comply with the Supreme Court's Administrative Order dated May 2, 2011 While there was an agreement entered by and between the parties in the summer/fall of calendar year 2010, that intervention dealt with four different foreclosure proceedings, of which one was Appellant's residence No intervention process has been had in accordance with the Administrative Order of May 2, 2011, and Appellant is capable of maintaining current payments on her residence No intervention process was conducted pursuant to the

¹ An Order of Chief Judge Few entered September 30, 2011, stayed that sale temporarily However, on October 24, 2011, Chief Judge Few lifted that stay with the entry of the Order which is at issue herein

Administrative Order even though this case was pending as of the date of the Administrative Order on May 2, 2011

Background

On April 18, 2005, defendant executed a note in the amount of \$255,450 secured by a mortgage in favor of plaintiff's predecessor in interest. The mortgage identified the property as lots 11 and 12 in Windy Hill section of North Myrtle beach, with a street address of 3307 Palm Street. On February 9, 2007 defendant executed a mortgage on the same property which was given to secure a revolving line of credit. The Home Equity agreement extended a line of credit up to \$135,000.00 with a maturity date of February 9, 2022. On January 28, 2008, defendant executed a Mortgage Note and Modification regarding the property. On May 1, 2008 defendant executed a renewal note in the amount of \$246,705.68.²

On December 23, 2009, Respondent filed a Notice of Lis Pendens along with civil action 09-CP-26-12374. Service was effectuated on January 7, 2010. On March 8, 2010 an Affidavit of Default filed by plaintiff's attorney. On July 13, 2010, the printed Testimony of one, Johnny Brown, was filed with the Court along with a Notice of Sale of 3307 Palm Street, a Master's Report and Judgment of Foreclosure and Sale, and a Judgment in a Civil Case Form 4. On August 4, 2010, an Order substituting counsel for the Plaintiff was entered. A forbearance agreement was entered following the July, 2010, hearing. That agreement involved four (4) foreclosure cases between these parties and

² Appellant owned several business properties, some of which were financed by Respondent. On May 14, 2008, Appellant was involved in a motor cycle collision. She suffered traumatic brain injury. While she was not hospitalized for an extended period of time, the injury did prohibit her thereafter from effectively running her businesses. She experienced trouble in keeping up with various mortgage payments, primarily as a result of her injury as opposed to problems with cash flow.

others associated with this Appellant Appellant paid approximately thirty eight thousand dollars on the note given in exchange for loan proceeds used to purchase the residence, and approximately thirty thousand (\$30,000 00) more dollars in principal payments to the plaintiff on the three (3) additional foreclosure actions as a result of that agreement

However, Respondent again alleged that Appellant had fallen delinquent on the residential account and the three (3) other accounts and sought a foreclosure hearing and sales date for the four (4) properties Appellant has since denied that she was delinquent Respondent scheduled a foreclosure hearing on the four pending actions for June 30, 2011 On June 27, 2011, Appellant filed a Motion for Relief from Default and Stay of Proposed Sale then tentatively scheduled for July 5, 2011 A hearing was held before the Honorable Ralph P Stroman, Special Referee, on June 30, 2011 At the hearing Appellant argued that one of the four (4) properties being foreclosed was her residence and that the Plaintiff bank had not complied with the Supreme Court's order of May 2, 2011, with regards to that property Notwithstanding, an order was entered on August 1, 2011, by Special Referee, Stroman, denying Appellant's motion for relief from default A motion to reconsider was timely filed on August 16, 2011, by the Appellant and Judge Stroman denied that motion by order entered September 2, 2011 Written notice of the entry of the order of denial was received by counsel on September 12, 2011, and Appellant served a notice of appeal on September 27, 2011

Appellant's property was set to be sold on October 5, 2011 Appellant sought and obtained a stay of that sale from the Court of Appeals on October 2, 2011 Chief Judge John C Few entered that temporary stay on October 2, 2011 However, on October 24,

2011, Chief Judge Few lifted the stay and Appellant's residence may now be sold at foreclosure

**B GROUNDS FOR THE PETITION
(And Legal Arguments with Supporting Points and Authority)**

Appellant submits that the Plaintiff has not complied with the Supreme Court's Administrative Order entered May 2, 2011, and unless a stay is granted during the pendency of this appeal, the appeal itself will become moot

On June 14, 2011, plaintiff's counsel executed what is entitled a "Certification of Mortgagor Non-Compliance (Administrative Order 2011-05-02-01)" The certificate states the following

The Plaintiff by and through its undersigned attorney does hereby certify as follows

- 1) That this is an action for the foreclosure of owner occupied real property
- 2) That pursuant to Supreme Court Administrative Order 2011-05-02-01

- a The Mortgagor entered into a Forbearance Agreement with the Plaintiff or [sic] about January 31, 2011 as a part of a mortgage intervention plan to assist the Mortgagor in keeping her property
- b The Mortgagor has failed, refused, or voluntarily elected not to comply with the terms of the Forbearance Agreement as a part of a mortgage foreclosure intervention

Notwithstanding this certification, a second hearing was required by the Court to be held on June 30, 2011 Appellant submits that a second foreclosure hearing was required to be held after the first intervention process, a fortiori the Court's Administrative Order of May 2, 2011, was applicable as well Counsel's Certification does not comply with the

Court's Administrative Order, we submit The particular intervention process referenced by plaintiff's counsel predated the Court's Administrative Order of May 2, 2011 The intervention process conducted prior to the Administrative Order was not sufficiently broad as is the Administrative Order

Non-Compliance with the Administrative Order

Enumerated Factors a – e from the Administrative Order were not met Under these factors,

(a) the Mortgagor must be provided with a notice of the Mortgagor's right to foreclosure intervention This was not done in this instance Further, the proceedings in the foreclosure action were never stayed from the time the Administrative Order issued until completion of such foreclosure intervention This Order does not exempt cases in which prior intervention efforts have been undertaken in the past The Administrative Order at issue provides that, "No foreclosure hearing or foreclosure sale may be held in the foreclosure action, inter alia, until the Mortgagee's attorney certifies " that the Mortgagor has been served with a notice of the Mortgagor's right to foreclosure intervention for the purpose of seeking a resolution of the foreclosure action by loan modification or other means of loss mitigation This was not done in this case As noted above, plaintiff's counsel has relied wholly on the negotiation process that plaintiff admits was conducted *prior* to the Court's Order of May 2, 2011 Further, this action was not stayed for intervention purposes after the Administrative Order's issuance Further section

b) of the Administrative Order requires a showing, " that the Mortgagee, or its designated agent, has received and examined all documents and records required to be submitted by the Mortgagor to evaluate eligibility for foreclosure intervention " This has not been done Appellant has lost four commercial properties since the Administrative Order was entered and no recent evaluation of Appellant's cash flow status has been done Counsel's *certification* provided

in this instance fails to allege that all of the documents submitted by the mortgagor have been evaluated in order to determine Appellant's eligibility for intervention Further the Administrative Order requires a plaintiff to show the Court,

