

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE HORRY COUNTY
Court of Common Pleas

The Honorable Steven H. John, Circuit Court Judge

Case No. 2013-CP-26-2861
Appellate Case No. 2014-002047

RECEIVED
APR 13 2015
SC Court of Appeals

Phyllis Hufton,
..... Respondent,
v.

Flagstar Bank, FSB and John Doe,
..... Defendants

of whom

Flagstar Bank FSB is
..... Appellant

RECORD ON APPEAL

BALLARD & WATSON
Desa Ballard
desab@desaballard.com
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299

NELSON MULLINS RILEY & SCARBOROUGH
Jeremy C. Hodges
jeremy.hodges@nelsonmullins.com
Brian M. Barnwell
brian.barnwell@nelsonmullins.com
Post Office Box 11070
Columbia, South Carolina 29211
Telephone 803.799.2000

ATTORNEYS FOR APPELLANT

TRAYWICK & TRAYWICK, LLC
David P. Traywick
dpt@traywicklaw.com
875 Lowcountry Boulevard, Suite 204
Mount Pleasant, South Carolina 29464
Telephone 843.343 5092

ATTORNEY FOR RESPONDENT

INDEX

Special Referee’s Order Judgment of Foreclosure and Sale, filed August 27, 2012	1
Form 4 Order denying Motion to Dismiss, filed August 15, 2013	15
Form 4 Order denying Flagstar’s Motion for Summary Judgment and Granting Hufton’s Motion to amend, filed June 4, 2014	17
Order granting Partial Summary Judgment, filed July 14, 2014	19
Order denying Flagstar’s Motion to Alter or Amend Partial Summary Judgment Order, filed September 19, 2014.. ..	21
Flagstar’s Lis Pendens, Summons and Complaint, filed February 20, 2012.	22
Acknowledgment of Service signed by David Traywick as Attorney for Defendants Phyllis C Hufton, dated February 24, 2012	32
Affidavit of Personal Service on Phyllis C Hufton by Nelson Tharpe in Virginia dated February 24, 2012 and filed April 1, 2012	33
Answer of Phyllis C. Hufton, dated March 7, 2012	34
Notice of Hearing, filed August 27, 2012.	37
Hufton Complaint, filed April 29, 2013... ..	39
Flagstar Motion to Dismiss or Stay, filed June 24, 2013.... ..	43
Exhibit A Order of Reference	48
Exhibit B Order and Judgment of Foreclosure and Sale.....	50
Exhibit C Report on Sale and Disbursements	65
Exhibit D Motion for Rule to Show Cause	67
Exhibit A Complaint	72
Exhibit B Motion to Dismiss (Omitted See ROA pages 43-78)	
Flagstar’s Motion for Summary Judgment and Memorandum in Support, filed April 7, 2014... ..	77
Exhibit A Indenture Deed	91
Exhibit B Note	97
Exhibit C Mortgage... ..	101
Exhibit D Quitclaim Deed	112

Exhibit E Foreclosure Complaint	117
Exhibit F Email Chain	124
Exhibit G 12/28/11 Letter	127
Exhibit H Foreclosure Answer.....	129
Exhibit I Foreclosure Order	133
Exhibit J Master's Deed.....	148
Hufton's Motion to Amend, dated April 9, 2014	151
Hufton's Motion for Partial Summary Judgment, filed May 12, 2014.	156
Exhibit 1 Quit Claim Deed	163
Exhibit 2 Letter from David Traywick to Kevin Hardy regarding deed in lieu of foreclosure, dated February 1, 2012	165
Exhibit 3 Summons and Complaint	185
Exhibit 4 Special Referee's Order and Judgment of Foreclosure and Sale..	200
Exhibit 5 Affidavits of Service	216
Amended Complaint, filed June 13, 2014	218
Flagstar Answer to Amended Complaint and Counterclaims, filed June 18, 2014	222
Flagstar's Memorandum in Opposition to Motion for Summary Judgment, filed June 18, 2014... ..	234
Exhibit A Indenture Deed	246
Exhibit B Note	252
Exhibit C Mortgage	256
Exhibit D Quitclaim Deed .. .	267
Exhibit E Foreclosure Complaint....	272
Exhibit F Email Chain	279
Exhibit G 12/28/11 Letter	282
Exhibit H Foreclosure Answer.....	284
Exhibit I Foreclosure Order	288
Exhibit J Master's Deed... ..	303

Flagstar’s Motion to Alter or Amend, filed August 4, 2014.....	306
Transcript of Hearing June 24, 2014.....	317
Certificate of Counsel	

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Flagstar Bank, FSB

PLAINTIFF

VS.

Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr. Deceased, James W. Hufton, Jr. as Legal Heir of the Estate of James W. Hufton, Sr. Deceased, Marcee L. Cook as Legal Heir of the Estate of James W. Hufton, Sr. Deceased, Sharie Ann Carey as Legal Heir of the Estate of James W. Hufton, Sr. Deceased, Deborah A. Oehlschlaeger as Personal Representative of the Estate of Elmer Judson Craft, Jr. a/k/a Elmer J. Craft, Jr. a/k/a Elmer J. Craft, Deceased, Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft, as Legal Heir of the Estate of Elmer Judson Craft, Jr. a/k/a Elmer J. Craft, Jr. a/k/a Elmer J. Craft, Deceased, and Bahama Sands Homeowners Association, Inc.

DEFENDANTS

File Number 110855.00256

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-26-1379

SPECIAL REFEREE'S
ORDER AND JUDGMENT
OF FORECLOSURE AND SALE

DEFICIENCY WAIVED

Non-Eligible under the Home Affordable
Modification Program

NOTICE: The original of this document was filed in
the office of the Clerk of Court for Horry County.

HORRY COUNTY
12 AUG 27 AM 9:07
CLERK OF COURT

TO: Ronald C. Scott, SC Bar #4996
Elizabeth R. Polk, SC Bar #11673
Brett F. Kline, SC Bar #15661
Angelia J. Grant, SC Bar #78334
Priti M. Patel, SC Bar #79835
Erica G. Lybrand, SC Bar #79052
Elizabeth A. Blackwell, SC Bar #78756
J. Harrison Rushton, SC Bar #100406
ATTORNEYS FOR THE PLAINTIFF
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
(803) 252-3340

Phyllis C. Hufton, as Personal Representative and
Legal Heir of the Estate of James W. Hufton, Sr.,
c/o David P. Traywick, Esq.
TAYWICK LAW OFFICES, LLC
P.O. Box 564
Isle of Palms, SC 29451

Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft, as Legal Heir and Devisee
of The Estate Elmer Judson Craft, Jr. a/k/a Elmer J. Craft, Jr. a/k/a Elmer J. Craft
307 N. Preston Dr.
Vinton, VA 24179

Bahama Sands Homeowners' Association, Inc.
Resort Association Management, Registered Agent
9550 Shore Dr.
Myrtle Beach, SC 29572

Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson
Craft, Jr. a/k/a Elmer J. Craft, Jr. a/k/a Elmer J. Craft
18-A Kirk Ave.
Roanoke, VA 24011

James W. Hufton, Jr., Marcee L. Cook, and
Sharie Ann Carey, as Legal Heirs and Devisees of
The Estate of James W. Hufton, Sr.
425 Hufton Brook Lane
Blue Ridge, VA 24064

Sharie Ann Carey
1540 Meadow Lark Ln.
Tracy, CA 95376

Marcee L. Cook
385 Hufton Book Lane
Blue Ridge, VA 24064

Pursuant to Circuit Court Rule 53(b) of the South Carolina Rules of Civil Procedure, the
above-entitled matter was referred to the undersigned to make appropriate findings of facts and
conclusions of law with authority to enter a final judgment in the cause.

Pursuant to the said Order of Reference a hearing was held attended by the attorneys of
record. A Record of Hearing was presented, which is herewith reported, and from the Record of

Hearing and the documents and records received into evidence, I find, conclude and order as follows:

FINDINGS

This Court has jurisdiction over the subject matter of this action and the parties hereto and it is the proper forum for the litigation of this matter.

1. The Court has determined that the Plaintiff has complied with the Administrative Order of the Supreme Court dated May 2, 2011 (2011-05-02-01).

2. Based upon the facts and/or evidence presented, the Court has determined that this loan is not eligible under the Home Affordable Modification Program.

3. The Lis Pendens was filed on February 20, 2012.

4. The Summons and Complaint were filed on February 20, 2012.

5. Service was made upon the Defendants named in this Report as is shown by the proofs of service filed herein.

6. The Defendant(s), James W. Hufton, Jr., as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Marcee L. Cook, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Sharie Ann Carey, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft, as Legal Heir of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, and Bahama Sands Homeowners' Association, Inc., are in default as is shown by the affidavit filed herein.

7. The Defendants and/or all attorneys of record were notified of the time, date, and place of the hearing of this matter.

8. According to the affidavit filed herein, any Defendant in default is not in the Military Service of the United States of America, as contemplated under The Servicemembers Civil Relief Act of 2003 and any amendments thereto.

9. For value received, Defendant(s), James Hufton, made, executed and delivered a Note dated April 7, 2008, promising thereby to pay to the order of Golden Gate Mortgage Inc. the sum of \$417,000.00 with interest at the rate of 5.375% per annum. Other terms and conditions are stated in the Note, which is of record herein.

10. To better secure the payment of the Note described above, the said Defendant(s), James W. Hufton, Sr. and Elmer J. Craft, Jr., made, executed and delivered to Mortgage Electronic Registration Systems, Inc. as nominee for Golden Gate Mortgage Inc. a Mortgage in writing, dated April 7, 2008, covering real property in Horry County, which is the same as that described in the Complaint. The Mortgage was filed on April 8, 2008, and is of record in the Office of the Clerk of Court for Horry County in Book 5055, at Page 1407. The Mortgage evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagor(s). The Court finds also that this mortgage constitutes a first lien on the mortgaged premises and a purchase money lien as may apply under state law as well as the After Acquired Property Doctrine. Thereafter, said Note and Mortgage were assigned to Flagstar Bank, FSB by assignment instrument dated January 31, 2012 and recorded February 9, 2012 in Book 5378 at Page 3123.

11. That the Court finds that the Plaintiff and/or its counsel has complied with its obligation(s) as required under the specific terms of the Note and Mortgage being foreclosed as well as any applicable Federal or State statutes or regulations including, but not limited to, the furnishing of any notices required to be given to the obligor(s) which gives to such person(s) the right to cure any default arising under the specific terms of the recited Note and Mortgage herein; the review of this mortgage loan for compliance with the Home Affordability Modification Program (HMP), if applicable, and that moreover and prior to the filing of this judicial proceeding, the Defendant(s) had not raised any compliance defense or objections as to the servicing of any applicable banking or consumer laws by the Plaintiff and/or its counsel.

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

13. With respect to attorney fees and in view of the potential financial liabilities and likely continuing professional obligations inherent in judicially prosecuting a real property mortgage credit matter, the attendant professional duties and responsibilities, and the size of the mortgage debt and consistent with similar case proceedings before this Honorable Court, I find that a reasonable attorney's fee in this matter would be \$1,750.00. This award is consistent with the laws of this state in the awarding of attorney fees. I have considered the six (6) factors (none of these factors is controlling in the singular) as follows: (1) the nature, extent, and

difficulty of the legal service rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. Taylor v. Medenica, 331 S.C. 575, 503 S.E.2d 458 (1998); Baron Data Systems v. Loter, 297 S.C. 382, 377 S.E.2d 296 (S.C. 1989). This fee is also consistent with and pursuant to opinions and orders of this jurisdiction wherein our state's appellate courts have repeatedly held that any contract for attorney fees that may exist or exists between the lawyer and the client (in addition to not being one of the six (6) fee review factors) is specifically not binding on the trial court in its determination of the reasonableness of the attorney fee. Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997); Rice v. Multimedia, Inc., 318 S.C. 95, 456 S.E.2d 381 (1995); and Williamson v. Middleton, 374 S.C. 419, 649 S.E.2d 57 (Cl. App. 2007). Plaintiff's Counsel has likewise reported to this Court that it is billing the Plaintiff a minimum of \$1,750.00 for all uncontested and routine matters plus costs as well as additional fees/costs for any services outside of the contemplated routine and uncomplicated services (relating to contested, complex, or difficult matters) for a case of this type. Total representation of the Plaintiff's interests in this matter have been undertaken (including among many duties the researching of the referral file to serving as custodian of the salient loan file documents to the filing of all pleadings and legally required documents with the court) by the Scott Law Firm, P.A. As to the Scott Law Firm, P.A. and its professional standing, it is noted that counsel for the Plaintiff is regionally and nationally recognized for its professional expertise in mortgage default credit matters as evidenced by its listing in BEST LAWYERS IN AMERICA™ and Martindale-Hubbell Registry of Pre-Eminent Lawyers™. This Court has specifically reviewed and satisfied itself with all six (6) factors to be considered in awarding reasonable attorneys fees in this matter.

14. On receiving testimony and other evidence during this hearing, I find that the Scott Law Firm, P.A. was engaged by the Plaintiff to foreclose the mortgage as expeditiously as possible, given the detriment to Plaintiff's equity position as a direct result of increasing losses from the accrual of interest and related adverse economic conditions such as depreciation or possible damage to the collateralized property. I find that Plaintiff's counsel has achieved a beneficial result with its prompt foreclosure of the subject mortgage.

Upon receipt of the case file, the title was examined and studied to identify all parties having or claiming an interest in the subject real estate as well as being researched for salient legal questions and issues. As to time and labor, I find that various attorneys as well as

experienced paralegal staff have been responsible for (and expended extensive professional time of 10 hours as to the basic services) in the preparation of the following pleadings and other legally required services and documents:

1. Lis Pendens and any amendment thereto
2. Summons and Complaint and any amendment thereto
3. Affidavits and proposed Order of Publication
4. Affidavit of Default
5. Consent(s) to Order of Reference
6. Order of Reference
7. Notice of Hearing
8. Proposed Judgment of Foreclosure and Sale
9. Record of Hearing
10. Notice of Sale
11. Other documents as applicable pertaining to service and finalization of the action.

Counsel may also prepare for the Plaintiff the Statutory Foreclosure Deed and any other documents necessary in this particular action as ordered or authorized by this Court. I find and note the nature, extent and difficulty of the services provided.

Although I have heretofore given consideration to all six (6) factors in the awarding of attorney fees and costs herein, jurisdiction over the fee award shall be reserved as granted in the Order of Reference with the right to re-visit the question of attorney fees should the action proceed in an unexpected way and/or to facilitate the assessment and payment of any such current or additional professional compensation.

5. The amount due and owing on the Note, with interest at the rate provided in the Note, including attorney's fee and allowable costs and charges allowable under and secured by the Note and Mortgage is as follows:

(a)	Principal due	\$396,516.95
(b)	Interest Due from August 1, 2011 to August 16, 2012	\$13,788.09
(c)	Pre-Acceleration Late Charges	\$ 375.44
(d)	Escrow Adjustments (Itemized in Plaintiff's Disbursement Record)	\$ 999.01
(e)	Broker's Price Opinion/Appraisals	\$ 0.00
(f)	Property Preservation	\$0.00
(g)	Previous Bankruptcy Fees/Costs	\$ 0.00
(h)	Property Inspections	\$ 135.00

(l)	Suspense	\$0.00
(j)	Miscellaneous Charges/Credits (Itemized in Plaintiff's Disbursement Record)	\$0.00
(k)	Costs of collection prior to hearing	\$2,566.30
(l)	Attorney's fees and costs	
	(Foreclosure & applicable Bankruptcy)	<u>\$1,750.00</u>
	TOTAL DEBT secured by note and mortgage including interest to date shown	<u>\$416,130.79</u>

Interest for the period from the date shown in (b) above through the date of this Judgment at the above stated rate to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of 3.375% per annum (pursuant to the terms of the Note and Mortgage) on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage through the date to which such interest is computed. (Items (g), (k) and (l) are subject to revision by Plaintiff's counsel and/or modification by the Court.)

16. Based upon a search of the public records of the aforesaid county, all persons or entities having an interest or lien or possible claim in or upon the mortgaged premises subordinate to the lien of the Plaintiff as of the date and time of the filing of the Lis Pendens herein have been made defendants.

17. The Plaintiff is seeking the usual foreclosure of mortgage and has in the Complaint or by amendment thereto, or by motion at the reference, expressly waived the right to a personal or deficiency judgment.

18. The Defendants below named claim or may claim a subordinate lien or junior interest upon or interest in the subject property and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with the Circuit Court Rules 53 and/or 71. The subject Defendant are further made a party due to the similarity in name(s) to the primary defendants against whom they claim or may claim a lien and in order to clear title to this property as follows:

(a) The Defendant, Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr., in such fiduciary capacity as representative of any person or entity that may be a creditor or claimant against such Estate, and by virtue of the

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

(b) The Defendant(s), Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft, as Legal Heir and Devisee of The Estate Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft of by virtue of any interest claimed under the law of succession (S.C. Code 62-2-109) or under decedent's will.

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

(d) The Defendant, Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft in such fiduciary capacity as representative of any person or entity that may be a creditor or claimant against such Estate, and by virtue of the powers granted by Decedent's Will or by statute and by virtue of any interest claimed under the law of succession (S.C. Code 62-2-109) or under decedent's will.

(e) The Defendant(s), James W. Hufton, Jr., Marcee L. Cook, and Sharee Ann Carey, as Legal Heirs and Devisees of The Estate of James W. Hufton, Sr., by virtue of any interest claimed under the law of succession (S.C. Code 62-2-109) or under decedent's will.

19. No Defendant raised any issues related to Plaintiff's standing to prosecute this action. Therefore, any issues related to Plaintiff's standing or ability to prosecute this action are waived.

20. Defendant Phyllis C. Hufton has not established any claims for relief against the Plaintiff, and therefore, no relief should be granted to the Defendant.

CONCLUSIONS OF LAW

I therefore, conclude as follows:

1. The Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2011-05-02-01) issued by Chief Justice Jean H. Toal, dated May 2, 2011.

2. The Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2009-05-22-01) issued by Chief Justice Jean H. Toal, dated May 22, 2009, and has shown that this loan is not eligible under the Home Affordable Modification Program.

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

4. Defendant Phyllis C. Hufton has not established any claims for relief against the Plaintiff, and therefore, no relief should be granted to the Defendant.

Now, on motion of Plaintiff's attorney,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED

1. The Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2011-05-02-01) issued by Chief Justice Jean H. Toal dated May 2, 2011.

2. The Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2009-05-22-01) issued by Chief Justice Jean H. Toal dated May 22, 2009, and has shown that this loan is not eligible under the Home Affordable Modification Program.

3. This case is not subject to the stay provisions of the Order of the Supreme Court of South Carolina dated May 4, 2009, as amended and superceded by Order dated May 22, 2009.

4. That there is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of \$416,130.79, representing the total debt due Plaintiff as set forth supra together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

5. The amount due in the preceding paragraph (the "total debt" as set forth in Paragraph hereinabove, 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 3.375% per annum.

6. That the Defendants liable for the aforesaid Mortgage debt shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or the Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

7. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the undersigned at public auction, after giving Notice of the time and place of such sale by advertisement according to law. Any sales date is tentative and may be rescheduled at any time prior to the sale without

further order of this court or written notice to the parties of the notice of sale, provided notice of the new sales date is duly advertised as required by law. The sale shall be according to the following terms, that is to say:

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

b. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 3.375%.

c. The sale shall be subject to taxes and assessments, existing easements and restrictions of record.

d. This mortgage constitutes a first lien covering the real estate and improvements therein described, including any mobile/manufactured home located thereon. Plaintiff would further allege and avail itself of the Purchase Money Mortgage Doctrine as may apply to the facts of this action.

e. Purchaser to pay for deed stamps and cost of recording the deed with the Plaintiff to pay the Statutory allowed fee of \$25.00 to the preparer of said deed (be it this Court or Counsel for Plaintiff).

8. If Plaintiff be the successful bidder at said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, the Plaintiff may pay to the Clerk of Court only the amount of the costs and expenses, crediting the balance of the bid on Plaintiff's indebtedness.

9. No personal or deficiency judgment being demanded, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately.

10. That the Master in Equity will by advertisement according to law, give notice of the time and place of such sale, and the terms thereof. Any sales date is tentative and may be rescheduled at any time prior to the sale without further order of this court or written notice to the parties of the notice of sale, provided notice of the new sales date is duly advertised as required by law. Master in Equity 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 30 days after the date of sale, then the Master in Equity may advertise the said premises for sale on the next or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured. In the event the Plaintiff is the successful bidder at its/his option or the option of its/his assignee, the deed may be taken subject to payment by grantee of any taxes or assessments constituting a lien against the property sold under this order and hereinafter more fully described. In the event the successful bidder is a third party, neither the Plaintiff nor Plaintiff's counsel make any warranties or representations as to the subject property on behalf of the third party bidder or any subsequent purchasers.

11. The sale will not be held unless the Plaintiff, its attorney, or its bidding agent is present at the sale and enters the bid of the Plaintiff or has advised the Master in Equity's office of its bidding instructions. In the event a sale is held without the Plaintiff entering a bid, the sale shall be void.

12. In the event of a third party bidder and that any third party bidder fails to deliver the required deposit in certified (immediately collectible) funds to the Office of the Master in Equity by close of bidding on the day of the sale, the Master in Equity will re-sell the subject property at the most convenient time thereafter (including the day of sale) upon notification to counsel for Plaintiff.

13. That the Master in Equity shall apply the proceeds of the sale as follows:

FIRST To the payment of the amount of the costs and expense of this action, including any Guardian ad Litem fee or fees of attorneys appointed under Order of the Court.

NEXT To the payment to the Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest or so much thereof as the purchase money will pay on the same, and Plaintiff's attorney shall receive and disburse such funds only in total and absolute compliance with the debt, interest, escrow, and related calculations of this Court including the Court's award for attorney fees and taxable costs.

NEXT Any surplus will be held pending further order of the Court as provided for in the South Carolina Rules of Civil Procedure and particularly Rule 71(c) of the South Carolina Rules of Civil Procedure.

14. It is further ORDERED that if the successful bidder is other than the Defendant in possession herein, upon the presentation of a Writ of Possession, the Sheriff of Horry County is ordered and directed to evict and remove from the premises the occupants of the property.

sold, together with all personal property located thereon, and put the successful Purchaser or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful Purchaser or his assigns in such peaceable possession. All valid Tenant rights pursuant to Protecting Tenants at Foreclosure Act of 2009 shall be protected.

15. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the South Carolina Department of Motor Vehicles is directed and ordered to provide the new Certificate of Title to the attorneys for the Plaintiff as agent for the grantee on the deed upon payment of the required title fees on any mobile/manufactured home which is herein located on the subject property and intended to be collateralized by the Plaintiffs security documents as heretofore received into evidence by this Court, or which may be received into evidence at any necessary hearing post sale of the subject property.

16. And it is further ORDERED, ADJUDGED AND DECREED that Defendant named herein and all persons whosoever claiming under him, them or it, be forever barred and foreclosed of all right, title and interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

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

18. The Special Referee will retain exclusive jurisdiction to do all necessary acts incident to this foreclosure, including, but not limited to, all matters post-sale which may effect the transfer of the title to the subject real property and all improvements thereon, as well, the issuance of a Writ of Assistance.

19. Upon issuance of a Master in Equity's Report on Sale and Disbursements, the Register of Deeds is directed to release of record the mortgage lien being foreclosed, which mortgage lien is described as follows:

Mortgage from James W. Hufton, Sr. and Elmer J. Craft, Jr. to Mortgage Electronic Registration Systems, Inc. as nominee for Golden Gate Mortgage Inc. dated April 7, 2008, covering real property in Horry County, filed on April 8, 2008, and is of record in the Office of the Clerk of Court/Register of Deeds for Horry County in Book 5055, at Page 1407.

20. This sale is subject to all title matters of record and any interested party should consider performing an independent title examination of the subject property as no warranty is given at all by the Court, the Plaintiff or its Counsel. If the judicial sale is set aside by this Court, the successful purchaser at the sale shall be entitled only to a return of the deposit paid, if any.

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

Unit 506 Bahama Sands Horizontal Property Regime, established by Master Deed dated December 26, 2007 and recorded December 31, 2007 in Deed Book 3304 at Page 1609, as thereafter amended, records of Horry County, South Carolina.

Subject to all of the provisions of the aforesaid Master Deed and Exhibits and Amendments thereto.

Together with all of the appurtenances thereto, to said Master Deed and Exhibits and Amendments thereto, and the Grantee(s) assume and agree to observe and perform their obligations under said Master Deed, Exhibits and Amendments thereto, including but not limited to the payment of assessments for the maintenance and operation of the units and condominiums.

And subject to the provisions of the By-laws of Bahama Sands Homeowners Association, Inc.

This being the same property conveyed to James W. Hufton, Sr. and Elmer J. Craft, Jr. by Deed of Bahama Sands Development, LLC, a South Carolina Limited Liability Company, dated April 7, 2008 and recorded April 8, 2008 in the Office of the Register of Deeds for Horry County, South Carolina in Book 3326 at Page 1862.

TMS No. 144-13-43-051

Property address: 1321 South Ocean Boulevard, Unit 506
North Myrtle Beach, SC 29582

22. IT IS FURTHER ORDERED that if the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the above-described property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales day as ordered by this court.

23. No Defendant raised any issues related to Plaintiff's standing to prosecute this action. Therefore, any issues related to Plaintiff's standing or ability to prosecute this action are waived.

24. Defendant Phyllis C. Hufton has not established any claims for relief against the Plaintiff, and therefore, no relief is granted to the Defendant.


Ralph Stroman
Special Referee for Horry County

Conway, South Carolina

 2012

26412/1605
8-13-13
21

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2602861

Phyllis Hufton

Flagstar Bank FSB

John Doe

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: **CLERK OF COURT**

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(c), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ 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

MOTION TO DISMISS DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

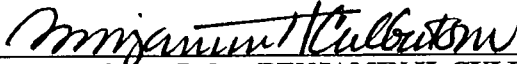
INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	N/A

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

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

	2148	8/14/2013
Circuit Court Judge BENJAMIN H. CULBERTSON	Judge Code	Date
For Clerk of Court Office Use Only		

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

David Paul Traywick PO Box 564 Isle Of Palms, SC 29451

ATTORNEY(S) FOR THE PLAINTIFF(S)

Brian Montgomery Barnwell Meridian/17Th Floor 1320
Main Street Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter NATALIE DAHL

Melanie Huggins-Ward - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2602861Ines
20 +
21

Phyllis Hufton

Flagstar Bank FSB

John Doe

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: **CLERK OF COURT**Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

FILED
HORRY COUNTY
14 JUN -4 AM 8:40
CLERK OF COURT

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:

Motion to amend granted.

Motion for summary judgment denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	N/A

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

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

	2152	6/3/2014
Circuit Court Judge Larry B. Hyman, Jr.	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on, to attorneys of record or to parties (when appearing pro se) as follows:

David Paul Traywick PO Box 564 Isle Of Palms, SC 29451

ATTORNEY(S) FOR THE PLAINTIFF(S)

Brian Montgomery Barnwell Meridian/17Th Floor 1320
Main Street Columbia, SC 29211

Jeremy C. Hodges 1320 Main Street 17Th Floor Columbia,
SC 29201

James Derrick Jackson PO Box 6138 Columbia, SC 29260

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter Ronda Cummings

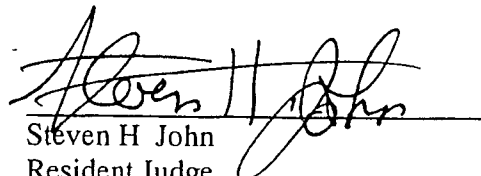
Melanie Huggins-Ward - Clerk of Court

3. The Court finds that Phyllis Hufton, individually, was not a party to the Foreclosure Action. As a result, in the Foreclosure Action, the Special Master lacked personal jurisdiction over Phyllis Hufton, individually, *see, e.g. Roche v. Young*, 456 S.E.2d 897, 899, 318 S.C. 207, 209 (1995)(compliance with Rule 4 confers personal jurisdiction on the court), and subject matter jurisdiction over the Deeded Interest.

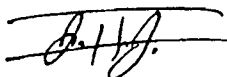
4. In light of the findings above, the Court finds that the Deeded Interest was not affected by the Foreclosure Action and that Phyllis Hufton, individually, remains the owner of the Deeded Interest. *See, e.g. Walker v. Williams*, 46 S.E.2d 249, 250, 212 S.C. 32, 37 (1948)(“It is a fundamental principle that a party cannot be affected by a proceeding in court to which he was not a party ... he is in no sense bound by that judgment.”)

At the June 24, 2014 hearing, the parties notified the Court of several outstanding issues on which the Court makes no ruling or order at present; chiefly, the Plaintiff’s claim for partition, and Flagstar’s claimed right to foreclose a mortgage or to establish and foreclose an equitable lien. On the latter two questions, enforceability of a mortgage or of an equitable lien, the Court finds that these issues have been raised by the Plaintiff’s existing filings and that no further filing is necessary to bring these matters to a hearing. The Court continues the motion on these issues. It is therefore

ORDERED that the Plaintiff’s Motion for Summary Judgment on the question of whether Phyllis Hufton’s Deeded Interest survived the Foreclosure Action is granted.


Steven H. John
Resident Judge
Fifteenth Judicial Circuit

July 14, 2014
Conway, South Carolina





STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Phyllis Hufton,

Plaintiff,

v

Flagstar Bank, FSB, and John Doe,

Defendant

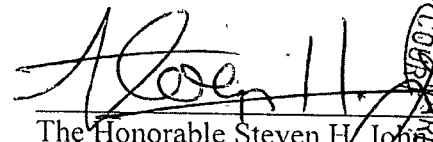
) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT

) Case No 2013-CP-26-02861

) **ORDER DENYING DEFENDANT'S MOTION**
) **TO ALTER OR AMEND PARTIAL SUMMARY**
) **JUDGMENT AND FINDINGS**

This matter came before the Court on Defendant's Motion to Alter or Amend Partial Summary Judgment and Findings regarding the Court's Order on Plaintiff's Motion for Summary Judgment. The Court has considered Defendant's Motion, the written response of the Plaintiff, both filed with the Horry County Clerk of Court, and all other matters in the Clerk of Court's file. The Court finds that oral arguments would not assist it in this matter and that any additional arguments would be redundant and unnecessary. It is therefore

ORDERED that Defendant Flagstar Bank, FSB's Motion to Alter or Amend Partial Summary Judgment and Findings is denied.


The Honorable Steven H. Johnson
Resident Judge
Fifteenth Judicial Circuit

FILED
HORRY COUNTY
2014 SEP 19 AM 8:09
MELANIE HUGGINS
CLERK OF COURT

September 16, 2014
Conway, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Flagstar Bank, FSB,

PLAINTIFF,

VS.

Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr., Deceased, James W. Hufton, Jr., as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Marcee L. Cook, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Sharie Ann Carey, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft, as Legal Heir of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, and Bahama Sands Homeowners' Association, Inc.,

DEFENDANT(S).

(110855.00256)

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-26-

1379

SUMMONS

Foreclosure - Non-Jury

FILED
HORRY COUNTY
JUL 20 AM 11:20
CLERK OF COURT

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 2712 Middleburg Drive, Suite 200, Post Office Box 2065, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service; except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDES, AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY:

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Mortgagee immediately and separately and such application will be deemed absolute and total in the absence of your application for such an appointment within thirty (30) days after the service of the Summons and Complaint upon you.

YOU WILL ALSO TAKE NOTICE that under the provisions of South Carolina Code §29-3-100, effective June 16, 1993, any collateral assignment of rents contained in the mortgage identified in the Complaint is hereby perfected and Plaintiff hereby gives further notice that all rents shall be payable directly to it by delivery of the same to its undersigned attorneys from the date of default forward. In the alternative, the Plaintiff will move a Judge of this Circuit Court on the tenth (10th) day after service hereof, or as soon as counsel for Plaintiff may be heard, for an Order enforcing the assignment of rents, if any, and/or profits, if any, compelling payments of all such funds covered by the mortgage and/or by status and/or by common law directly to the undersigned attorneys for the Plaintiff, which Motion is based upon the original Note and Mortgage identified in the Complaint therein and attached hereto as well as any applicable laws, statutes or regulations.

YOU WILL ALSO TAKE NOTICE that should you fail to Answer the foregoing Summons, the Plaintiff will move for an Order of Reference of this cause to the Master-In-Equity or Special Referee in/for this County, which Order shall, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, specifically provide that the said Master In Equity or Special Referee is authorized and empowered to enter a final judgment in this cause with appeal only to the South Carolina Court of Appeals pursuant to Rule 203(d)(1) of the SCAR, effective June 1, 1999.

SCOTT LAW FIRM, P.A.

By: 

Ronald C. Scott, SC Bar #4996
Elizabeth R. Polk, SC Bar #11673
Brett F. Kline, SC Bar #15661
Angela J. Grant, SC Bar #78334
Priti M. Patel, SC Bar #79835

Kevin T. Hardy, SC Bar #76015
Erica G. Lybrand, SC Bar #79052
Richard G. Duerinckx, SC Bar #70143
Elizabeth A. Blackwell, SC Bar #78756

ATTORNEYS FOR THE PLAINTIFF
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
(803) 252-3340

February 17, 2012

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Flagstar Bank, FSB,

PLAINTIFF

VS.

Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr., Deceased; James W. Hufton, Jr., as Legal Heir of the Estate of James W. Hufton, Sr., Deceased; Marcie L. Cook, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased; Sharie Ann Carey, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased; Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased; Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft, as Legal Heir of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, and Bahama Sands Homeowners Association, Inc.,

DEFENDANT(S)

(110855:00256)

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-28

1379

COMPLAINT

Foreclosure - Non-Jury

(Deficiency waived)

FILED
HORRY COUNTY
CLERK OF COURT
FEB 20 AM 11:20
JENNIFER J. HENDON

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

1. This is an action for foreclosure of a mortgage upon certain real estate in Horry County, South Carolina.

2. Plaintiff is a corporation or other legal entity doing business in the State of South Carolina and is the current holder of the Note and Mortgage described herein.

3. The servicer for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program (HMP), but the HMP process as specified by U.S. Treasury Department's Supplemental Directive 09-01 has been completed without resulting in a modification by virtue of the property not being owner occupied.

4. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.

5. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of Section 15-35-840 of the Code of Laws of South Carolina (1976).

6. Heretofore, under date of April 7, 2008, James Hufton made, executed and delivered to Golden Gate Mortgage Inc. a certain mortgage note ("Note") in writing wherein and whereby James Hufton promised to pay to Golden Gate Mortgage Inc. the principal sum of \$417,000.00.

7. In order to secure the payment of said note, the said James W. Hufton, Sr. and Elmer J. Craft, Jr. did on the same date, to-wit, April 7, 2008, make execute and deliver to Mortgage Electronic Registration Systems, Inc. as nominee for Golden Gate Mortgage Inc. its successors and assigns, a certain mortgage ("Mortgage") covering real property located in the County and State aforesaid, which said mortgage was recorded in the Office of the Clerk of Court/Register of Deeds for Horry County, on April 8, 2008, in Book 5055, at Page 1407. Thereafter, said Note and Mortgage were assigned to Flagstar Bank, FSB by assignment instrument dated January 31, 2012 and recorded February 9, 2012 in Book 5378 at Page 3123.

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

Unit 506 Bahama Sands Horizontal Property Regime, established by Master Deed dated December 26, 2007 and recorded December 31, 2007 in Deed Book 3304 at Page 1609, as thereafter amended, records of Horry County, South Carolina.

Subject to all of the provisions of the aforesaid Master Deed and Exhibits and Amendments thereto.

Together with all of the appurtenances thereto, to said Master Deed and Exhibits and Amendments thereto, and the Grantee(s) assume and agree to observe and perform their obligations under said Master Deed, Exhibits and Amendments thereto, including but not limited to the payment of assessments for the maintenance and operation of the units and condominiums.

And subject to the provisions of the By-laws of Bahama Sands Homeowners Association, Inc.

This being the same property conveyed to James W. Hufton, Sr. and Elmer J. Craft, Jr. by Deed of Bahama Sands Development, LLC, a South Carolina Limited Liability Company, dated April 7, 2008 and recorded April 8, 2008 in the Office of the Register of Deeds for Horry County, South Carolina in Book 3326 at Page 1862.

TMS No. 144-13-43-051

Property address: 1321 South Ocean Boulevard, Unit 506
North Myrtle Beach, SC 29582

8. The borrower, James W. Hufton, Sr. died on or about August 22, 2010.

9. The borrower, Elmer Judson Craft, Jr., died on or about June 5, 2009.

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

11. That the Plaintiff and/or its counsel have complied with its obligation(s) as required under the specific terms of the Note and Mortgage being foreclosed as well as any applicable Federal or State statutes or regulations including but not limited to, the furnishing of any notices required to be given to the obligor(s) which gives to such person(s) the right to cure any default arising under the specific terms of the recited Note and Mortgage herein; and the review of this mortgage loan for compliance with the Home Affordability Modification Program (HMP) as defined by and in the Administrative Order of the South Carolina Supreme Court issued by Chief Justice Jean H. Toal on May 22, 2009, if applicable. That the Plaintiff's counsel has read the allegations in this pleading and that to the best of his/her knowledge, information, and belief, there is a good ground to support it.

12. In and by the terms of said note and the mortgage securing the same, it is provided, among other things, that on failure to pay any installment of either principal and interest or any portion thereof when due, or if any of the conditions and requirements in the mortgage securing the same be not complied with, then the whole principal sum and accrued interest shall at the option of the legal holder thereof become at once due and payable without notice, and collectible by foreclosure.

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

14. The installments of principal and interest falling due from and after September 1, 2011 have not been paid although demand for the payment thereof has been made and the Plaintiff, as the holder of the said note and mortgage, has and does hereby elect to declare the entire balance of said principal and interest due and payable at once; that there is now due and owing and unpaid upon the said note and mortgage the full and just principal sum of \$398,516.95, together with interest thereon at the rate of 3.375% percent per annum from August 1, 2011, together with reasonable attorney's fees for the collection thereof and the costs

of this action. Pursuant thereto, the Plaintiff has employed the undersigned legal counsel to prosecute these actions herein and add the fees and costs of said counsel to the amount of the total debt as provided for in the Note and Mortgage.

15. Upon information and belief, the Defendants below named claim or may claim a subordinate lien or junior interest upon or interest in the subject property, and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with the Circuit Court Rules 53 and/or 71. The subject Defendant are further made a party due to the similarity in name(s) to the primary defendants against whom they claim or may claim a lien and in order to clear title to this property as follows:

(a) The Defendant, Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr., in such fiduciary capacity as representative of any person or entity that may be a creditor or claimant against such Estate, and by virtue of the powers granted by Decedent's Will or by statute and by virtue of any interest claimed under the law of succession (S.C. Code '62-2-109) or under decedent's will.

(b) The Defendant(s), Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft, as Legal Heir and Devisee of The Estate Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft of by virtue of any interest claimed under the law of succession (S.C. Code '62-2-109) or under decedent's will.

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

(d) The Defendant, Deborah A. Gehlschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft in such fiduciary capacity as representative of any person or entity that may be a creditor or claimant against such Estate, and by virtue of the powers granted by Decedent's Will or by statute and by virtue of any interest claimed under the law of succession (S.C. Code '62-2-109) or under decedent's will.

(e) The Defendant(s), James W. Hufton, Jr., Marcee L. Cook, and Shane Ann Carey, as Legal Heirs and Devisees of The Estate of James W. Hufton, Sr., by virtue of any interest claimed under the law of succession (S.C. Code '62-2-109) or under decedent's will.

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

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

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

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

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

2. Plaintiff's mortgage be declared a first lien (and purchase money mortgage first lien as does apply under the specific facts of this action as well as the After Acquired Property Doctrine) and that Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums and/or costs for inspecting and securing the property which may be due or which may be or have been paid by Plaintiff, with a reasonable attorney's fees, and for the costs of this action;

3. The mortgaged premises be sold according to law and the practice of this Court, the equity of redemption as to all defendants be barred and the lien or interest claimed by any defendant be extinguished and that the proceeds of sale be applied as follows:

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

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

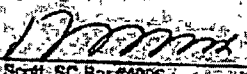
Third, the surplus, if any, be distributed according to law.

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

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

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

SCOTT LAW FIRM, P.A.

By: 

Ronald C. Scott, SC Bar #4996

Elizabeth R. Polk, SC Bar #11679

Brett F. Kline, SC Bar #15661

Angela J. Grant, SC Bar #78334

Prithvi M. Patel, SC Bar #78835

Kevin T. Hardy, SC Bar #76015

Erica G. Lybrand, SC Bar #79052

Richard G. Duerindox, SC Bar #70143

Elizabeth A. Blackwell, SC Bar #78758

ATTORNEYS FOR THE PLAINTIFF

2712 Middleburg Drive, Suite 200

Columbia, SC 29204

(803) 252-3340

February 17, 2012

ROA 029

FB (Hufon) 0356

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Flagstar Bank, FSB

PLAINTIFF

VS.

Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr., Deceased, James W. Hufton, Jr., as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Marcee L. Cook, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Sharie Ann Carey, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft, as Legal Heir of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, and Bahama Sands Homeowners Association, Inc.

DEFENDANT(S)

(110855.00256)

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-26

1379

LIS PENDENS

FILED
HORRY COUNTY
CLERK OF COURT
FEB 20 11 20
JAN 20 11 20

NOTICE IS HEREBY GIVEN that an action has been commenced by the Plaintiff above named against the Defendants above named for the foreclosure of a certain mortgage given by James W. Hufton, Sr. and Elmer J. Craft, Jr. to Mortgage Electronic Registration Systems, Inc. as nominee for Golden Gate Mortgage Inc., dated April 7, 2008, recorded April 8, 2008, in the office of the Clerk of Court/Register of Deeds for Horry County in Book 5055 at Page 1407. Thereafter, said Note and Mortgage were assigned to Flagstar Bank, FSB by assignment instrument dated January 31, 2012 and recorded February 9, 2012 in Book 5378 at Page 3123.

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

Unit 506 Bahama Sands Horizontal Property Regime, established by Master Deed dated December 26, 2007 and recorded December 31, 2007 in Deed Book 3304 at Page 1609 as thereafter amended, records of Horry County, South Carolina.

ROA 030

FB (Hufton) 0347

Subject to all of the provisions of the aforesaid Master Deed and Exhibits and Amendments thereto.

Together with all of the appurtenances thereto to said Master Deed and Exhibits and Amendments thereto, and the Grantee(s) assume and agree to observe and perform their obligations under said Master Deed, Exhibits and Amendments thereto, including but not limited to the payment of assessments for the maintenance and operation of the units and condominiums.

And subject to the provisions of the By-laws of Bahama Sands Homeowners Association, Inc.

This being the same property conveyed to James W. Hufton, Sr. and Elmer J. Craft, Jr. by Deed of Bahama Sands Development, LLC, a South Carolina Limited Liability Company, dated April 7, 2008 and recorded April 8, 2008 in the Office of the Register of Deeds for Horry County, South Carolina in Book 3326 at Page 1862.

TMS No. 144-13-43-051

Property address: 1321 South Ocean Boulevard, Unit 506
North Myrtle Beach, SC 29582

SCOTT LAW FIRM, P.A.

By: 

Ronald C. Scott, SC Bar #4996

Elizabeth R. Polk, SC Bar #11673

Brett F. King, SC Bar #15661

Angelia J. Grant, SC Bar #76334

Priit M. Patel, SC Bar #79835

Kevin T. Hardy, SC Bar #76015

Erica G. Lybrand, SC Bar #79052

Richard G. Duerndorf, SC Bar #70143

Elizabeth A. Blackwell, SC Bar #78756

ATTORNEYS FOR THE PLAINTIFF

2712 Middleburg Drive, Suite 200

Columbia, SC 29204

(803) 252-3340

February 17, 2012

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Flagstar Bank, FSB

PLAINTIFF

VS.

Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr., Deceased, James W. Hufton, Jr., as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Marcee L. Cook, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Sharie Ann Carey, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Deborah A. Gehlschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, Nancy Phillips Craft, a/k/a Nancy P. Craft, a/k/a Nancy Craft, as Legal Heir of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, and Bahama Sands Homeowners Association, Inc.

DEFENDANTS

110855.00256

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-26-1379

ACKNOWLEDGMENT OF SERVICE

DUE AND LEGAL SERVICE of the Lis Pendens, Summons, Complaint, and the Request for Foreclosure Intervention in the above-captioned action is hereby acknowledged this 24 day of February, 2012.


DAVID PAUL TRAYWICK
TRAYWICK LAW OFFICES, LLC
Post Office Box 564
Isle of Palms, SC 29451
Phone: (843) 343-5092
DPT@TRAYWICKLAW.COM
ATTORNEY FOR THE DEFENDANT
PHYLLIS C. HUFTON

Charleston, South Carolina

ROA 032

FB (Hufton) 0996

IN THE COURT OF COMMON PLEAS OF THE STATE OF SOUTH CAROLINA FOR Horry County

Flagstar Bank, FSB

Plaintiff/Petitioner

vs.
Phyllis C. Hufton, as Personal
Representative and Legal Heir of the
Estate of James W. Hufton, Sr.,
Deceased; et al.

Defendant/Respondent

DOCKET NO:
12-CP-28-1379

COPY

AFFIDAVIT OF SERVICE OF:
Civil Action Coversheet; Certificate of
Exemption/Withdrawal from Arbitration; Lis
Pendens; Summons; Complaint; Notice
Required by the the Fair Debt Collection
Practices Act; Certificate of Exemption From
Administrative Order 2011-05-02-01

The undersigned, being first duly sworn, on oath deposes and says: That s(he) is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, has the authority to serve pleadings in the State named below, and is competent to be a witness therein.

On the 24th day of February, 2012, at 8:45 AM, at the address of 2143 COACHMAN Drive, ROANOKE, Roanoke City County, VA 24012, this affiant served the above described documents upon Phyllis C. Hufton, as Personal Representative of the Estate of James W. Hufton, Sr. by then and there personally delivering 1 true and correct copy(ies) thereof, by then presenting to and leaving the same with PHYLLIS C. HUFTON, NAMED PARTY, A white female approx. 35-45 years of age 5'0"-5'2" in height weighing 180-200 lbs with blonde hair.

No information was provided or discovered that indicates that the subjects served are members of the U.S. military.

Is the place of service the dwelling house or usual abode for the party being served? () NO (X) YES

Is the Subject Property a Mobile Home? (X) NO () YES

Is a Mobile Home VIN # visible? (X) NO () YES VIN # _____

DATED this 24 day of FEB 2012


NELSON THARPE, VA

SHERRY B. FIELDS
NOTARY PUBLIC, STATE OF VIRGINIA
NOTARY REG. # 7283-03
COMMISSION EXPIRES 6/30/14

SUBSCRIBED AND SWORN to before me this 24 day of FEB 2012


NOTARY PUBLIC in and for the State of Virginia
My Commission Expires 6/30/14

FOR: Scott Law Firm, P.A.
REF: 110855-00256

ORIGINAL AFFIDAVIT OF
SERVICE

Tracking #: 7283-03 CAE FIL

REC'D MAR 09 2012

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

COUNTY OF HORRY)

Civil Action No.: 2012-CP-26-1379

Flagstar Bank, FSB,)

Plaintiff,)

**ANSWER OF DEFENDANT
PHYLLIS C. HUFTON**

v.)

Phyllis C. Hufton, as Personal)
Representative and Legal Heir of the Estate)
of James W. Hufton, Sr., Deceased, James)
W. Hufton, Jr., as Legal Heir of the Estate)
of James W. Hufton, Sr., Deceased, Sharie)
Ann Carey, as Legal Heir of the Estate of)
James W. Hufton, Sr., Deceased, Deborah)
A. Oehischlaeger, as Personal)
Representative of the Estate of Elmer Craft,)
Jr., aka Elmer J. Craft, Deceased, Nancy)
Phillips Craft aka Nancy P. Craft, as Legal)
Heir of the Estate of Elmer Judson Craft, Jr.)
Aka Elmer J. Craft, Deceased, and Bahama)
Sands Homeowners' Association, Inc.,)

Defendants.)

COMES NOW Defendant Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr., Deceased (hereinafter referred to as the "Defendant") by and through her undersigned attorney, hereby responds to Plaintiff's Complaint as follows:

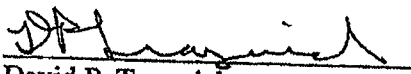
GENERAL ADMISSION

Any allegation contained in the Complaint not specifically denied herein is hereby admitted. Responding to the numbered paragraphs contained in the Complaint, Defendant states the following:

1. The allegations appearing in Paragraph 1 of Plaintiff's Complaint are admitted.

2. The allegations appearing in Paragraph 2 of Plaintiff's Complaint are admitted.
3. The allegations appearing in Paragraph 3 of Plaintiff's Complaint are admitted.
4. The allegations appearing in Paragraph 4 of Plaintiff's Complaint are admitted.
5. The allegations appearing in Paragraph 5 of Plaintiff's Complaint are admitted.
6. The allegations appearing in Paragraph 6 of Plaintiff's Complaint are admitted.
7. The allegations appearing in Paragraph 7 of Plaintiff's Complaint are admitted.
8. The allegations appearing in Paragraph 8 of Plaintiff's Complaint are admitted.
9. The allegations appearing in Paragraph 9 of Plaintiff's Complaint are admitted.
10. The allegations appearing in Paragraph 10 of Plaintiff's Complaint are admitted.
11. The allegations appearing in Paragraph 11 of Plaintiff's Complaint are admitted.
12. The allegations appearing in Paragraph 12 of Plaintiff's Complaint are admitted.
13. The allegations appearing in Paragraph 13 of Plaintiff's Complaint are admitted.
14. The allegations appearing in Paragraph 14 of Plaintiff's Complaint are admitted.
15. The allegations appearing in Paragraph 15 of Plaintiff's Complaint are admitted.
16. The allegations appearing in Paragraph 16 of Plaintiff's Complaint are admitted.
17. The allegations appearing in Paragraph 17 of Plaintiff's Complaint are admitted.

18. The allegations appearing in Paragraph 18 of Plaintiff's Complaint are admitted.
WHEREFORE, this Defendant prays that the Court provide such relief as may be provided at law or in equity.


David P. Traywick
TRAYWICK LAW OFFICES, LLC
P.O. Box 564
I.O.P., SC 29451
Telephone: 843-343-5092
Fax: 843-300-1051
Email: dpt@traywicklaw.com
Attorney for Defendant

March 7, 2012
Charleston, South Carolina

SCOTT LAW FIRM, P.A.
Attorneys and Counselors at Law

Street Address
2712 Middleburg Drive, Suite 200
Columbia, SC 29204

TELEPHONE (803) 252-3340
FACSIMILE (803) 799-1726

Mailing Address
P O Box 2055
Columbia, SC 29202

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

August 16, 2012

Occupant
1321 South Ocean Boulevard, Unit 506
North Myrtle Beach, SC 29582

Phyllis C. Hufton, as Personal Representative
and Legal Heir of the Estate
of James W. Hufton, Sr.,
c/o David P. Traywick, Esq
TAYWICK LAW OFFICES, LLC
P O. Box 564
Isle of Palms, SC 29451

Nancy Phillips Craft a/k/a Nancy P. Craft
a/k/a Nancy Craft
as Legal Heir and Devisee of The Estate
of Elmer Judson Craft, Jr.,
a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft
307 N. Preston Dr
Vinton, VA 24179

Bahama Sands Homeowners' Association, Inc
Resort Association Management, Registered Agent
9550 Shore Dr
Myrtle Beach, SC 29572

Deborah A. Oehlschlaeger, as Personal
Representative
of the Estate of Elmer Judson Craft, Jr., a/k/a
Elmer J. Craft, Jr., a/k/a Elmer J. Craft
18-A Kirk Ave
Roanoke, VA 24011

James W. Hufton, Jr., Marcee L. Cook, and
Sharie Ann Carey, as Legal Heirs and Devisees
of The Estate of James W. Hufton, Sr.,
425 Hufton Brook Lane
Blue Ridge, VA 24064

Sharie Ann Carey
1540 Meadow Lark Ln.
Tracy, CA 95376

Marcee L. Cook
385 Hufton Book Lane
Blue Ridge, VA 24064

Horry County
12 AUG 27 AM 9:07
MELANIE JOHNSON-WARD
CLERK OF COURT

RE: Flagstar Bank, FSB v. Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr., Deceased, James W. Hufton, Jr., as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Marcee L. Cook, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Sharie Ann Carey, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft, as Legal Heir of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, and Bahama Sands Homeowners' Association, Inc.,
Case Number: 2012-CP-26-1379; SLF No. 110855.00256

Dear Sir and/or Madam

The foreclosure hearing in the above-referenced matter that was scheduled for **August 16, 2012 at 10:00 a.m.**, before the Honorable Ralph Stroman, Special Referee for Horry County has been re-scheduled for **August 22, 2012, at 10:00 a.m.**, before the Ralph Stroman, Special Referee for Horry

ROA 037

County, at County Government & Justice Center, 1301 2nd Avenue, Conway, South Carolina, for the purpose of taking testimony, finding of facts and conclusions of law and to enter final judgment therein without further order of the court. If you plan to attend, we would respectfully appreciate your sending an email to mariaw@scottlaw.com or leaving a message for the undersigned at (803) 252-3340 (This is for purposes of notifying you in the event that the hearing is cancelled.) Pursuant to S.C. Code Ann. § 14-11-110 (as amended) and/or applicable case law, the Plaintiff's attorney intends to submit written testimony on behalf of the Plaintiff at the hearing on Plaintiff's behalf.

As a result of the hearing, a foreclosure sale could be ordered as soon as allowed by law after the foreclosure hearing.

Records in the possession of the undersigned as of this date reflect only the above parties and the above counsel (if any). Please contact the undersigned immediately if any counsel has filed an appearance and their name is not reflected above as a recipient of this Notice.

Occupants who are tenants under a valid lease agreement may be entitled to protections under The Protecting Tenants at Foreclosure Act (Title VII, S.896). If the occupant believes this Act applies, then occupant should attend the hearing listed above to present supporting documentation. In addition, if you are currently on active duty or have been within the last nine (9) months, please contact this office immediately as you may be eligible for protection under the Servicemembers Civil Relief Act (SCRA).

SCOTT LAW FIRM, P.A.

By: 

Ronald C. Scott, SC Bar #4996
~~Elizabeth R. Polk, SC Bar #11673~~
Brett F. Kline, SC Bar #15661
Angelia J. Grant, SC Bar #78334

Priti M. Patel, SC Bar #79835
Erica G. Lybrand, SC Bar #79052
Elizabeth A. Blackwell, SC Bar #78756
J. Harrison Ruston, SC Bar #100406

ATTORNEYS FOR THE PLAINTIFF
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
(803) 252-3340

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2013-CP-26- 2861
	)	
PHYLLIS HUFTON,	)	
	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	COMPLAINT
	)	(DECLARATORY JUDGMENT)
FLAGSTAR BANK, FSB,	)	
	)	
	)	
DEFENDANT	)	
AND JOHN DOE.	)	

HORRY COUNTY
 APR 29 PM 2:49
 ANNE HOGGINS-WALKER
 CLERK OF COURT

COMES NOW THE PLAINTIFF, Phyllis Hufton, complaining of the Defendant(s) Flagstar Bank, FSB ("Flagstar") and John Doe, alleging as follows:

Parties and Jurisdiction

1. The Plaintiff brings this action under the authority of South Carolina's Declaratory Judgment Action, South Carolina Code Section 15-53-10 *et seq*, seeking a judgment which declares that she is the fee simple owner of good and marketable title to the real property described herein, and that no Defendant has any interest therein, of any kind.

2. The real property which is the subject of this civil action ("Property") is commonly known as 1321 South Ocean Boulevard, Unit 506, North Myrtle Beach, South Carolina, with TMS# 144-13-43-051, is situated in Horry County, and is more fully described as follows:

Unit 506 Bahama Sands Horizontal Property Regime, established by Master Deed dates December 26, 2007 and recorded December 31, 2007 in Deed Book 3304 at Page 1609, as thereafter amended, records of Horry County, South Carolina. Subject to all of the provisions of the aforesaid Master Deed and Exhibits and Amendments thereto.

Together with all of the appurtenances thereto, to said Master Deed and Exhibits and Amendments thereto, and the Grantee(s) assume and agree to observe and perform their

obligations under said Master Deed, Exhibits and Amendments thereto, including but not limited to the payment of assessments for the maintenance and operation of the units and condominiums.

And subject to the provisions of the By-laws of Bahama Sands Homeowners Association, Inc.

This being the same property conveyed to James W. Hufton, Sr. and Elmer J. Craft, Jr. by Deed of Bahama Sands Development, LLC, a South Carolina Limited Liability Company, dated April 7, 2008 and recorded April 8, 2008 in the Office of the Register of Deeds for Horry County, South Carolina in Book 3326 at Page 1862.

TMS No. 144-13-43-051

Property address 1321 South Ocean Boulevard, Unit 506
North Myrtle Beach, SC 29582

3. The Plaintiff is the owner of the Property; Flagstar is a foreign corporation which instituted a foreclosure action concerning the Property and which makes a claim of ownership therein; John Doe is an unknown person, natural or incorporated, to whom Flagstar may have purported to transfer its interest in the Property.

4. The Court has personal and subject matter jurisdiction, and venue is proper.

Pertinent Facts

5. The Plaintiff took title to the Property through devise from the Estate of the Property co-owner James William Hufton and through quitclaim deed by Deborah A Oehlschlaeger, Administrator, C.T.A of the Estate of Property co-owner Elmer Judson Craft, Jr..

