

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Marvin H. Dukes, III

Master in Equity and Circuit Court Judge

Case No. 2011-CP-07-01778

Appellate Case No. 2014-002712

RECEIVED

FEB 23 2016

SC Court of Appeals

BENJAMIN GECY Appellant,

v.

SOUTH CAROLINA BANK & TRUST, JAIME HAMNER
and DEBORAH HAMNER Respondents.

RECORD ON APPEAL

VOLUME II

(Pages 221 to 441)

Robert V. Mathison, Jr.
Mathison & Mathison
Post Office Box 5271
Hilton Head Island, SC 29938
**ATTORNEYS FOR APPELLANT
BENJAMIN GECY**

Thomas A. Holloway, Esquire
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Post Office Box 1107
Beaufort, SC 29901
**ATTORNEYS FOR RESPONDENT
SOUTH CAROLINA BANK & TRUST**

James J. Wegmann, Esquire
Weidner, Wegmann & Harper, LLC
6 Professional Village Circle
Beaufort, SC 29907
**ATTORNEYS FOR RESPONDENTS
JAIME HAMNER and DEBORAH
HAMNER**

- 8) The MPR waiver would have been critical to my closing if SCBT/ Jacobs and Hamner had applied for a VA LOAN. SCBT, Jacobs and Hamner failed to ever apply to the VA and falsely misrepresented their loan conditions wrongfully for the entire contract period, including the 30 day extension period.

**(see exhibit G "conventional loan application signed by Hamner and L.O Jacobs")
(Jacobs testimony 2/11/14 page 28)**

Q That's right, okay. Did you ever apply	9
for a VA loan for Mr. Hamner?	10
A No.	11
Q Did you ever get a VA loan I.D. number	12
from the VA portal?	13
A No.	14
Q Why not?	15
A We weren't doing a VA loan, we were	16
doing a conventional construction loan.	17

- 9) At all times from the initial contract date, Jaime Hamner and all SCBT agents informed me as the seller, VA financing was funding the transaction and required signatures from all parties to the private road maintenance agreement.

(Van Horn depositions 2/10/14 and emails pg 65)

GECY - VANHORN (DIRECT EXAMINATION)	1
Q Do you think the VA requires a road	2
maintenance agreement?	3
A Yes.	4
Q Okay. Do you think the VA requires	5
that all parties to a private road has to sign a	6
road maintenance agreement?	7
A That, I don't know.	8

- 10) SCBT & Hamner failed to make or apply for a VA Loan, and falsely participated in requiring me the seller to obtain and fulfill VA conditions not required under Title 38 of the U.S. Code in the VA Handbook.

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BEAUFORT COUNTY PUBLIC RECORDS

The record shall reflect that both Van Horn and Jacobs of SCBT testified under oath in recent depositions that they both would never close a construction to permanent or VA loan without first obtaining a road maintenance agreement signed by all parties to the private road. Those statements were clearly NOT TRUE.

- 11) SCBT could have closed the Meredith In transaction as the Beaufort County Public Records reflect other SCBT closings on construction-to-permanent loans have closed with "NO" road maintenance agreements in place prior to closing. These loans were identical to the Hamner financing package proposed for Meredith In.

(see exhibit H-1 Walters Construction loan & Permanent VA loan)

- 12) Beaufort county records also reflect that SCBT recently closed construction-to-permanent loans where the road maintenance agreement only included one party of a 10+ party private road. Sworn testimony from SCBT's Jacobs and Van Horn cite they have never closed a loan without receiving all party's signatures for the RMA.

(Jacobs testimony 2/11/14 page 35-36)

Q So it's -- so if it's a VA loan, SCBT	4
is always going to require a road maintenance	5
agreement signed by all parties before they'll	6
close that construction loan, is that what	7
you're telling me?	8
A Yes.	9
Q Have you ever deviated from the SCBT	10
policy?	11
A No.	12
Q Are you certain that in that manual	13
right there there are guidelines that say the VA	14
needs a road maintenance agreement?	15
A Yes.	16
Q Are you certain that SCBT followed	17
those guidelines on every loan?	18
A Yes.	19
Q Okay. Is there an exception that could	20
be made to those road maintenance agreement	21
rules in that manual?	22
A No.	23
Q Can you grant those exceptions?	24
A No.	25

(Page 36)

GECY - D. JACOBS (DIRECT EXAMINATION)	1
Q Do you have the authority?	2
A No.	3
Q Does anyone at the bank have the	4
authority?	5
A No.	6
Q Isn't it a fact the bank has recently	7
closed a construction-to-permanent loan going to	8
VA without requiring a road maintenance	9
agreement?	10
A Not that I'm aware of.	11
Q You're certain of that?	12
A Not that I originated, that I'm aware	13

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(See Exhibit H-4 & H-2) Van Horn / Jacobs)

- 13) SCBT and the VA do not require an all party road maintenance agreements for closings to a private road.

The Beaufort County Register of Deeds and Public Records confirm no such guideline exist. SCBT, its agents and Hamner have pled and misrepresented loan conditions from the very beginning of the Gecy/ Hamner contract

Doug Jacobs and his supervisor Bruce Van Horn, both testified on February 10th & February 11th, 2014 under oath, that SCBT has never closed a construction to permanent financing without a fully executed road maintenance agreement signed by all parties to the private drive.

(see exhibit " Single RMA Hester Ln" H-2)

(Van Horn Jacobs depo)

- 14) I have researched the Beaufort County records and found a recent SCBT construction to permanent loan where Bruce Van Horn, Doug Jacobs and SCBT did not receive a fully executed road maintenance agreement prior to closing signed by all parties to the private drive.

(see exhibit H-1 Walters Construction loan)

- 15) I have researched the Beaufort County records and found that in the same construction to permanent financing for Mr Walters, a recorded private road maintenance agreement to Hester Ln was signed by only one party. This RMA was recorded a year after the construction closing. Both Van Horn and Jacobs of SCBT testified in their depositions that had never closed a loan without getting all parties to fully execute a RMA (see exhibit H-4 Hester Ln)

- 16) I have been personally informed by Mr Walters himself, that Doug Jacobs a Vice President of SCBT prepared the RMA to include only one party in the agreement.
(Walters deposition is scheduled for Feb 27th, 2014 9:30 AM)

- 17) Mr Walters residence is located on Hester Ln Ladys Island SC 29907. Hester Ln has 10 or more residents and or property owners that use the private dr. None of the additional residents have signed the RMA

(see exhibit H-4 "Hester Ln")

Interference of "RMA" Condition

- 18) Doug Jacobs and SCBT falsely applied the VA road maintenance condition. Jacobs, Hamner and SCBT misrepresented the VA private road guideline and final condition requiring all parties to fully execute.
- 19) Doug Jacobs and SCBT's requirement of an all party signed road maintenance agreement was the deciding factor that failed my 10 meredith in transaction with the Hamner's.
- 20) The RMA, signed by all parties requirement, imposed by SCBT and Doug Jacobs, interfered with both contracts I had with the Hamner family.
- 21) SCBT & Doug Jacob' falsely applied another loan condition of; a survey of the easement with pavement locations and also provide an aerial view for all lot owners. (See exhibit F)
- 22) Easement surveys, aerial views and road surface measurements have never been a condition with any lender. The VA guidelines and Lenders handbook under Title 38 U.S. Code has no road survey, aerial view or surface measurement requirement. I have never witnessed such an unreasonable condition to a loan in my 15+ years originating and closing government back loans.

Misrepresentation of Loan Application

- 23) SCBT and Doug Jacobs misrepresented the type of financing on the Hamner loan application at all times during the contract.
- 24) Mr Hamner's signed application on Feb 13, 2010 was neither VA, or Construction financing. SCBT & Hamner had checked conventional financing. Hamner and his wife executed the documents as a conventional loan and misled me as the seller. (See exhibit Loan Application G)
- 25) At no time did SCBT nor the Hamners inform me they were applying for a conventional loan. All SCBT agents including the Hamners repeatedly informed me and the neighbors of Meredith In that the VA was providing financing and needed all parties to sign the road maintenance agreement

CHALMERS AFFIDAVIT

- 26) Diana Chalmers signed a sworn affidavit that she never agreed to sign a road maintenance agreement "ever". I have provided multiple emails where her family has agreed to sign the RMA on multiple occasions. (see Exhibit C) However, her RMA is irrelevant, as SCBT and VA policy do not require all parties to sign a road maintenance agreement as confirmed in The Beaufort County Public Records

- 27) Diana Chalmers testified under oath she did not send emails agreeing to sign a RMA. I have a scheduled deposition for Mr Ed Chalmers on February 26th, 2014. That deposition is part of my continuing discovery process that has not ended as of Feb 18th, 2014.

LOAN OFFICER & SUPERVISOR RESPONSIBILITIES

- 28) Bruce Van Horn supervisor monitoring Doug Jacobs testified on February 1th, 2014 that Doug Jacobs had no lending authority at SCBT.
- 29) Bruce Van Horn testified on Feb 10th 2014 that he had limited to no knowledge of VA guidelines.
- 30) Bruce Van Horn testified on Feb 10th, 2014 He was unsure if the bank had any guidelines in place as it applies to RMA's on a private road. (see exhibit A-6 Van Horn depo)
- 31) All VA loans require the buyer and bank to notify seller via a signed disclosure called "VA Ammendatory Clause." SCBT and its agents failed to provide me the VA Ammendatory document.
- 32) The VA never received an appraisal order form from SCBT.
- 33) The VA through a (NOV) Notice of Value is how road maintenance agreements are stipulated as noted in the VA Handbook under Title 38 U.S. Code. SCBT failed to apply for a VA loan and did not have proper authority to ask for any RMA condition or requirement as they have no written guidelines in place and did not receive the VA (notice of value).
- 34) SCBT never received a (NOV) Notice of Value from the VA
- 35) SCBT turned Jaime Hamner down for financing on March 10th 2010. Contract required an extension until April 5th, 2010. Denial specifically states "denial for no road maintenance agreement". SCBT improperly turned Hamner down as contract set forth a 30 day extension
- 36) Doug Jacobs should not have been working on the construction loan without proper supervision
- 37) SCBT and Bruce Van Horn failed to properly monitor and review the authenticity of the final conditions that interfered with my sale to the Hamner's
- 38) Bruce Van Horn testified on Feb. 10th 2014 he does not spend really anytime reviewing consumer loans or VA loan requirements and spends 90% of his time on his commercial portfolio. Bruce and SCBT as the lender to the contract had a duty of care as the lender, and to me as a seller, in making sure Doug Jacobs was monitored. Doug Jacobs was not authorized to work on construction loans without proper supervision

(Van Horn testimony 2/10/14 page 21)

GECY - VANHORN (DIRECT EXAMINATION) 1
A I was going to say I don't spend really 2
any time -- I've never done a consumer mortgage. 3
loan and I don't spend much time reviewing them. 4
Q In your book of business, in your 5
commercial loans, including construction loans, 6
are road maintenance agreements required to 7
close on a transaction? 8
A I've never -- I've never had one. 9
Q You've never had a problem with a road 10
maintenance agreement on a commercial loan? 11
A They just don't apply to commercial 12
loans. 13

Q

- 39) I emailed Bruce van Horn about a conflict of issue on the Moody report when it was completed in March. Bruce Van Horn testified in his deposition that she "potentially" had a conflict of interest in completing the report. Van Horn also testified in his deposition that SCBT never denied or rejected the appraisal.

(Van Horn testimony 2/10/14 page 51)

Okay. Did SCB&T ever reject or deny 20
the Moody appraisal from Patrice Moody on 10 21
Meridith Lane? 22
A No, we did not. 23

JAIME & DEBORAH HAMNER

- 40) Mr Hamner informed me the seller in writing on March 10th, 2010 that he was withdrawing his interest from both contracts due to RMA issue and appraisal issues. SCBT never issued a denial for appraisal or rejected the appraisal.

(See Exhibit "I" Hamner withdraw letter & exhibit "J" Denial letter)

(Van Horn testimony 2/10/14 page 51)

Q Okay. Did SCB&T ever reject or deny 20
the Moody appraisal from Patrice Moody on 10 21
Meridith Lane? 22
A No, we did not. 23

- 41) Jaime & Deborah Hamner misrepresented the type of financing they were applying for to me. Jaime Hamner testified that he applied for VA construction financing with SCBT. Mr Hamner also testified he had never applied for an adjustable rate mortgage before. Signed applications.

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produced by the defendant illustrate the loan was not a VA application and it was not a fixed rate mortgage but an adjustable 2 year conventional ARM.

(see exhibit "F" Hamner Application)

- 42) SCBT and The Hamner's obstructed my sale and construction agreement with the Hamners by not properly applying for a VA loan, and improperly applying a VA loan condition to a conventional loan application.

Mr Hamner cancelled the Meredith In contract because of false RMA guidelines.

- 43) Doug Jacobs testified on Feb 11th, 2014 the Hamner loan was a construction to permanent VA loan. The signed applications received from SCBT for the Hamner closing were neither VA nor construction. (see exhibit " A-7" Jacobs depo)

- 44) I Benjamin Gecy on multiple occasions offered the services of GMC Mortgage to Mr Hamner on programs that did not include any type of Road maintenance agreement at all. Mr Hamner refused the offer on every occasion. Doug Jacobs testified he gave Hamner this option in sworn testimony February 11, 2014

(Jacobs 2/11/14 pg 23/24)

Q Construction to perm with a rollover to	4.
VA, was that the scenario you proposed to Mr.	5.
Hamner?	6
A Construction and then his VA perm to	7
any lender he chose, yes.	8
Q Why does Mr. Hamner have a choice for	9
the lender? I thought you guys didn't sell to	10
any other lenders.	11
A Because if I do a construction loan and	12
he doesn't choose me for the VA permanent loan	13
he can do a VA permanent loan with any lender he	14
chooses.	15
Q What if that lender did not have a road	16
maintenance agreement requirement, would SCBT	17
still require an RMA?	18
A The RMA is required by the VA.	19
Q What if a lender that sells loans to	20
the VA did not have that requirement and Mr.	21
Hamner could have closed without a road	22
maintenance agreement would South Carolina Bank	23
and Trust have closed that construction loan?	24
A No.	25

ADDITIONAL FACTS

- 45) I Benjamin Gecy informed SCBT that I had other lenders who could close without requiring an RMA.

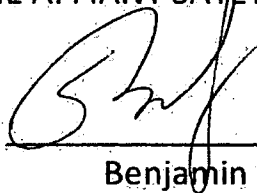
46) Doug Jacobs and SCBT failed its duty of care and obligation to me as a seller by misrepresenting financing and falsely applying unreasonable conditions not cited in Title 38 of the U.S. Code.

Doug Jacobs also testified on Feb 11th, 2014, that the bank only has a responsibility to the buyer

(Jacobs testimony 2/11/14)

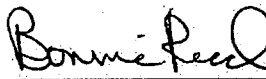
Q Did you -- did you feel there was an	19
obligation, as a lender, to pursue other lending	20
options?	21
A I didn't feel there was an obligation.	22
Q Do you have a standard duty of care to	23
the seller on contracts as a lender?	24
A No.	25

FURTHER THE AFFIANT SAYETH NOT.

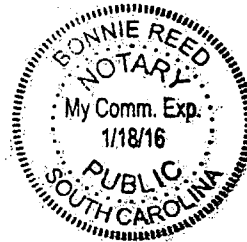
 2-19-14

Benjamin C. Gecy

Sworn to and Subscribed before me
On this 19 day of February, 2014

 (SEAL)

Notary Public for South Carolina
My Commission Expires: 1/18/16



STATE OF SOUTH CAROLINA)

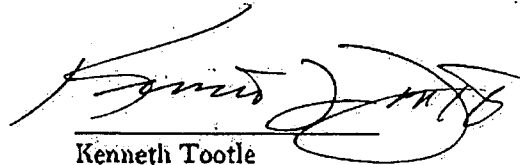
COUNTY OF BEAUFORT)

AFFIDAVIT

Personally appeared before me the WITNESS, Kenneth Tootle Attorney At Law, who, being duly sworn, deposes and says that:

I Kenneth Tootle was the closing agent for both buyer and seller of 10 Meredith Ln Beaufort SC 29907. I swear and affirm the following statements are true and correct:

- 1) On more than one occasion my office contacted Doug Jacobs at SCBT to inform him it was my opinion as an Attorney that all party's did not need to sign a road maintenance agreement for the Gecy/ Hammer transaction on Meredith Ln.
- 2) At all times Mr Jacob's informed me that my legal theory of one person in singular signing the RMA was not acceptable to the bank or VA guidelines.
- 3) Mr Jacob's also made it clear that my title company could not have any exceptions to the title report.


Kenneth Tootle

SWORN to before me this 19th day

Of February 2014


Notary Public for South Carolina

Commission expires:

Exhibit B

3. **Changes to the Contract:** Any changes to the construction contract, plans, or specifications must be submitted to SCBT, National Association for review and evaluation to establish how changes may impact your loan.

Requirements Prior to or at Closing:

1. **Funds to Complete:** All funds required to complete construction of the improvements in excess of the loan amount will be verified prior to closing and must be funded by you prior to commencement of the loan draws.

2. **Builder's Risk Insurance:** No later than closing, you must provide a one year builder's risk policy for the full amount of your loan or replacement costs of all completed improvements, whichever is less. Only the borrower may be listed as the named insured and SCBT, National Association as the Mortgagee. The builder can be listed as additional insured if the policy contains an endorsement stating that the Mortgagee will be paid in full before all others. A builder's blanket policy listing the borrower as an additional insured is not acceptable.

3. **Additional Documents that may be required prior:**

- Appraisal
- Flood Insurance
- Plans and Specifications
- Architectural approval
- Copy of recorded plat or metes and bounds survey
- ~~Copy of declarations and restrictive covenants~~
- Private street maintenance agreement
- Copy of permits and approvals such as building, septic tank, sewer, well permits; approval of private water system, zoning, etc.

Disbursements / Funding

1. **Funding Procedures:** You must call your Loan Originator to request draws as they are needed. Before draws are funded, an inspection must be performed to verify the work completed. In some cases, additional documentation or lien waivers may be required.

2. **Disbursement Policy:**

- Prior to each disbursement, SCBT, National Association will require an inspection to determine that satisfactory progress has been made to justify the amount of the requested draw. Each construction draw is limited to an amount that corresponds to the funds available and funds required to complete the project.
- Funds will be disbursed only for labor and material that is completed and/or installed. No funds shall be disbursed for stored material or deposits unless pre-approved.
- If interest payments or expenses (inspection fees, wire transfer fees, etc.) on the account are delinquent, no disbursement will be issued until the payments are current.
- If a lien has been filed, no draws will be funded until the lien is satisfied and a copy of the recorded satisfaction has been received by SCBT, National Association, the title insurance guarantees SCBT, National Association's continuing first lien position, or SCBT, National Association approves the draw.

Revision Date 01/19/2007

Exhibit C

Ben Gecy

From: Edward H chalmers [decsbeach@embarqmail.com]
Sent: Friday, April 16, 2010 12:00 PM
To: Ben Gecy
Subject: RE: FW: Scan from a Xerox WorkCentre
Attachments: _Certification_.txt

Ben

Pursuant to our phone conversation this morning I just want to state our position regarding the Road Maintenance Agreement you proposed us signing. When you initially approached us in regards to the aforementioned agreement you explained it was required by the Hamners to obtain VA financing. We spoke with Jamie Hamner and he confirmed this. We have no problem signing the agreement provided you agree to sign the addendum in regards to responsibility for damages incurred to the road during the construction of the Hamner home. You stated one of the objections you had to the addendum was the fact that it would nullify the Road Maintenance Agreement. I don't understand why you would object if the only intent of the agreement is to facilitate the VA loan for the Hamner's home.

Once the Road Agreement is signed and filed we become contractually obligated to repair road damage, even if it is done by construction equipment.

In summation, we have no problem signing The Road Maintenance Agreement to help the Hamner's obtain financing. We are only asking you to take written responsibility for any damages incurred to Meridith Lane by you, your company vehicles, or any subcontractors you use on the project.

We are only looking for you to live up to what you told us was the reason for the agreement, as well take responsibility for any damages your company or it's agents may do to Meridith Lane, nothing more, nothing less.

If you don't choose to sign the addendum, we'll just have to agree to disagree.

Regards

Ed and Diana Chalmers
8 Meridith Lane
Beaufort SC 29907----- Original Message -----

From: Ben Gecy

To: 'Edward H chalmers'

Sent: Fri, 16 Apr 2010 09:20:59 -0400 (EDT)

Subject: RE: FW: Scan from a Xerox WorkCentre

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From: Edward H

chalmers [mailto:decsbeach@embarqmail.com]

Sent: Wednesday, April 14, 2010

9:19 AM

To: Ben Gecy

Subject: Re: FW: Scan from a Xerox

WorkCentre

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The Road Maintenance Agreement is a condition of the Hamners obtaining financing for the aforementioned project. The addendum to the Road Maintenance Agreement is to protect the signing parties of The Road Maintenance Agreement against liability of damages due to the construction of the Hamners home. Should the Hamners not build on the proposed site which is 10

Meridith Lane both the Road Maintenance Agreement and this addendum shall become null and void.

Any damages must be documented and reported to River City Developers within 48

Hours by email or fax. River

City Developers agrees to

repair these damages in a timely fashion. Any damages determined to be the responsibility of River City Developers must be repaired within 30 days of completion of the project.

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

From: Ben Gecy

of the Hamner's residence.

The developer, River City Developers agrees to make a conscious effort to maintain the current condition of Meridith

Lane during the period of construction of the Hamner's home. Furthermore River City Developers agrees to be responsible for damages caused by it's company trucks and equipment as well as damages caused by subcontractors in regard to the building of the Hamner's residence. Damages incurred to the roadway and or adjoining property as a result of the proposed project will be the sole responsibility of River City Developers.

All parties to this agreement bear the responsibility of documenting for their records the current condition of Meridith

Lane.

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Ben

Please review at your convenience. This should be signed by all parties named on the Road Maintenance Agreement.

Thanks

Ed Chalmers

This addendum is to the Owner's Agreement to maintain Meridith Lane. The intent of this agreement is to protect the liability of the signing parties on the Road Maintenance Agreement against damages other than normal wear and tear incurred to Meridith Lane and adjoining property due to and during the construction.

Ben Gecy

From: Edward H chalmers [decsbeach@embarqmail.com]
Sent: Thursday, April 15, 2010 6:37 AM
To: Ben Gecy
Subject: RE: FW: Scan from a Xerox WorkCentre
Attachments: _Certification_.txt

Ben

Please forward your "adjustments" you want. I'll call you when we get home later this afternoon so you can come over and we can get things signed.

Ed Chalmers

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

From: Ben Gecy

To: 'Edward H chalmers'

Sent: Wed, 14 Apr 2010 10:07:30 -0400 (EDT)

Subject: RE: FW: Scan from a Xerox WorkCentre

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Exhibit F

Doug Jacobs

From: Doug Jacobs
Sent: Monday, April 05, 2010 3:20 PM
To: 'Ben Gecy'
Cc: Bruce W Vanhorn
Subject: RE: rma

Ben, I will need a couple of items to go with this RMA so I can submit it to the underwriter:

1. Survey from Christensen-Khahil of 3/29/10 (does this show what is paved and what is not?)
2. Overview/birds eye view of Meredith Lane from subject property to James F. Byrnes showing what properties are adjacent and included in RMA.
3. Copies of the tax records showing ownership that match #2.

Thanks
Doug

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

From: Ben Gecy [mailto:ben@beaufortlending.com]
Sent: Monday, April 05, 2010 1:02 PM
To: Doug Jacobs
Cc: Bruce W Vanhorn
Subject: FW: rma

Doug

Here is the RMA that John Ferguson and all parties of the road have agreed to sign... To expedite the closing please move it to an at closing condition... I believe you made an exception to have as an at closing condition several weeks ago. Please let me know if you need anything else

Please advise: There will be no title exceptions and all parties are signing the agreement.