(c), that the Mortgagor has been afforded a full and fair opportunity to submit any other information or data pertaining to the Mortgagor's loan or personal circumstances for consideration by the Mortgagee This Appellant has not been provided with such an opportunity, and she was never given notice of such a right subsequent to the Court's Administrative Order The plaintiff did not comply with this requirement Further, the Order requires particular standards to be applied to the individual case The Order states

(d) [mortgagee must show] that after completion of the foreclosure intervention process, the Mortgagor *does not qualify for loan modification or other means of loss mitigation*, in accordance with any standards, rules or guidelines applicable to the mortgage loan, and the parties have been unable to reach any other agreement concerning the foreclosure process Emphasis added The plaintiff did not show the Court that the Appellant does not qualify for a loan modification or other means of loss mitigation in accordance with any standards applicable to the mortgage loan The defendant/Appellant was not given the opportunity to reach any other agreement on this residential property foreclosure The certification by plaintiff's counsel states only that the mortgagor, "has failed, refused, or voluntarily elected not to comply with the terms of the Forbearance Agreement as a part of a mortgage foreclosure intervention " Lastly, the Administrative Order deals with the intervention denial process The order states,

(e) [mortgagee must show] that notice of the denial of loan modification or other means of loss mitigation has been served on the Mortgagor by mailing such notice to all known addresses of the Mortgagor, provided, that such notice shall also state that the Mortgagor has 30 days from the date of mailing of notice of denial of relief to file *and serve an answer or other response to the Mortgagee's summons and complaint* Emphasis added This requirement

was omitted by the plaintiff Defendant was never provided with an opportunity to file an answer after the alleged denial Moreover, in a motion seeking relief from an alleged default, defendant submitted an answer that showed she had meritorious claims against the plaintiff which warranted being litigated on the merits

General Provisions

Additionally the Administrative Order has general provisions which related to all cases pending regardless of when filed The order states, "A Mortgagee's attorney, by proceeding with a foreclosure, represents to the Court that the Mortgagee has fully complied with all provisions of this Order " We respectfully submit that counsel has overlooked this provision of the Administrative Order and has failed to correctly or accurately represent to the Court the status of this proceeding

In its Return to the Petition for Supersedeas filed with the Court of Appeals, Respondent argued at pages 8-9 of its return that because of a prior forbearance agreement, " Respondent had essentially complied with the terms of the Administrative Order regarding mortgage foreclosure intervention prior to its issuance of May 2, 2011 " In deciding to lift the temporary stay pending this appeal, Chief Judge Few's order essentially agrees with Respondent's position The Order states,

After careful consideration, Appellant's petition for supersedeas is denied We note this foreclosure action began before the Administrative Order was signed Although we find the Administrative Order is applicable because this action was pending on May 9, 2011, Appellants' rights under the Administrative Order were honored in substance and there was nothing the mortgage could have done to further honor those rights

We respectfully submit that the Order errs in adopting Respondent's position and overlooks the breadth of the Administrative Order's applicability In the Administrative

Order, the Court stated that it was attempting to deal with the increasing number of foreclosures notwithstanding the prior order of the Court dated May 22, 2011. Specifically the Administrative Order of May 2, 2011, stated in part

Since imposition of my prior order, the number of foreclosure actions filed in this State have continued to increase. The trial courts having jurisdiction over such actions have reported to this Court difficulty in making final disposition of these actions *as a result of failed or delayed loss mitigation efforts between lender-servicers and mortgagor-debtors*. As a result, the number of unresolved foreclosure actions has increased, with a resulting burden on the resources of the Court before which the action is pending.

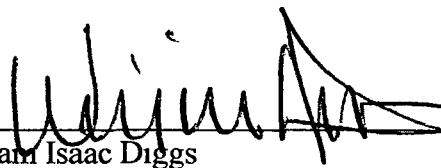
Emphasis added. *Thus, the Administrative Order anticipates that intervention measures might have been undertaken in foreclosure actions but that those measures had failed or had been ineffectual.* Moreover, the Order applies to ALL actions presently pending as of the date of the Order, or May 2, 2011, as this case was. Past interventions are not exempted from this Order. Therefore, we respectfully submit that the Administrative Order anticipated that interventions may have occurred and failed. Even so, the Order states that it would have application to any pending case as of May 2, 2011, if the sale had not been had.

We respectfully submit that not all of the rights set out in the Administrative Order of May 9, 2011 were dealt with in the prior intervention process. During that time frame, Appellant was without counsel and no record was developed of which counsel is aware. Appellant's residence was dealt with while three additional commercial properties were being foreclosed on by the Respondent at the same time. Appellant was held in default in the foreclosure proceeding on her residence and such would not have been the

case had the Administrative Order been in effect at that time, or it is reasonably unlikely that Appellant would have defaulted on her residence foreclosure proceeding

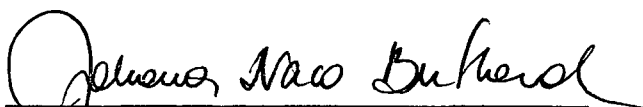
C CERTIFICATION BY COUNSEL

Counsel hereby certifies that he sought supersedeas relief at the local trial level and that counsel's request for supersedeas relief was denied Appellant obtained a temporary stay of sale from the Honorable John C Few, Chief Judge of the South Carolina Court of Appeals which stayed the sale of Appellant's residence previously scheduled for October 3, 2011 However, the stay was lifted, on Monday, October 24, 2011 Appellant now seeks review of that decision from the full Appellate Court pursuant to S C A C R 241(d)(2)


William Isaac Diggs

This 28th day of October, 2011

Sworn to before me this 28th day of
October, 2011

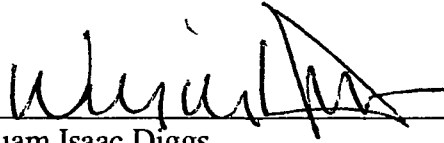

Notary Public for South Carolina
My Commission Expires
April 7, 2015

CONCLUSION

For the foregoing reasons the Appellant asks this Court review the decision of the Honorable Chief Judge Few and to issue the writ of supersedeas and stay the foreclosure sale of her residence pending the outcome of Appellant's appeal

Respectfully submitted

LAW OFFICES OF WILLIAM ISAAC DIGGS



William Isaac Diggs
1700 Oak Street, Suite D
Myrtle Beach, SC 25977
843-626-4243

**ATTORNEY FOR THE DEFENDANT, AMY
BREUNIG**

This 28th day of October, 2011
Myrtle Beach, South Carolina

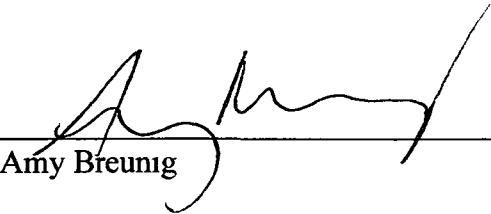
Other Counsel of Record

Stacy L. Stanley, Esquire
Stanley Law Firm
3303 Highway 9 East
Little River, SC 29566-7825
843-390-9187