6. On February 22nd, 2012, Flagstar instituted in the Horry County Court of Common Pleas a foreclosure action concerning the Property, captioned *Flagstar Bank, FSB v. Phyllis C. Hufton, as personal representative and legal heir of the Estate of James W. Hufton, Sr., Deceased et al*, case number 2012-CP-26-1379 ("Foreclosure Action").

7. At the time it filed the Foreclosure Action, Flagstar had actual knowledge that the Plaintiff owned the Property individually. Despite this knowledge, Flagstar failed to name the Plaintiff as a defendant in the Foreclosure Action.

8. On August 27th, 2012, the Court ordered that the Property be sold by the Master-in-Equity, whose December 3rd, 2012 Report on Sale and Disbursements reflects that Flagstar was the high bidder and was the recipient of a Master in Equity's Deed to the Property.

9. Because of Flagstar's failure to name the Plaintiff in the Foreclosure Action, the Foreclosure Action had no effect on the Plaintiff's fee simple interest in the property.

10. Because the Plaintiff held fee simple, good and marketable title to the Property before the Foreclosure Action, and because the Foreclosure Action had no effect on her interest, the Plaintiff continues to hold fee simple interest and a good and marketable title to the Property.

Receiver Action

11. Each of the allegations in the above numbered paragraphs are repeated and incorporated herein as if stated verbatim.

12. By virtue of the default, Plaintiff seeks the appointment of a receiver to protect and preserve the Real Property and to do all acts necessary or required in connection with the administration and management of the Real Property, including but not limited to the processing and administering of proceeds as to the Real Property.

WHEREFORE, the Plaintiff requests an Order declaring that she holds fee simple, good and marketable title to the Property as well as an Order appointing a receiver.



David P. Traywick
Benjamin A. Traywick
TRAYWICK LAW OFFICES, LLC
P.O. Box 564
Isle of Palms, South Carolina, 29464
Telephone 843-343-5092
dpt@traywicklaw.com
ben@traywicklaw.com
Attorneys for the Plaintiff

Charleston, South Carolina

Date: April 24, 2013

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
Phyllis C. Hufton,	)	Civil Action No. 2013-CP-26-2861
	)	
Plaintiff,	)	
	)	<u>MOTION TO DISMISS OR STAY</u>
vs.	)	<u>OR REFER TO THE MASTER IN</u>
	)	<u>EQUITY</u>
Flagstar Bank, FSB and John Doe,	)	
	)	
Defendants.	)	
	)	

Pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure, Defendant Flagstar Bank, FSB ("Flagstar") hereby moves this Court for an Order dismissing, or in the alternative staying or referring this action to the Master in Equity for resolution by the Special Referee.¹ In support of its motion, Flagstar states as follows:

1. On February 20, 2012, Flagstar filed a foreclosure action concerning a condominium located at 1321 South Ocean Boulevard, Unit 506, North Myrtle Beach, SC 29582 (the "Property"). This action was captioned Flagstar Bank, FSB v. Phyllis C. Hufton, et al., Civil Action Number 2012-CP-26-1379

2. Plaintiff Phyllis C. Hufton ("Plaintiff") was named as a defendant in Flagstar's foreclosure action in her capacities as the personal representative and legal heir to her deceased husband's estate. Plaintiff was represented by counsel, and in that action filed an answer admitting each and every allegation in Flagstar's foreclosure complaint.

3. The matter was referred to the Master in Equity for Horry County, the Honorable Cynthia Graham Howe, by Order of Reference on July 3, 2012. A copy of this Order is attached as **Exhibit A**.

¹ Pursuant to S C Rule 12(b), Flagstar files this motion in lieu of an answer

4. The Order of Reference specifically provides that the Master in Equity has “the authority to enter a final judgment in the cause and . . . shall specifically retain jurisdiction to hear on the merits any issues after sale or judgment” (Id. (emphasis added).) These issues “included but were not limited to issues involving appraisal proceedings . . . and evictions as well as Rule 60 or Rule 61 Motions and/or similar matters including but not limited to the sufficiency of the successful bid and/or the marketability of title.” (Id. (emphasis added).)

5. The Honorable Ralph Stroman, Special Referee for Horry County, was then assigned to the matter. A foreclosure hearing was held before the Special Referee, and he entered an Order and Judgment of Foreclosure and Sale in favor of Flagstar on August 27, 2012. A copy of the Order is attached as **Exhibit B**.

6. Like the Order of Reference, the Order and Judgment of Foreclosure and Sale also provided that “[t]he Special Referee will retain exclusive jurisdiction to do all necessary acts incident to this foreclosure, including, but not limited to, all matters post-sale which may effect the transfer of title of the subject real property and all improvements thereon.” (Id. (emphasis added).)

7. On October 1, 2012, Flagstar purchased the Property at the foreclosure sale for \$250,000.00. A copy of the Report on Sale and Disbursements is attached as **Exhibit C**. Master in Equity Howe conveyed the Property to Flagstar on December 3, 2012 via a Deed of Foreclosure. (See id.)

8. In response to Plaintiff’s filing of the above captioned action, Flagstar has also filed a Motion for Rule to Show Cause compelling the Plaintiff to appear before the Special Referee and show cause why her interest in the subject property has not been foreclosed. A copy of the Rule to Show Cause Motion is attached as **Exhibit D**.

9. Pursuant to the Order of Reference and the Judgment of Foreclosure, this Court lacks subject matter jurisdiction over this action. “Subject matter jurisdiction is ‘the power of a court to hear and determine cases of the general class to which the proceedings in question belong.’” Posey v. Proper Mold & Engineering, Inc., 378 S.C. 210, 222, 661 S.E.2d 395, 402 (Ct. App. 2008) (quoting Sabb v. S.C. State Univ., 350 S.C. 416, 402, 567 S.E.2d 231, 222 (2002)). Rule 53(c) of the South Carolina Rules of Civil Procedure provides that “[o]nce referred, the master or special referee shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter.” Rule 53(c), SCRCP. “Thus, once the case is referred to the Master [or Special Referee], he has subject matter jurisdiction to resolve the action to the extent the order of reference provides, and with the authority a circuit judge would have in a similar matter.” Wells Fargo Bank, N.A. v. Smith, 398 S.C. 487, 493, 730 S.E.2d 328, 331 (Ct. App. 2012). As the Supreme Court has explained, “[t]he proper construction of the order of reference is that it gives the master jurisdiction over the case and all matters arising from it until the master has performed all the duties assigned to him.” Wachovia Bank of S.C., N.A. v. Player, 341 S.C. 424, 427, 535 S.E.2d 128, 129 (2000).

10. As set forth above, both the Order of Reference and the Order and Judgment of Foreclosure and Sale unequivocally provide that the Special Referee has exclusive jurisdiction to resolve any post-sale issues. Plaintiff’s complaint seeks a declaration “that she is the fee simple owner of good and marketable title to the real property ” (Compl. ¶ 1) Plaintiff has admitted that this action relates to the central issue in the foreclosure action—title to the Property. As a result, the Complaint should be dismissed for lack of subject matter jurisdiction.

11. Further, Plaintiff seeks a declaration that she owns the property in fee simple. In doing so, Plaintiff is essentially arguing that the Order and Judgment of Foreclosure and Sale, which declared that she was "forever barred and foreclosed of all right, title and interest and equity of redemption in the said mortgaged premises so sold, or any part thereof," is void. (Exhibit B at p. 12 , ¶ 16.) The proper procedure for challenging a judgment would be to move to set it aside pursuant to Rule 60(b)(4). See Rule 60(b)(4), SCRCF (allowing a party to move for relief from judgment where the judgment is void). The Supreme Court examined this very issue in Player, 341 S.C. at 426, 535 S.E.2d at 128, where like here, the case had been referred to the master with authority to enter final judgment. See id. at 426, 535 S.E.2d at 128-29. There, the Supreme Court found that that the master had jurisdiction "to decide the merits of any Rule 60 motion," and that the motion should have been heard by the master instead of the Circuit Court Id. at 428, 535 S.E.2d at 129. Accordingly, Plaintiff's objection should have been made pursuant to Rule 60, and heard by the Special Referee. See Fobian v. Storage Tech. Corp., 164 F.3d 887, 889 (4th Cir. Va. 1999) ("As a general matter, the district court is the proper forum in which to bring Rule 60(b) motions for relief from that court's own judgments.").²

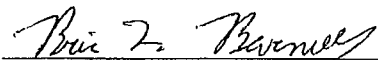
12. For the reasons stated above, Flagstar respectfully requests the Court to dismiss Plaintiff's complaint for lack of subject matter jurisdiction. In the alternative, Flagstar requests that the Court stay this action pending the resolution of the Rule to Show Cause filed with the Special Referee or to refer this case to the Master in Equity for Horry County for resolution by the Special Referee.

² South Carolina courts often look to the interpretations of the analogous Federal Rules of Civil Procedure when there is no state court precedent on point. *See, e.g., Gardner v. Newsome Chevrolet-Buick, Inc.*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991) ("Since our Rules of Procedure are based on the Federal Rules, where there is no South Carolina law, we look to the construction placed on the Federal Rules of Civil Procedure")

13. Flagstar's Motion is further based on the South Carolina Rules of Civil Procedure, the applicable statutory and case law of South Carolina, and any memorandum of law or other supporting material that may be submitted prior to, at, or subsequent to a hearing on this motion.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 
Jeremy C. Hodges
SC Bar No 71123
E-Mail: jeremy.hodges@nelsonmullins.com
Brian M. Barnwell
SC Bar No. 78249
E-Mail: brian.barnwell@nelsonmullins.com
Blake T. Williams
SC Bar No. 100794
E-Mail: blake.williams@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Flagstar Bank, FSB

Columbia, South Carolina

June 20, 2013

Exhibit A

(Order of Reference)

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Flagstar Bank, FSB,

PLAINTIFF,

vs.

Phyllis C. Hufton, as Personal Representative and
Legal Heir of the Estate of James W. Hufton, Sr.,
Deceased, James W. Hufton, Jr., as Legal Heir of
the Estate of James W. Hufton, Sr., Deceased, et
al.,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-26-1379

MOTION AND ORDER OF REFERENCE AND
ORDER OF DEFAULT

(Mortgage Foreclosure Action)

FILED
HORRY COUNTY
12 JUL -3 AM 9:55
CLERK OF COURT

110855.00256

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

IT IS THEREFORE ORDERED that this action be, and the same hereby is, referred to the Master in Equity for the within county to take the testimony arising under the pleadings and to make his/her findings of fact and conclusions of law, with authority to rule on all matters related to this action, including but not limited to, the authority to enter a final judgment in the cause and said Master in Equity shall specifically retain jurisdiction to hear and shall hear on the merits any issues after sale or judgment, including but not limited to issues involving appraisal proceedings under Section 29-3-680, et. seq., and evictions as well as Rule 60 or Rule 61 Motions and/or similar matters including but not limited to the sufficiency of the successful bid and/or the marketability of title; and with the further authority to sell the subject property at public auction on some convenient sales day hereafter as ordered with any appeal therefrom being directed and mandated to the South Carolina Court of Appeals.

Conway, South Carolina

May 27, 2012

ISO MOVE:

SCOTT LAW FIRM, P.A.

By:

Ronald C. Scott, SC Bar #4996

Elizabeth R. Polk, SC Bar #11673

Brett F. Kline, SC Bar #15561

Angella J. Grant, SC Bar #78334

Priti M. Patel, SC Bar #79835

Erica G. Lybrand, SC Bar #79052

Richard G. Duerinckx, SC Bar #70143

Elizabeth A. Blackwell, SC Bar #78756

ATTORNEYS FOR THE PLAINTIFF

2712 Middleburg Drive, Suite 200

Columbia, SC 29204

(803) 252-3340

S. Garrison Hill
Clerk of Court or Presiding Judge
County of Horry

ROA 049

Exhibit B

(Order and Judgment of
Foreclosure and Sale)

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Flagstar Bank, FSB,

PLAINTIFF,

VS.

Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr., Deceased, James W. Hufton, Jr., as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Marcee L. Cook, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Sharle Ann Carey, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft, as Legal Heir of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, and Bahama Sands Homeowners' Association, Inc.,

DEFENDANTS.

File Number 110855.00256

TO: Ronald C. Scott, SC Bar #4996
Elizabeth R. Polk, SC Bar #11673
Brett F. Kline, SC Bar #15661
Angella J. Grant, SC Bar #78334
Priti M. Patel, SC Bar #79835
Erica G. Lybrand, SC Bar #79052
Elizabeth A. Blackwell, SC Bar #78756
J. Harrison Rushton, SC Bar #100406
ATTORNEYS FOR THE PLAINTIFF
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
(803) 252-3340

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-26-1379

SPECIAL REFEREE'S
ORDER AND JUDGMENT
OF FORECLOSURE AND SALE

DEFICIENCY WAIVED

Non-Eligible under the Home Affordable
Modification Program

NOTICE: The original of this document was filed in
the office of the Clerk of Court for Horry County

HORRY COUNTY
12 AUG 27 AM 9:07
MELANIE HUGGINS-WARD
CLERK OF COURT

Phyllis C. Hufton, as Personal Representative and
Legal Heir of the Estate of James W. Hufton, Sr.,
c/o David P. Traywick, Esq.
TAYWICK LAW OFFICES, LLC
P.O. Box 584
Isle of Palms, SC 29451

Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft as Legal Heir and Devisee
of The Estate Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft
307 N. Preston Dr.
Vinton, VA 24179

Bahama Sands Homeowners' Association, Inc.
Resort Association Management, Registered Agent
9550 Shore Dr.
Myrtle Beach, SC 29572

Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson
Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft
18-A Kirk Ave.
Roanoke, VA 24011

James W. Hufton, Jr., Marcee L. Cook, and
Sharie Ann Carey, as Legal Heirs and Devisees of
The Estate of James W. Hufton, Sr.,
425 Hufton Brook Lane
Blue Ridge, VA 24064

Sharie Ann Carey
1540 Meadow Lark Ln.
Tracy, CA 95376

Marcee L. Cook
385 Hufton Book Lane
Blue Ridge, VA 24064

Pursuant to Circuit Court Rule 53(b) of the South Carolina Rules of Civil Procedure, the
above-entitled matter was referred to the undersigned to make appropriate findings of facts and
conclusions of law with authority to enter a final judgment in the cause.

Pursuant to the said Order of Reference a hearing was held attended by the attorneys of
record. A Record of Hearing was presented, which is herewith reported, and from the Record of

Hearing and the documents and records received into evidence, I find, conclude and order as follows:

FINDINGS

This Court has jurisdiction over the subject matter of this action and the parties hereto and it is the proper forum for the litigation of this matter.

1. The Court has determined that the Plaintiff has complied with the Administrative Order of the Supreme Court dated May 2, 2011 (2011-05-02-01).

2. Based upon the facts and/or evidence presented, the Court has determined that this loan is not eligible under the Home Affordable Modification Program.

3. The Lis Pendens was filed on February 20, 2012.

4. The Summons and Complaint were filed on February 20, 2012.

5. Service was made upon the Defendants named in this Report as is shown by the proofs of service filed herein.

6. The Defendant(s), James W. Hufton, Jr., as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Marcee L. Cook, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Sharie Ann Carey, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft, as Legal Heir of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, and Bahama Sands Homeowners' Association, Inc., , are in default as is shown by the affidavit filed herein.

7. The Defendants and/or all attorneys of record were notified of the time, date, and place of the hearing of this matter.

8. According to the affidavit filed herein, any Defendant in default is not in the Military Service of the United States of America, as contemplated under The Servicemembers' Civil Relief Act of 2003 and any amendments thereto.

9. For value received, Defendant(s), James Hufton, made, executed and delivered a Note dated April 7, 2008, promising thereby to pay to the order of Golden Gate Mortgage Inc. the sum of \$417,000.00 with interest at the rate of 5.375% per annum. Other terms and conditions are stated in the Note, which is of record herein.

10. To better secure the payment of the Note described above, the said Defendant(s), James W. Hufton, Sr. and Elmer J. Craft, Jr., made, executed and delivered to Mortgage Electronic Registration Systems, Inc. as nominee for Golden Gate Mortgage Inc. a Mortgage in writing, dated April 7, 2008, covering real property in Horry County, which is the same as that described in the Complaint. The Mortgage was filed on April 8, 2008, and is of record in the Office of the Clerk of Court for Horry County in Book 5055, at Page 1407. The Mortgage evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagor(s). The Court finds also that this mortgage constitutes a first lien on the mortgaged premises and a purchase money lien as may apply under state law as well as the After Acquired Property Doctrine. Thereafter, said Note and Mortgage were assigned to Flagstar Bank, FSB by assignment instrument dated January 31, 2012 and recorded February 9, 2012 in Book 5378 at Page 3123.

11. That the Court finds that the Plaintiff and/or its counsel has complied with its obligation(s) as required under the specific terms of the Note and Mortgage being foreclosed as well as any applicable Federal or State statutes or regulations including but not limited to, the furnishing of any notices required to be given to the obligor(s) which gives to such person(s) the right to cure any default arising under the specific terms of the recited Note and Mortgage herein; the review of this mortgage loan for compliance with the Home Affordability Modification Program (HMP), if applicable; and that moreover and prior to the filing of this judicial proceeding, the Defendant(s) had not raised any compliance defense or objections as to the servicing of any applicable banking or consumer laws by the Plaintiff and/or its counsel.

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

13. With respect to attorney fees and in view of the potential financial liabilities and likely continuing professional obligations inherent in judicially prosecuting a real property mortgage credit matter, the attendant professional duties and responsibilities, and the size of the mortgage debt and consistent with similar case proceedings before this Honorable Court, I find that a reasonable attorney's fee in this matter would be \$1,750.00. This award is consistent with the laws of this state in the awarding of attorney fees. I have considered the six (6) factors (none of these factors is controlling in the singular) as follows: (1) the nature, extent and

difficulty of the legal service rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. Taylor v. Medenica, 331 S.C. 575, 503 S.E.2d 458 (1998); Baron Data Systems v. Loter, 297 S.C. 382, 377 S.E.2d 296 (S.C. 1989). This fee is also consistent with and pursuant to opinions and orders of this jurisdiction wherein our state's appellate courts have repeatedly held that any contract for attorney fees that may exist or exists between the lawyer and the client (in addition to not being one of the six (6) fee review factors) is specifically not binding on the trial court in its determination of the reasonableness of the attorney fee. Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997); Rice v. Multimedia, Inc., 318 S.C. 95, 456 S.E.2d 381 (1995); and Williamson v. Middleton, 374 S.C. 419, 649 S.E.2d 57 (Ct. App. 2007). Plaintiff's Counsel has likewise reported to this Court that it is billing the Plaintiff a minimum of \$1,750.00 for all uncontested and routine matters plus costs as well as additional fees/costs for any services outside of the contemplated routine and uncomplicated services (relating to contested, complex, or difficult matters) for a case of this type. Total representation of the Plaintiff's interests in this matter have been undertaken (including among many duties the researching of the referral file to serving as custodian of the salient loan file documents to the filing of all pleadings and legally required documents with the court) by the Scott Law Firm, P.A. As to the Scott Law Firm, P.A. and its professional standing, it is noted that counsel for the Plaintiff is regionally and nationally recognized for its professional expertise in mortgage default credit matters as evidenced by its listing in BEST LAWYERS IN AMERICA™ and Martindale-Hubbell Registry of Pre-Eminent Lawyers™. This Court has specifically reviewed and satisfied itself with all six (6) factors to be considered in awarding reasonable attorneys fees in this matter.

14 On receiving testimony and other evidence during this hearing, I find that the Scott Law Firm, P.A., was engaged by the Plaintiff to foreclose the mortgage as expeditiously as possible, given the detriment to Plaintiff's equity position as a direct result of increasing losses from the accrual of interest and related adverse economic conditions such as depreciation or possible damage to the collateralized property. I find that Plaintiff's counsel has achieved a beneficial result with its prompt foreclosure of the subject mortgage.

Upon receipt of the case file, the title was examined and studied to identify all parties having or claiming an interest in the subject real estate as well as being researched for salient legal questions and issues. As to time and labor, I find that various attorneys as well as

experienced paralegal staff have been responsible for (and expended extensive professional time of 10 hours as to the basic services) in the preparation of the following pleadings and other legally required services and documents:

1. Lis Pendens and any amendment thereto
2. Summons and Complaint and any amendment thereto
3. Affidavits and proposed Order of Publication
4. Affidavit of Default
5. Consent(s) to Order of Reference
6. Order of Reference
7. Notice of Hearing
8. Proposed Judgment of Foreclosure and Sale
9. Record of Hearing
10. Notice of Sale
11. Other documents as applicable pertaining to service and finalization of the action.

Counsel may also prepare for the Plaintiff the Statutory Foreclosure Deed and any other documents necessary in this particular action as ordered or authorized by this Court. I find and note the nature, extent and difficulty of the services provided.

Although I have heretofore given consideration to all six (6) factors in the awarding of attorney fees and costs herein, jurisdiction over the fee award shall be reserved as granted in the Order of Reference with the right to re-visit the question of attorney fees should the action proceed in an unexpected way and/or to facilitate the assessment and payment of any such current or additional professional compensation.

15. The amount due and owing on the Note, with interest at the rate provided in the Note, including attorney's fee and allowable costs and charges allowable under and secured by the Note and Mortgage, is as follows:

(a)	Principal due	\$396,516.95
(b)	Interest Due from August 1, 2011 to August 16, 2012	\$13,788.09
(c)	Pre-Acceleration Late Charges	\$ 375.44
(d)	Escrow Adjustments (Itemized in Plaintiff's Disbursement Record)	\$ 999.01
(e)	Broker's Price Opinion/Appraisals	\$ 0.00
(f)	Property Preservation	\$0.00
(g)	Previous Bankruptcy Fees/Costs	\$ 0.00
(h)	Property Inspections	\$ 135.00

(i)	Suspense	\$0.00
(j)	Miscellaneous Charges/Credits (Itemized in Plaintiff's Disbursement Record)	\$0.00
(k)	Costs of collection prior to hearing	\$2,566.30
(l)	Attorney's fees and costs	
	(Foreclosure & applicable Bankruptcy)	<u>\$1,750.00</u>
	TOTAL DEBT secured by note and mortgage including interest to date shown	<u>\$416,130.79</u>

Interest for the period from the date shown in (b) above through the date of this Judgment at the above stated rate to be added to the above stated "Total Debt": to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of 3.375% per annum (pursuant to the terms of the Note and Mortgage) on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage through the date to which such interest is computed. (Items (g), (k) and (l) are subject to revision by Plaintiff's counsel and/or modification by the Court.)

16. Based upon a search of the public records of the aforesaid county, all persons or entities having an interest or lien or possible claim in or upon the mortgaged premises subordinate to the lien of the Plaintiff as of the date and time of the filing of the Lis Pendens herein have been made defendants.

17. The Plaintiff is seeking the usual foreclosure of mortgage and has in the Complaint, or by amendment thereto, or by motion at the reference, expressly waived the right to a personal or deficiency judgment.

18. The Defendants below named claim or may claim a subordinate lien or junior interest upon or interest in the subject property, and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with the Circuit Court Rules 53 and/or 71. The subject Defendant are further made a party due to the similarity in name(s) to the primary defendants against whom they claim or may claim a lien and in order to clear title to this property as follows:

(a) The Defendant, Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr., in such fiduciary capacity as representative of any person or entity that may be a creditor or claimant against such Estate, and by virtue of the

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

(b) The Defendant(s), Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft as Legal Heir and Devisee of The Estate Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft of by virtue of any interest claimed under the law of succession (S.C. Code '62-2-109) or under decedent's will.

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

(d) The Defendant, Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft in such fiduciary capacity as representative of any person or entity that may be a creditor or claimant against such Estate, and by virtue of the powers granted by Decedent's Will or by statute and by virtue of any interest claimed under the law of succession (S.C. Code '62-2-109) or under decedent's will

(e) The Defendant(s), James W. Hufton, Jr., Marcee L. Cook, and Sharle Ann Carey, as Legal Heirs and Devisees of The Estate of James W. Hufton, Sr., by virtue of any interest claimed under the law of succession (S.C. Code '62-2-109) or under decedent's will.

19. No Defendant raised any issues related to Plaintiff's standing to prosecute this action. Therefore, any issues related to Plaintiff's standing or ability to prosecute this action are waived.

20. Defendant Phyllis C. Hufton has not established any claims for relief against the Plaintiff, and therefore, no relief should be granted to the Defendant.

CONCLUSIONS OF LAW

I therefore, conclude as follows:

1. The Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2011-05-02-01) issued by Chief Justice Jean H. Toal, dated May 2, 2011.

2. The Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2009-05-22-01) issued by Chief Justice Jean H. Toal, dated May 22, 2009, and has shown that this loan is not eligible under the Home Affordable Modification Program.

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

4. Defendant Phyllis C. Hufton has not established any claims for relief against the Plaintiff, and therefore, no relief should be granted to the Defendant.

Now, on motion of Plaintiff's attorney,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2011-05-02-01) issued by Chief Justice Jean H. Toal, dated May 2, 2011.

2. The Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2009-05-22-01) issued by Chief Justice Jean H. Toal, dated May 22, 2009, and has shown that this loan is not eligible under the Home Affordable Modification Program.

3. This case is not subject to the stay provisions of the Order of the Supreme Court of South Carolina dated May 4, 2009, as amended and superceded by Order dated May 22, 2009.

4. That there is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of \$416,130.79, representing the total debt due Plaintiff as set forth supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

5. The amount due in the preceding paragraph (the "total debt" as set forth in Paragraph hereinabove, 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 3.375% per annum.

6. That the Defendants liable for the aforesaid Mortgage debt shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or the Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

7. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the undersigned at public auction, after giving Notice of the time and place of such sale by advertisement according to law. Any sales date is tentative and may be rescheduled at any time prior to the sale without

further order of this court or written notice to the parties of the notice of sale, provided notice of the new sales date is duly advertised as required by law. The sale shall be according to the following terms, that is to say:

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

b. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 3.375%.

c. The sale shall be subject to taxes and assessments, existing easements and restrictions of record.

d. This mortgage constitutes a first lien covering the real estate and improvements therein described, including any mobile/manufactured home located thereon. Plaintiff would further allege and avail itself of the Purchase Money Mortgage Doctrine as may apply to the facts of this action.

e. Purchaser to pay for deed stamps and cost of recording the deed with the Plaintiff to pay the Statutory allowed fee of \$25.00 to the preparer of said deed (be it this Court or Counsel for Plaintiff).

8. If Plaintiff be the successful bidder at said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, the Plaintiff may pay to the Clerk of Court only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

9. No personal or deficiency judgment being demanded, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately.

10. That the Master in Equity will by advertisement according to law, give notice of the time and place of such sale, and the terms thereof. Any sales date is tentative and may be rescheduled at any time prior to the sale without further order of this court or written notice to the parties of the notice of sale, provided notice of the new sales date is duly advertised as required by law. Master in Equity 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 30 days' after the date of sale, then the Master in Equity may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured. In the event the Plaintiff is the successful bidder, at its/his option, or the option of its/his assignee, the deed may be taken subject to payment by grantee of any taxes or assessments constituting a lien against the property sold under this order and hereinafter more fully described. In the event the successful bidder is a third party, neither the Plaintiff nor Plaintiff's counsel make any warranties or representations as to the subject property on behalf of the third party bidder or any subsequent purchasers.

11. The sale will not be held unless the Plaintiff, its attorney, or its bidding agent is present at the sale and enters the bid of the Plaintiff or has advised the Master in Equity's office of its bidding instructions. In the event a sale is held without the Plaintiff entering a bid, the sale shall be void.

12. In the event of a third party bidder and that any third party bidder fails to deliver the required deposit in certified (immediately collectible) funds to the Office of the Master in Equity by close of bidding on the day of the sale, the Master in Equity will re-sell the subject property at the most convenient time thereafter (including the day of sale) upon notification to counsel for Plaintiff.

13. That the Master in Equity shall apply the proceeds of the sale as follows:

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

NEXT: To the payment to the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest or so much thereof as the purchase money will pay on the same; and Plaintiff's attorney shall receive and disburse such funds only in total and absolute compliance with the debt, interest, escrow, and related calculations of this Court including the Court's award for attorney fees and taxable costs;

NEXT: Any surplus will be held pending further order of the Court as provided for in the South Carolina Rules of Civil Procedure and particularly Rule 71(c) of the South Carolina Rules of Civil Procedure.

14. It is further ORDERED, that if the successful bidder is other than the Defendant in possession herein, upon the presentation of a Writ of Possession, the Sheriff of Horry County is ordered and directed to evict and remove from the premises the occupants of the property

sold, together with all personal property located thereon, and put the successful Purchaser or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful Purchaser or his assigns in such peaceable possession. All valid Tenant rights pursuant to Protecting Tenants at Foreclosure Act of 2009 shall be protected.

15. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the South Carolina Department of Motor Vehicles is directed and ordered to provide the new Certificate of Title to the attorneys for the Plaintiff as agent for the grantee on the deed upon payment of the required title fees on any mobile/manufactured home which is herein located on the subject property and intended to be collateralized by the Plaintiff's security documents as heretofore received into evidence by this Court, or which may be received into evidence at any necessary hearing post sale of the subject property

16. And it is further ORDERED, ADJUDGED AND DECREED that Defendant named herein and all persons whosoever claiming under him, them or it, be forever barred and foreclosed of all right, title and interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

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

18. The Special Referee will retain exclusive jurisdiction to do all necessary acts incident to this foreclosure, including, but not limited to, all matters post-sale which may effect the transfer of the title to the subject real property and all improvements thereon, as well, the issuance of a Writ of Assistance.

19. Upon Issuance of a Master In Equity's Report on Sale and Disbursements, the Register of Deeds is directed to release of record the mortgage lien being foreclosed, which mortgage lien is described as follows:

Mortgage from James W. Hufton, Sr. and Elmer J. Craft, Jr. to Mortgage Electronic Registration Systems, Inc. as nominee for Golden Gate Mortgage Inc., dated April 7, 2008, covering real property in Horry County, filed on April 8, 2008, and is of record in the Office of the Clerk of Court/Register of Deeds for Horry County in Book 5055, at Page 1407.

20. This sale is subject to all title matters of record and any interested party should consider performing an independent title examination of the subject property as no warranty is given at all by the Court, the Plaintiff or its Counsel. If the judicial sale is set aside by this Court, the successful purchaser at the sale shall be entitled only to a return of the deposit paid, if any.

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

Unit 506 Bahama Sands Horizontal Property Regime, established by Master Deed dated December 26, 2007 and recorded December 31, 2007 in Deed Book 3304 at Page 1609, as thereafter amended, records of Horry County, South Carolina.

Subject to all of the provisions of the aforesaid Master Deed and Exhibits and Amendments thereto.

Together with all of the appurtenances thereto, to said Master Deed and Exhibits and Amendments thereto, and the Grantee(s) assume and agree to observe and perform their obligations under said Master Deed, Exhibits and Amendments thereto, including but not limited to the payment of assessments for the maintenance and operation of the units and condominiums.

And subject to the provisions of the By-laws of Bahama Sands Homeowners Association, Inc.

This being the same property conveyed to James W. Hufton, Sr. and Elmer J. Craft, Jr. by Deed of Bahama Sands Development, LLC, a South Carolina Limited Liability Company, dated April 7, 2008 and recorded April 8, 2008 in the Office of the Register of Deeds for Horry County, South Carolina in Book 3326 at Page 1862.

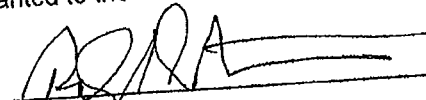
TMS No. 144-13-43-051

Property address: 1321 South Ocean Boulevard, Unit 506
North Myrtle Beach, SC 29582

22 IT IS FURTHER ORDERED that if the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the above-described property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales day as ordered by this court.

23. No Defendant raised any issues related to Plaintiff's standing to prosecute this action. Therefore, any issues related to Plaintiff's standing or ability to prosecute this action are waived.

24. Defendant Phyllis C. Hufon has not established any claims for relief against the Plaintiff, and therefore, no relief is granted to the Defendant.


Ralph Stroman
Special Referee for Horry County

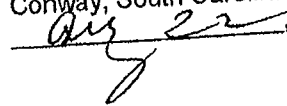
Conway, South Carolina
, 2012

Exhibit C

(Report on Sale and
Disbursements)

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Flagstar Bank, FSB,

PLAINTIFF,

VS.

Phyllis C. Hufton, as Personal
Representative and Legal Heir of the Estate
of James W. Hufton, Sr., Deceased, James
W. Hufton, Jr., as Legal Heir of the Estate of
James W. Hufton, Sr., Deceased, et al.

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-26-1379

REPORT ON SALE AND DISBURSEMENTS

UNDER AUTHORITY of a Decree herein dated August 27, 2012, the Master in Equity for Horry County offered for sale to the highest bidder for cash, at public auction, the premises subjected to this suit, and the Master in Equity received a high bid of two hundred fifty thousand and 00/100 (\$250,000.00); and the Master in Equity executed and delivered a Master in Equity's Deed to Flagstar Bank, FSB; and I disbursed the funds as follows:

CONSIDERATION:

Received by Master in Equity
Commission, etc.
TOTAL RECEIVED

\$ 125.00
\$ 2,500.00
\$ 2,625.00

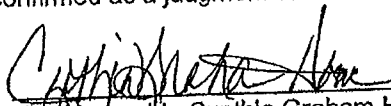
DISBURSEMENTS:

Reference Fee
County Costs
TOTAL OF MASTER IN EQUITY COSTS

\$ 125.00
\$ 2,500.00
\$ 2,625.00

ALL of the funds having been disbursed, I hereby ORDER the file closed and the case ended.

IT IS FURTHER ORDERED that the said sale and the Master in Equity's Report and Sale and Disbursements is hereby confirmed as a judgment of this Court.


The Honorable Cynthia Graham Howe
Master in Equity for Horry County

DATED: December 3, 2012

Conway, South Carolina

FILED
HORRY COUNTY
2012 DEC -5 AM 8:28
MELANIE HUGGINS-WARD
CLERK OF COURT

Exhibit D

(Motion for Rule to Show
Cause)

on July 3 at 1:00 pm, or as soon thereafter as may be ordered by the Court, and to show cause why her interests in the property identified in this action have not been foreclosed.

On February 20, 2012, Flagstar commenced the above-captioned foreclosure action, which concerns a condominium located at 1321 South Ocean Boulevard, Unit 506, North Myrtle Beach, SC 29582 (the "Property"). Hufton, as the personal representative and legal heir of her deceased husband's estate, was named as a defendant in this action. (Complaint.) Hufton, who was and is represented by counsel, filed an answer on March 9, 2012 which admitted each and every allegation of Flagstar's foreclosure Complaint. (Answer.)

On, July 3, 2012, this action was referred to the Honorable Cynthia Graham Howe, Master in Equity for Horry County. (Motion and Order of Reference and Order of Default.) Master in Equity Howe then assigned this case to the Honorable Ralph Stroman, Special Referee for Horry County. After holding a hearing, Special Referee Stroman entered an Order and Judgment of Foreclosure and Sale on August 27, 2012 (the "Order"). In the Order, Special Referee Stroman found that Flagstar's mortgage "constitute[d] a first lien on the mortgaged premises and a purchase money lien as may apply under state law as well as the After Acquired Property Doctrine." (Order p. 4, ¶ 10.) He further found that

Based upon a search of the public records of [Horry County], all persons or entities having an interest or lien or possible claim in or upon the mortgaged premises subordinate to the lien of the Plaintiff as of the date and time of the filing of the Lis Pendens herein have been made defendants.

(Id. at p. 7, ¶ 16.) The Court specifically found that "Defendant Phyllis C. Hufton has not established any claims for relief against [Flagstar], and therefore, no relief should be granted to the Defendant." (Id. p. 8, at ¶ 20; see also p. 9, ¶ 4 (same).)

After considering the public records and the evidence presented to it, the Special Referee entered an Order which declared “that Defendant named herein and all persons whosoever claiming under him, them, or it be forever barred and foreclosed of all right, title and interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.” (*Id.* at p. 12 , ¶ 16 (emphasis added).) The Order further stated that “The Special Referee will retain exclusive jurisdiction to do all necessary acts incident to this foreclosure, including, but not limited to, all matters post-sale which may effect the transfer of the title to the subject real property” (*Id.* at p. 12, ¶ 18 (emphasis added).) Likewise, Judge Hill’s Order of Reference and Order of Default conferred upon the Master in Equity “the authority to enter a final judgment in the cause and said Master in Equity shall specifically retain jurisdiction to hear and shall hear on the merits any issues after sale or judgment . . . including but not limited to . . . the marketability of title.” (Order of Reference and Order of Default.)

On October 1, 2012, Flagstar purchased the Property at a public foreclosure sale for \$250,000.00. (Notice of Sale; Report on Sale and Disbursements.) Master in Equity Howe executed a Deed of Foreclosure in favor of Flagstar on December 3, 2012. Phyllis Hufton did not object to the Deed of Foreclosure, did not appeal the Order, and did not otherwise attempt to stop the foreclosure sale and subsequent transfer of title to Flagstar.

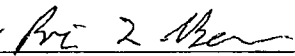
On April 29, 2013, eight (8) months after the Special Referee’s Order was entered, Phyllis Hufton commenced a new lawsuit captioned Phyllis Hufton v. Flagstar Bank, FSB and John Doe, Civil Action Number 2013-CP-26-2861, in which she alleges that she has a fee simple interest in the Property and that her interest was not terminated or otherwise affected by the Special Referee’s Order and the subsequent foreclosure sale. (Ex. A, Compl. ¶¶ 5-10.) In

that Complaint, Hufton asks the court to declare that she owns the property in fee simple and to set up a receiver to manage the Property. (Id at ¶¶ 11-12.)

Pursuant to the Order, Special Referee Stroman has exclusive jurisdiction to decide the issues raised in Hufton's Complaint. (Order p. 12, ¶ 18.) Accordingly, Flagstar has filed a Motion to Dismiss or Stay Hufton's new lawsuit. (Ex. B, Motion to Dismiss or Stay.) Based on the foregoing, Flagstar requests this Court to: 1) order Phyllis C. Hufton to appear at the Rule to Show Cause hearing and to show why her alleged interest in the Property was not foreclosed and 2) to order such other appropriate relief as the Court deems just and appropriate, including a) finding that Hufton's interests in the Property have been foreclosed, b) that the Order is valid and binding upon Hufton, and c) that Flagstar is the lawful owner of the Property by virtue of the Deed of Foreclosure dated December 3, 2012.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 
Jeremy C. Hodges
SC Bar No. 71123
E-Mail: jeremy.hodges@nelsonmullins.com
Brian M. Barnwell
SC Bar No. 78249
E-Mail: brian.barnwell@nelsonmullins.com
Blake T. Williams
SC Bar No. 100794
E-mail: blake.williams@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Flagstar Bank, FSB

Columbia, South Carolina

June 20, 2013

Exhibit A

(Complaint)

obligations under said Master Deed, Exhibits and Amendments thereto, including but not limited to the payment of assessments for the maintenance and operation of the units and condominiums.

And subject to the provisions of the By-laws of Bahama Sands Homeowners Association, Inc.

This being the same property conveyed to James W. Hufton, Sr. and Elmer J. Craft, Jr. by Deed of Bahama Sands Development, LLC, a South Carolina Limited Liability Company, dated April 7, 2008 and recorded April 8, 2008 in the Office of the Register of Deeds for Horry County, South Carolina in Book 3326 at Page 1862.

TMS No. 144-13-43-051

Property address 1321 South Ocean Boulevard, Unit 506
North Myrtle Beach, SC 29582

3. The Plaintiff is the owner of the Property; Flagstar is a foreign corporation which instituted a foreclosure action concerning the Property and which makes a claim of ownership therein; John Doe is an unknown person, natural or incorporated, to whom Flagstar may have purported to transfer its interest in the Property.

4. The Court has personal and subject matter jurisdiction, and venue is proper.

Pertinent Facts

5. The Plaintiff took title to the Property through devise from the Estate of the Property co-owner James William Hufton and through quitclaim deed by Deborah A. Oehlschlaeger, Administrator, C.T.A of the Estate of Property co-owner Elmer Judson Craft, Jr..

6. On February 22nd, 2012, Flagstar instituted in the Horry County Court of Common Pleas a foreclosure action concerning the Property, captioned *Flagstar Bank, FSB v. Phyllis C. Hufton, as personal representative and legal heir of the Estate of James W. Hufton, Sr., Deceased et al*, case number 2012-CP-26-1379 ("Foreclosure Action").

7. At the time it filed the Foreclosure Action, Flagstar had actual knowledge that the Plaintiff owned the Property individually. Despite this knowledge, Flagstar failed to name the Plaintiff as a defendant in the Foreclosure Action.

8. On August 27th, 2012, the Court ordered that the Property be sold by the Master-in-Equity, whose December 3rd, 2012 Report on Sale and Disbursements reflects that Flagstar was the high bidder and was the recipient of a Master in Equity's Deed to the Property.

9. Because of Flagstar's failure to name the Plaintiff in the Foreclosure Action, the Foreclosure Action had no effect on the Plaintiff's fee simple interest in the property.

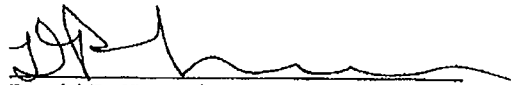
10. Because the Plaintiff held fee simple, good and marketable title to the Property before the Foreclosure Action, and because the Foreclosure Action had no effect on her interest, the Plaintiff continues to hold fee simple interest and a good and marketable title to the Property.

Receiver Action

11. Each of the allegations in the above numbered paragraphs are repeated and incorporated herein as if stated verbatim.

12. By virtue of the default, Plaintiff seeks the appointment of a receiver to protect and preserve the Real Property and to do all acts necessary or required in connection with the administration and management of the Real Property, including but not limited to the processing and administering of proceeds as to the Real Property.

WHEREFORE, the Plaintiff requests an Order declaring that she holds fee simple, good and marketable title to the Property as well as an Order appointing a receiver.



David P. Traywick
Benjamin A. Traywick
TRAYWICK LAW OFFICES, LLC
P.O. Box 564
Isle of Palms, South Carolina, 29464
Telephone 843-343-5092
dpt@traywicklaw.com
ben@traywicklaw.com
Attorneys for the Plaintiff

Charleston, South Carolina
Date: April 24, 2013

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
Phyllis C. Hufton,	)	Civil Action No. 2013-CP-26-2861
	)	
Plaintiff,	)	
	)	<u>DEFENDANT'S MOTION FOR</u>
vs.	)	<u>SUMMARY JUDGMENT</u>
	)	
Flagstar Bank, FSB and John Doe,	)	
	)	
Defendants.	)	
	)	

NOW COMES Defendant Flagstar Bank, FSB ("Flagstar"), pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, and respectfully moves this Court for an entry of summary judgment in its favor. The grounds for this Motion are that the pleadings, exhibits, and affidavits submitted herewith, if any, show that there is no genuine issue as to any material fact and that Flagstar is entitled to judgment as a matter of law. The specific arguments in support of this Motion included the following:

- Flagstar's previous foreclosure action foreclosed all of Plaintiff's alleged interests in the subject property; and
- Even if Plaintiff's individual interest survived the previous foreclosure action, Flagstar is entitled to re-foreclose on the property.

This Motion is further based on the South Carolina Rules of Civil Procedure, the applicable statutory and case law, and any supporting memorandum filed by Flagstar before, during, or after the hearing on this matter.

[SIGNATURES ON FOLLOWING PAGE]

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By. Brian M. Barnwell
Jeremy C. Hodges
SC Bar No. 71123
E-Mail jeremy.hodges@nelsonmullins.com
Brian M. Barnwell
SC Bar No. 78249
E-Mail brian.barnwell@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Flagstar Bank, FSB

Columbia, South Carolina

April 4, 2014

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT

Phyllis C. Hufton,) Civil Action No. 2013-CP-26-2861
)

Plaintiff,)

vs.)

Flagstar Bank, FSB and John Doe,)

Defendants.)

DEFENDANT'S MEMORANDUM IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

APR-7 PM 2:40
CLERK OF COURT

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Defendant
Flagstar Bank, FSB ("Flagstar") respectfully submits this Memorandum of Law in
Support of its Motion for Summary Judgment.

INTRODUCTION

Flagstar became the owner of the real property in question after completing a
valid foreclosure and purchasing the property at the foreclosure sale. Plaintiff Phyllis C.
Hufton ("Plaintiff"), a former owner of the property, was named as a party in the
foreclosure action. Mrs. Hufton answered Flagstar's foreclosure complaint, admitted all
of the complaint's allegations, and allowed the foreclosure to proceed to sale without
objection. Six months after the sale, Plaintiff filed this action claiming that she has an
interest in the property which survived and was unaffected by the foreclosure. The sole
basis for her claim is that Plaintiff was not named as a party to the foreclosure complaint
in her individual, personal capacity. Because Plaintiff participated in the foreclosure
action without raising any claim or defense concerning her claimed interests in the
property, her present claims are barred by the doctrines of waiver and res judicata.

Furthermore, even if Plaintiff still has an interest in the property, her interest remains encumbered by Flagstar's mortgage and is, therefore, subject to foreclosure.

STATEMENT OF FACTS

On or about April 7, 2008, James W. Hufton, Sr. and Elmer J. Craft purchased a condominium located at 1321 South Ocean Boulevard, Unit 506, North Myrtle Beach, South Carolina (the "Property"). (Ex. A, Indenture Deed.) The Indenture Deed received by Mr. Hufton and Mr. Craft conveyed to each man an undivided one-half interest in the Property. (*See id.*) To finance the purchase, Mr. Hufton borrowed \$417,000.00 and executed a note (the "Note") in favor of Golden Gate Mortgage Inc. (Ex. B, Note.) Mr. Craft did not sign the Note, but to secure it, both Mr. Hufton and Mr. Craft executed a mortgage concerning the Property (the "Mortgage"). (Ex. C, Mortgage.) The Note and Mortgage were subsequently assigned to Flagstar.

Mr. Hufton died on August 22, 2010, and his one-half interest in the Property was devised to Plaintiff through his estate, which has been fully probated and closed. Mr. Craft died on June 5, 2009. On September 9, 2011, Mr. Craft's estate conveyed his one-half interest in the property to Plaintiff. (Ex. D, Quitclaim Deed.) Neither Mr. Craft's nor Mr. Hufton's estates satisfied the Note before conveying their respective interests to Plaintiff. Thus, the Mortgage was never released.

Even though her interests in the Property were encumbered by Flagstar's Mortgage, Plaintiff chose not to make payments on the Note. As a result, the account went into default, and Flagstar filed a foreclosure action on February 20, 2012 in the Court of Common Pleas for Horry County, South Carolina (the "Foreclosure Action"). (*See* Ex. E, Foreclosure Compl.) The foreclosure action was captioned *Flagstar Bank,*

FSB v Phyllis C Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr, Deceased, et al., Civil Action Number 2012-CP-26-1379. (*Id.*) The Foreclosure Complaint stated that Flagstar was seeking foreclosure on the entire Property. (*Id.* at ¶ 7.) It also named every person, including Plaintiff, that was a legal heir or representative of Mr Hufton and Mr. Craft's estates. (*Id.* at ¶ 15.)

On February 23, 2012, Plaintiff's attorney¹ sent Flagstar's foreclosure attorneys an email stating as follows:

I represent Phyllis Hufton, and the rest of the known parties named as defendants. I had already agreed to accept service on behalf of my client(s).

Please forward a copy of the complaint filed in this matter as soon as you can. Once you have done so, I will email confirmation that such receipt by me constitutes personal service on Phyllis Hufton as well as any other parties you have not already effected personal service upon in this matter. I will be representing all of the parties in the suit.

(Ex. F, 2/23/12 Email Chain; *see also* Ex. G, 12/28/2011 Letter ("I agree to accept service on behalf of the title holder.")) Later that day, Plaintiff's attorney confirmed that "I'll accept service for Phyllis Hufton. Please do not attempt to serve her personally." (2/23/12 Email Chain.)

On March 9, 2012, Plaintiff, by and through her attorney, filed an answer to the Foreclosure Complaint that admitted each and every allegation. (Ex. H, Foreclosure Answer.) The Foreclosure Action then proceeded to final judgment and sale without any objections by Plaintiff. Similarly, Plaintiff did not claim that she had any interest in the Property that was not subject to the Foreclosure Action

¹ Mr. David Traywick, who is also representing Mrs. Hufton in the present action.

On August 27, 2012, Special Referee Ralph Stroman entered an Order and Judgment of Foreclosure and Sale (the "Foreclosure Order") in favor of Flagstar. (Ex. I, Foreclosure Order.) The Foreclosure Order stated that the entire property was being foreclosed on, (*id.* at ¶ 21) all parties named in the foreclosure action and all parties claiming under them were foreclosed of all interest in the property, (*id.* at ¶ 16) and that Plaintiff failed to establish any claim against Flagstar. (*Id.* at ¶ 24.)

On October 1, 2012, Flagstar purchased the Property at the foreclosure sale for \$250,000.00. (Ex. J, Master's Deed.) The Master's Deed states that the entire Property was being conveyed to Flagstar (*Id.*) Again, Plaintiff and her attorneys did not raise any objection to the sale and did not inform Special Referee Stroman that Plaintiff had an interest in the Property that was not subject to the Foreclosure Order. Six months after the foreclosure sale, Plaintiff filed this action, seeking a declaration that she has an interest in the Property that was not affected by the Foreclosure Action and resulting sale to Flagstar

SUMMARY JUDGMENT STANDARD

A motion for summary judgment should be granted where the Court is satisfied that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. A party opposing a motion for summary judgment must "'do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with specific facts showing that there is a *genuine issue for trial*.'" *Hedgepath v. AT&T Co.*, 348 S.C. 340, 354, 559 S.E.2d 327, 335 (Ct. App. 2001) (quoting *Baughman v. AT&T Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991)) (emphasis in original). "[W]hen plain, palpable, and

indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *Id.* at 355, 559 S.E.2d at 336. Reliance on allegations in a pleading is insufficient to overcome a motion for summary judgment. Rule 56(e), SCRCPP.

ARGUMENT

I. The Foreclosure Action extinguished any interest Plaintiff had in the Property.

Although her Complaint is unclear, it appears Plaintiff’s entire argument is that she is not bound by the Foreclosure Order because the Foreclosure Complaint’s caption did not expressly state that she was being named as a party in her individual capacity in addition to naming her as a party in her capacity as the “personal representative and legal heir” of her late husband. Plaintiff’s hyper technical argument fails under South Carolina law. Furthermore, because Plaintiff failed to raise her claims in the Foreclosure Action, they are now barred by the doctrines of waiver and res judicata

A. Plaintiff is bound by the Foreclosure Order.

Under South Carolina law a party with actual notice of a lawsuit cannot remain silent and then avoid a judgment by arguing that she was improperly named in the complaint. As explained by our Supreme Court,

[W]here a party is served by a wrong name, and the writ is served on the party intended to be served and he fails to appear and plead the misnomer in abatement, and suffers judgment to be obtained by default against him in the erroneous name, he is concluded, and execution may be issued on the judgment in that name and levied upon the property and effects of the real defendant.

Tri-Cnty. Ice & Fuel Co. v. Palmetto Ice Co., 303 S.C. 237, 241, 399 S.E.2d 779, 782 (1990) (quoting *Waldrop v. Leonard*, 22 SC 118 (1885)); *see also* Rule 9(a), SCRCPP (“When a party desires to raise an issue as to the . . . capacity of any party to . . . be sued

or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment . . .”).

In *Waldrop*, a suit was initiated against James P. Leonard (“James”), however, the plaintiff intended to sue Jonas P. Leonard (“Jonas”), and actually served Jonas with the suit *Waldrop*, 22 S.C. at 118. Jonas consulted with counsel and because James was named in the suit, Jonas and his counsel elected not to respond to the complaint and to allow entry of a default judgment against James. *Id.* at 119. When the plaintiff attempted to execute the default judgment against Jonas, Jonas argued that he was not bound by the judgment because he had not been properly identified in the action *Id.* The Court rejected this argument and explained that

[A]ll authorities hold that it is the duty of the [incorrectly named] party served to inform the court of the error and have the service discharged.

Id. at 121; *see also* Rule 9(a), SCRC. Accordingly, the court held that because Jonas was aware of the lawsuit and failed to appear and point out the incorrect name in the complaint, he was bound by the judgment. *Id.* at 127.

Here, just like in *Waldrop*, Plaintiff was aware of the Foreclosure Action and allowed it to proceed to judgment without raising any issue with the Court about the alleged misnomer or omission in the Foreclosure Complaint. Instead, she now argues that that even though she was named as Mr. Hufton’s personal representative *and legal heir*, she has an interest in the Property that was not affected by the foreclosure. It is undisputed, however, that Plaintiff was properly served in the Foreclosure Action. Specifically, Plaintiff’s attorney told Flagstar that he would “accept service on behalf of the title holder” (12/28/11 Letter), confirmed that he “accept[ed] service for Phyllis

Huften”; and instructed Flagstar to “not attempt to serve her personally” (2/23/12 Email Chain). *See Waldrop*, 22 S.C. at 118 (basing its decision in part on fact that misnamed party consulted with an attorney and then made the strategic decision to try and avoid judgment by not informing the court about misnomer).

After being served, Plaintiff answered the Foreclosure Complaint admitting that she inherited a personal interest in the Property as Mr. Huften’s heir. (*See* Foreclosure Compl. ¶ 15; *see also* Foreclosure Answer ¶ 15(a)). Plaintiff further admitted that the entire Property should be sold to satisfy the Note, and she did not raise any objection or defense concerning her alleged individual interests that she now claims was not affected by the foreclosure and subsequent sale. (*See* Foreclosure Answer ¶ 18; *see also* Foreclosure Complaint at paragraph beginning with “WHEREFORE”). Plaintiff’s position is however at odds with the Foreclosure Order, which specifically found that the entire Property was foreclosed upon and that all named defendants were forever barred of all right, title, and interest in the Property. Again, Plaintiff did not object to the entry of this Order. (*See* Foreclosure Order p. 9 ¶ 3; p. 12 ¶ 16) As such, and in accordance with South Carolina law, any individual interest Plaintiff had in the Property was foreclosed upon, and Plaintiff waived any claims or defenses she may have had as to the effect of the foreclosure on those interests. *See Waldrop*, 22 S.C. at 127.

B. Plaintiff’s claims are also barred by res judicata.

Because Plaintiff did not object to or oppose the entry of the Foreclosure Order, she is barred from attacking it in this action. Under South Carolina the doctrine of “[r]es judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those

parties.” *Plum Creek Dev Co., Inc v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). The doctrine of res judicata also bars a litigant “from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.” *Hilton Head Center of South Carolina, Inc. v Public Service Comm’n of South Carolina*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987) (emphasis added); *see also Richburg v Baughman*, 290 S.C. 431, 434, 351 S.E.2d 164, 166 (1986) (“Under the doctrine of collateral estoppel, once a final judgment on the merits has been reached in a prior claim, the relitigation of those issues actually and necessarily litigated and determined in the first suit are precluded as to the parties and their privies in any subsequent action based upon a different claim.”).

Res judicata applies when the following three elements are established: “(1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the claim in the former suit.” *Judy v Judy*, 393 S.C. 160, 167, 712 S.E.2d 408, 412 (2011). Under South Carolina law, the doctrine of res judicata extends to parties in privity with one another. *Wyndham v. Lewis*, 292 S.C. 6, 8, 354 S.E.2d 578, 579 (1987). “Under this rule, the term privity means mutual or successive relationship to the same rights of property. The term can also refer to a person so identified in interest with another that he represents the same legal rights.” *Id.* Furthermore, the general rule is that res judicata applies “where a party to one action in his individual capacity and to another action in his representative capacity is in each case asserting or protecting his individual rights.” 47 Am. Jur. 2d Judgments § 579; *see also Ward v Detroit Auto. Inter-Insurance Exchange*, 115 Mich. App. 30, 38 (Mich. Ct. App. 1982).

To the extent Plaintiff claims she only appeared in the Foreclosure Action in a representative capacity, her argument is unsupported by fact and law. First, the Foreclosure Complaint named Plaintiff as both a “personal representative” and as “legal heir” of Mr. Hufton’s estate. (Foreclosure Complaint.) Plaintiff’s answer admitted that her personal interests, as least those she inherited, concerning the Property, should be foreclosed upon. (Foreclosure Answer ¶¶ 7 & 15.) Therefore, even if Plaintiff was incorrectly identified, her answer to the Foreclosure Complaint indisputably concerned her personal interests in the Property. Because Plaintiff appeared in that action and consented to the foreclosure of the entire Property, she is bound by the Foreclosure Order and her claims here are barred. *See* 47 Am. Jur. 2d Judgments § 579.

II. Even if Plaintiff’s individual interest survived the Foreclosure Action, Flagstar is entitled to re-foreclose on the Property.

As explained below, even if Plaintiff has an interest that survived the foreclosure, her interest is still subject to Flagstar’s Mortgage. Accordingly, Flagstar is entitled to foreclose upon any of Plaintiff’s alleged remaining interests. Under South Carolina law, the Court has the ability to re-open a foreclosure action to correct any alleged errors. *See Peoples Fed. Sav & Loan Ass’n v. Graham*, 291 S.C. 178, 182, 352 S.E 2d 511, 513 (Ct. App. 1987) (noting that the appellant could have moved to reopen the foreclosure); *see also* Rule 60(a), SCRCP (“Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time . . .”). Furthermore, the legislature has specifically created a provision to allow the revival of a mortgage that was mistakenly satisfied. S.C. Code Ann. § 29-3-345.