Benjamin Gecy
Owner
ben@beaufortlending.com
GMC Mortgage
Phone: 843-524-2404
Fax: 843-524-2414

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

From: MICHELLE L. FLUDD [mailto:tootle_title@hargray.com]
Sent: Thursday, April 01, 2010 10:57 AM
To: ben Gecy
Subject: Fw:

Michelle Smith Fludd
Paralegal for
Kenneth L. Tootle
Post Office Box 1321
1015 Prince Street
Beaufort, South Carolina 29901
(843) 524-0424
(843) 524-1264

This message is intended for the individual or entity to which it is addressed and may contain information that is privileged and/or confidential. If you are not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this

Exhibit 6

SCBT, National Association
Uniform Residential Loan Application

This application is designed to be completed by the applicant(s) with the Lender's assistance. Applicants should complete this form as "Borrower" or "Co-Borrower", as applicable. Co-Borrower information must also be provided (and the appropriate box checked) when ☐ the income or assets of a person other than the Borrower (including the Borrower's spouse) will be used as a basis for loan qualification or ☐ the income or assets of the Borrower's spouse or other person who has community property rights pursuant to state law will not be used as a basis for loan qualification, but his or her liabilities must be considered because the spouse or other person has community property rights pursuant to applicable law and Borrower resides in a community property state, the security property is located in a community property state, or the Borrower is relying on other property located in a community property state as a basis for repayment of the loan.
 If this is an application for joint credit, Borrower and Co-Borrower each agree that we intend to apply for joint credit (sign below).

Deborah L. Hamner Jamie R. Hamner
 Borrower Co-Borrower

TYPE OF MORTGAGE AND TERMS OF LOAN
 Mortgage: ☐ VA ☒ Conventional ☐ Other (explain): _____ Agency Case Number _____ Lender Case Number _____
 Applied for: ☐ FHA ☐ USDA/Rural Housing Service

Amount: \$ 306,900.00 Interest Rate: 6.000 % No. of Months: 360 Amortization: ☐ Fixed Rate ☐ Other (explain): _____
 Type: ☐ GPM ☒ ARM (type): 2 Year ARM

PROPERTY INFORMATION AND PURPOSE OF LOAN
 Subject Property Address (street, city, state, & ZIP): 10 Meredith Lane, Beaufort, SC 29907 County: Beaufort No. of Units: 1
 Legal Description of Subject Property (attach description if necessary): _____ Year Built: _____
 See Preliminary Title Report

Purpose of Loan: ☒ Purchase ☐ Construction ☐ Other (explain): _____ Property will be: ☒ Primary Residence ☐ Secondary Residence ☐ Investment
☐ Refinance ☐ Construction-Permanent

Complete this line if construction or construction-permanent loan.
 Year Lot Acquired _____ Original Cost \$ _____ Amount Existing Liens \$ _____ (a) Present Value of Lot \$ _____ (b) Cost of Improvements \$ _____ Total (a+b) \$ _____

Complete this line if this is a refinance loan.
 Year Acquired _____ Original Cost \$ _____ Amount Existing Liens \$ _____ Purpose of Refinance _____ Describe Improvements ☐ made ☐ to be made
 Cost \$ _____

Title will be held in what Name(s): Deborah L. Hamner, Jamie R. Hamner Manner in which Title will be held: ☒ Joint tenants Estate will be held in: ☒ Fee Simple ☐ Leasehold (show expiration date) _____
 Source of Down Payment, Settlement Charges and/or Subordinate Financing (explain): _____
 Equity On Pending Sale

BORROWER INFORMATION

Borrower's Name (include Jr. or Sr. if applicable): Deborah L. Hamner Co-Borrower's Name (include Jr. or Sr. if applicable): Jamie R. Hamner
 Social Security Number _____ Home Phone (incl. area code) _____ DOB (MM/DD/YYYY) 12/31/1976 Yrs. School _____ Social Security Number _____ Home Phone (incl. area code) _____ DOB (MM/DD/YYYY) 08/13/1972 Yrs. School _____

☒ Married ☐ Unmarried (include single, divorced, widowed) Dependents (not listed by Co-Borrower) ☒ Married ☐ Unmarried (include single, divorced, widowed) Dependents (not listed by Borrower) ☐ Separated
 no. ages no. ages

Present Address (street, city, state, ZIP): 11 Southern Magnolia Drive Beaufort, SC 29907 ☒ Own ☐ Rent No. Yrs. 8Y6M
 Present Address (street, city, state, ZIP): 11 Southern Magnolia Drive Beaufort, SC 29907 ☒ Own ☐ Rent No. Yrs. 8Y6M

Mailing Address, if different from Present Address: 11 Southern Magnolia Drive Beaufort, SC 29907
 Mailing Address, if different from Present Address: 11 Southern Magnolia Drive Beaufort, SC 29907

If residing at present address for less than two years, complete the following:
 Former Address (street, city, state, ZIP): PSC 557 Box 1443 Fpo, AP 86379 ☐ Own ☒ Rent No. Yrs. 4Y
 Former Address (street, city, state, ZIP): PSC 557 Box 1443 Fpo, AP 86379 ☐ Own ☒ Rent No. Yrs. 4Y

EMPLOYMENT INFORMATION

Name & Address of Employer: U.S. Marine Corps 6th MCD, MCRD Parris Island Beaufort, SC 29905 ☐ Self Employed Yrs. on this job 15Y Yrs. employed in this line of work/profession 15
 Name & Address of Employer: U.S. Marine Corps H&S Bn, Band, MCRD Parris Island Beaufort, SC 29905 ☐ Self Employed Yrs. on this job 18Y Yrs. employed in this line of work/profession 18

Position/Title/Type of Business: Gunnery Sgt E7 Business Phone (incl. area code) 843-228-2080
 Position/Title/Type of Business: Gunnery Sgt E7 Business Phone (incl. area code) 843-228-3743

If employed in current position for less than two years or if currently employed in more than one position, complete the following:
 Name & Address of Employer: _____ ☐ Self Employed Dates (from-to) _____
 Name & Address of Employer: _____ ☐ Self Employed Dates (from-to) _____

Monthly Income \$ _____
 Monthly Income \$ _____

Position/Title/Type of Business: _____ Business Phone (incl. area code) _____
 Position/Title/Type of Business: _____ Business Phone (incl. area code) _____

Name & Address of Employer: _____ ☐ Self Employed Dates (from-to) _____
 Name & Address of Employer: _____ ☐ Self Employed Dates (from-to) _____

Monthly Income \$ _____
 Monthly Income \$ _____

Position/Title/Type of Business: _____ Business Phone (incl. area code) _____
 Position/Title/Type of Business: _____ Business Phone (incl. area code) _____

PLAINTIFF'S
EXHIBIT

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SCBT, National Association

Y-MONTHLY INCOME AND COMBINED HOUSING EXPENSE INFORMATION						
Gross Monthly Income:	Borrower	Co-Borrower	Total	Combined Monthly Housing Expense	Present	Proposed
Base Empl. Income*	\$ 3,859.50	\$ 4,085.70	\$ 7,945.20	Rent	\$ 918.00	\$ 1,278.75
Overtime:				First Mortgage (P&I)		
Bonuses				Other Financing (P&I)	166.00	
Commissions				Hazard Insurance:		150.00
Dividends/Interest				Real Estate Taxes		105.00
Net Rental Income				Mortgage Insurance		
Other (before completing, see the notice in "describe other income," below)				Homeowner Assn. Dues		
	1,476.87	1,832.87	3,308.74	Other:		
Total	\$ 5,335.37	\$ 5,918.57	\$ 11,253.94	Total	\$ 1,084.00	\$ 1,533.75

* Self Employed Borrower(s) may be required to provide additional documentation such as tax returns and financial statements.

Described Other Income: Notice: Alimony, child support, or separate maintenance income need not be revealed if the Borrower (B) or Co-Borrower (C) does not choose to have it considered for repaying this loan.

B/C		Monthly Amount:
B	Military Rations Allowance	\$ 323.87
B	Military Quarters Allowance	1,152.00
C	Military Rations Allowance and Military Qtrs Allowance	1,832.87

ASSETS AND LIABILITIES
This Statement and any applicable supporting schedules may be completed jointly by both married and unmarried Co-Borrowers if their assets and liabilities are sufficiently joined so that the Statement can be meaningfully and fairly presented on a combined basis; otherwise separate Statements and Schedules are required. If the Co-Borrower section was completed about a non-applicant spouse or other person, this Statement and supporting schedules must be completed about that spouse or other person also.
Completed ☐ Jointly ☐ Not Jointly

ASSETS		Cash or Market Value	LIABILITIES		
Description			Name and address of Company	Monthly Payment & Months Left to Pay	Unpaid Balance
Cash deposit toward purchase held by:	\$				
List checking and savings accounts below					
Name and address of Bank, S&L, or Credit Union			BB&T	\$ 918.00	\$ 100,801.00
Fidelity Destiny First Command			PO BOX 2027 GREENVILLE, SC 29602		
Acct. no.	\$ 9,000.00		Acct. no. 9336610789984		
Name and address of Bank, S&L, or Credit Union			GREEN TREE SERVICING	\$ 166.00	\$ 22,047.00
Fidelity Destiny First Command			332 MINNESOTA ST STE 610 SAINT PAUL, MN 55101	133	
Acct. no.	\$ 18,000.00		Acct. no. 8920		
Name and address of Bank, S&L, or Credit Union			NAVY FCU	\$ 340.00	\$ 14,805.00
Fidelity Destiny First Command			PO BOX 3600 MERRIFIELD, VA 22116	0	
Acct. no.	\$ 18,000.00		Acct. no. 42174181600109		
Name and address of Bank, S&L, or Credit Union			NAVY FCU	\$ 440.00	\$ 11,547.00
Fidelity Destiny First Command			PO BOX 3600 MERRIFIELD, VA 22116	0	
Acct. no.	\$ 27,000.00		Acct. no. 42174181600110		
Stocks & Bonds (Company name/number & description)			NAVY FCU	\$ 177.00	\$ 8,816.00
			820 FOLLIN LN SE VIENNA, VA 22180	50	
			Acct. no. 406041201368		
Life Insurance net cash value			BK OF AMER	\$ 534.00	\$ 4,775.00
Face amount:			201 N TRYON ST CHARLOTTE, NC 28202	0	
Subtotal Liquid Assets	\$ 87,000.00		Acct. no. 63010001944034		
Real estate owned (enter market value from schedule of real estate owned)	\$ 152,000.00		Name and address of Company	\$ 20.00	\$ 891.00
Vested interest in retirement fund			NAVY FEDERAL CR UNIO	45	
Net worth of business(es) owned (attach financial statement)			820 FOLLIN LANE VIENNA, VA 22180		
Automobiles owned (make and year)			Acct. no. 1741816704		
Other Assets (itemize)			Alimony/Child Support/Separate Maintenance Payments Owed to:		
			Job-Related Expense (child care, union dues, etc.)		
			Total Monthly Payments*	\$ 1,511.00	
Total Assets &	\$ 239,000.00		Total Liabilities &	\$ 163,682.00	

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SCBT, National Association

VI: ASSETS AND LIABILITIES (cont.)

Schedule of Real Estate Owned (If additional properties are owned, use continuation sheet.)

Property Address (enter S if sold, PS if pending sale or R if rental being held for income)	Type of Property	Present Market Value	Amount of Mortgages & Liens	Gross Rental Income	Mortgage Payments	Insurance, Maintenance, Taxes & Misc.	Net Rental Income
11 Southern Magnolia Drive Beaufort, SC 29907	PS SFR	\$ 152,000.00	\$ 122,848.00	\$	\$ 1,084.00	\$ 0.00	\$
	Totals	\$ 152,000.00	\$ 122,848.00	\$	\$ 1,084.00	\$	\$

[illegible]**REVIEW DETAILS OF TRANSACTION**

AWARDS & CELEBRATIONS

		Borrower		Co-Borrower	
		Yes	No	Yes	No
a. Purchase Price	\$ 308,900.00	If you answer "Yes" to any questions a through l, please use continuation sheet for explanation.			
b. Alterations, improvements, repairs		☐	☒	☐	☒
c. Land (if acquired separately)		☐	☒	☐	☒
d. Refinance (incl. debts to be paid off)		☐	☒	☐	☒
e. Estimated prepaid items	2,430.62	a. Are there any outstanding judgments against you?			
f. Estimated closing costs	6,326.76	b. Have you been declared bankrupt within the past 7 years?			
g. PMI, MIP, Funding Fee		c. Have you had property foreclosed upon or given title or deed in lieu thereof in the last 7 years?			
h. Discount (if Borrower will pay)		☐	☒	☐	☒
i. Total costs (add items a through h)	315,657.37	☐	☒	☐	☒
j. Subordinate financing		d. Are you a party to a lawsuit?			
k. Borrower's closing costs paid by Seller		e. Have you directly or indirectly been obligated on any loan which resulted in foreclosure, transfer of title in lieu of foreclosure, or judgment? (This would include such loans as home mortgage loans, SBA loans, home improvement loans, educational loans, manufactured (mobile) home loans, any mortgage, financial obligation, bond, or loan guarantee. If "Yes," provide details, including date, name and address of lender, FHA or VA case number, if any, and reasons for the action.)			
l. Other Credits (explain)		☐	☒	☐	☒
Total Other Paid CC	3,000.00	f. Are you presently delinquent or in default on any Federal debt or any other loan, mortgage, financial obligation, bond or loan guarantee? If "Yes," give details as described in the preceding question.			
		☐	☒	☐	☒
		g. Are you obligated to pay alimony, child support, or separate maintenance?			
		☐	☒	☐	☒
		h. Is any part of the down payment borrowed?			
		☐	☒	☐	☒
		i. Are you a co-maker or endorser on a note?			
		☐	☒	☐	☒
		j. Are you a U.S. citizen?			
		☒	☐	☒	☐
		k. Are you a permanent resident alien?			
		☒	☐	☒	☐
		l. Do you intend to occupy the property as your primary residence? If "Yes," complete question m below.			
		☒	☐	☒	☐
m. Loan amount (exclude PMI, MIP, Funding Fee financed)	306,900.00	m. Have you had an ownership interest in a property in the last three years?			
n. PMI, MIP, Funding Fee financed		(1) What type of property did you own - principal residence (PR), second home (SH), or investment property (IP)?			
o. Loan amount (add m & n)	306,900.00	PR PR			
p. Cash from l to Borrower (subtract l, k, i & o from i)	5,757.37	(2) How did you hold title to the home - solely by yourself (S), jointly with your spouse (SP), or jointly with another person (O)?			
		SP SP			

IX. ACKNOWLEDGEMENT AND AGREEMENT

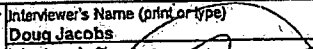
Each of the undersigned specifically represents to Lender and to Lender's actual or potential agents, brokers, processors, attorneys, insurers, servicers, successors and assigns and agrees and acknowledges; that: (1) the information provided in this application is true and correct as of the date set forth opposite my signature and that any intentional or negligent misrepresentation of this information contained in this application may result in civil liability, including monetary damages, to any person who may suffer any loss due to reliance upon any misrepresentation that I have made on this application, and/or in criminal penalties including, but not limited to, the fine or imprisonment or both under the provisions of Title 18, United States Code, Sec. 1001, et seq.; (2) the loan requested pursuant to this application (the "Loan") will be secured by a mortgage or deed of trust on the property described in this application; (3) the property will not be used for any illegal or prohibited purpose or use; (4) all statements made in this application are made for the purpose of obtaining a residential mortgage loan; (5) the property will be occupied as indicated in this application; (6) the Lender, its servicers, successors or assigns may retain the original and/or electronic record of this application, whether or not the Loan is approved; (7) the Lender and its agents, brokers, insurers, servicers, successors and assigns may continuously rely on the information contained in the application, and I am obligated to amend and/or supplement the information provided in this application if any of the material facts that I have represented herein should change prior to closing of the Loan; (8) in the event that my payments on the Loan become delinquent, the Lender, its servicers, successors or assigns may, in addition to any other rights and remedies that it may have relating to such delinquency, report my name and account information to one or more consumer reporting agencies; (9) ownership of the Loan and/or administration of the Loan account may be transferred with such notice as may be required by law; (10) neither Lender nor its agents, brokers, insurers, servicers, successors or assigns has made any representation or warranty, express or implied, in me regarding the property or the condition or value of the property; and (11) my transmission of this application as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or my facsimile transmission of this application containing a signature, as such terms shall be as effective, enforceable and valid as if a paper version of this application were delivered containing my original written signature.

Acknowledgment: Each of the undersigned hereby acknowledges that any owner of the Loan, its servants, successors and assigns, may verify or reverify any information contained in this application or obtain any information or data relating to the Loan, for any legitimate business purpose through any source, including a source named in this application or a consumer reporting agency.

Borrower's Signature	Date	Co-Borrower's Signature	Date
	2/13/16		2/13/16

INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the Federal Government for certain types of loans related to a dwelling in order to monitor the lender's compliance with equal credit opportunity, fair housing and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender may not discriminate either on the basis of this information, or on whether you choose to furnish it. If you furnish the information, please provide both ethnicity and race. For race, you may check more than one designation. If you do not furnish ethnicity, race, or sex, under Federal regulations, this lender is required to note the information on the basis of visual observation and surname if you have made this application in person. If you do not wish to furnish the information, please check the box below. (Lender must review the above material to assure that the disclosures satisfy all requirements to which the lender is subject under applicable state law for the particular type of loan applied for.)

BORROWER ☐ I do not wish to furnish this information.		CO-BORROWER ☐ I do not wish to furnish this information.	
Ethnicity: ☐ Hispanic or Latino ☒ Not Hispanic or Latino		Ethnicity: ☐ Hispanic or Latino ☒ Not Hispanic or Latino	
Race: ☐ American Indian or Alaska native ☐ Asian ☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander ☒ White		Race: ☐ American Indian or Alaska native ☐ Asian ☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander ☒ White	
Sex: ☒ Female ☐ Male		Sex: ☐ Female ☒ Male	
To be Completed by Interviewer This application was taken by: ☒ Face-to-face interview ☐ Mail ☐ Telephone ☐ Internet		Interviewer's Name (print or type) Doug Jacobs Interviewer's Signature  Interviewer's Phone Number (incl. area code) 843-521-5507	
		Name and Address of Interviewer's Employer SCBT, National Association 189 Sea Island Parkway Ladys Island, SC 29907 (P) 800-277-2175 (F) 843-521-5555	

SCBT, National Association

Continuation Sheet/Residential Loan Application

Use this continuation sheet if you need more space to complete the Residential Loan Application. Mark B for Borrower or C for Co-Borrower.

Borrower:
Deborah L. Hamner
Co-Borrower:
Jamie R. Hamner

Agency Case Number:

Lender Case Number:

[Large handwritten 'X' mark across the page]

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I/We fully understand that it is a Federal crime punishable by fine or Imprisonment, or both, to knowingly make any false statements concerning any of the above facts as applicable under the provisions of Title 18, United States Code, Section 1001, et seq.

Borrower's Signature:	Date	Co-Borrower's Signature:	Date
x Deborah L. Hamner	2/13/10	x Jamie R. Hamner	2/13/10

Federal Truth-In-Lending Disclosure Statement

Lender/Broker: SCBT, National Association	Loan Number: 30231002026179	TIL Date: 02/13/2010
Borrower(s): Deborah L. Hamner Jamil R. Hamner	Property Address: 10 Meredith Lane Beaufort, SC 29907	
☒ Initial Disclosure estimated at time of application ☐ Final Disclosure based on contract terms		

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you assuming the annual percentage rate does not change.	The amount of credit provided to you or on your behalf as of loan closing.	The amount you will have paid after you have made all payments as scheduled assuming the annual percentage rate does not change.
E 4.651 %	E \$ 262,423.87	E \$ 302,842.00	E \$ 666,365.87

Your Payment Schedule Will Be:

Number of Payments	* Amount of Payments	Monthly Payments Are Due Beginning	Number of Payments	* Amount of Payments	Monthly Payments Are Due Beginning
12	1,278.76	04/01/2010			
347	1,580.51	04/01/2011			
1	1,583.90	03/01/2040			

* Includes mortgage insurance premiums, excludes taxes, hazard insurance and flood insurance.

- ☐ Demand Feature: This loan transaction has a demand feature.
☐ Required Deposit: The annual percentage rate does not take into account your required deposit.
☒ Variable Rate Feature: Your loan contains a Variable Rate Feature. Disclosures about the Variable Rate Feature have been provided to you separately.

Security Interest: You are giving security interest in: 10 Meredith Lane, Beaufort SC 29907

☒ the goods or property being purchased. ☐ real property you already own.

Filing or Recording Fees: \$ 35.00

Late Charge: If a payment is more than 15 days late, you will be charged \$ 76.69 / 5.000 % of the payment.

Prepayment: If you pay off your loan early, you

☐ may ☒ will not have to pay a penalty.

☐ may ☒ will not be entitled to a refund of part of the finance charge.

Insurance: Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost.

Type	Premium	Signature	Signature:
Credit Life		I want credit life insurance.	Signature:
Credit Disability		I want credit disability insurance.	Signature:
Credit Life and Disability		I want credit life and disability insurance.	Signature:

This loan transaction requires the following insurance:

☒ Hazard Insurance ☐ Flood Insurance ☐ Credit Insurance ☐ Credit Life Insurance ☐ MMI ☐ PMI

Borrower(s) may obtain hazard and flood insurance through any person of his/her choice, provided said carrier meets the requirements of the Lender. If Borrower desires Property Insurance to be obtained through the Lender's designated agency, the cost will be set forth in a separate insurance statement furnished by the Lender.

☐ If you purchase Insurance from creditor, you will pay \$ _____ for a one-year term.

Assumption: Someone buying your house:

☐ may ☐ may, subject to conditions, ☒ may not assume the remainder of your loan on the original terms.

See your contract documents for additional information regarding nonpayment, default, right to accelerate the maturity of the obligation, prepayment rebates and penalties, and the Lender's policy regarding assumption of the obligation.

You are not required to complete this agreement merely because you have received these disclosures or signed a loan application.

☒ All dates and numerical disclosures except late payment disclosures are estimates. E means an estimate.

"The undersigned hereby acknowledge receiving and reading a completed copy of this disclosure along with copies of the documents provided. The delivery and signing of this disclosure does not constitute an obligation on the part of the lender to make, or the Borrower(s) to accept, the loan as identified."

Read, acknowledged and accepted this 13th day of February, 2010

Deborah L. Hamner
Borrower
Deborah L. Hamner

Date:

Co-borrower

Jamil R. Hamner

Date:

EXHIBIT 11

BEAUFORT COUNTY SC - ROD
BK 03186 PGS 0446-0458
FILE NUM 2012062781
10/26/2012 04:42:18 PM
REC'D BY S SMITH RCPT# 692604
RECORDING FEES 19.00

After Recording Return To:
SCBT
FIDEL DOCUMENT DEPARTMENT
700 GERVAIS STREET, STE E
COLUMBIA, SC 29201
LOAN #: 30231209045862

PLAINTIFF'S
EXHIBIT

Handwritten signature

This instrument was prepared by:

[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 9, 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 OCTOBER 25, 2012, together with all Riders to this document.
- (B) "Borrower" is ROBERT E. WALTERS JR.

Borrower is the mortgagor under this Security instrument.
(C) "Lender" is SCBT.

Lender is a CORPORATION,
SOUTH CAROLINA,
STE E, COLUMBIA, SC 29201.

organized and existing under the laws of
Lender's address is 700 GERVAIS STREET.

Lender is the mortgagee under this Security instrument.

(D) "Note" means the promissory note signed by Borrower and dated OCTOBER 25, 2012. The Note states that Borrower owes Lender ***** HUNDRED THIRTY TWO THOUSAND SEVEN HUNDRED AND NO/100 ***** Dollars (U.S. \$132,700.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than NOVEMBER 1, 2043.