ATTORNEY FOR THE RESPONDENT

VERIFICATION

PERSONALLY appeared before me, Amy Breunig, being the Appellant within named, who, after being duly sworn, deposes and says that he has read the allegations contained within the Petition for Writ of Supersedeas and Stay and knows same to be true to the best of his own knowledge, excepting such matters and things which are based upon information and belief, and as to those, she believes same to be true also



Amy Breunig

SWORN to me this 29th day of
October, 2011



Notary Public for South Carolina

William Isaac Diaz
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires 09 - 2015

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO 09-CP-26-12374

BANK OF NORTH CAROLINA,)
Plaintiff,)
vs)
AMY BREUNIG,)
Defendant.)

**ORDER DENYING DEFENDANT'S
MOTION FOR RELIEF FROM
DEFAULT AND STAY OF
FORECLOSURE SALE**

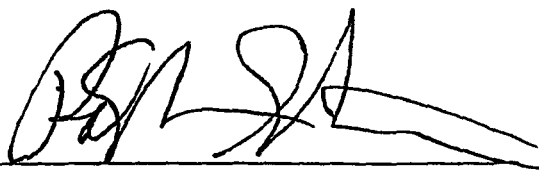
This matter comes before the Court on June 30, 2011, upon Motion of Defendant for Relief from Default and Stay of Foreclosure Sale Present at the hearing was Stacy Stanley on behalf of the Plaintiff Also present at the hearing was William I. Diggs on behalf of the Defendant.

Based on the information presented to this Court, it appears that this Court has previously held the Defendant in default by Order dated July 7, 2010 The parties further agreed that the foreclosure sale would be scheduled for October 3, 2011

THEREFORE, IT IS ORDERED

That the Defendant's Motion for Relief from Default is denied and it is further ORDERED, that the property which is the subject of this action shall be sold at the foreclosure sale on October 3, 2011

IT IS SO ORDERED


RALPH STROMAN, SPECIAL REFEREE

July 13, 2011

Conway, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO 09-CP-26-12374

BANK OF NORTH CAROLINA,)

Plaintiff,)

vs)

AMY BREUNIG,)

Defendant.)

ORDER DENYING DEFENDANT'S
MOTION FOR RECONSIDERATION
OF ORDER ENTERED
AUGUST 1, 2011

This matter comes before the Court upon Defendant's Motion for Reconsideration of Order Entered August 1, 2011.

The court has reconsidered its previous ruling from the hearing held on June 30, 2011, and the Court finds that the Defendant's Motion for Reconsideration should be denied.

THEREFORE, IT IS ORDERED

That the Defendant's Motion for Reconsideration of Order Entered August 1, 2011 is denied and it is further

ORDERED, that the property which is the subject of this action shall be sold at the foreclosure sale on October 3, 2011

IT IS SO ORDERED


RALPH STROMAN, SPECIAL REFEREE

August 30, 2011

Conway, South Carolina

COPY

2011 SEP -2 AM 9 06
MELANIE HUGGINS WARD
CLERK OF COURT
COUNTY

00180

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY COUNTY
IN THE COURT OF COMMON PLEAS
BANK OF NORTH CAROLINA

JUDGMENT IN A CIVIL CASE

CASE NO 09 -CP- CP - 12374

AMY BREUNIG

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE

- ☐ **JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON)** ☐ Rule 12(b), SCRPC, ☐ Rule 41(a), SCRPC (Vol Nonsuit), ☐ Rule 43(k), SCRPC (Settled), ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON)** ☐ Rule 40(j), SCRPC, ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award, ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**
☐ Affirmed; ☐ Reversed, ☐ Remanded, ☐ Other _____
NOTE ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

FILED
HORRY COUNTY
2011 AUG -1 PM 2:58
JELANIE HUGGINS, CLERK OF COURT

IT IS ORDERED AND ADJUDGED

- ☒ See attached order (Formal order to follow)
☐ Statement of Judgment by the Court

SUPPLEMENTAL MASTER'S REPORT AND JUDGMENT OF FORECLOSURE AND SALE

Dated at Conway, South Carolina, this 13th day of July, 2011

[Signature]
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows

Stacy L Stanley
Stanley Law Firm, LLC
3303 E. Highway 9
Little River, SC 29566
ATTORNEY(S) FOR THE PLAINTIFF(S)

Amy Breunig
3307 Palm Street
Little River, SC 29566
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO 09-CP-26-12374

BANK OF NORTH CAROLINA,)
Plaintiff,)
vs)
AMY BREUNIG,)
Defendant.)

**ORDER DENYING DEFENDANT'S
MOTION FOR RELIEF FROM
DEFAULT AND STAY OF
FORECLOSURE SALE**

FILED
AUG - 1 PM 2:58
CLERK OF COURT
JAMES HUGHES-WARD

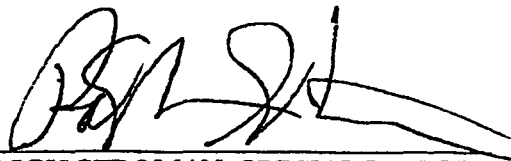
This matter comes before the Court on June 30, 2011, upon Motion of Defendant for Relief from Default and Stay of Foreclosure Sale Present at the hearing was Stacy Stanley on behalf of the Plaintiff Also present at the hearing was William I Diggs on behalf of the Defendant.

Based on the information presented to this Court, it appears that this Court has previously held the Defendant in default by Order dated July 7, 2010 The parties further agreed that the foreclosure sale would be scheduled for October 3, 2011

THEREFORE, IT IS ORDERED

That the Defendant's Motion for Relief from Default is denied and it is further ORDERED, that the property which is the subject of this action shall be sold at the foreclosure sale on October 3, 2011

IT IS SO ORDERED


RALPH STROMAN, SPECIAL REFEREE

July 13, 2011

Conway, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO 09-CP-26-12374

BANK OF NORTH CAROLINA,)
Plaintiff,)
vs)
AMY BREUNIG,)
Defendant.)