Indeed, when a lender omits an interested party from a foreclosure action, the omitted party's interest is still subject to the lender's mortgage lien. *Green Tree Serv., LLC v. Adams*, 375 S.C. 583, 587, 654 S.E.2d 100, 102 (Ct. App. 2007) (holding that bank could file a quiet title action after purchasing property at foreclosure sale to extinguish the lien of a junior lien holder that was omitted from foreclosure action) As such, courts have uniformly held that the omitted party's interest may be foreclosed upon either by re-opening the underlying foreclosure action or by commencing a new foreclosure action:

Generally speaking, . . . if a mortgagee forecloses but fails to join the holder of an interest in the premises as a party defendant, such interest is not foreclosed but the mortgage remains alive and the mortgagee may effectively foreclose against the omitted parties, either in the same or a new action.

First Nat'l Bank & Trust Co. v. Stark, 249 P.2d 117, 118 (Okla. 1952) (holding that, where a mortgagor was omitted from the foreclosure, the note and mortgage remain, and the situation is the same as if no legal proceeding had occurred at all); *see also Hurt v. Pico Inv. Co.*, 136 Cal. App. 390, 392-393 (Cal. App. 1934) (“[A] second action in foreclosure may be maintained if, in the first action, an owner of an interest in the mortgaged premises is omitted as a party, through mistake, and the proceeding is rendered thereby ineffective as a foreclosure.”); *Oakland Props. Corp. v. Hogan*, 117 So. 850, 851 (Fla. 1928) (“We think the law is well settled that where the owner of the equity of redemption has been omitted from the list of parties defendant in a cause, that the mortgagee may maintain a second action to foreclose his mortgage, thereby cutting off the interest of such owner.”); *English v. Bankers Trust Co. of Cal., N.A.*, 895 So. 2d 1120, 1121-22 (Fla. Dist. Ct. App. 2005) (concluding that a mortgagee can be joined in a re-

foreclosure of a mortgage when the mortgagee was not joined in the first foreclosure); *Ill. Bankers Life Assur Co. v. Dunas*, 77 N.E.2d 54, 56 (Ill. Ct. App. 1947) (finding that, where holder of note secured by trust deed named the children and devisees of a deceased purchaser of realty subject to lien of deed of trust, but did not name them in their capacity as trustees under the deed, the subsequent holder of the note had the right to re-foreclose for purposes of joining the children as trustees); *Bank of N.Y. v. Larson*, No. C1-99-1736, 2000 Minn. App. LEXIS 355, at *1-3 (Minn Ct App. Apr 18, 2000) (allowing a mortgagee to re-foreclose the mortgage in relation to a second lot); *Sur Bldg & Loan Ass'n v Risack*, 179 A. 680, 681 (N.J. Ch. 1935) (finding that a mortgagor that foreclosed on a one-half interest in a property and purchased the property at the sale was entitled to require the owner of the other one-half interest to redeem or be foreclosed of his equity of redemption).

It is undisputed that Plaintiffs' interests were encumbered by the Mortgage when she obtained them. If she has an interest that survived foreclosure, that interest is still encumbered. Therefore, Plaintiffs' claims fail as a matter of law, and summary judgment in favor of Flagstar is proper.

CONCLUSION

For the reasons set forth above, Flagstar respectfully requests this Court to grant its Motion for Summary Judgment and enter an Order declaring that Plaintiff's interests in the Property were extinguished by the Foreclosure Order. In the alternative, Flagstar requests that if Plaintiff does still have an interest in the Property, the Court enter Order an declaring that Plaintiff's interests are subject to Flagstar's Mortgage and that Flagstar may foreclose upon those interests.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Brian M. Barnwell

Jeremy C. Hodges

SC Bar No. 71123

E-Mail: jeremy.hodges@nelsonmullins.com

Brian M. Barnwell

SC Bar No. 78249

E-Mail: brian.barnwell@nelsonmullins.com

1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

Attorneys for Flagstar Bank, FSB

Columbia, South Carolina

April 4, 2014

Exhibit A

(Indenture Deed)

STATE OF SOUTH CAROLINA

)

)

INDENTURE DEED

COUNTY OF HORRY

)

INDENTURE made the day hereinbelow stated, by and between BAHAMA SANDS DEVELOPMENT, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY, hereinafter called GRANTOR, which expression shall include its successors and assigns, wherever the context so requires, or admits, of the one part, and James W. Hufton, Sr. and Elmer J. Craft, Jr., hereinafter called GRANTEE(S), which expression shall include his, her, or their heirs and assigns, and/or its successors and/or assigns, forever, wherever the context so requires or admits, of the other part; and in this agreement, the singular shall include the plural, and the plural shall include the singular, and the gender shall include all genders.

FOR AND IN CONSIDERATION of the covenants and conditions hereinafter contained and the sum of Five Hundred Ninety-Nine Thousand Nine Hundred and 00/100 (\$599,900.00) DOLLARS paid to the GRANTOR by said GRANTEE(S), the GRANTOR has granted, bargained, sold, and released, and by these presents grants, bargains, sells, and releases unto the said GRANTEE(S), all of the real property situate in Horry County, South Carolina, described as follows:

Unit 506 Bahama Sands Horizontal Property Regime, established by Master Deed dated December 26, 2007, and recorded December 31, 2007, in Deed Book 3304 at Page 1609, and as thereafter amended, records of Horry County, South Carolina

SUBJECT TO all of the provisions of the aforesaid Master Deed and Exhibits and Amendments thereto.

TOGETHER with all of the appurtenances thereto according to said Master Deed, and Exhibits and Amendments thereto, and the Grantee(s) assume and agree to observe and perform their obligations under said Master Deed, Exhibits and Amendments thereto, including, but not limited to, the payment of assessments for the maintenance and operation of the units and condominiums.

AND SUBJECT TO the provisions of the By-Laws of Bahama Sands Homeowners' Association, Inc.

This is a portion of the property conveyed to the Grantor herein by the following Deeds:

Deed of E. Dean Bray, Jr. to Bahama Sands Development, LLC dated October 4, 2005 and recorded October 6, 2005, in Deed Book 2990 at Page 0415, in the Office of the Register of Deeds for Horry County, South Carolina.

Quit-Claim Deed from Wachovia Bank, N.A., sole surviving trustee of "The Charles N. Ingram Marital Deduction Trust" under the Last Will and Testament of Charles N. Ingram, deceased and Wachovia Bank, N.A., sole surviving Trustee of "The Charles N. Ingram Residual Trust" under the Last Will and Testament of Charles N. Ingram, deceased to Bahama Sands Development, LLC dated May 11, 2006 and recorded May 30, 2006, in Deed Book 3103 at Page 0619, in the Office of the Register of Deeds for Horry County, South Carolina.

Deed from WKB Properties, LLC to Bahama Sands Development, LLC dated May 30, 2006 and recorded May 31, 2006, in Deed Book 3104 at Page 878, in the Office of the Register of Deeds for Horry County, South Carolina.

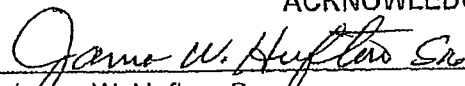
Address of Grantee: 2143 Coachman Drive
Roanoke, Virginia 24012

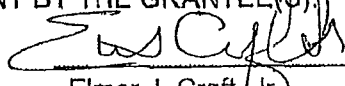
Tax Notice Address: 2143 Coachman Drive
Roanoke, Virginia 24012

TMS#: 144-13-43-051

ACKNOWLEDGMENT AND RATIFICATION BY GRANTEE(S). The GRANTEE(S) by the acceptance and execution of this Indenture Deed acknowledge that this conveyance is subject to the provisions of the Master Deed of Bahama Sands Horizontal Property Regime and By-Laws of Bahama Sands Homeowners' Association, Inc., described as above, including the provisions of all exhibits. GRANTEE(S) acknowledge and agree that the Master Deed and By-Laws of Bahama Sands Horizontal Property Regime, and By-Laws of Bahama Homeowners' Association, Inc., and exhibits, and the contract executed by the GRANTOR and GRANTEE(S) contain all of the warranties, representations, and inducements concerning the purchase by GRANTEE(S) of the unit described above.

ACKNOWLEDGMENT BY THE GRANTEE(S):


James W. Hufton, Sr.


Elmer J. Craft, Jr.

TOGETHER with all and singular the rights, members, hereditaments, and appurtenances to said premises belonging, or in anywise Incident or appertaining.

TO HAVE AND TO HOLD all singular the said premises before mentioned unto said GRANTEE(S).

AND the said GRANTOR does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular the said premises unto the said GRANTEE(S) against itself and its successors and all other persons whomsoever lawfully claiming, or to claim the same or any part thereof.

IN WITNESS WHEREOF, the GRANTOR, BAHAMA SANDS DEVELOPMENT, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY, by its Member, and the GRANTEE(S) have caused these presents to be signed and sealed this 7th day of April, in the year of our Lord Two Thousand Eight.

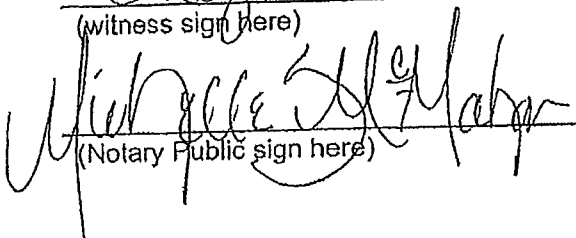
SIGNED, SEALED AND DELIVERED IN
THE PRESENCE OF:

BAHAMA SANDS DEVELOPMENT, LLC,
a South Carolina Limited Liability Company


(witness sign here)

By: Christopher Development Corp. IX,
a South Carolina Corporation

Its: Member


(Notary Public sign here)

By: 
Charles F. Christopher, President

STATE OF SOUTH CAROLINA

)

)

PROBATE

COUNTY OF HORRY

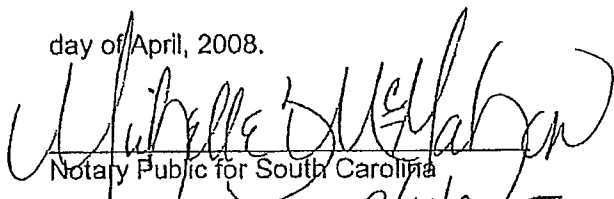
)

PERSONALLY appeared before me the undersigned witness, who being first duly sworn, deposes and states that s/he saw BAHAMA SANDS DEVELOPMENT, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY, by and through its Member, Sign, Seal, and, as its Act and Deed, delivered the within written Indenture Deed, and that s/he, together with the other witness subscribed above, witnessed the execution thereof.


(witness sign here, also)

SWORN to before me this 7th

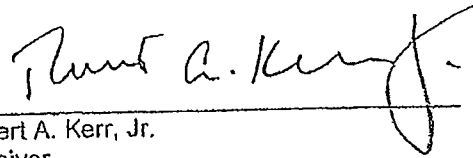
day of April, 2008.


Notary Public for South Carolina
My Commission Expires: 3/11/2015

Page 5 of the Deed from Bahama Sands Development, LLC, a South Carolina Limited Liability Company to James W. Hufton, Sr. and Elmer J. Craft, Jr. dated April 7, 2008

ACKNOWLEDGMENT

The undersigned, Robert A. Kerr, Jr., Receiver, hereby approves and authorizes this conveyance

A handwritten signature in cursive script, appearing to read "Robert A. Kerr, Jr.", is written over a horizontal line.

Robert A. Kerr, Jr.
Receiver

Exhibit B

(Note)

EXHIBIT "1"

VI MPOD LOAN # [REDACTED]
MIM: [REDACTED]

ADJUSTABLE RATE NOTE

(LIBOR One-Year Index (As Published In The Wall Street Journal)-Rate Caps)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

APRIL 7, 2008
[Date]

Myrtle Beach,
[City]

SOUTH CAROLINA
[State]

1321 S OCEAN BLVD UNIT 506, MORTG MIRTLE BEACH, SC 29582-3847
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$417,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is GOLDEN GATE MORTGAGE INC., A SOUTH CAROLINA CORPORATION.

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

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 5.375%. The interest rate I will pay will change in accordance with Section 4 of this Note. The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments
I will pay principal and interest by making a payment every month. I will make my monthly payment on the 15th day of each month beginning on JUNE 1, 2008. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on MAY 1, 2038, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at
3102 MILLWOOD AVE
COLORADO, SC 29205

or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments
Each of my initial monthly payments will be in the amount of U.S. \$2,335.08. This amount may change.

(C) Monthly Payment Changes
Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates
The interest rate I will pay may change on the 15th day of MAY, 2011 and on that day every 12th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index
Beginning with the first Change Date, my interest rate will be based on an index. The "index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in The Wall Street Journal. The most recent index figure available as of the date 45 days before each Change Date is called the "Current Index".

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

(C) Calculation of Changes
Before each Change Date, the Note Holder will calculate my new interest rate by adding two and one-eighth percentage point(s) (2.125%) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes
The interest rate I am required to pay at the first Change Date will not be greater than 7.375% or less than 3.375%. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than two percentage point(s) (2.000%) from the rate of interest I have been paying for the preceding 12 month(s). My interest rate will never be greater than 11.375%.

MULTISTATE ADJUSTABLE RATE NOTE - WSJ One-Year LIBOR - Single Family - Female Max UNIFORM INSTRUMENT
© 2001-2009 Online Documents, Inc. Page 1 of 3

Initials: [Signature]
FORM 5428 M01
78255401 0007
04-03-2008 15:14

1321 S Ocean Blvd Unit 506 North Myrtle Beach, SC 29582-3847

ROA 098

FB (Hufton) 1268

(E) **Effective Date of Changes**
My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

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

6. BORROWER'S RIGHT TO PREPAY

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

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

6. LOAN CHARGES

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

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) **Late Charges for Overdue Payments**
If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be \$5.000 per month of overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

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

(C) Notice of Default

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

(D) No Waiver By Note Holder

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

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

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

8. GIVING OF NOTICES

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

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

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

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

10. WAIVERS

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

11. UNIFORM SECURED NOTE

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

VI. ASSIGNMENT OF INTEREST

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. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, 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.

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

James Hufton (Bank)
JAMES HUFTON

PAY TO THE ORDER OF
FLAGSTAR BANK, FSB
WITHOUT RECOURSE
GOLDEN GATE MORTGAGE INC
BY: JU
PRINTED NAME: _____
NOTE ENDORSEMENT VOID

PAY TO THE ORDER OF
Flagstar Bank, FSB
WITHOUT RECOURSE

Golden Gate Mortgage, Inc.
By: Jamie Urban
Team Leader

[Sign Original Only]

[REDACTED]
[21 5 Down Blvd Unit 200 North Little Rock AR 72205-2817]

Exhibit C

(Mortgage)

After Recording Return To:
FLAGSTAR BANK
5151 CORPORATE DRIVE
TROT, MI 48098
FINAL DOCUMENTS, MAIL STOP W-830-3

This instrument was prepared by:

VI NCED LOAN

(Space Above This Line For Recording Date)

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 APRIL 7, 2008, together with all Riders to this document.

(B) "Borrower" is James W. Hufton Sr. and Elmer J. Craft Jr..

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, Michigan 48501-2026, tel. (888) 579-MERS.

(D) "Lender" is GOLDEN GATE MORTGAGE INC.

Lender is a CORPORATION,
SOUTH CAROLINA,
COLUMBIA, SC 29205.

organized and existing under the laws of
Lender's address is 3102 HILLWOOD AVE,

(E) "Note" means the promissory note signed by Borrower and dated APRIL 7, 2008. The Note states that Borrower owes Lender *****FOUR HUNDRED SEVENTEEN THOUSAND AND NO/100 ***** Dollars (U.S. \$417,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than MAY 1, 2038.

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

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

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

☒ Adjustable Rate Rider	☒ Condominium Rider	☒ Second Home Rider
☐ Balloon Rider	☐ Planned Unit Development Rider	☐ Other(s) (specify)
☐ 1-4 Family Rider	☐ Biweekly Payment Rider	
☐ V.A. Rider		

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

Initials: *JS*

108-3201

VI MORTGAGE LOAN

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

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

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

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

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

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

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. 5280 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.

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

TRANSFER OF RIGHTS IN THE PROPERTY

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

(Type of Recording Jurisdiction) of HORRY

(Name of Recording Jurisdiction):

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF

APR 8, 2008-1074999

which currently has the address of 1321 S OCEAN BLVD UNIT 506, NORTH MYRTLE BEACH,

(Subst) (City)

South Carolina 29582-3847 ("Property Address").

(Zip Code)

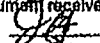
TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter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

BORROWER COVENANTS that Borrower is lawfully 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

Initials: 

V1 WRCD LOAN #

by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

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

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

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

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

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

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

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

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

Initials: 

VI NCDC LOAN §

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 Encumbrances, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

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

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any 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.

Initials 

VI HBCD LOAN §

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 6 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

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

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

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

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

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

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

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

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

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the

Initials: *[Signature]*

V1 MISC LOAN #

mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

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

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

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

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

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

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

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

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 90 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

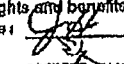
Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 18, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

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

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

Initials: 

VI HBCD LOAN #

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 nomenclature or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

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

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

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

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 90 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

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

Initials: 

VI. WRCD LOAN §

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 filigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehydes, 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.

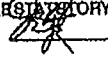
NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

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 this 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

Initials: 

V1 WRCD LONE \$

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 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:

Joan M. Craft
1st Witness
Joan M. Craft
2nd Witness (May be Notary)
State of ~~WEST VIRGINIA~~ Virginia
County of ~~HOOPER~~

James Hufton (Seal)
JAMES HUFTON
Elmer J. Craft, Jr. (Seal)
Elmer J. Craft, Jr.

The foregoing instrument was acknowledged before me this 4/7/08 (date)
by James Hufton and Elmer J. Craft, Jr.

(name of person acknowledged).

Joan M. Craft
Signature of Person Taking Acknowledgement
My commission expires: 3/31-11
225386



EXHIBIT "A"
LEGAL DESCRIPTION

Unit 506 Bahama Sands Horizontal Property Regime, established by Master Deed dated December 26, 2007 and recorded December 31, 2007 in Deed Book 3304 at page 1609, as as thereafter amended, records of Horry County, South Carolina.

SUBJECT TO all of the provisions of the aforesaid Master Deed and Exhibits and Amendments thereto.

TOGETHER WITH all of the appurtenances thereto according to said Master Deed and Exhibits and Amendments thereto, and the Grantee(s) assume and agree to observe and perform their obligations under said Master Deed, Exhibits ad Amendments thereto, including but not limited to the payment of assessments for the maintenance and operation of the units and condominiums.

AND SUBJECT TO the provisions of the By-laws of Bahama Sands Homeowners Association, Inc.

Being the same land conveyed to the Mortgagor(s) herein by deed of Bahama Sands Development, LLC, a South Carolina Limited Liability Company, dated January 11, 2008 and recorded simultaneously herewith in the records of Horry County, South Carolina.

TMS# 144-13-43-051

Exhibit D

(Quitclaim Deed)

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF HORRY

QUIT CLAIM DEED

IN THE MATTER OF

ELMER JUDSON CRAFT, JR.

CASE FILE # 2011-ES-26-1576

WHEREAS, Elmer Judson Craft, Jr. and James W. Hufton, Sr., purchased Unit 506, Bahama Sands on April 7, 2008 evidenced in Deed Book 3326 at page 1862 in the office of the Register of Deed for Horry County, South Carolina;

WHEREAS, Elmer Judson Craft, Jr. died on June 5, 2009 and his Estate is being administered in Roanoke County Virginia in Court file No. 200900507 and exemplified copies are filed in Horry County, Probate File No. 2011-ES-26-1576; and

WHEREAS, Nancy P. Craft was named as Executor and Melissa Craft Stanley f/n/a Melissa C. Tinley was named as alternate Executor; and

WHEREAS, Nancy P. Craft and Melissa Craft Stanley f/n/a Melissa C. Tinley declined to qualify as such; and

WHEREAS, Deborah A. Oehlschlaeger was appointed as Administrator, c.t.a. by Letters of Qualification dated August 2, 2010 and recorded in Court File No. 200900507 in the Roanoke County Clerk of the Court; and

WHEREAS, a dispute arose between the Estate of Craft and James W. Hufton, Sr. regarding the payment of the note for the purchase price financing and other expenses related to the Unit; and

WHEREAS, a Settlement of Dispute by Agreement was executed July 20, 2010 between James W. Hufton, Sr. and Deborah A. Oehlschlaeger, Executor, c.t.a. of the Estate of Elmer J. Craft, Jr., where Deborah A. Oehlschlaeger, Executor, c.t.a. of the Estate of Elmer J. Craft, Jr. was to convey the 1/2 interest in the property to James W. Hufton, Sr. and Phyllis C. Hufton as Joint Tenants with Rights of Survivorship in consideration of James W. Hufton, Sr.'s complete release of the Estate of Elmer J. Craft, Jr. for payment of any part of the note for the purchase price financing and other expenses related to the Unit; and

WHEREAS, prior to the Deed being executed James W. Hufton, Sr. died on 8-22-2010 and his Estate is being administered in Roanoke County Virginia in Court file No. CWF201000586 and exemplified copies are filed in Horry County, Probate File No. 2011-ES-26-1577; and

WHEREAS, the parties desire to have the property conveyed pursuant to the Settlement Agreement.

instrument#: 2011000093705, DEED BK:
1541 PG: 2844 DOCTYPE: 001 09/16/2011
04:10:30 PM, 1 OF 4, EXEMPT,
JALLERY V. SKIPPER, HORRY COUNTY,
CLERK OF THE REGISTER OF DEEDS

ROA 113

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that DEBORAH A. OEHLSCHLAEGER, ADMINISTRATOR, C.T.A. OF THE ESTATE OF ELMER JUDSON CRAFT, JR., hereinafter called Grantor, in consideration of Five and No/100--- (\$5.00) Dollars and the above premises, in hand paid at and before the sealing of these presents by PHYLLIS C. HUFTON, hereinafter called Grantee, whose address is 2143 Coachman Drive, Roanoke, Virginia 24012 the receipt and sufficiency of which are hereby acknowledged, have remised, released and forever quit-claimed, and by these presents do remise, release and forever, quit-claim unto the said PHYLLIS C. HUFTON, her heirs and assigns forever, all of the right, title and interest in and to the following described property, to-wit:

Unit 506 Bahama Sands Horizontal Property Regime, established by Master Deed dated December 26, 2007 and recorded December 31, 2007 in Deed Book 3304 at page 1609, as as thereafter amended, records of Horry County, South Carolina.

SUBJECT TO all of the provisions of the aforesaid Master Deed and Exhibits and Amendments thereto.

TOGETHER WITH all of the appurtenances thereto according to said Master Deed and Exhibits and Amendments thereto, and the Grantee(s) assume and agree to observe and perform their obligations under said Master Deed, Exhibits and Amendments thereto, including but not limited to the payment of assessments for the maintenance and operation of the units and condominiums.

AND SUBJECT TO the provisions of the By-laws of Bahama Sands Homeowners Association, Inc.

Being the same land conveyed to James W. Hufton, Sr. and Elmer J. Craft, Jr. from Bahama Sands Development, LLC by Indenture Deed dated April 7, 2008 and recorded April 8, 2008 in Deed Book 3326 at page 1862 in the records of Horry County, South Carolina.

TMS# 144-13-43-051

TO HAVE AND HOLD all and singular of the premises before mentioned unto the said PHYLLIS C. HUFTON her heirs and assigns, forever, so that neither I, nor any other person or persons claiming under me, shall at any time hereafter, by any way or means, have claim or demand any right or title to the aforesaid premises and appurtenances, or any part or parcel thereof, forever.

TOGETHER with all and singular, the Rights, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at Unit 506 Bahama Sands, TMS# 144-13-43-051 was transferred by Deborah A. Gehlschlaeger, Administrator, C.T.A. of the Estate of Birmer Judson Craft, Jr. to Phyllis C. Hutton on 9/9/11.

3. Check one of the following: The deed is

(a) subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) X exempt from the deed recording fee because (See Information section of affidavit);

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes or No

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

(a) The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of 65,000.00

(b) The fee is computed on the fair market value of the realty which is

(c) The fee is computed on the fair market value of the realty as established for property tax purposes which is

5. Check Yes or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is:

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here: \$-0-

(b) Place the amount listed in item 5 above here: 0

(If no amount is listed, place zero here.)

(c) Subtract line 6(b) from Line 6(a) and place result here: \$-0-

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is:

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: GRANTOR

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Kenneth S. Corbett

SWORN to before me this 9th day of September year of 2011.

Notary Public for

My Commission Expires: 9-18-17

WITNESS my Hand and Seal this 9th day of September in the year of our Lord Two Thousand and Eleven the Two Hundred Thirty-Fifth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Regina B. Cooper
Witness

Deborah A. Oehlschlaeger
Deborah A. Oehlschlaeger,
Administrator, c.t.a.

Phillip A. Cooper
Witness

ACKNOWLEDGEMENT

STATE OF

COUNTY:

I, the undersigned Notary Public, do hereby certify that Deborah A. Oehlschlaeger, Administrator, c.t.a., personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this the 9th day of September, 2011.

M. Jackie Largen
Notary Public for
My Commission Expires: 9-30-2013

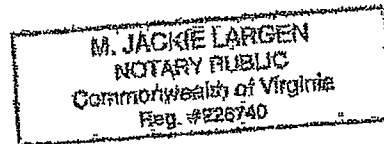


Exhibit E

(Foreclosure Complaint)

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Flagstar Bank, FSB,

PLAINTIFF,

VS.

Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr., Deceased, James W. Hufton, Jr., as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Marcee L. Cook, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Sharie Ann Carey, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft, as Legal Heir of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, and Bahama Sands Homeowners' Association, Inc.,

DEFENDANT(S).

(110855.00256)

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-26-

1379

COMPLAINT

Foreclosure - Non-Jury
(Deficiency waived)

FILED
Horry County
2012 FEB 20 AM 11:19
MELANIE HUGGINS-WARD
CLERK OF COURT

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

1. This is an action for foreclosure of a mortgage upon certain real estate in Horry County, South Carolina
2. Plaintiff is a corporation or other legal entity doing business in the State of South Carolina and is the current holder of the Note and Mortgage described herein
3. The servicer for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program (HMP), but the HMP process as specified by U.S. Treasury Department's Supplemental Directive 09-01 has been completed without resulting in a modification by virtue of the property not being owner occupied.
4. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein

5. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of Section 15-35-840 of the Code of Laws of South Carolina (1976).

6. Heretofore, under date of April 7, 2008, James Hufton made, executed and delivered to Golden Gate Mortgage Inc. a certain mortgage note ("Note") in writing wherein and whereby James Hufton promised to pay to Golden Gate Mortgage Inc the principal sum of \$417,000.00.

7. In order to secure the payment of said note, the said James W. Hufton, Sr. and Elmer J. Craft, Jr did on the same date, to-wit, April 7, 2008, make execute and deliver to Mortgage Electronic Registration Systems, Inc. as nominee for Golden Gate Mortgage Inc. , its successors and assigns, a certain mortgage ("Mortgage") covering real property located in the County and State aforesaid, which said mortgage was recorded in the Office of the Clerk of Court/Register of Deeds for Horry County, on April 8, 2008, in Book 5055, at Page 1407; Thereafter, said Note and Mortgage were assigned to Flagstar Bank, FSB by assignment instrument dated January 31, 2012 and recorded February 9, 2012 in Book 5378 at Page 3123

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

Unit 506 Bahama Sands Horizontal Property Regime, established by Master Deed dated December 26, 2007 and recorded December 31, 2007 in Deed Book 3304 at Page 1609, as thereafter amended, records of Horry County, South Carolina.

Subject to all of the provisions of the aforesaid Master Deed and Exhibits and Amendments thereto.

Together with all of the appurtenances thereto, to said Master Deed and Exhibits and Amendments thereto, and the Grantee(s) assume and agree to observe and perform their obligations under said Master Deed, Exhibits and Amendments thereto, including by not limited to the payment of assessments for the maintenance and operation of the units and condominiums.

And subject to the provisions of the By-laws of Bahama Sands Homeowners Association, Inc

This being the same property conveyed to James W Hufton, Sr and Elmer J. Craft, Jr. by Deed of Bahama Sands Development, LLC, a South Carolina Limited Liability Company, dated April 7, 2008 and recorded April 8, 2008 in the Office of the Register of Deeds for Horry County, South Carolina in Book 3326 at Page 1862.

TMS No. 144-13-43-051

Property address. 1321 South Ocean Boulevard, Unit 506
North Myrtle Beach, SC 29582

8. The borrower, James W. Hufton, Sr., died on or about August 22, 2010.

9. The borrower, Elmer Judson Craft, Jr., died on or about June 5, 2009.

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

11. That the Plaintiff and/or its counsel have complied with its obligation(s) as required under the specific terms of the Note and Mortgage being foreclosed as well as any applicable Federal or State statutes or regulations including but not limited to, the furnishing of any notices required to be given to the obligor(s) which gives to such person(s) the right to cure any default arising under the specific terms of the recited Note and Mortgage herein, and the review of this mortgage loan for compliance with the Home Affordability Modification Program (HMP) as defined by and in the Administrative Order of the South Carolina Supreme Court issued by Chief Justice Jean H. Toal on May 22, 2009, if applicable. That the Plaintiff's counsel has read the allegations in this pleading and that to the best of his/her knowledge, information, and belief, there is a good ground to support it.

12. In and by the terms of said note and the mortgage securing the same, it is provided, among other things, that on failure to pay any installment of either principal and interest or any portion thereof when due, or if any of the conditions and requirements in the mortgage securing the same be not complied with, then the whole principal sum and accrued interest shall at the option of the legal holder thereof become at once due and payable without notice, and collectible by foreclosure.

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

14. The installments of principal and interest falling due from and after September 1, 2011 have not been paid although demand for the payment thereof has been made and the Plaintiff, as the holder of the said note and mortgage, has and does hereby elect to declare the entire balance of said principal and interest due and payable at once; that there is now due and owing and unpaid upon the said note and mortgage the full and just principal sum of \$396,516.95, together with interest thereon at the rate of 3.375% percent per annum from August 1, 2011, together with reasonable attorney's fees for the collection thereof and the costs

of this action. Pursuant thereto, the Plaintiff has employed the undersigned legal counsel to prosecute these actions herein and add the fees and costs of said counsel to the amount of the total debt as provided for in the Note and Mortgage

15. Upon information and belief, the Defendants below named claim or may claim a subordinate lien or junior interest upon or interest in the subject property, and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with the Circuit Court Rules 53 and/or 71. The subject Defendant are further made a party due to the similarity in name(s) to the primary defendants against whom they claim or may claim a lien and in order to clear title to this property as follows.

(a) The Defendant, Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr., in such fiduciary capacity as representative of any person or entity that may be a creditor or claimant against such Estate, and by virtue of the powers granted by Decedent's Will or by statute and by virtue of any interest claimed under the law of succession (S.C. Code '62-2-109) or under decedent's will.

(b) The Defendant(s), Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft as Legal Heir and Devisee of The Estate Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft of by virtue of any interest claimed under the law of succession (S.C. Code '62-2-109) or under decedent's will

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

(d) The Defendant, Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr , a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft in such fiduciary capacity as representative of any person or entity that may be a creditor or claimant against such Estate, and by virtue of the powers granted by Decedent's Will or by statute and by virtue of any interest claimed under the law of succession (S.C. Code '62-2-109) or under decedent's will.

(e) The Defendant(s), James W. Hufton, Jr., Marcee L. Cook, and Sharie Ann Carey, as Legal Heirs and Devisees of The Estate of James W Hufton, Sr , by virtue of any interest claimed under the law of succession (S.C. Code '62-2-109) or under decedent's will

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

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

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

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

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

2. Plaintiff's mortgage be declared a first lien (and purchase money mortgage first lien as does apply under the specific facts of this action as well as the After Acquired Property Doctrine) and that Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums and/or costs for inspecting and securing the property which may be due or which may be or have been paid by Plaintiff, with a reasonable attorney's fees, and for the costs of this action.

3. The mortgaged premises be sold according to law and the practice of this Court, the equity of redemption as to all defendants be barred and the lien or interest claimed by any defendant be extinguished and that the proceeds of sale be applied as follows:

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

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

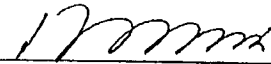
Third, the surplus, if any, be distributed according to law.

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

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

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

SCOTT LAW FIRM, P.A.

By: 

Ronald C. Scott, SC Bar #4996
Elizabeth R. Polk, SC Bar #11673
Brett F. Kline, SC Bar #15661
Angella J. Grant, SC Bar #78334
Priti M. Patel, SC Bar #79835

Kevin T. Hardy, SC Bar #76015
Erica G. Lybrand, SC Bar #79052
Richard G. Duerinckx, SC Bar #70143
Elizabeth A. Blackwell, SC Bar #78756

ATTORNEYS FOR THE PLAINTIFF
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
(803) 252-3340

February 17, 2012

Exhibit F
(2/23/12 Email Chain)

From: dpt@traywicklaw.com
Sent: Thursday, February 23, 2012 4:42 PM
To: Kevin T. Hardy
Subject: RE: 1321 S Ocean blvd Unit 506 (Hufton)

I'll accept service for Phyllis Hufton. Please do not attempt to serve her personally.

David P. Traywick

Traywick Law Offices, LLC
PO Box 564
Isle of Palms, SC 29451
PH 843-343-5092
FAX 843-300-1051
EMAIL DPT@Traywicklaw.com

CONFIDENTIALITY NOTICE - This e-mail transmission, and any documents, files or previous e-mail messages attached to it may contain confidential or legally privileged information. If you are not the intended recipient, you are hereby notified that you must not read this transmission and that disclosure, copying, printing, distributing or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. If you have received this transmission in error, please immediately notify the sender by telephone or return e-mail and delete the original transmission and its attachment(s) without reading or saving in any manner. Thank you.

----- Original Message -----

Subject: RE: 1321 S Ocean blvd Unit 506 (Hufton)
From: "Kevin T. Hardy" <KevinH@scottlaw.com>
Date: Thu, February 02, 2012 9:28 am
To: <dpt@traywicklaw.com>

David,
Thank you for clarifying. I will consult with Flagstar and let you know how they prefer to proceed.

Best Regards,
Kevin T. Hardy
Attorney
Scott Law Firm, P.A.
P.O. Box 2065 (29202)
2712 Middleburg Drive, Suite 200 (29204)
Columbia, South Carolina
(803) 252-3340 Ext. 122
Fax (803) 252-3346
[VIEW BIO](#) | [VCARD](#) | [WEBSITE](#)

DEBT COLLECTOR: This firm collects debts for mortgage lenders and other creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only as an attempt to enforce a lien.

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with certain U.S. Treasury regulations, we inform you that, unless expressly stated otherwise, any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of avoiding tax-related penalties that may be imposed by the IRS or to promote, market, or recommend to any party any tax-related matter addressed herein. In addition, if any such tax advice is used or referred to by other parties in promoting,

ROA¹ 125

FB (Hufton) 1647

From: dpt@traywicklaw.com
Sent: Thursday, February 23, 2012 9:33 AM
To: Erica Lybrand
Cc: Kevin T. Hardy
Subject: Flagstar v. Hufton

Erica:

I represent Phyllis Hufton, and the rest of the known parties named as defendants. I had already agreed to accept service on behalf of my client(s).

Please forward a copy of the complaint filed in this matter as soon as you can. Once you have done so, I will email confirmation that such receipt by me constitutes personal service on Phyllis Hufton as well as any other parties you have not already effected personal service upon in this matter. I will be representing all of the parties in the suit.

David P. Traywick

Traywick Law Offices, LLC
PO Box 564
Isle of Palms, SC 29451
PH 843-343-5092
FAX 843-300-1051
EMAIL DPT@Traywicklaw.com

CONFIDENTIALITY NOTICE - This e-mail transmission, and any documents, files or previous e-mail messages attached to it may contain confidential or legally privileged information. If you are not the intended recipient, you are hereby notified that you must not read this transmission and that disclosure, copying, printing, distributing or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. If you have received this transmission in error, please immediately notify the sender by telephone or return e-mail and delete the original transmission and its attachment(s) without reading or saving in any manner. Thank you.

Exhibit G

(12/28/11 Letter)

TRAYWICK LAW OFFICES, LLC
DAVID PAUL TRAYWICK
ATTORNEY AT LAW

POST OFFICE BOX 584
ISLE OF PALMS, SOUTH CAROLINA 29451
TEL: (843) 343-5092
DPT@TRAYWICKLAW.COM
WWW.TRAYWICKLAW.COM

December 28, 2011

BY FAX ONLY TO, 888-848-1071
BY FAX ONLY TO, 866-234-9845
Flagstar Bank

Re: Account No.. 0501997041
James Hufton (deceased)
Power of Attorney

To Whom it Concerns:

I represent the title holder of 1321 South Ocean Blvd., Unit 506 North Myrtle Beach, SC 29582.

My client, Phyllis Hufton, has provided me Power of Attorney (attached) in order to resolve the matter of the account above referenced. The original mortgagor is deceased and his estate has been probated.

From here out, forward all correspondence to me at the contact information provided. No further correspondence, telephone calls, or contacts of any kind should be directed to Phyllis Hufton or James Hufton.

We invoke all of the protections of the Fair Debt Collection Practices Act. You should be aware that any attempt to collect any payments or installments from Phyllis Hufton is a violation of said Act and I request that you refrain from doing so immediately.

Further, in the event you need to serve process on my client, I request that you instruct any law firms or attorneys retained by you or your agents for the purpose of foreclosing on the residence to contact me - I agree to accept service on behalf of the title holder.

With kind regards,

Yours very truly,



David P. Traywick

DPT:jt
Enclosure

ROA 128

FB (Hufton) 0479

Exhibit H

(Foreclosure Answer)

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Flagstar Bank, FSB,

Plaintiff,

v.

Phyllis C. Hufton, as Personal
Representative and Legal Heir of the Estate
of James W. Hufton, Sr., Deceased, James
W. Hufton, Jr., as Legal Heir of the Estate
of James W. Hufton, Sr., Deceased, Sharie
Ann Carey, as Legal Heir of the Estate of
James W. Hufton, Sr., Deceased, Deborah
A. Oehischlaeger, as Personal
Representative of the Estate of Elmer Craft,
Jr., aka Elmer J. Craft, Deceased, Nancy
Phillips Craft aka Nancy P. Craft, as Legal
Heir of the Estate of Elmer Judson Craft, Jr.
Aka Elmer J. Craft, Deceased, and Bahama
Sands Homeowners' Association, Inc.,

Defendants.

In the Court of Common Pleas

Civil Action No.: 2012-CP-26-1379

**ANSWER OF DEFENDANT
PHYLLIS C. HUFTON**

FILED
HORRY COUNTY
2012 MAR -9 PM 3:19
MELANIE HUGGINS-WARD
CLERK OF COURT

COMES NOW Defendant Phyllis C. Hufton, as Personal Representative and Legal Heir of the
Estate of James W. Hufton, Sr., Deceased (hereinafter referred to as the "Defendant") by and
through her undersigned attorney, hereby responds to Plaintiff's Complaint as follows:

GENERAL ADMISSION

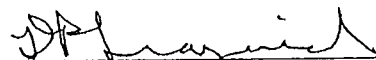
Any allegation contained in the Complaint not specifically denied herein is hereby
admitted. Responding to the numbered paragraphs contained in the Complaint, Defendant states
the following:

1. The allegations appearing in Paragraph 1 of Plaintiff's Complaint are admitted.

2. The allegations appearing in Paragraph 2 of Plaintiff's Complaint are admitted.
3. The allegations appearing in Paragraph 3 of Plaintiff's Complaint are admitted.
4. The allegations appearing in Paragraph 4 of Plaintiff's Complaint are admitted.
5. The allegations appearing in Paragraph 5 of Plaintiff's Complaint are admitted.
6. The allegations appearing in Paragraph 6 of Plaintiff's Complaint are admitted.
7. The allegations appearing in Paragraph 7 of Plaintiff's Complaint are admitted.
8. The allegations appearing in Paragraph 8 of Plaintiff's Complaint are admitted.
9. The allegations appearing in Paragraph 9 of Plaintiff's Complaint are admitted.
10. The allegations appearing in Paragraph 10 of Plaintiff's Complaint are admitted.
11. The allegations appearing in Paragraph 11 of Plaintiff's Complaint are admitted.
12. The allegations appearing in Paragraph 12 of Plaintiff's Complaint are admitted.
13. The allegations appearing in Paragraph 13 of Plaintiff's Complaint are admitted.
14. The allegations appearing in Paragraph 14 of Plaintiff's Complaint are admitted.
15. The allegations appearing in Paragraph 15 of Plaintiff's Complaint are admitted.
16. The allegations appearing in Paragraph 16 of Plaintiff's Complaint are admitted.
17. The allegations appearing in Paragraph 17 of Plaintiff's Complaint are admitted.

18. The allegations appearing in Paragraph 18 of Plaintiff's Complaint are admitted.

WHEREFORE, this Defendant prays that the Court provide such relief as may be provided at law or in equity.



David P. Traywick
TRAYWICK LAW OFFICES, LLC
P.O. Box 564
I.O.P., SC 29451
Telephone: 843-343-5092
Fax: 843-300-1051
Email: dpt@traywicklaw.com
Attorney for Defendant

March 7, 2012
Charleston, South Carolina

Exhibit I
(Foreclosure Order)

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Flagstar Bank, FSB,

PLAINTIFF,

VS.

Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr., Deceased, James W. Hufton, Jr., as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Marcee L. Cook, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Sharle Ann Carey, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft, as Legal Heir of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, and Bahama Sands Homeowners' Association, Inc.,

DEFENDANTS.

File Number 110855.00256

TO: Ronald C. Scott, SC Bar #4996
Elizabeth R. Polk, SC Bar #11673
Brett F. Kline, SC Bar #15661
Angelia J. Grant, SC Bar #78334
Priti M. Patel, SC Bar #79835
Erica G. Lybrand, SC Bar #79052
Elizabeth A. Blackwell, SC Bar #78756
J. Harrison Rushton, SC Bar #100406
ATTORNEYS FOR THE PLAINTIFF
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
(803) 252-3340

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-26-1379

SPECIAL REFEREE'S
ORDER AND JUDGMENT
OF FORECLOSURE AND SALE

DEFICIENCY WAIVED

Non-Eligible under the Home Affordable
Modification Program

NOTICE: The original of this document was filed in
the office of the Clerk of Court for Horry County:

HORRY COUNTY
12 AUG 27 AM 9:06
MELANIE HUGGINS-WARD
CLERK OF COURT

Phyllis C. Hufton, as Personal Representative and
Legal Heir of the Estate of James W. Hufton, Sr.,
c/o David P Traywick, Esq.
TAYWICK LAW OFFICES, LLC
P.O. Box 564
Isle of Palms, SC 29451

Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft as Legal Heir and Devisee
of The Estate Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft
307 N. Preston Dr.
Vinton, VA 24179

Bahama Sands Homeowners' Association, Inc.
Resort Association Management, Registered Agent
9550 Shore Dr.
Myrtle Beach, SC 29572

Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson
Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft
18-A Kirk Ave.
Roanoke, VA 24011

James W. Hufton, Jr., Marcee L. Cook, and
Sharie Ann Carey, as Legal Heirs and Devisees of
The Estate of James W. Hufton, Sr.,
425 Hufton Brook Lane
Blue Ridge, VA 24064

Sharie Ann Carey
1540 Meadow Lark Ln.
Tracy, CA 95376

Marcee L. Cook
385 Hufton Book Lane
Blue Ridge, VA 24064

Pursuant to Circuit Court Rule 53(b) of the South Carolina Rules of Civil Procedure, the
above-entitled matter was referred to the undersigned to make appropriate findings of facts and
conclusions of law with authority to enter a final judgment in the cause.

Pursuant to the said Order of Reference a hearing was held attended by the attorneys of
record. A Record of Hearing was presented, which is herewith reported, and from the Record of

Hearing and the documents and records received into evidence, I find, conclude and order as follows:

FINDINGS

This Court has jurisdiction over the subject matter of this action and the parties hereto and it is the proper forum for the litigation of this matter.

1. The Court has determined that the Plaintiff has complied with the Administrative Order of the Supreme Court dated May 2, 2011 (2011-05-02-01).
2. Based upon the facts and/or evidence presented, the Court has determined that this loan is not eligible under the Home Affordable Modification Program.
3. The Lis Pendens was filed on February 20, 2012.
4. The Summons and Complaint were filed on February 20, 2012.
5. Service was made upon the Defendants named in this Report as is shown by the proofs of service filed herein.
6. The Defendant(s), James W. Hufton, Jr., as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Marcee L. Cook, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Sharle Ann Carey, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft, as Legal Heir of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, and Bahama Sands Homeowners' Association, Inc., are in default as is shown by the affidavit filed herein.
7. The Defendants and/or all attorneys of record were notified of the time, date, and place of the hearing of this matter.
8. According to the affidavit filed herein, any Defendant in default is not in the Military Service of the United States of America, as contemplated under The Servicemembers' Civil Relief Act of 2003 and any amendments thereto.
9. For value received, Defendant(s), James Hufton, made, executed and delivered a Note dated April 7, 2008, promising thereby to pay to the order of Golden Gate Mortgage Inc. the sum of \$417,000.00 with interest at the rate of 5.375% per annum. Other terms and conditions are stated in the Note, which is of record herein.

10. To better secure the payment of the Note described above, the said Defendant(s), James W. Hufton, Sr. and Elmer J. Craft, Jr., made, executed and delivered to Mortgage Electronic Registration Systems, Inc. as nominee for Golden Gate Mortgage Inc. a Mortgage in writing, dated April 7, 2008, covering real property in Horry County, which is the same as that described in the Complaint. The Mortgage was filed on April 8, 2008, and is of record in the Office of the Clerk of Court for Horry County in Book 5055, at Page 1407. The Mortgage evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagor(s). The Court finds also that this mortgage constitutes a first lien on the mortgaged premises and a purchase money lien as may apply under state law as well as the After Acquired Property Doctrine. Thereafter, said Note and Mortgage were assigned to Flagstar Bank, FSB by assignment instrument dated January 31, 2012 and recorded February 9, 2012 in Book 5378 at Page 3123.

11. That the Court finds that the Plaintiff and/or its counsel has complied with its obligation(s) as required under the specific terms of the Note and Mortgage being foreclosed as well as any applicable Federal or State statutes or regulations including but not limited to, the furnishing of any notices required to be given to the obligor(s) which gives to such person(s) the right to cure any default arising under the specific terms of the recited Note and Mortgage herein; the review of this mortgage loan for compliance with the Home Affordability Modification Program (HMP), if applicable; and that moreover and prior to the filing of this judicial proceeding, the Defendant(s) had not raised any compliance defense or objections as to the servicing of any applicable banking or consumer laws by the Plaintiff and/or its counsel.

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

13. With respect to attorney fees and in view of the potential financial liabilities and likely continuing professional obligations inherent in judicially prosecuting a real property mortgage credit matter, the attendant professional duties and responsibilities, and the size of the mortgage debt and consistent with similar case proceedings before this Honorable Court, I find that a reasonable attorney's fee in this matter would be \$1,750.00. This award is consistent with the laws of this state in the awarding of attorney fees. I have considered the six (6) factors (none of these factors is controlling in the singular) as follows: (1) the nature, extent and

difficulty of the legal service rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. Taylor v. Medenica, 331 S.C. 575, 503 S.E.2d 458 (1998); Baron Data Systems v. Loter, 297 S.C. 382, 377 S.E.2d 296 (S.C. 1989). This fee is also consistent with and pursuant to opinions and orders of this jurisdiction wherein our state's appellate courts have repeatedly held that any contract for attorney fees that may exist or exists between the lawyer and the client (in addition to not being one of the six (6) fee review factors) is specifically not binding on the trial court in its determination of the reasonableness of the attorney fee. Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750(1997); Rice v. Multimedia, Inc., 318 S.C. 95, 456 S.E.2d 381 (1995); and Willamson v. Middleton, 374 S.C. 419, 649 S.E.2d 57 (Ct. App. 2007). Plaintiff's Counsel has likewise reported to this Court that it is billing the Plaintiff a minimum of \$1,750.00 for all uncontested and routine matters plus costs as well as additional fees/costs for any services outside of the contemplated routine and uncomplicated services (relating to contested, complex, or difficult matters) for a case of this type. Total representation of the Plaintiff's interests in this matter have been undertaken (including among many duties the researching of the referral file to serving as custodian of the salient loan file documents to the filing of all pleadings and legally required documents with the court) by the Scott Law Firm, P.A. As to the Scott Law Firm, P.A. and its professional standing, it is noted that counsel for the Plaintiff is regionally and nationally recognized for its professional expertise in mortgage default credit matters as evidenced by its listing in BEST LAWYERS IN AMERICA™ and Martindale-Hubbell Registry of Pre-Eminent Lawyers™. This Court has specifically reviewed and satisfied itself with all six (6) factors to be considered in awarding reasonable attorneys fees in this matter.

14. On receiving testimony and other evidence during this hearing, I find that the Scott Law Firm, P.A., was engaged by the Plaintiff to foreclose the mortgage as expeditiously as possible, given the detriment to Plaintiff's equity position as a direct result of increasing losses from the accrual of interest and related adverse economic conditions such as depreciation or possible damage to the collateralized property. I find that Plaintiff's counsel has achieved a beneficial result with its prompt foreclosure of the subject mortgage.

Upon receipt of the case file, the title was examined and studied to identify all parties having or claiming an interest in the subject real estate as well as being researched for salient legal questions and issues. As to time and labor, I find that various attorneys as well as

experienced paralegal staff have been responsible for (and expended extensive professional time of 10 hours as to the basic services) in the preparation of the following pleadings and other legally required services and documents.

1. Lis Pendens and any amendment thereto
2. Summons and Complaint and any amendment thereto
3. Affidavits and proposed Order of Publication
4. Affidavit of Default
5. Consent(s) to Order of Reference
6. Order of Reference
7. Notice of Hearing
8. Proposed Judgment of Foreclosure and Sale
9. Record of Hearing
10. Notice of Sale
11. Other documents as applicable pertaining to service and finalization of the action.

Counsel may also prepare for the Plaintiff the Statutory Foreclosure Deed and any other documents necessary in this particular action as ordered or authorized by this Court. I find and note the nature, extent and difficulty of the services provided.

Although I have heretofore given consideration to all six (6) factors in the awarding of attorney fees and costs herein, jurisdiction over the fee award shall be reserved as granted in the Order of Reference with the right to re-visit the question of attorney fees should the action proceed in an unexpected way and/or to facilitate the assessment and payment of any such current or additional professional compensation.

15. The amount due and owing on the Note, with interest at the rate provided in the Note, including attorney's fee and allowable costs and charges allowable under and secured by the Note and Mortgage, is as follows:

(a)	Principal due	\$396,516.95
(b)	Interest Due from August 1, 2011 to August 16, 2012	\$13,788.09
(c)	Pre-Acceleration Late Charges	\$ 375.44
(d)	Escrow Adjustments (Itemized in Plaintiff's Disbursement Record)	\$ 999 01
(e)	Broker's Price Opinion/Appraisals	\$ 0.00
(f)	Property Preservation	\$0.00
(g)	Previous Bankruptcy Fees/Costs	\$ 0 00
(h)	Property Inspections	\$ 135.00

(i)	Suspense	\$0.00
(j)	Miscellaneous Charges/Credits (Itemized in Plaintiff's Disbursement Record)	\$0.00
(k)	Costs of collection prior to hearing	\$2,566.30
(l)	Attorney's fees and costs	
	(Foreclosure & applicable Bankruptcy)	<u>\$1,750.00</u>

**TOTAL DEBT secured by note
and mortgage including interest to date shown** **\$416,130.79**

Interest for the period from the date shown in (b) above through the date of this Judgment at the above stated rate to be added to the above stated "Total Debt": to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of 3.375% per annum (pursuant to the terms of the Note and Mortgage) on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage through the date to which such Interest is computed. (Items (g), (k) and (l) are subject to revision by Plaintiff's counsel and/or modification by the Court.)

16. Based upon a search of the public records of the aforesaid county, all persons or entities having an interest or lien or possible claim in or upon the mortgaged premises subordinate to the lien of the Plaintiff as of the date and time of the filing of the Lis Pendens herein have been made defendants.

17. The Plaintiff is seeking the usual foreclosure of mortgage and has in the Complaint, or by amendment thereto, or by motion at the reference, expressly waived the right to a personal or deficiency judgment.

18. The Defendants below named claim or may claim a subordinate lien or junior interest upon or interest in the subject property, and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with the Circuit Court Rules 53 and/or 71. The subject Defendant are further made a party due to the similarity in name(s) to the primary defendants against whom they claim or may claim a lien and in order to clear title to this property as follows:

(a) The Defendant, Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr., in such fiduciary capacity as representative of any person or entity that may be a creditor or claimant against such Estate, and by virtue of the

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

(b) The Defendant(s), Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft as Legal Heir and Devisee of The Estate Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft of by virtue of any interest claimed under the law of succession (S.C. Code '62-2-109) or under decedent's will.

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

(d) The Defendant, Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft in such fiduciary capacity as representative of any person or entity that may be a creditor or claimant against such Estate, and by virtue of the powers granted by Decedent's Will or by statute and by virtue of any interest claimed under the law of succession (S.C. Code '62-2-109) or under decedent's will.

(e) The Defendant(s), James W. Hufton, Jr., Marcee L. Cook, and Sharle Ann Carey, as Legal Heirs and Devisees of The Estate of James W. Hufton, Sr., by virtue of any interest claimed under the law of succession (S.C. Code '62-2-109) or under decedent's will.

19. No Defendant raised any issues related to Plaintiff's standing to prosecute this action. Therefore, any issues related to Plaintiff's standing or ability to prosecute this action are waived.

20. Defendant Phyllis C. Hufton has not established any claims for relief against the Plaintiff, and therefore, no relief should be granted to the Defendant.

CONCLUSIONS OF LAW

I therefore, conclude as follows:

1. The Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2011-05-02-01) issued by Chief Justice Jean H. Toal, dated May 2, 2011.

2. The Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2009-05-22-01) issued by Chief Justice Jean H. Toal, dated May 22, 2009, and has shown that this loan is not eligible under the Home Affordable Modification Program.

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

4. Defendant Phyllis C. Hufton has not established any claims for relief against the Plaintiff, and therefore, no relief should be granted to the Defendant.

Now, on motion of Plaintiff's attorney,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2011-05-02-01) issued by Chief Justice Jean H. Toal, dated May 2, 2011.

2. The Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2009-05-22-01) issued by Chief Justice Jean H. Toal, dated May 22, 2009, and has shown that this loan is not eligible under the Home Affordable Modification Program.

3. This case is not subject to the stay provisions of the Order of the Supreme Court of South Carolina dated May 4, 2009, as amended and superceded by Order dated May 22, 2009.

4. That there is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of \$416,130.79, representing the total debt due Plaintiff as set forth supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

5. The amount due in the preceding paragraph (the "total debt" as set forth in Paragraph hereinabove, 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 3.375% per annum.

6. That the Defendants liable for the aforesaid Mortgage debt shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or the Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

7. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the undersigned at public auction, after giving Notice of the time and place of such sale by advertisement according to law. Any sales date is tentative and may be rescheduled at any time prior to the sale without

further order of this court or written notice to the parties of the notice of sale, provided notice of the new sales date is duly advertised as required by law. The sale shall be according to the following terms, that is to say:

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

b. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 3.375%.

c. The sale shall be subject to taxes and assessments, existing easements and restrictions of record.

d. This mortgage constitutes a first lien covering the real estate and improvements therein described, including any mobile/manufactured home located thereon. Plaintiff would further allege and avail itself of the Purchase Money Mortgage Doctrine as may apply to the facts of this action.

e. Purchaser to pay for deed stamps and cost of recording the deed with the Plaintiff to pay the Statutory allowed fee of \$25.00 to the preparer of said deed (be it this Court or Counsel for Plaintiff).

8. If Plaintiff be the successful bidder at said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, the Plaintiff may pay to the Clerk of Court only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

9. No personal or deficiency judgment being demanded, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately.

10. That the Master in Equity will by advertisement according to law, give notice of the time and place of such sale, and the terms thereof. Any sales date is tentative and may be rescheduled at any time prior to the sale without further order of this court or written notice to the parties of the notice of sale, provided notice of the new sales date is duly advertised as required by law. Master in Equity 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 30 days after the date of sale, then the Master in Equity may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured. In the event the Plaintiff is the successful bidder, at its/his option, or the option of its/his assignee, the deed may be taken subject to payment by grantee of any taxes or assessments constituting a lien against the property sold under this order and hereinafter more fully described. In the event the successful bidder is a third party, neither the Plaintiff nor Plaintiff's counsel make any warranties or representations as to the subject property on behalf of the third party bidder or any subsequent purchasers.

11. The sale will not be held unless the Plaintiff, its attorney, or its bidding agent is present at the sale and enters the bid of the Plaintiff or has advised the Master in Equity's office of its bidding instructions. In the event a sale is held without the Plaintiff entering a bid, the sale shall be void.

12. In the event of a third party bidder and that any third party bidder fails to deliver the required deposit in certified (immediately collectible) funds to the Office of the Master in Equity by close of bidding on the day of the sale, the Master in Equity will re-sell the subject property at the most convenient time thereafter (including the day of sale) upon notification to counsel for Plaintiff.

13. That the Master in Equity shall apply the proceeds of the sale as follows:

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

NEXT: To the payment to the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest or so much thereof as the purchase money will pay on the same; and Plaintiff's attorney shall receive and disburse such funds only in total and absolute compliance with the debt, interest, escrow, and related calculations of this Court including the Court's award for attorney fees and taxable costs;

NEXT: Any surplus will be held pending further order of the Court as provided for in the South Carolina Rules of Civil Procedure and particularly Rule 71(c) of the South Carolina Rules of Civil Procedure.