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

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

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

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

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

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

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephone instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes:

Initials: *[Handwritten initials]*



not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

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

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

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

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

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns the following described property located in the County of _____ [Type of Recording Jurisdiction] of

Beaufort

(Name of Recording Jurisdiction):

SEE EXHIBIT "A" ATTACHED HERETO

which currently has the address of 12 Hester Lane, Beaufort,

[Street] [City]

South Carolina 29907

("Property Address"):

[Zip Code]

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

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

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

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

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

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payment is 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 hereafter or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to do so.

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

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

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

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

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

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

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but shall not be bound by such agreement; (b) consents the lien is good faith by, or defends against enforcement of the lien.

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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 obtain 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 sentence 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.

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



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to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

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

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

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

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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 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 18) 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 which constitutes a violation of 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.

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

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

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

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

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

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

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

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

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for 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, instrumentally or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievances. 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. The 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 the information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and the sale is subject to

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

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

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

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

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any 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 site evidence, all of which shall be additional sums secured by this Security Instrument.

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

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

25. **Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. This waiver shall not apply so long as the Property is used as a dwelling place as defined in § 12-57-250 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.

Initials: *[Signature]*



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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]

Robert E. Walters Jr. (Seal)
Robert E. Walters Jr.

State of SOUTH CAROLINA
County of BEAUFORT

The foregoing instrument was acknowledged before me this 15th day of July, 2012 (date) by Robert E. Walters Jr (name of person acknowledged).

Tramont L. Hargrett
Print Name of Person Taking Acknowledgement

[Signature]
Signature of Person Taking Acknowledgement

NOTARY PUBLIC

Title of Rank

2/1/14
My commission expires:

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FIXED/ADJUSTABLE RATE RIDER
(One-Year Treasury Index-Rate Caps)

THIS FIXED/ADJUSTABLE RATE RIDER is made this 25th day of October, 2012 and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Fixed/Adjustable Rate Note (the "Note") to acm

("Lender") of the same date and covering the property described in the Security Instrument and located at: 12 Hester Lane, Beaufort, SC 29907.

THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT THE BORROWER'S ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

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

A. ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial fixed interest rate of 3.750%. The Note also provides for a change in the initial fixed rate to an adjustable rate, as follows:

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the 1st day of November, 2012 and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an index. The "Index" is the weekly average yield on United States Treasury securities adjusted to a constant maturity of one year, as made available by the Federal Reserve Board. 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 that is based upon comparable information. The Note Holder will give me notice of this choice.

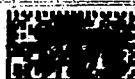
(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding seven and one-eighth percentage points (7.125%) 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 next day. This will be the new amount of my monthly payment. 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 5.750% or less than 3.125%. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points (2.000%) from the rate



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of interest I have been paying for the preceding 12 month(s). My interest rate will never be greater than 9.750%.

LOAN #: 30231209045862

(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 initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any 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.

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

1. Until Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument shall read as follows:

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

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

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

2. When Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument described in Section B) above shall then cease to be in effect, and the provisions of Uniform Covenant 18 of the Security Instrument shall be amended to read as follows:

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

If all or any part of the Property or any interest in the Property is sold or transferred (or if 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 caused to be submitted to Lender information required by Lender to evaluate the intended transfer 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.



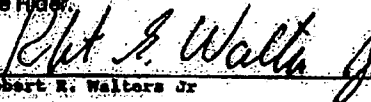
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LOAN #: 20251209045863

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 also may 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.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Fixed/Adjustable Rate Rider.

 (Seal)
Robert R. Walters Jr.



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12/23/13
7113
Hager

LXh.011 11-1-13

When recorded, return to:
SCBT
Attn: Final Document Department
700 Gervais Street, Suite E
Columbia, SC 29201

BEAUFORT COUNTY SC - ROD
BK 03294 PGS 0785-0796
FILE NUM 2013072998
12/23/2013 03:18:52 PM
REC'D BY S WASHINGTON RCPT# 731789
RECORDING FEES 18.00

This document was prepared by:
SCBT
700 Gervais Street, Suite E
Columbia, SC 29201

PLAINTIFF'S
EXHIBIT

[Signature]

LOAN #: 30231307053118

[Space Above This Line For Recording Data]

CASE #: 19-19-6-0441591

MORTGAGE

MIN 1001266-0002013490-8

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 December 16, 2013, together with all Riders to this document.

(B) "Borrower" is ROBERT E. WALTERS 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) 679-MERS.

(D) "Lender" is SCBT.

Lender is a Corporation,
South Carolina.
Columbia, SC 29201

organized and existing under the laws of
Lender's address is 700 Gervais Street, Suite E,

(E) "Note" means the promissory note signed by Borrower and dated December 16, 2013. The Note states that Borrower owes Lender ONE HUNDRED THIRTY SEVEN THOUSAND THREE HUNDRED NINETY ONE AND NO/100..... Dollars (U.S. \$137,391.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than January 1, 2044.

(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.



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(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 1024), 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 Beaufort.

[Name of Recording Jurisdiction]:

SEE EXHIBIT "A" ATTACHED HERETO

which currently has the address of 12 Hester Lane, Beaufort,

[Street] [City]

South Carolina 29907

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

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

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

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received,



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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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



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 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

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

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

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

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

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits.



under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

25. Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY



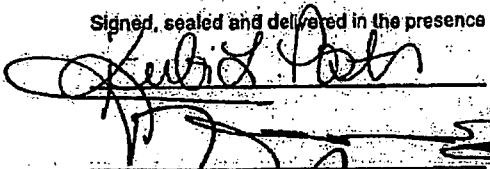
LOAN #: 30231307053118

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:



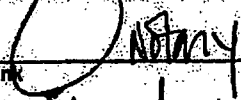

ROBERT E. WALTERS JR

12-16-13 (Seal)
DATE

State of SOUTH CAROLINA
County of BEAUFORT

The foregoing instrument was acknowledged before me this DECEMBER 16, 2013 (date) by ROBERT E. WALTERS JR (name of person acknowledged).


Signature of Person Taking Acknowledgement


Title or Rank


My commission expires:



LOAN #: 30231307053118
CASE #: 19-19-6-0441591
MIN: 1001260-0002013490-8

VA GUARANTEED LOAN AND ASSUMPTION POLICY RIDER

NOTICE: THIS LOAN IS NOT ASSUMABLE WITHOUT THE APPROVAL OF THE DEPARTMENT OF VETERANS AFFAIRS OR ITS AUTHORIZED AGENT.

THIS VA GUARANTEED LOAN AND ASSUMPTION POLICY RIDER is made this 16TH day of December, 2013, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Deed to Secure Debt (herein "Security Instrument") dated of even date herewith, given by the undersigned (herein "Borrower") to secure Borrower's Note to SGBT

(herein "Lender")

and covering the Property described in the Security Instrument and located at
12 Hester Lane
Beaufort, SC 29907

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

If the indebtedness secured hereby be guaranteed or insured under Title 38, United States Code, such Title and Regulations issued thereunder and in effect on the date hereof shall govern the rights, duties and liabilities of Borrower and Lender. Any provisions of the Security Instrument or other instruments executed in connection with said indebtedness which are inconsistent with said Title or Regulations, including, but not limited to, the provision for payment of any sum in connection with prepayment of the secured indebtedness and the provision that the Lender may accelerate payment of the secured indebtedness pursuant to Covenant 18 of the Security Instrument, are hereby amended or negated to the extent necessary to conform such instruments to said Title or Regulations.

LATE CHARGE: At Lender's option, and as allowed by applicable state law, Borrower will pay a "late charge" not exceeding four per centum (4%) of the overdue payment when paid more than fifteen (15) days after the due date thereof to cover the extra expense involved in handling delinquent payments, but such "late charge" shall not be payable out of the proceeds of any sale made to satisfy the indebtedness secured hereby, unless such proceeds are sufficient to discharge the entire indebtedness and all proper costs and expenses secured hereby.

GUARANTY: Should the Department of Veterans Affairs fail or refuse to issue its guaranty in full amount within 60 days from the date that this loan would normally become eligible for such guaranty committed upon by the Department of Veterans Affairs under the provisions of Title 38 of the U.S. Code "Veterans Benefits", the Mortgagee may declare the indebtedness hereby secured at once due and payable and may foreclose immediately or may exercise any other rights hereunder or take any other proper action as by law provided.

TRANSFER OF THE PROPERTY: This loan may be declared immediately due and payable upon transfer of the property securing such loan to any transferee, unless the acceptability of the assumption of the loan is established pursuant to Section 3714 of Chapter 37, Title 38, United States Code.

An authorized transfer ("assumption") of the property shall also be subject to additional covenants and agreements as set forth below:

(a) **ASSUMPTION FUNDING FEE:** A fee equal to one-half of 1 percent (0.5%) of the balance of this loan at the date of transfer of the property shall be payable at the time of transfer to the loan holder or its authorized agent, as trustee for the Department of Veterans Affairs.

VA GUARANTEED LOAN AND ASSUMPTION POLICY RIDER
Elo Mac, Inc.

Page 1 of 2

Initials:

P8751AGR 0311

P8751AGR

12/12/2013 02:00 PM PST



LOAN #: 30231307053118

Affairs. If the assumer fails to pay this fee at the time of transfer, the fee shall constitute an additional debt to that already secured by this instrument, shall bear interest at the rate herein provided, and, at the option of the payee of the indebtedness hereby secured or any transferee thereof, shall be immediately due and payable. This fee is automatically waived if the assumer is exempt under the provisions of 38 U.S.C. 3729 (c).

(b) **ASSUMPTION PROCESSING CHARGE:** Upon application for approval to allow assumption of this loan, a processing fee may be charged by the loan holder or its authorized agent for determining the creditworthiness of the assumer and subsequently revising the holder's ownership records when an approved transfer is completed. The amount of this charge shall not exceed the maximum established by the Department of Veterans Affairs for a loan to which Section 3714 of Chapter 37, Title 38, United States Code applies.

(c) **ASSUMPTION INDEMNITY LIABILITY:** If this obligation is assumed, then the assumer hereby agrees to assume all of the obligations of the veteran under the terms of the instruments creating and securing the loan. The assumer further agrees to indemnify the Department of Veterans Affairs to the extent of any claim payment arising from the guaranty or insurance of the indebtedness created by this instrument.

IN WITNESS WHEREOF, Borrower(s) has executed this VA Guaranteed Loan and Assumption Policy Rider.

Robert E. Walters Jr.
ROBERT E. WALTERS JR.

12-16-13 (Seal)
DATE

VA GUARANTEED LOAN AND ASSUMPTION POLICY RIDER
Elle Mae, Inc.

Page 2 of 2

P8751ASR 0311
P8751ASR
12/12/2013 02:00 PM PST



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10FB
Walters
(com)

EXHIBIT 11

BEAUFORT COUNTY SC- ROD
BK 03272 PGS 1220-1221
DATE: 09/13/2013 08:05:47 AM
INST # 2013053457 RCPT# 722905

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

ROAD MAINTENANCE AGREEMENT

THIS ROAD MAINTENANCE AGREEMENT ("Agreement is made effective this 11th day of September, 2013, by Robert E. Walters Jr.

WITNESSETH:

WHEREAS, Robert E. Walters Jr is the owner of certain real property known as 12 Hester Lane, Beaufort, South Carolina, 29907, which is shown on the Beaufort County Tax Map as Parcel R200.018 000.0202 0000.

WHEREAS, all of the above-described property is located on 12 Hester Lane (the "Road(s)") and the above-described property owner have an easement along the Road to access their property which is more particularly described in their deed; and

WHEREAS, the Road is maintained by the above-described property owner to the "Roads" terminus at Lost Island Road and that "Road" is a Beaufort County Public Road and is maintained by Beaufort County.

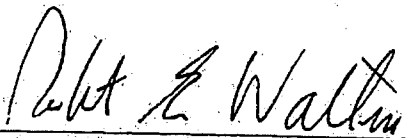
WHEREAS, the party hereto desires to set forth in this agreement the terms and conditions governing the maintenance of the "Road" as a covenant which shall run with the land.

NOW THEREFORE, the party hereto does hereby covenant and agrees as follows:

1. Incorporation of Whereas Clauses: The above recitals are hereby incorporated by reference hereto as if restated herein.
2. Road Maintenance. The party hereto, which includes the owner of 12 Hester Lane, Beaufort, SC 29907 covenants and agrees to maintain that portion of Hester Lane from their property to Lost Island Road.
3. Binding Effect. The agreements set forth in this Agreement shall run with and burden above-described property and shall insure to the benefit of, and be binding upon heirs, successors and assigns of the party hereto, including their tenants, invitees, and guests. Furthermore, the agreement shall remain in full force and effect and shall be unaffected by any change in ownership of the above-described property or by an change of use of the above-described property or other circumstances except as otherwise expressly provided in this Agreement. Each of the rights created under this Agreement shall be specifically enforceable in a court of equity, the party hereto recognizing and agreeing that damages at law will be inadequate.
4. Miscellaneous. In the event any provision hereof is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision hereof. This agreement contains the entire agreement of the party hereto with respect to the subject matter hereof and no representation, inducements, promises or agreements, oral or otherwise, not expressly set forth herein shall be of any force of effect. The Agreement may not be modified except by written modification executed by the party hereto. In the event the party hereto must bring legal action to enforce the terms of this Agreement, the prevailing party in such action, suit, or arbitration shall be entitled to collect from the non-prevailing party all

265

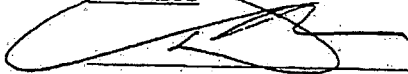
reasonable attorney's fees and court costs actually incurred, both prior to and on appeal. This Agreement may be executed in counterparts.



Robert E. Walters Jr

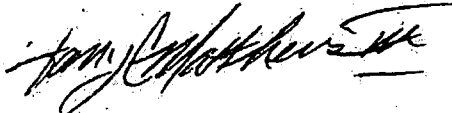
IN WITNESS WHEREOF, the party hereto has caused the Agreement to be executed on the date above stated.

WITNESS



STATE OF SOUTH CAROLINA)

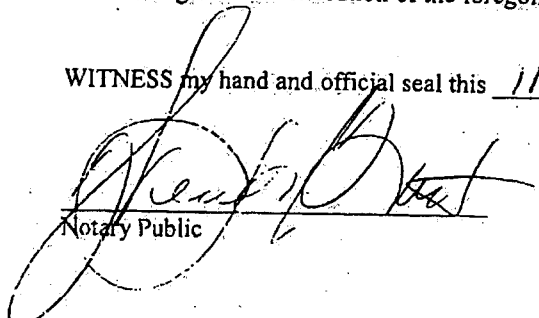
COUNTY OF BEAUFORT)



ACKNOWLEDGEMENT

I, the undersigned notary, do hereby certify that Robert E. Walters Jr. personally appeared before me this day and acknowledge the due execution of the foregoing instrument.

WITNESS my hand and official seal this 11th day of September 2013.


Notary Public

Aug 19, 2015
My Commission Expires

My Map

Exhibit

11-71

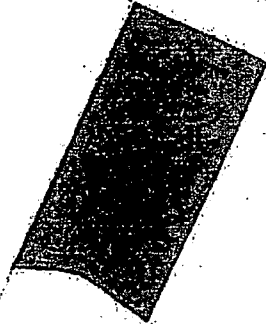
Little Creek
Partnership

SARAZONA

Cordial

Carlson

Carlson



Copyright 2011, Esri, All rights reserved. Tue Feb 11 2014 08:56:31 AM.

Esri

PLAINTIFF'S
EXHIBIT

ACBS

**PLAINTIFF'S
EXHIBIT**

24
JACOBS

Search by Street Address...



Search by

Property ID (PIN)

Street Address

Print View

Alternate ID (AIN)

Legal Description

Sales

Owner Name

Functions

County Home →

Welcome

Real Property

Personal Property

Vehicle Tax

Shopping Cart

Help

Feedback

County Login

Parcel ID	Address	Owner Name
R111 009 000 0013 0001	1 CHESTER DR, Town of Port Royal	LEVERTON STEPHI
R200 018 000 0194 0000	7 HESTER LN	LITTLE CREEK PAF
R200 018 000 0195 0000	9 HESTER LN	SAZAMA DONALD
R200 018 000 0196 0000	13 HESTER LN	CORDIAL NOEL GF
R200 018 000 0197 0000	15 HESTER LN	GALLION MELANIE
R200 018 000 0198 0000	17 HESTER LN	GALLION MELANIE
R200 018 000 0200 0000	8 HESTER LN	CARLSON LAWREN
R200 018 000 0201 0000	10 HESTER LN	CARLSON LAWREN
R200 018 000 0202 0000	12 HESTER LN	WALTERS ROBERT
R200 018 000 0203 0000	14 HESTER LN	LITTLE CREEK PAF
R200 018 000 0204 0000	16 HESTER LN	LITTLE CREEK PAF
R600 023 00D 0452 0000	1 MANCHESTER CT	HAZINSKI JOHN J
R600 023 00D 0453 0000	3 MANCHESTER CT	WHITE CYNTHIA E
R600 023 00D 0454 0000	5 MANCHESTER CT	CLARK MERRELL F
R600 023 00D 0455 0000	7 MANCHESTER CT	SACKS LARRY TRU
R600 023 00D 0456 0000	9 MANCHESTER CT	EDWARDS JAMES
R600 023 00D 0457 0000	11 MANCHESTER CT	FITZGERALD LIND
R600 023 00D 0458 0000	13 MANCHESTER CT	PETERS DAVID R I
R600 023 00D 0459 0000	15 MANCHESTER CT	BELFAIR 712 LLC
R600 023 00D 0460 0000	17 MANCHESTER CT	TOLERTON J TERF
R600 023 00D 0461 0000	19 MANCHESTER CT	GAGLIANO PHILIP
R600 023 00D 0462 0000	21 MANCHESTER CT	MURRAY KAREN
R600 023 00D 0463 0000	23 MANCHESTER CT	ORTH JOHN J PAM
R600 023 00D 0464 0000	25 MANCHESTER CT	LINMAN ROBERT E
R600 023 00D 0465 0000	27 MANCHESTER CT	US BANK AS C/F S
R600 023 00D 0466 0000	29 MANCHESTER CT	GRINDSTAFF ANN

~~268~~ 268

Exh. B. 1 1

Mr. Tootle,

As requested by Mr. Gecy, I am writing this letter to express my intent concerning 10 Meredith Lane. I am withdrawing my interests in this contract because stipulations in the contract were not met. The land did not appraise for the agreed upon amount. I am unable to secure 100% financing on a loan because Mr. Gecy was unable to provide a signed road maintenance agreement. This agreement is a requirement for the loan that I am trying to acquire.

I attempted to set up a time with Mr. Gecy to address these matters, but he told me his schedule was busy and that we should just talk over the phone. He was not in agreement with my concerns. Mr. Gecy intends on clearing the property tomorrow even after I have told him my concerns. I do not authorize him to start building a foundation on the house. We have not closed on this loan and I do not want to improve on a property that I am longer purchasing. I have offered alternate solutions around the road maintenance agreement by suggesting we enter elsewhere, but Mr. Gecy wants no part in that an option.

To date, Mr. Gecy has received \$2,000.00 of earnest money from me. I also paid him \$12,700.00 for a crawl space on the new house. Mr. Gecy is supposed to pay \$3,000.00 of my closing costs which is a carryover from the house that he helped me sell. I lowered my house price lower than I wanted and he agreed to pay the difference on the other end.

If you have any further questions, my number is 843-271-4177

Very respectfully,

Jaime Hamner

Exhibit "J"

Statement of Credit Denial, Termination, or Change

Borrower(s): Deborah L. Hamner, Jaime R. Hamner

Address: 11 Southern Magnolia Drive
Beaufort, SC 29907

Loan Amount: \$ 319,600.00

Interest Rate: 5.000 %

Term: 360 Months

Part I.

In compliance with Regulation 'B' (Equal Credit Opportunity Act), you are advised that your recent application for an extension or renewal of credit has been declined. The decision to deny your application was based on the following reason(s).

A. Credit

- ☐ No credit file
- ☐ Insufficient credit reference
- ☐ Insufficient credit file
- ☐ Unable to verify credit references
- ☐ Garnishment, attachment, foreclosure, repossession, or suit
- ☐ Excessive obligations
- ☐ Insufficient income for total obligations
- ☐ Unacceptable payment record on previous mortgage
- ☐ Delinquent credit obligations
- ☐ Bankruptcy

B. Employment Status

- ☐ Unable to verify employment
- ☐ Length of employment
- ☐ Temporary or irregular employment, insufficient stability of income

C. Income

- ☐ Insufficient income for mortgage payments
- ☐ Unable to verify income

D. Residency

- ☐ Temporary residence
- ☐ Too short a period of residence
- ☐ Unable to verify residence

E. Other

- ☐ Credit application incomplete
- ☒ Inadequate collateral
 - ☐ Unacceptable property
 - ☐ Insufficient data - property
 - ☐ Unacceptable appraisal
 - ☐ Unacceptable leasehold estate
- ☐ We do not grant credit to any applicant on the terms and conditions you have requested.
- ☐
- ☐

Part II.

Disclosure of use of information obtained from an outside source. This section should be completed if the credit decision was based in whole or in part on information that has been obtained from an outside source.

- ☒ Our credit decision was based in whole or part on information obtained in a report from the consumer-reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer-reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

Name: Equifax Mortgage Solutions
Address: 6 E Clementon Rd, Ste A-2, Gibbstown, NJ 08026
Telephone number (toll free): 800-333-0037

- ☐ Our credit decision was based in whole or part on information obtained from an outside source other than a consumer-reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

If you have any questions regarding this notice, you should contact:
SCBT, National Association

189 Sea Island Parkway, Lady's Island, SC 29907
843-521-5607

- ☒ Declined due to not be able to obtain a Road Maintenance Agreement for the subject property.

Notice:

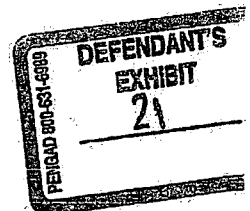
The Federal Equal Credit Opportunity Act prohibits creditors from discrimination against credit applicants on the basis of race, color, religion, national origin, sex, marital status, or age (providing that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with this law concerning the creditor is:
Comptroller of the Currency
Consumer Assistance Group 1301 McKinney St, Ste 3450 Houston, TX 77010-9060
Should you have any additional information which might assist us in evaluating your creditworthiness, please let us know.
Thank you for applying.

This notification is given by us on behalf of: SCBT, National Association
189 Sea Island Parkway
Lady's Island, SC 29907
800-277-2175

Notice mailed on: 03/10/2010

By: Doug Jacobs

PLAINTIFF'S
EXHIBIT



SCB&T38

STATE OF SOUTH CAROLINA

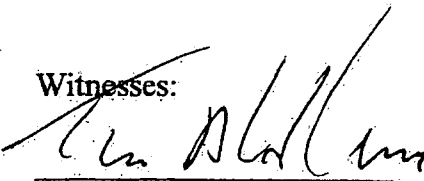
COUNTY OF BEAUFORT

)
)
)
AFFIDAVIT

Personally appeared before me, Diana G. Chalmers, who, being duly sworn, deposes and says that:

1. I am the owner of #8 Merideth Lane, Beaufort County, South Carolina and reside there with my husband and children.
2. I am personally familiar with Ben Gecy and his family.
3. Approximately, in April, 2010, Ben Gecy came to my home on several occasions and asked me to sign a "Road Maintenance Agreement" for Meredith Lane. Mr. Gecy explained that the agreement was necessary before he could sell a vacant lot on Meredith Lane to Mr. and Mrs. Hamner.
4. On the first visit I advised Mr. Gecy that I would need to review the matter with my husband.
5. Mr. Gecy repeatedly came to my home over the next several days and repeatedly asked me to sign the "Road Maintenance Agreement."
6. At all times I declined to sign the "Road Maintenance Agreement." Further, I advised Mr. Gecy that I had no intention of signing the document then or anytime in the future.
7. I swear that the foregoing statements made by me are true and are made under oath.

Witnesses:





Diana G. Chalmers

Personally appeared Thomas A. Holloway and made oath that he/she saw the within named
Diana G. Chalmers sign as her act and deed the within Affidavit and that he/she along with
Ann B. Williamson, witnessed the execution thereof.