**AMENDED
NOTICE OF SALE**

2011 AUG -1 PM 2:58
CLANIE HUGGINS-WARD
CLERK OF COURT
HORRY COUNTY

BY VIRTUE OF A DECREE of the Court of Common Pleas for Horry County, South Carolina, heretofore issued in the case of Bank of North Carolina v Amy Breunig, the undersigned, Master in Equity for Horry County, will sell on October 3, 2011, at 11 00 a.m , at the Horry County Courthouse in Conway, South Carolina, to the highest bidder

The following is a description of the premises subject of said mortgage

ALL AND SINGULAR, all those certain pieces, parcels or lots of land, with improvements thereon, situate, lying and being in Little River Township, County of Horry, State of South Carolina, and being represented as LOTS ELEVEN (11) and TWELVE (12), BLOCK FOUR (4), on a plat or map made for Windy Hill Beach, a Corporation, by N C Hughes, Jr , Engineer, revised March 25, 1947, and recorded in the Office of the Clerk of Court for Horry County, South Carolina in Plat Book 5-A at Page 111, reference to which is made a part and parcel hereof

This being the identical property conveyed to Amy Breunig by Deed of Jeffrey A Finkley dated April 18, 2005 and recorded April 20, 2005 in Deed Book 2896 at Page 899, Horry County records

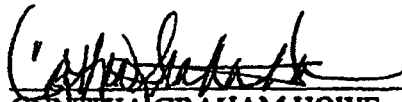
TMS # 156-03-13-005

STREET ADDRESS 3307 Palm Street, North Myrtle Beach, SC 29582

THIS PROPERTY ALSO INCLUDES ANY IMPROVEMENTS THEREON

TERMS OF SALE For cash Interest at the rate of six and three-quarters (6 75) percent to be paid on balance of bid from date of sale to date of compliance The purchaser to pay for papers and stamps, and that the successful bidder or bidders, other than the Plaintiff herein, do, upon the acceptance of his or her bid, deposit with the Master in Equity for Horry County a certified check or cash in the amount equal to five (5%) percent of the amount of bid on said premises at the sale as evidence of good faith in bidding, and subject to any resale of said premises under Order of this Court; and in the event the said purchaser or purchasers fail to comply with the terms of sale within thirty (30) days, the Master in Equity shall forthwith resell the said property, after the due notice and advertisement, and shall continue to sell the same each subsequent sales day until a purchaser, who shall comply with the terms of sale, shall be obtained, such sales to be made at the risk of the former purchaser Since deficiency judgment has been demanded, bidding will be held open for thirty (30) days

If the Plaintiff or the Plaintiff's representative does not appear at the above-described sale, then the sale of the property will be null, void, and of no force and effect. In such event, the sale will be rescheduled for the next available sales day Sold subject to taxes and assessments, existing easements, restrictions of record, and prior judgments


CYNTHIA GRAHAM HOWE
MASTER IN EQUITY

July 15, 2011

Conway, South Carolina

Stacy L. Stanley
Stanley Law Firm, LLC
3303 E. Highway 9
Little River, SC 29566
(843) 390-9111
ATTORNEY FOR PLAINTIFF

~~2~~
~~11~~

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO 09-CP-26-12374

BANK OF NORTH CAROLINA,)
Plaintiff,)
vs)
AMY BREUNIG,)
Defendant)

ED
COUNTY
J11 AUG - 1 PM 2 58
CLERK OF COURT

**SUPPLEMENTAL MASTER'S REPORT
AND JUDGMENT OF FORECLOSURE AND SALE**

Pursuant to Rule 53, SCRCP, the above entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in the case Any appeal from this Order is to the Supreme Court or the South Carolina Court of Appeals

Pursuant to the said Order of Reference, a hearing was held Stacy L Stanley of the Stanley Law Firm appears as attorney for the Plaintiff The Defendant also appeared at the hearing and was represented by William I Diggs The testimony was taken, which is reported herewith, and from the testimony and evidence, I find and conclude as follows

FINDINGS OF FACT

1 I find that by Order dated August 3, 2010, Bank of North Carolina as Successor in Interest to Beach First National Bank was substituted as the Plaintiff in the above entitled case

2 The Lis Pendens, Summons and Complaint of the Plaintiff were filed on December 23, 2009

3 Service of the Lis Pendens, Summons and Complaint of the Plaintiff was made on the Defendant on January 7, 2010, as evidenced by the Affidavit of Service on file herein

4 The Defendant did not file an Answer and is therefore in default.

5 For value received, the Defendant, Amy Breunig, made, executed and delivered unto Beach First National Bank a certain Promissory Note in writing, dated April 18, 2005 by which according to the terms and conditions as set out herein, Defendant promised to pay to the Plaintiff the principal sum of Two Hundred Fifty-Five Thousand Four Hundred Fifty and 00/100ths (\$255,450 00) Dollars, along with interest at the rate of six and three quarters percent (6 75%) per annum. Other terms and conditions are stated in the Promissory Note held by the Plaintiff which was introduced into evidence without objection

6 That also on April 18, 2005, in order to secure the above-referenced Promissory Note, the Defendant did deliver to the Plaintiff a Mortgage for said real property with improvements thereon. The Mortgage was thereafter recorded in the Office of the Register of Deeds for Horry County in Mortgage Book 4009 at Page 1486. This mortgage was introduced into evidence without objection.

7 That also for value received, the Defendant also made, executed and delivered unto Beach First National Bank a certain renewal Note in writing dated May 1, 2008 by which according to the terms and conditions as set out herein, Defendant promised to pay to the Plaintiff the principal sum of Two Hundred Forty-Six Thousand Seven Hundred Five and 68/100ths (\$246,705 68) Dollars, along with interest at the rate of six and three quarters percent (6 75%) per annum. Other terms and conditions are stated in the Promissory Note held by the Plaintiff which was introduced into evidence without objection

8 That also for value received, the Defendant also made, executed and delivered unto Beach First National Bank a certain Home Equity Variable Draw Agreement in writing dated February 9, 2007 by which according to the terms and conditions as set out herein, Defendant promised to pay to the Plaintiff the principal sum of One Hundred Thirty-Five Thousand and 00/100ths (\$135,000 00) Dollars, along with interest at a variable rate with an initial rate of nine and one quarter percent (9.25%) per annum. Other terms and conditions are stated in the Home Equity Variable Draw Agreement held by the Plaintiff which was introduced into evidence without objection

9 That also on February 9, 2007, in order to secure the above-referenced Home Equity Variable Draw Agreement, the Defendant did deliver to the Plaintiff a Mortgage for said real property with improvements thereon. The Mortgage was thereafter recorded in the Office of the Register of Deeds for Horry County in Mortgage Book 4848 at Page 2889 This mortgage was introduced into evidence without objection.

10 That also for value received, the Defendant also made, executed and delivered unto Beach First National Bank a certain Mortgage and Note Modification Agreement in writing dated January 28, 2008 by which according to the terms and conditions as set out herein, the interest rate of the Home Equity Variable Rate Agreement was modified Other terms and conditions are stated in the Promissory Note held by the Plaintiff which was introduced into evidence without objection.