14. It is further ORDERED, that if the successful bidder is other than the Defendant in possession herein, upon the presentation of a Writ of Possession, the Sheriff of Horry County is ordered and directed to evict and remove from the premises the occupants of the property

sold, together with all personal property located thereon, and put the successful Purchaser or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful Purchaser or his assigns in such peaceable possession. All valid Tenant rights pursuant to Protecting Tenants at Foreclosure Act of 2009 shall be protected.

15. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the South Carolina Department of Motor Vehicles is directed and ordered to provide the new Certificate of Title to the attorneys for the Plaintiff as agent for the grantee on the deed upon payment of the required title fees on any mobile/manufactured home which is herein located on the subject property and intended to be collateralized by the Plaintiff's security documents as heretofore received into evidence by this Court, or which may be received into evidence at any necessary hearing post sale of the subject property.

16. And it is further ORDERED, ADJUDGED AND DECREED that Defendant named herein and all persons whosoever claiming under him, them or it, be forever barred and foreclosed of all right, title and interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

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

18. The Special Referee will retain exclusive jurisdiction to do all necessary acts incident to this foreclosure, including, but not limited to, all matters post-sale which may effect the transfer of the title to the subject real property and all improvements thereon, as well, the issuance of a Writ of Assistance.

19. Upon issuance of a Master in Equity's Report on Sale and Disbursements, the Register of Deeds is directed to release of record the mortgage lien being foreclosed, which mortgage lien is described as follows:

Mortgage from James W. Hufton, Sr. and Elmer J. Craft, Jr. to Mortgage Electronic Registration Systems, Inc. as nominee for Golden Gate Mortgage Inc. , dated April 7, 2008, covering real property in Horry County, filed on April 8, 2008, and is of record in the Office of the Clerk of Court/Register of Deeds for Horry County in Book 5055, at Page 1407.

20. This sale is subject to all title matters of record and any interested party should consider performing an independent title examination of the subject property as no warranty is given at all by the Court, the Plaintiff or its Counsel. If the judicial sale is set aside by this Court, the successful purchaser at the sale shall be entitled only to a return of the deposit paid, if any.

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

Unit 506 Bahama Sands Horizontal Property Regime, established by Master Deed dated December 26, 2007 and recorded December 31, 2007 in Deed Book 3304 at Page 1609, as thereafter amended, records of Horry County, South Carolina.

Subject to all of the provisions of the aforesaid Master Deed and Exhibits and Amendments thereto.

Together with all of the appurtenances thereto, to said Master Deed and Exhibits and Amendments thereto, and the Grantee(s) assume and agree to observe and perform their obligations under said Master Deed, Exhibits and Amendments thereto, including by not limited to the payment of assessments for the maintenance and operation of the units and condominiums.

And subject to the provisions of the By-laws of Bahama Sands Homeowners Association, Inc.

This being the same property conveyed to James W. Hufton, Sr. and Elmer J. Craft, Jr. by Deed of Bahama Sands Development, LLC, a South Carolina Limited Liability Company, dated April 7, 2008 and recorded April 8, 2008 in the Office of the Register of Deeds for Horry County, South Carolina in Book 3326 at Page 1862.

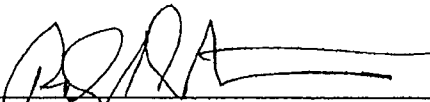
TMS No. 144-13-43-051

Property address: 1321 South Ocean Boulevard, Unit 506
North Myrtle Beach, SC 29582

22. IT IS FURTHER ORDERED that if the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the above-described property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales day as ordered by this court.

23. No Defendant raised any issues related to Plaintiff's standing to prosecute this action. Therefore, any issues related to Plaintiff's standing or ability to prosecute this action are waived.

24. Defendant Phyllis C. Hufton has not established any claims for relief against the Plaintiff, and therefore, no relief is granted to the Defendant.



Ralph Stroman
Special Referee for Horry County

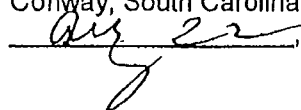
Conway, South Carolina
 2012

Exhibit J

(Master's Deed)

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

ORIGINAL

MASTER IN EQUITY'S DEED
OF FORECLOSURE

I, Cynthia Graham Howe, as Master in Equity for Horry County, in the said State, send greetings:

WHEREAS, in an action in the Court of Common Pleas in Horry County between Flagstar Bank, FSB, as Plaintiff and James W. Hufton, Sr. and Elmer J. Craft, Jr., as Defendant(s), by an Order dated on August 27, 2012, it was decreed that the property hereinafter described should be sold by the Master in Equity for Horry County on the terms and for the purposes mentioned in the Order(s) granted in the case (see Case No. 2012-CP-26-1379),

NOW THEREFORE KNOW ALL MEN, that I, the undersigned, as Master in Equity for Horry County, pursuant to the foregoing and in consideration of the sum of two hundred fifty thousand and 00/100 (\$250,000.00) as paid by the hereinafter named grantee, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant and release the following described property unto the grantee: **Flagstar Bank, FSB, 5151 Corporate Drive, Troy, MI 48098:**

Unit 506 Bahama Sands Horizontal Property Regime, established by Master Deed dated December 26, 2007 and recorded December 31, 2007 in Deed Book 3304 at Page 1609, as thereafter amended, records of Horry County, South Carolina.

Subject to all of the provisions of the aforesaid Master Deed and Exhibits and Amendments thereto.

Together with all of the appurtenances thereto, to said Master Deed and Exhibits and Amendments thereto, and the Grantee(s) assume and agree to observe and perform their obligations under said Master Deed, Exhibits and Amendments thereto, including by not limited to the payment of assessments for the maintenance and operation of the units and condominiums.

And subject to the provisions of the By-laws of Bahama Sands Homeowners Association, Inc.

This being the same property conveyed to James W. Hufton, Sr. and Elmer J. Craft, Jr. by Deed of Bahama Sands Development, LLC, a South Carolina Limited Liability Company, dated April 7, 2008 and recorded April 8, 2008 in the Office of the Register of Deeds for Horry County, South Carolina in Book 3326 at Page 1862.

TMS No. 144-13-43-051

Property address: 1321 South Ocean Boulevard, Unit 506, North Myrtle Beach, SC 29582

Return to Scott Law Firm, P.A., P.O. Box 2065, Columbia, SC 29202

Instrument#: 2012000146222, DEED BK:
3626 PG: 2508 DOCTYPE: 125 12/17/2012
at 09:51:02 AM, 1 OF 3, EXEMPT,

ROA 149 BALLERY V. SKIPPER, HORRY COUNTY,
SC REGISTRAR OF DEEDS

This property was sold subject to any past due or accruing property taxes, assessments, existing easements and restrictions of record and any other senior encumbrances.

TOGETHER with all and singular the hereditaments, rights, members, and appurtenances whatsoever to the said property belonging or in any wise incident or appertaining, and the reversions and remainders, rents, issues, and profits thereof, and also any estate, right, title, interest, dower, possession, benefit, claim, or demand therein whatsoever of all parties to the said suit and of all other persons who might rightfully claim the same or any part thereof, by, from, or under them, or either of them;

TO HAVE AND TO HOLD the said property, with its hereditaments, privileges, and appurtenances, unto the said grantee, its successors and assigns for their own use, benefit, and behoof, forever.

IN WITNESS WHEREOF, I, the undersigned, as Master in Equity for Horry County under and by virtue of the said Order(s), have hereunto set my Hand and Seal the 3rd day of December, 2012

SIGNED, SEALED AND DELIVERED
in the Presence of.

Stephanie S. Mayers
Rebecca Cook Shigson

Cynthia Graham Howe
Cynthia Graham Howe
As Master In Equity
for Horry County

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

PERSONALLY APPEARED the undersigned witness and made oath that she saw Cynthia Graham Howe, as Master in Equity for Horry County, sign, seal, and deliver the within Deed; and that deponent together with the other witness signed their names as witnesses thereto.

Stephanie S. Mayers

SWORN to before me this
3rd day of December, 2012.

Rebecca Cook Shigson
Notary Public for South Carolina
My Commission Expires 5-20-2021

Return to Scott Law Firm, P.A., P.O. Box 2065, Columbia, SC 29202

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT
Phyllis C. Hufton, Plaintiff v. Flagstar Bank, FSB and John Doe, Defendants	Case No.: 13-CP-26-2861 Plaintiff's Motion to Amend Complaint

TO BRIAN BARNWELL AND JEREMY HODGES, ATTORNEYS FOR THE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, through his undersigned counsel, will move pursuant to Rule 15, *SCRCP*, for an order permitting him to amend his Complaint to add an action for a partition of the property that is the subject of the instant suit, as reflected in proposed Amended Complaint, attached hereto as Exhibit #1. The basis of this motion is that Plaintiff owns an interest in the property which she wishes to liquidate.

Counsel for the Plaintiffs has consulted with counsel for the current Defendants in an effort to resolve this matter, to no avail.



David P. Traywick
Benjamin A. Traywick
TRAYWICK LAW OFFICES, LLC
P.O. Box 564
Isle of Palms, South Carolina, 29464
Telephone 843-343-5092
dpt@traywicklaw.com
ben@traywicklaw.com
Attorneys for the Plaintiff

4-9-14
Date

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2013-CP-26-2861
	)	
PHYLLIS HUFTON,	)	
	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	AMENDED COMPLAINT
	)	(DECLARATORY JUDGMENT AND
	)	PARTITION)
FLAGSTAR BANK, FSB,	)	
	)	
DEFENDANT	)	
AND JOHN DOE	)	
_____	)	

COMES NOW THE PLAINTIFF, Phyllis Hufton, complaining of the Defendant(s) Flagstar Bank, FSB ("Flagstar") and John Doe, alleging as follows:

Parties and Jurisdiction

1. The Plaintiff brings this action under the authority of South Carolina's Declaratory Judgment Action, South Carolina Code Section 15-53-10 *et seq*, seeking a judgment which declares that she is the fee simple owner of good and marketable title to the real property described herein, and that no Defendant has any interest therein, of any kind.

2. The real property which is the subject of this civil action ("Property") is commonly known as 1321 South Ocean Boulevard, Unit 506, North Myrtle Beach, South Carolina, with TMS# 144-13-43-051, is situated in Horry County, and is more fully described as follows:

Unit 506 Bahama Sands Horizontal Property Regime, established by Master Deed dates December 26, 2007 and recorded December 31, 2007 in Deed Book 3304 at Page 1609, as thereafter amended, records of Horry County, South Carolina. Subject to all of the provisions of the aforesaid Master Deed and Exhibits and Amendments thereto.

Together with all of the appurtenances thereto, to said Master Deed and Exhibits and Amendments thereto, and the Grantee(s) assume and agree to observe and perform their obligations under said Master Deed, Exhibits and Amendments thereto, including but not limited to the payment of assessments for the maintenance and operation of the units and condominiums.

And subject to the provisions of the By-laws of Bahama Sands Homeowners Association, Inc.

This being the same property conveyed to James W. Hufton, Sr. and Elmer J. Craft, Jr. by Deed of Bahama Sands Development, LLC, a South Carolina Limited Liability Company, dated April 7, 2008 and recorded April 8, 2008 in the Office of the Register of Deeds for Horry County, South Carolina in Book 3326 at Page 1862.

TMS No. 144-13-43-051

Property address 1321 South Ocean Boulevard, Unit 506
North Myrtle Beach, SC 29582

3. The Plaintiff is the owner of the Property; Flagstar is a foreign corporation which instituted a foreclosure action concerning the Property and which makes a claim of ownership therein, John Doe is an unknown person, natural or incorporated, to whom Flagstar may have purported to transfer its interest in the Property.

4. The Court has personal and subject matter jurisdiction, and venue is proper

Pertinent Facts

5. The Plaintiff took title to the Property through devise from the Estate of the Property co-owner James William Hufton and through quitclaim deed by Deborah A Oehlschlaeger, Administrator, C.T.A of the Estate of Property co-owner Elmer Judson Craft, Jr.,

6. On February 22nd, 2012, Flagstar instituted in the Horry County Court of Common Pleas a foreclosure action concerning the Property, captioned *Flagstar Bank, FSB v. Phyllis C. Hufton, as personal representative and legal heir of the Estate of James W. Hufton, Sr., Deceased et al*, case number 2012-CP-26-1379 ("Foreclosure Action").

7. At the time it filed the Foreclosure Action, Flagstar had actual knowledge that the Plaintiff owned the Property individually. Despite this knowledge, Flagstar failed to name the Plaintiff as a defendant in the Foreclosure Action.

8. On August 27th, 2012, the Court ordered that the Property be sold by the Master-in-Equity, whose December 3rd, 2012 Report on Sale and Disbursements reflects that Flagstar was the high bidder and was the recipient of a Master in Equity's Deed to the Property.

9. Because of Flagstar's failure to name the Plaintiff in the Foreclosure Action, the Foreclosure Action had no effect on the Plaintiff's fee simple interest in the property.

10. Because the Plaintiff held fee simple, good and marketable title to the Property before the Foreclosure Action, and because the Foreclosure Action had no effect on her interest, the Plaintiff continues to hold fee simple interest and a good and marketable title to the Property.

Receiver Action

11. Each of the allegations in the above numbered paragraphs are repeated and incorporated herein as if stated verbatim.

12. By virtue of the default, Plaintiff seeks the appointment of a receiver to protect and preserve the Real Property and to do all acts necessary or required in connection with the administration and management of the Real Property, including but not limited to the processing and administering of proceeds as to the Real Property.

Partition Action

13. The subject of this action is real estate located in Horry County, South Carolina, and within the jurisdiction of this Honorable Court. The property is described in Paragraph 2, hereinabove.

14. The Plaintiff and each Defendant claims some title or interest in the subject property.

15. The Plaintiff seeks a partition of this property and to have the property sold subject to the provisions of Section 15-61-10 et. seq., South Carolina Code of Laws, as amended.

16. This is a partition action. Rule 71 of the South Carolina Rules of Civil Procedure and applicable subsections apply in this matter.

WHEREFORE, the Plaintiff requests an Order declaring that she holds fee simple, good and marketable title to the Property as well as an Order appointing a receiver and for an order partitioning the property.



David P. Traywick
Benjamin A. Traywick
TRAYWICK LAW OFFICES, LLC
P.O. Box 564
Isle of Palms, South Carolina, 29464
Telephone 843-343-5092
dpt@traywicklaw.com
ben@traywicklaw.com
Attorneys for the Plaintiff

Charleston, South Carolina

Date, 4-9-14

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT
Phyllis C. Hufton, Plaintiff v. Flagstar Bank, FSB and John Doe, Defendants	Case No.: 13-CP-26-2861 Plaintiff's Motion for Summary Judgment

TO BRIAN BARNWELL AND JEREMY HODGES, ATTORNEYS FOR THE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff will move for summary judgment, pursuant to Rule 56, *SCRCP*, before the presiding judge of the Circuit Court, Horry County, ten days from the date hereof, or as soon thereafter as the Plaintiff may be heard. This motion's basis, generally, is that there is no genuine, triable issue on any material fact, and that in the present posture the case should be determined in the Plaintiff's favor as a matter of law. Specifically, the record demonstrates with certainty that the Plaintiff's property interest survived the foreclosure action, entitling the Plaintiff to a declaration to that effect.

Pertinent Facts

These are the facts pertinent to this motion: On April 7, 2008, James W. Hufton and Elmer J. Craft purchased the subject property. On June 5, 2009, Elmer Craft died, on August 22, 2010, James Hufton died. On September 9, 2011, Phyllis Hufton purchased a deed for Elmer Craft's one half interest in the subject property from his estate; she recorded the deed on September 16, 2011.

(Exhibit #1)

On January 18, 2012, Traywick Law Offices discussed the title status of the subject property with Scott Law Firm. On February 1, 2012, Traywick Law Offices sent a letter (Exhibit #2) to Scott Law Firm which attached the deed from Craft's estate and established Phyllis Hufton's sole title to the subject property. The February 1, 2012 letter establishes that Flagstar Bank, FSB ("Flagstar") had actual knowledge of the conveyance from the Estate of Craft to Hufton, individually, of the Estate's one half interest in the property.

On February 20, 2012, Flagstar filed a Summons and Complaint (attached as Exhibit #3) wherein Phyllis C. Hufton was named only in her capacities as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr., Deceased. She was not named individually. On March 7, 2012, Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr., Deceased, served an Answer, and on August 27, 2012, Judge Stroman, Special Referee for Horry County, entered an Order and Judgment of Foreclosure and Sale (attached as Exhibit #4).

Legal Argument and Citation to Authority

Because neither Hufton nor her property was before the court in the foreclosure action, the foreclosure order had no effect on either, and the property interest survived. Phyllis Hufton was not individually named in the foreclosure complaint, her individually held property interest was not described in the foreclosure complaint, and she was not individually served with the foreclosure complaint. Simply put she was not a party to the case, and the Master lacked jurisdiction over her person and her property. In its filings Flagstar advances a host of legal

propositions, but none support what Flagstar actually is asking the Court to do. ignore the rules on pleading, service and jurisdiction, in order that Flagstar be relieved of the natural legal consequences of its lawyers' myriad errors.

First, concerning rules of pleading, the Plaintiff should prevail because Flagstar failed to name Phyllis Hufton as a defendant. The rules require that all parties must be named in the summons and complaint, *South Carolina Rules of Civil Procedure* 10(a). It is undisputed that, in the foreclosure action, neither "Phyllis Hufton" nor "Phyllis Hufton, individually" appear anywhere in the case caption or in the actual complaint allegations. It is true that she appears in the caption, in a representative capacity, as "Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr., Deceased", but Flagstar cites no authority for its request that the Court stray, in the matter at hand, from the standard rule in South Carolina: that individual and representative capacities must be pled separately. Instances of this duality abound in the case law:

- "Chase, as current holder of the note and mortgage, filed this action against Cassandra individually and in her capacities as personal representative and legal heir of Sidney's estate" *Chase Home Finance, LLC v. Cassandra S. Risher, individually, as Personal Representative and Legal Heir of the Estate of Sidney Allan Risher*. Opinion No. 5138, filed May 29th, 2013 (Ct. App.)
- "Of the appellants, only Anderson and Burnett are heirs of Joseph Woodruff and C. P. Woodruff, and they elected below to appear solely as individuals, and not as heirs, or representatives of the heirs, of either of the Woodruffs." *First Baptist Church of Woodruff v. Turner*, 149 S.E.2d 45, 46, 248 S.C. 71, 74 (1966).
- "Although there was a misjoinder of causes of action, in that a cause of action was attempted to be set forth against Sallie W. Burgess individually . . . and another cause of action against her and the other defendants as heirs at law . . . no point would be made of the misjoinder, and that, so far as the case against Sallie W. Burgess individually under policy No. 80922 was concerned, she would answer and meet that cause of action individually..." *Philadelphia Life Ins. Co. v Burgess*, 18 F.2d 599, 600-01 (D.S.C. 1927).

Phyllis Hufton was not before the Court because she was not named as a defendant.

Second, Flagstar's failure to name the proper party is supplemented by a second pleading defect in the Complaint: its failure to describe the property interest in question. In describing the claimed interest of Hufton's that it sought to foreclose, the Complaint alleges as follows:

The Defendant, Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr. in such fiduciary capacity as any representative of any person or entity that may be a creditor or claimant against such Estate, and by virtue of the powers granted by Decedents' will or by statute and by virtue of any interest claimed under the law of succession (S.C. Code 62-2-109) or under decedent's will.

(Complaint, Paragraph 15.) This paragraph describes the interests which Hufton did enjoy or may have enjoyed under precisely the two representative capacities in which she was sued: as both heir and personal representative of her husband's estate. Entirely absent is a description of the interest presently before this Court: a half interest in the property which Hufton purchased from the Craft Estate, and which she held in her individual capacity.

Third, Phyllis Hufton was not served in her individual capacity: the two affidavits of service clearly indicate that they are served on her in her representative capacities. (Exhibit #5.) Without proper service upon Hufton, the civil action was not commenced as to her, *see e.g. Matter of Palmer*, 380 S.E.2d 813, 815, 298 S.C. 324, 327 (1989)(civil action commences upon filing and service of summons and complaint), and the court lacked personal jurisdiction over her. *See e.g. Roche v. Young Bros., Inc. of Florence*, 456 S.E.2d 897, 899, 318 S.C. 207, 209 (1995) (stating that Rule 4, *SCRCP* has two purposes: it confers personal jurisdiction on the court and assures the defendant of notice). As an aside, these affidavits establish Flagstar's knowledge that separate capacities matter. By having two separate affidavits of service for Hufton—one for each of the two

representative capacities in which she was sued—Flagstar acknowledges that it and its attorneys recognize the proposition that Plaintiff advances in the matter at hand: that capacities matter, and that suit against a person in one capacity is not suit against that person in every conceivable capacity in which the person may hold property. If a person holds property in more than one capacity, a plaintiff must name her in each capacity, and must serve her in each capacity.¹

So Hufton was not named, her interest was not described, and she was not served. Simply put: Phyllis Hufton the PR, and Phyllis Hufton the heir may have been parties to the action, but Phyllis Hufton, individually, was not. Representative capacity v. individual capacity is a distinction which carries a critical difference: the failure to name Hufton individually means that she as an individual was not before the Court in the foreclosure proceeding. *See, e.g. Walker v. Williams*, 46 S.E.2d 249, 250, 212 S.C. 32 37 (1948)(“It is a fundamental principle that a party cannot be affected by a proceeding in court to which he was not a party, and in which he had no opportunity of being heard. . . . Therefore, he is in no sense bound by that judgment.”)

The same is true of her property interest: it was not affected by the foreclosure action because it was not before the court in that action, and the court had no subject matter jurisdiction over it. The master’s deed only conveys those interests properly before the Court. “The court makes the sale, and orders generally one of its officers to write the deed for the defendant, and to convey *whatever title the defendant may have had, and no more.*” *Calder v. Maxwell*, 82 S.E. 997, 997, 99 S.C. 115, 117 (1914); *see also Carolina Savings Bank v. McMahon et al.*, 37 S.C. 309, 16 S.E. 31, 34 (1892) (“[I]t is a deed made by an officer of the law, in his official capacity, under the

¹ Any reliance by Flagstar on equity fails because it has an adequate, and frankly much more straightforward, legal remedy: a malpractice case against its foreclosure attorneys, who had actual knowledge that Hufton owned half of the property individually, but who failed to name or serve her in the in the foreclosure action.

mandate of the court, which required him to sell all the estate of the judgment debtor, McBride, in the premises, whatever such estate might be, and *he had no authority to sell anything more or anything less*”(emphasis added). So South Carolina law dictates that the order of foreclosure had no effect on the one-half interest that Phyllis Hufton held individually, even if, as Flagstar asserts, the foreclosure order purports to terminate Hufton’s interest.

But it does not. In fact, the foreclosure order by its own terms asserts its adherence to these legal principles and as a result *does not claim and does not in fact apply to Phyllis Hufton individually*. The order a) specifically conditions the sale on recognition of record claims to interest which were not before the Court (“This sale is subject to all title matters of record”), and b) notifies Flagstar of the wisdom of conducting its own title examination (“any interested party should consider performing an independent title examination”), all in light of the deed’s limitations (“no warrant is given at all by the Court”). (Order and Judgment of Foreclosure and Sale, Paragraph 20.)

The survival of Hufton’s interest is the natural consequence of these instructions and limitations. Hufton’s interest is a “title matter of record” to which the sale is subject, the sort of interest whose existence prevents the Master from giving any warranty, and the sort of interest whose potential existence is precisely why an “interested party should consider performing an independent title examination”. Obviously, Flagstar did not avail itself of the opportunity to examine the title carefully: had it done so, Flagstar would have discovered the deed reflecting Hufton’s individual interest, which already was a title matter of record (and of which its lawyers had actual knowledge). As a result of its failure to heed the call to diligence, Flagstar carelessly blundered into the foreclosure action: it named and inconvenienced numerous parties it needed

not, *see* S.C. Code Sections 29-3-610 (“It shall not be necessary to make the personal representative of a deceased mortgagor a party to any foreclosure proceeding .”) and 29-3-620 (“It shall not be necessary to make a mortgagor who has conveyed to another the mortgaged premises a party to any action for foreclosure when no judgment for a deficiency is demanded”), while somehow failing to name a half-owner, Hufton, whose interest it now disingenuously claims to have extinguished

Flagstar’s position utterly ignores the fact that the Order governs the rights and interests of the people Flagstar itself sued—*only* those persons—and that this set of persons, which was devised solely by Flagstar, flatly does not include Hufton individually. Flagstar’s position, in sum, is at odds with substantially every extant fundament of South Carolina real property law. This conclusion is inevitable: neither the property interest nor its owner was before the Special Referee; as a result, neither was affected by the order of foreclosure.



David P. Traywick
Benjamin A. Traywick
Meredith Ann Carter
TRAYWICK LAW OFFICES, LLC
P.O. Box 564
Isle of Palms., SC 29451
Telephone: 843-343-5092
Fax: 843-300-1051
Email: dpt@traywicklaw.com
ben@traywicklaw.com
Attorneys for Plaintiff

May 9th, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE MATTER OF
ELMER JUDSON CRAFT, JR.

IN THE PROBATE COURT

QUIT CLAIM DEED

CASE FILE # 2011-ES-26-1576

WHEREAS, Elmer Judson Craft, Jr. and James W. Hufton, Sr., purchased Unit 506, Bahama Sands on April 7, 2008 evidenced in Deed Book 3326 at page 1862 in the office of the Register of Deed for Horry County, South Carolina.

WHEREAS, Elmer Judson Craft, Jr. died on June 5, 2009 and his Estate is being administered in Roanoke County Virginia in Court file No. 200900507 and exemplified copies are filed in Horry County, Probate File No. 2011-ES-26-1576; and

WHEREAS, Nancy P. Craft was named as Executor and Melissa Craft Stanley f/n/a Melissa C. Tinley was named as alternate Executor; and

WHEREAS, Nancy P. Craft and Melissa Craft Stanley f/n/a Melissa C. Tinley declined to qualify as such; and

WHEREAS, Deborah A. Oehlschlaeger was appointed as Administrator, c.t.a. by Letters of Qualification dated August 2, 2010 and recorded in Court File No. 200900507 in the Roanoke County Clerk of the Court; and

WHEREAS, a dispute arose between the Estate of Craft and James W. Hufton, Sr. regarding the payment of the note for the purchase price financing and other expenses related to the Unit; and

WHEREAS, a Settlement of Dispute by Agreement was executed July 20, 2010 between James W. Hufton, Sr. and Deborah A. Oehlschlaeger, Executor, c.t.a. of the Estate of Elmer J. Craft, Jr., where Deborah A. Oehlschlaeger, Executor, c.t.a. of the Estate of Elmer J. Craft, Jr. was to convey the ½ interest in the property to James W. Hufton, Sr. and Phyllis C. Hufton as Joint Tenants with Rights of Survivorship in consideration of James W. Hufton, Sr.'s complete release of the Estate of Elmer J. Craft, Jr. for payment of any part of the note for the purchase price financing and other expenses related to the Unit; and

WHEREAS, prior to the Deed being executed James W. Hufton, Sr. died on 12-22-2010 and his Estate is being administered in Roanoke County Virginia in Court File No. CWF201000586 and exemplified copies are filed in Horry County, Probate File No. 2011-ES-26-1577; and

WHEREAS, the parties desire to have the property conveyed pursuant to the Settlement Agreement.

Document#: 2011000093705, DEED BK:
PG: 2844 DOCTYPE: 001 09/16/2011
10:30 PM, 1 OF 4, EXEMPT,
JERRY V. SKIPPER, HORRY COUNTY,
REGISTER OF DEEDS

ROA 163



NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that **DEBORAH A. OEHLSCHLAEGER, ADMINISTRATOR, C.T.A. OF THE ESTATE OF ELMER JUDSON CRAFT, JR.,** hereinafter called Grantor, in consideration of Five and No/100---(\$5.00) Dollars and the above premises, in hand paid at and before the sealing of these presents by **PHYLLIS C. HUFTON,** hereinafter called Grantee, whose address is 2143 Coachman Drive, Roanoke, Virginia 24012 the receipt and sufficiency of which are hereby acknowledged, have remised, released and forever quit-claimed, and by these presents do remise, release and forever, quit-claim unto the said **PHYLLIS C. HUFTON,** her heirs and assigns forever, all of the right, title and interest in and to the following described property, to-wit:

Unit 506 Bahama Sands Horizontal Property Regime, established by Master Deed dated December 26, 2007 and recorded December 31, 2007 in Deed Book 3304 at page 1609, as as thereafter amended, records of Horry County, South Carolina.

SUBJECT TO all of the provisions of the aforesaid Master Deed and Exhibits and Amendments thereto.

TOGETHER WITH all of the appurtenances thereto according to said Master Deed and Exhibits and Amendments thereto, and the Grantee(s) assume and agree to observe and perform their obligations under said Master Deed, Exhibits and Amendments thereto, including but not limited to the payment of assessments for the maintenance and operation of the units and condominiums.

AND SUBJECT TO the provisions of the By-laws of Bahama Sands Homeowners Association, Inc.

Being the same land conveyed to James W. Hufton, Sr. and Elmer J. Craft, Jr. from Bahama Sands Development, LLC by Indenture Deed dated April 7, 2008 and recorded April 8, 2008 in Deed Book 3326 at page 1862 in the records of Horry County, South Carolina.

TMS# 144-13-43-051

TO HAVE AND HOLD all and singular of the premises before mentioned unto the said PHYLLIS C. HUFTON her heirs and assigns, forever, so that neither I, nor any other person or persons claiming under me, shall at any time hereafter, by any way or means, have claim or demand any right or title to the aforesaid premises and appurtenances, or any part or parcel thereof, forever.

TOGETHER with all and singular, the Rights, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TRAYWICK LAW OFFICES, LLC
DAVID PAUL TRAYWICK
ATTORNEY AT LAW

POST OFFICE BOX 564
ISLE OF PALMS, SOUTH CAROLINA 29451
TEL.: (843) 343-5092
DPT@TRAYWICKLAW.COM
WWW.TRAYWICKLAW.COM

February 1, 2012

BY EMAIL ONLY TO, KEVINH@SCOTTLAW.COM

Scott Law Firm, P.A.

Attn.: Mr. Kevin T. Hardy

PO Box 2065

Columbia, SC 29202

Re: Flagstar v. James Hufton
1321 S. Ocean Blvd, Unit 506 N. Myrtle Beach
Deed in Lieu of Foreclosure

Dear Kevin:

On January 18, 2012, I telephoned you to discuss your client's intentions with respect to the property location above referenced. At that time, I explained that the borrower is deceased, that title to the property conveyed automatically by operation of exemplified will and that by devise combined with the Quit Claim Deed recorded at Book 3541 at Page 2844, my client, Phyllis Hufton holds title to the property.

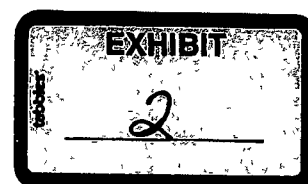
Mr. Hufton's estate has been closed in the State of Virginia for some time, which means Flagstar's recourse shall be confined to the property itself. Though she holds title, she never promised to pay your client money in exchange for the property. Which leaves us both with a problem. I propose one of the following solutions:

1. Either accept a deed in lieu of foreclosure in which case I am authorized to offer to pay your client's costs in ensuring that clean title is conveyed; or
2. A cooperative short sale of the property.

On January 18, I promised to provide certain documents demonstrating that Mr. Hufton is, in fact, deceased; that the property is currently listed for sale; and that Phyllis Hufton holds title to the subject property. Consequently, I enclose the following:

1. Copy of Virginia Death Certificate for James Hufton;
2. Record Copy of Certified Will;
3. Letter of Qualification from the Virginia Probate Court;

ROA 165



Mr. Kevin T. Hardy
February 1, 2011
Page 2

4. A copy of a Quit Claim Deed from Craft to Hufton; and
5. A copy of the listing agreement.

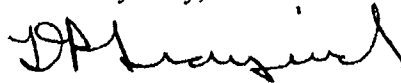
I hope you will convince your client that this entire matter can be resolved quickly and simply by conveyance of title to the property from Phyllis Hufton to Flagstar (or to whomever). In exchange for a quick solution, we are happy to pay for your client's title search to save it the expense of having to do so itself. All taxes, insurances, regime fees, and management fees are current. Consequently, we request that your client move quickly to accept one of our two offers.

Naturally, your client has a duty to mitigate its damages and I feel strongly that either of our offers are fair and reasonable. I hope to hear from you regarding this matter as soon as you can get some response from your client.

If you require additional information or material, please contact me with requests.

With kind regards,

Yours very truly,



David P. Traywick

DPT:jt

Enclosures

cc w/o encls.: Mr. John R. Patterson, Esquire

COMMONWEALTH OF VIRGINIA
(CERTIFIED COPY OF DEATH RECORD)

COMMONWEALTH OF VIRGINIA - CERTIFICATE OF DEATH
DEPARTMENT OF HEALTH - DIVISION OF VITAL RECORDS - RICHMOND

COPY A

FOR DIVISION OF
VITAL RECORDS

REGISTRATION
AREA NUMBER

180

CERTIFICATE
NUMBER

352

STATE FILE
NUMBER

DECEDENT	1 FULL NAME OF DECEDENT (first) (middle) (last) JAMES WILLIAM HUFTON SR.						2 SEX male ☒ female ☐	
	3 DATE OF DEATH (mo) (day) (year) August 22, 2010		4 AGE 68 years		IF UNDER 1 YEAR months days		5. DATE OF BIRTH (mo) (day) (year) Dec 23, 1941	
PLACE OF DEATH	7 NAME OF HOSPITAL OR INSTITUTION OF DEATH (if none, so state) None						8. COUNTY OF DEATH (if independent city, leave blank) ROANOKE	
	9 CITY OR TOWN OF DEATH Roanoke						10 STREET ADDRESS OR RT. NO. OF PLACE OF DEATH 2143 COACHMAN DR.	
USUAL RESIDENCE OF DECEDENT	11 STATE (OR FOREIGN COUNTRY) OF DECEDENT'S RESIDENCE Virginia						12 COUNTY OF DECEDENT'S RESIDENCE (if independent city, leave blank) ROANOKE	
	13 CITY OR TOWN OF RESIDENCE Roanoke						14 STREET ADDRESS OR RT. NO. OF RESIDENCE 2143 COACHMAN DR.	
PERSONAL DATA OF DECEDENT	15 NAME OF DECEDENT'S FATHER JAMES GORDON HUFTON						16 MAIDEN NAME OF DECEDENT'S MOTHER HAZEL LEE SMITH	
	17 RACE OF DECEDENT White		18 OF HISPANIC ORIGIN? Puerto Rican, etc. ☒ no ☐ yes		19 EDUCATION (Specify only highest grade completed) Elementary/Secondary (0-12) 12 College (1-4 or 5 +)		23 IF MARRIED OR WIDOWED, NAME OF SPOUSE (if divorced leave blank) PHYLLIS C HUFTON	
	20 CITIZEN OF WHAT COUNTRY USA		21 BIRTHPLACE (state or country) Virginia		22 NEVER MARRIED ☐ DIVORCED ☐ MARRIED ☒ WIDOWED ☐		27 INFORMANT - OR SOURCE OF INFORMATION RELATIONSHIP PHYLLIS C HUFTON, Wife	
	24 SOCIAL SECURITY NUMBER 229-50-7816		25 USUAL OR LAST OCCUPATION MANAGER		26 KIND OF BUSINESS OR INDUSTRY UPS			
CAUSE OF DEATH	28. PART I Enter the diseases, injuries, or complications that caused the death. Do not enter the mode of dying such as cardiac or respiratory arrest, shock, or heart failure. List only one cause on each line. IMMEDIATE CAUSE (Final disease or condition resulting in death) (A) <u>Mucostate Renal Cell Cancer</u>						INTERVAL BETWEEN ONSET AND DEATH	
	SEQUENTIALLY list conditions, if any, leading to immediate cause. Enter UNDERLYING CAUSE (Disease or injury that initiated events resulting in death) LAST (B) <u></u>							
TO PHYSICIAN.	PART II. Other significant conditions contributing to death but not resulting in the underlying cause given in Part I. (C) <u></u>						28a AUTOPSY? AUTHORIZED BY ☐ yes ☐ no	
MEDICAL CERTIFICATION	28b IF FEMALE, WAS THERE A PREGNANCY IN PAST 3 MONTHS? yes ☐ no ☐ unknown ☐		28c IF EXTERNAL CAUSE, IT WAS PRIMARY ☐ OR CONTRIBUTING ☐ TO CAUSE OF DEATH		28d. DESCRIBE HOW INJURY RELATING TO DEATH OCCURRED			
	28e TIME OF INJURY (mo) (day) (year) A.M. P.M.		28f INJURY OCCURRED while at work ☐ not while at work ☐		28g. PLACE OF INJURY (home, farm, factory, street, office bldg., etc.)			
	28h. (city or town) (county) (state)						28i. (city or town) (county) (state)	
	28j. (city or town) (county) (state)							
FUNERAL DIRECTOR	29 BURIAL ☒ REMOVAL ☐ CREMATION ☐ BLUE RIDGE MEMORIAL GARDENS Roanoke, VA 24012						30. PLACE OF BURIAL, REMOVAL, ETC. (name of cemetery or crematory) (city or county) (state)	
	31 (Signature of funeral director or person legally holding this certificate) John M. Oakey, Inc. P.O. Drawer 1579 Roanoke, VA							
REGISTRAR	32. (signature of registrar) Kathy Clemore Deputy, 8/26/10						DATE RECORD FILED: 8/26/10	
	RESERVED FOR REGISTRAR'S USE							

This is to certify that this is a true and correct reproduction of the original record filed with the Roanoke County/Salem Health Department, Salem, Virginia.

8/26/10
Date

Kathy Clemore
Registrar or Deputy

ROA 167

ANY REPRODUCTION OF THIS DOCUMENT IS PROHIBITED BY STATUTE. DO NOT ACCEPT UNLESS IT BEARS THE IMPRESSED SEAL OF THE ROANOKE COUNTY/SALEM HEALTH DEPARTMENT.

VIRGINIA: IN THE CIRCUIT COURT OF BOTETOURT COUNTY CLERK'S OFFICE

COURT FILE NO. 100000239

IN RE: JAMES W. HUFTON SR., Deceased

DATE OF DEATH: August 22, 2010

RECORD CERTIFIED COPY OF WILL

A paper writing dated July 15, 2009, purporting to be a certified copy of the Last Will and Testament of James W. Hufton Sr., deceased, with Clerk's Order of Probate and the List of Heirs for James W. Hufton, Sr. with certificate of Steven A. McGraw, Clerk of the Circuit Court of Roanoke County, that said writings are a true and correct copy of the Last Will and Testament of James W. Hufton Sr., deceased, with Clerk's Order of Probate and the List of Heirs of James W. Hufton, Sr., are admitted to record as a true copy of the Last Will and Testament and List of Heirs of James W. Hufton Sr., deceased.


_____, Clerk
October 21, 2010

CERTIFICATE/LETTER OF QUALIFICATION

COMMONWEALTH OF VIRGINIA

VA CODE §§ 6.2-893, 6.2-1171, 6.2-1365, 6.2-1367, 37.2-1011, 64.1-122, 64.1-128

Court File No. 201000586

Roanoke County Circuit Court

I, the duly qualified clerk/deputy clerk of this Court, **CERTIFY** that on October 12, 2010

DATE

Phyllis C Hufton

NAME(S) OF PERSON(S) QUALIFYING

duly qualified in this court, under applicable provisions of law, as **Executor** of the estate of

JAMES W HUFTON SR

☒ DECEASED ☐ MINOR ☐ INCAPACITATED

The powers of the fiduciary(ies) named above continue in full force and effect.

Given under my hand and the seal of this Court on

October 12, 2010

DATE

Steven A. McGraw, Clerk

by Rhonda Rogers, Deputy Clerk

KENNETH S. CORBETT, P.A.
ATTORNEY & COUNSELOR AT LAW
405 79TH AVENUE NORTH
MYRTLE BEACH, SOUTH CAROLINA 29572

MAILING ADDRESS

POST OFFICE BOX 7818
MYRTLE BEACH, SOUTH CAROLINA 29572

TELEPHONE: (843) 449-7779
TELECOPIER: (843) 449-1573

October 7, 2011

Mrs. Phyllis C. Hufton
2143 Coachman Drive
Roanoke, VA 24012

RE: Unit 506 Bahama Sands
Our File No: 10-123-KC

Dear Mrs. Hufton:

In connection with the above purchase, please find enclosed herewith the Original Documents.

a. Original Deed

With kind regards, I am

Very truly yours,

Justine, Real Estate Paralegal for Kenneth S
Corbett, P. A.

Enclosures

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE MATTER OF
ELMER JUDSON CRAFT, JR.

IN THE PROBATE COURT

QUIT CLAIM DEED

CASE FILE # 2011-ES-26-1576

WHEREAS, Elmer Judson Craft, Jr. and James W. Hufton, Sr., purchased Unit 506, Bahama Sands on April 7, 2008 evidenced in Deed Book 3326 at page 1862 in the office of the Register of Deed for Horry County, South Carolina.

WHEREAS, Elmer Judson Craft, Jr. died on June 5, 2009 and his Estate is being administered in Roanoke County Virginia in Court file No. 200900507 and exemplified copies are filed in Horry County, Probate File No. 2011-ES-26-1576; and

WHEREAS, Nancy P. Craft was named as Executor and Melissa Craft Stanley f/n/a Melissa C. Tinley was named as alternate Executor; and

WHEREAS, Nancy P. Craft and Melissa Craft Stanley f/n/a Melissa C. Tinley declined to qualify as such; and

WHEREAS, Deborah A. Oehlschlaeger was appointed as Administrator, c.t.a. by Letters of Qualification dated August 2, 2010 and recorded in Court File No. 200900507 in the Roanoke County Clerk of the Court; and

WHEREAS, a dispute arose between the Estate of Craft and James W. Hufton, Sr. regarding the payment of the note for the purchase price financing and other expenses related to the Unit; and

WHEREAS, a Settlement of Dispute by Agreement was executed July 20, 2010 between James W. Hufton, Sr. and Deborah A. Oehlschlaeger, Executor, c.t.a. of the Estate of Elmer J. Craft, Jr., where Deborah A. Oehlschlaeger, Executor, c.t.a. of the Estate of Elmer J. Craft, Jr. was to convey the ½ interest in the property to James W. Hufton, Sr. and Phyllis C. Hufton as Joint Tenants with Rights of Survivorship in consideration of James W. Hufton, Sr.'s complete release of the Estate of Elmer J. Craft, Jr. for payment of any part of the note for the purchase price financing and other expenses related to the Unit; and

WHEREAS, prior to the Deed being executed James W. Hufton, Sr. died on 22-2010 and his Estate is being administered in Roanoke County Virginia in Court e No. CWF201000586 and exemplified copies are filed in Horry County, Probate File . 2011-ES-26-1577; and

WHEREAS, the parties desire to have the property conveyed pursuant to the Settlement Agreement.

ument#: 2011000093705, DEED BK:
PG: 2844 DOCTYPE: 001 09/16/2011
:10:30 PM, 1 OF 4, EXEMPT,
ERY V. SKIPPER, HORRY COUNTY,
GISTRAR OF DEEDS

ROA 171

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that DEBORAH A. OEHLSCHLAEGER, ADMINISTRATOR, C.T.A. OF THE ESTATE OF ELMER JUDSON CRAFT, JR., hereinafter called Grantor, in consideration of Five and No/100---(\$5.00) Dollars and the above premises, in hand paid at and before the sealing of these presents by PHYLLIS C. HUFTON, hereinafter called Grantee, whose address is 2143 Coachman Drive, Roanoke, Virginia 24012 the receipt and sufficiency of which are hereby acknowledged, have remised, released and forever quit-claimed, and by these presents do remise, release and forever, quit-claim unto the said PHYLLIS C. HUFTON, her heirs and assigns forever, all of the right, title and interest in and to the following described property, to-wit:

Unit 506 Bahama Sands Horizontal Property Regime, established by Master Deed dated December 26, 2007 and recorded December 31, 2007 in Deed Book 3304 at page 1609, as as thereafter amended, records of Horry County, South Carolina.

SUBJECT TO all of the provisions of the aforesaid Master Deed and Exhibits and Amendments thereto.

TOGETHER WITH all of the appurtenances thereto according to said Master Deed and Exhibits and Amendments thereto, and the Grantee(s) assume and agree to observe and perform their obligations under said Master Deed, Exhibits ad Amendments thereto, including but not limited to the payment of assessments for the maintenance and operation of the units and condominiums.

AND SUBJECT TO the provisions of the By-laws of Bahama Sands Homeowners Association, Inc.

Being the same land conveyed to James W. Hufton, Sr. and Elmer J. Craft, Jr. from Bahama Sands Development, LLC by Indenture Deed dated April 7, 2008 and recorded April 8, 2008 in Deed Book 3326 at page 1862 in the records of Horry County, South Carolina.

TMS# 144-13-43-051

TO HAVE AND HOLD all and singular of the premises before mentioned unto the said PHYLLIS C. HUFTON her heirs and assigns, forever, so that neither I, nor any other person or persons claiming under me, shall at any time hereafter, by any way or means, have claim or demand any right or title to the aforesaid premises and appurtenances, or any part or parcel thereof, forever.

TOGETHER with all and singular, the Rights, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at Unit 506 Bahama Sands, TMS# 144-13-43-051 was transferred by Deborah A. Oehlschlaeger, Administrator, C.T.A. of the Estate of Elmer Judson Craft, Jr. to Phyllis C. Hufton on 9/9/11.
- 3 Check one of the following: The deed is
 - (a) ___ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) ___ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) X exempt from the deed recording fee because (See Information section of affidavit);
A 1

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.

If exempt under exemption #14 as described in the information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ___ or No ___

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

- (a) ___ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of 65,000.00
- (b) ___ The fee is computed on the fair market value of the realty which is _____.
- (c) ___ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes ___ or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: \$-0-
 - (b) Place the amount listed in item 5 above here: 0
- (If no amount is listed, place zero here.)

(c) Subtract line 6(b) from Line 6(a) and place result here: \$-0-

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: .

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: GRANTOR - AHU

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

HHK
Kenneth S. Corbett

SWORN to before me this 9th
day of September year of 2011.

James G. Hufton
Notary Public for

My Commission Expires: 9-18-17

WITNESS my Hand and Seal this 9th day of September in the year of our Lord Two Thousand and Eleven the Two Hundred Thirty-Fifth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Regina B. Cooper
Witness

Deborah A. Oehlschlaeger
Deborah A. Oehlschlaeger,
Administrator, c.t.a.

Phillip A. Cooper
Witness

ACKNOWLEDGEMENT

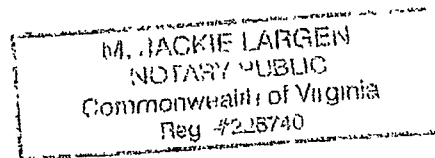
STATE OF _____,

COUNTY: _____

I, the undersigned Notary Public, do hereby certify that Deborah A. Oehlschlaeger, Administrator, c.t.a. personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this the 9th day of September, 2011.

M. Jackie Largen
Notary Public for
My Commission Expires: 9-30-2013





Flagstar Bank Third-Party Authorization Form

Please use this form to authorize someone other than yourself to access your Flagstar Bank mortgage information.

Fax this completed page and any additional documents to (888) 848-1071 (Do not attach a cover letter.)

Or

Mail this completed page only to:

Flagstar Bank
Attention - Research Department
Mail Stop S-115-3
5151 Corporate Drive
Troy, MI 48098-2639

Section 1

Please PRINT (for multiple loans use separate forms)

Loan Number:

0 5 0 1 9 9 7 0 4 - 1

Section 2

PRINT in CAPITAL LETTERS the Legal Name of Borrower

JAMES

First

WILLIAM

Middle

HUFTON, Sr.

Last

Social Security Number of Borrower:

2 2 9 - 5 0 - 7 8 1 6

Daytime Telephone Number: (843)

343

- 5092

ext. _____

Section 3

PRINT in CAPITAL LETTERS the Name of Authorized Person

JOHN (JAY)

First

ERNEST

Middle

BONNOITT, JR

Last

Select a PIN for the Authorized Person:

1 1 1 1

Daytime Telephone Number: (843)

222

- 9135

ext. N/A

Section 4

I authorize the person named above to access my account information, as long as he or she provides the PIN that I have assigned. If at any time I choose to remove the person named from accessing my account information, it is my responsibility to notify Flagstar Bank by calling Customer Service at (800) 968-7700.



Signature

PoA Phyllis Hufton

Estate Executor

1-6-12

Date: MM/DD/YYYY

Agency Relationships in South Carolina

The SC Real Estate License Law, in Section 40-57-139 (A) (1) and (2), requires a real estate licensee to provide you this brochure and a meaningful explanation of agency relationships offered by the licensee's Company. This must be done at the first practical opportunity when you and the licensee have substantive contact.

Before you begin to work with a real estate licensee, it is important for you to know the difference between a broker-in-charge and associated licensees. The broker-in-charge is the person in charge of a real estate Company. Associated licensees may work only through a broker-in-charge. **In other words, when you choose to work with any real estate licensee, your business relationship is legally with the Company and not with the associated licensee.**

A real estate Company and its associated licensees can provide buyers and sellers valuable real estate services, whether in the form of basic **customer** services, or through **client-level** agency representation. The services you can expect will depend upon the legal relationship you establish with the Company. It is important for you to discuss the following information with the real estate licensee and agree on whether in your business relationship you will be a **customer** or a **client**.

Now You Are a Customer of the Company

South Carolina license law defines customers as buyers or sellers who choose **NOT** to establish an agency relationship. The law requires real estate licensees to perform the following **basic duties** when dealing with **any** real estate buyer or seller as customers:

Present all offers in a timely manner

Account for money or other property received on your behalf

Provide an explanation of the scope of services to be provided

Be fair and honest and provide accurate information

Disclose "adverse material facts" about the property or the transaction which are within the licensee's knowledge.

*Unless or until you enter into a written agreement with the Company for agency representation, you are considered a "Customer" of the Company, and the Company will **not** act as your agent. As a Customer, you should **not** expect the Company or its licensees to promote your best interest, or to keep your bargaining information confidential.*

Customer service does not require a written agreement; therefore, you are not committed to the Company in any way.

You Can Become a Client

Clients receive more services than customers. If client status is offered by the real estate Company, you can become a client by entering into a written agency agreement requiring the Company and its associated licensees to act as an agent on your behalf and promote your best interests. If you choose to become a client, you will be asked to confirm in your written representation agreement that you received this brochure in a timely manner.

A seller becomes a client of a real estate company by signing a formal listing agreement with the Company. For a seller to become a client, this agreement must be in writing and must clearly establish the terms of the agreement and the obligations of both the seller and the Company which becomes the agent for the seller.

A buyer becomes a client of a real estate Company by signing a formal buyer agency agreement with the Company. For a buyer to become a client, this agreement must be in writing and must clearly establish the terms of the agreement and the obligations of both the buyer and the Company which becomes the agent for the buyer.

If you enter into a written agency agreement, as a Client, you can expect the real estate Company to provide the following client-level services:

Obedience

Loyalty

Disclosure

Confidentiality

Accounting

Reasonable care and skill

Client-level services also include advice, counsel and assistance in negotiations.

Single Agency

When the Company represents only one client in the same transaction (the seller or the buyer), it is called single agency.

Dual Agency

Dual Agency exists when the real estate Company has two clients in one transaction – a seller client and a buyer client.

At the time you sign an agency agreement, you may be asked to acknowledge whether you would consider giving written consent allowing the Company to represent both you and the other client in a disclosed dual agency relationship.

Disclosed Dual Agency

In a disclosed dual agency, the Company's representation duties are limited because a buyer and seller have recognized conflicts of interest. Both clients' interests are represented by the

Company. *As a disclosed dual agent, the Company and its associated licensees cannot advocate on behalf of one client over the other, and cannot disclose confidential client information concerning the price negotiations, terms, or factors motivating the buyer/client to buy or the seller/client to sell.* Each Dual Agency Agreement contains the names of both the seller client(s) and the buyer client(s) and identifies the property.

Designated Agency

In designated agency, a broker-in-charge may designate individual associated licensees to act solely on behalf of each client. Designated agents are not limited by the Company's agency relationship with the other client, but instead have a duty to promote the best interest of their clients, including negotiating a price. The broker-in-charge remains a disclosed dual agent for both clients, and ensures the assigned agents fulfill their duties to their respective clients.

At the time you sign an agency agreement, you may be asked to acknowledge whether you would consider giving written consent allowing the Company to designate a representative for you and one for the other client in a designated agency.

Each Designated Agency Agreement contains the names of both the seller client(s) and the buyer client(s) and identifies the property.

What to Look For in Any Agreement

When you choose client-level service, your written Agency Agreement or your agent should answer these questions:

Can I work with other Companies during the time of the Agreement?

What will happen if I buy or sell on my own without the agent?

When will this agreement expire?

How will the Company be paid for its services?

Does this Company represent both buyers and sellers as clients?

If so, what are the choices if two clients become involved in one transaction?

What duties will the Company continue to provide me after the transaction is completed?

If you plan to become a client of a Company, the licensee will explain the agreement to you fully and will answer questions you may have about the agreement. **Remember, however, that until you enter into a representation agreement with the Company, you are considered a customer and the Company cannot be your advocate, cannot advise you on price or terms, and cannot keep your confidences.**

It's Your Choice

As a real estate consumer in South Carolina, it is your choice as to the type and nature of services you receive.

You can choose to remain a customer and represent yourself while the Company represents the other party.

You can choose to hire the Company for representation through a written agreement.

If represented by the Company, you can decide whether to go forward under the shared services of dual agency or designated agency or to remain in single agency.

The choice of services belongs to you—the South Carolina real estate consumer.

This brochure has been approved by the S.C. Real Estate Commission for use in explaining representation issues in real estate transactions and consumers rights as a buyer or seller. Reprinting without permission is permitted provided no changes or modifications are made.

Agency Disclosure Brochure

Agency Relationships in Real Estate



South Carolina Department of
Labor, Licensing and
Regulation

South Carolina Real Estate Commission

PO Box 11847
Synergy Business Park, Kingstree Building
110 Centerview Dr., Suite 201
Columbia, SC 29210

Telephone: (803) 896-4400

Fax: (803) 896-4404

www.llr.state.sc.us/Pol/RealEstateCommission/

(Rev. 1/05)



EXCLUSIVE RIGHT TO SELL AGREEMENT LISTING AGREEMENT



consideration of the covenants herein contained, Phyllis C Hufton,
sole Property Owner(s) (hereinafter called "OWNER") and C-21 Boling and Associates,
Real Estate Company (hereinafter called "BROKER"), agree as follows.

for the period of time beginning on January 9, 2012, and ending at midnight on July 9, 2012, Owner hereby grants to Broker the sole and exclusive right to sell the real property known as:

at 506 Block 1321 Section 1321 Subdivision Bahama Sands HPR PH I
address 1321 South Ocean Boulevard

ax Map # 144-13-43-051 City North Myrtle Beach Zip 29582

ounty of HORRY, State of South Carolina.

he real estate described herein includes all improvements, fixtures, appurtenances, and the additional property, if any, described here _____

CONSENT TO DISCLOSED DUAL AGENCY/DESIGNATED AGENCY: (INITIAL APPLICABLE CHOICES)

PH Owner acknowledges receiving an explanation of the types of agency relationships that are offered by brokerage and an Agency Disclosure Form at the first practical opportunity at which substantive contact occurred between the Broker and Owner.

Owner acknowledges that after entering into this written agency contract, Broker might request a modification in order to act as a **dual agent** or a **designated agent** in a specific transaction.

asked Permission to act as a dual agent will not be considered.

PH Permission to act as a dual agent may be considered at the time I am provided with information about the other party to a transaction. If Owner agrees, Owner will execute a separate written **Dual Agency Agreement**.

PH Permission to act as a designated agent will not be considered.

PH Permission to act as a designated agent may be considered at the time I am provided with information about the other party to a transaction. If Owner agrees, Owner will execute a separate written **Designated Agency Agreement**.

COMPENSATION TO OTHER AGENTS

roker has advised Owner of Broker's general company policy regarding cooperating with and compensating other agents. Owner authorizes the Broker to cooperate and to compensate the following: (CHECK ALL APPLICABLE CHOICES)

1 Subagents ☒ Buyer Agents ☒ Dual Agents ☒ Designated Agents ☐ None (If this box is checked, property cannot be placed in the multiple listing service)

TERMS: As follows.

Broker agrees to employ Broker's best efforts to sell or to secure a contract for the sale of the property for a price of

Two Hundred Fifty-Five Thousand Dollars

or 255,000.00) and in return Owner agrees to pay Broker a fee of \$ _____ or a commission of

6.000 % of gross sales price if Broker, Owner, another broker, or any other person or company produces a buyer who is ready, willing, and able to purchase the property on the terms described above or on any terms acceptable to Owner. Owner understands that Broker shall pay cooperating agents a fee of \$ _____ or a commission of

3.000 % of gross sales price. Owner and Broker agree that there shall be no variation or exception in the amount of the fee or commission to be paid, unless specified under Paragraph 25. ~~The brokerage fee shall be earned, due and payable when an agreement to purchase, option, exchange, lease or trade is signed by Owner. However, if Owner shall fail or refuse to sell the described property for the price and terms set forth herein, or if Owner shall fail or refuse to complete the sale of such property under any written Agreement to Buy and Sell Real Estate to which Owner has agreed, Broker's full fee shall be due and payable by Owner.~~

PH OWNER, [] OWNER, AND [] BROKER HAVE READ THIS PAGE.