SWORN to before me this 7th day of November 2011.
Chris P. Williamson

Notary Public For South Carolina

My Commission Expires: 01.04.20

6 new

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
CA NO. 2011-CP-07-1778

Benjamin Gecy,)
Plaintiff,)

vs.)

AFFIDAVIT OF DOUG JACOBS

South Carolina Bank & Trust,)
Jaime Hamner and Deborah Hamner,)
Defendants,)

1. I am an employee of South Carolina Bank & Trust in the position of Loan Originator and Vice President with office located on Lady's Island, Beaufort County, South Carolina.
2. On or about February 13, 2010, Jaime and Deborah Hamner made a loan application with SCBT for the purchase of real property and construction of a dwelling located at 10 Meredith Lane, Lady's Island, SC. Hamners provided the bank with requested relevant information as part of their loan application in a timely manner.
3. The closing date on the contracts was scheduled for March 5th, 2010. The contracts contained an "extension agreement" paragraph that essentially stated if the transaction was not closed by March 5th, 2010, in the event a contingency was not satisfied through no fault of either party, then both parties agreed to extend this agreement for a period not to exceed 30 consecutive days from the original closing date. Both contracts further stated that in "no event shall closing occur later then the above extension date. Time is of the essence." Pursuant to the 30 day extension, closing was to occur on or before April 5th, 2010.
4. On information and belief, Meredith Lane is a private Road. As part of the underwriting process, the bank underwriting required a fully executed Road Maintenance Agreement

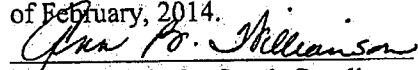
from the adjacent landowners to the private road, in recordable form. At no time prior to April 5th, 2010 did SCBT receive a fully executed Road Maintenance Agreement required as part of underwriting.

5. At no time did SCBT make a loan commitment to the Hamner's nor to Mr. Gecy for the above described matter.
6. At no time did anyone at SCBT direct the Hamner's to purchase a home in Pleasant Point Subdivision in lieu of purchasing the 10 Meredith Lane property.



Doug Jacobs

SWORN to before me this 18 day
of February, 2014.


Notary Public for South Carolina

Commission Expires: 01.04.2020

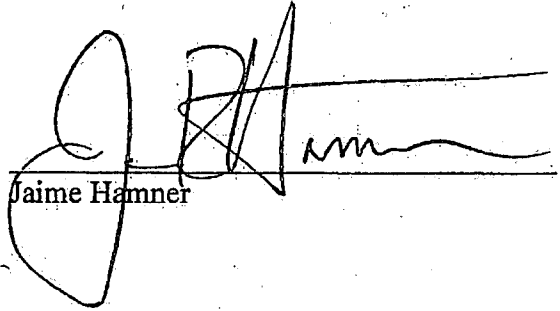
STATE OF SOUTH CAROLINA)

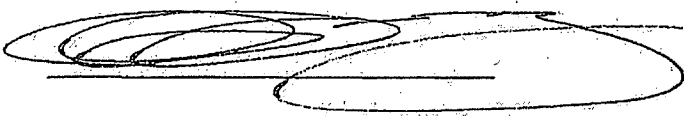
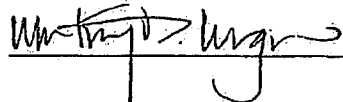
COUNTY OF BEAUFORT)

AFFIDAVIT

Personally appeared before me the Defendant, Jaime Hamner, who, being duly sworn, deposes and says that:

1. I am a Defendant in the above stated case.
2. I have read and reviewed the Answer and Counterclaim and the Amended Answer filed on my and my wife's behalf by our attorney, James J. Wegmann.
3. The facts as pled within the Answer and Counterclaim and the Amended Answer, except for those matters stated which are alleged upon information and belief, are true to the best of my knowledge and I hereby, as if stated verbatim herein, are making them under oath.


Jaime Hamner

Personally appeared James J. Wegmann and made oath that he/she saw the within named Jaime Hamner sign as his act and deed the within Affidavit and the he/she along with Courtney D. Longino, witnessed the execution thereof.

Sworn to before me this 27th day of April 2012


Notary Public for South Carolina
My Commission Expires: 8/3/19

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

)
)
)
AFFIDAVIT

Personally appeared before me the Defendant, Jaime Hamner, who, being duly sworn,
deposes and says that:

1. I am a Defendant in the above stated case.
2. On or about February 3rd, 2010 my wife and I entered into two (2) contracts with the Plaintiff, one for the purchase of a lot known as 10 Meredith Lane on Lady's Island for \$150,000.00 and one for the construction of a home at 10 Meredith Lane for \$156,900.00.
3. Both of these contracts were drafted by the Plaintiff and provided to us for signature. Both of these contracts stated the contracts were "subject to financing" and both contained financing contingencies that state, "Buyers obligation under this agreement is contingent on Buyer obtaining said loan."
4. My wife and I applied for financing with the Defendant, South Carolina Bank and Trust and pursuant to their requests, provided SCB&T with all the necessary information and documents in order to qualify for the loan.
5. The original closing date on both contracts was scheduled for March 5th, 2010. Both contracts contained an "extension agreement" paragraph that essentially stated if the transaction was not closed by March 5th, 2010 because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed 30 consecutive days from the original closing date. Both contracts further stated that in "no event shall closing occur later then the above extension date. Time is of the essence." My wife and I were ready, willing and able to close on March 5th, 2010, but I understood there was an appraisal issue

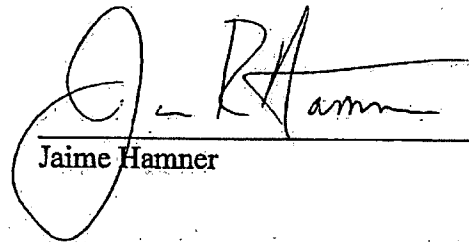
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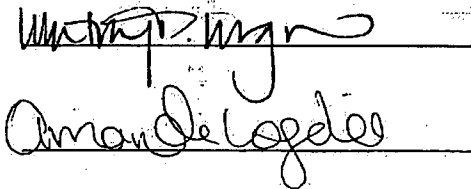
and a Road Maintenance Agreement issue on that date so the Bank would not issue a package. Pursuant to the 30 day extension, closing was to occur on or before April 5th, 2010.

6. Meredith Lane is a private road.
7. As part of the underwriting process, the bank required a signed Road Maintenance Agreement for the private road, Meredith Lane. I assisted the Plaintiff in contacting the individuals listed on the proposed Road Maintenance Agreement to get them a copy of the proposed Agreement and instructed them if they had questions to contact the Plaintiff.
8. In anticipation of closing, on or about March 27th, 2010, I emailed the Plaintiff with possible exterior color choices and information on another home that had a porch design that I was interested in possibly having the Plaintiff build for the home he was to build for us.
9. As of April 5th, 2010, the bank had not issued a closing package and our loan had not been approved.
10. On April 5th, 2010, my wife and I were ready, willing and able to close on the transaction if the bank had approved our loan and issued a loan closing package.
11. I was informed that the bank was unable to issue a package because the bank had not received a signed Road Maintenance Agreement and our loan could not be approved without a completely signed Road Maintenance Agreement.
12. My wife and I were incapable of purchasing the lot and having a home built on the lot without bank financing.
13. Approximately 2 weeks later and after getting notice from our Landlord that we would have to vacate our rental home, we found a Realtor and looked at several

existing houses for sale. On or about April 21st, 2010 we entered into a contract to purchase a home at Pleasant Point and on May 28th, 2010 my wife and I purchased the Pleasant Point home.

14. At no time did the Bank direct that I not purchase the property at 10 Meredith Lane nor did the Bank suggest we consider other properties.
15. At no time did I request the Bank not approve our loan or direct that approval of our loan be conditioned on certain underwriting guidelines.
16. On April 5th, 2010, had our loan been approved and a package provided to our attorney, I would have closed on the loan that would have purchased the lot and funded the construction of the home at 10 Meredith Lane.


Jaime Hamner


Amanda Cogdill

Personally appeared Courtney Longino and made oath that he/she saw the within named Jaime Hamner sign as his act and deed the within Affidavit and that he/she along with Amanda Cogdill, witnessed the execution thereof.

Sworn to before me this 18th day of February 2014


Notary Public for South Carolina
My Commission Expires: 6/11/23

3. Although defendant SCB&T fulfilled its duty to the 30 days time frame extended by plaintiff, the answers were limited and incomplete.
4. On January 31st, 2014 the Honorable Judge Marvin Dukes denied Plaintiff's Motion to Quash of defendant's subpoena. During motion Plaintiff requested relief from the court for the continued obstruction tactics from defendant.
5. Plaintiff moves court to answer all questions as they contain critical and vital information for all claims from plaintiff

Wherefore, Plaintiff Benjamin Gecy respectfully requests the court for relief and prohibit the defendant's obstruction to vital and important facts by Ordering defendant SCB&T to produce and answer the following questions from the 2nd set of Interrogatories, 2nd set of Production and 2nd set of Request to Admit.

James J Wegmann
6 Professional Village Circle
Beaufort SC 29907

Thomas A Holloway
1001 Craven St
Beaufort SC 29902

February 20th, 2014

Respectfully Submitted,

Benjamin Gecy
1857 Ribaut Rd

280

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CA NO. 2011-CP-07-1778
COUNTY OF BEAUFORT	)	
Benjamin Gecy,	)	
	)	
Plaintiff,	)	
vs.	)	Defendant, South Carolina Bank & Trust's
	)	Answers To Plaintiff's Second
South Carolina Bank & Trust, Jaime	)	Interrogatories
Hamner and Deborah Hamner,	)	
	)	
Defendants,	)	

TO: THE PLAINTIFF ABOVE NAMED:

The Defendant, South Carolina Bank & Trust, answering the Plaintiff's Second Interrogatories states as follows:

15. Give names, addresses, email addresses and telephone numbers of any underwriter who performed/issued underwriting decisions and or conditional loan approvals for Hamner on 10 Meredith Lane. Provide company position and credentials.

Answer: Charlotte Marcelle, c/o SCB&T, was involved in underwriting the Hamner application for financing the purchase of 10 Meredith Lane. Contact information was previously provided in responses to Request For Production.

16. Give names, addresses email addresses and phone numbers of any underwriter who performed/issued underwriting decisions and or issued conditional loan approvals for Hamner on the purchase of 16 Tuscarora Ave., Beaufort, SC. Provide company position and credentials.

Answer: Defendant objects to the extent that it requests information that is privilege and not otherwise discoverable. In addition, Defendant objects to the extent that it requests information that is not relevant or reasonably calculated to lead to admissible discovery.

17. List the total number of customers who have successfully closed the SCB&T 100% Construction/Conventional loan in Beaufort. This is the same loan Hamner was obtaining to build at 10 Meredith Lane. Records from October 2009 to January 1, 2014 are requested.

Answer: Defendant objects to the extent that it requests information that is privileged and not otherwise discoverable. In addition, Defendant objects to the extent that is requests information that is not relevant or reasonably calculated to lead to admissible discovery. Without waiving objection, SCB&T does not compile such statistics.

18. List the names, addresses, email addresses and phone numbers of all residential and commercial builders that constructed homes for customers participating in the SCB&T 100% Construction/Conventional loan in Beaufort. Records from October, 2009 to January 1, 2014 are requested.

Answer: Defendant objects to the extent that it requests information that is privileged and not otherwise discoverable. In addition, Defendant objects to the extent that it is not relevant and or reasonably calculated to lead to admissible discovery. Without waiving object ion, SCB&T does not compile such statistics.

19. Did SCB&T ever commission, register or order an appraisal from the Veterans Affairs for Hamner's purchase and construction at 10 Meredith Lane. If so, provide the (LIN).

Answer: Defendant objects to the extent that it requests information that is privileged and not otherwise discoverable. In addition, Defendant objects to the extent that it requests information not relevant or reasonably calculated to lead to admissible discovery. Without waiving said objection, SCB&T obtained an appraisal in the ordinary course of business that was prepared by Patrice S. Moody, Coastal Appraisal Services, P.O. Box 104, Beaufort, SC 29901 as previously provided in Defendant's Response to Request For Production.

20. Did any representative of SCB&T obtain any electronic or manual approval, denial or referred status from any AUS, DU, LP system. List the date, time and origination system Hamner's file was submitted for electronic or manual decision.

Answer: Defendant objects to the extent that it requests information that is privileged and not otherwise discoverable. In addition, Defendant objects to the extent that it requests information not relevant or reasonably calculated to lead to admissible discovery. Notwithstanding said objection, there was no approval for the Hamner's loan application. The underlying contract expired by operation of time and to activity occurred thereafter.

Defendant SCB&T's Response To Plaintiff's Second Request For Production

14. Produce all email communications from Hamners underwriter to Doug Jacobs loan officer or any processor involved with Hamner purchase of 10 Meredith Lane.

Response: Email communications between Doug Jacobs and Charlotte Marcelle were previously provided in Defendant's First Response To Request to Produce.

15. Produce underwriters original conditional loan approval for Hamner's application to purchase/construct 10 Meredith Lane. Produce underwriters final conditional loan approval for Hamner on 10 Meredith Lane.

Response: No such documents exist. There were no conditional or final loan approvals for the

purchase of 10 Meredith Lane.

16. Produce underwriters original conditional loan approval for the Hamner purchase of 16 Tuscarora Avenue.

Response: Defendant objects on the grounds that it requests private information that is privileged and not otherwise discoverable. In addition, it requests information that is not relevant or reasonably calculated to lead to admissible discovery.

17. Produce any and all executed VA/HUD/FHA Amendatory Clause/Real Estate Certification and or VA/HUD/FHA Escape Clause documents obtained by SCB&T in connection with the Hamner's financing of 10 Meredith Lane.

Response: Upon information and belief all real estate and construction contracts were prepared by Plaintiff and executed by and between the Plaintiff and the Hamners. Said contracts, addendums or clauses have previously been provided in First Production of Documents.

18. Produce any and all fully executed VA/HUD/FHA Amendatory Clause/Real Estate Certification and or VA/HUD/FHA Escape Clause documents obtained by SCB&T in connection with Hamner's financing of 16 Tuscarora.

Response: Objection as this request private and confidential information that is privileged and not otherwise discoverable. In addition, Defendant objects to extent that it requests information that is not relevant or reasonably calculated to lead to admissible discovery.

19. Produce all 12 digit VA loan numbers SCB&T obtained for Hamner's in connection with purchase of 10 Meredith Lane.

Response: Objection as this requests private and confidential information that is privileged and not otherwise discoverable. In addition, Defendant objects to extent that it requests information that is not relevant or reasonable calculated to lead to admissible discovery. Without waiving objection, Defendant is unaware of any responsive documents.

20. Produce all 12 digit VA loan numbers SCB&T obtained for Hamner's in eonnection with purchase of 16 Tuscarora.

Response: Objection as this requests private and confidential information that is privileged and not otherwise discoverable. In addition, Defendant objects to the extent that it requests information that is not relevant or reasonably calculated to lead to admissible discovery.

21. Provide all underwriting matrices, guidelines or handbooks for SCB&T's 100%

Construction/Conventional Loan.

Response: Objection as this requests private and confidential information that is privileged and not otherwise discoverable. In addition, Defendant objects to the extent that it requests information that is not relevant or reasonably calculated to lead to admissible discovery.

22. Produce all fully executed loan application signed by buyer for mortgage financing associated with 10 Meredith Lane.

Response: See attached.

23. Produce all AUS submissions including and not limited to DU, LP and its complete findings for James and Deborah Hamner on the purchase/construction of 10 Meredith Lane.

Response: Objection as this requests private and confidential information that is privileged and not otherwise discoverable. In addition, Defendant objects to the extent that it requests information that is not relevant or reasonably calculated to lead to admissible discovery.

24. Produce all CAIVRS numbers obtained by SCB&T for Hamner's purchase of 16 Tuscarora.

Response: Objection as this requests private and confidential information that is privileged and not otherwise discoverable. In addition, Defendant objects to the extent that it requests information that is not relevant or reasonably calculated to lead to admissible discovery.

25. Produce any and all CAIVRA numbers obtained by SCB&T for the purchase of 16 Tuscarora.

Response: Objection as this requests private and confidential information that is privileged and not otherwise discoverable. In addition, Defendant objects to the extent that it requests information that is not relevant or reasonably calculated to lead to admissible discovery.

26. Produce names, addresses, email addresses of the S.A.R. representative assigned to Hamner's appraisal of 10 Meredith Lane.

Response: This information has previously been provided in Defendant's Response to First Request to Produce.

Defendant, SCB&T's Response to Second Request To Admit

5. Admit the value of the Coastal Appraisal for 10 Meredith Lane performed by Patrice Moody exceeded the combined sales price for both the land contract and construction contract

signed by Hamner and Gecy.

Response: Denied as stated. Defendant craves reference to the documents as they speak for themselves.

6. Admit SCB&T obtained a VA/HUD/FHA Amendatory Clause and Real Estate Certification signed from the buyer, seller and real estate agents on 16 Tuscarora.

Response: Objection as this requests private and confidential information that is privileged and not otherwise discoverable. In addition, Defendant objects to the extent that it requests information that is not relevant and not reasonably calculated to lead to admissible evidence.

7. Admit the VA requires the seller to sign a VA/HUD/FHA Amendatory Clause and Real Estate Certification on purchase transactions.

Response: Defendant neither admits nor denies this Request, as VA requirements are contained in the Federal Register and speak for themselves.

8. Admit SCB&T and its agents required Hamner to deposit money in CD form during the construction of a 100% Construction Loan on 10 Meredith Lane.

Response: Denied. No construction loan was provided by Defendant for 10 Meredith Lane.

9. Admit SCB&T and its agents never applied, obtained or received a notice of value for appraisal on 10 Meredith Lane.

Response: Defendant neither admits nor denies this Request as Defendant is unaware of and does not know what Plaintiff is asking. Therefore, restate the question with more particularity for further response.

10. Admit SCB&T and its agents received a notice of value for Hamner's appraisal of 16 Tuscarora.

Response: Objection as this requests private and confidential information that is privileged and otherwise discoverable. In addition, Defendant objects to the extent that it requests information that is not relevant and not reasonably calculated to lead to admissible discovery. Further, Defendant is unaware of and does not know what Plaintiff is asking. Therefore, restate the question with more particularity.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2011-CP-07-1778

Benjamin Gecy,

Plaintiff,

MOTION

VS.

Plaintiff's "Motion to Continue"

SOUTH CAROLINA BANK & TRUST, JAIME
Hamner and Deborah Hamner,

Defendants)

2014 FEB 20 PM 1:42
CLERK OF COURT
BEAUFORT COUNTY, S.C.

To: James J Wegman, Attorney for Defendant, Thomas A. Holloway
Attorney for Defendant:

PLEASE TAKE NOTICE that the Plaintiff, Benjamin Gecy represented pro se hereby moves before the Presiding Judge of the Beaufort County Court of Common Pleas for an Order of Continuance to the defendant's Motion for Summary Judgment hearing scheduled February 21st at 9.00 A.M. Plaintiff respectfully requests Summary Judgment hearing to be re-scheduled to March 7th, 2014, approximately 7 days from scheduled and properly served depositions February 27th, 2014. The grounds wherefore as follows:

1. Plaintiff properly served witness Edward Chalmers under S.C.R.C.P rule 45, immediately after deposing wife Diana Chalmers on February 12, 2014. Mrs. Chalmers informed plaintiff in sworn testimony that she did not agree to sign a road maintenance agreement. Mrs. Chalmers also testified that

she did not send any of the emails received by plaintiff Benjamin Gecy that clearly reflect an agreement between Gecy and both Mr. & Mrs Chalmers. This statement has raised many questions to Mrs Chalmers previously filed affidavit which is the primary subject of the Defendant's Motion for Summary Judgment.

2. Plaintiff expects Mr. Ed Chalmers to testify to the agreements illustrated in emails and also testify to the authenticity of the language, and facts of the email as they pertain to case #2011-CP-78-1778.
3. Plaintiff could not depose Ed Chalmers during the previously scheduled week of February 10th-15th, 2014, as he was not a witness to the action.
4. Mr. Robert Walters, a newly discovered witness, is also scheduled to testify on February 27th, 2014. Mr Walters has been properly served un S.C.R.C.P rule 45. Mr Walters testimony is expected to produce material facts exclusive to Road Maintenance Agreements associated with loans closed from defendant SCB&T and other discovery that is vital to Plaintiff.
5. Mr. Walters is also the product of newly discovered information originated from the questions and answers included in January 8th, 2014 properly filed and served discovery requests to defendant SCB&T. Plaintiff received answers from defendant SCB&T February 8th, 2014.
6. Plaintiff is constrained with the timing of closely scheduled Motion for Summary Judgment hearing and the rapidly developing facts from 8 depositions. Transcripts to all

depositions were received Tuesday February 18th, 2014.

Exhibits from depositions were not received until Wednesday February 19th, 2014.

7. Plaintiff also request relief and protection from the court against the defendants (2) late additions of Jacob's affidavit and Mr Hamner's affidavit. S.C.R.C.P rule 56 requires 10 days notice to the opposing party. Both affidavits were received late in the day February 18th, 2014 for a previously scheduled Summary Judgment Motion filed and scheduled by the court in early January, 2014.
8. The Standing Motion for Summary Judgment was scheduled and filed by defendants exclusive to the Chalmer's affivadit. This affidavit has been the core subject matter since its original filing in 2012.
9. Plaintiff prays for relief and continuance as discovery has not been completed with open properly served depositions scheduled and pending.
10. In addition, Defendant has not provided all answers to discovery submitted on January 8th, 2014. Plaintiff seeks continuance from court as a Motion to Compel defendant answers will be filed on February 20th, 2014.

Wherefore, Plaintiff Benjamin Gecy respectfully requests relief from the court and continue the defendant's February 21st, 2014 Summary Judgment Motion, to a date 7 days from the Walters /

Chalmers deposition. Plaintiff prays the court will grant him fairness to the continuing discovery process as noted in S.C.R.C.P rule 26 (b)(1):

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Respectfully submitted by Benjamin Gecy pro se for Plaintiff February 20th, 2014.

Notary - Bonnie Reed
Bonnie Reed 2/20/14

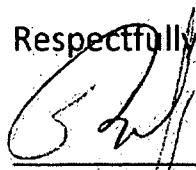
James J Wegmann
6 Professional Village Circle
Beaufort SC 29907

Thomas A Holloway
1001 Craven St
Beaufort SC 29902

February 20th, 2014



Respectfully Submitted,

 2/20/14

Benjamin Gecy
1857 Ribaut Rd
Port Royal SC 29935

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
(Case No. 2011-CP-07-01469)

1778

BENJAMIN GECY,)
Plaintiff,)

vs.)

SOUTH CAROLINA BANK &)
TRUST, JAIME HAMNER)
and DEBORAH HAMNER,)
Defendants.)

NOTICE OF MOTION AND MOTION
FOR RECONSIDERATION

2014 JUN 19 PM 1:08
CLERK OF COURT
BEAUFORT COUNTY, S.C.

PLEASE TAKE NOTICE that the Plaintiff herein, BENJAMIN GECY, by and through his undersigned attorney, ten (10) days after the service hereof, at such time and upon such date as shall be scheduled by the court, will move before the Honorable Marvin H. Dukes, III, at the Beaufort Courthouse, 102 Ribaut Road, Beaufort, South Carolina, for the following relief:

1. An order, pursuant to Rules 52(b), 59(a) and 59(e), SCRCP, awarding a new trial or amending and/or modifying the Order dated June 5, 2014 (herein below "the Order"), to deny the Defendants' motion(s) for summary judgment and/or to alter the Order in material particulars, all in the manner and upon the grounds set forth below:
 - (a) Eliminating so much of the second paragraph on page 2 of the Order as states, "the Plaintiff had not provided SCBT with a fully executed Road Maintenance Agreement (RMA) which was required by the Bank's underwriting procedures as a condition of loan approval," as well as the accompanying footnote, upon the grounds that whether a fully executed RMA was a requirement for closing was a disputed fact, upon which doubt had been cast by (i) the failure of SCBT to produce any written

evidence that it had a policy of requiring any RMA, let alone an RMA signed by all of the adjacent property owners, and (ii) the existence of public records demonstrating that the Bank had closed loans on properties served only by a private road without bothering to obtain any maintenance agreement at all, or by obtaining such an agreement, but only one signed by fewer than all adjoining land owners.