11 A notice of default and right to cure was sent to the Defendant by the Plaintiff but to no avail

12 The title holder of record in and to the subject property as of the filing of the Lis Pendens of the Plaintiff in this action is the Defendant

13 Payments due on the Notes have not been made as provided therein and the Plaintiff has elected to accelerate payment of the entire indebtedness and has placed the note and mortgage in the hands of its attorney herem for collection

14 Further, prior to the foreclosure sale date on August 2, 2010, the parties entered into a Forbearance Agreement however, the Defendant has defaulted on the terms of said Forbearance Agreement.

15 The sum of Three Thousand Five and 00/100ths (\$3,500 00) Dollars is a reasonable fee to allow as attorney's fees for the Plaintiff's attorney for services performed and anticipated to be performed until a final adjudication of the within matter, under the terms of the note and mortgage held by the Plaintiff for the foreclosure action in Horry Cc.nty, South Carolina. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time, including any appeal which may be taken from this Order In setting these attorney's fees, I have taken into consideration

- (1) the nature, extent and difficulty of the legal services rendered,
- (2) the time and labor necessarily devoted to the case,
- (3) the professional standing of counsel,
- (4) the contingency of compensation,
- (5) the beneficial results accomplished, and
- (6) the fee customarily charged in this court for similar legal services

16 I further find that the Plaintiff has had to expend funds for property taxes and insurance on the mortgaged property in order to protect its interest in the property

17 The amount due and owing on the note due the Plaintiff, with interest as provided in the note and other costs and expenses of collection, including the attorney's fees awarded, secured by the note and mortgage is as follows

Principal and Interest as of 6/30/11	
1 st Note	\$243,129 16
Home Equity Agreement	\$139,274.31
Attorney's Fees	\$ 3,500 00
Costs Due	\$ 520 50
2009 & 2010 Property Taxes	\$ 2,103 95
Insurance Premium	\$ 2,199 36
TOTAL DEBT SECURED BY THE NOTES AND MORTGAGES INCLUDING INTEREST TO DATE SHOWN	\$390,727.28

Interest for the period from June 30, 2011 through the date of compliance with the highest bid at the foreclosure sale shall comprise the total judgment debt due the Plaintiff Interest after June 30, 2011 in the amount of Forty-Three and 47/100ths (\$43 47) Dollars on the first Note and Eighteen and 46/100ths (\$18 46) Dollars on the home equity loan, per day is to be added to the above stated amount to comprise the judgment debt secured by the mortgage held by the Plaintiff.

18 Upon agreement between counsel for the Plaintiff and Defendant, this property shall be sold at the foreclosure sale on October 3, 2011

19 The Plaintiff hereby demands deficiency judgment in this matter

20 In the event of any surplus of funds which may be created at a sale of the mortgaged premises ordered herein, an additional hearing will be held at which time evidence may be presented to determine disposition of said surplus

CONCLUSIONS OF LAW

I therefore conclude as follows

The Plaintiff should have judgment of foreclosure of its mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED

(a) That there is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of Three Hundred Ninety Thousand Seven Hundred Twenty-Seven and 28/100ths (\$390,727.28) Dollars representing the total debt due the Plaintiff as set out in Paragraph 17 supra, together with interest at the rate provided therein on the balance or principal for the period set out in said paragraph

(b) The amount in the precedent paragraph ("Total Debt") as set forth in Paragraph 17, supra, and later accrued interest on the principal, shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of Forty-Three and 47/100ths (\$43 47) Dollars on the first Note and Eighteen and 46/100ths (\$18 46) Dollars on the home equity loan.

(c) That the Defendant shall on or before the date of the sale of the property hereinafter described pay to the Plaintiff or to the Plaintiff's attorney the amount of the Plaintiff's debt as aforesaid, together with costs and disbursements of this action

(d) That on default of payment at or before the time indicated, the mortgaged premises described in the Complaint as hereinafter set forth shall be sold by the undersigned Master in Equity at public auction at the Horry County Courthouse in the City of Conway, County and State aforesaid, on some convenient sales day hereafter on the following terms, that is to say

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

(2) Interest on the bid shall be paid to the date of compliance at the legal rate

(3) The sale shall be subject to taxes and assessments, existing easements and restrictions and all matters of record.

(4) Purchaser shall pay for deed stamps and the cost of recording of the Deed.

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

(f) As the Plaintiff has demanded deficiency judgment, the bidding will be held open for thirty (30) days

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

(h) That the undersigned Master in Equity will apply the proceeds of sale as follows

FIRST to the payment of the amount of the costs and expenses of this action,

NEXT, to the payment to the Plaintiff or its attorney the amount of the Plaintiff's
"Total Debt" or so much thereof as the purchase money will pay on same,
NEXT, any surplus will be held pending further Order of this Court.

(1) It is further ORDERED, ADJUDGED AND DECREED that in the event that the successful bidder is other than the Defendant in possession herein, and a Writ of Assistance is presented, the Sheriff of Horry County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and to put the successful bidder or his assigns in such peaceable possession. All valid tenant rights shall be protected pursuant to the Protecting Tenants at Foreclosure Act of 2009

(j) And it is further ORDERED, ADJUDGED AND DECREED that the Defendants and all other persons whomsoever claiming under them, them or it, be forever barred and foreclosed of all right, title, interest, and equity of redemption in the mortgaged premises so sold, or any part thereof

(k) It is further ORDERED, ADJUDGED AND DECREED that pursuant to S C Code Ann §30-9-31 (Supp 1987) the deed of conveyance made pursuant to this sale shall be indexed in the grantor index by the ROD in the name of the owner of record of the subject property immediately prior to execution of the deed, as well as in the name of the undersigned Master in Equity, who executes such deed as grantor

(l) The undersigned Master in Equity retains jurisdiction to do all the necessary acts incident to this foreclosure, including, but not limited to, the issuance of a Writ of Assistance and disposing of any surplus of funds pursuant to Rule 71(c), SCRPC

(m) The following is a description of the premises ordered to be sold

ALL AND SINGULAR, all those certain pieces, parcels or lots of land, with improvements thereon, situate, lying and being in Little River Township, County of Horry State of South Carolina, and being represented as LOTS ELEVEN (11)

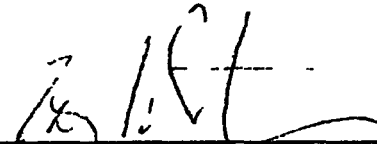
and TWELVE (12), BLOCK FOUR (4), on a plat or map made for Windy Hill Beach, a Corporation, by N C Hughes, Jr, Engineer, revised March 25, 1947, and recorded in the Office of the Clerk of Court for Horry County, South Carolina in Plat Book 5-A at Page 111, reference to which is made a part and parcel hereof.

This being the identical property conveyed to Amy Breunig by Deed of Jeffrey A. Finkley dated April 18, 2005 and recorded April 20, 2005 in Deed Book 2896 at Page 899, Horry County records

TMS #: 156-03-13-005

STREET ADDRESS 3307 Palm Street, North Myrtle Beach, SC 29582

THIS PROPERTY ALSO INCLUDES ANY IMPROVEMENTS THEREON



RALPH STROMAN, SPECIAL REFEREE
ACTING WITH FINALITY

July 13, 2011
Conway, South Carolina

The South Carolina Court of Appeals

Bank of North Carolina,

Respondent,

v

Amy Breung,

Appellant.