Form 220
PAGE 1 OF 5

~~Owner agrees to pay all costs, including reasonable attorney's fees, which may be incurred by Broker in the collection of a fee due by Owner under this Agreement.~~

~~Broker agrees to defer the commission until the closing date or extension thereof stated in the agreement or until default by Owner. Deferral is agreed to solely as an accommodation to Owner and such deferral shall in no way be construed as a waiver of the brokerage fee. Closing Attorney is hereby irrevocably directed to deduct and pay said Broker's fee from the proceeds of the sale.~~

~~If the property is sold within 30 days of the expiration or termination of this Agreement (which shall be the protection period) to a Buyer to whom the property was shown by Owner, Broker, another broker, or any other person or during the term of this Agreement, Broker's full fee shall be payable by Owner. The protection period shall be terminated if Owner enters into a listing agreement with another broker during the protection period.~~

~~For purposes of this Agreement, a sale shall be defined as any transfer of a legal, equitable or beneficial interest in a subject property, whether for money or in exchange of other property, and shall include, but not be limited to, any transfer of the ownership interest in any corporation, limited partnership, partnership, or other entity.~~

Traywick Law Offices

EARNEST MONEY: Owner authorizes and designates Escrow Agent, as designated by the sales agreement, to accept and hold on behalf of Owner any earnest money or escrow deposit made in accordance with the terms of any agreement to buy and sell real estate for the property. In the event of default or forfeiture by a prospective buyer, Owner will reimburse Escrow Agent any costs incurred by Escrow Agent including attorney's fees as a result of the release of payment by Owner of any of the earnest money deposited, and such reimbursement may be made by Broker from the earnest money deposit. All earnest money will be deposited in Escrow Agent's escrow account. Traywick Law Office will disburse such funds accordingly.

~~OWNER UNDERSTANDS THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, BROKER WILL NOT DISBURSE EARNEST MONEY TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.~~

SIGNS: Owner grants to Broker the exclusive right to display "For Sale," "Under Contract," "Sale Pending," (or other similar) signs on the property and to remove other such signs

BROKER'S DUTY: Broker agrees to employ the best efforts of Broker and Broker's agents and staff to secure a contract of sale for the described property upon such terms as may be agreeable to Owner. Broker's efforts shall include directing the efforts of Broker's organization to bring about the sale, advertising the described property as Broker deems advisable in those advertising media of merit customarily used in the area, furnishing such additional information as is necessary to cooperating real estate brokers and assisting such brokers in effecting a sale of property, and keeping Owner informed as to the progress of Broker's efforts in finding a Buyer for the described property. Owner understands the Broker makes no representation or guarantee as to the sale of the property. Upon the termination or completion of this agreement, Broker shall keep confidential all information received during the course of this agreement which was made confidential by written request or instructions from the client, except as provided for under South Carolina law.

OWNER'S DUTY: Owner agrees as follows

To furnish Broker with complete and reliable information concerning ownership and the operation of the property, and any encumbrances or liens affecting the property; and
To inform Broker of any inquiries (including inquiries from other brokers) or negotiations concerning the sale of the property, and

To permit inspection and showing of the property by Broker, Broker's Agents, Subagents, Buyer's Agent, and by such agents, subagents and prospective buyers as deemed reasonably necessary by Broker, and to cooperate in the scheduling and carrying out of such showings and inspections as is necessary, and

To permit the offering for sale of the property to prospective buyers without regard to age, sex, race, creed, color, religion, national origin, handicap or familial status; and

~~To permit Broker to incur, or pay on behalf of Owner reasonable expenses for repairs, inspection, utilities, maintenance, or similar expenses not to exceed \$ N/A for each separate expense, and to reimburse Broker, as necessary, upon receipt of the statement of expenses, and~~

To allow closing attorney to pay Broker's compensation in an amount equal to the compensation provided above from Owner's proceeds at time of closing; and

To grant to Broker the authority and approval to list and publish all sales data pertaining to the sale and closing of the hereinabove described property. Owner understands and acknowledges that sales data are published for the use and information of the members of all the Boards/Associations of REALTORS® and the Multiple Listing Services (MLS) of which Broker is a member, for their use of same in marketing and selling of all properties listed in said publication; and



☐ OWNER, ☐ OWNER, AND ☐ BROKER HAVE READ THIS PAGE.

Form 220
PAGE 2 OF 5

To permit Broker to take photographs of the Owner's property described herein for advertising and marketing purposes in any advertising medium of the Broker's choice Owner understands and acknowledges that all marketing materials, including but not limited to photographs, brochures, and websites, developed for the sale of the subject property shall remain the property of the Broker; and

To convey marketable title to the buyer in fee simple free from all liens except those stipulated herein, subject to existing zoning and government restrictions, applicable owner's association assessments and restrictive conditions and covenants of record which do not materially affect the present use of the property; and

To authorize Owner's attorneys and the settlement agent to furnish to Broker copies of the final HUD-1 settlement statement for the transaction prior to the closing date; and

Not to deal directly with prospective buyers of this property during the period of this agency and shall refer any inquiries received directly and immediately to the Broker; and

To authorize the Broker, in response to inquiries from buyers or cooperating brokers, to divulge the existence of offers on the property; and

~~To furnish Broker with written instructions regarding the confidentiality of information upon termination or completion of this agreement which was received during the course of this agreement in accordance with South Carolina law.~~ *

*All information confidential other than information reasonably necessary for the sale of property

PROPERTY INFORMATION/SELLER'S PROPERTY DISCLOSURE STATEMENT: Owner warrants that, to owner's knowledge, there are no material defects, hidden or obvious, in or on the property, which have not been disclosed. Broker in writing Owner further warrants that Owner has reviewed and completed a Seller's Property Disclosure statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et seq, attached to and made a part of this Agreement, and that all such information is accurate to the best of Owner's knowledge. If the Owner discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the owner shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. An owner who knowingly violates or fails to perform any duty prescribed by any provision of this title or who discloses any material information on the disclosure statement that he knows to be false, incomplete, or misleading is liable for actual damages proximately caused to the Buyer and court costs. Owner agrees to defend, indemnify, and hold harmless the Broker, Broker's agents, or subagents, including indemnification for attorney's fees and court costs, from any and all claims arising out of any information or omission of information presented to Broker by Owner. Owner agrees to disclose to the Broker any known latent defects of the herein described property which are not readily ascertainable upon view including land, improvements, and personal property to be conveyed, and to hold said Broker harmless for any liabilities or damages arising from such defects. Owner will not hold Broker liable for the Owner's refusal or failure to provide a prospective purchaser with a disclosure statement. Owner agrees to allow Broker to provide copies of the disclosure statement to prospective buyers. The Owner understands and agrees that Broker has fully met the requirements of Section 27-50-70 of the South Carolina Code of Laws, as amended.

DISCLOSURE: Owner authorizes Broker to disclose information about the property to Broker's agents, subagents, prospective buyers, and all inquiring parties. Such disclosure shall be in accordance with Broker's company policy. Owner hereby authorizes anyone having a lien against the property including the mortgage holder, to disclose complete information about the lien to Broker and Closing Attorney or Agent.

3. **TAXES:** Owner covenants and agrees to comply with the provisions of the South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of owners who are not residents of South Carolina as defined in the said statute. The payment of rollback taxes, if applicable, and past personal property taxes, if applicable, shall be negotiated between the Owner and any prospective buyer.

1. **COASTAL TIDELANDS & WETLANDS ACT:** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq, South Carolina Code of Laws), an addendum will be attached to the sales agreement incorporating the required disclosures. The payment of any necessary surveys shall be negotiated between the Owner and any prospective buyer.

2. **MULTIPLE LISTING SERVICE:** The property ☒ shall be ☐ shall not be entered into the Multiple Listing Services which Broker is a member, which shall constitute an offer of cooperating brokerage to all members of the listing service. Owner agrees that Broker may compensate an agent representing the buyer from the fee described above.

3. **LOCKBOX:** Owner ☐ agrees ☒ does not agree for a MLS lock box to be installed on the property to facilitate showing and inspection of the property. Owner acknowledges and agrees that neither Broker, nor Broker's agents, subagents, or anyone showing the property through the MLS, shall be responsible for any damage to, or loss of personal property, or to the realty, except such damage or loss as may be caused by the negligence of such party.

 OWNER, ☐ OWNER, AND ☐ BROKER HAVE READ THIS PAGE.

ROA 180

Owner further acknowledges that neither Broker nor MLS is an insurer against the loss of personal property and agrees to release Broker and MLS from any responsibility therefore.

4. **INTERNET MARKETING:** Owner ☒ agrees ☐ does not agree that the listing may be placed in electronic marketing mediums including, but not limited to, the Internet, MLS Internet Data Exchange (IDX) program or other similar on-line computer services and to share listing data, including the property address, with other members of MLS for marketing and advertising purposes only. Owner further agrees to permit other real estate firms who belong to any listing service of which Broker is a member to advertise the listing on the internet in accordance with the listing service rules and regulations

5. **OTHER OFFERS:** Owner understands that the Broker's responsibility to present offers to purchase to the Owner for Owner's consideration terminates at the closing of the subject property or expiration of this agreement, whichever occurs first.

6. **MARKETING THE PROPERTY:** The Broker shall not continue marketing the property after an offer has been accepted, unless requested in writing by the Owner to do so

7. **NO CONTROL OF COMMISSION RATES OR FEES:** The Broker's compensation for services rendered in respect of any listing is solely a matter of negotiation between the Broker and the Owner and is not fixed, controlled, suggested, recommended, or maintained by the board/association, the MLS, or by any persons not a party to the listing agreement. The subagency compensation paid by the Listing Broker to a Cooperating Broker or Buyer's Broker in respect to any listing established by the Listing Broker in Broker's offer of subagency, and is not fixed, controlled, suggested, recommended or maintained by the board/association, the MLS or by any persons other than the Listing Broker.

8. **MAINTENANCE:** Owner agrees to maintain the property, including lawn, shrubbery, and grounds until the day of closing or possession, whichever occurs first. Owner also warrants that all heating, air conditioning, electrical, and plumbing systems as well as built-in or appurtenant equipment or appliances shall be in operative condition on the day of closing or possession, whichever occurs first. Unless otherwise agreed herein, Owner shall deliver the premises to the Buyer with no broken panes; no torn or missing door screens or window screens, and with no missing or broken hardware, lighting, or plumbing fixtures

9. **AGREEMENT TO SELL:** When a Buyer is found for said property, the Owner shall enter into a written sales agreement which will contain the terms and conditions of sale, the customary provisions as to the examination of the title, the curing of any defects in title, the prorations of taxes, rents, and applicable property expenses.

10. **LEAD-BASED PAINT:** For dwellings built before 1978, and as required by applicable law, a Disclosure of information on Lead-Based Paint and Lead-Based Paint Hazards (the "Disclosure" must be signed by Owner and attached to this agreement. Owner represents that either (1) the improvements on the property were all constructed after December 31, 1977, or (2) the Disclosure has been fully completed and is attached to this agreement. Owner agrees to provide Broker with any such additional information or reports as may come to Owner's possession during the term of this agreement. Owner acknowledges that Broker has informed Owner of the Owner's obligations to provide a buyer of the property with the pamphlet "Protect your Family from Lead in Your Home," to provide information to a buyer of the property with copies of available records and reports with respect to the property and lead-based paint and lead-based paint hazards, all pursuant to 42USC4582(d), as amended

11. **MEDIATION CLAUSE:** Any dispute or claim arising out of or relating to this Agreement, the breach of this agreement or the services provided in relation to this Agreement, shall be submitted to mediation ~~in accordance with the rules and procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®~~. Disputes shall include representations made by Owner or Broker in connection with the services to which this Agreement pertains, including without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding. This mediation clause shall survive for a period of 120 days after the date of the closing

12. **FAIR HOUSING:** Owner and Broker agree that this property is offered without regard to race, color, religion, sex, handicap, familial status, or national origin and is listed in full compliance with local, state, and federal fair housing laws.

13. **FACSIMILE:** The parties agree that this Agreement may be communicated by use of a fax, or other secure electronic means, including but not limited to the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.



OWNER, ☐ OWNER, AND ☐ BROKER HAVE READ THIS PAGE.

ROA 181

4. **ENFORCEMENT:** The parties agree that Broker may take action to enforce this Agreement or collect any ~~associated costs, fees, and damages. Owner agrees to reimburse or indemnify or pay all Broker costs in enforcing this agreement or collecting costs, fees, and damages including any incidental expenses or attorneys fees.~~

5. **OTHER TERMS AND CONDITIONS:** Agreement may be terminated at will by either party for any reason.
~~Agreement may be terminated at will by either party for any reason.~~

HE UNDERSIGNED HEREBY WARRANTS THAT THEY OWN THE PROPERTY AND/OR HAVE THE AUTHORITY TO EXECUTE THIS AGREEMENT. THIS IS A LEGALLY BINDING AGREEMENT. OWNER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. OWNER ACKNOWLEDGES RECEIPT OF A COPY OF HIS AGREEMENT. OWNER AGREES TO RECEIVE COMMUNICATIONS FROM BROKER AT THE EMAIL ADDRESS, PHONE AND FAX NUMBER LISTED BELOW.

I WITNESS WHEREOF, this agreement has been duly executed by the parties.

Owner: Phyllis C. Hufton, P.O. Date 1-6-12 Time _____
Phyllis C. Hufton

mail: dpt@traywicklaw.com Phone: 843-343-5092 Fax: 843 300-1051

Witness: _____ Date _____ Time _____

Owner: _____ Date _____ Time _____

mail: _____ Phone: _____ Fax: _____

Witness: _____ Date _____ Time _____

Owner's Mailing Address: P.O. Box 564, I.O.P. SC 29451

Real Estate Firm: C-21 Boling and Associates Phone: _____

by Jay Bonnoitt Century 21 Boling Date 01/05/2012 Time _____

The foregoing form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. Expressly prohibited is the duplication or reproduction of such form or the use of the name "South Carolina Association of REALTORS®" in connection with any written form without the prior written consent of the South Carolina Association of REALTORS®. The foregoing form may not be edited, revised, or changed without the prior written consent of the South Carolina Association of REALTORS®.

© 2008 South Carolina Association of REALTORS®. 1/08

Form 220
PAGE 5 OF 5

ROA 182

Produced with ZipForm® by zipLogix 18070 Fifteen Mile Road, Fraser Michigan 48026 www.ziplogix.com

Phyllis C. Hufton,



SHORT SALE ADDENDUM AGREEMENT TO BUY AND SELL REAL ESTATE



The following provisions are made part of the Contract for Sale (the "Contract") between Phyllis C Hufton
 _____ (Seller) and _____
 _____ (Purchaser), concerning the Property located in.
HORRY County, South Carolina, (the "Property") and being described as follows:
 Address: 1221
2121 South Ocean Boulevard City: North Myrtle Beach Zip 29582
 Subdivision: Bahama Sands HPR PH I Tax Map#: 144-13-43-051 Legal Lot #: 506

1. Contingency: Purchaser and Seller acknowledge that the purchase price is less than the amount of Seller's debt(s) secured by the property, which are owed to one ~~or more~~ lender(s) or lienholder(s) (collectively "Lender") Such a transaction is known as a "short sale." Therefore, this contract is contingent upon: (a) Lender's approval of the purchase price and other terms of the Contract and the HUD-1 settlement statement, (b) Lender's agreement to accept a payoff which is less than the balance due on the loan or other indebtedness, and (c) Lender's release and satisfaction of the mortgage(s) and/or other lien(s) upon receipt of discounted payoff amount(s)

If Seller has not obtained and provided Purchaser or Purchaser's Agent written notice of Lender's approval of the transaction, as set forth above, within ~~30~~ sixty days prior to the closing date specified in the Contract, Purchaser may terminate the Contract, and in such event Purchaser shall be entitled to a refund of the earnest money deposit, and neither party shall have any further rights or obligations hereunder. If purchaser terminates prior to sixty(60) days, purchaser forfeits earnest money deposit.

2. Notice of Approval: Seller shall provide Purchaser or Purchaser's Agent written notice of Lender's approval (or rejection) within twenty-four (24) hours of Seller's receipt of same.

3. Time Periods: Any time periods shall apply as set forth in the contract.

4. No Guarantee of Lender Approval: Purchaser and Seller acknowledge that Lender is neither required nor obligated to accept a short sale, and that Lender's approval may be revoked at any time prior to Closing, even after previous approval. In addition, the Parties acknowledge that Lender may require that as a condition of approval, some terms of the Contract be amended. Neither Purchaser nor Seller are obligated to agree to any of Lender's proposed terms; in the event that any of Lender's terms are unacceptable to either party, the Contract shall be void, and Purchaser shall be entitled to a refund of the earnest money deposit, and the parties shall execute a mutual release as set forth in the Contract. Purchaser further acknowledges that Seller is not liable for damages or costs incurred by Purchaser as a result of delays caused by Lender, Lender's failure to approve, or Lender's revocation of approval

5. Seller Acknowledgement: Seller acknowledges the need to seek advice from an attorney, a certified public accountant or other professional regarding the credit, legal and tax consequences of a short sale

This addendum amends the above-referenced Contract between Seller and Purchaser. Except as expressly modified or amended herein, all terms and provisions of the Contract and any prior amendments or addenda shall remain in full force and effect. In the event of any conflict between the Contract and this Addendum, this Addendum shall control.

Phyllis C Hufton P.A. 1-6-12
 Seller Date

 Purchaser Date

 Seller Date

 Purchaser Date

The foregoing form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. Expressly prohibited is the duplication or reproduction of such form or the use of the name "South Carolina Association of REALTORS®" in connection with any written form without the prior written consent of the South Carolina Association of REALTORS®. The foregoing form may not be edited, revised, or changed without the prior written consent of the South Carolina Association of REALTORS®.

© 2009 South Carolina Association of REALTORS®.

Form 393-SCR (10/09)

CENTURY 21 Boling & Associates 7722 N. Kings Hwy Myrtle Beach, SC 29572
 Phone. 843-449-2121 Fax 843-449-8802 Jay Bonnoitt

Produced with ZipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

ROA 183

Phyllis C Hufton,

Beachfront Management Act
Notice of Disclosure

1321
~~3121~~ South Ocean Boulevard
Subject Property: North Myrtle Beach, SC 29582 Unit # 506

Pursuant to the S. C. Code Ann. Section 48-39-330 (1988 Supp.), the Seller discloses to the Buyer that the property or a portion thereof is or may be subject to statutory regulation imposed by The South Carolina Coastal Zone Act of 1977, S. C. Ann., Section 49-39-10 et. seq. (1988 Supp.), as amended by The South Carolina Beach Management Act, S. C. Code Ann. Section 48-39-270 et. seq. (1988 Supp.), hereinafter collectively called "the Acts". The Acts involve, and may subject the property to, the creation and existence of interim and final baselines, setback lines, the velocity zone and an erosion rate, all as is more fully defined in the Acts. Part or all of the property is or may be located seaward of the setback line, the minimum setback line or interim baseline. All or part of the property is or may be within the velocity zone as determined by the Federal Emergency Management Agency. The Acts may also restrict the Buyer's right to build, repair or rebuild structures on the property. No structure may be constructed seaward of the setback line without a permit issued by the South Carolina Coastal Council. Pursuant to the Acts, the locations of the baselines and interim and final setback lines are subject to change. The methodology utilized in determining the exact location of the setback lines and baselines on the property and the currently applicable erosion rate may be obtained from the South Carolina Coastal Council. The methodology described above must be utilized in a case-by-case, property-by-property manner in order for an exact, surveyed determination to be made of the location of the baselines and setback lines. The Seller makes no representation to the Buyer concerning the location of such baselines, setback lines, or the velocity zone, the effect of such regulation on the property, or the accuracy of the foregoing disclosure.

Witness: As to Purchaser(s)

X _____ Date _____
Purchaser

X _____ Date _____
Co-Purchaser

Witness: As to Seller(s)

X _____ Date 1-6-12
Seller
Phyllis C Hufton

X _____ Date _____
Co-Seller

STATE OF SOUTH CAROLINA

COUNTY OF Horry

Flagstar Bank, FSB,

Plaintiff,

vs.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVER SHEET

Docket No. 2012-CP-98-

1379

Phyllis C. Hulton, as Personal Representative and Legal Heir of the Estate of James W. Hulton, Sr., Deceased, James W. Hulton, Jr., as Legal Heir of the Estate of James W. Hulton, Sr., Deceased, Marlene L. Cook, as Legal Heir of the Estate of James W. Hulton, Sr., Deceased, Shelia Ann Carey, as Legal Heir of the Estate of James W. Hulton, Sr., Deceased, Deborah A. Oehlenschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, Nancy Phyllis Craft a/k/a Nancy P. Craft a/k/a Nancy Craft, as Legal Heir of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, and Bahama Sands Homeowners' Association, Inc.,

Defendant(s).

Submitted by:

Ronald C. Scott (RonS@scottlaw.com), SC Bar #4908
 Elizabeth Rice Port (BetsyP@scottlaw.com), SC Bar #11673
 Brett E. Kline (BrettK@scottlaw.com), SC Bar #16881
 Angela J. Grant (AngJ@scottlaw.com), SC Bar #78334
 Phil M. Pajel (PhilP@scottlaw.com), SC Bar #78336
 Kevin T. Handy (KevinH@scottlaw.com), SC Bar #78016
 Erica G. Lybrand (EricaL@scottlaw.com), SC Bar #78032
 Richard G. Duerrndor (RichardD@scottlaw.com), SC Bar #70143
 Elizabeth A. Blockwell (LizB@scottlaw.com), SC Bar #78768
 P.O. Box 2058 Telephone #: (803) 252-3840
 Columbia, SC 29202 Fax #: (803) 252-3840

FILED
 Horry County
 2012 FEB 23 AM 11:19
 CLERK OF COURT

Note: The cover sheet and the 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 filed 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.

XX

NON-JURY TRIAL demanded in Complaint.

This case is subject to ARBITRATION pursuant to Circuit Court Alternative Dispute Resolution Rules.

This case is subject to MEDIATION pursuant to Circuit Court Alternative Dispute Resolution Rules.

This case is exempt from ADR (certificate is attached).

NATURE OF ACTION (check one box below)

Contracts

- Construction (110)
- Debt Collection (110)
- Employment (120)
- General (130)
- Breach of Contract (140)
- Other (150)

Torts-Professional Malpractice

- Dental Malpractice (200)
- Legal Malpractice (210)
- Medical Malpractice (220)
- Previous Notice of Infant Case # 25 - CP -
- Notice/Pre-Med Mail (230)
- Other (290)

Torts-Personal Injury

- Assault/Battery/Lib (300)
- Conversion (310)
- Motor Vehicle Accident (320)
- Premises Liability (330)
- Products Liability (340)
- Personal Injury (350)
- Wrongful Death (360)
- Other (390)

Real Property

- Claim & Delivery (400)
- Condemnation (410)
- XX Foreclosure (420)
- Mechanics Lien (430)
- Partition (440)
- Possession (450)
- Building Code Violation (460)
- Other (490)

Inmate Petitions

- PCR (500)
- Mandamus (520)
- Habeas Corpus (530)
- Other (590)

Judgments/Settlements

- Death Settlement (700)
- Foreign Judgment (710)
- Magistrate's Judgment (720)
- Minor Settlement (730)
- Transcript Judgment (740)
- Lis Pendens (750)
- Transfer of Structured Settlement
- Payment Rights Application (760)
- Other (790)

Administrative Law/Relief

- Reinstatement Driver's License (800)
- Judicial Review (810)
- Relief (820)
- Permanent Injunction (830)
- Forfeiture - Petition (840)
- Forfeiture - Consent Order (850)
- Other (890)

Appeals

- Arbitration (900)
- Magistrate-Civil (910)
- Magistrate-Criminal (920)
- Municipal (930)
- Probate Court (940)
- SCDOT (950)
- Worker's Comp (960)
- Zoning Board (970)
- Public Service Commission (980)
- Employment Security Commission (990)
- Other (999)

Special/Complex/Other

- Environmental (500)
- Automobile Arb. (810)
- Medical (820)
- Other (890)
- Pharmaceuticals (830)
- Unfair Trade Practices (840)
- Out-of-State Depositions (850)
- Motion to Quash Subpoena in Out-of-County Action (860)
- Sexual Predator (810)

Submitting Party Signature:

Note: Privileged civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Privileged Proceedings Sanctions Act, S.C. Code Ann. §18-36-10 et seq.

SCCA / 234 (01/2011)

Date: February 17, 2012

Page 1 of 2

ROA 185

EXHIBIT

3

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

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 and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. 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. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. 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 has 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

Flagstar Bank, FSB,

Plaintiff,

vs

Phyllis C. Hufon, as Personal Representative and Legal Heir of the Estate of James W. Hufon, Sr., Deceased, James W. Hufon, Jr., as Legal Heir of the Estate of James W. Hufon, Sr., Deceased, Marjoe L. Cook, as Legal Heir of the Estate of James W. Hufon, Sr., Deceased, Sharie Ann Carey, as Legal Heir of the Estate of James W. Hufon, Sr., Deceased, Deborah A. Oehlenschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft, as Legal Heir of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, and Bahama Sands Homeowners' Association, Inc.,

Defendant(s).

IN THE COURT OF COMMON PLEAS

Docket No. 2012-CP-26-

1379

CERTIFICATE OF EXEMPTION/WITHDRAWAL FROM
ARBITRATION

(I CERTIFY THAT THIS ACTION IS EXEMPT FROM ARBITRATION BECAUSE:

- ☐ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
- ☐ this action is appellate in nature;
- ☐ this is a post-conviction relief matter;
- ☐ this is a contempt of court proceeding;
- ☐ this is a forfeiture proceeding brought by the State; or
- ☒ this is a mortgage foreclosure action.

Date: February 17, 2012

SCOTT LAW FIRM, P.A.

By: 
 Ronald C. Scott, SC Bar #10998
 Elizabeth R. Polk, SC Bar #11673
 Brett E. Kline, SC Bar #15551
 Angelle J. Grant, SC Bar #78334
 Prith M. Patel, SC Bar #78835

Kevin T. Hardy, SC Bar #76015
 Erica G. Lybrand, SC Bar #78082
 Richard G. Overlander, SC Bar #70143
 Elizabeth A. Blackwell, SC Bar #76766

ATTORNEYS FOR THE PLAINTIFF
 2712 Middleburg Drive, Suite 200
 Columbia, SC 29204
 (803) 252-3340

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.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Flagstar Bank, FSB,

PLAINTIFF,

VS.

Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr., Deceased, James W. Hufton, Jr., as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Marcee L. Cook, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Sharla Ann Carey, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft, as Legal Heir of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, and Bahama Sands Homeowners' Association, Inc.,

DEFENDANT(S).

(110855.00256)

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-28-

1379

LIS PENDENS

FILED
HORRY COUNTY
2012 FEB 20 AM 11:20
CLERK OF COURT

NOTICE IS HEREBY GIVEN that an action has been commenced by the Plaintiff above named against the Defendants above named for the foreclosure of a certain mortgage given by James W. Hufton, Sr. and Elmer J. Craft, Jr. to Mortgage Electronic Registration Systems, Inc. as nominee for Golden Gate Mortgage Inc., dated April 7, 2008, recorded April 8, 2008, in the office of the Clerk of Court/Register of Deeds for Horry County, in Book 5055, at Page 1407; Thereafter, said Note and Mortgage were assigned to Flagstar Bank, FSB by assignment instrument dated January 31, 2012 and recorded February 9, 2012 in Book 5378 at Page 3123.

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

Unit 506 Bahama Sands Horizontal Property Regime, established by Master Deed dated December 26, 2007 and recorded December 31, 2007 in Deed Book 3304 at Page 1609, as thereafter amended, records of Horry County, South Carolina.

Subject to all of the provisions of the aforesaid Master Deed and Exhibits and Amendments thereto.

Together with all of the appurtenances thereto, to said Master Deed and Exhibits and Amendments thereto, and the Grantee(s) assume and agree to observe and perform their obligations under said Master Deed, Exhibits and Amendments thereto, including by not limited to the payment of assessments for the maintenance and operation of the units and condominiums.

And subject to the provisions of the By-laws of Bahama Sands Homeowners Association, Inc.

This being the same property conveyed to James W. Hutton, Sr. and Elmer J. Craft, Jr. by Deed of Bahama Sands Development, LLC, a South Carolina Limited Liability Company, dated April 7, 2008 and recorded April 8, 2008 in the Office of the Register of Deeds for Horry County, South Carolina in Book 3326 at Page 1862.

TMS No. 144-13-43-051

Property address: 1321 South Ocean Boulevard, Unit 506
North Myrtle Beach, SC 29582

SCOTT LAW FIRM, P.A.

By: 

Ronald C. Scott, SC Bar #4696
Elizabeth R. Pelt, SC Bar #11673
Brett F. King, SC Bar #15601
Angela J. Grant, SC Bar #78334
Prati M. Patel, SC Bar #79835

Kevin T. Hardy, SC Bar #78016
Erica G. Lybrand, SC Bar #79052
Richard G. Querindot, SC Bar #70143
Elizabeth A. Blackwell, SC Bar #78756

ATTORNEYS FOR THE PLAINTIFF
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
(803) 252-3340

February 17, 2012

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Flagstar Bank, FSB,

PLAINTIFF,

VS.

Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr., Deceased, James W. Hufton, Jr., as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Marcee L. Cook, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Sharie Ann Carey, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft, as Legal Heir of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, and Bahama Sands Homeowners' Association, Inc.,

DEFENDANT(S).

(110865.00256)

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-26-

1379

SUMMONS

Foreclosure - Non-Jury

FILED
Horry County
2012 FEB 20 AM 11:20
JULIA A. HUGHES-BAIRD
CLERK OF COURT

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 2712 Middleburg Drive, Suite 200, Post Office Box 2065, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service; except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

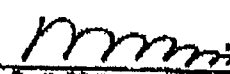
TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDES, AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY:

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Mortgagee immediately and separately and such application will be deemed absolute and total in the absence of your application for such an appointment within thirty (30) days after the service of the Summons and Complaint upon you.

YOU WILL ALSO TAKE NOTICE that under the provisions of South Carolina Code §29-3-100, effective June 16, 1993, any collateral assignment of rents contained in the mortgage identified in the Complaint is hereby perfected and Plaintiff hereby gives further notice that all rents shall be payable directly to it by delivery of the same to its undersigned attorneys from the date of default forward. In the alternative, the Plaintiff will move a Judge of this Circuit Court on the tenth (10th) day after service hereof, or as soon as counsel for Plaintiff may be heard, for an Order enforcing the assignment of rents, if any, and/or profits, if any, compelling payments of all such funds covered by the mortgage and/or by status and/or by common law directly to the undersigned attorneys for the Plaintiff, which Motion is based upon the original Note and Mortgage identified in the Complaint therein and attached hereto as well as any applicable laws, statutes or regulations.

YOU WILL ALSO TAKE NOTICE that should you fail to Answer the foregoing Summons, the Plaintiff will move for an Order of Reference of this cause to the Master-in-Equity or Special Referee in/for this County, which Order shall, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, specifically provide that the said Master in Equity or Special Referee is authorized and empowered to enter a final judgment in this cause with appeal only to the South Carolina Court of Appeals pursuant to Rule 203(d)(1) of the SCAR, effective June 1, 1999.

SCOTT LAW FIRM, P.A.

By: 

Ronald G. Scott, SC Bar #4936
Elizabeth R. Palk, SC Bar #11673
Brett F. Niles, SC Bar #16661
Angela J. Grant, SC Bar #78334
Priti M. Patel, SC Bar #78835

Kevin T. Hardy, SC Bar #78018
Erica G. Lybrand, SC Bar #79062
Richard G. Querindox, SC Bar #70143
Elizabeth A. Blackwell, SC Bar #78758

ATTORNEYS FOR THE PLAINTIFF
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
(803) 252-3340

February 17, 2012

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Flagstar Bank, FSB,

PLAINTIFF,

VS.

Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr., Deceased, James W. Hufton, Jr., as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Marcee L. Cook, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Sharle Ann Carey, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft, as Legal Heir of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, and Bahama Sands Homeowners' Association, Inc.,

DEFENDANT(S).

(110855.00286)

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-28-

1379

COMPLAINT
Foreclosure - Non-Jury
(Deficiency waived)

FILED
Horry County
2012 FEB 20 AM 11:28
JULIA E. HUGGINS-MAFLO
CLERK OF COURT

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

1. This is an action for foreclosure of a mortgage upon certain real estate in Horry County, South Carolina.
2. Plaintiff is a corporation or other legal entity doing business in the State of South Carolina and is the current holder of the Note and Mortgage described herein.
3. The servicer for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program (HMP), but the HMP process as specified by U.S. Treasury Department's Supplemental Directive 09-01 has been completed without resulting in a modification by virtue of the property not being owner occupied.
4. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.

5. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of Section 15-35-840 of the Code of Laws of South Carolina (1976).

6. Heretofore, under date of April 7, 2008, James Hufton made, executed and delivered to Golden Gate Mortgage Inc. a certain mortgage note ("Note") in writing wherein and whereby James Hufton promised to pay to Golden Gate Mortgage Inc. the principal sum of \$417,000.00.

7. In order to secure the payment of said note, the said James W. Hufton, Sr. and Elmer J. Craft, Jr. did on the same date, to-wit, April 7, 2008, make execute and deliver to Mortgage Electronic Registration Systems, Inc. as nominee for Golden Gate Mortgage Inc., its successors and assigns, a certain mortgage ("Mortgage") covering real property located in the County and State aforesaid, which said mortgage was recorded in the Office of the Clerk of Court/Register of Deeds for Horry County, on April 8, 2008, in Book 5055, at Page 1407; Thereafter, said Note and Mortgage were assigned to Flagstar Bank, FSB by assignment instrument dated January 31, 2012 and recorded February 8, 2012 in Book 5378 at Page 3123.

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

Unit 508 Bahama Sands Horizontal Property Regime, established by Master Deed dated December 28, 2007 and recorded December 31, 2007 in Deed Book 3304 at Page 1609, as thereafter amended, records of Horry County, South Carolina.

Subject to all of the provisions of the aforesaid Master Deed and Exhibits and Amendments thereto.

Together with all of the appurtenances thereto, to said Master Deed and Exhibits and Amendments thereto, and the Grantee(s) assume and agree to observe and perform their obligations under said Master Deed, Exhibits and Amendments thereto, including but not limited to the payment of assessments for the maintenance and operation of the units and condominiums.

And subject to the provisions of the By-laws of Bahama Sands Homeowners Association, Inc.

This being the same property conveyed to James W. Hufton, Sr. and Elmer J. Craft, Jr. by Deed of Bahama Sands Development, LLC, a South Carolina Limited Liability Company, dated April 7, 2008 and recorded April 8, 2008 in the Office of the Register of Deeds for Horry County, South Carolina in Book 3326 at Page 1882.

TMS No. 144-13-43-051

Property address: 1321 South Ocean Boulevard, Unit 508
North Myrtle Beach, SC 29582

8. The borrower, James W. Hufton, Sr., died on or about August 22, 2010.

9. The borrower, Elmer Judson Craft, Jr., died on or about June 6, 2009.

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

11. That the Plaintiff and/or its counsel have complied with its obligation(s) as required under the specific terms of the Note and Mortgage being foreclosed as well as any applicable Federal or State statutes or regulations including but not limited to, the furnishing of any notices required to be given to the obligor(s) which gives to such person(s) the right to cure any default arising under the specific terms of the recited Note and Mortgage herein; and the review of this mortgage loan for compliance with the Home Affordability Modification Program (HMP) as defined by and in the Administrative Order of the South Carolina Supreme Court issued by Chief Justice Jean H. Toal on May 22, 2009, if applicable. That the Plaintiff's counsel has read the allegations in this pleading and that to the best of his/her knowledge, information, and belief, there is a good ground to support it.

12. In and by the terms of said note and the mortgage securing the same, it is provided, among other things, that on failure to pay any installment of either principal and interest or any portion thereof when due, or if any of the conditions and requirements in the mortgage securing the same be not complied with, then the whole principal sum and accrued interest shall at the option of the legal holder thereof become at once due and payable without notice, and collectible by foreclosure.

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

14. The installments of principal and interest falling due from and after September 1, 2011 have not been paid although demand for the payment thereof has been made and the Plaintiff, as the holder of the said note and mortgage, has and does hereby elect to declare the entire balance of said principal and interest due and payable at once; that there is now due and owing and unpaid upon the said note and mortgage the full and just principal sum of \$398,516.95, together with interest thereon at the rate of 3.375% percent per annum from August 1, 2011, together with reasonable attorney's fees for the collection thereof and the costs

of this action. Pursuant thereto, the Plaintiff has employed the undersigned legal counsel to prosecute these actions herein and add the fees and costs of said counsel to the amount of the total debt as provided for in the Note and Mortgage.

15. Upon information and belief, the Defendants below named claim or may claim a subordinate lien or junior interest upon or interest in the subject property, and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with the Circuit Court Rules 53 and/or 71. The subject Defendant are further made a party due to the similarity in name(s) to the primary defendants against whom they claim or may claim a lien and in order to clear title to this property as follows:

(a) The Defendant, Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr., in such fiduciary capacity as representative of any person or entity that may be a creditor or claimant against such Estate, and by virtue of the powers granted by Decedent's Will or by statute and by virtue of any interest claimed under the law of succession (S.C. Code '62-2-109) or under decedent's will.

(b) The Defendant(s), Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft as Legal Heir and Devisee of The Estate Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft of by virtue of any interest claimed under the law of succession (S.C. Code '62-2-109) or under decedent's will.

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

(d) The Defendant, Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft in such fiduciary capacity as representative of any person or entity that may be a creditor or claimant against such Estate, and by virtue of the powers granted by Decedent's Will or by statute and by virtue of any interest claimed under the law of succession (S.C. Code '62-2-109) or under decedent's will.

(e) The Defendant(s), James W. Hufton, Jr., Marcee L. Cook, and Sharla Ann Carey, as Legal Heirs and Devisees of The Estate of James W. Hufton, Sr., by virtue of any interest claimed under the law of succession (S.C. Code '62-2-109) or under decedent's will.

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

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

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

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

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

2. Plaintiff's mortgage be declared a first lien (and purchase money mortgage first lien as does apply under the specific facts of this action as well as the After Acquired Property Doctrine) and that Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums and/or costs for inspecting and securing the property which may be due or which may be or have been paid by Plaintiff, with a reasonable attorney's fees, and for the costs of this action.

3. The mortgaged premises be sold according to law and the practice of this Court, the equity of redemption as to all defendants be barred and the lien or interest claimed by any defendant be extinguished and that the proceeds of sale be applied as follows:

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

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

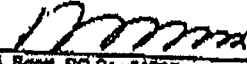
Third, the surplus, if any, be distributed according to law.

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

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

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

SCOTT LAW FIRM, P.A.

By: 

Ronald G. Scott, SC Bar #4898

Elizabeth R. Polk, SC Bar #11873

Brett F. Kline, SC Bar #16867

Angela J. Grant, SC Bar #78394

Phil M. Patel, SC Bar #78896

Kevin T. Hardy, SC Bar #78016

Erica G. Lybrand, SC Bar #79062

Richard G. Duerndor, SC Bar #70143

Elizabeth A. Blackwell, SC Bar #78758

ATTORNEYS FOR THE PLAINTIFF

2712 Middleburg Drive, Suite 200

Columbia, SC 29204

(803) 252-3340

February 17, 2012

NOTICE REQUIRED BY THE FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. Section 1692, et seq.

1. The amount of the debt as of September 1, 2011, is the principal sum of \$396,516.95, with interest from August 1, 2011, advances, late charges, and the costs and disbursements of this action, including attorney's fees.
2. The Creditor to whom the debt is owed is Flagstar Bank, FSB, who is authorized to receive payment on your loan.
3. The debt described in this notice will be assumed to be valid by the Creditor's law firm unless you, the Debtor, within thirty (30) days after receipt of this notice, dispute the validity of the debt or some portion thereof.
4. If you, the Debtor, notify the Creditor's law firm in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, the Creditor's law firm will obtain verification of the debt, and a copy of the verification will be mailed to you, the Debtor, by the Creditor's law firm.
5. If the Creditor named in this notice is different from the original Creditor, and if you, the Debtor, make a written request to the Creditor's law firm within thirty (30) days from the receipt of this notice, the name and address of the original Creditor will be mailed to you by the Creditor's law firm.
6. This notice should not be construed as a thirty (30) day grace period. If, in writing, you request proof of the debt or the name and address of the original creditor within the thirty (30) day period that begins with your receipt of this notice, the law requires the Creditor's law firm to suspend its efforts (through litigation or otherwise) to collect the debt until the Creditor's law firm mails the requested information to you.
7. This notice pertains to your dealings with the Creditor's law firm as a debt collector. It does not affect your dealings with the court, and in particular it does not change the time by which you must answer the complaint if we serve one on you. The summons is a command from the court, not from the Creditor's law firm, and you would have to follow its instructions even if you dispute the validity or amount of the debt. The advice in this notice also does not affect the Creditor's law firm's relations with the court. The Creditor's law firm may file papers in any such suit according to the court's rules and the judge's instructions.
8. **THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.** The information provided in paragraphs 1 and 2 above has been provided to us by the Creditor or Servicer. At this point in time, no attorney with this firm has personally reviewed the particular circumstances of your account. If you have previously received a discharge in bankruptcy, this notice is not and should not be construed as an attempt to collect a debt but only as an attempt to enforce a lien.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Flagstar Bank, FSB,

PLAINTIFF,

VS.

Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr., Deceased, James W. Hufton, Jr., as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Marcee L. Cook, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Shante Ann Carey, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Deborah A. Oehlschlager, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft, as Legal Heir of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, and Bahama Sands Homeowners' Association, Inc.,

DEFENDANT(S).

(110885,00256)

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-25-

1379

CERTIFICATE OF EXEMPTION FROM
ADMINISTRATIVE ORDER 2011-05-02-01
(Non-Owner Occupied Property)

FILED
COUNTY
2012 FEB 20 AM 11:20
CLERK OF COURT

Pursuant to Rule 11, SCRPC, upon information and belief, the undersigned Plaintiff's attorney does hereby certify as follows:

1. That this is an action for the foreclosure of real property.
2. Based on the records in my possession, the Administrative Order of the Supreme Court dated May 2, 2011 (2011-05-02-01) does not apply in this case because the real property is not currently an "Owner-Occupied dwelling" as defined in the Order.

SCOTT LAW FIRM, P.A.

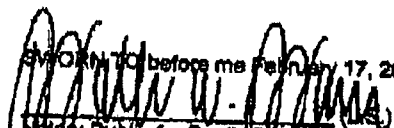
By: 

Ronald C. Scott, SC Bar #4956
Elizabeth R. Polk, SC Bar #11673
Brett F. Kline, SC Bar #15561
Angela J. Grant, SC Bar #76334
Phil M. Pate, SC Bar #79835

Kevin T. Hardy, SC Bar #76015
Erica G. Lybrand, SC Bar #79052
Richard G. Duesinckot, SC Bar #70143
Elizabeth A. Blackwell, SC Bar #78758

ATTORNEYS FOR THE PLAINTIFF
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
(803) 252-3340

Sworn to before me February 17, 2012.


Notary Public for South Carolina
My Commission Expires: 2/16/2016

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-26-1379

Flagstar Bank, FSB

Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr., Deceased, James W. Hufton, Jr., as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Marcee L. Cook, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Sharie Ann Carey, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft, as Legal Heir of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, and Bahama Sands Homeowners' Association, Inc.,

HORRY COUNTY
12 AUG 27 AM 9:06
MELANIE J. JENNINGS-WARD
CLERK OF COURT

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Scott Law Firm, P.A.

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

The property which is the subject of this action shall be sold at public sale pursuant to the Special Referee's Report and Judgment of Foreclosure and Sale

INFORMATION FOR THE PUBLIC INDEX

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

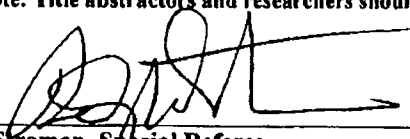
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		



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

TMS No 144-13-43-051
Property address. 1321 South Ocean Boulevard, Unit 506
North Myrtle Beach, SC 29582

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


Ralph Stroman, Special Referee

2098
Judge Code

Aug 27, 2012
Date

For Clerk of Court Office Use Only

This judgment was entered on the 27 day of August, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Scott Law Firm, P.A.
P.O. Box 2065
Columbia, SC 29204
Attorney for the Plaintiff

Phyllis C. Hufton, as Personal Representative and
Legal Heir of the Estate of James W. Hufton, Sr.,
David P. Traywick, Esq.
TAYWICK LAW OFFICES, LLC
P.O. Box 564
Isle of Palms, SC 29451

Attorney for the Defendants


Clerk of Court

Court Reporter:

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Flagstar Bank, FSB,

PLAINTIFF,

VS.

Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr., Deceased, James W. Hufton, Jr., as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Marcee L. Cook, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Sharie Ann Carey, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft, as Legal Heir of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, and Bahama Sands Homeowners' Association, Inc.,

DEFENDANTS.

File Number 110855.00256

TO: Ronald C. Scott, SC Bar #4996
Elizabeth R. Polk, SC Bar #11673
Brett F. Kline, SC Bar #15661
Angella J. Grant, SC Bar #78334
Priti M. Patel, SC Bar #79835
Erica G. Lybrand, SC Bar #79052
Elizabeth A. Blackwell, SC Bar #78756
J. Harrison Rushton, SC Bar #100406
ATTORNEYS FOR THE PLAINTIFF
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
(803) 252-3340

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-26-1379

SPECIAL REFEREE'S
ORDER AND JUDGMENT
OF FORECLOSURE AND SALE

DEFICIENCY WAIVED

Non-Eligible under the Home Affordable
Modification Program

NOTICE: The original of this document was filed in
the office of the Clerk of Court for Horry County

HORRY COUNTY
12 AUG 27 AM 9:06
CLERK OF COURT

Phyllis C. Hufton, as Personal Representative and
Legal Heir of the Estate of James W. Hufton, Sr.,
c/o David P. Traywick, Esq.
TAYWICK LAW OFFICES, LLC
P.O. Box 564
Isle of Palms, SC 29451

Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft as Legal Heir and Devisee
of The Estate Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft
307 N. Preston Dr.
Vinton, VA 24179

Bahama Sands Homeowners' Association, Inc.
Resort Association Management, Registered Agent
9550 Shore Dr.
Myrtle Beach, SC 29572

Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson
Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft
18-A Kirk Ave.
Roanoke, VA 24011

James W. Hufton, Jr., Marcee L. Cook, and
Sharie Ann Carey, as Legal Heirs and Devisees of
The Estate of James W. Hufton, Sr.,
425 Hufton Brook Lane
Blue Ridge, VA 24064

Sharie Ann Carey
1540 Meadow Lark Ln.
Tracy, CA 95376

Marcee L. Cook
385 Hufton Book Lane
Blue Ridge, VA 24064

Pursuant to Circuit Court Rule 53(b) of the South Carolina Rules of Civil Procedure, the
above-entitled matter was referred to the undersigned to make appropriate findings of facts and
conclusions of law with authority to enter a final judgment in the cause.

Pursuant to the said Order of Reference a hearing was held attended by the attorneys of
record. A Record of Hearing was presented, which is herewith reported, and from the Record of

Hearing and the documents and records received into evidence, I find, conclude and order as follows:

FINDINGS

This Court has jurisdiction over the subject matter of this action and the parties hereto and it is the proper forum for the litigation of this matter.

1. The Court has determined that the Plaintiff has complied with the Administrative Order of the Supreme Court dated May 2, 2011 (2011-05-02-01).

2. Based upon the facts and/or evidence presented, the Court has determined that this loan is not eligible under the Home Affordable Modification Program.

3. The Lis Pendens was filed on February 20, 2012

4. The Summons and Complaint were filed on February 20, 2012.

5. Service was made upon the Defendants named in this Report as is shown by the proofs of service filed herein.

6. The Defendant(s), James W. Hufton, Jr., as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Marcee L. Cook, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Sharie Ann Carey, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft, as Legal Heir of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, and Bahama Sands Homeowners' Association, Inc., are in default as is shown by the affidavit filed herein.

7. The Defendants and/or all attorneys of record were notified of the time, date, and place of the hearing of this matter.

8. According to the affidavit filed herein, any Defendant in default is not in the Military Service of the United States of America, as contemplated under The Servicemembers' Civil Relief Act of 2003 and any amendments thereto.

9. For value received, Defendant(s), James Hufton, made, executed and delivered a Note dated April 7, 2008, promising thereby to pay to the order of Golden Gate Mortgage Inc. the sum of \$417,000.00 with interest at the rate of 5.375% per annum. Other terms and conditions are stated in the Note, which is of record herein.

10. To better secure the payment of the Note described above, the said Defendant(s), James W. Hufton, Sr. and Elmer J. Craft, Jr., made, executed and delivered to Mortgage Electronic Registration Systems, Inc. as nominee for Golden Gate Mortgage Inc. a Mortgage in writing, dated April 7, 2008, covering real property in Horry County, which is the same as that described in the Complaint. The Mortgage was filed on April 8, 2008, and is of record in the Office of the Clerk of Court for Horry County in Book 5055, at Page 1407. The Mortgage evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagor(s). The Court finds also that this mortgage constitutes a first lien on the mortgaged premises and a purchase money lien as may apply under state law as well as the After Acquired Property Doctrine. Thereafter, said Note and Mortgage were assigned to Flagstar Bank, FSB by assignment instrument dated January 31, 2012 and recorded February 9, 2012 in Book 5378 at Page 3123.

11 That the Court finds that the Plaintiff and/or its counsel has complied with its obligation(s) as required under the specific terms of the Note and Mortgage being foreclosed as well as any applicable Federal or State statutes or regulations including but not limited to, the furnishing of any notices required to be given to the obligor(s) which gives to such person(s) the right to cure any default arising under the specific terms of the recited Note and Mortgage herein; the review of this mortgage loan for compliance with the Home Affordability Modification Program (HMP), if applicable; and that moreover and prior to the filing of this judicial proceeding, the Defendant(s) had not raised any compliance defense or objections as to the servicing of any applicable banking or consumer laws by the Plaintiff and/or its counsel.

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

13. With respect to attorney fees and in view of the potential financial liabilities and likely continuing professional obligations inherent in judicially prosecuting a real property mortgage credit matter, the attendant professional duties and responsibilities, and the size of the mortgage debt and consistent with similar case proceedings before this Honorable Court, I find that a reasonable attorney's fee in this matter would be \$1,750.00. This award is consistent with the laws of this state in the awarding of attorney fees. I have considered the six (6) factors (none of these factors is controlling in the singular) as follows: (1) the nature, extent and

difficulty of the legal service rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel, (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services, and (6) the beneficial results obtained. Taylor v. Medenica, 331 S.C. 575, 503 S.E.2d 458 (1998); Baron Data Systems v. Loter, 297 S.C. 382, 377 S.E.2d 296 (S.C. 1989). This fee is also consistent with and pursuant to opinions and orders of this jurisdiction wherein our state's appellate courts have repeatedly held that any contract for attorney fees that may exist or exists between the lawyer and the client (in addition to not being one of the six (6) fee review factors) is specifically not binding on the trial court in its determination of the reasonableness of the attorney fee. Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750(1997); Rice v. Multimedia, Inc., 318 S.C. 95, 456 S.E.2d 381 (1995); and Williamson v. Middleton, 374 S.C. 419, 649 S.E.2d 57 (Ct. App. 2007). Plaintiff's Counsel has likewise reported to this Court that it is billing the Plaintiff a minimum of \$1,750.00 for all uncontested and routine matters plus costs as well as additional fees/costs for any services outside of the contemplated routine and uncomplicated services (relating to contested, complex, or difficult matters) for a case of this type. Total representation of the Plaintiff's interests in this matter have been undertaken (including among many duties the researching of the referral file to serving as custodian of the salient loan file documents to the filing of all pleadings and legally required documents with the court) by the Scott Law Firm, P.A. As to the Scott Law Firm, P.A. and its professional standing, it is noted that counsel for the Plaintiff is regionally and nationally recognized for its professional expertise in mortgage default credit matters as evidenced by its listing in BEST LAWYERS IN AMERICA™ and Martindale-Hubbell Registry of Pre-Eminent Lawyers™. This Court has specifically reviewed and satisfied itself with all six (6) factors to be considered in awarding reasonable attorneys fees in this matter.

14. On receiving testimony and other evidence during this hearing, I find that the Scott Law Firm, P.A., was engaged by the Plaintiff to foreclose the mortgage as expeditiously as possible, given the detriment to Plaintiff's equity position as a direct result of increasing losses from the accrual of interest and related adverse economic conditions such as depreciation or possible damage to the collateralized property. I find that Plaintiff's counsel has achieved a beneficial result with its prompt foreclosure of the subject mortgage.

Upon receipt of the case file, the title was examined and studied to identify all parties having or claiming an interest in the subject real estate as well as being researched for salient legal questions and issues. As to time and labor, I find that various attorneys as well as

experienced paralegal staff have been responsible for (and expended extensive professional time of 10 hours as to the basic services) in the preparation of the following pleadings and other legally required services and documents:

1. Lis Pendens and any amendment thereto
2. Summons and Complaint and any amendment thereto
3. Affidavits and proposed Order of Publication
4. Affidavit of Default
5. Consent(s) to Order of Reference
6. Order of Reference
7. Notice of Hearing
8. Proposed Judgment of Foreclosure and Sale
9. Record of Hearing
10. Notice of Sale
11. Other documents as applicable pertaining to service and finalization of the action.

Counsel may also prepare for the Plaintiff the Statutory Foreclosure Deed and any other documents necessary in this particular action as ordered or authorized by this Court. I find and note the nature, extent and difficulty of the services provided.

Although I have heretofore given consideration to all six (6) factors in the awarding of attorney fees and costs herein, jurisdiction over the fee award shall be reserved as granted in the Order of Reference with the right to re-visit the question of attorney fees should the action proceed in an unexpected way and/or to facilitate the assessment and payment of any such current or additional professional compensation.

15. The amount due and owing on the Note, with interest at the rate provided in the Note, including attorney's fee and allowable costs and charges allowable under and secured by the Note and Mortgage, is as follows:

(a)	Principal due	\$396,516.95
(b)	Interest Due from August 1, 2011 to August 16, 2012	\$13,788.09
(c)	Pre-Acceleration Late Charges	\$ 375.44
(d)	Escrow Adjustments (Itemized in Plaintiff's Disbursement Record)	\$ 999.01
(e)	Broker's Price Opinion/Appraisals	\$ 0.00
(f)	Property Preservation	\$0.00
(g)	Previous Bankruptcy Fees/Costs	\$ 0 00
(h)	Property Inspections	\$ 135.00

(i)	Suspense	\$0.00
(j)	Miscellaneous Charges/Credits (Itemized in Plaintiff's Disbursement Record)	\$0 00
(k)	Costs of collection prior to hearing	\$2,566 30
(l)	Attorney's fees and costs	
	(Foreclosure & applicable Bankruptcy)	<u>\$1,750.00</u>
	TOTAL DEBT secured by note and mortgage including interest to date shown	<u>\$416,130.79</u>

Interest for the period from the date shown in (b) above through the date of this Judgment at the above stated rate to be added to the above stated "Total Debt": to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of 3.375% per annum (pursuant to the terms of the Note and Mortgage) on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage through the date to which such interest is computed. (Items (g), (k) and (l) are subject to revision by Plaintiff's counsel and/or modification by the Court.)

16. Based upon a search of the public records of the aforesaid county, all persons or entities having an interest or lien or possible claim in or upon the mortgaged premises subordinate to the lien of the Plaintiff as of the date and time of the filing of the Lis Pendens herein have been made defendants.

17. The Plaintiff is seeking the usual foreclosure of mortgage and has in the Complaint, or by amendment thereto, or by motion at the reference, expressly waived the right to a personal or deficiency judgment.

18. The Defendants below named claim or may claim a subordinate lien or junior interest upon or interest in the subject property, and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with the Circuit Court Rules 53 and/or 71. The subject Defendant are further made a party due to the similarity in name(s) to the primary defendants against whom they claim or may claim a lien and in order to clear title to this property as follows:

(a) The Defendant, Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr., in such fiduciary capacity as representative of any person or entity that may be a creditor or claimant against such Estate, and by virtue of the

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

(b) The Defendant(s), Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft as Legal Heir and Devisee of The Estate Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft of by virtue of any interest claimed under the law of succession (S.C. Code '62-2-109) or under decedent's will.

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

(d) The Defendant, Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft in such fiduciary capacity as representative of any person or entity that may be a creditor or claimant against such Estate, and by virtue of the powers granted by Decedent's Will or by statute and by virtue of any interest claimed under the law of succession (S C Code '62-2-109) or under decedent's will.

(e) The Defendant(s), James W. Hufton, Jr., Marcee L. Cook, and Sharie Ann Carey, as Legal Heirs and Devisees of The Estate of James W. Hufton, Sr., by virtue of any interest claimed under the law of succession (S.C. Code '62-2-109) or under decedent's will.

19. No Defendant raised any issues related to Plaintiff's standing to prosecute this action. Therefore, any issues related to Plaintiff's standing or ability to prosecute this action are waived.

20 Defendant Phyllis C. Hufton has not established any claims for relief against the Plaintiff, and therefore, no relief should be granted to the Defendant.

CONCLUSIONS OF LAW

I therefore, conclude as follows:

1. The Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2011-05-02-01) issued by Chief Justice Jean H. Toal, dated May 2, 2011.