(b) Eliminating so much of the same paragraph as states, "a completed and signed Road Maintenance Agreement, as required by SCBT for approval, was never provided to the Bank" upon the same grounds as are set forth in paragraph (a) above, as well as because the Plaintiff's contention was not just that the insistence by the Bank on a fully executed RMA was "unnecessary," but, instead, that it was entirely false and amounted therefore to a false representation.

(c) Eliminating so much of the discussion of the standards applicable to granting or denying summary judgment on pages 3 and 4 of the Order as fails to address what actually occurred in this case in which SCBT filed an affidavit in support of its motion for summary judgment stating that the affiant had never agreed to be bound by the RMA, thereby suggesting a factual issue as to that point, but thereafter, at the hearing of the Bank's motion, without any advance notice, filing and arguing exclusively from a brief devoted to the notions that the Bank owed no duty to the Plaintiff and that the Plaintiff, as a consequence, had no right to rely on statements made by the Bank.

(d) The "bait and switch" argument described in paragraph (c) evidently obscured the "specific facts showing that there is a genuine issue for trial," as described in the last paragraph on page 3 of the Order, namely, that the Bank had represented that it had an inflexible policy of insisting on the execution before closing of an RMA signed by all

property owners adjoining a private road—a representation that was embraced by Mr. Jacobs, the loan officer in question, during his deposition, and one that clearly proved to be false when refuted by other evidence.

(e) Rewriting the discussion on pages 4 and 5 of the Order with respect to “Ongoing Discovery” to provide that the Plaintiff should have been allowed to take (i) the deposition of Mr. Edward H. Chalmers, the husband of the Bank’s affiant, as described in paragraph (c) above, who, upon the taking by the Plaintiff of his wife’s deposition, proved to be the person who had confirmed in an email to the Plaintiff that he and his wife would sign the RMA; and (ii) the deposition of Robert E. Walters, Jr., to confirm that he had obtained a loan from SCBT for real property served by a private road that crossed or adjoined ten or more land owners, and that, notwithstanding the Bank’s supposedly inflexible policy with respect to requiring fully executed RMA’s, Mr. Walters’ loan was closed on or before October 26, 2012, with no RMA having been obtained or recorded, and, afterwards, an RMA was recorded showing fewer than all adjoining landowners as signatories; and (iii) SCBT should have been required to respond and/or to answer a production request and/or interrogatory seeking copies of the Bank’s policy regarding RMA’s or the material information contained therein.

(f) Pages 5 and 6 (“Breach of Contract”) should be amended to include the considerations set forth in paragraphs (a) through (e)) herein above. Specifically, a state of technical default should be found to exist by virtue of the false requirement of the RMA.

(g) The section of the Order discussing Code Section 37-10-107 (“The Statute of Frauds Bars Lender Liability”) should be deleted or rewritten to specify the that the

statute in question only applies to lenders and borrowers, and thus it has no possible application to the Plaintiff. In addition, real estate notes and mortgages are excluded from the statute's reach, as are consumer loans, both of which apply to the relationship between the Hamners and SCBT. Accordingly, Section 37-10-107 does not bar any of the Plaintiff's pleaded causes of action, and it would not bar a claim for fraud and deceit, which is a cause of action a liberal view of the Verified, Amended Complaint surely would reveal.

(h) As to the Plaintiff requesting information about an internal bank policy (not discoverable elsewhere) from one or more agents of and for the Bank, those agents were under no duty to respond. However, the Restatement of Torts requires that, once the decision to respond was made, the agents were required, at a minimum, to adhere to a standard of reasonable care.

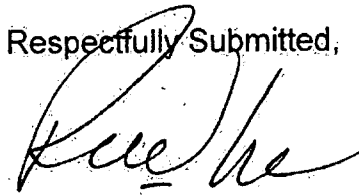
(i) Put another way, while SCBT was under no duty to speak to the Plaintiff, once a specific inquiry about the RMA was made, upon choosing to reply, the Bank, through its agents, was under a duty to tell the truth.

(j) The discussion of negligent misrepresentation and reliance commencing at page 9 of the Order ("No Right to Rely") must bow to the propositions set forth in paragraphs (i) and (j) above.

(l) So also should the tendentious discussion about the elements of the torts of civil conspiracy and violation of the Unfair Trade Practices Act should be updated to set forth the most recent, applicable precedents.

Respectfully Submitted,

By:



Robert V. Mathison, Jr.
Attorney for the Plaintiff
Benjamin Gecy

MATHISON & MATHISON
Posts Office Box 5271
Hilton Head Island, SC 29938-5271
Telephone: (843) 785-6503
Email: mathlaw@aol.com

June 16, 2014

Hilton Head Island, South Carolina.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
(Case No. 2011-CP-07-01778)

BENJAMIN GECY,)
Plaintiff,)

vs.)

SOUTH CAROLINA BANK &)
TRUST, JAIME HAMNER)
and DEBORAH HAMNER,)
Defendants.)

MEMORANDUM OF AUTHORITIES

2014 AUG 18 PM 1:11
CLERK OF COURT
BEAUFORT COUNTY, S.C.

The Plaintiff submits that the Court overlooked or misperceived a number of issues in its Order dated June 5, 2014, which granted both of the Defendants summary judgment. In addition to pertinent facts, which have been set forth in the Plaintiff's Motion for Reconsideration, the Plaintiff requests that the Court consider the following points of law.

I. SCB&T HAS A DUTY TO THE PLAINTIFF.

In its Order dated June 5, 2014, the Court presupposes that SCB&T owes no duty to the Plaintiff, Benjamin Gecy, essentially because he is not a bank customer. That presupposition ignores an argument previously made to the Court that the bank's duty is imposed by the Restatement Second of Torts (1977)[herein after referred to as "Restatement"], and, specifically, by § 552 therein. That section is entitled "INFORMATION NEGLIGENTLY SUPPLIED FOR THE BENEFIT OF OTHERS," and it provides as follows:

- (1) One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transaction, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information. Restatement § 552.

Measured against this test, the representations made by Mr. Jacobs and other bank officers about the requirements of a Road Maintenance Agreement

(herein "RMA") were both false and manifestly actionable. The Court, however, never applied the criteria in § 552 to the conduct of the bank's officers, and it should have for a number of reasons:

First, the Restatement applies regardless of whether the victim of false information is a customer. The zone of anticipated liability is defined in § 552 as follows:

- (2) The liability stated in subsection (1) is limited to loss suffered
 - (a) by the person or one of a limited group of persons for whose benefit and guidance he intends to supply the information or knows that the recipient intends to supply it; or
 - (b) through reliance upon it in a transaction that he intends the information to influence or knows that the recipient so intends or in a substantially similar transaction.
- Restatement § 552.

The Plaintiff is clearly a person to whom Mr. Jacobs intended to supply information about the RMA. Perhaps, Mr. Jacobs had no duty to supply it, but, once he chose to do so, under well-established principles, he had the duty to speak the truth. Moreover, Mr. Jacobs intended that the information which he supplied--both to Mr. Gecy and to Mr. Hamner--would surely influence the transaction.

In addition, an analysis under Section 552 eliminates the need to consider whether the Plaintiff is owed some kind of fiduciary duty or is entitled to be treated as a third-party beneficiary under the contract between the borrowers and the bank.

Section 552 of the Restatement has long been embraced by the Supreme Court of South Carolina as the organic law of this state. *ML-Lee Acquisition v. Deloitte & Touche*, 327 S.C. 238, 489 S.E.2d 470 (1997)(Note 2). It has been applied in a number of cases, both to accountants and to those in other businesses and professions. *ML-Lee Acquisition Fund v. Deloitte & Touche*, 320 S.C. 143, 463 S.E.2d 618 (Ct. App. 1995); *First Federal Savings Bank v. Knauss*, 296 S.C. 136, 370 S.E.2d 906 (Ct. App. 1988); *Winburn v. Insurance Co. of North America*, 287 S.C. 435, 339 S.E.2d 142 (Ct. App. 1985).

Therefore, a clear-cut case of liability can be made out on the record in this case—certainly based on negligent misrepresentation. Because all that is required to defeat summary judgment in a negligence case is a scintilla of evidence, summary judgment should have been, and should now be, denied. *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

II. CODE SECTION 37-10-107 CLEARLY DOES NOT APPLY.

In ruling against the Plaintiff, the Court embraced an argument first advanced at the hearing of the Defendants' motions for summary judgment, namely, that the Plaintiff had brought multiple causes of action that violated the so-called Statute of Frauds for lenders. S.C. Code Ann. § 37-10-107.

This lagniappe for banks first appeared in the Code in 1991. Although it incongruously appears in the Consumer Protection Code, the statute's constitutionality has been upheld, at least in a limited context. *Sea Cove Development, LLC v. Harbourside Community Bank*, 387 S.C. 95, 691 S.E.2d 158 (2010)[herein after referred to as "Sea Cove"].

If applicable, the statute would appear to bar a number of claims raised by the Plaintiff, such as negligent representation. S.C. Code Ann. § 37-10-107(2)(d).

However, the statute manifestly has no application to the case at bar. Instead, it appears to have been introduced, without prior notice, at the last minute simply to distract the *pro se* Plaintiff from putting on his case.

To confirm that the statute has no application, one need only review its content. According to the South Carolina Supreme Court, the statute "provides for certain exclusions, [by] stating the statute does not apply to, among other things, personal loans and lines of personal credit" *Sea Cove*, 387 S.C. at 102-03, 691 S.E.2d at ____.

(3) Subsections (1) and (2) do not apply to

(a) a loan of money used primarily for personal, family, or household purposes;

....

...; or

(d) promissory notes, real estate mortgages, security agreements, guaranty and surety agreements, and letters of credit. *Sea Cove*, 387 S.C. at 103, 691 S.E.2d at ____; quoting S.C. Code Ann. § 37-10-107.

Clearly, the loan and mortgage for Mr. and Mrs. Hamner fall within the exclusions.

In addition, The Plaintiff unearthed a transaction that was a matter of public record in which SCB&T was the lender that had occurred at about the same time as the Hamners' loan was pending. Just like the Hamners' lot, the property of Robert E. Walters, Jr., was on a private road.

However, SCB&T had closed Mr. Walters' loan and recorded his mortgage without obtaining any RMA at all. Not until months after the recording of the mortgage was an RMA filed, and, when it was, it contained the signatures of fewer than half of the adjoining landowners.

That evidence would have tended to prove, if it did not prove conclusively, that Mr. Jacobs' representations about SCB&T's requirements RMA's were false.

The Plaintiff sought to take Mr. Walters' deposition before the disposition of the Defendants' motions for summary judgment. The Court declined the request, again, it is submitted, because the Court was convinced that the bank had no duty to the Plaintiff.

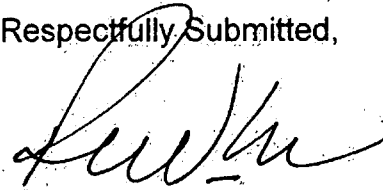
Assuming that the law described above is sufficient to raise the strong possibility of such a duty, it was error to deny the Plaintiff the right to take the depositions, as well as to have a proper response to his document discovery. *Stevens Aviation v. Dyncorp Intern.*, 407 S.C. 407, 756 S.E.2d 148 (2014).

IV CONCLUSION

For the foregoing reasons, the Order dated June 5, 2014, should be withdrawn, and the Defendants' motions for summary judgment should be denied.

Respectfully Submitted,

By:



Robert V. Mathison, Jr.
Attorney for the Plaintiff
Benjamin Gecy

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June 16, 2014

Hilton Head Island, South Carolina.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CA NO. 2011-CP-07-1778
Benjamin Gecy,	)	
Plaintiff,	)	
vs.	)	Defendant, South Carolina Bank & Trust
South Carolina Bank & Trust, Jaime	)	Brief in Support of Summary Judgment
Hamner and Deborah Hamner,	)	
Defendants,	)	

2014 FEB 21 PM 12:13
 BEAUFORT COUNTY, S.C.
 CLERK OF COURT

FACTS

This is a lender liability case in which Plaintiff Gecy alleges that he was harmed when Defendant SCBT did not fund an application by Defendants Hamners for mortgage financing prior to the expiration date of the contracts. Plaintiff's allegations do not pertain to any relationship he had with SCBT but, instead, only with regard to the relationship between SCBT and Hamners. Defendant SCBT is a federally regulated banking institution with branch offices in Beaufort, South Carolina. Gecy is an individual that entered into contracts to sell real property to construct a dwelling for the Hamners at 10 Meredith Lane, Lady's Island, SC. Hamners applied for financing to complete the purchases through SCBT.

The contracts for the purchase and sale of real estate and the construction contract were both contingent on financing. In February 2010, Hamners applied for financing with SCBT and financing was not approved prior to the expiration of the contacts on or about April 5, 2010. Plaintiff contends the failure to provide financing to the Hamners prior to the

300

expiration of the contracts was somehow improper, alleging SCBT had no right to require a Common Road Maintenance Agreement as a condition of financing. Plaintiff claims the failure to fund the Hamners loan application prior to the expiration of the contracts resulted harm to him.

Plaintiff was not the applicant for funds from SCBT. SCBT did not offer nor commit to lend any money to Plaintiffs. Plaintiff is not in privity with SCBT in this case and had no relationship with SCBT whatsoever. All of Plaintiffs' allegations pertain to the relationship between Hamners and SCBT, and all of Plaintiffs' alleged injuries arise out of the expiration of the contracts with Hamners.

In his Amended Complaint, Plaintiff asserts four claims against SCBT for: (1) tortious interference with contract (2) Civil Conspiracy (3) negligent misrepresentation and; (4) violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"). Defendants move for Summary Judgment all four claims pursuant to the South Carolina Rules of Civil Procedure.

LEGAL ANALYSIS

Rule 56 (c) of the South Carolina Rules of Civil Procedure requires summary judgment to be granted if "there is no genuine issue of material fact and ... the moving party is entitled to judgment as a matter of law. S.C.R. Civ. P. 56(c). Although the moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact, "this initial responsibility may be discharged by showing – that is pointing out to the trial court –

that there is an absence of evidence to support the nonmoving party's case." Baughman v. Am.Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

The purpose of summary judgment is to expedite the disposition of cases not requiring the services of fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "The trial court should grant summary judgment if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show 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." Turner v. Milliman, 381 S.C. 101, 108, 671 S.E.2d 636 640 (Ct. App. 2009) (citing S.C.R. Civ. P. 56(c) and Russell v. Wachovia Bank, N.A., 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003)).

When a party makes a motion for summary judgment, "an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial." S.C. Elec. & Gas Co. v. Combustion Eng'g, Inc., 283 S.C. 182, 188-89, 322 S.E.2d 453, 457 (Ct. App. 1984). If the adverse party does not respond accordingly, the trial court shall enter summary judgment against him if appropriate. Id. at 189, 322 S.E.2d at 457. When a party makes no factual showing in opposition to a motion for summary judgment the trial "court must grant summary judgment to the moving party if, under the facts presented, the latter is entitled to summary judgment as a matter of law." Id.; see also Hancock vs. Mid-South Mgm't Co., Inc., 381 S.C. 326, 330-31, 673 S.E.2d 801, 803 (2009) (indicating

summary judgment is appropriate where plaintiff has not proven even a scintilla of evidence).

Ongoing Discovery

The plaintiff may request a continuance from the hearing of this motion on a claim he did not have a chance to finish discovery. Plaintiff filed a Verified Complaint against the defendants on April 15, 2010. The parties exchanged extensive written discovery and SCBT filed a Motion for Summary Judgment on March 19, 2012 and Hamner's joined the motion shortly thereafter. Plaintiff's counsel was relieved from representing plaintiff on May 8, 2012. The case was stayed on or about July 7, 2012 when Mr. Gecy filed for Chapter 7 Bankruptcy protection in the United States Bankruptcy Court. After the bankruptcy proceeding was complete this case was restored to the active roster on Motion of the Plaintiff and the Motion for Summary Judgment was restored to the Motions Roster. Since the time the case was restored, Plaintiff requested and was granted the opportunity to conduct depositions and in fact has conducted additional discovery including the taking of six depositions. During the discussion of scheduling this motion all parties including Plaintiff agreed to the hearing date of February 21, 2013. Gecy may now request more time to take more depositions.

This Motion for Summary Judgment is being heard nearly three years after the filing of the Verified Complaint and two years after the filing of the Motion for Summary Judgment. Extensive written discovery has been exchanged and all parties to the action have been deposed along with five fact witnesses. Generally, it is not premature for the trial court

to grant summary judgment after all parties have been deposed because the litigants have had a full and fair opportunity to develop the record of the case. See George v. Empire Fire & Marine Ins. Co., 344 S.C. 582, 594, 545 S.E. 2d 500, 506 (2001), finding summary judgment was not premature because defendant "had a full and fair opportunity to develop the record on this issue and failed to do so."); also see Bayle v. South Carolina Department of Transportation., 344 S.C. 115, 128-29, 542 S.E.2d 736, 742-43 (Ct. App. 2001) (stating it was not error to grant summary judgment because no further discovery would have contributed to the resolution of the case).

This case is sufficiently old and all parties have had a full and fair opportunity to develop the record and more than enough time to complete the record for purposes of summary judgment. All parties previously agreed to the hearing date of February 21, 2014. In addition and for reasons stated within, no further discovery would contribute to the resolution of issues in the case.

The Statute of Frauds Bars Lender Liability

Section 37-10-107 of the South Carolina Code bars all of the Plaintiffs' claims against defendants, as a matter of law. Many states, including South Carolina, have enacted specialized statutes concerning loan and credit agreements. These statutes bar enforcement of oral lending agreements and bar fraud and other tort claims based on alleged oral voluminous and other non-written conduct concerning these loan agreements. Specifically, Section 37-10-107 of the South Carolina Code Annotated provides:

(1) No person may maintain an action for legal or equitable relief or a defense based upon a failure to perform an alleged promise, undertaking, accepted offer, commitment, or agreement:

- (a) to lend or borrow money;
- (b) to defer or forbear in the repayment of money; or
- (c) to renew, modify, amend, or cancel a loan of money or any provision with respect to a loan of money, involving in any such case a principal amount in excess of fifty thousand dollars, unless the party seeking to maintain the action or defense has received a writing from the party to be charged containing the material terms and conditions of the promise, undertaking, accepted offer, commitment, or agreement and the party to be charged, or its duly authorized agent, has signed the writing.

(2) Failure to comply with subsection (1) precludes an action or defense based on any of the following legal or equitable theories:

- (a) an implied agreement based on course of dealing or performance or on a fiduciary relationship;
- (b) promissory or equitable estoppel;
- (c) part performance, except to the extent that the part performance may be explained only by reference to the alleged promise, undertaking, accepted offer, commitment, or agreement; or
- (d) negligent misrepresentation.

S.C. Code Ann. § 37-10-107.

All of Plaintiffs' claims flow from the application for a loan made by Hamners to SCBT. Plaintiff claims one alleged specific act that by SCBT gives rise to lender liability. He alleges the lender's requirement for a Common Road Maintenance Agreement to be in place for the care and maintenance of the private road was improper under custom and/or applicable State and/or Federal lending guidelines. The Plaintiff does not allege the breach of any material terms or conditions of any written agreement between the bank and Plaintiff nor has Plaintiff alleged that any such agreement ever existed. Plaintiff merely claims that the contracts with the Hamners expired before the loans were approved because SCBT did not to follow what he claims to be the applicable lending guidelines for similar transactions. Plaintiff alleges, in the alternative, that SCBT directed the Hamners to purchase a different property, although there is no evidence to support that naked allegation. In fact, the only evidence in the record is that the Hamners very much wanted to purchase the 10 Meredith Lane property and diligently tried to help Plaintiff obtain the required signatures on the RMA and they only purchased a property in Pleasant Point after the Plaintiff contracts expired because their lease was expired and they had to move. (See Hamner Affidavit).

Because Plaintiff has not alleged or otherwise provided a writing to evidence any material terms and/or conditions of the alleged promises or representations made to him, his claims fail as a matter of law. See Carolina First Bank v. Lucas, Case No. 03-CP-10-1907, 2004 WL 5208410 (S.C. Com. Pl. Jun. 14, 2004); see also Robertson v. First Union Nat'l

Bank, Case No. 99-CP-10-288, 2000 WL 35722762 (S.C. Com. Pl. Aug. 8, 2000).

Specifically, Plaintiff has not alleged that he "received a writing from the party to be charged [i.e. SCBT] containing the material terms and conditions of the promise, undertaking, accepted offer, commitment, or agreement and the party to be charged, or its duly authorized agent, has signed the writing." S.C. Code Ann. § 37-10-107(1)(c). Accordingly, as a matter of law, Plaintiffs cannot "maintain an action for legal . . . relief . . . based upon [SCBT's alleged] failure to lend . . . money [to Hamners.]" S.C. Code Ann. § 37-10-107(1)(a). Under these circumstances, Plaintiff cannot establish his claims against SCBT, as a matter of law.

Further, Plaintiff can point to no written agreement, law or regulation that limits the banks ability to determine their underwriting standards and requirements for lending. A key purpose of the lenders statute of frauds is to protect financial institutions and other lenders from claims outside the four corners of an agreement or that are inconsistent with the written agreements outlining the terms of the transaction. Because the statutes within Title 37 should "be liberally construed and applied to promote [Title 37's] underlying purposes and policies," any question regarding the applicability of section 37-10-107 to the alleged agreement is resolved in Defendant's favor. See S.C. Code Ann. § 37-10-102(1).

Plaintiff Lacks Standing

There are no reported cases where SC Courts have recognized causes of actions for lender liability as a viable cause of action by a third party, not in privity to the loan agreement

(in this case no loan agreement exists at all—only an application for loan financing by Hamners to SCBT). There have been some recently reported decisions in which third parties, not in privity to loan agreements, attempted to establish they were harmed by the lender's actions in administering the loan. Skywave I Corp. V. Branch Banking & Trust Co., 2009-CP-10-7516, Kerr v. Branch Banking & Trust Co., 2009-CP-10-7516 (S.C. Bus. Ct. 9th Cir. Nov 8, 2011) amended June 15, 2012. In these cases Skywave I Corp., a company in which one Plaintiff was an investor and the others officers, had a creditor-borrower relationship with the bank via an agreement. At the heart of the case were Plaintiff's allegations that the bank improperly refused to further finance the company causing it to file bankruptcy and see plaintiffs to lose their respective investments and salaries. The Plaintiff's lender liability claims were not based upon their relationship or agreements with the bank but rather the company's. They argued that the bank had a duty to them because banks relationship with the company created a special relationship with the plaintiff investors and officers. The Court squarely dismissed that argument stating that the "Plaintiff cannot unilaterally manufacture a duty by BB&T (the lender) where none exists." The Court dismissed the cases finding that the bank did not have any duty to the Plaintiffs, and they therefore could not establish their lender liability claims.

Section 37-10-107 Bars Fraud, Civil Conspiracy, Negligent Misrepresentation and UTPA Claims.

South Carolina state and federal trial courts have found that fraud, negligent misrepresentation, civil conspiracy and UTPA claims are barred by section 37-10-107. See

e.g. Lands Inn, Inc. v. Branch Banking and Trust Company of South Carolina, C.A. No. 2:98-158-23 (S.C. Com. Pl. April 12, 1999) (citing Derrick v. Branch Banking and Trust Company of South Carolina, 96-CP-42-2095 (S.C.Ct.Cm. P.) Kerr v. Branch Banking & Trust Co., 2009-CP-10-7516 (S.C. Bus. Ct. 9th Cir. Nov 8, 2011) amended June 15, 2012. Courts in South Carolina have also held that the lender statute of frauds applies to residential real estate transactions. Berlinsky v. Palmetto Federal Savings Bank, Opinion No. 2008-UP-231, (SC Ct App. 2008), Sea Cove Development, LLC v. Harbourside Community Bank, Opinion No. 26789 (S.C. 2010).