The Honorable Ralph Stroman
Horry County
Trial Court Case No 2009-CP-26-12374

ORDER

Appellant petitions this Court to supersede Judge Stroman's order denying Appellant's motion for relief from default and stay of the foreclosure sale. Appellant requests the scheduled sale of Appellant's residence be stayed pending appeal because of Respondent's failure to comply with the Supreme Court's May 2, 2011 Administrative Order regarding foreclosure proceedings. The Petition for Supersedeas is temporarily granted pending a return from the Respondent, which must be served and filed within ten days.

IT IS SO ORDERED

Columbia, South Carolina

cc William I. Diggs, Esquire
Stacy L. Stanley, Esquire



FILED

W. Carter 9/30/11

000495

The South Carolina Court of Appeals

Bank of North Carolina,

Respondent,

v

Amy Breunig,

Appellant

The Honorable Ralph Stroman
Horry County
Trial Court Case No 2009-CP-26-12374

ORDER

Appellant petitions this Court to supersede Judge Stroman's order denying Appellant's motion for relief from default and stay of the foreclosure sale. Appellant requests the scheduled sale of Appellant's residence be stayed pursuant to the South Carolina Supreme Court Administrative Order 2011-05-02-01. This Court temporarily granted the petition for supersedeas pending a return from the Respondent. Respondent has now filed a return, and Appellant has filed a reply.

After careful consideration, Appellant's petition for supersedeas is denied. We note this foreclosure action began before the Administrative Order was signed. Although we find the Administrative Order is applicable because this action was pending on May 9, 2011, Appellant's rights under the Administrative Order were honored in substance and there was nothing the mortgagee could have done to further honor those rights.

IT IS SO ORDERED

Columbia, South Carolina

cc William I Diggs, Esquire
Stacy L Stanley, Esquire

A handwritten signature in cursive script, appearing to read "John C. Cannon", written over a horizontal line.

FILED
10/24/11

000137

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph Stroman, Special Referee
Case No 2009-CP-26-12374

BANK OF NORTH CAROLINA

Respondent,

v

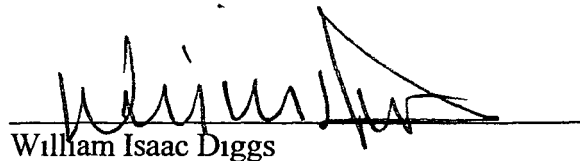
AMY BREUNIG,


Appellant

CERTIFICATE OF SERVICE

This is to certify that I have this 29 day OF October, 2011 deposited one copy of the APPELLANT'S PETITION FOR SUPERSEDEAS AND STAY OF FORCLOSURE SALE OF APPELLANT'S RESIDENCE with postage prepaid and addressed to opposing counsel as follows

Stacy L Stanley, Esquire
V Denise Hamilton, Esquire
Stanley Law Firm
3303 Highway 9 East
Little River, SC 29566-7825


William Isaac Diggs

Myrtle Beach, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph Stroman, Special Referee

Case No 2009-CP-26-12374

Bank of North Carolina,

Respondent,

v

Amy Breunig,

Appellant

RETURN TO SECOND PETITION FOR SUPERSEDEAS AND STAY OF
FORECLOSURE SALE OF APPELLANT'S RESIDENCE

Stacy L. Stanley, Esquire
V Denise Hamilton, Esquire
STANLEY LAW FIRM
3303 Highway 9 East
Little River, South Carolina 29566
(843) 390-9111
Attorneys for Respondent

Pursuant to Rules 240 and 241, SCACR, Respondent files this Return in opposition to the Appellant's Second Petition for Supersedeas and Stay of Foreclosure Sale of Appellant's Residence in the case of Bank of North Carolina v Amy Breunig, Case No 2009-CP-26-12374

FACTUAL/PROCEDURAL BACKGROUND

Appellant Amy Breunig, made, executed and delivered unto Respondent Beach First National Bank n/k/a Bank of North Carolina, a certain Promissory Note in writing, dated April 18, 2005 by which Appellant promised to pay to Respondent the principal sum of Two Hundred Fifty-Five Thousand Four Hundred Fifty and 00/100ths (\$255,450 00) Dollars, along with interest at the rate of six and three quarters percent (6 75%) per annum. Additionally, on April 18, 2005, in order to secure the above-referenced Promissory Note, Appellant delivered to Respondent a Mortgage for Lots 11 and 12, Block 4, with improvements thereon, in Little River Township. The Mortgage was thereafter recorded in the Office of the Register of Deeds for Horry County in Mortgage Book 4009 at Page 1486.

Appellant also made, executed and delivered unto Respondent a certain Home Equity Variable Draw Agreement in writing dated February 9, 2007 by which Appellant promised to pay to Respondent the principal sum of One Hundred Thirty-Five Thousand and 00/100ths (\$135,000 00) Dollars, along with interest at a variable rate with an initial rate of nine and one quarter percent (9 25%) per annum. On that same date, in order to secure the above-referenced Home Equity Variable Draw Agreement, Appellant did deliver to Respondent a Mortgage for Lots 11 and 12, Block 4, with improvements thereon, in Little River Township. The Mortgage was thereafter recorded in the Office of the Register of Deeds for Horry County in Mortgage

Book 4848 at Page 2889 Thereafter, Appellant made, executed and delivered unto Respondent a certain Mortgage and Note Modification Agreement in writing dated January 28, 2008 by which the interest rate of the Home Equity Variable Rate Agreement was modified

On May 1, 2008, Appellant made, executed and delivered unto Respondent a certain renewal Note in writing by which Appellant promised to pay to Respondent the principal sum of Two Hundred Forty-Six Thousand Seven Hundred Five and 68/100ths (\$246,705 68) Dollars, along with interest at the rate of six and three quarters percent (6 75%) per annum This loan matured on May 1, 2011

Appellant defaulted on the loan in 2009 A right to cure was mailed on September 22, 2009, but Appellant failed to cure the default

The Lis Pendens, Summons and Foreclosure Complaint of Respondent were filed on December 23, 2009 Service of the Lis Pendens, Summons and Complaint of Respondent was made on Appellant on January 7, 2010, as evidenced by the Affidavit of Service Appellant did not file an Answer On March 8, 2010, an Affidavit of Default was filed by Respondent

A notice of default and right to cure was sent to Appellant by Respondent but to no avail A foreclosure hearing was held on June 11, 2010 before the Honorable Cynthia Graham Howe, at which the Appellant and the Respondent both appeared The court issued its Master's Report and Judgment of Foreclosure and Sale and Notice of Sale on July 7, 2010 The property was to be sold on August 2, 2010 On August 3, 2010, an Order substituting Bank of North Carolina as Plaintiff was entered

Prior to the sale, the parties verbally agreed Appellant would be allowed to make up delinquent payments. Subsequently, the parties memorialized the agreement and entered into a Forbearance Agreement dated December 13, 2010 and an amended Forbearance Agreement on January 31, 2011 wherein Appellant agreed to make monthly payments of \$1,607.28. In her Petition, Appellant contends she signed a Forbearance Agreement involving four different foreclosure cases. However, contrary to Appellant's assertion, she signed four separate Forbearance Agreements. A separate Forbearance Agreement was executed for each loan.