2. The Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2009-05-22-01) issued by Chief Justice Jean H. Toal, dated May 22, 2009, and has shown that this loan is not eligible under the Home Affordable Modification Program.

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

4. Defendant Phyllis C. Hufton has not established any claims for relief against the Plaintiff, and therefore, no relief should be granted to the Defendant.

Now, on motion of Plaintiff's attorney,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2011-05-02-01) issued by Chief Justice Jean H. Toal, dated May 2, 2011.

2. The Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2009-05-22-01) issued by Chief Justice Jean H. Toal, dated May 22, 2009, and has shown that this loan is not eligible under the Home Affordable Modification Program

3. This case is not subject to the stay provisions of the Order of the Supreme Court of South Carolina dated May 4, 2009, as amended and superceded by Order dated May 22, 2009.

4. That there is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of \$416,130 79, representing the total debt due Plaintiff as set forth supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

5. The amount due in the preceding paragraph (the "total debt" as set forth in Paragraph hereinabove, 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 3.375% per annum.

6. That the Defendants liable for the aforesaid Mortgage debt shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or the Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

7. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the undersigned at public auction, after giving Notice of the time and place of such sale by advertisement according to law. Any sales date is tentative and may be rescheduled at any time prior to the sale without

further order of this court or written notice to the parties of the notice of sale, provided notice of the new sales date is duly advertised as required by law. The sale shall be according to the following terms, that is to say:

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

b. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 3.375%.

c. The sale shall be subject to taxes and assessments, existing easements and restrictions of record.

d. This mortgage constitutes a first lien covering the real estate and improvements therein described, including any mobile/manufactured home located thereon. Plaintiff would further allege and avail itself of the Purchase Money Mortgage Doctrine as may apply to the facts of this action.

e. Purchaser to pay for deed stamps and cost of recording the deed with the Plaintiff to pay the Statutory allowed fee of \$25.00 to the preparer of said deed (be it this Court or Counsel for Plaintiff).

8. If Plaintiff be the successful bidder at said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, the Plaintiff may pay to the Clerk of Court only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

9. No personal or deficiency judgment being demanded, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately.

10. That the Master in Equity will by advertisement according to law, give notice of the time and place of such sale, and the terms thereof. Any sales date is tentative and may be rescheduled at any time prior to the sale without further order of this court or written notice to the parties of the notice of sale, provided notice of the new sales date is duly advertised as required by law. Master in Equity 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 30 days after the date of sale, then the Master in Equity may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured. In the event the Plaintiff is the successful bidder, at its/his option, or the option of its/his assignee, the deed may be taken subject to payment by grantee of any taxes or assessments constituting a lien against the property sold under this order and hereinafter more fully described. In the event the successful bidder is a third party, neither the Plaintiff nor Plaintiff's counsel make any warranties or representations as to the subject property on behalf of the third party bidder or any subsequent purchasers.

11 The sale will not be held unless the Plaintiff, its attorney, or its bidding agent is present at the sale and enters the bid of the Plaintiff or has advised the Master in Equity's office of its bidding instructions. In the event a sale is held without the Plaintiff entering a bid, the sale shall be void.

12. In the event of a third party bidder and that any third party bidder fails to deliver the required deposit in certified (immediately collectible) funds to the Office of the Master in Equity by close of bidding on the day of the sale, the Master in Equity will re-sell the subject property at the most convenient time thereafter (including the day of sale) upon notification to counsel for Plaintiff.

13. That the Master in Equity shall apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expense of this action, including any Guardian ad Litem fee or fees of attorneys appointed under Order of the Court,

NEXT: To the payment to the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest or so much thereof as the purchase money will pay on the same; and Plaintiff's attorney shall receive and disburse such funds only in total and absolute compliance with the debt, interest, escrow, and related calculations of this Court including the Court's award for attorney fees and taxable costs;

NEXT. Any surplus will be held pending further order of the Court as provided for in the South Carolina Rules of Civil Procedure and particularly Rule 71(c) of the South Carolina Rules of Civil Procedure.

14. It is further ORDERED, that if the successful bidder is other than the Defendant in possession herein, upon the presentation of a Writ of Possession, the Sheriff of Horry County is ordered and directed to evict and remove from the premises the occupants of the property

sold, together with all personal property located thereon, and put the successful Purchaser or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful Purchaser or his assigns in such peaceable possession. All valid Tenant rights pursuant to Protecting Tenants at Foreclosure Act of 2009 shall be protected.

15. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the South Carolina Department of Motor Vehicles is directed and ordered to provide the new Certificate of Title to the attorneys for the Plaintiff as agent for the grantee on the deed upon payment of the required title fees on any mobile/manufactured home which is herein located on the subject property and intended to be collateralized by the Plaintiff's security documents as heretofore received into evidence by this Court, or which may be received into evidence at any necessary hearing post sale of the subject property.

16. And it is further ORDERED, ADJUDGED AND DECREED that Defendant named herein and all persons whosoever claiming under him, them or it, be forever barred and foreclosed of all right, title and interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

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

18. The Special Referee will retain exclusive jurisdiction to do all necessary acts incident to this foreclosure, including, but not limited to, all matters post-sale which may effect the transfer of the title to the subject real property and all improvements thereon, as well, the issuance of a Writ of Assistance.

19. Upon issuance of a Master in Equity's Report on Sale and Disbursements, the Register of Deeds is directed to release of record the mortgage lien being foreclosed, which mortgage lien is described as follows:

Mortgage from James W. Hufton, Sr. and Elmer J. Craft, Jr. to Mortgage Electronic Registration Systems, Inc. as nominee for Golden Gate Mortgage Inc. , dated April 7, 2008, covering real property in Horry County, filed on April 8, 2008, and is of record in the Office of the Clerk of Court/Register of Deeds for Horry County in Book 5055, at Page 1407.

20. This sale is subject to all title matters of record and any interested party should consider performing an independent title examination of the subject property as no warranty is given at all by the Court, the Plaintiff or its Counsel. If the judicial sale is set aside by this Court, the successful purchaser at the sale shall be entitled only to a return of the deposit paid, if any.

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

Unit 506 Bahama Sands Horizontal Property Regime, established by Master Deed dated December 26, 2007 and recorded December 31, 2007 in Deed Book 3304 at Page 1609, as thereafter amended, records of Horry County, South Carolina.

Subject to all of the provisions of the aforesaid Master Deed and Exhibits and Amendments thereto.

Together with all of the appurtenances thereto, to said Master Deed and Exhibits and Amendments thereto, and the Grantee(s) assume and agree to observe and perform their obligations under said Master Deed, Exhibits and Amendments thereto, including by not limited to the payment of assessments for the maintenance and operation of the units and condominiums.

And subject to the provisions of the By-laws of Bahama Sands Homeowners Association, Inc.

This being the same property conveyed to James W. Hufton, Sr. and Elmer J. Craft, Jr. by Deed of Bahama Sands Development, LLC, a South Carolina Limited Liability Company, dated April 7, 2008 and recorded April 8, 2008 in the Office of the Register of Deeds for Horry County, South Carolina in Book 3326 at Page 1862.

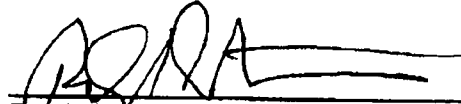
TMS No. 144-13-43-051

Property address: 1321 South Ocean Boulevard, Unit 506
North Myrtle Beach, SC 29582

22. IT IS FURTHER ORDERED that if the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the above-described property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales day as ordered by this court.

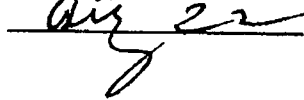
23. No Defendant raised any issues related to Plaintiff's standing to prosecute this action. Therefore, any issues related to Plaintiff's standing or ability to prosecute this action are waived.

24. Defendant Phyllis C. Hufton has not established any claims for relief against the Plaintiff, and therefore, no relief is granted to the Defendant



Ralph Stroman
Special Referee for Horry County

Conway, South Carolina

 22, 2012

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

Flagstar Bank, FSB

Plaintiff/Petitioner

vs
Phyllis C. Hufton, as Personal
Representative and Legal Heir of the
Estate of James W. Hufton, Sr.,
Deceased; et.al.

Defendant/Respondent

DOCKET NO
12-CP-26-1379

AFFIDAVIT OF SERVICE OF:
Civil Action Coversheet; Certificate of
Exemption/Withdrawal from Arbitration; Lis
Pendens; Summons; Complaint; Notice
Required by the the Fair Debt Collection
Practices Act; Certificate of Exemption From
Administrative Order 2011-05-02-01

FILED
CLERK OF COURT
12 MAR -1 AM 11:19
Horry County

The undersigned, being first duly sworn, on oath deposes and says: That s(he) is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, has the authority to serve pleadings in the State named below, and is competent to be a witness therein

On the **24th day of February, 2012**, at **8:45 AM**, at the address of **2143 COACHMAN Drive, ROANOKE, Roanoke City County, VA 24012**; this affiant served the above described documents upon **Phyllis C. Hufton, as Personal Representative of the Estate of James W. Hufton, Sr.** by then and there personally delivering 1 true and correct copy(ies) thereof, by then presenting to and leaving the same with **PHYLLIS C. HUFTON, NAMED PARTY, A white female approx. 55-65 years of age 5'0"-5'2" in height weighing 180-200 lbs with blonde hair.**

No Information was provided or discovered that indicates that the subjects served are members of the U S. military.

Is the place of service the dwelling house or usual abode for the party being served? () NO (X) YES

Is the Subject Property a Mobile Home? (X) NO () YES

Is a Mobile Home VIN # visible? (X) NO () YES VIN #: _____

DATED this 24 day of FEB, 2012

Nelson Tharpe
NELSON THARPE, VA

SHERRY B. FIELDS
NOTARY COMMONWEALTH OF VIRGINIA
NOTARY REG. # 7330128
COMMISSION EXPIRES 6/30/14

SUBSCRIBED AND SWORN to before me this 24 day of FEB, 2012

Sherry B. Fields
NOTARY PUBLIC in and for the State of Virginia
My Commission Expires: 6/30/14



FOR: Scott Law Firm, P.A.
REF 110855.00256

ORIGINAL AFFIDAVIT OF
SERVICE

Tracking #: 7263503 CAE FIL



ROA 216

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

Flagstar Bank, FSB

Plaintiff/Petitioner

vs.
Phyllis C. Hufton, as Personal
Representative and Legal Heir of the
Estate of James W. Hufton, Sr.,
Deceased, et.al.

Defendant/Respondent

DOCKET NO
12-CP-26-1379

AFFIDAVIT OF SERVICE OF:
Civil Action Coversheet; Certificate of
Exemption/Withdrawal from Arbitration; Lis
Pendens; Summons; Complaint; Notice
Required by the the Fair Debt Collection
Practices Act; Certificate of Exemption From
Administrative Order 2011-05-02-01

The undersigned, being first duly sworn, on oath deposes and says: That s(he) is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, has the authority to serve pleadings in the State named below, and is competent to be a witness therein.

On the 24th day of February, 2012, at 8:45 AM, at the address of 2143 COACHMAN Drive, ROANOKE, Roanoke City County, VA 24012; this affiant served the above described documents upon Phyllis C. Hufton, as Legal Heir of the Estate of James W. Hufton, Sr. by then and there personally delivering 1 true and correct copy(ies) thereof, by then presenting to and leaving the same with PHYLLIS C HUFTON, NAMED PARTY, A white female approx. 55-65 years of age 5'0"-5'2" in height weighing 180-200 lbs with blonde hair.

No Information was provided or discovered that indicates that the subjects served are members of the U.S. military

Is the place of service the dwelling house or
usual abode for the party being served? () NO (X) YES

Is the Subject Property a Mobile Home? (X) NO () YES
Is a Mobile Home VIN # visible? (X) NO () YES VIN # _____

DATED this 24 day of FEB, 2012

Nelson Tharpe
NELSON THARPE, VA

SHERRY B. FIELDS
NOTARY COMMONWEALTH OF VIRGINIA
NOTARY REG. # 7330128
COMMISSION EXPIRES 6/30/14

SUBSCRIBED AND SWORN to before me this 24 day of FEB, 2012

Sherry B Fields
NOTARY PUBLIC in and for the State of Virginia
My Commission Expires: 6/30/14



FOR: Scott Law Firm, P.A.
REF: 110855.00256

ORIGINAL AFFIDAVIT OF
SERVICE

Tracking #: 7263504 CAE FIL



ROA 217

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

PHYLLIS HUFTON,

PLAINTIFF,

vs.

FLAGSTAR BANK, FSB,

DEFENDANT

AND JOHN DOE

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO. 2013-CP-26-2861
)
)
)

AMENDED COMPLAINT
(DECLARATORY JUDGMENT AND
PARTITION)

FILED
2013 JUL 13 PM 4:16
CLERK OF COURT
HORRY COUNTY
SOUTH CAROLINA

COMES NOW THE PLAINTIFF, Phyllis Hufton, complaining of the Defendant(s) Flagstar Bank, FSB ("Flagstar") and John Doe, alleging as follows:

Parties and Jurisdiction

1. The Plaintiff brings this action under the authority of South Carolina's Declaratory Judgment Action, South Carolina Code Section 15-53-10 *et seq*, seeking a judgment which declares that she is the fee simple owner of good and marketable title to the real property described herein, and that no Defendant has any interest therein, of any kind.

2. The real property which is the subject of this civil action ("Property") is commonly known as 1321 South Ocean Boulevard, Unit 506, North Myrtle Beach, South Carolina, with TMS# 144-13-43-051, is situated in Horry County, and is more fully described as follows:

Unit 506 Bahama Sands Horizontal Property Regime, established by Master Deed dates December 26, 2007 and recorded December 31, 2007 in Deed Book 3304 at Page 1609, as thereafter amended, records of Horry County, South Carolina. Subject to all of the provisions of the aforesaid Master Deed and Exhibits and Amendments thereto

Together with all of the appurtenances thereto, to said Master Deed and Exhibits and Amendments thereto, and the Grantee(s) assume and agree to observe and perform their obligations under said Master Deed, Exhibits and Amendments thereto, including but not

limited to the payment of assessments for the maintenance and operation of the units and condominiums.

And subject to the provisions of the By-laws of Bahama Sands Homeowners Association, Inc.

This being the same property conveyed to James W Hufton, Sr. and Elmer J Craft, Jr. by Deed of Bahama Sands Development, LLC, a South Carolina Limited Liability Company, dated April 7, 2008 and recorded April 8, 2008 in the Office of the Register of Deeds for Horry County, South Carolina in Book 3326 at Page 1862.

TMS No. 144-13-43-051

Property address 1321 South Ocean Boulevard, Unit 506
North Myrtle Beach, SC 29582

3. The Plaintiff is the owner of the Property; Flagstar is a foreign corporation which instituted a foreclosure action concerning the Property and which makes a claim of ownership therein, John Doe is an unknown person, natural or incorporated, to whom Flagstar may have purported to transfer its interest in the Property.

4. The Court has personal and subject matter jurisdiction, and venue is proper.

Pertinent Facts

5. The Plaintiff took title to the Property through devise from the Estate of the Property co-owner James William Hufton and through quitclaim deed by Deborah A Oehlschlaeger, Administrator, C.T.A of the Estate of Property co-owner Elmer Judson Craft, Jr..

6. On February 22nd, 2012, Flagstar instituted in the Horry County Court of Common Pleas a foreclosure action concerning the Property, captioned *Flagstar Bank, FSB v. Phyllis C Hufton, as personal representative and legal heir of the Estate of James W. Hufton, Sr., Deceased et al*, case number 2012-CP-26-1379 ("Foreclosure Action").

7. At the time it filed the Foreclosure Action, Flagstar had actual knowledge that the Plaintiff owned the Property individually. Despite this knowledge, Flagstar failed to name the Plaintiff as a defendant in the Foreclosure Action.

8. On August 27th, 2012, the Court ordered that the Property be sold by the Master-in-Equity, whose December 3rd, 2012 Report on Sale and Disbursements reflects that Flagstar was the high bidder and was the recipient of a Master in Equity's Deed to the Property.

9. Because of Flagstar's failure to name the Plaintiff in the Foreclosure Action, the Foreclosure Action had no effect on the Plaintiff's fee simple interest in the property.

10. Because the Plaintiff held fee simple, good and marketable title to the Property before the Foreclosure Action, and because the Foreclosure Action had no effect on her interest, the Plaintiff continues to hold fee simple interest and a good and marketable title to the Property.

Receiver Action

11. Each of the allegations in the above numbered paragraphs are repeated and incorporated herein as if stated verbatim

12. Plaintiff seeks the appointment of a receiver to protect and preserve the Real Property and to do all acts necessary or required in connection with the administration and management of the Real Property, including but not limited to the processing and administering of proceeds as to the Real Property including collecting rents and avoiding waste.

Partition Action

13. The subject of this action is real estate located in Horry County, South Carolina, and within the jurisdiction of this Honorable Court. The property is described in Paragraph 2, hereinabove

14. The Plaintiff and each Defendant claims some title or interest in the subject property.

15. The Plaintiff seeks a partition of this property and to have the property sold subject to the provisions of Section 15-61-10 et seq., South Carolina Code of Laws, as amended

16. This is a partition action Rule 71 of the South Carolina Rules of Civil Procedure and applicable subsections apply in this matter.

WHEREFORE, the Plaintiff requests an Order declaring that she holds fee simple, good and marketable title to the Property as well as an Order appointing a receiver and for an order partitioning the property.



David P. Traywick
Benjamin A. Traywick
TRAYWICK LAW OFFICES, LLC
P.O. Box 564
Isle of Palms, South Carolina, 29464
Telephone 843-343-5092
dpt@traywicklaw.com
ben@traywicklaw.com

Attorneys for the Plaintiff

Charleston, South Carolina

Date: 6-10-14

1 JUL 18 PM 2:33
FBI - NEW YORK

GENERAL DENIAL

Each and every allegation of the Complaint is expressly denied unless specifically admitted, qualified, or explained herein.

1. Flagstar denies Paragraph 1.
2. Flagstar admits Paragraph 2.
3. Responding to Paragraph 3, Flagstar denies that Plaintiff has any interest in the subject property. Flagstar admits that it foreclosed upon the property and is now the sole owner of the property. Flagstar denies any and all remaining allegations of Paragraph 3.
4. Flagstar admits Paragraph 4.
5. Flagstar admits Paragraph 5. However, Flagstar denies that the Estate of Elmer Judson Craft, Jr. had Flagstar's permission to convey its interest in the property to Plaintiff.

Therefore, the quitclaim deed from the Craft Estate to Plaintiff violated the terms of the subject mortgage, and Flagstar reserves the right to make any argument based on that violation.

6. Flagstar admits Paragraph 6.

7. Flagstar denies Paragraph 7.

8. Flagstar admits Paragraph 8.

9. Flagstar denies Paragraph 9.

10. Flagstar denies Paragraph 10.

11. Responding to Paragraph 11, Flagstar incorporates by reference its responses in the preceding paragraphs as if repeated verbatim herein.

12. Flagstar denies Paragraph 12.

13. Flagstar admits Paragraph 13.

14. Responding to Paragraph 14, Flagstar admits that both Plaintiff and Flagstar "claim" an interest in the subject property but denies that Plaintiff actually has any interest in the property.

15. Paragraph 15 states a legal conclusion to which no response is required. To the extent a response is required, Flagstar denies Paragraph 15.

16. Paragraph 16 states a legal conclusion to which not response is required. To the extent a response is required, Flagstar denies Paragraph 16.

17. Responding to Plaintiff's prayer for relief, beginning with WHEREFORE, Flagstar denies that Plaintiff is entitled to the requested relief or any relief whatsoever.

FOR A SECOND DEFENSE
(Failure to State a Claim)

18. Plaintiff's Amended Complaint fails to state a cause of action upon which relief can be granted against Flagstar, and, therefore, Plaintiff's Amended Complaint should be dismissed pursuant to Rule 12 of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Waiver, Estoppel, Laches, and Unclean Hands)

19. Plaintiff was named as a party in the prior foreclosure action referenced in her amended Complaint. Plaintiff was represented by counsel in that action, filed an answer admitting all of the allegations of the foreclosure complaint, and allowed, without objection, the foreclosure to proceed to judgment and for the property to be sold to Flagstar at the conclusion of that action. At no point during the foreclosure proceedings did Plaintiff raise, before the Court, the fact that she believed she had an interest in the subject property that was not subject to the foreclosure proceedings. Accordingly, Plaintiff's claims are barred by the equitable doctrines of waiver, estoppel, laches, and unclean hands.

FOR A FOURTH DEFENSE
(Collateral Estoppel and Res Judicata)

20. Pursuant to Special Referee Ralph Stroman's Order and Judgment of Foreclosure and Sale dated August 22, 2012 and the Master in Equity's Deed of Foreclosure dated December 3, 2012, Plaintiff's claims are barred by the doctrines of collateral estoppel and/or res judicata.

FOR A FIFTH DEFENSE
(Failure to Mitigate)

21. Flagstar would show that Plaintiff failed to mitigate her damages, if any exist and are proven at trial, and therefore, her claims should be barred or reduced accordingly.

FOR A FOURTH DEFENSE
(Preemption)

22. Plaintiff's counterclaims are preempted pursuant to the Home Owner's Loan Act (12 U.S.C. § 1461, *et seq.*) and the regulations issued thereunder by the Office of the Comptroller of the Currency and/or its predecessor, the Office of Thrift Supervision, and by other laws, rules and regulations applicable to Federal Savings Banks.

FOR A FIFTH DEFENSE
(Intervening Acts)

23. Plaintiff's damages, if any exist and are proven at trial, were proximately caused by the acts or omissions of a third party and not by the acts or omissions of Flagstar.

FOR A SIXTH DEFENSE
(Right to Foreclosure)

24. Even if Plaintiff had an interest that survived the foreclosure action, which Flagstar denies, Plaintiff's interest in the property would still be subject to Flagstar's mortgage lien and Flagstar would have the right to foreclose upon that interest.

FOR A SEVENTH DEFENSE
(Improper Venue)

25. The proper venue for this action is before Special Referee Ralph Stroman, who presided over the prior foreclosure action and entered the Special Referee's Order of Judgment of Foreclosure Sale (the "Order"). This matter does not involve any legal causes of action that require resolution by a jury. Additionally, Special Referee Stroman entered the Order and retained jurisdiction over post-sale disputes conferencing the subject property. Therefore, pursuant to Rule 53, SCRCP and the Order, this matter should be referred to Special Referee Ralph Stroman.

FOR A SEVENTH DEFENSE
(Reservation)

26. Flagstar reserves the right to amend and supplement its affirmative defenses to include any applicable defense, both legal and factual.

FOR AN EIGHTH DEFENSE AND BY WAY OF COUNTERCLAIM

27. NOW COMES Flagstar, by way of counterclaim against Plaintiff, Phyllis C. Hufton, and states the following:

PARTIES

28. Flagstar is a federal savings bank that is doing business in the State of South Carolina.

29. Plaintiff is an individual that filed this lawsuit claiming an ownership in a condominium located in Horry County, South Carolina.

FACTUAL ALLEGATIONS

30. In April 2008, Plaintiff's husband, James Hufton, and an individual named Elmer J. Craft purchased a condominium located at 1321 South Ocean Blvd., Unit 506, North Myrtle Beach, South Carolina 29582 (the "Property").

31. The legal description for the Property is:

Unit 506 Bahama Sands Horizontal Property Regime, established by Master Deed dated December 26, 2007 and recorded December 31, 2007 in Deed Book 3304 at Page 1609, as thereafter amended, records of Horry County, South Carolina.

Subject to all the provisions of the aforesaid Master Deed and Exhibits and Amendments thereto.

Together with all of the appurtenances thereto, to said Master Deed and Exhibits and Amendments thereto, and the Grantee(s) assume and agree to observe and perform their obligations under said Master Deed, Exhibits and Amendments thereto, including

but not limited to the payment of assessments for the maintenance and operation of the units and condominiums.

And subject to the provisions of the By-laws of Bahama Sands Homeowners Association, Inc.

TMS No. 144-13-43-051

Property address: 1321 South Ocean Boulevard, Unit 506,
North Myrtle Beach, SC 29202

32. To finance the purchase of the Property, James Hufton executed a promissory note on April 7, 2008 for \$417,000.00 in favor of Golden Gate Mortgage Inc. (the "Note").

33. To better secure the Note, James Hufton and Elmer Craft executed a mortgage concerning the property in favor of Golden Gate Mortgage, Inc (the "Mortgage").

34. The Mortgage was recorded on April 8, 2008 at the Horry County Register of Deeds in Mortgage Book 5055 at Page 1407.

35. The Note and Mortgage were assigned to Flagstar.

36. Subsequently, James Hufton and Elmer Craft died.

37. Plaintiff alleges that she obtained an ownership interest in the Property from James Hufton's estate and from Elmer Craft's estate.

38. Plaintiff did not obtain Flagstar's permission to obtain a conveyance of any interest in the property from Elmer Craft's estate.

39. Any ownership interest that Plaintiff obtained in the Property remained encumbered by the Mortgage.

40. Beginning in September 2011, no more payments were made on the Note.

41. Because the Note fell into default, Flagstar commenced a foreclosure action on February 17, 2012 with the Civil Action Number 2012-CP-26-01379 (the "Foreclosure Action").

42. Plaintiff was named as a defendant to the Foreclosure Action.
43. Plaintiff, who was represented by counsel, filed an answer in the Foreclosure Action admitting each and every allegation of the foreclosure complaint.
44. Plaintiff allowed the Foreclosure Action to proceed to judgment without objection.
45. On August 27, 2012, Special Referee Ralph Stroman, entered a Special Referee's Order and Judgment of Foreclosure and Sale (the "Order").
46. The Order held that as of August 27, 2012, the total debt owed on the Note was \$416,130.79.
47. The Order also held that "Defendant[s] named herein and all persons whosoever claiming under him, them or it, be forever barred and foreclosed of all right, title and interest and equity of redemption in the said mortgage premises so sold, or any part thereof."
48. The Order further held that the *entire* Property would be sold at a judicial sale.
49. The Order also held that "Defendant Phyllis C. Hufton has not established any claims for relief against the Plaintiff, and therefore, no relief is granted to Defendant."
50. On or about, October 1, 2012, Flagstar purchased the Property at a judicial sale.
51. Upon information and belief, Plaintiff did not appear at the sale, did not make a bid on the Property, and did not contest the sale of the Property to Flagstar.
52. On December 3, 2012, Flagstar received a Master in Equity's Deed of Foreclosure for the *entire* Property (the "Master's Deed").
53. Plaintiff never objected to the Order or sale of the Property, never filed a motion to reconsider or vacate the Order, and she never appealed the Order.

54 On April 29, 2013, Plaintiff filed this action, raising for the first time to this Court, that she contends she has an interest in the Property that was not foreclosed by the Order.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment that the Order Foreclosed Plaintiff's Interests)

55. The allegations in Paragraphs 28-54 are incorporated by reference into this cause of action.

56. This is an action for a declaratory judgment pursuant to S.C. Code Ann. § 15-53-10, *et seq.* for the purpose of determining a question of actual controversy between the parties regarding whether Plaintiff retained any ownership interest in the Property after the Order and judicial sale of the Property to Flagstar.

57. The Order and Master's Deed conveyed the entire Property to Flagstar free and clear of any interest that Plaintiff may have once had in the Property.

58. Plaintiff had notice of the Foreclosure Action, was, in fact, a party to the Foreclosure Action, did not raise any affirmative defenses based on capacity, and she never objected or tried to prevent the foreclosure or judicial sale of the Property.

59. Therefore, Flagstar requests this Court to enter a judgment declaring that any interest Plaintiff had in the Property has been foreclosed and that Flagstar is the fee simple owner of the Property.

60. In the alternative, if the Court finds that Plaintiff does retain some ownership interest in the Property that was not previously foreclosed, Flagstar asks the Court to enter a judgment declaring that Plaintiff's interests are still subject to the Mortgage, or that Flagstar

has a equitable lien on Plaintiff's interests, and that Flagstar has the right to foreclose upon Plaintiff's interests.

FOR A SECOND CAUSE OF ACTION
(As an Alternative Relief, Foreclosure of Flagstar's Lien)

61. The allegations in Paragraphs 28-54 are incorporated by reference into this cause of action.

62. In the alternative, if the Court declares that Plaintiff has an interest in the Property, Flagstar seeks foreclosure of its mortgage lien on the Property.

63. Any interest Plaintiff acquired in the Property was encumbered by the Mortgage.

64. If Plaintiff's interests were not extinguished in the Foreclosure Action, then the Mortgage remains as a valid lien on those interests.

65. The Order entered by Special Referee Stroman establishes that the mortgagors defaulted on the Note and that a total debt of \$416,130.79 was owed on the Note as of August 27, 2013.

66. Plaintiff has not paid the debt owed on the Note.

67. Plaintiff is not willing to pay the debt owed on the Note.

68. Additionally, as set forth above, Flagstar did not consent to the quitclaim deed issued by the Craft estate to Plaintiff.

69. Because Plaintiff has not exercised any possible right of redemption she may have, and because the Craft estate's quitclaim deed violated the terms of the Mortgage, Flagstar is entitled to a foreclosure judgment as to Plaintiff's interests.

70. Upon information and belief, as of the date and time of this filing, no other persons or entities other than Flagstar and Plaintiff have an interest, lien, or claim, potential or otherwise, in or upon the Property.

71. It has become necessary for Flagstar to employ counsel to prosecute this action and, pursuant to the Mortgage, Flagstar is entitled to receive an award of reasonable attorneys' fees and costs against Plaintiff and/or the Property.

FOR A THIRD CAUSE OF ACTION
(As a Second Alternative Relief, Foreclosure of Equitable Lien)

72. The allegations in Paragraphs 28-54 are incorporated by reference into this cause of action.

73. In the second alternative, if the Court finds that Plaintiff has an interest in the Property and that the Mortgage is no longer valid, Flagstar seeks foreclosure of an equitable lien on the Property.

74. There is a debt owed under the Note.

75. That debt attached to the Property.

76. Mr. Craft and Mr. Hufton intended for the debt to attach to the entire Property when they offered the Property as collateral to secure the Note.

77. In reliance upon Mr. Craft and Mr. Hufton's representations, a mortgage loan was extended with the intent that the loan would be secured by a first mortgage lien on the Property.

78. Plaintiff benefited from the mortgage loan proceeds.

79. When Plaintiff acquired her interests in the Property, she knew that debt owed on the Note attached to, and was secured by, the Property and that her interests in the Property were subject to Flagstar's lien on the Property.

80. Therefore, Flagstar is entitled to a declaratory judgment that it has an equitable lien on Plaintiff's interests.

81. Furthermore, the Order entered by Special Referee Stroman establishes that the mortgagors defaulted on the Note and that a total debt of \$416,130.79 was owed on the Note as of August 27, 2013.

82. Plaintiff has not paid the debt owed on the Note, and she is not willing to pay the debt owed on the Note.

83. Because Plaintiff has not exercised any possible right of redemption she may have, Flagstar is entitled to a foreclosure judgment as to its equitable lien on Plaintiff's interests.

84. Upon information and belief, as of the date and time of this filing, no other persons or entities other than Flagstar and Plaintiff have an interest, lien, or claim, potential or otherwise, in or upon the Property.

WHEREFORE, having fully answered Plaintiff's Complaint, Flagstar prays that the Court will:

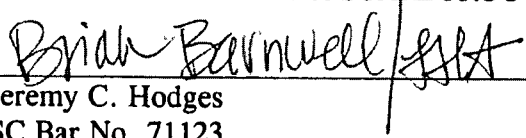
- a. Dismiss the Complaint with prejudice and award costs to Flagstar;
- b. Enter judgment that any interest Plaintiff had in the Property has been foreclosed and that Flagstar is the fee simple owner of the entire Property;
- c. In the alternative, Flagstar asks the Court to declare that Plaintiff's interests in the Property are subject to the Mortgage and enter a foreclosure judgment in the amount found to be due and owing, together with interest, attorneys' fees, and costs;

- d. In the second alternative, Flagstar asks the Court to declare that Plaintiff's interests in the Property are subject Flagstar's equitable lien and enter a foreclosure judgment in amount found to be due and owing, together with interest, attorneys' fees, and costs;
- e. Award Flagstar all other relief that the Court deems just and proper.

Respectfully,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By:


Jeremy C. Hodges

SC Bar No. 71123

E-Mail: jeremy.hodges@nelsonmullins.com

Brian M. Barnwell

SC Bar No. 78249

E-Mail: brian.barnwell@nelsonmullins.com

1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

Attorneys for Flagstar Bank, FSB

Columbia, South Carolina

June 18, 2014

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
Phyllis C. Hufton,	)	Civil Action No. 2013-CP-26-2861
	)	
Plaintiff,	)	
	)	<u>MEMORANDUM IN OPPOSITION</u>
vs.	)	<u>TO MOTION FOR SUMMARY</u>
	)	<u>JUDGMENT</u>
Flagstar Bank, FSB and John Doe,	)	
	)	
Defendants.	)	
	)	

FILED
JUL 18 PM 2:33
CLERK OF COURT

Defendant Flagstar Bank, FSB, ("Flagstar") respectfully submits this Memorandum in Opposition to Plaintiff's Motion for Summary Judgment. For the reasons set forth below, Plaintiff's Motion for Summary Judgment should be denied, and this case should be set for trial on the next available non-jury roster.

INTRODUCTION

Plaintiff's Motion for Summary Judgment asks the Court to declare that she retains a one-half ownership interest in a vacation condominium that was previously foreclosed upon and purchased by Flagstar. (Pl's Mot. for Summary Judgment p.1.) Plaintiff's Motion does not address Flagstar's counterclaim for a declaration that, even if Plaintiff retains an interest in the property, which Flagstar denies, her interest remains encumbered by Flagstar's mortgage. Plaintiff also recently amended her Complaint to add a partition action, and in response, Flagstar has asserted a counterclaim for a foreclosure judgment. Plaintiff's Motion for Summary Judgment does not address the partition claim, or Flagstar's counterclaim for a foreclosure judgment.

Moreover, Plaintiff's motion fails because she appeared in the foreclosure action, was represented by counsel who accepted service on behalf of all titleholders, and failed to raise the capacity defenses she asserts as affirmative claims in this action. For these reasons, and the reasons set forth below, Plaintiff's Motion for Summary Judgment should be denied, and this case should be placed on the next non-jury roster.

FACTUAL BACKGROUND

On or about April 7, 2008, James W. Hufton, Sr. and Elmer J. Craft purchased a condominium located at 1321 South Ocean Boulevard, Unit 506, North Myrtle Beach, South Carolina (the "Property"). (Ex. A, Indenture Deed.) The Indenture Deed received by Mr. Hufton and Mr. Craft conveyed to each man an undivided one-half interest in the Property. (*See id.*) To finance the purchase, Mr. Hufton borrowed \$417,000.00 and executed a note (the "Note") in favor of Golden Gate Mortgage Inc. (Ex. B, Note.) Mr. Craft did not sign the Note, but to secure it, both Mr. Hufton and Mr. Craft executed a mortgage concerning the Property (the "Mortgage"). (Ex. C, Mortgage.) The Note and Mortgage were subsequently assigned to Flagstar.

Mr. Hufton died on August 22, 2010, and his one-half interest in the Property was devised to Plaintiff through his estate, which has been fully probated and closed. Mr. Craft died on June 5, 2009. On September 9, 2011, Mr. Craft's estate conveyed his one-half interest in the property to Plaintiff. (Ex. D, Quitclaim Deed.) Neither Mr. Craft's nor Mr. Hufton's estates satisfied the Note before conveying their respective interests to Plaintiff. Thus, the Mortgage was never released.

Even though her interests in the Property were encumbered by Flagstar's Mortgage, Plaintiff chose not to make payments on the Note. As a result, the account went into default,

and Flagstar filed a foreclosure action on February 20, 2012 in the Court of Common Pleas for Horry County, South Carolina (the "Foreclosure Action"). (See Ex. E, Foreclosure Compl.). The foreclosure action was captioned *Flagstar Bank, FSB v. Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr., Deceased, et al.*, Civil Action Number 2012-CP-26-1379. (*Id.*) The Foreclosure Complaint stated that Flagstar was seeking foreclosure on the entire Property. (*Id.* at ¶ 7.) It also named every person, including Plaintiff, that was a legal heir or representative of Mr. Hufton and Mr. Craft's estates. (*Id.* at ¶ 15.)

On February 23, 2012, Plaintiff's attorney¹ sent Flagstar's foreclosure attorneys an email stating as follows:

I represent Phyllis Hufton, and the rest of the known parties named as defendants. I had already agreed to accept service on behalf of my client(s).

Please forward a copy of the complaint filed in this matter as soon as you can. Once you have done so, I will email confirmation that such receipt by me constitutes personal service on Phyllis Hufton as well as any other parties you have not already effected personal service upon in this matter. I will be representing all of the parties in the suit.

(Ex. F, 2/23/12 Email Chain; see also Ex. G, 12/28/2011 Letter ("I agree to accept service on behalf of the title holder.")) Later that day, Plaintiff's attorney confirmed that "I'll accept service for Phyllis Hufton. Please do not attempt to serve her personally." (2/23/12 Email Chain.)

On March 9, 2012, Plaintiff, by and through her attorney, filed an answer to the Foreclosure Complaint that admitted each and every allegation. (Ex. H, Foreclosure Answer.) The Foreclosure Action then proceeded to final judgment and sale without any objections by

¹ Mr. David Traywick, who is also representing Mrs. Hufton in the present action.

Plaintiff. Similarly, Plaintiff did not claim that she had any interest in the Property that was not subject to the Foreclosure Action.

On August 27, 2012, Special Referee Ralph Stroman entered an Order and Judgment of Foreclosure and Sale (the "Foreclosure Order") in favor of Flagstar. (Ex. I, Foreclosure Order.) The Foreclosure Order stated that the entire property was being foreclosed on, (*id.* at ¶ 21) all parties named in the foreclosure action and all parties claiming under them were foreclosed of all interest in the property, (*id.* at ¶ 16) and that Plaintiff failed to establish any claim against Flagstar. (*Id.* at ¶ 24.) The Order also held that the total debt owed on the Property was \$417,000.00.

On October 1, 2012, Flagstar purchased the Property at the foreclosure sale for \$250,000.00. (Ex. J, Master's Deed.) The Master's Deed states that the entire Property was being conveyed to Flagstar. (*Id.*) Again, Plaintiff and her attorneys did not raise any objection to the sale and did not inform Special Referee Stroman that Plaintiff had an interest in the Property that was not subject to the Foreclosure Order. Six months after the foreclosure sale, Plaintiff filed this action, seeking a declaration that she has an interest in the Property that was not affected by the Foreclosure Action and resulting sale to Flagstar.

PROCEDURAL HISTORY AND REQUEST FOR NON-JURY TRIAL

Plaintiff commenced this action on April 29, 2013. Flagstar filed a motion for summary judgment on April 7, 2014, which was heard by this Court on June 3, 2014. Plaintiff filed a cross-motion for summary judgment on May 9, 2014, which is currently before the Court.

At that hearing on Flagstar's motion for summary judgment, Judge Hyman expressed reservations about deciding the merits of this case during a short motions hearing rather than a

full non-jury trial. He then entered a Form 4 Order which merely stated "Motion to amend granted"; "Motion for summary judgment denied." The Form 4 Order does not make any findings of fact or conclusions of law.

After Plaintiff filed her Amended Complaint, Flagstar filed its answer and asserted new counterclaims for a foreclosure judgment. As stated above, Plaintiff has not moved for summary judgment on any of Flagstar's counterclaims for foreclosure. Therefore, to promote judicial economy, and to resolve the procedural quagmire that has arisen in this case, Plaintiff's motion for summary judgment should be denied and this case should be scheduled on the next available non-jury roster.

ARGUMENT

I. The Foreclosure Action extinguished any interest Plaintiff had in the Property.

Plaintiff's entire argument is that she is not bound by the Foreclosure Order because the Foreclosure Complaint's caption did not expressly state that she was being named as a party in her individual capacity although she was indisputably named as a party in her capacity as the "personal representative and legal heir" of her late husband. Plaintiff's hyper technical argument fails under South Carolina law. Furthermore, because Plaintiff failed to raise her claims in the Foreclosure Action, they are now barred by the doctrines of waiver and res judicata.

A. Plaintiff is bound by the Foreclosure Order.

"It is the established rule of this jurisdiction to uphold judicial sales, when regularly made, 'when it can be done without violating principle or doing injustice.'" *Wooten v. Seanch*, 187 S.C. 219, 222, 196 S.E. 877, 878 (1938). In *Wooten*, the South Carolina Supreme Court rejected the exact argument Plaintiff makes in this case—that a property owner,

represented by counsel, can avoid a foreclosure judgment by relying on the fact that he is incorrectly named in a complaint. *Id.* In affirming the foreclosure sale, the *Wooten* court explained that “[i]t is sufficient to say that to avail himself of this objection, the issue should have been made by answer or demurrer, which was not done. [Instead, the property owner] appeared by attorney, who consented to the order of reference, and attended the reference, and no reference was made to the alleged misnomer.” *Id.* As in *Wooten*, Plaintiff has not suffered an injustice because she was aware that Flagstar was foreclosing upon the entire Property, and she chose not to raise any issue about the manner in which she was named in the Foreclosure Complaint. As such, she cannot avoid the Foreclosure Order, and her motion for summary judgment should be denied.

Indeed, under South Carolina law a party with actual notice of a lawsuit cannot remain silent and then avoid a judgment by arguing that she was improperly named in the complaint. As explained by our Supreme Court,

[W]here a party is served by a wrong name, and the writ is served on the party intended to be served and he fails to appear and plead the misnomer in abatement, and suffers judgment to be obtained by default against him in the erroneous name, he is concluded, and execution may be issued on the judgment in that name and levied upon the property and effects of the real defendant.

Tri-Cnty. Ice & Fuel Co. v. Palmetto Ice Co., 303 S.C. 237, 241, 399 S.E.2d 779, 782 (1990). (quoting *Waldrop v. Leonard*, 22 SC 118 (1885)); see also Rule 9(a), SCRCF (“When a party desires to raise an issue as to the . . . capacity of any party to . . . be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment . . .”).

In *Waldrop*, a suit was initiated against James P. Leonard ("James"), however, the plaintiff intended to sue Jonas P. Leonard ("Jonas"), and actually served Jonas with the suit. *Waldrop*, 22 S.C. at 118. Jonas consulted with counsel and because James was named in the suit, Jonas and his counsel elected not to respond to the complaint and to allow entry of a default judgment against James. *Id.* at 119. When the plaintiff attempted to execute the default judgment against Jonas, Jonas argued that he was not bound by the judgment because he had not been properly identified in the action. *Id.* The Court rejected this argument and explained that

[A]ll authorities hold that it is the duty of the [incorrectly named] party served to inform the court of the error and have the service discharged.

Id. at 121; *see also* Rule 9(a), SCRCP. Accordingly, the court held that because Jonas was aware of the lawsuit and failed to appear and point out the incorrect name in the complaint, he was bound by the judgment. *Id.* at 127.

Here, just like in *Waldrop* and *Wooten*, Plaintiff was aware of the Foreclosure Action and allowed it to proceed to judgment without raising any issue with the Court about the alleged misnomer or omission in the Foreclosure Complaint. Instead, she now argues that that even though she was named as Mr. Hufton's personal representative *and legal heir*, she has an interest in the Property that was not affected by the foreclosure. It is undisputed, however, that Plaintiff was properly served in the Foreclosure Action. Specifically, Plaintiff's attorney told Flagstar that he would "accept service on behalf of the title holder" (12/28/11 Letter); confirmed that he "accept[ed] service for Phyllis Hufton"; and instructed Flagstar to "not attempt to serve her personally" (2/23/12 Email Chain). *See Waldrop*, 22 S.C. at 118 (basing

its decision in part on fact that misnamed party consulted with an attorney and then made the strategic decision to try and avoid judgment by not informing the court about misnomer).

After being served, Plaintiff answered the Foreclosure Complaint admitting that she inherited a personal interest in the Property as Mr. Hufton's heir. (*See* Foreclosure Compl. ¶ 15; *see also* Foreclosure Answer ¶ 15(a)). Plaintiff further admitted that the entire Property should be sold to satisfy the Note, and she did not raise any objection or defense concerning her alleged individual interests that she now claims was not affected by the foreclosure and subsequent sale. (*See* Foreclosure Answer ¶ 18; *see also* Foreclosure Complaint at paragraph beginning with "WHEREFORE"). Plaintiff's position is however at odds with the Foreclosure Order, which specifically found that the entire Property was foreclosed upon and that all named defendants were forever barred of all right, title, and interest in the Property. Again, Plaintiff did not object to the entry of this Order. (*See* Foreclosure Order p. 9 ¶ 3; p. 12 ¶ 16.) As such, and in accordance with South Carolina law, any individual interest Plaintiff had in the Property was foreclosed upon, and Plaintiff waived any claims or defenses she may have had as to the effect of the foreclosure on those interests. *See Waldrop*, 22 S.C. at 127.

B. Plaintiff's claims are also barred by res judicata.

Because Plaintiff did not object to or oppose the entry of the Foreclosure Order, she is barred from attacking it in this action. Under South Carolina law the doctrine of "[r]es judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." *Plum Creek Dev. Co., Inc. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). The doctrine of res judicata also bars a litigant "from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." *Hilton Head*

Center of South Carolina, Inc. v. Public Service Comm'n of South Carolina, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987) (emphasis added); *see also Richburg v. Baughman*, 290 S.C. 431, 434, 351 S.E.2d 164, 166 (1986) ("Under the doctrine of collateral estoppel, once a final judgment on the merits has been reached in a prior claim, the relitigation of those issues actually and necessarily litigated and determined in the first suit are precluded as to the parties and their privies in any subsequent action based upon a different claim.").

Res judicata applies when the following three elements are established: "(1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the claim in the former suit." *Judy v. Judy*, 393 S.C. 160, 167, 712 S.E.2d 408, 412 (2011). Under South Carolina law, the doctrine of res judicata extends to parties in privity with one another. *Wyndham v. Lewis*, 292 S.C. 6, 8, 354 S.E.2d 578, 579 (1987). "Under this rule, the term privity means mutual or successive relationship to the same rights of property. The term can also refer to a person so identified in interest with another that he represents the same legal rights." *Id.* Furthermore, the general rule is that res judicata applies "where a party to one action in his individual capacity and to another action in his representative capacity is in each case asserting or protecting his individual rights." 47 Am. Jur. 2d Judgments § 579; *see also Ward v. Detroit Auto. Inter-Insurance Exchange*, 115 Mich. App. 30, 38 (Mich. Ct. App. 1982).

To the extent Plaintiff claims she only appeared in the Foreclosure Action in a representative capacity, her argument is unsupported by fact and law. First, the Foreclosure Complaint named Plaintiff as both a "personal representative" and as "legal heir" of Mr. Hufton's estate. (Foreclosure Complaint.) Plaintiff's answer admitted that her personal interests, as least those she inherited, concerning the Property, should be foreclosed upon. (Foreclosure Answer ¶¶ 7 & 15.) Therefore, even if Plaintiff was incorrectly identified, her

answer to the Foreclosure Complaint indisputably concerned her personal interests in the Property. Because Plaintiff appeared in that action and consented to the foreclosure of the entire Property, she is bound by the Foreclosure Order, her claims here are barred, and her motion for summary judgment should be denied. *See* 47 Am. Jur. 2d Judgments § 579.

II. Even if Plaintiff's individual interest survived the Foreclosure Action, they are still encumbered by Flagstar's Mortgage and subject to foreclosure.

As set forth above, Plaintiff has not moved for summary judgment on Flagstar's counterclaims for a foreclosure judgment. However, in the event Plaintiff tries to attack those claims during the June 25 hearing, her arguments should be denied for the reasons set forth herein.

Plaintiff has no legal basis for claiming that she owns the Property free and clear of Flagstar's Mortgage. To the contrary, the South Carolina Supreme Court has explained that when a lender omits an interested party from a foreclosure action, the omitted party has "no recourse against" a lender other than to exercise her right of redemption. *See Green Tree Serv., LLC v. Adams*, 375 S.C. 583, 587, 654 S.E.2d 100, 102 (Ct. App. 2007). The *Adams* court further explained that if the omitted party is not able, or not willing, to redeem the property by paying the amount that was owed at the time of the foreclosure, then she is not prejudiced by not being made a party to the foreclosure action. *Id.*² Because Plaintiff is not willing to redeem the Property in this case, Flagstar is entitled to a foreclosure judgment.

In line with *Adams*, courts from other jurisdictions have uniformly held that an omitted party's interests remain encumbered by a lender's mortgage and subject to foreclosure:

² *Adams* also clarifies that if Special Referee Stroman did not have personal jurisdiction over Plaintiff in the Foreclosure Action, then the remedy is simply for this Court, which undeniably has personal jurisdiction over her individual capacity, to enter a foreclosure judgment against Plaintiff in this case. *Id.* (holding that bank could file a separate quiet title action after purchasing property at foreclosure sale to extinguish the lien of a junior lien holder that was omitted from foreclosure action).

Generally speaking, . . . if a mortgagee forecloses but fails to join the holder of an interest in the premises as a party defendant, such interest is not foreclosed but the mortgage remains alive and the mortgagee may effectively foreclose against the omitted parties, either in the same or a new action.

First Nat'l Bank & Trust Co. v. Stark, 249 P.2d 117, 118 (Okla. 1952) (holding that, where a mortgagor was omitted from the foreclosure, the note and mortgage remain, and the situation is the same as if no legal proceeding had occurred at all); *see also Ill. Bankers Life Assur. Co. v. Dunas*, 77 N.E.2d 54, 56 (Ill. Ct. App. 1947) (finding that, where holder of note secured by trust deed named the children and devisees of a deceased purchaser of realty subject to lien of deed of trust, but did not name them in their capacity as trustees under the deed, the subsequent holder of the note had the right to foreclose upon the children as trustees); *Sur. Bldg. & Loan Ass'n v. Risack*, 179 A. 680, 681 (N.J. Ch. 1935) (finding that a mortgagor that foreclosed on a one-half interest in a property and purchased the property at the sale was entitled to require the owner of the other one-half interest to redeem or be foreclosed of his equity of redemption); *English v. Bankers Trust Co. of Cal., N.A.*, 895 So. 2d 1120, 1121-22 (Fla. Dist. Ct. App. 2005) (concluding that a mortgagee can be subsequently foreclosed upon when the mortgagee was not joined in the first foreclosure); *Oakland Props. Corp. v. Hogan*, 117 So. 850, 851 (Fla. 1928) ("We think the law is well settled that where the owner of the equity of redemption has been omitted from the list of parties defendant in a cause, that the mortgagee may maintain a second action to foreclose his mortgage, thereby cutting off the interest of such owner.").

Plaintiff has not cited a single case or other authority to refute *Adams* or the cases from other jurisdictions cited above.

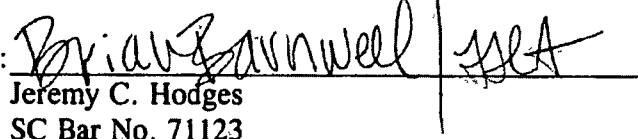
It is undisputed that Plaintiffs' interests were encumbered by the Mortgage when she obtained them. If she has an interest that survived foreclosure, that interest is still encumbered. Therefore, Plaintiffs' claims fail as a matter of law, and her motion for summary judgment should be denied.

CONCLUSION

For the reasons set forth above, Flagstar respectfully requests this Court deny Plaintiff's Motion for Summary Judgment and schedule this case on the next available non-jury roster.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 
Jeremy C. Hodges

SC Bar No. 71123

E-Mail: jeremy.hodges@nelsonmullins.com

Brian M. Barnwell

SC Bar No. 78249

E-Mail: brian.barnwell@nelsonmullins.com

1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

Attorneys for Flagstar Bank, FSB

Columbia, South Carolina

June 18, 2014

Exhibit A

(Indenture Deed)

STATE OF SOUTH CAROLINA

)

)

INDENTURE DEED

COUNTY OF HORRY

)

INDENTURE made the day hereinbelow stated, by and between BAHAMA SANDS DEVELOPMENT, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY, hereinafter called GRANTOR, which expression shall include its successors and assigns, wherever the context so requires, or admits, of the one part, and James W. Hufton, Sr. and Elmer J. Craft, Jr., hereinafter called GRANTEE(S), which expression shall include his, her, or their heirs and assigns, and/or its successors and/or assigns, forever, wherever the context so requires or admits, of the other part; and in this agreement, the singular shall include the plural, and the plural shall include the singular, and the gender shall include all genders.

FOR AND IN CONSIDERATION of the covenants and conditions hereinafter contained and the sum of Five Hundred Ninety-Nine Thousand Nine Hundred and 00/100 (\$599,900.00) DOLLARS paid to the GRANTOR by said GRANTEE(S), the GRANTOR has granted, bargained, sold, and released, and by these presents grants, bargains, sells, and releases unto the said GRANTEE(S), all of the real property situate in Horry County, South Carolina, described as follows:

Unit 606 Bahama Sands Horizontal Property Regime, established by Master Deed dated December 26, 2007, and recorded December 31, 2007, in Deed Book 3304 at Page 1609, and as thereafter amended, records of Horry County, South Carolina.

SUBJECT TO all of the provisions of the aforesaid Master Deed and Exhibits and Amendments thereto.

TOGETHER with all of the appurtenances thereto according to said Master Deed, and Exhibits and Amendments thereto, and the Grantee(s) assume and agree to observe and perform their obligations under said Master Deed, Exhibits and Amendments thereto, including, but not limited to, the payment of assessments for the maintenance and operation of the units and condominiums.

AND SUBJECT TO the provisions of the By-Laws of Bahama Sands Homeowners' Association, Inc.

This is a portion of the property conveyed to the Grantor herein by the following Deeds:

Deed of E. Dean Bray, Jr. to Bahama Sands Development, LLC dated October 4, 2005 and recorded October 6, 2005, in Deed Book 2990 at Page 0415, in the Office of the Register of Deeds for Horry County, South Carolina.

Quit-Claim Deed from Wachovia Bank, N.A., sole surviving trustee of "The Charles N. Ingram Marital Deduction Trust" under the Last Will and Testament of Charles N. Ingram, deceased and Wachovia Bank, N.A., sole surviving Trustee of "The Charles N. Ingram Residual Trust" under the Last Will and Testament of Charles N. Ingram, deceased to Bahama Sands Development, LLC dated May 11, 2006 and recorded May 30, 2006, in Deed Book 3103 at Page 0619, in the Office of the Register of Deeds for Horry County, South Carolina.

Deed from WKB Properties, LLC to Bahama Sands Development, LLC dated May 30, 2006 and recorded May 31, 2006, in Deed Book 3104 at Page 878, in the Office of the Register of Deeds for Horry County, South Carolina.

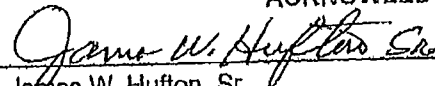
Address of Grantee: 2143 Coachman Drive
Roanoke, Virginia 24012

Tax Notice Address: 2143 Coachman Drive
Roanoke, Virginia 24012

TMS#: 144-13-43-051

ACKNOWLEDGMENT AND RATIFICATION BY GRANTEE(S): The GRANTEE(S) by the acceptance and execution of this Indenture Deed acknowledge that this conveyance is subject to the provisions of the Master Deed of Bahama Sands Horizontal Property Regime and By-Laws of Bahama Sands Homeowners' Association, Inc., described as above, including the provisions of all exhibits. GRANTEE(S) acknowledge and agree that the Master Deed and By-Laws of Bahama Sands Horizontal Property Regime, and By-Laws of Bahama Homeowners' Association, Inc., and exhibits, and the contract executed by the GRANTOR and GRANTEE(S) contain all of the warranties, representations, and inducements concerning the purchase by GRANTEE(S) of the unit described above.

ACKNOWLEDGMENT BY THE GRANTEE(S)


James W. Hufton, Sr.


Elmer J. Craft, Jr.

TOGETHER with all and singular the rights, members, hereditaments, and appurtenances to said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all singular the said premises before mentioned unto said GRANTEE(S).

AND the said GRANTOR does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular the said premises unto the said GRANTEE(S) against itself and its successors and all other persons whomsoever lawfully claiming, or to claim the same or any part thereof.

IN WITNESS WHEREOF, the GRANTOR, BAHAMA SANDS DEVELOPMENT, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY, by its Member, and the GRANTEE(S) have caused these presents to be signed and sealed this 7th day of April, in the year of our Lord Two Thousand Eight.

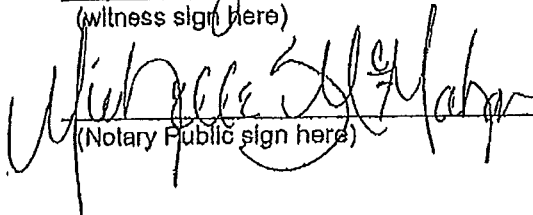
SIGNED, SEALED AND DELIVERED IN
THE PRESENCE OF:

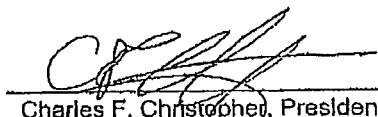
BAHAMA SANDS DEVELOPMENT, LLC,
a South Carolina Limited Liability Company


(witness sign here)

By: Christopher Development Corp. IX,
a South Carolina Corporation

Its: Member


(Notary Public sign here)

By: 
Charles F. Christopher, President

STATE OF SOUTH CAROLINA)

)

PROBATE

)

COUNTY OF HORRY)

)

PERSONALLY appeared before me the undersigned witness, who being first duly sworn, deposes and states that s/he saw BAHAMA SANDS DEVELOPMENT, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY, by and through its Member, Sign, Seal, and, as its Act and Deed, delivered the within written Indenture Deed, and that s/he, together with the other witness subscribed above, witnessed the execution thereof.