Notwithstanding the foregoing, alternatively Plaintiffs' allegations are insufficient to state a claim for negligent misrepresentation, negligence, conspiracy, interference with contract or lender liability. Plaintiffs' claim for negligent misrepresentation fail as a matter of law because Plaintiff has not alleged a legally viable false statement or any fact that would tend to create a right for them to rely on any alleged misrepresentation by SCBT. Plaintiff's only claim appears to be that the lender's underwriting requirement for an RMA was not proper and should not have been required as a condition of a loan. In this case, there is no false statement claimed.

Negligent misrepresentation is predicated upon the transmission of a negligently made false statement. See Armstrong v. Collins, 366 S.C. 204, 220, 621 S.E.2d 368, 376 (Ct. App. 2005); Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 407, 581 S.E.2d 161, 166 (2003); Robertson v. First Union Nat'l Bank, 350 S.C. 339, 349, 565 S.E.2d 309, 315 (Ct. App.

2002); Brown v. Stewart, 348 S.C. 33, 42, 557 S.E.2d 676, 680-81 (Ct. App. 2001); West v. Gladney, 341 S.C. 127, 134, 533 S.E.2d 334, 337 (Ct. App. 2000). Negligent misrepresentation case requires there first be a false representation predicated upon misstatements of fact rather than upon expression of opinion, intent, or confidence that the deal would be satisfactory. See Bishop Logging Co. v. John Deere Indus. Equip. Co., 317 S.C. 520, 526-27, 455 S.E.2d 183, 187 (Ct. App. 1995) (finding statements by equipment seller concerning expected performance of logging system were opinions as to future performance and could not be basis for claim of fraud). More specifically, the alleged false representation must be of a present or pre-existing fact. See Spires v. Acceleration Nat'l Ins. Co., 417 F. Supp. 2d 750, 755-56 (D.S.C. 2006) (applying South Carolina law). The negligent representation cannot be based on unfulfilled promises or statements as to future events. See Fields v. Melrose Ltd. P'ship, 312 S.C. 102, 105, 439 S.E.2d 283, 285 (Ct. App. 1993). In addition, an integral component of this element is that the representation be false at the time it is made. See GSM Dealer Servs., Inc. v. Chrysler Corp., 32 F.3d 139, 142 (4th Cir. 1994) (applying South Carolina law). With respect to fraudulent misrepresentation, "the fraudulent representation must relate to a present or pre-existing fact and it cannot ordinarily be based upon an unfulfilled promise to perform in the future or statements as to future events." *Id.* (quoting Emerson v. Powell, 283 S.C. 293, 296, 321 S.E.2d 629, 631 (Ct. App. 1984)).

Plaintiff at most has only alluded to alleged that "[d]efendants made false statement

to Plaintiff regarding their intention to close the loan and/or their reasons for failing to close the loan. " (See Paragraph 74 Amended Complaint). Even if taken as true, such a representation does not relate to present or pre-existing fact cannot, as a matter of law, satisfy the requirements for a claim for negligent misrepresentation.

No Right to Rely

In addition to showing that a false representation was made, a plaintiff must also show that he had a right to rely on such representation in order to pursue a claim for either negligent misrepresentation or fraudulent misrepresentation. See GSM Dealer Servs., Inc. v. Chrysler Corp., 32 F.3d 139, 142 (4th Cir. 1994) (applying South Carolina law). Plaintiff did not have a right to rely on any statements because Plaintiffs did not have a fiduciary relationship with Defendants. When there is no fiduciary relationship between the parties and the situation involves an arm's length transaction between mature, educated parties, as is the case here, there is no right to rely. Lands Inn, Inc., supra. (citing Florentine Corp. v. PEDA I, Inc., 339 S.E.2d 112, 114 (S.C. 1985)); see also First Savings Bank, FSB v. Capital Investors, Inc., 450 S.E.2d 83 (Ct. App. 1994), rev'd in part on other grounds, 459 S.E.2d 307 (S.C. 1995).

Plaintiff makes no allegations as to any fiduciary relationship between SCBT and them. Instead, as the bulk of Plaintiffs' allegations reflect, the relationship at issue is the one between SCBT and Hamners and Plaintiff and Hamners but not Plaintiff and SCBT. Plaintiff has not alleged any specific facts that would create a fiduciary relationship between Plaintiff

and SCBT. Accordingly, Plaintiff has not sufficiently pled and cannot establish that he had a right to rely on any alleged false statements by SCBT.

Plaintiffs cannot sustain a claim against either Defendant for negligent or intentional lender liability.

Additionally, Plaintiffs cannot establish their claim for negligent nor intentional lender liability against SCBT. To prove a claim for negligence, a plaintiff must establish a duty of care, a breach of that duty and damages proximately caused by the breach. McKnight v. South Carolina Dept. of Corrections, 684 S.E.2d 566, 569 (S.C.Ct.App.2009). In this case, SCBT had no duty to Plaintiff. Plaintiff alleges that "SCBT owed Plaintiff a duty of care because SCBT possessed expertise or special knowledge that would ordinarily make it reasonable for Plaintiff to rely on SCBT and because SCBT had pecuniary interest in the transaction and [SCBT] breached its duty of by failing to exercise care." (See paragraph 77 of the Amended Complaint). However, Plaintiff cannot manufacture an alleged duty on behalf of SCBT. Instead, "[duty is generally defined as the obligation to conform to a particular standard of conduct toward another." Murray v. Bank of America, N.A., 354 S.C. 337, 343, 580 S.E.2d 194, 197 (Ct. App. 2003). "Ordinarily, the common law imposes no duty on a person to act." *Id.* "An affirmative legal duty to act exists if created by statute, contract, relationship, status, property interest, or some other special circumstance." *Id.* In this case, SCBT did not have a duty to Plaintiff, Hamners were the applicants for financing and Plaintiff was not. SCBT did not owe any duty to Plaintiff via Hamners application for

financing and, therefore, Plaintiff cannot establish their claim for negligence or lender liability.

Civil Conspiracy

Plaintiff alternately claims the Bank and Hamners conspired with each other for the purpose of injuring Plaintiff. (See Paragraph 67 of Amended Complaint). A civil conspiracy exists when there is (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes the plaintiff special damage. Island Car Wash, Inc. v. Norris, 292 S.C. 595, 600, 358 S.E.2d 150, 152 (Ct. App. 1987). "Civil conspiracy is an act which is by its very nature covert and clandestine and usually not susceptible of proof by direct evidence. . . ." Id., 292 S.C. at 601, 358 S.E.2d at 153. Thus, "[i]n order to establish a conspiracy, evidence, either direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise." First Union Nat'l Bank of South Carolina v. Soden, 333 S.C. 554, 575, 511 S.E.2d 372, 383 (Ct.App. 1998).

Here, Hamners applied for a loan with the bank and the loan was not approved before the contracts expired. Doug Jacobs, a loan officer at Bank testified that it was Bank's underwriting practice to require a Road Maintenance Agreement when new loans were contemplated for properties located on a private road. At most, Plaintiff claims the Bank imposed an unnecessary underwriting requirement. Thus, Plaintiff has not presented any evidence of a concerted effort by Bank and Hamners to harm Plaintiff, and there no proof of

civil conspiracy.

Plaintiff Cannot Sustain a Claim Against Either Defendant for Violation of the South Carolina Unfair Trade Practices Act.

Finally, Plaintiff, as a person without privity and to which no duty is owed under Hamners application for financing has not pled sufficient allegations against SCBT to support a claim for violation of the SCUTPA. Plaintiffs claims are essentially that SCBT failed to follow federal lending guidelines for the Hamners applications. Such allegations and claims are generally a state and federally regulated arena. "Actions or transactions permitted under laws administered by any regulatory body or officer acting under statutory authority of this State or the United States" are generally exempt from the provisions of the SCUTPA. S.C. Code Ann. § 39-5-40(a).

Additionally, to be actionable under the SCUTPA, the unfair or deceptive act or practice must have an impact upon the public interest. Noack Enterprises, Inc. v. Country Corner Interiors, 351 S.E.2d 347 (S.C.Ct.App. 1986). Here, Plaintiff merely offers a conclusion of law that the "unfair acts and practices of Defendants have an impact on the public interest, have potential for repetition." Absent from the Amended Complaint are any facts that would even tend to show that the supposed conduct impacted the public directly or that the conduct is otherwise capable of repetition. At most, the Amended Complaint alleges, in sum, that SCBT failed to follow a lending guideline and that failure prevented SCBT from providing financing to the Hamners before the Hamner/Plaintiff contracts expired by operation of time. These allegations do not comprise "unfair or deceptive acts"

that are actionable under the SCUTPA because business relationships that affect only the parties to the complained-of transaction are not actionable under the SCUTPA. See Noack Enterprises, Inc. 351 S.E.2d at 349-50.

CONCLUSION

For the reasons set forth herein, it is request that Motions for Summary Judgment be granted and all claims against Defendants be dismissed with prejudice.

HARVEY & BATTEY, P.A.

By: 

For:

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Attorney for the Defendant,
South Carolina Bank & Trust

Beaufort, SC
February 18, 2014

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

BENJAMIN GECY,

Plaintiff,

vs.

SOUTH CAROLINA BANK & TRUST,
JAIME HAMNER and DEBORAH
HAMNER,

Defendants,

IN THE COURT OF COMMON PLEAS
CA NO. 2011-CP-07-01778

DEFENDANT SCB&T'S ANSWERS TO
INTERROGATORIES

TO: THOMAS A. PENDARVIS, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

The Defendant, SCB&T, answering Interrogatories propounded by the Plaintiff,

states as follows:

1. Give names, addresses, e-mail addresses and telephone numbers of persons known to Defendant to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken and who has possession of such statements.

Answer:

Doug Jacobs, SCB&T, Beaufort, SC
Bruce VanHorn, SCB&T, Beaufort, SC
Jamie & Deborah Hamner, c/o James Wegmann, Esquire
Dixie Sturgeon, Appraiser Coordinator for SCB&T, Columbia, SC
Kenneth Tootle, Esquire, Beaufort, SC
Ben Gecy, Beaufort, SC
John & Lori Ferguson, Meredith Lane, Beaufort, SC
Caroline T. O'Neal, Meredith Lane, Beaufort, SC
Lela O. Stalworth, Meredith Lane, Beaufort, SC
William G. O'Neal, Meredith Lane, Beaufort, SC
Kenneth, T. O'Neal, Meredith Lane, Beaufort, SC
Diana Chalmers, Meredith Lane, Beaufort, SC
Glen Klass & Madonna M. Klass, Francis Marion Circle, Beaufort, SC
Steven A. Reyna & Jennifer L. Reyna, Francis Marion Circle, Beaufort, SC
Any individual, company or entity named within the Answers To Request For
Production of any and all parties. No written or recorded statements have been taken
other than what may be included in the Request For Production

2. For each person known to Defendant to be a witness concerning the facts of the case, set forth a summary sufficient to inform the other party of the facts known to or observed by

such witness or provide a copy of any statements taken from such witnesses.

Answer: The witnesses named are expected to testify to the facts and circumstances surrounding the causes of action and defenses.

3. List names and addresses of expert witnesses whom Defendant proposes to use as a witness at trial.

Answer: This Defendant has not obtained the service of any expert witness at this time, but reserves the right to do so and supplement this answer prior to time of trial.

4. For each expert whom Defendant proposes to use as a witness, state the following:
- A complete statement of opinions to be expressed and basis and reasons therefor;
 - Data or other information considered by the witness in forming opinions;
 - Exhibits to be used as a summary of or support for the opinions;
 - Qualifications of witness, including a list of publications authored within the last ten (10) years;
 - The compensation to be paid for the study and testimony;
 - A listing of any other cases in which the witness has testified at trial or deposition in the last four (4) years;

Answer: N/A.

5. Describe legal and factual basis for any and all defenses Defendant intends to plead or rely on.

Answer: The defenses are pled with specificity. The Defendant intends to rely upon the testimony and documentary evidence to be developed therein during the course of discovery.

6. Explain if and why SCB&T denied financing for Jaime and Deborah Hamner to purchase the 10 Meredith Lane property and construction loan.

Answer: SCB&T is of the understanding and belief that the contracts between Plaintiff and Defendants Hamner's expired by operation of time and failure to meet conditions.

7. Explain why SCB&T required a Road Maintenance Agreement in order to approve the Hamners' conventional loan financing for 10 Meredith Lane and construction loan.

Answer: A valid, fully executed, recordable and approved by underwriting, RMA is required.

→ Slander of title
again

by Bank underwriters; Additionally, financing was requested to be in a form to roll into a VA format. The property did not have direct lawful access; The access was by private road with no covenants or agreements for road maintenance; The financing was intended to be provided by secondary market.

8. Did the appraisal performed by Patricia Moody have any effect on SCB&T's approval of the Hamners' financing for the property and construction loan.

Answer: The appraised values were not sufficient to support the loan requested.

9. Explain how Hamners' credit history affected SCB&T's approval of Hamners' financing for the property and construction loan.

Answer: Credit history was not an issue in this matter.

10. Describe what the commission schedule, including amounts and timing, would have been awarded to SCB&T's loan officer if the Hamners' property and construction for 10 Meredith Lane had been approved.

Answer: The commission schedule would have been based upon a percentage of the loan amount that would have been determined at the time of the closing depending on the loan amounts and the entities providing financing.

11. Describe the commission schedule, including amounts and timing, awarded to SCB&T's loan officer for the purchase of 16 Tuscarora Lane, Beaufort, SC.

Answer: This Defendant objects to this Interrogatory, to the extent that it requests information not relevant or reasonably calculated to lead to admissible discovery.

12. Describe Plaintiff Gecy's failures, if any, to meet the preconditions for the closing on the Hamner's loan for 10 Meredith Lane.

Answer: Approval required a satisfactory appraisal; builders' plans and builders' sheets verified; fully executed, valid, recordable and approved by underwriting Road Maintenance Agreement; Upon information and belief the contract expired by its terms for failure to meet conditions precedent.

13. Describe the chronology of events related in any fashion to SCB&T's involvement with the Hamners' efforts to obtain a loan for the purchase of 10 Meredith Lane, including an identification of all communications with the Hamners, underwriters, appraisers, any attorneys, all internal communications, and all documents making reference to or having any bearing on the attempts to obtain a loan.

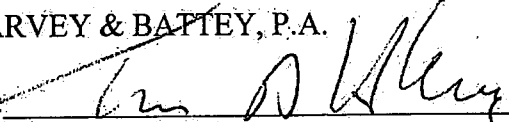
Answer: This Defendant objects to this Interrogatory to the extent that it requests information that is privileged. Without waiving the foregoing objection, see Answers to Request

To Produce.

14. Describe the chronology of events related in any fashion to SCB&T's involvement with the Hamners' efforts to obtain a loan for the purchase of 16 Tuscarora Lane, including an identification of all communications with the Hamners, underwriters, appraisers, any attorneys, all internal communications, and all documents making reference to or having any bearing on the attempts to obtain a loan.

Answer: This Defendant objects to Interrogatory 14 to the extent it requests information that is privileged and not otherwise discoverable. In addition, the Defendant objects to the extent that it requests information that is not relevant or reasonably calculated to lead to admissible discovery.

HARVEY & BATTEY, P.A.

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Bank & Trust

Beaufort, SC
August 15, 2011

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
CA NO. 2011-CP-07-1778

COUNTY OF BEAUFORT)

BENJAMIN GECY,)

Plaintiff,)

vs.)

SOUTH CAROLINA BANK & TRUST,)

JAIME HAMNER and DEBORAH)

HAMNER,)

Defendants,)

RESPONSE TO REQUEST TO ADMIT

1. Admit that SCB&T did not deny Jaime and Deborah Hamner financing for the purchase of then property and construction loan for 10 Meredith Lane based on the Hamners' credit history and/or score.

Response: It is admitted that the Hamners were not denied financing based upon credit history and or credit scores, for the purchase of property and construction for the Meredith Lane property.

2. Admit that SCB&T provided financing to Jaime and Deborah Hamner for their purchase of 16 Tuscarora Avenue, Beaufort, SC.

Response: It is admitted that SCB&T provided financing services for the Hamners' purchase of the Tuscarora Avenue property.

3. Admit that SCB&T agreed to make the valid, signed Road Maintenance Agreement an at-closing condition for the financing of the Hamners' purchase of 10 Meredith Lane.

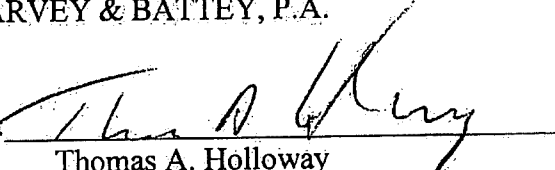
Response: It is denied that a valid signed Road Maintenance Agreement was an at-closing condition for the financing of the Hamners' purchase of 10 Meredith Lane. A valid and fully executed and approved Road Maintenance Agreement was required in advance of the closing date.

4. Admit that the closing of 10 Meredith Lane did not occur because the Hamners decided not to purchase 10 Meredith Lane.

Response: Denied as stated. Upon information and belief it is this parties understanding that the contracts expired due to the Plaintiff's failure to meet material terms, conditions and

contingencies of the contracts.

HARVEY & BATTEY, P.A.

By: 

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Beaufort, SC
August 16, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
CA NO. 2011-CP-07-01778

BENJAMIN GECY,)
)
Plaintiff,)
vs.)

DEFENDANT SCB&T'S RESPONSE
TO REQUEST FOR PRODUCTION

SOUTH CAROLINA BANK & TRUST,)
)
JAIME HAMNER AND DEBORAH)
HAMNER,)
)
Defendants,)
)

1. Produce any writing and recordings making reference to or related in any fashion to any statements give by witnesses to the incidents and matters complained of in this litigation which are in the possession of Defendant or its attorney, whether written or recorded.

Response: See attached Bates No (s). 1 through 115 .

2. Produce any writings and recordings making reference to any and all reports prepared by any witness concerning this litigation and specifically any expert witnesses' reports.

Response: See Response No. 1.

3. Produce any writings and recordings making reference to or related to any and all writings or recordings listed, referred to, used in preparing or otherwise identified in your answers to these discovery requests.

Response: See Response No. 1.

4. Produce any writings and recordings Defendant intends to offer in the trial of this case to demonstrate, illustrate or assist testimony of any witness.

Response: This Defendant objects to this request on the grounds that it requests attorney work product and/or attorney impressions. Without waiving such objections, Defendant has not determined what evidence it intends to offer at the time of trial.

5. Produce any writings and recordings, including electronic mail, making reference to the ownership, purchase and/or attempt to own or purchase 10 Meredith Lane.

Response: See Response No. 1.

6. Produce any writings and recordings, including electronic mail, making reference to building a residence on 10 Meredith Lane and/or attempt to obtain a loan to finance building a residence on 10 Meredith Lane.

Response: See Response No. 1.

7. Produce any writings and recordings making reference to any correspondence between Defendants Jaime and Deborah Hamner and SCB&T.

Response: See Response No. 1.

8. Produce any writings and recordings making reference or related to any writings or recordings identified in your answer to Plaintiff's Discovery Requests and not already produced in response to any of the foregoing requests.

Response: See Response No. 1.

9. Produce any writings and recordings you intend to use to impeach testimony of any witness at trial or deposition.

Response: See Response No. 1.

10. Produce any writings and recordings obtained through legal process, including but not limited to subpoena, Freedom of Information Act requests.

Response: See Response No. 1.

11. Produce any writings and recordings making reference to formulating your responses to the Request To Admit and Interrogatories.

Response: See Response No. 1.

12. Produce any writings and recordings making reference to or related to SCB&T's involvement with the Hamners' efforts to obtain a loan to purchase 10 Meredith Lane.

Response: See Response No. 1.

13. Produce any writings and recordings making reference to or related to SCB&T's financing of the loan it made to the Hamners for their purchase of 16 Tuscarora Lane.

Response: Defendant objects to this request based upon the fact that it is not relevant and that it is not anticipated to lead to admissible evidence.

18. List the names, addresses, email addresses and phone numbers of all residential and or commercial builders that constructed homes for customers participating in the SCB&T 100% Construction/Conventional loan in Beaufort. Records from October, 2009 to January 1, 2014 are requested.

Answer: Defendant objects to the extent that it requests information that is privileged and not otherwise discoverable. In addition, Defendant objects to the extent that it is not relevant and or reasonably calculated to lead to admissible discovery. Without waiving objection, SCB&T does not compile such statistics.

19. Did SCB&T ever commission, register or order an appraisal from the Veterans Affairs for Hamner's purchase and construction at 10 Meredith Lane. If so, provide the (LIN).

Answer: Defendant objects to the extent that it requests information that is privileged and not otherwise discoverable. In addition, Defendant objects to the extent that it requests information not relevant or reasonably calculated to lead to admissible discovery. Without waiving said objection, SCB&T obtained an appraisal in the ordinary course of business that was prepared by Patrice S. Moody, Coastal Appraisal Services, P.O. Box 104, Beaufort, SC 29901 as previously provided in Defendant's Response to Request For Production.

20. Did any representative of SCB&T obtain any electronic or manual approval, denial or referred status from any AUS, DU, LP system. List the date, time and origination system Hamner's file was submitted for electronic or manual decision.

Answer: Defendant objects to the extent that it requests information that is privileged and not otherwise discoverable. In addition, Defendant objects to the extent that it requests information not relevant or reasonably calculated to lead to admissible discovery. Notwithstanding said objection, there was no approval for the Hamner's loan application. The underlying contract expired by operation of time and to activity occurred thereafter.

Defendant SCB&T's Response To Plaintiff's Second Request For Production

14. Produce all email communications from Hamners underwriter to Doug Jacobs loan officer or any processor involved with Hamner purchase of 10 Meredith Lane.

Response: Email communications between Doug Jacobs and Charlotte Marcelle were previously provided in Defendant's First Response To Request to Produce.

15. Produce underwriters original conditional loan approval for Hamner's application to purchase/construct 10 Meredith Lane. Produce underwriters final conditional loan approval for Hamner on 10 Meredith Lane.

Response: No such documents exist. There were no conditional or final loan approvals for the

1

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
CA NO. 2011-CP-07-1778

Benjamin Gecy,)
)
Plaintiff,)

vs.)

Defendant, South Carolina Bank & Trust's
Answers To Plaintiff's Second
Interrogatories

South Carolina Bank & Trust, Jaime)
Hamner and Deborah Hamner,)
)
Defendants,)

TO: THE PLAINTIFF ABOVE NAMED:

The Defendant, South Carolina Bank & Trust, answering the Plaintiff's Second Interrogatories states as follows:

15. Give names, addresses, email addresses and telephone numbers of any underwriter who performed/issued underwriting decisions and or conditional loan approvals for Hamner on 10 Meredith Lane. Provide company position and credentials.

Answer: Charlotte Marcelle, c/o SCB&T, was involved in underwriting the Hamner application for financing the purchase of 10 Meredith Lane. Contact information was previously provided in responses to Request For Production.

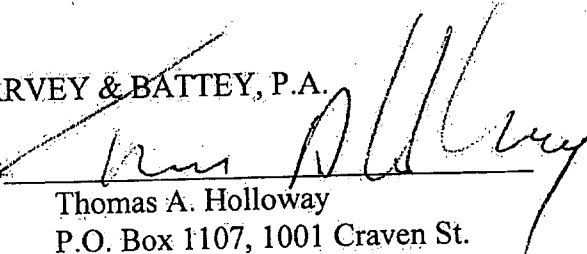
16. Give names, addresses email addresses and phone numbers of any underwriter who performed/issued underwriting decisions and or issued conditional loan approvals for Hamner on the purchase of 16 Tuscarora Ave., Beaufort, SC. Provide company position and credentials.

Answer: Defendant objects to the extent that it requests information that is privilege and not otherwise discoverable. In addition, Defendant objects to the extent that it requests information that is not relevant or reasonably calculated to lead to admissible discovery.