Appellant did not make payments in accordance with the Forbearance Agreement and, in fact, only paid \$7,770.00 total. As a result, Appellant was in default of the Forbearance Agreement. The Forbearance Agreement provided that, if Appellant defaulted under the Forbearance Agreement, the Respondent could resume the foreclosure proceeding at the point at which it was stopped prior to the Forbearance Agreement.

Due to Appellant's default on the Forbearance Agreement and Note which matured on May 1, 2011, Respondent proceeded with the foreclosure in this action, as well as three other foreclosures against Appellant. On June 7, 2011, Respondent mailed a letter to the Master in Equity advising that the parties had previously entered into a Forbearance Agreement, Appellant had defaulted under the terms of the agreement, enclosing a Supplemental Master's Report and Judgment of Foreclosure and Sale, Amended Notice of Sale, Amended Affidavit of Attorney's Fees, and Certificate of Mailing and asking the Master to sign the Report and Notice of Sale. The Master in Equity called and advised Respondent's attorney that, because it had been over a year since the previous foreclosure

hearing on this case, the Master required the Respondent to have another hearing, although the only material factors to change were the principal and interest amounts

The second foreclosure hearing was held on June 30, 2011 before the Honorable Ralph Stroman, Special Referee. Appellant appeared at the hearing with her attorney, William I. Diggs, who had filed a Motion for Relief from Default and Stay of Proposed Sale

At the hearing, Appellant argued that one of the four properties being foreclosed was her residence and that Respondent had not complied with the Supreme Court's Administrative Order dated May 2, 2011, with regard to her residence. Respondent requested that the property be sold on August 2, 2011. However, Appellant requested an additional sixty days before sale of the property such that the foreclosure sale would occur on October 3, 2011. Thus, at the June 30 hearing, Respondent, Respondent's counsel, Appellant and Appellant's attorney agreed to extend the sale of the property until October 3, 2011.

Special Referee Stroman memorialized this agreement in his Supplemental Master's Report and Judgment of Foreclosure and Sale dated July 13, 2011, which stated "Upon agreement between counsel for the Plaintiff and Defendant, this property shall be sold at the foreclosure sale on October 3, 2011." Judge Stroman denied Appellant's motion for relief from default and stay of foreclosure sale and ordered the property be sold at the October 3 foreclosure sale. In the Order, Judge Stroman stated "Based on the information presented to this Court, it appears that this Court has previously held the Defendant in default by Order dated July 7, 2010. The parties further agreed that the foreclosure sale would be scheduled for October 3, 2011." Thereafter, Judge Stroman denied Appellant's motion for

reconsideration and reiterated that the property “shall be sold at the foreclosure sale on October 3, 2011 ”

Appellant filed a Petition for Supersedeas and Stay of Foreclosure Sale of Appellant’s Residence Scheduled for October 3, 2011 Chief Judge John Cannon Few issued an Order on September 30, 2011 temporarily granting Appellant’s Petition for Supersedeas and staying the foreclosure sale pending the filing of a Return by Respondent On October 13, 2011, Respondent filed a Return and, thereafter, Appellant filed a Reply On October 24, 2011, Chief Judge Few issued an Order on behalf of the Court denying Appellant’s Petition for Supersedeas and concluding

We note this foreclosure action began before the Administrative Order was signed Although we find the Administrative Order is applicable because this action was pending on May 9, 2011, Appellant’s rights under the Administrative Order were honored in substance and there was nothing the mortgagee could have done to further honor those rights

Appellant now petitions for a review of the Order issued by Chief Judge Few and again asks for a supersedeas and stay of the foreclosure sale of Appellant’s residence pending the appeal of this case on the merits

DISCUSSION

In her Petition, Appellant argues the scheduled sale of her residence on October 3, 2011 must be stayed pending appeal because Respondent has failed to comply with the requirements of the Supreme Court of South Carolina’s Administrative Order dated May 2, 2011 regarding mortgage foreclosure actions This assertion has no merit

First, the Administrative Order dated May 2, 2011 is not applicable to the instant case. The Master in Equity issued the Master's Report and Judgment of Foreclosure and Sale and Notice of Sale on July 7, 2010, prior to the date the Administrative Order was issued on May 2, 2011. In addition, the first mortgage loan matured on May 1, 2011, eight days prior to the effective date of the Administrative Order. Thus, Respondent was not required to serve Appellant with a Notice of Foreclosure Intervention.

The second foreclosure hearing held on June 30, 2011 occurred at the Master in Equity's direction because the previous hearing had been held over a year earlier. Judge Stroman issued a Supplemental Master's Report and Judgment of Foreclosure and Sale on August 1, 2011. In his Order Denying Defendant's Motion for Relief from Default, he stated "Based on the information presented to this Court, it appears that this Court has previously held the Defendant in default by Order dated July 7, 2010." Accordingly, the default date as determined by the Special Referee was prior to the May 2, 2011 Administrative Order.

Second, Respondent had essentially complied with the terms of the Administrative Order regarding mortgage foreclosure intervention prior to its issuance on May 2, 2011. Respondent entered into a Forbearance Agreement with Appellant in an effort to assist Appellant in keeping her property. Respondent gave Appellant an opportunity to maintain the payments on her loan pursuant to the Forbearance Agreement. However, Appellant violated the Forbearance Agreement by defaulting on her payments. Appellant was under the terms of the Forbearance Agreement at the time the Administrative Order was issued. The Forbearance Agreement provided

Upon and after the occurrence of an event of default all amounts then remaining unpaid under the loan documents and this Agreement shall be immediately due and payable and Lender shall be free to exercise any or all rights and remedies provided for under the loan documents, including, but not limited to continuance of the foreclosure action. By entering into this agreement, Lender shall in no way be considered to have waived or have been estopped from exercising any or all of its rights and remedies under the loan documents. Nothing contained herein shall constitute a waiver of any or all of the Lender's rights or remedies including the right to proceed with the foreclosure action. This Agreement shall not be construed as a discontinuance of the foreclosure action and any forbearance by the Lender and acceptance of monies hereunder shall not be deemed an estoppel, prejudice or waiver of Lender's right to proceed with the foreclosure action.