Carla Bauc
(witness sign here, also)

SWORN to before me this 7th

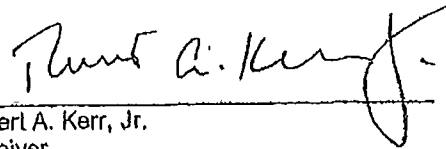
day of April, 2008.

Michelle D. McElhannon
Notary Public for South Carolina
My Commission Expires: 3/11/2015

Page 5 of the Deed from Bahama Sands Development, LLC, a South Carolina Limited Liability Company to James W. Hufton, Sr. and Elmer J. Craft, Jr. dated April 7, 2008

ACKNOWLEDGMENT

The undersigned, Robert A. Kerr, Jr., Receiver, hereby approves and authorizes this conveyance.

A handwritten signature in cursive script, appearing to read "Robert A. Kerr, Jr.", is written over a horizontal line.

Robert A. Kerr, Jr.
Receiver

Exhibit B

(Note)

VI HOC LOAN & ~~RECEIVED~~
 HIM: ~~RECEIVED~~

ADJUSTABLE RATE NOTE

ADJUSTABLE RATE NOTE
(LIBOR One-Year Index (As Published In The Wall Street Journal)-Rate Caps)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

APR 7, 2000
[date]

Mytilus edulis,
[olive]

SOUTH CAROLINA
[State]

1521 N OCEAN BLVD UNIT 306, NORTH MYRTLE BEACH, SC 29502-2067
(Property Address)

(Property Address)

1. BORROWER'S PROMISE TO PAY

1. BORROWER'S PROMISE TO PAY
In return for a loan that I have received, I promise to pay U.S. \$217,000.00 (this amount is called
"principal"), plus interest, to the order of the Lender. The Lender is GOLDEN GATE MORTGAGE INC., A SOUTH
CAROLINA CORPORATION.

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

2. INTEREST

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 6.75%. The interest rate I will pay will change in accordance with Section 4 of this Note.
The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(b) of this Note.

3. PAYMENTS

5. **PAYMENTS**
(A) **Time and Place of Payments**
I will pay principal and interest by making a payment every month.
I will make my monthly payment on the 15th day of each month beginning on JUNE 1, 2008.
I will make my payments every month until I have paid all of the principal and interest and pay other charges described below that I may owe under this Note. Each monthly payment will be applied as to its scheduled due date and will be applied to interest before principal. I, on MAY 1, 2008, I will owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."
I will make my monthly payments at
3102 MILLWOOD AVE
COLUMBIA, RI 02205

(b) Amount of My Initial Monthly Payments: \$2,335.00. This amount may change.

(C) **Monthly Payment Changes**
Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

4. INTEREST RATE AND MONTHLY PAYMENT CHANGE
(A) Change Dates
The interest rate I will pay may change on the 10% day of MAY, 2021 and on that day every 12% month thereafter. Each date on which my interest rate could change is called a "Change Date."

(5) **The Index**
Beginning with the first Orange Data, my interest rate will be based on an index. The "index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market (LIBOR), as published in *The Wall Street Journal*. The most robust index figure available as of the date 45 days before each Change Date is called the "Current Index".

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

(c) Calculation of Changes. The Note Holder will calculate my new Interest rate by adding zero and one-eighth of one percent (0.125%) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percent (0.125%). Subject to the limits stated in Section 4(A) below, this rounded amount will be my new Interest rate until the next Change Date. The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially the same amount as the scheduled payment will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes. The interest rate I am required to pay at the first Chicago Date will not be greater than 7.375% or less than 3.375%. Thereafter, my interest rate will never be increased or decreased on any single Chicago Date by more than two percentage point(s) (2.000%) from the rate of interest I have been paying for the preceding 12 month(s). My interest rate will never be greater than 11.375%.

STAFFMENT FORM 3420-101
F6622401 0007
04-03-2008 16:14

1913 Annals Entomological Society of America [Vol. 26, No. 3, p. 307]

(E) **Effective Date of Changes**
My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

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

6. **BORROWER'S RIGHT TO PREPAY**
I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note. I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayment to reduce the amount of Principal that I owe under this Note. However, the Note Holder may only use my Prepayment to reduce the amount of Principal that I owe under this Note. Before applying my Prepayment to reduce the Principal amount of the Note, I will make a partial Prepayment, there will be no change in the due date of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. **LOAN CHARGES**
If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charges 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.

7. **BORROWER'S FAILURE TO PAY AS REQUIRED**

(A) **Late Charges for Overdue Payments**
If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be \$ 5.00 per \$1,000 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 monthly payment on the date it is due, I will be in default.

(C) **Notice of Default**

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

(D) **No Waiver by Note Holder**
Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) **Payment of Note Holder's Costs and Expenses**
If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. **GIVING OF NOTICES**

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

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

9. **OBLIGATIONS OF PERSONS UNDER THIS NOTE**

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

10. **WARRANTS**

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

11. **UNIFORM SECURED NOTE**

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

MULTISTATE ADJUSTABLE RATE NOTE - 1993 One-Year LIBOR - Single Family - Female MLE UNIFORM INSTRUMENT FORM 650-0001
Page 2 of 3
04-03-2008 16:14

121. I am and this Note is being executed

VI. TRANSFER OF LOAN

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. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, 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.

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

James Hufton (Bank)
JAMES HUFTON

PAY TO THE ORDER OF
FLAGSTAR BANK, FSB
WITHOUT RECOURSE
CUTAW DATE MONTH YEAR INO
BY JU
PAID TO ORDER
NOTE ENDORSEMENT VOID

PAY TO THE ORDER OF
Flagstar Bank, FSB
WITHOUT RECOURSE
Golden Gate Mortgage, Inc.
By [Signature]
Jamie Urban
Team Leader

[Sign Original Only]

[Redacted Signature]
[Redacted Signature]
[Redacted Signature]

Exhibit C

(Mortgage)

After Recording Return To:
FLAGSTAR BANK
5151 CORPORATE DRIVE
TROY, MI 48098
FURNAL DOCUMENTS, MAIL STOP W-830-3

This instrument was prepared by:

VI NCSD LOAN

(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 18.

(A) "Security Instrument" means this document, which is dated APRIL 7, 2008, together with all riders to this document.

(B) "Borrower" is James W. Hufton Sr. and Blane J. Craft Jr..

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2028, Flint, Michigan 48501-2028, tel. (888) 678-MERS.

(D) "Lender" is GOLDEN DATE MORTGAGE INC.

Lender is a CORPORATION,
SOUTH CAROLINA,
COLUMBIA, SC 29205.

organized and existing under the laws of
Lender's address is 3102 MILLWOOD AVE,

(E) "Note" means the promissory note signed by Borrower and dated APRIL 7, 2008. The Note states that Borrower owes Lender *****FOUR HUNDRED SEVENTEEN THOUSAND AND NO/100 ***** Dollars (U.S. \$417,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than MAY 1, 2038.

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

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

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

☒ Adjustable Rate Rider	☐ Condominium Rider	☒ Second Home Rider
☐ Balloon Rider	☐ Planned Unit Development Rider	☐ Other(s) (specify)
☐ 1-4 Family Rider	☐ Biweekly Payment Rider	
☐ V.A. Rider		

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

Initials: JS

RECEIVED 0412
04-03-2008 15:14

08-320

V1 MCD LOAN #

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

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

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

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

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

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

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §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.

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

TRANSFER OF RIGHTS IN THE PROPERTY

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

(Name of Recording Jurisdiction):

(Type of Recording Jurisdiction) of Horry

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF

APN #: 57-1074999

which currently has the address of 1321 S OCEAN BLVD UNIT 506, NORTH MYRTLE BEACH,

[State] [City]

South Carolina 29582-3847

("Property Address"):

(Zip Code)

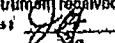
TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter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

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

Initials: 

SOUTH CAROLINA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
© 1999 2004 Online Documents, Inc.

Page 2 of 8

Form 3041 1/01

SCDEED 0412

04-03-2008 15:14

VI. WAIVER LOAN

by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 18. Lender may return any payment or partial payment if the payment or partial payment is insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payment 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.

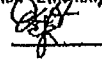
Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

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 attach priority over this Security Instrument as a lien or encumbrance on the Property; (b) household payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 6; 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, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

Initials: 

V1 MDCP LOAN #

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 attach prior to this Security Instrument, household payments or ground rents on the Property, liens, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Encumbrances, 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 attach prior to 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 deductibles) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

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

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

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

VI HUND LOM

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 6 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

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

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

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or otherwise, for enforcement of a lien which may have 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 releasing 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 attorney's fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

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

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

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

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

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

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing of modifying the

Initials: [Signature]

V1 MACH LOAN 5

mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other forms 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 repair and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

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

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

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

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

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 18, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

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

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 Successor 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 Successor 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, or from 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

V1 MORTGAGE LOAN

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, attorney's 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. **Notice.** 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.

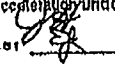
17. **Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

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

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

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 60 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 those 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 outlet of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorney's 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, instrumentally or only; 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.

Initials: 

VI. WAIVER LOAN

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 18) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

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

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

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spill, 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 this 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 replacing 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. **Homesale 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

Initials: 

VI MRCO LONG § [REDACTED]
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.
28. 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 160% 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:

[Signature]
1st Witness
[Signature]
2nd Witness (May be Notary)
State of ~~MISSISSIPPI~~ Virginia
County of ~~MISSISSIPPI~~

[Signature] (Seal)
JAMES HUFTON
[Signature] (Seal)
Elmer J. Craft, Jr.

The foregoing instrument was acknowledged before me this 4/7/08 (date)
by James Hufton and Elmer J. Craft, Jr.

(Name of person acknowledged).

[Signature]
Signature of Person Taking Acknowledgement
My commission expires: 5/31/11
225386



EXHIBIT "A"
LEGAL DESCRIPTION

Unit 506 Bahama Sands Horizontal Property Regime, established by Master Deed dated December 26, 2007 and recorded December 31, 2007 in Deed Book 3304 at page 1609, as is thereafter amended, records of Horry County, South Carolina.

SUBJECT TO all of the provisions of the aforesaid Master Deed and Exhibits and Amendments thereto.

TOGETHER WITH all of the appurtenances thereto according to said Master Deed and Exhibits and Amendments thereto, and the Grantee(s) assume and agree to observe and perform their obligations under said Master Deed, Exhibits and Amendments thereto, including but not limited to the payment of assessments for the maintenance and operation of the units and condominiums.

AND SUBJECT TO the provisions of the By-laws of Bahama Sands Homeowners Association, Inc.

Being the same land conveyed to the Mortgagor(s) herein by deed of Bahama Sands Development, LLC, a South Carolina Limited Liability Company, dated January 11, 2008 and recorded simultaneously herewith in the records of Horry County, South Carolina.

TMS# 144-13-43-051

Exhibit D

(Quitclaim Deed)

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF HORRY

QUIT CLAIM DEED

IN THE MATTER OF
ELMER JUDSON CRAFT, JR.

CASE FILE # 2011-ES-26-1576

WHEREAS, Elmer Judson Craft, Jr. and James W. Hufton, Sr., purchased Unit 506, Bahama Sands on April 7, 2008 evidenced in Deed Book 3326 at page 1862 in the office of the Register of Deed for Horry County, South Carolina.

WHEREAS, Elmer Judson Craft, Jr. died on June 5, 2009 and his Estate is being administered in Roanoke County Virginia in Court file No. 200900507 and exemplified copies are filed in Horry County, Probate File No. 2011-ES-26-1576; and

WHEREAS, Nancy P. Craft was named as Executor and Melissa Craft Stanley f/n/a Melissa C. Tinley was named as alternate Executor; and

WHEREAS, Nancy P. Craft and Melissa Craft Stanley f/n/a Melissa C. Tinley declined to qualify as such; and

WHEREAS, Deborah A. Oehlschlaeger was appointed as Administrator, c.t.a. by Letters of Qualification dated August 2, 2010 and recorded in Court File No. 200900507 in the Roanoke County Clerk of the Court; and

WHEREAS, a dispute arose between the Estate of Craft and James W. Hufton, Sr. regarding the payment of the note for the purchase price financing and other expenses related to the Unit; and

WHEREAS, a Settlement of Dispute by Agreement was executed July 20, 2010 between James W. Hufton, Sr. and Deborah A. Oehlschlaeger, Executor, c.t.a. of the Estate of Elmer J. Craft, Jr., where Deborah A. Oehlschlaeger, Executor, c.t.a. of the Estate of Elmer J. Craft, Jr. was to convey the 1/2 interest in the property to James W. Hufton, Sr. and Phyllis C. Hufton as Joint Tenants with Rights of Survivorship in consideration of James W. Hufton, Sr.'s complete release of the Estate of Elmer J. Craft, Jr. for payment of any part of the note for the purchase price financing and other expenses related to the Unit; and

WHEREAS, prior to the Deed being executed James W. Hufton, Sr. died on 8-22-2010 and his Estate is being administered in Roanoke County Virginia in Court file No. CWF201000586 and exemplified copies are filed in Horry County, Probate File No. 2011-ES-26-1577; and

WHEREAS, the parties desire to have the property conveyed pursuant to the Settlement Agreement.

Instrument#: 2011000093705, DEED BK:
1641 PG: 2844 DOCTYPE: 001 09/16/2011
@ 04:10:30 PM, 1 OF 4, EXEMPT,
JALLERY V. SKIPPER, HORRY COUNTY,
CLERK OF THE REGISTER OF DEEDS

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that DEBORAH A. OEHLISCHLAEGER, ADMINISTRATOR, C.T.A. OF THE ESTATE OF ELMER JUDSON CRAFT, JR., hereinafter called Grantor, in consideration of Five and No/100--- (\$5.00) Dollars and the above premises, in hand paid at and before the sealing of these presents by PHYLLIS C. HUFTON, hereinafter called Grantee, whose address is 2143 Coachman Drive, Roanoke, Virginia 24012, the receipt and sufficiency of which are hereby acknowledged, have remised, released and forever quit-claimed, and by these presents do remise, release and forever, quit-claim unto the said PHYLLIS C. HUFTON, her heirs and assigns forever, all of the right, title and interest in and to the following described property, to-wit:

Unit 506 Bahama Sands Horizontal Property Regime, established by Master Deed dated December 26, 2007 and recorded December 31, 2007 in Deed Book 3304 at page 1609, as as thereafter amended, records of Horry County, South Carolina.

SUBJECT TO all of the provisions of the aforesaid Master Deed and Exhibits and Amendments thereto.

TOGETHER WITH all of the appurtenances thereto according to said Master Deed and Exhibits and Amendments thereto, and the Grantee(s) assume and agree to observe and perform their obligations under said Master Deed, Exhibits and Amendments thereto, including but not limited to the payment of assessments for the maintenance and operation of the units and condominiums,

AND SUBJECT TO the provisions of the By-laws of Bahama Sands Homeowners Association, Inc.

Being the same land conveyed to James W. Hufton, Sr. and Elmer J. Craft, Jr. from Bahama Sands Development, LLC by Indenture Deed dated April 7, 2008 and recorded April 8, 2008 in Deed Book 3326 at page 1862 in the records of Horry County, South Carolina.

TMS# 144-13-13-051

TO HAVE AND HOLD all and singular of the premises before mentioned unto the said PHYLLIS C. HUFTON her heirs and assigns, forever, so that neither I, nor any other person or persons claiming under me, shall at any time hereafter, by any way or means, have claim or demand any right or title to the aforesaid premises and appurtenances, or any part or parcel thereof, forever.

TOGETHER with all and singular, the Rights, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining,

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at Unit 506 Bahama Sands, TMS# 144-13-43-051 was transferred by Deborah A. Gehlschlaeger, Administrator, C.T.A. of the Estate of Blmer Judson Craft, Jr. to Phyllis C. Hutton on 9/9/11.

3. Check one of the following: The deed is

(a) ☐ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) ☒ exempt from the deed recording fee because (See information section of affidavit):

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption 7.1 as described in the information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ☐ or No ☐

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See information section of this affidavit):

(a) ☐ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$5,000.00

(b) ☐ The fee is computed on the fair market value of the realty which is _____

(c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____

5. Check Yes ☐ or No ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here: \$-0-

(b) Place the amount listed in item 5 above here: 0

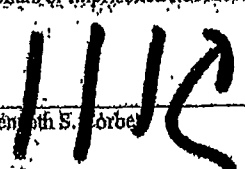
(If no amount is listed, place zero here.)

(c) Subtract line 6(b) from Line 6(a) and place result here: \$-0-

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: _____

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: GRANTOR

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.


Kenneth S. Forber

SWORN to before me this 9th day of September year of 2011.

Notary Public for

My Commission Expires: 9-18-17

WITNESS my Hand and Seal this 9th day of September in the year of our Lord Two Thousand and Eleven the Two Hundred Thirty-Fifth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Regina B. Cooper
Witness

Deborah A. Oehlschlaeger
Deborah A. Oehlschlaeger,
Administrator, c.f.a.

Phillip A. Cooper
Witness

ACKNOWLEDGEMENT

STATE OF

COUNTY:

I, the undersigned Notary Public, do hereby certify that Deborah A. Oehlschlaeger, Administrator, c.f.a, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this the 9th day of September, 2011.

M. Jackie Largen
Notary Public for
My Commission Expires: 9-30-2013

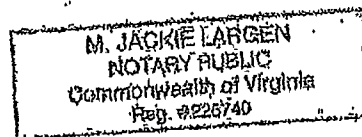


Exhibit E

(Foreclosure Complaint)

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Flagstar Bank, FSB,

PLAINTIFF,

VS.

Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr., Deceased, James W. Hufton, Jr., as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Marcee L. Cook, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Sharle Ann Carey, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft, as Legal Heir of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, and Bahama Sands Homeowners' Association, Inc.,

DEFENDANT(S).

(110855.00256)

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-26-

1379

COMPLAINT

Foreclosure - Non-Jury
(Deficiency waived)

FILED
Horry County
2012 FEB 20 AM 11:19
KELANIE HUGGINS-WARD
CLERK OF COURT

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

1. This is an action for foreclosure of a mortgage upon certain real estate in Horry County, South Carolina.
2. Plaintiff is a corporation or other legal entity doing business in the State of South Carolina and is the current holder of the Note and Mortgage described herein.
3. The servicer for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program (HMP), but the HMP process as specified by U.S. Treasury Department's Supplemental Directive 09-01 has been completed without resulting in a modification by virtue of the property not being owner occupied.
4. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.

5. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of Section 15-35-840 of the Code of Laws of South Carolina (1976).

6. Heretofore, under date of April 7, 2008, James Hufton made, executed and delivered to Golden Gate Mortgage Inc. a certain mortgage note ("Note") in writing wherein and whereby James Hufton promised to pay to Golden Gate Mortgage Inc. the principal sum of \$417,000.00.

7. In order to secure the payment of said note, the said James W. Hufton, Sr. and Elmer J. Craft, Jr. did on the same date, to-wit, April 7, 2008, make execute and deliver to Mortgage Electronic Registration Systems, Inc. as nominee for Golden Gate Mortgage Inc., its successors and assigns, a certain mortgage ("Mortgage") covering real property located in the County and State aforesaid, which said mortgage was recorded in the Office of the Clerk of Court/Register of Deeds for Horry County, on April 8, 2008, in Book 5055, at Page 1407; Thereafter, said Note and Mortgage were assigned to Flagstar Bank, FSB by assignment instrument dated January 31, 2012 and recorded February 9, 2012 in Book 5378 at Page 3123.

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

Unit 506 Bahama Sands Horizontal Property Regime, established by Master Deed dated December 28, 2007 and recorded December 31, 2007 in Deed Book 3304 at Page 1609, as thereafter amended, records of Horry County, South Carolina.

Subject to all of the provisions of the aforesaid Master Deed and Exhibits and Amendments thereto.

Together with all of the appurtenances thereto, to said Master Deed and Exhibits and Amendments thereto, and the Grantee(s) assume and agree to observe and perform their obligations under said Master Deed, Exhibits and Amendments thereto, including by not limited to the payment of assessments for the maintenance and operation of the units and condominiums.

And subject to the provisions of the By-laws of Bahama Sands Homeowners Association, Inc.

This being the same property conveyed to James W. Hufton, Sr. and Elmer J. Craft, Jr. by Deed of Bahama Sands Development, LLC, a South Carolina Limited Liability Company, dated April 7, 2008 and recorded April 8, 2008 in the Office of the Register of Deeds for Horry County, South Carolina in Book 3326 at Page 1862.

TMS No. 144-13-43-051

Property address: 1321 South Ocean Boulevard, Unit 506
North Myrtle Beach, SC 29582

8. The borrower, James W. Hufton, Sr., died on or about August 22, 2010.

9. The borrower, Elmer Judson Craft, Jr., died on or about June 5, 2009.

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

11. That the Plaintiff and/or its counsel have complied with its obligation(s) as required under the specific terms of the Note and Mortgage being foreclosed as well as any applicable Federal or State statutes or regulations including but not limited to, the furnishing of any notices required to be given to the obligor(s) which gives to such person(s) the right to cure any default arising under the specific terms of the recited Note and Mortgage herein; and the review of this mortgage loan for compliance with the Home Affordability Modification Program (HMP) as defined by and in the Administrative Order of the South Carolina Supreme Court issued by Chief Justice Jean H. Toal on May 22, 2009, if applicable. That the Plaintiff's counsel has read the allegations in this pleading and that to the best of his/her knowledge, information, and belief, there is a good ground to support it.

12. In and by the terms of said note and the mortgage securing the same, it is provided, among other things, that on failure to pay any installment of either principal and interest or any portion thereof when due, or if any of the conditions and requirements in the mortgage securing the same be not complied with, then the whole principal sum and accrued interest shall at the option of the legal holder thereof become at once due and payable without notice, and collectible by foreclosure.

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

14. The installments of principal and interest falling due from and after September 1, 2011 have not been paid although demand for the payment thereof has been made and the Plaintiff, as the holder of the said note and mortgage, has and does hereby elect to declare the entire balance of said principal and interest due and payable at once; that there is now due and owing and unpaid upon the said note and mortgage the full and just principal sum of \$396,516.95, together with interest thereon at the rate of 3.375% percent per annum from August 1, 2011, together with reasonable attorney's fees for the collection thereof and the costs

of this action. Pursuant thereto, the Plaintiff has employed the undersigned legal counsel to prosecute these actions herein and add the fees and costs of said counsel to the amount of the total debt as provided for in the Note and Mortgage.

15. Upon information and belief, the Defendants below named claim or may claim a subordinate lien or junior interest upon or interest in the subject property, and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with the Circuit Court Rules 53 and/or 71. The subject Defendant are further made a party due to the similarity in name(s) to the primary defendants against whom they claim or may claim a lien and in order to clear title to this property as follows:

(a) The Defendant, Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr., in such fiduciary capacity as representative of any person or entity that may be a creditor or claimant against such Estate, and by virtue of the powers granted by Decedent's Will or by statute and by virtue of any interest claimed under the law of succession (S.C. Code '62-2-109) or under decedent's will.

(b) The Defendant(s), Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft as Legal Heir and Devisee of The Estate Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft of by virtue of any interest claimed under the law of succession (S.C. Code '62-2-109) or under decedent's will.

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

(d) The Defendant, Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft in such fiduciary capacity as representative of any person or entity that may be a creditor or claimant against such Estate, and by virtue of the powers granted by Decedent's Will or by statute and by virtue of any interest claimed under the law of succession (S.C. Code '62-2-109) or under decedent's will.

(e) The Defendant(s), James W. Hufton, Jr., Marcee L. Cook, and Sharie Ann Carey, as Legal Heirs and Devisees of The Estate of James W. Hufton, Sr., by virtue of any interest claimed under the law of succession (S.C. Code '62-2-109) or under decedent's will.

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

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

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

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

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

2. Plaintiff's mortgage be declared a first lien (and purchase money mortgage first lien as does apply under the specific facts of this action as well as the After Acquired Property Doctrine) and that Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums and/or costs for inspecting and securing the property which may be due or which may be or have been paid by Plaintiff, with a reasonable attorney's fees, and for the costs of this action.

3. The mortgaged premises be sold according to law and the practice of this Court, the equity of redemption as to all defendants be barred and the lien or interest claimed by any defendant be extinguished and that the proceeds of sale be applied as follows:

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

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

Third, the surplus, if any, be distributed according to law.

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

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

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

SCOTT LAW FIRM, P.A.

By: 

Ronald C. Scott, SC Bar #4898

Elizabeth R. Polk, SC Bar #11673

Brett F. Kline, SC Bar #15661

Angella J. Grant, SC Bar #78334

Priti M. Patel, SC Bar #79836

Kevin T. Hardy, SC Bar #76015

Erica G. Lybrand, SC Bar #79052

Richard G. Duerinckx, SC Bar #70143

Elizabeth A. Blackwell, SC Bar #78768

ATTORNEYS FOR THE PLAINTIFF

2712 Middleburg Drive, Suite 200

Columbia, SC 29204

(803) 252-3340

February 17, 2012

Exhibit F

(2/23/12 Email Chain)

From: dpt@traywicklaw.com
Sent: Thursday, February 23, 2012 4:42 PM
To: Kevin T. Hardy
Subject: RE: 1321 S Ocean blvd Unit 506 (Hufton)

I'll accept service for Phyllis Hufton. Please do not attempt to serve her personally.

David P. Traywick

Traywick Law Offices, LLC
PO Box 564
Isle of Palms, SC 29451
PH 843-343-5092
FAX 843-300-1051
EMAIL DPT@Traywicklaw.com

CONFIDENTIALITY NOTICE - This e-mail transmission, and any documents, files or previous e-mail messages attached to it may contain confidential or legally privileged information. If you are not the intended recipient, you are hereby notified that you must not read this transmission and that disclosure, copying, printing, distributing or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. If you have received this transmission in error, please immediately notify the sender by telephone or return e-mail and delete the original transmission and its attachment(s) without reading or saving in any manner. Thank you.

----- Original Message -----

Subject: RE: 1321 S Ocean blvd Unit 506 (Hufton)
From: "Kevin T. Hardy" <KevinH@scottlaw.com>
Date: Thu, February 02, 2012 9:28 am
To: <dpt@traywicklaw.com>

David,
Thank you for clarifying. I will consult with Flagstar and let you know how they prefer to proceed.

Best Regards,
Kevin T. Hardy
Attorney
Scott Law Firm, P.A.
P.O. Box 2065 (29202)
2712 Middleburg Drive, Suite 200 (29204)
Columbia, South Carolina
(803) 252-3340 Ext. 122
Fax (803) 252-3346
[VIEW BIO](#) | [VCard](#) | [WEBSITE](#)

DEBT COLLECTOR: This firm collects debts for mortgage lenders and other creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only as an attempt to enforce a lien.

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with certain U.S. Treasury regulations, we inform you that, unless expressly stated otherwise, any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of avoiding tax-related penalties that may be imposed by the IRS or to promote, market, or recommend to any party any tax-related matter addressed herein. In addition, if any such tax advice is used or referred to by other parties in promoting,

From: dpt@traywicklaw.com
Sent: Thursday, February 23, 2012 9:33 AM
To: Erica Lybrand
Cc: Kevin T. Hardy
Subject: Flagstar v. Hufton

Erica:

I represent Phyllis Hufton, and the rest of the known parties named as defendants. I had already agreed to accept service on behalf of my client(s).

Please forward a copy of the complaint filed in this matter as soon as you can. Once you have done so, I will email confirmation that such receipt by me constitutes personal service on Phyllis Hufton as well as any other parties you have not already effected personal service upon in this matter. I will be representing all of the parties in the suit.

David P. Traywick

Traywick Law Offices, LLC
PO Box 564
Isle of Palms, SC 29451
PH 843-343-5092
FAX 843-300-1051
EMAIL DPT@Traywicklaw.com

CONFIDENTIALITY NOTICE - This e-mail transmission, and any documents, files or previous e-mail messages attached to it may contain confidential or legally privileged information. If you are not the intended recipient, you are hereby notified that you must not read this transmission and that disclosure, copying, printing, distributing or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. If you have received this transmission in error, please immediately notify the sender by telephone or return e-mail and delete the original transmission and its attachment(s) without reading or saving in any manner. Thank you.

Exhibit G

(12/28/11 Letter)

TRAYWICK LAW OFFICES, LLC

DAVID PAUL TRAYWICK

ATTORNEY AT LAW

POST OFFICE BOX 564

ISLE OF PALMS, SOUTH CAROLINA 29451

TEL.: (843) 343-5092

DPT@TRAYWICKLAW.COM

WWW.TRAYWICKLAW.COM

December 28, 2011

BY FAX ONLY TO, 888-848-1071

BY FAX ONLY TO, 866-234-9845

Flagstar Bank

Re: Account No.: 0501997041
James Hufton (deceased)
Power of Attorney

To Whom it Concerns:

I represent the title holder of 1321 South Ocean Blvd., Unit 506 North Myrtle Beach, SC 29582.

My client, Phyllis Hufton, has provided me Power of Attorney (attached) in order to resolve the matter of the account above referenced. The original mortgagor is deceased and his estate has been probated.

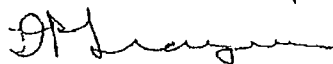
From here out, forward all correspondence to me at the contact information provided. No further correspondence, telephone calls, or contacts of any kind should be directed to Phyllis Hufton or James Hufton.

We invoke all of the protections of the Fair Debt Collection Practices Act. You should be aware that any attempt to collect any payments or installments from Phyllis Hufton is a violation of said Act and I request that you refrain from doing so immediately.

Further, in the event you need to serve process on my client, I request that you instruct any law firms or attorneys retained by you or your agents for the purpose of foreclosing on the residence to contact me - I agree to accept service on behalf of the title holder.

With kind regards,

Yours very truly,



David P. Traywick

DPT:jt
Enclosure

ROA 283

FB (Hufton) 0479

Exhibit H

(Foreclosure Answer)

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Flagstar Bank, FSB,

Plaintiff,

v.

Phyllis C. Hufton, as Personal
Representative and Legal Heir of the Estate
of James W. Hufton, Sr., Deceased, James
W. Hufton, Jr., as Legal Heir of the Estate
of James W. Hufton, Sr., Deceased, Sharie
Ann Carey, as Legal Heir of the Estate of
James W. Hufton, Sr., Deceased, Deborah
A. Oehischlaeger, as Personal
Representative of the Estate of Elmer Craft,
Jr., aka Elmer J. Craft, Deceased, Nancy
Phillips Craft aka Nancy P. Craft, as Legal
Heir of the Estate of Elmer Judson Craft, Jr.
Aka Elmer J. Craft, Deceased, and Bahama
Sands Homeowners' Association, Inc.,

Defendants.

In the Court of Common Pleas

Civil Action No. 2012-CP-26-1379

ANSWER OF DEFENDANT
PHYLLIS C. HUFTON

FILED
HORRY COUNTY
2012 MAR -9 PM 3:19
MELANIE HUGGINS-WARD
CLERK OF COURT

COMES NOW Defendant Phyllis C. Hufton, as Personal Representative and Legal Heir of the
Estate of James W. Hufton, Sr., Deceased (hereinafter referred to as the "Defendant") by and
through her undersigned attorney, hereby responds to Plaintiff's Complaint as follows:

GENERAL ADMISSION

Any allegation contained in the Complaint not specifically denied herein is hereby
admitted. Responding to the numbered paragraphs contained in the Complaint, Defendant states
the following:

1. The allegations appearing in Paragraph 1 of Plaintiff's Complaint are admitted.

2. The allegations appearing in Paragraph 2 of Plaintiff's Complaint are admitted.
3. The allegations appearing in Paragraph 3 of Plaintiff's Complaint are admitted.
4. The allegations appearing in Paragraph 4 of Plaintiff's Complaint are admitted.
5. The allegations appearing in Paragraph 5 of Plaintiff's Complaint are admitted.
6. The allegations appearing in Paragraph 6 of Plaintiff's Complaint are admitted.
7. The allegations appearing in Paragraph 7 of Plaintiff's Complaint are admitted.
8. The allegations appearing in Paragraph 8 of Plaintiff's Complaint are admitted.
9. The allegations appearing in Paragraph 9 of Plaintiff's Complaint are admitted.
10. The allegations appearing in Paragraph 10 of Plaintiff's Complaint are admitted.
11. The allegations appearing in Paragraph 11 of Plaintiff's Complaint are admitted.
12. The allegations appearing in Paragraph 12 of Plaintiff's Complaint are admitted.
13. The allegations appearing in Paragraph 13 of Plaintiff's Complaint are admitted.
14. The allegations appearing in Paragraph 14 of Plaintiff's Complaint are admitted.
15. The allegations appearing in Paragraph 15 of Plaintiff's Complaint are admitted.
16. The allegations appearing in Paragraph 16 of Plaintiff's Complaint are admitted.
17. The allegations appearing in Paragraph 17 of Plaintiff's Complaint are admitted.

18. The allegations appearing in Paragraph 18 of Plaintiff's Complaint are admitted.
WHEREFORE, this Defendant prays that the Court provide such relief as may be provided at law
or in equity.



David P. Traywick
TRAYWICK LAW OFFICES, LLC
P.O. Box 564
I.O.P., SC 29451
Telephone: 843-343-5092
Fax: 843-300-1051
Email: dpt@traywicklaw.com
Attorney for Defendant

March 7, 2012
Charleston, South Carolina

Exhibit I

(Foreclosure Order)

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Flagstar Bank, FSB,

PLAINTIFF,

VS.

Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr., Deceased, James W. Hufton, Jr., as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Marcee L. Cook, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Sharle Ann Carey, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft, as Legal Heir of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, and Bahama Sands Homeowners' Association, Inc.,

DEFENDANTS.

File Number 110865.00258

TO: Ronald C. Scott, SC Bar #4996
Elizabeth R. Polk, SC Bar #11673
Brett F. Kline, SC Bar #15661
Angella J. Grant, SC Bar #78334
Priti M. Patel, SC Bar #79835
Erica G. Lybrand, SC Bar #79052
Elizabeth A. Blackwell, SC Bar #78756
J. Harrison Rushton, SC Bar #100408
ATTORNEYS FOR THE PLAINTIFF
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
(803) 252-3340

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-26-1379

SPECIAL REFEREE'S
ORDER AND JUDGMENT
OF FORECLOSURE AND SALE

DEFICIENCY WAIVED

Non-Eligible under the Home Affordable
Modification Program

NOTICE: The original of this document was filed in
the office of the Clerk of Court for Horry County:

HORRY COUNTY
12 AUG 27 AM 9:06
MELANIE HUGGINS-WARD
CLERK OF COURT

Phyllis C. Hufton, as Personal Representative and
Legal Heir of the Estate of James W. Hufton, Sr.,
c/o David P. Traywick, Esq.
TAYWICK LAW OFFICES, LLC
P.O. Box 564
Isle of Palms, SC 29451

Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft as Legal Heir and Devisee
of The Estate Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft
307 N. Preston Dr.
Vinton, VA 24179

Bahama Sands Homeowners' Association, Inc.
Resort Association Management, Registered Agent
9550 Shore Dr.
Myrtle Beach, SC 29572

Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson
Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft
18-A Kirk Ave.
Roanoke, VA 24011

James W. Hufton, Jr., Marcee L. Cook, and
Sharle Ann Carey, as Legal Heirs and Devisees of
The Estate of James W. Hufton, Sr.,
425 Hufton Brook Lane
Blue Ridge, VA 24064

Sharle Ann Carey
1540 Meadow Lark Ln.
Tracy, CA 95376

Marcee L. Cook
385 Hufton Book Lane
Blue Ridge, VA 24064

Pursuant to Circuit Court Rule 53(b) of the South Carolina Rules of Civil Procedure, the
above-entitled matter was referred to the undersigned to make appropriate findings of facts and
conclusions of law with authority to enter a final judgment in the cause.

Pursuant to the said Order of Reference a hearing was held attended by the attorneys of
record. A Record of Hearing was presented, which is herewith reported, and from the Record of

Hearing and the documents and records received into evidence, I find, conclude and order as follows:

FINDINGS

This Court has jurisdiction over the subject matter of this action and the parties hereto and it is the proper forum for the litigation of this matter.

1. The Court has determined that the Plaintiff has complied with the Administrative Order of the Supreme Court dated May 2, 2011 (2011-05-02-01).
2. Based upon the facts and/or evidence presented, the Court has determined that this loan is not eligible under the Home Affordable Modification Program.
3. The Lis Pendens was filed on February 20, 2012.
4. The Summons and Complaint were filed on February 20, 2012.
5. Service was made upon the Defendants named in this Report as is shown by the proofs of service filed herein.
6. The Defendant(s), James W. Hufton, Jr., as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Marcee L. Cook, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Sharie Ann Carey, as Legal Heir of the Estate of James W. Hufton, Sr., Deceased, Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft, as Legal Heir of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft, Deceased, and Bahama Sands Homeowners' Association, Inc., are in default as is shown by the affidavit filed herein.
7. The Defendants and/or all attorneys of record were notified of the time, date, and place of the hearing of this matter.
8. According to the affidavit filed herein, any Defendant in default is not in the Military Service of the United States of America, as contemplated under The Servicemembers' Civil Relief Act of 2003 and any amendments thereto.
9. For value received, Defendant(s), James Hufton, made, executed and delivered a Note dated April 7, 2008, promising thereby to pay to the order of Golden Gate Mortgage Inc. the sum of \$417,000.00 with interest at the rate of 5.375% per annum. Other terms and conditions are stated in the Note, which is of record herein.

10. To better secure the payment of the Note described above, the said Defendant(s), James W. Hufton, Sr. and Elmer J. Craft, Jr., made, executed and delivered to Mortgage Electronic Registration Systems, Inc. as nominee for Golden Gate Mortgage Inc. a Mortgage in writing, dated April 7, 2008, covering real property in Horry County, which is the same as that described in the Complaint. The Mortgage was filed on April 8, 2008, and is of record in the Office of the Clerk of Court for Horry County in Book 5055, at Page 1407. The Mortgage evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagor(s). The Court finds also that this mortgage constitutes a first lien on the mortgaged premises and a purchase money lien as may apply under state law as well as the After Acquired Property Doctrine. Thereafter, said Note and Mortgage were assigned to Flagstar Bank, FSB by assignment instrument dated January 31, 2012 and recorded February 9, 2012 in Book 5378 at Page 3123.

11. That the Court finds that the Plaintiff and/or its counsel has complied with its obligation(s) as required under the specific terms of the Note and Mortgage being foreclosed as well as any applicable Federal or State statutes or regulations including but not limited to, the furnishing of any notices required to be given to the obligor(s) which gives to such person(s) the right to cure any default arising under the specific terms of the recited Note and Mortgage herein; the review of this mortgage loan for compliance with the Home Affordability Modification Program (HMP), if applicable; and that moreover and prior to the filing of this judicial proceeding, the Defendant(s) had not raised any compliance defense or objections as to the servicing of any applicable banking or consumer laws by the Plaintiff and/or its counsel.

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

13. With respect to attorney fees and in view of the potential financial liabilities and likely continuing professional obligations inherent in judicially prosecuting a real property mortgage credit matter, the attendant professional duties and responsibilities, and the size of the mortgage debt and consistent with similar case proceedings before this Honorable Court, I find that a reasonable attorney's fee in this matter would be \$1,750.00. This award is consistent with the laws of this state in the awarding of attorney fees. I have considered the six (6) factors (none of these factors is controlling in the singular) as follows: (1) the nature, extent and

difficulty of the legal service rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. Taylor v. Medenica, 331 S.C. 575, 603 S.E.2d 458 (1998); Baron Data Systems v. Loter, 297 S.C. 382, 377 S.E.2d 296 (S.C. 1989). This fee is also consistent with and pursuant to opinions and orders of this jurisdiction wherein our state's appellate courts have repeatedly held that any contract for attorney fees that may exist or exists between the lawyer and the client (in addition to not being one of the six (6) fee review factors) is specifically not binding on the trial court in its determination of the reasonableness of the attorney fee. Jackson v. Speed, 328 S.C. 289, 486 S.E.2d 750(1997); Rice v. Multimedia, Inc., 318 S.C. 95, 456 S.E.2d 381 (1995); and Williamson v. Middleton, 374 S.C. 419, 649 S.E.2d 57 (Ct. App. 2007). Plaintiff's Counsel has likewise reported to this Court that it is billing the Plaintiff a minimum of \$1,750.00 for all uncontested and routine matters plus costs as well as additional fees/costs for any services outside of the contemplated routine and uncomplicated services (relating to contested, complex, or difficult matters) for a case of this type. Total representation of the Plaintiff's interests in this matter have been undertaken (including among many duties the researching of the referral file to serving as custodian of the salient loan file documents to the filing of all pleadings and legally required documents with the court) by the Scott Law Firm, P.A. As to the Scott Law Firm, P.A. and its professional standing, it is noted that counsel for the Plaintiff is regionally and nationally recognized for its professional expertise in mortgage default credit matters as evidenced by its listing in BEST LAWYERS IN AMERICA™ and Martindale-Hubbell Registry of Pre-Eminent Lawyers™. This Court has specifically reviewed and satisfied itself with all six (6) factors to be considered in awarding reasonable attorneys fees in this matter.

14. On receiving testimony and other evidence during this hearing, I find that the Scott Law Firm, P.A., was engaged by the Plaintiff to foreclose the mortgage as expeditiously as possible, given the detriment to Plaintiff's equity position as a direct result of increasing losses from the accrual of interest and related adverse economic conditions such as depreciation or possible damage to the collateralized property. I find that Plaintiff's counsel has achieved a beneficial result with its prompt foreclosure of the subject mortgage.

Upon receipt of the case file, the title was examined and studied to identify all parties having or claiming an interest in the subject real estate as well as being researched for salient legal questions and issues. As to time and labor, I find that various attorneys as well as

experienced paralegal staff have been responsible for (and expended extensive professional time of 10 hours as to the basic services) in the preparation of the following pleadings and other legally required services and documents:

1. Lis Pendens and any amendment thereto
2. Summons and Complaint and any amendment thereto
3. Affidavits and proposed Order of Publication
4. Affidavit of Default
5. Consent(s) to Order of Reference
6. Order of Reference
7. Notice of Hearing
8. Proposed Judgment of Foreclosure and Sale
9. Record of Hearing
10. Notice of Sale
11. Other documents as applicable pertaining to service and finalization of the action.

Counsel may also prepare for the Plaintiff the Statutory Foreclosure Deed and any other documents necessary in this particular action as ordered or authorized by this Court. I find and note the nature, extent and difficulty of the services provided.

Although I have heretofore given consideration to all six (6) factors in the awarding of attorney fees and costs herein, jurisdiction over the fee award shall be reserved as granted in the Order of Reference with the right to re-visit the question of attorney fees should the action proceed in an unexpected way and/or to facilitate the assessment and payment of any such current or additional professional compensation.

15. The amount due and owing on the Note, with interest at the rate provided in the Note, including attorney's fee and allowable costs and charges allowable under and secured by the Note and Mortgage, is as follows:

(a)	Principal due	\$396,516.95
(b)	Interest Due from August 1, 2011 to August 16, 2012	\$13,788.09
(c)	Pre-Acceleration Late Charges	\$ 375.44
(d)	Escrow Adjustments (Itemized in Plaintiff's Disbursement Record)	\$ 999.01
(e)	Broker's Price Opinion/Appraisals	\$ 0.00
(f)	Property Preservation	\$0.00
(g)	Previous Bankruptcy Fees/Costs	\$ 0.00
(h)	Property Inspections	\$ 135.00

(l)	Suspense	\$0.00
(j)	Miscellaneous Charges/Credits (Itemized in Plaintiff's Disbursement Record)	\$0.00
(k)	Costs of collection prior to hearing	\$2,566.30
(l)	Attorney's fees and costs (Foreclosure & applicable Bankruptcy)	<u>\$1,750.00</u>
TOTAL DEBT secured by note and mortgage including interest to date shown		<u>\$416,130.79</u>

Interest for the period from the date shown in (b) above through the date of this Judgment at the above stated rate to be added to the above stated "Total Debt"; to comprise the amount of the Judgment debt entered herein and interest after the date of judgment at the rate of 3.375% per annum (pursuant to the terms of the Note and Mortgage) on the Judgment debt should be added to such Judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage through the date to which such interest is computed. (Items (g), (k) and (l) are subject to revision by Plaintiff's counsel and/or modification by the Court.)

16. Based upon a search of the public records of the aforesaid county, all persons or entities having an interest or lien or possible claim in or upon the mortgaged premises subordinate to the lien of the Plaintiff as of the date and time of the filing of the Lis Pendens herein have been made defendants.

17. The Plaintiff is seeking the usual foreclosure of mortgage and has in the Complaint, or by amendment thereto, or by motion at the reference, expressly waived the right to a personal or deficiency judgment.

18. The Defendants below named claim or may claim a subordinate lien or junior interest upon or interest in the subject property, and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with the Circuit Court Rules 53 and/or 71. The subject Defendant are further made a party due to the similarity in name(s) to the primary defendants against whom they claim or may claim a lien and in order to clear title to this property as follows:

(a) The Defendant, Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr., in such fiduciary capacity as representative of any person or entity that may be a creditor or claimant against such Estate, and by virtue of the

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

(b) The Defendant(s), Nancy Phillips Craft a/k/a Nancy P. Craft a/k/a Nancy Craft as Legal Heir and Devisee of The Estate Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft of by virtue of any interest claimed under the law of succession (S.C. Code '62-2-109) or under decedent's will.

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

(d) The Defendant, Deborah A. Oehlschlaeger, as Personal Representative of the Estate of Elmer Judson Craft, Jr., a/k/a Elmer J. Craft, Jr., a/k/a Elmer J. Craft in such fiduciary capacity as representative of any person or entity that may be a creditor or claimant against such Estate, and by virtue of the powers granted by Decedent's Will or by statute and by virtue of any interest claimed under the law of succession (S.C. Code '62-2-109) or under decedent's will.

(e) The Defendant(s), James W. Hufton, Jr., Marcee L. Cook, and Sharle Ann Carey, as Legal Heirs and Devisees of The Estate of James W. Hufton, Sr., by virtue of any interest claimed under the law of succession (S.C. Code '62-2-109) or under decedent's will.

19. No Defendant raised any issues related to Plaintiff's standing to prosecute this action. Therefore, any issues related to Plaintiff's standing or ability to prosecute this action are waived.

20. Defendant Phyllis C. Hufton has not established any claims for relief against the Plaintiff, and therefore, no relief should be granted to the Defendant.

CONCLUSIONS OF LAW

I therefore, conclude as follows:

1. The Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2011-05-02-01) Issued by Chief Justice Jean H. Toal, dated May 2, 2011.

2. The Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2009-05-22-01) Issued by Chief Justice Jean H. Toal, dated May 22, 2009, and has shown that this loan is not eligible under the Home Affordable Modification Program.

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

4. Defendant Phyllis C. Hufton has not established any claims for relief against the Plaintiff, and therefore, no relief should be granted to the Defendant.

Now, on motion of Plaintiff's attorney,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2011-05-02-01) issued by Chief Justice Jean H. Toal, dated May 2, 2011.

2. The Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2009-05-22-01) issued by Chief Justice Jean H. Toal, dated May 22, 2009, and has shown that this loan is not eligible under the Home Affordable Modification Program.

3. This case is not subject to the stay provisions of the Order of the Supreme Court of South Carolina dated May 4, 2009, as amended and superseded by Order dated May 22, 2009.

4. That there is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of \$416,130.79, representing the total debt due Plaintiff as set forth supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

5. The amount due in the preceding paragraph (the "total debt" as set forth in Paragraph hereinabove, 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 3.375% per annum.

6. That the Defendants liable for the aforesaid Mortgage debt shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or the Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

7. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the undersigned at public auction, after giving Notice of the time and place of such sale by advertisement according to law. Any sales date is tentative and may be rescheduled at any time prior to the sale without

further order of this court or written notice to the parties of the notice of sale, provided notice of the new sales date is duly advertised as required by law. The sale shall be according to the following terms, that is to say:

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

b. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 3.375%.

c. The sale shall be subject to taxes and assessments, existing easements and restrictions of record.

d. This mortgage constitutes a first lien covering the real estate and improvements therein described, including any mobile/manufactured home located thereon. Plaintiff would further allege and avail itself of the Purchase Money Mortgage Doctrine as may apply to the facts of this action.

e. Purchaser to pay for deed stamps and cost of recording the deed with the Plaintiff to pay the Statutory allowed fee of \$25.00 to the preparer of said deed (be it this Court or Counsel for Plaintiff).

8. If Plaintiff be the successful bidder at said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, the Plaintiff may pay to the Clerk of Court only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

9. No personal or deficiency judgment being demanded, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately.

10. That the Master in Equity will by advertisement according to law, give notice of the time and place of such sale, and the terms thereof. Any sales date is tentative and may be rescheduled at any time prior to the sale without further order of this court or written notice to the parties of the notice of sale, provided notice of the new sales date is duly advertised as required by law. Master in Equity 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 30 days after the date of sale, then the Master In Equity may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured. In the event the Plaintiff is the successful bidder, at its/his option, or the option of its/his assignee, the deed may be taken subject to payment by grantee of any taxes or assessments constituting a lien against the property sold under this order and hereinafter more fully described. In the event the successful bidder is a third party, neither the Plaintiff nor Plaintiff's counsel make any warranties or representations as to the subject property on behalf of the third party bidder or any subsequent purchasers.

11. The sale will not be held unless the Plaintiff, its attorney, or its bidding agent is present at the sale and enters the bid of the Plaintiff or has advised the Master In Equity's office of its bidding instructions. In the event a sale is held without the Plaintiff entering a bid, the sale shall be void.

12. In the event of a third party bidder and that any third party bidder fails to deliver the required deposit in certified (immediately collectible) funds to the Office of the Master In Equity by close of bidding on the day of the sale, the Master In Equity will re-sell the subject property at the most convenient time thereafter (including the day of sale) upon notification to counsel for Plaintiff.

13. That the Master In Equity shall apply the proceeds of the sale as follows:

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

NEXT: To the payment to the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest or so much thereof as the purchase money will pay on the same; and Plaintiff's attorney shall receive and disburse such funds only in total and absolute compliance with the debt, interest, escrow, and related calculations of this Court including the Court's award for attorney fees and taxable costs;

NEXT: Any surplus will be held pending further order of the Court as provided for in the South Carolina Rules of Civil Procedure and particularly Rule 71(c) of the South Carolina Rules of Civil Procedure.

14. It is further ORDERED, that if the successful bidder is other than the Defendant in possession herein, upon the presentation of a Writ of Possession, the Sheriff of Horry County is ordered and directed to evict and remove from the premises the occupants of the property

sold, together with all personal property located thereon, and put the successful Purchaser or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful Purchaser or his assigns in such peaceable possession. All valid Tenant rights pursuant to Protecting Tenants at Foreclosure Act of 2009 shall be protected.

15. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the South Carolina Department of Motor Vehicles is directed and ordered to provide the new Certificate of Title to the attorneys for the Plaintiff as agent for the grantee on the deed upon payment of the required title fees on any mobile/manufactured home which is herein located on the subject property and intended to be collateralized by the Plaintiff's security documents as heretofore received into evidence by this Court, or which may be received into evidence at any necessary hearing post sale of the subject property.

16. And it is further ORDERED, ADJUDGED AND DECREED that Defendant named herein and all persons whosoever claiming under him, them or it, be forever barred and foreclosed of all right, title and interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

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

18. The Special Referee will retain exclusive jurisdiction to do all necessary acts incident to this foreclosure, including, but not limited to, all matters post-sale which may effect the transfer of the title to the subject real property and all improvements thereon, as well, the issuance of a Writ of Assistance.

19. Upon Issuance of a Master in Equity's Report on Sale and Disbursements, the Register of Deeds is directed to release of record the mortgage lien being foreclosed, which mortgage lien is described as follows:

Mortgage from James W. Hufton, Sr. and Elmer J. Craft, Jr. to Mortgage Electronic Registration Systems, Inc. as nominee for Golden Gate Mortgage Inc., dated April 7, 2008, covering real property in Horry County, filed on April 8, 2008, and is of record in the Office of the Clerk of Court/Register of Deeds for Horry County in Book 5055, at Page 1407.

20. This sale is subject to all title matters of record and any interested party should consider performing an independent title examination of the subject property as no warranty is given at all by the Court, the Plaintiff or its Counsel. If the judicial sale is set aside by this Court, the successful purchaser at the sale shall be entitled only to a return of the deposit paid, if any.

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

Unit 506 Bahama Sands Horizontal Property Regime, established by Master Deed dated December 26, 2007 and recorded December 31, 2007 in Deed Book 3304 at Page 1609, as thereafter amended, records of Horry County, South Carolina.

Subject to all of the provisions of the aforesaid Master Deed and Exhibits and Amendments thereto.

Together with all of the appurtenances thereto, to said Master Deed and Exhibits and Amendments thereto, and the Grantee(s) assume and agree to observe and perform their obligations under said Master Deed, Exhibits and Amendments thereto, including but not limited to the payment of assessments for the maintenance and operation of the units and condominiums.

And subject to the provisions of the By-laws of Bahama Sands Homeowners Association, Inc.

This being the same property conveyed to James W. Hufton, Sr. and Elmer J. Craft, Jr. by Deed of Bahama Sands Development, LLC, a South Carolina Limited Liability Company, dated April 7, 2008 and recorded April 8, 2008 in the Office of the Register of Deeds for Horry County, South Carolina in Book 3326 at Page 1862.

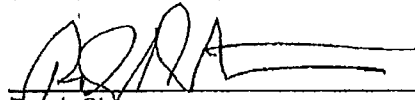
TMS No. 144-13-43-051

Property address: 1321 South Ocean Boulevard, Unit 506
North Myrtle Beach, SC 29582

22. IT IS FURTHER ORDERED that if the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the above-described property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales day as ordered by this court.

23. No Defendant raised any issues related to Plaintiff's standing to prosecute this action. Therefore, any issues related to Plaintiff's standing or ability to prosecute this action are waived.

24. Defendant Phyllis C. Hufton has not established any claims for relief against the Plaintiff, and therefore, no relief is granted to the Defendant.



Ralph Stroman
Special Referee for Horry County

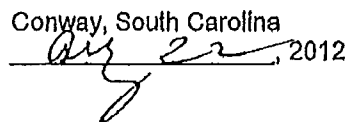
Conway, South Carolina

_____, 2012

Exhibit J

(Master's Deed)

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

ORIGINAL

MASTER IN EQUITY'S DEED
OF FORECLOSURE

I, Cynthia Graham Howe, as Master in Equity for Horry County, in the said State, send greetings:

WHEREAS, in an action in the Court of Common Pleas in Horry County between Flagstar Bank, FSB, as Plaintiff and James W. Hufton, Sr. and Elmer J. Craft, Jr., as Defendant(s), by an Order dated on August 27, 2012, it was decreed that the property hereinafter described should be sold by the Master in Equity for Horry County on the terms and for the purposes mentioned in the Order(s) granted in the case (see Case No. 2012-CP-26-1379),

NOW THEREFORE KNOW ALL MEN, that I, the undersigned, as Master in Equity for Horry County, pursuant to the foregoing and in consideration of the sum of two hundred fifty thousand and 00/100 (\$250,000.00) as paid by the hereinafter named grantee, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant and release the following described property unto the grantee: **Flagstar Bank, FSB, 5151 Corporate Drive, Troy, MI 48098;**

Unit 506 Bahama Sands Horizontal Property Regime, established by Master Deed dated December 26, 2007 and recorded December 31, 2007 in Deed Book 3304 at Page 1609, as thereafter amended, records of Horry County, South Carolina.

Subject to all of the provisions of the aforesaid Master Deed and Exhibits and Amendments thereto.

Together with all of the appurtenances thereto, to said Master Deed and Exhibits and Amendments thereto, and the Grantee(s) assume and agree to observe and perform their obligations under said Master Deed, Exhibits and Amendments thereto, including but not limited to the payment of assessments for the maintenance and operation of the units and condominiums.

And subject to the provisions of the By-laws of Bahama Sands Homeowners Association, Inc.

This being the same property conveyed to James W. Hufton, Sr. and Elmer J. Craft, Jr. by Deed of Bahama Sands Development, LLC, a South Carolina Limited Liability Company, dated April 7, 2008 and recorded April 8, 2008 in the Office of the Register of Deeds for Horry County, South Carolina in Book 3326 at Page 1862.

TMS No. 144-13-43-051

Property address: 1321 South Ocean Boulevard, Unit 506, North Myrtle Beach, SC 29582

Return to Scott Law Firm, P.A., P.O. Box 2065, Columbia, SC 29202

Instrument#: 2012000146222, DEED BK:
3626 PG: 2508 DOCTYPE: 125 12/17/2012
at 09:51:02 AM, 1 OF 3, EXEMPT,
BALLERY V. SKIPPER, HORRY COUNTY,
SC REGISTRAR OF DEEDS

ROA 304

This property was sold subject to any past due or accruing property taxes, assessments, existing easements and restrictions of record and any other senior encumbrances.

TOGETHER with all and singular the hereditaments, rights, members, and appurtenances whatsoever to the said property belonging or in any wise incident or appertaining, and the reversions and remainders, rents, issues, and profits thereof, and also any estate, right, title, interest, dower, possession, benefit, claim, or demand therein whatsoever of all parties to the said suit and of all other persons who might rightfully claim the same or any part thereof, by, from, or under them, or either of them;

TO HAVE AND TO HOLD the said property, with its hereditaments, privileges, and appurtenances, unto the said grantee, its successors and assigns for their own use, benefit, and behoof, forever.