17. List the total number of customers who have successfully closed the SCB&T 100% Construction/Conventional loan in Beaufort. This is the same loan Hamner was obtaining to build at 10 Meredith Lane. Records from October 2009 to January 1, 2014 are requested.

Answer: Defendant objects to the extent that it requests information that is privileged and not otherwise discoverable. In addition, Defendant objects to the extent that it requests information that is not relevant or reasonably calculated to lead to admissible discovery. Without waiving objection, SCB&T does not compile such statistics.

HARVEY & BATTEY, P.A.

By: 

Thomas A. Holloway

P.O. Box 1107, 1001 Craven St.

Beaufort, SC 29901-1107

(Tel) 843.524.3109 (Fax) 843.524.6973

Attorneys for the Defendant,

South Carolina Bank & Trust

Beaufort, SC
August 12, 2011

#1

purchase of 10 Meredith Lane.

16. Produce underwriters original conditional loan approval for the Hamner purchase of 16 Tuscarora Avenue.

Response: Defendant objects on the grounds that it requests private information that is privileged and not otherwise discoverable. In addition, it requests information that is not relevant or reasonably calculated to lead to admissible discovery.

17. Produce any and all executed VA/HUD/FHA Amendatory Clause/Real Estate Certification and or VA/HUD/FHA Escape Clause documents obtained by SCB&T in connection with the Hamner's financing of 10 Meredith Lane.

Response: Upon information and belief all real estate and construction contracts were prepared by Plaintiff and executed by and between the Plaintiff and the Hamners. Said contracts, addendums or clauses have previously been provided in First Production of Documents.

18. Produce any and all fully executed VA/HUD/FHA Amendatory Clause/Real Estate Certification and or VA/HUD/FHA Escape Clause documents obtained by SCB&T in connection with Hamner's financing of 16 Tuscarora.

Response: Objection as this request private and confidential information that is privileged and not otherwise discoverable. In addition, Defendant objects to extent that it requests information that is not relevant or reasonably calculated to lead to admissible discovery.

19. Produce all 12 digit VA loan numbers SCB&T obtained for Hamner's in connection with purchase of 10 Meredith Lane.

Response: Objection as this requests private and confidential information that is privileged and not otherwise discoverable. In addition, Defendant objects to extent that it requests information that is not relevant or reasonable calculated to lead to admissible discovery. Without waiving objection, Defendant is unaware of any responsive



VA loan numbers SCB&T obtained for Hamner's in connection with purchase of 16 Tuscarora.

this requests private and confidential information that is privileged and not otherwise discoverable. In addition, Defendant objects to the extent that it requests information that is not relevant or reasonably calculated to lead to admissible discovery.

21. Provide all underwriting matrices, guidelines or handbooks for SCB&T's 100%

Construction/Conventional Loan.

Response: Objection as this requests private and confidential information that is privileged and not otherwise discoverable. In addition, Defendant objects to the extent that it requests information that is not relevant or reasonably calculated to lead to admissible discovery.

22. Produce all fully executed loan application signed by buyer for mortgage financing associated with 10 Meredith Lane.

Response: See attached.

23. Produce all AUS submissions including and not limited to DU, LP and its complete findings for James and Deborah Hamner on the purchase/construction of 10 Meredith Lane.

Response: Objection as this requests private and confidential information that is privileged and not otherwise discoverable. In addition, Defendant objects to the extent that it requests information that is not relevant or reasonably calculated to lead to admissible discovery.

24. Produce all CAIVRS numbers obtained by SCB&T for Hamner's purchase of 16 Tuscarora.

Response: Objection as this requests private and confidential information that is privileged and not otherwise discoverable. In addition, Defendant objects to the extent that it requests information that is not relevant or reasonably calculated to lead to admissible discovery.

25. Produce any and all CAIVRA numbers obtained by SCB&T for the purchase of 16 Tuscarora.

Response: Objection as this requests private and confidential information that is privileged and not otherwise discoverable. In addition, Defendant objects to the extent that it requests information that is not relevant or reasonably calculated to lead to admissible discovery.

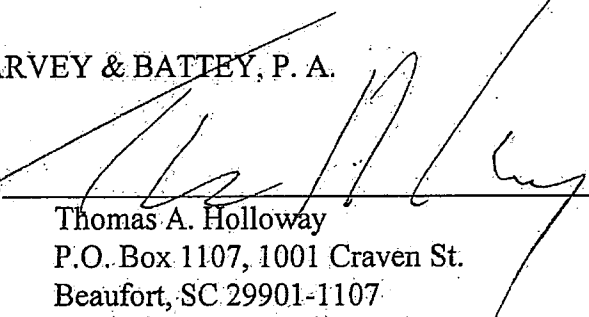
26. Produce names, addresses, email addresses of the S.A.R. representative assigned to Hamner's appraisal of 10 Meredith Lane.

Response: This information has previously been provided in Defendant's Response to First Request to Produce.

Defendant, SCB&T's Response to Second Request To Admit

5. Admit the value of the Coastal Appraisal for 10 Meredith Lane performed by Patrice Moody exceeded the combined sales price for both the land contract and construction contract

HARVEY & BATTEY, P. A.

By: 

Thomas A. Holloway

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Attorney for the Defendant, SCB&T

Beaufort, SC
February 7, 2014

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

BENJAMIN GECY,

Plaintiff,

vs.

SOUTH CAROLINA BANK & TRUST,

JAIME HAMNER and DEBORAH

HAMNER,

Defendants,

IN THE COURT OF COMMON PLEAS
CA NO. 2011-CP-07-1778

RESPONSE TO REQUEST TO ADMIT

1. Admit that SCB&T did not deny Jaime and Deborah Hamner financing for the purchase of then property and construction loan for 10 Meredith Lane based on the Hamners' credit history and/or score.

Response: It is admitted that the Hamners were not denied financing based upon credit history and or credit scores, for the purchase of property and construction for the Meredith Lane property.

2. Admit that SCB&T provided financing to Jaime and Deborah Hamner for their purchase of 16 Tuscarora Avenue, Beaufort, SC.

Response: It is admitted that SCB&T provided financing services for the Hamners' purchase of the Tuscarora Avenue property.

3. Admit that SCB&T agreed to make the valid, signed Road Maintenance Agreement an at-closing condition for the financing of the Hamners' purchase of 10 Meredith Lane.

Response: It is denied that a valid signed Road Maintenance Agreement was an at-closing condition for the financing of the Hamners' purchase of 10 Meredith Lane. A valid and fully executed and approved Road Maintenance Agreement was required in advance of the closing date.

4. Admit that the closing o 10 Meredith Lane did not occur because the Hamners decided not to purchase 10 Meredith Lane.

Response: Denied as stated. Upon information and belief it is this parties understanding that the contracts expired due to the Plaintiff's failure to meet material terms, conditions and

signed by Hamner and Gecy.

Response: Denied as stated. Defendant craves reference to the documents as they speak for themselves.

6. Admit SCB&T obtained a VA/HUD/FHA Amendatory Clause and Real Estate Certification signed from the buyer, seller and real estate agents on 16 Tuscarora.

Response: Objection as this requests private and confidential information that is privileged and not otherwise discoverable. In addition, Defendant objects to the extent that it requests information that is not relevant and not reasonably calculated to lead to admissible evidence.

7. Admit the VA requires the seller to sign a VA/HUD/FHA Amendatory Clause and Real Estate Certification on purchase transactions.

Response: Defendant neither admits nor denies this Request, as VA requirements are contained in the Federal Register and speak for themselves.

8. Admit SCB&T and its agents required Hamner to deposit money in CD form during the construction of a 100% Construction Loan on 10 Meredith Lane.

Response: Denied. No construction loan was provided by Defendant for 10 Meredith Lane.

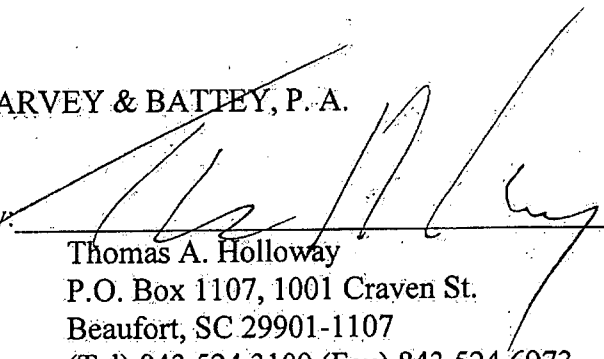
9. Admit SCB&T and its agents never applied, obtained or received a notice of value for appraisal on 10 Meredith Lane.

Response: Defendant neither admits nor denies this Request as Defendant is unaware of and does not know what Plaintiff is asking. Therefore, restate the question with more particularity for further response.

10. Admit SCB&T and its agents received a notice of value for Hamner's appraisal of 16 Tuscarora.

Response: Objection as this requests private and confidential information that is privileged and otherwise discoverable. In addition, Defendant objects to the extent that it requests information that is not relevant and not reasonably calculated to lead to admissible discovery. Further, Defendant is unaware of and does not know what Plaintiff is asking. Therefore, restate the question with more particularity.

HARVEY & BATTEY, P. A.

By: 

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Attorney for the Defendant, SCB&T

Beaufort, SC

February 7, 2014

CERTIFICATE OF MAILING

I certify that on the 7th day of February, 2014, a copy of the attached **Defendant's SCB&T's Answers/Response to Plaintiff Second Set of Discovery Requests** was placed in the United States Mail with first class postage prepaid and mailed to the following:

Benjamin Gecy
1857 Ribaut Road
Port Royal, SC 29935

James J. Wegmann, Esquire
6 Professional Village
Beaufort, SC 29907

HARVEY & BATTEY, P. A.

By: 
Ann B. Williamson

Beaufort, South Carolina

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

BENJAMIN GECY,
Plaintiff,

vs.

CIVIL ACTION NUMBER
2011-CP-07-1778

SOUTH CAROLINA BANK & TRUST,
JAIME HAMNER AND DEBORAH HAMNER,

Defendants.

COPY

-----/

The deposition of DOUG JACOBS, a witness
in the above-entitled cause, taken pursuant to
Notice and agreement, before Kyle J. Saniga,
Certified Court Reporter and Notary Public, at
the Offices of GMC Mortgage, 1857 Ribaut Road,
Port Royal, South Carolina, on the 11th day of
February 2014, commencing at or about the hour
of 9:30 a.m.

COASTAL COURT REPORTING & VIDEO SERVICES
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HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - FAX 843-785-5837

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1
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17
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1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 DOUG JACOBS,

3 having been produced and first duly sworn as a
4 witness, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. GECY:

7 Q All right, Doug. I think we've met
8 before. My name's Benjamin Gecy.

9 This is the deposition of Doug Jacobs,
10 witness in Civil Case Number 2011CP071778
11 conducted by Benjamin Gecy pro se for the
12 plaintiff, February 11th 2014 approximately 9:30
13 a.m.

14 Mr. Jacobs, let's just go over a few
15 rules and housekeeping rules before we get
16 started. You know your testimony is under oath,
17 correct?

18 A Yes.

19 Q If you don't understand one of my
20 questions please do not answer it, ask me to
21 rephrase it. Do not ask your attorney. If you
22 do answer my question I will assume that you did
23 understand the question.

24 Please make verbal responses. The
25 court reporter cannot pick up head nods or hand

1 GECY - D. JACOBS (DIRECT EXAMINATION)
2 signals.

3 Also, do you understand that I'm
4 conducting this deposition pro se?

5 A Yes.

6 Q Do you know what pro se means?

7 A Yes.

8 Q Okay, all right.

9 MR. HOLLOWAY: As a housekeeping
10 matter, do you have the witness fee and
11 mileage?

12 MR. GECY: Did she give you the
13 envelope up front?

14 THE WITNESS: No.

15 MR. HOLLOWAY: Bruce didn't
16 receive his yesterday either.

17 MR. GECY: Bruce denied his
18 yesterday. Did you know that?

19 MR. HOLLOWAY: No. I guess he
20 didn't know what it was.

21 MR. GECY: Yeah. Bonnie tried to
22 give him a check and he said, 'no, no,
23 I'll just catch up with you later,' so
24

25 MR. HOLLOWAY: He probably thought

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 you were serving him with something
3 else.

4 MR. GECY: But Doug does have a
5 check in an envelope up front. Bonnie
6 was supposed to give it to him when he
7 walked in and we've got mileage from
8 SCB&T, in fact.

9 MR. HOLLOWAY: I got a call from
10 another witness --

11 MR. GECY: Well, let's deal with
12 that later.

13 MR. HOLLOWAY: -- Ms. Chalmers.

14 MR. GECY: Yeah, we'll deal with
15 that later. Thank you.

16 BY MR. GECY:

17 Q Doug, can you please state your full
18 name for the record.

19 A Douglas B. Jacobs.

20 Q Are you known by any other names or
21 aliases?

22 A No.

23 Q Where you born?

24 A Reed City, Michigan.

25 Q How long have you lived in Beaufort,

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 South Carolina?

3 A This time since 1999.

4 Q What other times?

5 A From 1987 to 1990.

6 Q Okay. And was that because of the
7 military?

8 A Yes.

9 Q Where were you stationed and what was
10 your rank at that point in time?

11 A Stationed at MCRB Parris Island and I
12 was a sergeant.

13 Q Which is enlisted E6, E7?

14 A E5?

15 Q E5, okay. How about your educational
16 background, can you state your educational
17 background from beginning to end starting in
18 grade school ending in college, if any.

19 A Grade school Percy Elementary, Middle
20 School Reed City Middle School, high school Reed
21 City High School and University of Hawaii,
22 Honolulu and one year of college.

23 Q Okay. All of the grade school, high
24 school was in Michigan?

25 A Yes.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 Q Okay. University of Hawaii, how long
3 did you spend at the University of Hawaii?

4 A I took courses while I was stationed
5 there. I was stationed in Hawaii for
6 three years. I took intermittent courses.

7 Q What was the subject matter of those
8 courses?

9 A Just basic general courses.

10 Q Entry level college courses?

11 A Entry level, yes.

12 Q Were the courses -- did any courses
13 deal with finance, mortgage or real estate?

14 A No.

15 Q Okay. Have you received any degrees
16 from any colleges or other advanced
17 institutions?

18 A None that I'm aware of.

19 Q Okay. What mortgage credentials do you
20 currently possess?

21 A I have a NMLS number, the federal I.D.
22 I'm a loan originator.

23 Q What is your NMLS number?

24 A My NMLS ID is 4414435.

25 Q Please state what the purpose of an

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 NMLS number is for a loan originator.

3 A It is -- my understanding it's an I.D.
4 for every loan originator that's required by the
5 federal government to originate loans.

6 Q Does the federal government monitor
7 those loan originators?

8 A Yes.

9 Q Does that NMLS number follow you from
10 employment-to-employment, broker-to-broker,
11 bank-to-bank?

12 A That, I'm not sure of.

13 Q Does the NMLS number serve as a social
14 security number sort of for a loan officer?

15 A It's an identification number for an
16 individual.

17 Q Can the NMLS number change on a loan
18 originator?

19 A I do not know.

20 Q Okay. Isn't it a fact when you have
21 a -- when -- is it a fact when a loan officer
22 has an NMLS number there are certain continuing
23 education they have to participate in?

24 A Yes.

25 Q Have you completed your courses for

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 2013 and/or '14?

3 A Yes.

4 Q When did you complete your courses in
5 2013?

6 A Before the end of October 2013.

7 Q What was the subject matter of the
8 continuing education you took there?

9 A Mortgage origination.

10 Q Anything specific?

11 A Everything that's required by the
12 federal regulations.

13 Q How about any truth in lending
14 education?

15 A I'm sure there was a component of the
16 truth in lending.

17 Q Any Regulation Z?

18 A Yes, there would have been Regulation
19 Z.

20 Q Any educational RESPA, Real Estate
21 Servicing and Protection Act?

22 A If it's required by the fed.

23 Q Who monitors both of those
24 organizations?

25 A The federal government, is my

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 understanding.

3 Q Does the OTC monitor any of those
4 organizations?

5 A They may.

6 Q Does the FBI monitor any of those
7 organizations?

8 A Not aware if they do or not.

9 Q Any other -- how about the thrift and
10 supervision, thrift and supervision, do they
11 regulate truth in lending and RESPA?

12 A (Witness shakes head) No idea.

13 Q Are you familiar with the South
14 Carolina Department of Consumer Affairs?

15 A I've heard of them.

16 Q Has the Department of Consumer Affairs
17 ever audited any files at South Carolina Bank
18 and Trust that you participated in?

19 A None that I'm aware.

20 Q Have you had any files sanctioned or
21 fined by any regulatory agencies?

22 A None.

23 Q So is it a fact, in those classes you
24 took last year of 2013, they educated loan
25 officers on the guidelines of truth in lending

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 and the possible violations that happen with
3 truth in lending?

4 MR. HOLLOWAY: Objection to the
5 form. You can answer the question.

6 BY MR. GECY:

7 Q Answer the question.

8 A If that is part of the required
9 specific training then, yes, if that's part of
10 the federal regulated training. It is different
11 for banks as it is for brokers.

12 Q Is it more stringent on banks than
13 brokers?

14 A I don't know.

15 Q Do banks have more laws to follow than
16 brokers?

17 A I don't know.

18 Q Have you ever been a mortgage broker?

19 A Yes, I've worked for a mortgage broker.

20 Q The laws that you had as a mortgage
21 broker -- is it a fact the laws that you have,
22 now, as a lender are completely different than
23 the laws you had as a mortgage broker?

24 A The regulations were different at that
25 time when I worked for a mortgage broker.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 Q Why have the regulations changed over
3 the years?

4 A Because the fed has changed them.

5 Q Are those changes to protect the
6 consumers?

7 A Yes.

8 Q Are those changes to protect loan
9 officers?

10 A Yes.

11 Q Are those changes to help make loan
12 officers more money?

13 A No.

14 Q Have they regulated the income on loan
15 originators in the past ten years?

16 A Yes.

17 Q Has your income declined in the last
18 ten years?

19 Let me rephrase the question, if you
20 don't mind.

21 Has your income declined since being a
22 mortgage broker versus a mortgage lender?

23 A I think it stayed relatively the same.

24 Q So there were -- were there years, as a
25 mortgage broker, that you made more money than

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 as a lender?

3 A I don't think it's -- anything has
4 really changed.

5 Q How much do you make, on average, per
6 year, from South Carolina Bank and Trust?

7 A More than ten dollars, less than a
8 million.

9 Q Can you give me a specific number?

10 A No.

11 Q Is it greater than 100,000?

12 A It might be.

13 Q Can you have him answer the question,
14 please.

15 MR. HOLLOWAY: He's entitled to
16 answer it the way he wants to.

17 BY MR. GECY:

18 Q Is it greater than 150,000?

19 A It might not be.

20 Q Is it greater than 130,199.99 cent?

21 A I don't know.

22 Q Okay. Try to make this as quick as
23 possible, Doug, but that's okay.

24 So you roughly make around \$130,000 a
25 year, right now, with South Carolina Bank and

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 Trust?

3 MR. HOLLOWAY: I object to the
4 form of the question.

5 MR. GECY: I object to it myself.

6 All right.

7 BY MR. GECY:

8 Q As a mortgage broker, is it a fact that
9 you made more than \$130,000 a year in any given
10 year?

11 A I don't remember.

12 Q Did you ever make over \$100,000 a year,
13 as a mortgage broker?

14 A I don't know, specifically.

15 Q Are you employed by any mortgage
16 brokers, currently?

17 A No.

18 Q Do you broker loans to any other
19 companies besides the portfolio with SCB&T?

20 A No.

21 Q Who does SCB&T sell their loans to?

22 A SCBT is a Fannie Mae direct lender.

23 Q Do they sometimes service -- sell
24 servicing rights to other lenders?

25 A I would assume they do.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 Q Have you directly closed any loan with
3 any other bank, outside of South Carolina Bank
4 and Trust, while employed with them?

5 A No.

6 Q You've never received a commission from
7 any other lending institution, besides South
8 Carolina Bank and Trust, while employed with
9 them?

10 A No.

11 Q Are you a 1099 employee with South
12 Carolina Bank and Trust or do you get paid a W2?

13 A W2.

14 Q Do you receive any 1099 income with
15 South Carolina Bank and Trust?

16 A I don't believe so.

17 Q Have you ever received any income, via
18 1099 tax form, from South Carolina Bank and
19 Trust?

20 A I don't believe so.

21 Q Are you receiving any money from any
22 other professional organizations related to the
23 real estate industry, currently?

24 A No.

25 Q Do you receive money from real estate

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 agents for referrals?

3 A No.

4 Q Do you receive money from builders for
5 referrals?

6 A No.

7 Q Have you ever?

8 A No.

9 Q Have you ever held a builder license?

10 A No.

11 Q Have you ever held any other
12 professional license in the state of Michigan,
13 California, Hawaii or South Carolina, besides
14 your current NMLS number?

15 A I don't believe so.

16 Q What is the highest commission check
17 you've ever made on a loan?

18 A I don't know.

19 Q Do you get paid commission as a loan
20 officer?

21 A Yes.

22 Q What was the commission you got paid on
23 the 16 Tuscarora Avenue purchase for James
24 Hamner?

25 A Don't know.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 Q Did you receive that documented in your
3 paycheck stub, at any point in time, after the
4 closing?

5 A Yes.

6 Q Have you ever received a commission,
7 over \$10,000, for participation on a loan with
8 South Carolina Bank and Trust?

9 A I don't know.

10 Q Are you on salary with your \$130,000
11 plus income with South Carolina Bank and Trust?

12 A I never stated what I made for income.

13 Q Are you on any type of salary with
14 South Carolina Bank and Trust?

15 A Yes.

16 Q Are you a Vice President with South
17 Carolina Bank and Trust?

18 A Yes.

19 Q Are you Vice Presidents with any other
20 companies?

21 A No.

22 Q When was your last promotion?

23 A I believe two or three years ago.

24 Q Do you receive commission on the
25 upfront origination fees and the back end when

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 the loan sells?

3 A Not specifically.

4 Q Why do you answer it that way?

5 A Because our pay is not derived from
6 fees that are charged.

7 Q Do you not get paid on upfront
8 origination fees that are charged to the
9 borrower on loans you participated in?

10 A Our pay structure is based on the loan
11 amount.

12 Q I understand that but if you charge --
13 is it a fact that the bank charges a customer
14 \$3,000 up front for an origination fee, on the
15 front end, you get paid for that or a portion of
16 it?

17 MR. HOLLOWAY: Objection to the
18 form of the question.

19 BY MR. GECY:

20 Q Answer the question.

21 A We don't get paid like brokers do.

22 Q I didn't ask you that.

23 A You asked me how we got paid and that's
24 how brokers get paid.

25 Q I asked you a scenario.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 A If that is relevant to the loan size,
3 yes, then we would get paid on that.

4 Q Even if it was an upfront charge?

5 MR. HOLLOWAY: Objection to the
6 form of the question.

7 THE WITNESS: We get paid on the
8 loan size.

9 BY MR. GECY:

10 Q If a client closed a transaction and
11 there was a \$3,000 origination fee on the HUD
12 that you originated, would you get paid on that
13 amount of money?

14 A If it is relevant to the loan size.

15 Q Well, I think we're all assuming that
16 there's a loan.

17 If -- if there was a loan on that HUD
18 that had a \$3,000 origination fee, would you
19 have received income from that upfront
20 origination fee?

21 A If the loan was a \$300,000 loan and
22 there was no service release premium, then yes.

23 Q Can you get paid service release
24 premium and upfront origination fees --

25 A No.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 Q -- on the same loan?

3 A No.

4 Q You're positive on that?

5 A Positive.

6 Q Have you ever received any income in
7 that scenario?

8 A Yes.

9 Q With South Carolina Bank and Trust?

10 A Yes.

11 Q Why did you answer it differently, the
12 question before?

13 A Because that was an old pay plan versus
14 the new pay plan.

15 Q When did the new pay plan go into
16 effect?

17 A It changes every year.

18 Q Okay. How about the year of 2010, did
19 y'all have a different pay plan for that year?

20 A I don't know the specifics of it, but
21 yes.

22 Q Do you remember if you would have
23 received income on a \$3,000 origination fee and
24 the amortization fees that were charged Mr.
25 Hamner on his good faith estimate if that loan

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 had closed?