It is also agreed that the Lender may, without further notice to the Borrower, proceed ex parte with all further proceedings in the foreclosure action, inclusive of the Order of Reference, preparation of Master's Report and entering final Judgment of Foreclosure and Sale, except that the Lender agrees to forbear in scheduling the foreclosure sale as long as an event of default does not exist. In the event there is an event of default, the premise will be sold at a foreclosure sale for the unpaid balance of the monies due to Lender.

Thus, upon execution of the Forbearance Agreement, which was a “foreclosure intervention,” Appellant agreed that upon default, Respondent could continue the foreclosure action from the point where the foreclosure action stopped just prior to the execution of the Forbearance Agreement

Prior to the second foreclosure hearing on June 30, 2011, the first mortgage loan matured on May 1, 2011. Therefore, Appellant was further in default for failure to pay off the loan as required in the Note

Finally, at the June 30, 2011 hearing while in Judge’s chambers, Appellant asked for an additional sixty days to bring her payments current before the property would be sold at foreclosure sale. Respondent granted Appellant’s request. Appellant specifically agreed that the foreclosure sale would be scheduled for October 3, 2011. Thus, Appellant should be estopped from now claiming the foreclosure sale should be stayed

Although Appellant asked for an additional sixty days within which to bring her payments current before the sale of the property, she made no payments within the sixty day period. This sixty day extension was essentially a second “foreclosure intervention.” Since Respondent had already provided Appellant with foreclosure interventions via the Forbearance Agreements and the subsequent sixty-day extension of time, was Respondent required to offer a third foreclosure intervention to Appellant? Respondent satisfied the spirit and intent of the Administrative Order through the Forbearance Agreements and subsequent grant of the requested sixty day extension before the specific sale date agreed to by Appellant

In her Affidavit in Support of the Motion for Relief from Default and Stay of

Foreclosure Sale, Appellant asserted she has “sufficient income with which to pay the financial obligations [she has] to the plaintiff bank ” In addition, on page 2 of Appellant’s Second Petition for Supersedeas, Appellant alleged she “is capable of maintaining current payments on her residence ” If this is an accurate assertion, why has Appellant not brought her account current?

It is important to note that Appellant did not bring two of the commercial loans current and those two foreclosures were recently finalized, with deficiency judgment being granted against Appellant Although Appellant alleges Respondent did not work with her, Respondent, in a further attempt to work with Appellant, recently allowed a short sale on one of the commercial properties, which was in foreclosure and was the subject of one of the aforementioned forbearance agreements

On page 9 of her second Petition for Supersedeas, Appellant claims that “during the prior intervention process,” “Appellant was without counsel and no record was developed of which counsel is aware ” Appellant knowingly and voluntarily entered into the forbearance agreement and had numerous opportunities to seek advice of and retain counsel as the foreclosure action was filed on December 23, 2009, almost two years ago Respondent should not be penalized because Appellant chose not to seek counsel until she was in default of the forbearance agreement as a part of the foreclosure intervention process

On Page 9 of her Second Petition for Supersedeas, Appellant states that she was “held in default in the foreclosure proceeding on her residence and such would not have been the case had the Administrative Order been in effect at that time, or it is reasonably unlikely that Appellant would have defaulted on her residence foreclosure proceeding ” This assertion is

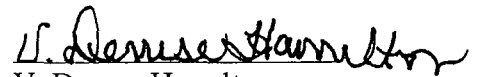
meritless Although the Administrative Order was not in effect at the time the foreclosure proceeding was initiated, Respondent nonetheless provided Appellant with foreclosure interventions via the Forbearance Agreements and the subsequent sixty-day extension of time Respondent was not required to offer a third foreclosure intervention to Appellant

CONCLUSION

Accordingly, the Order denying Appellant's Petition for Supersedeas should be affirmed and the property at issue should be sold at the next foreclosure sale

Respectfully submitted,

November 10, 2011



V Denise Hamilton

Stacy L Stanley

STANLEY LAW FIRM

3303 Highway 9 East

Little River, South Carolina 29566

(843) 390-9111

Attorneys for Respondent

The South Carolina Court of Appeals

Bank of North Carolina,

Respondent,

v

Amy Breunig,

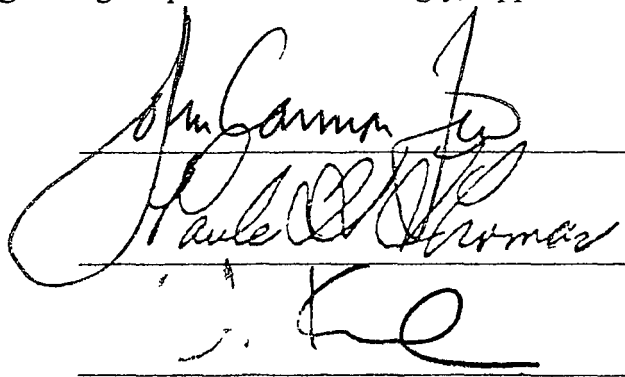
Appellant

The Honorable Ralph Stroman
Horry County
Trial Court Case No 2009-CP-26-12374

ORDER

Appellant filed a petition for panel review of this Court's order denying Appellant's petition for supersedeas. After a careful consideration of the parties' filings, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting the petition. Accordingly, Appellant's petition is denied.

IT IS SO ORDERED


Ralph Stroman

Columbia, South Carolina

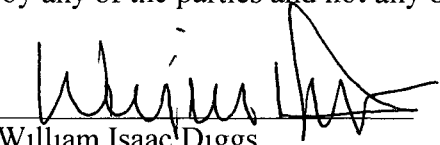
cc William I Diggs, Esquire
Stacy L Stanley, Esquire

FILED

Stanton 11/16/11
210

CERTIFICATE OF COUNSEL

Pursuant to S C A C R 210, counsel certifies that the foregoing Record on Appeal contains all material proposed to be included by any of the parties and not any other material



William Isaac Diggs
ATTORNEY AT LAW
1700 Oak Street, Suite D
Myrtle Beach, SC 29577
(843)-626-4243

ATTORNEY FOR THE APPELLANT

This 3 day of April, 2012
Myrtle Beach, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph Stroman, Special Referee
Case No 2009-CP-26-12374

BANK OF NORTH CAROLINA

Respondent,

v

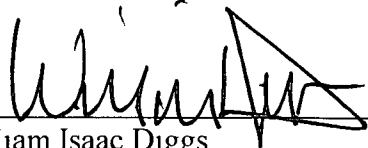
AMY BREUNIG,

Appellant

CERTIFICATE OF SERVICE

This is to certify that I have this 4th day of April, 2012 deposited one copy of the Record of Appeal with postage prepaid and addressed to opposing counsel as follows

Stacy L Stanley, Esquire
V Denise Hamilton, Esquire
Stanley Law Firm
3303 Highway 9 East
Little River, SC 29566-7825



William Isaac Diggs

Myrtle Beach, South Carolina