IN WITNESS WHEREOF, I, the undersigned, as Master In Equity for Horry County under and by virtue of the said Order(s), have hereunto set my Hand and Seal the 3rd day of December, 2012.

SIGNED, SEALED AND DELIVERED

In the Presence of:

Stephanie S. Mayers
Rebecca Ann Cook-Thigpen

Cynthia Graham Howe
Cynthia Graham Howe
As Master In Equity
for Horry County

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

PERSONALLY APPEARED the undersigned witness and made oath that she saw Cynthia Graham Howe, as Master In Equity for Horry County, sign, seal, and deliver the within Deed; and that deponent together with the other witness signed their names as witnesses thereto.

SWORN to before me this
3rd day of December, 2012.

Rebecca Ann Cook-Thigpen
Notary Public for South Carolina
My Commission Expires: 5-20-2021

Stephanie S. Mayers

Return to Scott Law Firm, P.A., P.O. Box 2085, Columbia, SC 29202

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Phyllis Hufton,

Plaintiff,

vs.

Flagstar Bank, FSB, and John Doe,

Defendants.

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

Case No. 2013-CP-26-2861

MOTION TO ALTER OR AMEND
PARTIAL SUMMARY JUDGMENT
AND FINDINGS PURSUANT TO
RULES 52(b) and 59(e) SCRPC

CLERK OF COURT
AUG-14 PM 2:29
HORRY COUNTY

Flagstar Bank FSB ("Flagstar") moves the Honorable Steven H. John pursuant to Rules 52(b) and 59(e) SCRPC for an order altering and amending his findings and granting of partial summary judgment to the Plaintiff Phyllis Hufton ("Hufton") on the grounds that her interest survived foreclosure in Civil Action Number 2012-CP-26-1379 ("Foreclosure Action"). The order granting partial summary judgment was filed July 14, 2014. Flagstar did not receive written notice of entry of the order, but retrieved a copy from the courthouse on July 24, 2014. The specific grounds for this motion are as follows:

1. **THE COURT SHOULD ALTER OR AMEND ITS FINDINGS AND PARTIAL SUMMARY JUDGMENT BECAUSE IT DID NOT FOLLOW THE STANDARD OF REVIEW.**

"When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002) ((citation omitted)). In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a *mere scintilla of evidence*. *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326,

330, 673 S.E.2d 801, 803(2009) (*emphasis added*.) Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000); *Ellis v. Davidson*, 358 S.C. 509, 595 S.E.2d 817 (Ct.App.2004). Because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. *Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 594 S.E.2d 455 (2004); *Hawkins*, 358 S.C. at 289, 594 S.E.2d at 561-62; *Murray v. Holnam, Inc.*, 344 S.C. 129, 542 S.E.2d 743 (Ct.App.2001).

In this case, it appears the court viewed all reasonable inferences concerning how Hufton was named in the suit, whether she was served individually, and whether she appeared and was a party in her individual capacity in the light most favorable to Hufton. Moreover, even though the evidentiary facts are not in dispute, the conclusions to be drawn from those facts are very much in dispute and therefore should not have been decided on summary judgment. Finally, as discussed in more detail below, Flagstar raised more than a scintilla of evidence that Hufton's interest was properly foreclosed.

2. THE COURT SHOULD ALTER OR AMEND ITS FINDINGS AND PARTIAL SUMMARY JUDGMENT THAT HUFTON WAS NOT "NAMED" IN THE FORECLOSURE ACTION AS REQUIRED BY RULE 10(a) SCRPC BECAUSE SHE WAS NAMED AS A PARTY AND PURSUANT TO RULE 9(a) SCRPC FLAGSTAR DID NOT HAVE TO AVER HUFTON'S CAPACITY.

Rule 10(a) SCRPC merely requires the Summons and Complaint to include the *names* of all the parties. Consistent with Rule 9(a) SCRPC, Rule 10(a) SCRPC does not require the pleader to state the names and capacities of all parties. Instead, Rule 9(a) SCRPC provides, "[i]t is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity." Phyllis Hufton was *named* in the Summons and Complaint filed in the Foreclosure Action.

3. **THE COURT SHOULD ALTER OR AMEND ITS FINDINGS AND PARTIAL SUMMARY JUDGMENT BECAUSE THE COURT FAILED TO CONSIDER AND APPLY RULES 8(e)(1) and 8(f) SCRCP.**

Rule 8(e)(1) provides in part, "No technical forms of pleading or motions are required" and Rule 8(f) provides, All pleadings shall be so construed as to do substantial justice to all parties." In this case, the court, by granting Hufton partial summary judgment, is imposing a hyper technical pleading requirement and construing the pleadings in a manner that results in an injustice to Flagstar and a windfall to Hufton, who expressly waived any rights she had in her appearance during the foreclosure..

Hufton admitted the superiority of Flagstar's lien, admitted the property should be sold and that her equity of redemption should be barred. The court should also consider that Flagstar's debt was more than \$416,000 dollars and that Hufton is now claiming the right to ½ the property free and clear of Flagstar's lien. The court's construction of the pleadings is an injustice to Flagstar, especially considering South Carolina authority on the law of misnomer.

In *Tri-County Ice and Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 399 S.E.2d 779(1990), A judgment debtor sought to set aside a default judgment alleging that it had been sued in the wrong name. The court found that,

Helmly, who is the principal shareholder and president of P & H Company Inc., was served with the summons and complaint and all other notices. Helmly clearly knew that Tri-County intended to sue the corporation, P & H Company, Inc., but that Tri-County was under a misapprehension as to the identity of Palmetto Ice Company. ...Yet, Helmly did not come forward to correct the misnomer, but chose to ignore it and rely on it to attack the validity of the judgment. As we stated in *Waldrop*, 'where a defendant sued by a wrong name omits to plead in abatement and suffers the plaintiff to proceed to judgment, though he has never appeared to

the wrong name, this Court will not interfere to set aside the proceedings.'

Tri-County Ice and Fuel Co., 303 S.C. 237, 240-41, 399 S.E.2d 779, 782(1990),

This court should amend its partial summary judgment and hold that technical pleading is not required and construe the pleadings to do substantial justice to the parties.

4. THE COURT SHOULD ALTER OR AMEND ITS FINDINGS IN PARAGRAPH 2 OF THE PARTIAL SUMMARY JUDGMENT ORDER THAT HUFTON WAS NOT SERVED "INDIVIDUALLY" AS REQUIRED BY RULE 4 SCRPC BECAUSE HUFTON WAS NAMED AND SERVED IN BOTH AN INDIVIDUAL AND REPRESENTATIVE CAPACITY.

Paragraph 2 of the order states "that Phyllis Hufton, individually, was not served in the Foreclosure Action, as required by Rule 4, SCRPC. This finding is not factually or legally accurate. The record evidence reflects that by e-mail dated February 23, 2012, Hufton's attorney, David Traywick, stated, "I'll accept service for Phyllis Hufton." Mr. Traywick subsequently executed an Acknowledgment of Service as "Attorney for the Defendant Phyllis C. Hufton." Mr. Traywick did not limit or qualify his representation of Hufton, or of the service being accepted on behalf of Hufton as being in a limited capacity. At this same time these communications occurred, the process server personally served Hufton with a copy of the Summons and Complaint as shown by the Affidavit of Service on file with the court. Therefore it is error to state that Hufton was not served "individually" in compliance with Rule 4 SCRPC.

It appears that Hufton and the court have concluded that Hufton in her individual capacity must be served separately from Hufton in her representative capacity because of her "deeded interest" in the property (versus her inherited interest in the same property). If so, this is error and should be corrected by this court. Service of process under Rule 4 is made on people, not interests. To hold otherwise, would

require that people with multiple interests in a property be served multiple times for each of their interests.

There are only two capacities that a party can be named in a suit: individual and representative. In this case, Hufton was named and served in both capacities. Paragraph 15(a) of the Complaint alleges, "The Defendant, Phyllis C. Hufton, as Personal Representative and Legal Heir of the Estate of James W. Hufton, Sr. ... and by virtue of any interest claimed under the law of succession (S.C. Code 62-2-109) or under decedent's will. " (Emphasis added). The term "decedent's will" was not specifically defined in the Complaint. Paragraphs 8 and 9 did reference, however, the deaths of both James W. Hufton, Sr. and Elmer Judson Craft, Jr. Thus, Hufton was named in a representative capacity as Personal Representative for the Estate of James W. Hufton and as legal heir who may take under the or any decedent's will. The other legal heirs to Mr. Hufton as well as the Personal Representative and heirs to the Estate of Elmer Judson Craft, Jr. were also named in the Complaint and properly served. Surely the court would concede that these legal heirs who were named and served were parties individually to the foreclosure action. Hufton as legal heir and a party who had an interest by virtue of decedent's will is no different.

5. THE COURT SHOULD ALTER OR AMEND ITS FINDINGS IN PARAGRAPH 3 OF THE PARTIAL SUMMARY JUDGMENT ORDER THAT HUFTON INDIVIDUALLY WAS NOT A PARTY TO THE FORECLOSURE ACTION AND THAT THE COURT LACKED PERSONAL JURISDICTION OVER HER.

A court obtains personal jurisdiction by the service of a summons. *Ex parte S. Carolina Dep't of Revenue*, 350 S.C. 404, 407, 566 S.E.2d 196, 198 (Ct. App. 2002) (citing *State v. Sanders*, 118 S.C. 498, 502, 110 S.E. 808, 810 (1920)). In this case, as noted above Hufton was personally served with the Summons and Complaint which named her in

both a representative and individual capacity. If that were not sufficient to include her as a party and confer personal jurisdiction, her attorney also executed an Acknowledgment of Service as "Attorney for the Defendant Phyllis C. Hufton."

Additionally, Hufton made an appearance and filed an Answer to the Complaint captioned, "Answer of Defendant Phyllis C. Hufton" in which she admitted all the allegations of the foreclosure Complaint. By making an appearance and not contesting personal jurisdiction, Hufton waived any objections to service of process or to personal jurisdiction. *See Rule 12(h)(1) SCRCP Waiver or Preservation of Certain Defenses.*

This court, by finding that Hufton was not bound by the foreclosure judgment is not only allowing Hufton to make an impermissible collateral attack on another judge's judgment but also allowing Hufton to make an end run around the requirements of Rule 12(h)(1) SCRCP.

6. THE COURT SHOULD ALTER OR AMEND ITS FINDINGS AND ORDER FOR PARTIAL SUMMARY JUDGMENT BECAUSE THE COURT DID NOT CONSIDER HUFTON'S GENERAL ADMISSION ANSWER AND THE APPLICATION OF RULE 9(a) SCRCP.

As just noted, Hufton filed and served an answer captioned, "Answer of Defendant Phyllis C. Hufton" in which she admitted all the allegations of the foreclosure Complaint. Moreover, Hufton's answer specifically provides that "Any allegation of the Complaint not specifically denied is admitted." Thus Hufton admitted, among other things that her interest is junior and subordinate to Flagstar (Paragraph 15), that Flagstar's mortgage be declared a first lien (prayer for relief, paragraph 2), that the property be sold (prayer for relief, paragraph 3), and "the equity of redemption as to all defendants be barred and the lien or interest claimed by any defendant be extinguished." (prayer for relief, paragraph 3).

Moreover, if Hufton had any argument about the capacity in which she was sued, under Rule 9(a) that argument should have been included in her answer; failure to do so waived that argument entirely, in that matter and in any subsequent matter. Rule 9(a) SCRCF provides, "When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are within the pleaders' knowledge." It is undisputed that Hufton had full knowledge about all the facts she is now raising in this action at the time she filed an answer to the foreclosure action.

This court should amend its judgment and hold that Hufton waived any issues regarding the capacity in which she was named and appeared by not including it in her Answer to the foreclosure Complaint.

7. THE COURT SHOULD ALTER OR AMEND ITS FINDINGS AND ORDER FOR PARTIAL SUMMARY JUDGMENT BECAUSE THE COURT DID NOT APPLY JUDGE STROMAN'S ORDER AND JUDGMENT OF FORECLOSURE AND SALE AS THE LAW OF THE CASE.

A party may not seek relief from a prior unappealed order because the order has become the law of the case. Under the law of the case doctrine, a party is precluded from relitigating matters that were either not raised on appeal, but should have been, or matters that were raised on appeal, but were expressly rejected by the appellate court. *Hudson v. Lancaster Convalescent Ctr.*, 393 S.C. 1, 7, 709 S.E.2d 65, 68 (Ct.App.2011) (stating a circuit court ruling that is appealed but subsequently withdrawn is the law of the case); *see also Buckner v. Preferred Mut. Ins. Co.*, 255 S.C. 159, 160–61, 177 S.E.2d 544, 544 (1970) (holding an unappealed ruling, right or wrong, is the law of the case).

In this case, Hufton did not appeal Judge Stroman's Order and Judgment of Foreclosure and Sale; therefore it is the law of the case and should have been applied by the court in considering Hufton's attempt to relitigate the matter. Being the law of the case, the court was required to accept the "Conclusions of Law" as found by Judge

Stroman. Specifically, Paragraphs 4 and 16 of the "Conclusions of Law" state as follows: (4) Defendant Phyllis C. Hufton has not established any claims for relief against the Plaintiff, and therefore, no relief should be granted to the Defendant; (16) And it is further ORDERED, ADJUDGED AND DECREED that Defendant[s] named herein and all persons whosoever claiming under him, them, or it, be foreclosure barred and foreclosure of all right, title and interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

This court should amend its partial summary judgment to be consistent with Judge Stroman's Order and the law of the case.

8. THE COURT SHOULD ALTER OR AMEND ITS FINDINGS AND ORDER FOR PARTIAL SUMMARY JUDGMENT BECAUSE ANY DEEDED INTEREST OF HUFTON IN THE PROPERTY WAS DERIVATIVE OF THE ESTATE OF ELMER J. CRAFT WHICH WAS A PARTY TO AND BOUND BY THE FORECLOSURE JUDGMENT.

The court erred in granting summary judgment to Hufton in her individual capacity because any interest held by the Estate of Elmer J. Craft, through whom Hufton claims individual ownership of the property in question, was properly addressed in Case No. 2012-CP-26-1379. Specifically, the foreclosure Complaint named Hufton's grantor, Deborah A. Oehlschlaeger, as Personal Representative of The Estate of Elmer Judson Craft, Jr. as a party defendant. Any rights Hufton might claim to the property in her individual capacity derive from the Estate of Elmer J. Craft. See Paragraph 18(d) of the "Finding of Facts" in Judge Stroman's Order and Judgment of Foreclosure and Sale filed August 27, 2012. This fact was also admitted in Paragraph 15 of the "Answer of Defendant Phyllis C. Hufton" filed and served in Case No. 2012-CP-26-1379. Accordingly, Hufton's derivative interest was properly foreclosed in the underlying action.

Additionally, Flagstar's mortgage required notice be provided of any transfer of interest in the subject property; failure to do so was a violation of the terms of the mortgage. Accepting Hufton's argument here would allow transfer of real property, unencumbered by the mortgage attached to it, leaving no remedy to the mortgagee whose security is transferred without notice. Such transfers would not be valid.

9. THE COURT SHOULD ALTER OR AMEND ITS FINDINGS AND ORDER FOR PARTIAL SUMMARY JUDGMENT BECAUSE THE QUIT CLAIM DEED TO HUFTON FROM THE ESTATE OF ELMER J. CRAFT WAS DEFECTIVE.

The court erred in granting summary judgment to Hufton in her individual capacity because the Quit Claim Deed to Hufton from the Estate of Elmer J. Craft was defective. Virginia Code §47.1-16 requires that every notarization act include the state and the county or city where the act was performed. (See attached.) In this case the purported acknowledgement of the Quit Claim Deed from Deborah A. Oehlschlaeger, as Personal Representative of The Estate of Elmer Judson Craft, Jr. to Phyllis C. Hufton includes neither the state nor the county where the acknowledgment took place. Therefore, the deed is defective. *See Burnette v. Young*, 107 Va. 184 (1907) (noting the absence of a seal in a deed is not sufficient to convey title to real property).

10. THE COURT SHOULD ALTER OR AMEND ITS FINDINGS AND ORDER FOR PARTIAL SUMMARY JUDGMENT BECAUSE THE MASTER'S DEED RENDERS THE FORECLOSURE PROCEEDINGS RES JUDICATA.

By Master's Deed dated December 3, 2012 and recorded on December 12, 2012 in Deed Book 3625 at Page 2508, the Honorable Cynthia Graham Howe conveyed all right, title and interest in the property to Flagstar Bank, FSB. The deed specifically conveyed

Any estate, right, title, interest, dower, possession, benefit, claim, or demand therein whatsoever of all parties to the said suit and of all other persons who might rightfully claim the same or any part thereof, by, from, or under them, or either of them.

S.C. Code Ann. § 15-39-870 provides, "Upon the execution and delivery by the proper officer of the court of a deed for any property sold at a judicial sale under a decree of a court of competent jurisdiction the proceedings under which such sale is made shall be deemed res judicata as to any and all bona fide purchasers for value without notice, notwithstanding such sale may not subsequently be confirmed by the court. In this case, Flagstar purchased the property at the foreclosure sale.

At the time of its purchase, Flagstar had no notice that Hufton, who had offered a deed in lieu and filed a general admission answer admitting all the allegations of the foreclosure complaint, would raise an issue that she was not a party to the case and was not bound by the foreclosure judgment. Hufton's claims were not raised until several months after the foreclosure deed was issued to Flagstar.

This case is also somewhat analogous to the case *Robinson v. Estate of Harris*, 378 S.C. 140, 662 S.E.2d 420 (Ct. App. 2008) aff'd, 390 S.C. 272, 701 S.E.2d 740 (2010) in which the court granted summary judgment based on this statute against heirs with potential claims to property who brought a quiet title action claiming they were not properly served in the foreclosure action. See *Cumbe v. Newberry*, 251 S.C. 33, 37, 159 S.E.2d 915, 917 (1968)(stating "a sound public policy requires the validity of judicial sales be upheld, if in reason and justice it can be done").

11. THE COURT SHOULD ALTER OR AMEND ITS CONCLUSIONS IN PARAGRAPH 4 OF THE ORDER THAT HUFTON'S DEEDED INTEREST SURVIVED FORECLOSURE AND THAT SHE STILL OWNS PART OF THE PROPERTY.

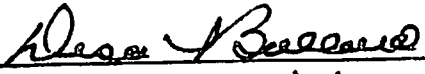
Based on the foregoing grounds, the court must alter or amend its judgment to either deny partial summary judgment to Hufton or conclude that Hufton's interest did not survive foreclosure and she no longer owns any interest in the property. The court must view all the inferences and conclusions in the light most favorable to Flagstar. The record shows that Hufton was served in her individual and representative capacities

and therefore she was a party to the foreclosure action in her individual capacity. Hufton filed an answer admitting all the material allegations of the foreclosure complaint including that the property be sold at the foreclosure sale and her equity of redemption be barred. Hufton did not appeal Judge Stroman's Order, which includes specific findings as to Hufton and which has become the law of the case. Finally, the proceedings are res judicata as to Hufton because the Master's deed has been issued to Flagstar who, at the time, had no notice of the claims Hufton is now making in this action.

For all these reasons and to do substantial justice to the parties, this court should reverse its granting of partial summary judgment to Hufton or grant summary judgment to Flagstar on this issue.


Desa Ballard
Ballard & Watson
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
Email: desab@desaballard.com
ATTORNEY FOR FLAGSTAR BANK, FSB

NELSON MULLINS RILEY & SCARBOROUGH LLP

By:  *for*
Jeremy C. Hodges *with permission*
E-Mail: jeremy.hodges@nelsonmullins.com
Brian M. Barnwell
E-Mail: brian.barnwell@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

August 1, 2014

1	STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS NON-JURY
2	COUNTY OF HORRY	)	(2013-CP-26-02861)
3		)	
4	PHYLLIS HUFTON	)	
5		)	
6	. Vs.	)	TRANSCRIPT OF RECORD
7	FLAGSTAR BANK, FSB, et al	)	June 24, 2014
8		)	Conway, S. C.
9			
10	B E F O R E:		
11	HONORABLE STEVEN H. JOHN, Judge.		
12	A P P E A R A N C E S:		
13	BENJAMIN ALEXANDER TRAYWICK, ESQ.		
14	ATTORNEY FOR PLAINTIFF		
15	BRIAN MONTGOMERY BARNWELL, ESQ.		
16	ATTORNEY FOR DEFENDANT		
17			
18			
19			
20			
21	DIXIE COX EUBANK		
22	CIRCUIT COURT REPORTER		
23	FIFTEENTH JUDICIAL CIRCUIT		
24			
25			

1 (THE FOLLOWING TAKES PLACE ON JUNE 24, 2014.)

2 THE COURT: All right. This is (2013-CP-26-02861),
3 Phyllis Hufton v. Flagstar Bank FSB and John Doe, Defendants.

4 Before we get started, understanding it's the
5 Plaintiff's Motion for Summary Judgment, the -- there was a
6 motion previously, I believe it was -- might have been Judge
7 Hyman -- allowed the filing of an amended Complaint to include
8 an action for partition, and the Clerk's record does not
9 reflect that amended complaint having been filed; is that
10 correct?

11 MR. TRAYWICK: Your Honor, Ben Traywick. I represent
12 the Plaintiff. That Amended Complaint has been filed, Your
13 Honor. I think it was filed on the 18th of June ---

14 THE COURT: Okay.

15 MR. TRAYWICK: ---If memory serves, and ---

16 THE COURT: Can you look that up, please Ma'am?

17 MR. TRAYWICK: ---And the Defendant has filed a Reply,
18 and has added an additional Counterclaim as well, in response.

19 THE COURT: Well, they haven't made it to the Clerk of
20 Court's file then, so I don't have the benefit of those
21 pleadings.

22 MR. BARNWELL: Your Honor, I have a copy of the Answer
23 and Counterclaim that Flagstar has filed, if you would like
24 that.

25 THE COURT: Okay. Well -- well, we need to --- all

1 right, since you are asking me to rule on a Motion for Summary
2 Judgment I need the up-to-date pleadings.

3 MR. TRAYWICK: Your Honor, if I may, this is a -- and I
4 can hand you -- I believe I have a copy of the Amended
5 Complaint as well, but if I may put those, going forward.

6 THE COURT: Sure.

7 MR. TRAYWICK: And I don't mean to jump ahead. I ---

8 THE COURT: That's all right. Go ahead.

9 MR. TRAYWICK: What Mr. Barnwell, the Bank, put into
10 it's Response in Memorandum to this motion, that there are new
11 issues raised by this new Counterclaim, and I think that
12 that's -- to the extent that those issues would tend to make
13 this -- it would appear that that would make it more of a
14 motion for partial summary judgment on indiscreet issues ---

15 THE COURT: Okay.

16 MR. TRAYWICK: ---Rather than closing out the entire
17 case. Now it's certainly my hope that if we can get the
18 central issues resolved, which I think we can, that the rest
19 of it will fall into place, but I certainly -- you know, I
20 don't think that -- I don't think that, for example, the
21 Bank's Counterclaim, their new Counterclaim can be adjudicated
22 here today, although I think we've got a pretty strong
23 position.

24 But as a matter of procedure and kind of timing I don't
25 think it's -- I don't think it's really timely.

1 **THE COURT:** All right. So, counsel, what would your
2 position be on that?

3 **MR. BARNWELL:** Brian Barnwell for Flagstar.. I agree
4 that he hasn't moved for summary judgment on our
5 Counterclaims. There are two issues. One is whether or not
6 the Plaintiff was -- her interest in a condominium at Myrtle
7 Beach - it's a vacation home - was foreclosed. That's kind of
8 issue one, whether or not she has an interest in it, issue two
9 is, what's the result of that, can we foreclose on her
10 interest or not.

11 If Mr. Traywick is saying he's just moving for summary
12 judgment on that first issue, does she have an interest, I
13 think that -- that can go forward today. I don't ---

14 **THE COURT:** All right.

15 **MR. BARNWELL:** ---Think he's moved on the second feast
16 as to, if he's right what's the remedy.

17 **THE COURT:** All right. Do you agree with that?

18 **MR. TRAYWICK:** Not quite, Your Honor. I really want to
19 be as cooperative as possible.

20 **THE COURT:** Okay.

21 **MR. TRAYWICK:** This has been a -- this thing has just
22 had a bit of a tortured procedural history, and that has
23 nothing to do with Mr. Barnwell or me. We have been doing our
24 best. It's just the way that things are shaping out.

25 **THE COURT:** Okay.

1 **MR. TRAYWICK:** I think that the two issues that were
2 just identified are actually the core issues that I was
3 talking about, whether our property interests survive the
4 foreclosure ---

5 **THE COURT:** Right.

6 **MR. TRAYWICK:** ---And then whether the Bank can quote,
7 re-foreclose. These were two legal issues that were present
8 and were adjudicated in -- in the -- the Bank had a Motion for
9 Summary Judgment that Judge Hyman heard on June the 3rd, and I
10 can hand up the Motion and my opposing Memorandum, but what
11 you find is that those two issues are precisely what were
12 brought up in the Bank's Motion for Summary Judgment, and
13 those are the two issues that are at issue -- that are
14 involved in my Summary Judgment Motion.

15 The issues that are not -- that I have not moved for
16 summary judgment on are the new issues that appear in the
17 Counterclaim that the Bank has just filed in the last several
18 days. Those issues are an equitable lien, and I think that's
19 it. That -- the issue as an equitable lien, but whether the -
20 - whether the mortgage is still attached to my client's
21 property, and just whether they can be foreclosed. I think
22 that's ready for adjudication, Your Honor,

23 **THE COURT:** Well, let's resolve the issue first of
24 whether the Plaintiff's property interest survived the
25 foreclosure. Why don't we resolve that issue first? Okay.

1 We will deal with that one first.

2 All right. Go ahead, counsel.

3 **MR. TRAYWICK:** Thank you, Your Honor. The -- strikes
4 me that a bit of a history of the facts would be beneficial to
5 the Court.

6 **THE COURT:** Well, kind of be brief. I mean, the
7 purpose of the Briefs are for you to kind of educate me about
8 that, but I don't mind you being brief about it.

9 **MR. TRAYWICK:** Well, I'll just get right to the point
10 then.

11 Your Honor, my client held property interest in an
12 individual capacity that she bought from an estate. It was
13 not the estate of her husband. That property interest was in
14 place, was deeded, and it was recorded at the Register of
15 Deeds at the time the Bank instituted the foreclosure action.
16 They didn't identify her individually. They didn't describe
17 that property interest that she purchased. When they named
18 her they named her as the PR, and as an heir to the estate of
19 her husband. She was the PR at the time, and she was an heir,
20 and she held half of the property in those capacities, but she
21 held another half of the property as a purchaser for value
22 from the other guy's estate. Not only did they not name her
23 individually -- and I've got all the case law in our Briefs
24 that say, you know, those different capacities matter and they
25 have to be pled separately. These folks clearly understood

1 that because the Certificates of Service that they filed show,
2 one, for Phyllis Hufton as Personal Representative, and a
3 separate Certificate of Service, Phyllis Hufton as heir to her
4 husband's estate. There is no certificate of service for
5 Phyllis Hufton individually. In addition to the fact they
6 didn't name her individually, they didn't serve her
7 individually.

8 When you look at the foreclosure Complaint it describes,
9 as it must, all of the Defendants and the interests that are
10 being foreclosed on. And when they describe Phyllis Hufton in
11 the foreclosure Complaint it says, Phyllis Hufton is being
12 named here to eradicate any interest that she holds as the
13 Personal Representative, and any interest in the property she
14 holds under the Laws of Succession or her husband's Will.

15 Well she -- the half interest that we are talking about
16 did not come to her by any of those mechanisms, so she wasn't
17 named individually, she wasn't served individually, and her
18 property interest wasn't described individually. There's no
19 personal jurisdiction, there is no subject matter jurisdiction
20 over the property.

21 The Bank knows this, because after they got all the way
22 through their foreclosure, got a judicial sale, purchased the
23 thing themselves, their new lawyers, not Mr. Barnwell's firm
24 nor the folks who -- who botched the foreclosure, but some --
25 another law firm sent us an email, a letter says, hey, we made

1 a mistake and we failed to name you in this foreclosure
2 action, and we wonder if you will quit-claim your remaining
3 interest to us, and we said, well, no, we won't quit-claim it,
4 but we will sell it to you, and they said, okay, how much, and
5 so we dickered a little bit. We couldn't reach a satisfactory
6 price, and so we just filed this action to quiet title in this
7 half interest, and to move on.

8 So, you know, there are a number of equitable type
9 arguments that are made in the motion, or by the Bank, and I
10 want to point out, Your Honor, again, that these exact same
11 issues, the exact same arguments that you see in the Bank's
12 Briefing today, were in the Bank's Briefing in front of Judge
13 Hyman on their Motion for Summary Judgment, which was denied,
14 so from our perspective the issues have already been
15 adjudicated.

16 Now, he did issue a Form 4, rather than a series of
17 specific findings and conclusions, but these same arguments
18 have already been rejected by Judge Hyman, and we think that
19 they should be rejected here today, and that the equitable
20 arguments that are out there, waiver and -- and, you know,
21 they are really not -- they cannot overcome, and frankly, we
22 think that the Bank can be shown to not be entitled to equity
23 for a variety of reasons, but - and we are happy to get into
24 that - but also that these arguments cannot overcome the fact
25 that she wasn't named, she wasn't served, and she wasn't

1 before the Court.

2 And not to get too carried away here, but there are due
3 process considerations in place concerning notice, and the
4 proper application of these rules of service.

5 THE COURT: Okay.

6 MR. TRAYWICK: Thank you, Your Honor.

7 THE COURT: All right. Thank you.
8 Response.

9 MR. BARNWELL: Your Honor, we filed a Memorandum in
10 Opposition to this last week. Do you have a copy?

11 THE COURT: Yes sir, I do.

12 MR. BARNWELL: All right. Your Honor, just first to
13 address the issue of the prior summary judgment hearing and
14 the Form 4 issues by Judge Hyman, when he was made aware of
15 the discovery motions and the motions on your roster for this
16 week he expressed some hesitation about deciding this case at
17 a summary judgment hearing, and indicated that a trial might
18 be more proper.

19 But just as an issue of Law, in Ballenger vs. Bowen the
20 Supreme Court has held that the signing -- or denying a motion
21 for summary judgment decides nothing on the merits of the
22 case, does not prevent you from raising them later on, it
23 merely decides that the case should proceed to a trial.
24 That's all we think the Form 4 Order decides, and frankly,
25 Your Honor, we think that would probably be the proper venue

1 for this case to be decided, in a full non-jury trial rather
2 than a short motions hearing.

3 And moving on to the issue of whether or not Ms.
4 Hufton's interests were foreclosed in the prior foreclosure
5 action, we disagree that she wasn't served, Your Honor. She
6 was represented by counsel in that case. Mr. Traywick pointed
7 out, she was named as the Personal Representative and legal
8 heir. She was aware -- she had actual notice of the case.
9 When she was served as the PR. And on page three of our Memo
10 in Opposition you will see a block quote from an email that
11 her attorney sent to foreclosure counsel saying that he will
12 accept service on behalf of the title holder, she rep -- he
13 represents Phyllis Hufton, as well as all the parties, already
14 effected personal service upon in this matter, he's
15 representing everybody, and please serve -- do not serve
16 Phyllis Hufton personally; I'll accept service on her behalf.
17 So we know that she was aware of the case, and as far as the
18 case law that she cites in her Brief as far as different
19 capacities, and people being named in their individual versus
20 representative capacity, the key distinction between those
21 cases and this one is that she was aware of the case, had a
22 chance to appear and argue, to raise the fact that hey, I have
23 the Complaint in my hands that says an entire piece of
24 property is being foreclosed upon; I don't think you can do
25 that because I own it in a capacity that hasn't been named

1 here. She was aware of that and failed to raise that
2 argument, and our -- there's several cases cited in our Brief,
3 Wooten versus Seanch, I think being the most applicable,
4 wherein in a foreclosure complaint someone was represented by
5 counsel who was misnamed in the foreclosure complaint and
6 decided to sit tight, let that foreclosure go forward, not
7 object, allow a sale to happen and a deed to be issued, and
8 then try to come back and say, wait, wait, wait, you didn't
9 name me in the right capacity and I can avoid that foreclosure
10 judgment. The Court said no, if you are aware of the case,
11 especially if represented by counsel, and you allow it go
12 forward without raising an issue as to capacity, then you've
13 waived the right to make that argument and you are going to be
14 bound by the foreclosure judgment.

15 So that's our argument on that first issue. We think
16 it's only ---

17 **THE COURT:** Isn't that -- isn't that more an argument
18 regarding inequitable lien?

19 **MR. BARNWELL:** I think it -- it -- it's -- it will come
20 into the equitable part of this case, but as far as just our -
21 - basically it's an affirmative defense that we think she
22 should have asserted in the foreclosure action. She was aware
23 of the case, she's -- now she's claiming that she has a
24 capacity that wasn't subject to being sued, and Rule 9 talks
25 about raising a capacity issue, whether or not you think you

1 can be sued in that capacity, or the person suing you can sue
2 you in that capacity; it's got to be raised at the outset of
3 the case. That doesn't make sense for a Court to have an
4 entire case go to trial, judgment be entered, property sold,
5 and then come back to someone who was there, aware of the
6 case, is aware of a possibly misidentification in the
7 complaint, to come back six months later and try to avoid that
8 judgment. We think it's a waste of the Court's time and the
9 parties not to have that kind of defense raised at the
10 forefront.

11 **THE COURT:** All right. In the Complaint of Flagstar
12 Bank it's without question she was not named individually in
13 the caption, correct?

14 **MR. BARNWELL:** Yes, Your Honor.

15 **THE COURT:** There's no question about that. All right.
16 In the body of the Complaint, the facts alleged in the body of
17 the Complaint says that the Defendants against whom they
18 claim, or may claim, in order to clear title to this property
19 are as follows, and it's got a laundry list. Number one,
20 Party Named: The Defendant, Phyllis C. Hufton, as Personal
21 Representative and legal heir of the Estate of James W.
22 Hufton, Sr. in such fiduciary capacity as representative of
23 any person or entity that may be a creditor or a claimant
24 against such Estate, and by virtue of the powers granted by
25 Decedent's Will or by statute, and by virtue of any interest

1 claimed under the Law of Succession, or under Decedent's Will.

2 It makes no mention in the Complaint anywhere of her
3 deeded individual interest in the property, correct?

4 **MR. BARNWELL:** Yes, Your Honor.

5 **THE COURT:** Doesn't say it in the Complaint in any way,
6 correct?

7 **MR. BARNWELL:** Correct.

8 **THE COURT:** All right. The Affidavits of Service, she
9 gets served twice. She gets served as the personal
10 representative, and she gets served as an heir. That's what
11 the Affidavits of Service say, correct?

12 **MR. BARNWELL:** And then her attorney asked that she not
13 be served personally anymore, that he would accept service on
14 behalf of all titled owners.

15 **THE COURT:** But where is that Affidavit of Service in
16 the file?

17 **MR. BARNWELL:** That's -- no sir.

18 **THE COURT:** Doesn't exist?

19 **MR. BARNWELL:** No.

20 **THE COURT:** That document doesn't exist in the file.

21 **MR. BARNWELL:** An Affidavit of Service is not -- the
22 email is attached to our Memo and ---

23 **THE COURT:** I understand it's in the Memo. It's not in
24 the foreclosure action in any way. There is nothing by the
25 attorney indicating that such occurred, correct?

1 **MR. BARNWELL:** Yes, Your Honor.

2 **THE COURT:** All right. How did the Court acquire
3 personal jurisdiction, or subject-matter jurisdiction of her
4 interest in the property, her individual interest to the
5 property? How did the Court acquire jurisdiction over her?

6 **MR. BARNWELL:** Our position is that the fact that the
7 Court had jurisdiction over the property, that the foreclosure
8 Complaint described the entire property, at least the legal
9 description of it, the derivation clause doesn't affect the
10 actual property we are talking about, and then Ms. Hufton
11 appears, filing an Answer admitting all the allegations of the
12 Complaint Your Honor has talked about, that she made unto the
13 Court, yes, I own it as the PR and legal heir. And then she
14 also admits all the other allegations that talk about how the
15 Craft Estate owned it, and how the Craft legal heirs. She
16 didn't say, I deny that the Craft Estate owns interest in the
17 property. She admitted that. And so I think by doing that
18 she has waived an argument as a personal jurisdiction which
19 can be waived.

20 **THE COURT:** All right. What do you say to that,
21 counsel?

22 **MR. TRAYWICK:** Your Honor, she, Phyllis Hufton,
23 individually, does not admit anything, because she was not a
24 party to the case. Phyllis Hufton, the individual, was not a
25 party to the lawsuit; she was not named, and she was not

1 served. She can't admit or deny anything.

2 **THE COURT:** All right. Thank you.

3 All right. As to the issue of whether the property
4 interest of the individual, Phyllis Hufton, survived the
5 foreclosure action I do so find that her individual interest
6 survived the property foreclosure, she was not named as a
7 party, she was not served as an individual party; there is
8 nothing that -- in the file, the foreclosure file, the
9 foreclosure proceedings before the Court, that indicated her
10 individual interest was before the Court in any way. The fact
11 that the Bank made a mistake is regrettable, but they did not
12 name, they did not make her a party, they didn't effect her
13 interest; her interest survives.

14 Now, whether or not -- using one of Judge Ralph King
15 Anderson's words -- the efficacy of Judge Hyman's Order, I
16 don't know what Judge Hyman did. He issued a Form 4. You
17 know, under summary judgment you can deny summary judgment
18 because the facts are in dispute, you can deny summary
19 judgment because a fuller exploration of the facts would aid
20 the Court in the understanding of the applicable law. I don't
21 know what he did. It just says, Form 4, summary judgment
22 denied. I have no idea what his rationale or decision was, so
23 I can't refer back to that and use it in any way regarding
24 these other arguments that are part of the Plaintiff's -- and
25 the Clerk - the one y'all filed, they made me a copy of that -

1 the Answer to the Amended Complaint and Counterclaims that --
2 dated June 18, 2014, and filed the same day, those new
3 Counterclaims, I don't see how I can possibly rule on them at
4 the present time. They are not -- I don't see how they are
5 before the Court, since I don't know what it is that Judge
6 Hyman did.

7 I'll be glad to hear from you, Mr. Traywick, if you want
8 to make some other argument.

9 **MR. TRAYWICK:** Thank you, Your Honor.

10 I recognize that this is a little bit piecemeal, and
11 that it's my deal that really (unintelligible) said, we ought
12 to just have one hearing, and again it -- we've done our best.

13 **THE COURT:** I understand.

14 **MR. TRAYWICK:** I believe -- I acknowledge that there
15 are some issues raised, at one point or another, that are --
16 have not been ruled on just now, or by Judge Hyman, and that
17 really are not ripe for adjudication right now, today. I
18 think that there is one other that is raised in my Motion
19 that's pretty significant ---

20 **THE COURT:** Okay.

21 **MR. TRAYWICK:** ---That I think can be wrapped up on the
22 record here, and that I think will really streamline things
23 going forward ---

24 **THE COURT:** All right.

25 **MR. TRAYWICK:** ---And that argument is, the question of

1 whether the Bank can re-foreclosure, can enforce it's mortgage
2 lien against this property. Now the equitable lien issue
3 which Your Honor referred to -- and I agree, that's got to be
4 sort of -- that's got to be thrashed out - there may even need
5 to be some discovery on it - but the question of whether this
6 property interest will survive the foreclosure still has
7 attached to it a contractual mortgage lien I think is pretty
8 clear, and it's pretty clear for the following reason. Judge
9 Stroman, in his Order of Foreclosure, which was, I think back
10 in -- the original Order of Foreclosure was in, I think,
11 October of 2012, and then they sold the property, and shortly
12 thereafter, in December of 2012, there was a follow-up Order.
13 The Order says -- this is all in our Brief -- that the
14 mortgage shall be deemed and marked satisfied, and indeed, as
15 of December 17, 2012, the records of the Register of Deeds
16 here in Horry County say that that mortgage has been
17 satisfied, so it's been sitting down there satisfied for
18 eighteen months; it was ordered satisfied by Judge Stroman.
19 From my perspective and ---

20 **THE COURT:** And there's no appeal of that Order?

21 **MR. TRAYWICK:** That's correct, Your Honor. There is no
22 appeal and -- now, honestly the Bank has suggested to us,
23 well, y'all need to go re-open that Order, and we are saying,
24 that's not our Order, and we actually like it because it marks
25 the mortgage satisfied, and so from my perspective - and I am

1 not a -- you know, I'm not a guru on dirt ball but the
2 mortgage is satisfied. You cannot enforce a mortgage that has
3 been satisfied for eighteen months, and so from our
4 perspective, we need to go and look at the equitable lien
5 issue which has just been raised. We can understand that.
6 And if this -- the new issue was not brought out until we
7 amended our Complaint to add this partition thing we probably
8 should have done it from the get-go, so we've got to deal with
9 that, we understand that, but we do think that the question of
10 whether they can re-foreclose on a mortgage that doesn't exist
11 is ready to be adjudicated in the Plaintiff's favor.

12 **THE COURT:** All right.

13 Mr. Barnwell.

14 **MR. TRAYWICK:** Thank you, Your Honor.

15 **THE COURT:** And address the issue, if you would, in,
16 you know, making what arguments you are going to make, just
17 the basic issue of, there's a final Order, it says what it
18 says, and it's not appealed from, and it's eighteen months
19 later.

20 **MR. BARNWELL:** Your Honor, just as an initial matter,
21 the motion before you right now does not move on this second
22 issue we are now talking about as to, now that you have ruled
23 that her interests survive. Nowhere in the current motion
24 does it ask you to decide what's the impact of that. It was
25 simply asking you to make this initial determination that you

1 have already made, so I think we can stop right there.

2 **THE COURT:** All right. Well, let's stop right there.
3 Let's go to the motion as filed. What was the date of your
4 Motion for Summary Judgment, Mr. Traywick?

5 **MR. TRAYWICK:** Your Honor, it's May the 9th of this
6 year.

7 **THE COURT:** May the 9th. Okay. Well, let me find that
8 in the Clerk's file. Let's go to May. All right.
9 Plaintiff's Motion for Summary Judgment, I think it's dated,
10 but it actually got filed May 12th by the Clerk, but anyway.
11 All right, so looking at Plaintiff's Motion for Summary
12 Judgment.

13 **MR. BARNWELL:** If you look at the last sentence of the
14 introductory paragraph, kind of sums up what the -- all eight,
15 nine pages say.

16 **THE COURT:** All right.

17 **MR. BARNWELL:** Seven pages.

18 **THE COURT:** All right. Well, let me just look through
19 it, and then I'll be glad for y'all to point out anything in
20 there that I might have overlooked in this motion.

21 All right, Mr. Traywick, I'm looking at your May 9th
22 Motion, which is very detailed. I appreciate that. That's
23 always helpful to the Court. I don't see in it that you are
24 raising the issue that the Bank cannot re-foreclose it's
25 original mortgage, for whatever reasons. It's a final Order,

1 not appealed from, or whatever rationale that your -- your
2 other rationales that you suggested.

3 MR. TRAYWICK: Your Honor, I -- I don't see it there
4 either.

5 THE COURT: All right.

6 MR. TRAYWICK: So I -- you know, I apologize for any
7 sense that that was -- trying to pull a fast one.

8 THE COURT: No. No. And I appreciate that. I -- you
9 know, this is a -- this is a complicated endeavor here.

10 MR. TRAYWICK: It is, Your Honor. And if the Court is
11 more comfortable punting on this issue or ---

12 THE COURT: Well, I'm not punting, but I -- counsel has
13 raised it to me, and correct me if I'm wrong, Mr. Barnwell,
14 but I'm taking from your positioning to me that -- of raising
15 that issue, that you were not put on proper notice that it
16 would be argued in court today, and you are not prepared to
17 make those arguments to the Court, having not been put on
18 proper notice by the motion.

19 MR. BARNWELL: Yes, Your Honor.

20 THE COURT: All right. So with that, I don't know how
21 I can go forward. It would also seem to me that -- I know you
22 have raised the issue now, and it's clear you want to raise
23 the issue, but I don't see it in the Motion for Summary
24 Judgment, so I don't know that I can say that.

25 MR. TRAYWICK: If I may ---

1 **THE COURT:** Yes sir.

2 **MR. TRAYWICK:** And I appreciate Your Honor's patience
3 with us. I filed a Supplemental Memorandum yesterday.

4 **THE COURT:** Okay.

5 **MR. TRAYWICK:** And I've got copies of it, if I may
6 approach.

7 **THE COURT:** Okay.

8 **MR. TRAYWICK:** And this was very late, and heavens
9 knows, that's not ideal from your perspective.

10 This is a Supplemental Memo that really I put together
11 yesterday when I realized that the motion was going to be
12 heard today, also when I got a copy of the Answer with the new
13 Counterclaim. I don't think that any of that totally excuses
14 why this is not before Your Honor before, and whatever you
15 deem fit is fine.

16 If I may just direct your attention to the third page,
17 Your Honor. There's an argument there, Number Three ---

18 **THE COURT:** Right. Right. I'm not -- you know, the
19 point I'm making is, I appreciate that you are bringing the
20 Court's attention to an issue that probably needs to be
21 resolved. It may or may not be properly resolved in a summary
22 judgment motion, I don't know, but technically on -- you know,
23 technicality or not, it's not in your motion for summary
24 judgment, so it's not in a motion before the Court. I
25 understand the arguments are there, but in actuality your

1 request, the original request to the Court is not there. Now,
2 it can be said it's here now, all right. Just, you know, you
3 submit the issue to the Court on a motion for summary judgment
4 based upon your filing, you know, yesterday or today,
5 whichever it was. I'm assuming will -- again, counsel, you
6 tell me, if you want to argue the point right now, you -- Mr.
7 Barnwell, you want to argue the point, and you are prepared to
8 argue it, then I'll be glad to resolve it, right now.

9 **MR. BARNWELL:** Your Honor, again, it wasn't in the
10 motion so we don't think it should be heard today.

11 **THE COURT:** All right. So I -- I'm going to -- I'm
12 taking that as a request for a continuance of that particular
13 issue. I've granted a partial summary judgment on the issue
14 of -- that the Court rules that Phyllis C. Hufton's personal
15 property interest survived the foreclosure action originally
16 filed by Flagstar Bank in this matter. The Court has so
17 ruled.

18 And I'm going to be asking you, Mr. Traywick, to do an
19 order to that effect, and with the supporting law, and send
20 that to my Clerk within seven days of today's date.

21 The other issues, what we are going to have to do is
22 reschedule the Plaintiff's motion for summary judgment, and
23 now, you can put in the order, so it's clear, that the Court
24 says proper notice has now been given, today, of the issue for
25 motion for summary judgment of this issue of the fact that the

1 Bank cannot re-foreclose it's original mortgage, your argument
2 there, as well as any motion -- or any arguments you have
3 regarding their equitable lien Counterclaim. Those survive
4 today's ruling to be heard at another scheduled motion for
5 summary judgment. You don't have to refile your motion for
6 summary judgment is what I'm saying.

7 Counsel, you are aware of the issues, all right, so when
8 it comes up again you can't say, I don't know what they are.
9 You know what they are. All right. They are before the
10 Court. They are just not going to be heard today. But you
11 don't -- Mr. Traywick, you don't have to refile your motion
12 for summary judgment. Probably it would be a good idea to put
13 just a real short paragraph in the order so that it's clear,
14 this is what we are doing, and when it comes up again whoever
15 the Judge is - if it's myself obviously I'll have some
16 familiarity with it, but if not, that other Judge will know,
17 there aren't any issues, opposing counsel knows about it, and
18 it's here to be argued. All right.

19 MR. TRAYWICK: Yes sir, Your Honor.

20 THE COURT: All right.

21 MR. BARNWELL: Thank you, Your Honor.

22 MR. TRAYWICK: May I impose on your good nature?

23 THE COURT: That's fine. What would you want to do?

24 MR. TRAYWICK: There's one -- I've got two requests ---

25 THE COURT: Sure.

1 **MR. TRAYWICK:** We've been up here four or five times in
2 front of a bunch of different Judges, and they've all been
3 wonderful. I wonder if there is any way that you would be
4 willing to retain ---

5 **THE COURT:** You want me to retain jurisdiction of this?

6 **MR. TRAYWICK:** And we could package it so that we will
7 only be up here one more -- and I ---

8 **MR. BARNWELL:** You want us to put a cross motion, and
9 just have it all decided?

10 **MR. TRAYWICK:** Yes. I would love to just have it
11 decided.

12 **THE COURT:** And I appreciate that. The fact of the
13 matter is, I'm Administrative Judge for the Court of General
14 Sessions this year. I don't have any more non-jury court this
15 year, for the rest of the year, okay, Common Pleas Non-Jury
16 Court for the rest of the year. I'm sure I'll have a bunch of
17 it next year when I'm Administrative Judge for Common Pleas,
18 but that's a good six months away. I'm -- don't know that
19 y'all want to wait six months.

20 I appreciate that, but if I was Administrative Judge for
21 Common Pleas it would be a different story, but -- or if I had
22 non-jury court again, neither one of them, so I respectfully
23 decline to do that. I appreciate the issues and problems that
24 it causes, but basically, since I don't have any more Common
25 Pleas Non-Jury Court the rest of the year I just don't know

1 that it's feasible, and I could fit it in. I'm also going to
2 be on the road a good bit too, so ---

3 **MR. TRAYWICK:** We appreciate your considering it. May
4 I ask one other thing?

5 **THE COURT:** Yes sir, absolutely.

6 **MR. TRAYWICK:** I don't know, and Brian, just let me
7 know, I don't think that anybody needs any discovery to have -
8 - some discovery disputes that we kind of pulled off the table
9 to try to streamline things.

10 **THE COURT:** All right. Okay.

11 **MR. TRAYWICK:** I don't think for the question of
12 whether the mortgage is still there, I don't think we need any
13 discovery on that, and you ---

14 **THE COURT:** Mr. Barnwell, do you disagree with that?

15 **MR. BARNWELL:** I don't think any more discovery is
16 needed on any issue.

17 **THE COURT:** It's just -- it seems like a pure legal
18 issue, well, you know, what's the -- you know, what's the
19 effect of that previous order.

20 **MR. BARNWELL:** I was going to talk with Mr. Traywick
21 about maybe trying to do a stipulation of facts to submit for
22 our next ---

23 **THE COURT:** That would probably -- that would -- I
24 would suggest that would be helpful ---

25 **MR. TRAYWICK:** I would love to, Your Honor.

1 **THE COURT:** ---To whomever, you know, would hear it.
2 You know, I'm hoping that, you know, just for your sake it's
3 not six months down the road - and I'll be glad to do it - but
4 it's not six months down the road and y'all haven't had a
5 hearing yet.

6 **MR. TRAYWICK:** The one issue about discovery - and I --
7 we have a little bit of fatigue with this case, so I'm not ---

8 **THE COURT:** I'm sure.

9 **MR. TRAYWICK:** ---Trying to do a lot of discovery, Your
10 Honor.

11 The one issue that I think where it could come up is
12 that, you know, there's going to be this equitable lien
13 argument and, you know, any time we bring up an equitable
14 matter now we've got to see about clean hands, and you've got
15 to do equity ---

16 **THE COURT:** Right.

17 **MR. TRAYWICK:** ---And seek equity and all this and ---

18 **THE COURT:** Right.

19 **MR. TRAYWICK:** ---And that tends to get into what
20 people did, and why, and what they were doing and what they
21 weren't doing ---

22 **THE COURT:** Certainly.

23 **MR. TRAYWICK:** ---And so I think that -- you know, this
24 is really where we were coming from before on trying to
25 conduct some discovery. I wonder, you know, I -- I wonder

1 whether Your Honor could offer some guidance on the
2 possibility that we could do some **Brady** depositions or ---

3 **THE COURT:** Well, if you just -- just for the purpose
4 of the summary judgment motion, if you are going to argue it,
5 I would think that the Circuit Judge would have some factual
6 questions as to just on the equitable lien issue, as to
7 exactly what was accomplished. Now, if you can do that
8 through a stipulation of facts, that's great. If it takes a
9 deposition or two I don't know that y'all need to, you know --
10 it doesn't seem to me that there would be a large amount of
11 discovery that would need to be done for that particular
12 issue, but in coming up with your stipulation of facts, if you
13 find a hole maybe it could be answered by a specific written
14 interrogatory, if not, you know, the deposition of a
15 particular person that, you know, the opposing counsel can
16 say, or you can say, we know (X) person would have this
17 information, and be able to answer the question. If you can
18 do it by writing, or if you have to do it orally, but just so
19 that the next time you come the facts are there before a
20 Court, and you know, it's one of those where, you know,
21 basically you've got the agreed-upon facts, or at least these
22 are what the people said, in front of the Judge, rather than
23 speculating or saying, well, I don't know what it would say so
24 I have to deny your motion for summary judgment, because I
25 don't know, you know, what the factual basis of it, you know,

1 between those parties is, so -- I don't know that that helps
2 at all. I'm suggesting though that, for your own -- for your
3 own goods in this case it would seem to me that y'all ought to
4 try and work and come up with a stipulation of facts, and
5 argue that in front of the Court on the next time, so that you
6 can get these legal issues resolved, or if the Court
7 ultimately says, (A) and (B) are diametrically opposed; you've
8 got to have a trial on who believes (A) or (B) at a -- you
9 know, at a trial, and even that it's narrowed it down, by your
10 efforts, so that you don't have, you know, maybe as expansive
11 a trial as you might have otherwise had.

12 MR. TRAYWICK: Your Honor, may I ---

13 THE COURT: Yes sir, please.

14 MR. TRAYWICK: Thank you.

15 We had noticed three depositions.

16 THE COURT: Okay.

17 MR. TRAYWICK: These are the subject matter of the --
18 of the Motion for a Protective Order. We have noticed the
19 Bank's deposition, and we've noticed the foreclosure law
20 firm's deposition, and their reason for that, and we've
21 noticed the deposition of the law firm that contacted us.
22 They wrote us a letter and said, you know, by error of
23 omission we failed to name you, and so we just wanted to kind
24 of establish some of those things to show, really the Bank and
25 it's lawyers have been kind of asleep at the switch, you know,

1 sitting on their rights and so forth, and ---

2 **THE COURT:** Well, have you first tried requests to
3 admit?

4 **MR. TRAYWICK:** We have not.

5 **THE COURT:** Okay.

6 **MR. BARNWELL:** You withdrew the deposition ---

7 **MR. TRAYWICK:** Oh yes. We've withdrawn, but I'm just -
8 --

9 **THE COURT:** Okay. And what I'm just saying, but I
10 mean, you know, that's another avenue, and ---

11 **MR. BARNWELL:** Let's just try the stipulation.

12 **THE COURT:** Try -- you know, I would suggest a
13 stipulation of facts, because honestly, I'm just speaking from
14 my perspective. That would be helpful. Okay. You are asking
15 the Court to decide these -- you know, I mean, it's not a
16 question that comes up every day. It would be, frankly,
17 easier for the Court if y'all can agree, here's the factual
18 basis, we don't have to argue about that, here's the facts,
19 Court, you decide the law, and either we agree with it or
20 disagree with it, and there it goes from there, but at least
21 that's taken care of, and the Court can say, okay, I'm relying
22 on, you know, points (A), (B), (C) and (D) that are in the
23 stipulation of facts, and because of that I believe this law
24 applies.

25 **MR. TRAYWICK:** And I think we can get ---

1 **THE COURT:** So it -- you know, if you can't then you
2 can't, and then maybe you'll you have to argue the issue about
3 the deposition, but my suggestion is, just for the Court's
4 benefit, agree on a stipulation of facts if at all you can.
5 Okay.

6 **MR. TRAYWICK:** Thank you, Your Honor.

7 **THE COURT:** All right.

8 **MR. BARNWELL:** Thank you, Your Honor.

9 **THE COURT:** Thank you, gentlemen. I appreciate it very
10 much.

11 **MR. TRAYWICK:** Thank you, sir.

12 **THE COURT:** All right.

13 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the MOTION HEARING of the captioned case, relative to appeal, in the COURT OF COMMON PLEAS NON-JURY for HORRY COUNTY, SOUTH CAROLINA, on the 24th day of June, 2014.

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

July 31, 2014

DIXIE COX EUBANK

CIRCUIT COURT REPORTER

FIFTEENTH JUDICIAL CIRCUIT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE HORRY COUNTY
Court of Common Pleas

The Honorable Steven H. John, Circuit Court Judge

Case No. 2013-CP-26-2861
Appellate Case No. 2014-002047

RECEIVED
APR 13 2015
SC Court of Appeals

Phyllis Hufton,

..... Respondent,

v.

Flagstar Bank, FSB and John Doe,

..... Defendants

of whom

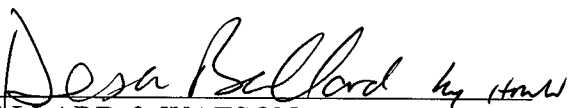
Flagstar Bank FSB is

..... Appellant

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material, with the exception of the Items designated by Respondents as Items 28, 30, and 32 which were not introduced before the trial court.

Respectfully submitted,


BALLARD & WATSON
Desa Ballard
desab@desaballard.com
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299

NELSON MULLINS RILEY & SCARBOROUGH

Jeremy C. Hodges

jeremy.hodges@nelsonmullins.com

Brian M. Barnwell

brian.barnwell@nelsonmullins.com

Post Office Box 11070

Columbia, South Carolina 29211

Telephone 803.799.2000

ATTORNEYS FOR APPELLANT

April 3, 2015