3 A Modification fee is not a fee that
4 lenders get paid on.

5 Q Who gets paid on it?

6 A The attorney. That's an attorney
7 charge.

8 Q So SCB&T does not charge a modification
9 fee?

10 A We disclose a modification fee, if
11 that's the customer's choice, to modify the
12 loan.

13 Q What loan were you modifying Mr.
14 Hamner's transaction to as disclosed in that
15 good faith estimate?

16 A We wouldn't -- the modification is a
17 modification done at the attorney's office for
18 the customer to whoever would do the permanent
19 loan.

20 Q What would that modify? What would
21 that fee modify?

22 A It would have modified a construction
23 loan to a VA permanent loan.

24 Q - And that was the expected --- was that
25 the expected financing scenario of Mr. Hamner on

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 the purchase of 10 Meridith Lane?

3 A Yes.

4 Q Construction to perm with a rollover to
5 VA, was that the scenario you proposed to Mr.
6 Hamner?

7 A Construction and then his VA perm to
8 any lender he chose, yes.

9 Q Why does Mr. Hamner have a choice for
10 the lender? I thought you guys didn't sell to
11 any other lenders.

12 A Because if I do a construction loan and
13 he doesn't choose me for the VA permanent loan
14 he can do a VA permanent loan with any lender he
15 chooses.

16 Q What if that lender did not have a road
17 maintenance agreement requirement, would SCB&T
18 still require an RMA?

19 A The RMA is required by the VA.

20 Q What if a lender that sells loans to
21 the VA did not have that requirement and Mr.
22 Hamner could have closed without a road
23 maintenance agreement would South Carolina Bank
24 and Trust have closed that construction loan?

25 A No.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 Q Why is that?

3 A It's a VA requirement.

4 Q That's not what I'm asking you. Is it
5 an SCBT policy for a road maintenance agreement?

6 A For a construction loan that will be a
7 VA permanent, yes.

8 Q Okay. Those are some good points and
9 your testimony is Mr. Hamner can rollover to any
10 type of loan that he chooses.

11 I'm going to show you a document here.

12 What if Mr. Hamner chose an FHA loan to
13 roll over to. They don't require road
14 maintenance agreements, do they?

15 A They do now.

16 Q They didn't in 2010, did they?

17 A No.

18 Q Did you check into that?

19 A They didn't in 2010.

20 Q They did not require road maintenance
21 agreements in 2010?

22 A They did not. The FHA did not, that I
23 know of.

24 Q Why did you not pursue an FHA type loan
25 for Mr. Hamner to help his family who was in

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 need of a closing, panicked with anxiety,
3 stressed out?

4 MR. HOLLOWAY: Objection to the
5 form of the question.

6 BY MR. GECY:

7 Q Answer the question.

8 A He wanted a VA loan.

9 Q Did Mr. Hamner want to close the 10
10 Meridith Lane?

11 A I would assume so.

12 Q Did he ever tell you to cancel that
13 loan and not close it?

14 A I don't recall if he did.

15 Q So that's not a yes or no, is it?

16 MR. HOLLOWAY: Objection to the
17 form of the question. He answered it.

18 BY MR. GECY:

19 Q Answer it. Can you give me a yes or no
20 answer?

21 A I cannot.

22 Q Why not?

23 A I don't know if he requested that it be
24 withdrawn.

25 Q Did you stop working on the file during

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 the extension period at the request of Mr.
3 Hamner?

4 A I don't know if I stopped working on
5 the file at his request.

6 Q Well, Mr. Jacobs, there's a lot of
7 people had a lot of problems over this and you
8 were responsible for it.

9 MR. HOLLOWAY: Objection. Ask
10 questions. You're not --

11 MR. GECY: I'm going to ask some
12 questions, don't worry. Don't worry,
13 Mr. Holloway.

14 MR. HOLLOWAY: Objection. Ask
15 questions. You're not entitled to
16 commentary in a deposition.

17 MR. GECY: Okay. Well, let's see
18 what we can find here.

19 (Whereupon, Plaintiff's Exhibit
20 Number 21 was marked for
21 identification.)

22 BY MR. GECY:

23 Q Mr. Jacobs, is it a fact in 2010 the
24 FHA did not require a road maintenance
25 agreement?

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 A I believe that is true.

3 Q Okay. Why did you not pursue the FHA
4 loan?

5 A Customer requested a VA loan as a perm.

6 Q Have you ever changed directions for a
7 customer to help facilitate a closing for a
8 client?

9 A If the customer requested alternative
10 options.

11 Q Okay. So if Mr. Hamner didn't want to
12 pursue the FHA loan you weren't obligated to
13 transfer his application over to FHA?

14 MR. HOLLOWAY: Objection to the
15 form of the question.

16 BY MR. GECY:

17 Q Answer the question.

18 A Mr. Hamner wanted a VA loan.

19 Q Did you -- did you feel there was an
20 obligation, as a lender, to pursue other lending
21 options?

22 A I didn't feel there was an obligation.

23 Q Do you have a standard duty of care to
24 the seller on contracts as a lender?

25 A No.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 Q Why is that?

3 A The seller is not the applicant for the
4 loan.

5 Q So if a seller rejects an appraisal
6 y'all don't have to pay attention to that, do
7 you?

8 A No.

9 Q That's right, okay. Did you ever apply
10 for a VA loan for Mr. Hamner?

11 A No.

12 Q Did you ever get a VA loan I.D. number
13 from the VA portal?

14 A No.

15 Q Why not?

16 A We weren't doing a VA loan, we were
17 doing a conventional construction loan.

18 Q Did you apply VA guidelines to his
19 closing on a construction loan for the road
20 maintenance agreement?

21 A Yes.

22 Q Why?

23 A Because he had requested his perm would
24 be a VA.

25 Q What if Mr. Hamner paid cash, paid the

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 loan off cash before the VA loan closed,
3 permanent financing, do you think the seller
4 should be responsible for those VA guidelines in
5 that scenario?

6 A The bank's responsibility is to the
7 borrower.

8 Q What if the borrower said the
9 responsibility was on you to make those
10 decisions, what if the borrower, as a fiduciary,
11 trusted you to make those decisions on behalf of
12 he and his family?

13 MR. HOLLOWAY: Objection to the
14 form.

15 BY MR. GECY:

16 Q Answer it.

17 A The borrower requested a VA permanent
18 loan.

19 Q Why was your loan application checked
20 conventional?

21 A Because we do not do or the VA does not
22 have a construction loan program.

23 Q That's right. And is that a fact?

24 A To my understanding, yes.

25 Q And is it a fact that the bank

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 represents that the VA can do construction
3 financing that'd be a complete
4 misrepresentation, wouldn't it?

5 MR. HOLLOWAY: Objection.

6 BY MR. GECY:

7 Q Answer.

8 A The VA does not loan money.

9 Q Did you obtain a Notice of Value from
10 the VA, Mr. Hamner, James Hamner and Deborah
11 Hamner on 10 Meridith Lane?

12 A No.

13 Q Why not?

14 A Construction loans are conventional
15 loans.

16 Q Was the loan rolled into a VA permanent
17 financing?

18 A That's what Mr. Hamner -- that's what
19 the Hamners had requested.

20 Q Were you processing a VA loan
21 application at the time, between February 3rd
22 and April 6th?

23 A Restate the question.

24 Q Were you processing a VA application
25 for Mr. Hamner during the periods of

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 February 3rd 2010 and April 6th 2010?

3 A No.

4 Q Why not?

5 A Because construction loans are
6 conventional loans.

7 Q Did Mr. Hamner tell you he wanted a VA
8 loan?

9 A The Hamners told me they wanted a VA
10 permanent loan after the construction loan.

11 Q When would you start working on that VA
12 permanent loan?

13 A If I was the chosen lender at the end,
14 60 days prior to the house being issued a
15 certificate of occupancy.

16 Q What if that appraisal came in lower
17 than the combined sales transaction in this
18 particular situation, what would happen in that
19 scenario, would the seller have to give money
20 back?

21 A Seller may have to -- would the seller?

22 Q That's what I asked you.

23 A No.

24 Q Why not?

25 A There's only a -- there's a

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 loan-to-value requirement that has to be met.

3 Q In this scenario with Mr. Hamner and
4 Mr. Gecy, there were two contracts, 156,900 and
5 150,000; \$306,900 that would be taken out
6 February or March 10th, whenever, whenever the
7 closing date was, okay, Mr. Gecy had property
8 free and clear on the \$150,000.

9 There was a VA guideline imposed on
10 that closing, and this is the moment of truth,
11 this is what it's about. This is the problem
12 that stopped this loan from closing. You were
13 in here yesterday.

14 Why were you not processing a VA loan
15 when Mr. Hamner specifically requested it?

16 MR. HOLLOWAY: Objection to the
17 form. You can answer.

18 BY MR. GECY:

19 Q Answer it.

20 MR. HOLLOWAY: You can answer.

21 THE WITNESS: I was processing a
22 construction loan.

23 BY MR. GECY:

24 Q Did that construction loan have a road
25 maintenance requirement under the guidelines for

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 construction lending with SCB&T?

3 A Yes.

4 Q What was that guideline?

5 A That it has to meet any required
6 permanent financing guidelines so that it can be
7 sold or transferred at the permanent loan.

8 Q So it's a fact SCB&T does due diligence
9 to make sure they don't get stuck with loans?

10 MR. HOLLOWAY: Objection to the
11 form.

12 THE WITNESS: There is a
13 requirement.

14 BY MR. GECY:

15 Q Okay. That's SC -- is that SCBT
16 policy?

17 A Yes.

18 Q Do you follow SCBT policy?

19 A Yes.

20 Q Did you follow SCBT policy on the
21 Hamner transaction at 10 Meridith Lane?

22 A Yes.

23 Q Did you follow VA policy on the 10
24 Meridith Lane, Hamner/Gecy transaction?

25 A With regard to a road maintenance

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 agreement, yes.

3 Q Was that for the one that was required
4 for the VA or the one that was required for
5 SCB&T or both?

6 A It is required for both.

7 Q And you follow these guidelines on
8 every loan?

9 A Every loan.

10 Q No exceptions?

11 A No exceptions.

12 Q Ben Gecy was a client of the bank, all
13 right, good client, knew Bruce, knew you. You
14 couldn't make an exception for Ben?

15 A No.

16 Q Have you ever closed a loan without a
17 road maintenance agreement in place in this
18 scenario?

19 A No.

20 Q Is it SCBT policy only -- make sure
21 it's a question because I know you already got
22 object coming out of your mouth.

23 Does SCBT policy require a road
24 maintenance agreement before they can close a
25 construction loan?

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 A If the permanent loan would require it,
3 yes.

4 Q So it's -- so if it's a VA loan, SCB&T
5 is always going to require a road maintenance
6 agreement signed by all parties before they'll
7 close that construction loan, is that what
8 you're telling me?

9 A Yes.

10 Q Have you ever deviated from the SCBT
11 policy?

12 A No.

13 Q Are you certain that in that manual
14 right there there are guidelines that say the VA
15 needs a road maintenance agreement?

16 A Yes.

17 Q Are you certain that SCB&T followed
18 those guidelines on every loan?

19 A Yes.

20 Q Okay. Is there an exception that could
21 be made to those road maintenance agreement
22 rules in that manual?

23 A No.

24 Q Can you grant those exceptions?

25 A No.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 Q Do you have the authority?

3 A No.

4 Q Does anyone at the bank have the
5 authority?

6 A No.

7 Q Isn't it a fact the bank has recently
8 closed a construction-to-permanent loan going to
9 VA without requiring a road maintenance
10 agreement?

11 A Not that I'm aware of.

12 Q You're certain of that?

13 A Not that I originated, that I'm aware
14 of.

15 Q Okay. I want you to take a look at a
16 document right here, please.

17 MR. HOLLOWAY: You want to mark
18 that?

19 MR. GECY: Not really but we'll
20 just mark it anyways.

21 (Whereupon, Plaintiff's Exhibit
22 Number 22 was marked for
23 identification.)

24 BY MR. GECY:

25 Q How do you explain that document right

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 there?

3 MR. HOLLOWAY: Excuse me -- have
4 you previously provided this in
5 discovery?

6 MR. GECY: Just printed it off
7 last night.

8 MR. HOLLOWAY: Okay. We'll
9 reserve our right to review it in
10 private and discuss it.

11 MR. GECY: You have that right.
12 How long do you think it'll take?

13 MR. HOLLOWAY: I don't know.
14 We'll decide at that point whether --
15 we're going to talk about it. You can
16 move on.

17 MR. GECY: You need a private
18 room?

19 MR. HOLLOWAY: You can continue.
20 We'll do it at the end or during a
21 break.

22 MR. GECY: No, you guys do that
23 now.

24 MR. HOLLOWAY: We're not going to
25 do that now. You haven't previously

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 provided it. We're not going to take
3 the time to do it.

4 MR. GECY: I'm going to ask
5 questions about it.

6 MR. HOLLOWAY: You can move on.

7 MR. GECY: I'm not moving on.

8 MR. HOLLOWAY: Okay.

9 MR. GECY: All right. I'm going
10 to ask questions about that document
11 right there until you meet with your
12 client and you come back in --

13 MR. HOLLOWAY: We have a right to
14 review --

15 MR. GECY: You want me to call the
16 judge?

17 MR. HOLLOWAY: I'm going to get
18 the rule book.

19 MR. GECY: I've got the rules
20 right here, Tom. I've got them printed
21 out, buddy.

22 For the record I want to note that
23 Mr. Holloway's instructed his client
24 not to answer the question.

25 (Whereupon, Mr. Holloway exited the

1 GECY - D. JACOBS (DIRECT EXAMINATION)
2 proceedings.)

3 MR. GECY: I object to Mr.
4 Holloway interference with my
5 deposition.

6 MR. HOLLOWAY: If you would have
7 provided the discovery as required by
8 the rules we wouldn't have the problem.
9 You're not entitled to lay out
10 documents you haven't produced and
11 disclosed.

12 MR. GECY: This is discovery and
13 these are documents that your bank has,
14 Mr. Holloway, and these are documents
15 that I requested in my production, last
16 week, that you objected to and did not
17 provide and if you want to see a copy
18 of that production I've got it and I'm
19 going to mark it as an exhibit.

20 MR. WEGMANN: There's a page
21 missing. It's an incomplete record.
22 Page 796 is missing.

23 (Whereupon, Plaintiff's Exhibit
24 Number 23 was marked for
25 identification.)

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 MR. HOLLOWAY: Do you have other
3 documents that you haven't provided
4 that you want us to review? We'll do
5 them all at once.

6 MR. GECY: Yes, I do. Would you
7 like the document?

8 MR. HOLLOWAY: If you want us to
9 review them we can do them one at a
10 time. Why don't we do them one at a
11 time. Come on, Doug, let's go look at
12 this document. Do you have Exhibit 22?

13 MR. GECY: Hang on a second. Make
14 sure I got you what you want. Let's
15 just do them one at a time. We can do
16 that one. When we get to the other one
17 we can do that.

18 (Whereupon, a short break was
19 taken.)

20 MR. GECY: For the record -- this
21 is Ben Gecy. Counselor Holloway spoke
22 with his client for approximately one
23 minute in reference to a document that
24 the plaintiff has previously requested
25 in production and was not provided.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 BY MR. GECY:

3 Q How do you explain that document, Mr.
4 Jacobs?

5 MR. HOLLOWAY: Objection to the
6 question, form of the question.

7 THE WITNESS: The document speaks
8 for itself.

9 BY MR. GECY:

10 Q What is that document?

11 A A mortgage.

12 Q Whose name is on that document?

13 A Robert E. Walters Junior.

14 Q Do you know who Robert Walters is?

15 A Yes.

16 Q Did you originate his loan?

17 A Yes.

18 Q Did you close his loan?

19 A Yes.

20 Q Did you get compensated a commission
21 for his loan?

22 A Yes.

23 Q Have you received that commission as of
24 February 11th 2014?

25 A I'm not sure if that loan has posted to

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 the payroll.

3 Q Okay. Are you expecting to receive
4 commission on that transaction?

5 A Yes.

6 Q How much do you think it will be, your
7 best guesstimate?

8 A No idea.

9 Q Two percent? Three percent?

10 A No.

11 Q Half a percent?

12 A Depends on the payroll for that month.

13 Q Okay.

14 A The production for that month.

15 Q What is the date highlighted on that
16 mortgage?

17 A 16 December of 2013.

18 Q That's -- is that pretty recent?

19 A Yes.

20 Q What type of mortgage is that?

21 A A VA.

22 Q Did South Carolina Bank and Trust roll
23 that to a VA loan?

24 A We refinanced that to a VA loan.

25 Q Okay.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 A Yes.

3 Q Did SCB&T close a construction loan for
4 Mr. Walters?

5 A Yes.

6 Q Did SCB -- what is the address of that
7 property?

8 A May I review the document?

9 Q There it is.

10 A 12 Hester Lane.

11 Q Are you familiar with Hester Lane?

12 A No more than any other property.

13 Q Okay. Were you pretty familiar with
14 Meridith Lane?

15 A No more than any other loan property.

16 Q Do you have any objection to that?

17 MR. HOLLOWAY: You want to mark
18 it?

19 MR. GECY: Yeah, let's mark that.

20 (Whereupon, Plaintiff's Exhibit
21 Number 24 was marked for
22 identification.)

23 BY MR. GECY:

24 Q Does that look like a county-maintained
25 road?

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 A It looks like an all-weather road.

3 Q Does that look like a possible private
4 road?

5 A Looks like a possible county-maintained
6 road.

7 Q Okay. Would you be surprised if that's
8 a private road?

9 A There's no way to positively know
10 unless an appraiser mentions or tells us whether
11 it's private or county.

12 Q Okay.

13 (Whereupon, Plaintiff's Exhibit
14 Number 25 was marked for
15 identification.)

16 MR. GECY: For the record 24
17 Plaintiff's Exhibit Jacobs is a picture
18 of Hester Lane.

19 MR. HOLLOWAY: For the record none
20 of these documents at least 22, 23 and
21 24 have been previously provided in
22 discovery. I'll have that, please.

23 MR. GECY: You guys have any
24 objections to this right here exhibit?

25 MR. WEGMANN: It's already in.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 MR. GECY: Yeah.

3 MR. WEGMANN: Plaintiff's

4 Exhibit 1. Well, not in evidence but
5 it's already marked.

6 BY MR. GECY:

7 Q Do you recognize that document, Mr.
8 Jacobs?

9 MR. HOLLOWAY: Let the record
10 reflect that's Plaintiff's Exhibit 1
11 from the Hamner deposition.

12 THE WITNESS: I've never seen this
13 document before.

14 BY MR. GECY:

15 Q Does this look like a Beaufort County
16 aerial illustrating parcels of land?

17 A No.

18 Q Does it look like some type of
19 estimated boundaries of lots in a particular
20 area?

21 A Look like some type of mapping.

22 Q Okay. Could it be a mapping of
23 Meridith Lane and the surrounding properties,
24 including the Hamner/Gecy seven acres?

25 A It appears to be.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 Q Okay. Do you see where I have
3 illustrated, in writing, where Meridith Lane is?

4 A Yes.

5 Q In the Hamner transaction, did you
6 request all parties to sign the road maintenance
7 agreement as a condition for the loan?

8 A Yes.

9 Q Why?

10 A VA requirement.

11 Q Is it a fact that you closed the
12 Walters transaction on Hester Lane with only on
13 person signing a road maintenance agreement?

14 A The VA appraiser said it was a
15 county-maintained road.

16 Q Why was it necessary, then, for a road
17 maintenance agreement if it was a
18 county-maintained road?

19 A We did it out of an abundance of
20 caution.

21 Q Out of abundance of caution, okay. Is
22 that what you normally do?

23 A If the loan so dictates it.

24 Q Okay. Did you contact any other
25 homeowners or lot owners on Hester Lane out of

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 an abundance of caution?

3 A The bank left that up to the attorney
4 and the customer --

5 Q Okay.

6 A -- to prepare the loan maintenance
7 agreement.

8 Q Did the VA appraiser document Hester
9 Drive was a private drive or a county-maintained
10 road?

11 A County-maintained road.

12 Q That's your testimony?

13 A Yes.

14 Q Okay. Is Hester Lane a
15 county-maintained road?

16 A I would assume it is. The VA appraiser
17 is the subject expert.

18 Q Okay. What if Hester Lane is not a
19 county-maintained road and it's a private drive?

20 A That's an issue for the VA appraiser.

21 Q Okay. It's not an issue for the bank?

22 A We have to follow the provided
23 documents from the VA assigned appraiser.

24 Q Is it a fact you didn't know what type
25 of road Hester Lane was until you received the

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 VA appraisal?

3 A We weren't sure.

4 Q Can you answer my question, please.

5 A I did.

6 MR. HOLLOWAY: He's entitled to
7 answer it the way he answers it.

8 THE WITNESS: We weren't sure.

9 BY MR. GECY:

10 Q You weren't sure?

11 A So out of an abundance of caution we
12 required the borrower to provide us with a road
13 maintenance agreement.

14 Q Your testimony, earlier, is you
15 normally work on VA loans about 60 days prior to
16 closing. Is that what you did in the Walters
17 transaction?

18 A That's normally when we start them.

19 Q Did you order a VA appraisal earlier
20 than 60 days of the VA loan closing?

21 A No.

22 Q Would it have been closer to the
23 December closing date documented in that
24 mortgage that you ordered the VA appraisal?

25 A You don't order the VA appraisal until

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 they're about at 90 percent complete.

3 Q Okay.

4 A Per VA guidelines.

5 Q When was Mr. Walters 90 percent
6 complete?

7 A I don't know.

8 Q When was the VA appraisal ordered for
9 Mr. Walters?

10 A I don't know.

11 Q Would it have been -- how -- when did
12 you say you order a VA appraisal? What
13 completion time?

14 A Normally around the 90 percent mark.

15 Q 90 percent. So if there's only
16 ten percent left on a home to finish, how long
17 does that take?

18 A There is no timeframe. It could take
19 two months. It could take three months.

20 Q Okay.

21 A It could take ten days.

22 Q All right. Maybe no more than -- would
23 it take more than 90 days?

24 A Every loan is different.

25 Q Yeah. How long does the VA appraisal

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 -- how long is that good for?

3 A Six months.

4 Q Okay. Did you order the VA appraisal
5 on Mr. Walters within six months of that
6 mortgage right there dated in December?

7 A Yes.

8 Q Okay. Did you close a
9 construction-to-permanent loan for Mr. Walters?

10 A Yes.

11 Q Was that construction-to-permanent loan
12 anticipated to roll to VA or some other type of
13 permanent financing?

14 A Yes.

15 Q Was it always to roll to a VA permanent
16 financing?

17 A No.

18 Q What were the other programs it was to
19 roll to?

20 A Because of his loan-to-value it wasn't
21 decided because of his equity in the property it
22 wasn't decided what it was going to roll to.

23 Q Did Mr. Walters ever inform you that he
24 was a veteran before he applied for the
25 construction loan?

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 A Yes.

3 Q Did Mr. Walters think he was getting a
4 hundred percent VA construction loan?

5 A No.

6 Q Are you certain about that?

7 A Yes.

8 Q Is that your testimony?

9 A Yes.

10 Q Is Mr. Walters going to have the same
11 testimony?

12 A Yes.

13 Q Has Mr. -- do you know if Mr. Walters
14 has applied with GMC Mortgage?

15 A I don't know.

16 Q Would that surprise you if he did?

17 A No.

18 Q Okay. When did you close the
19 construction-to-permanent loan for Mr. Walters?

20 A I don't know.

21 Q Was it before six months of
22 December 2013?

23 A I don't know.

24 Q Is it a fact that the -- is it a fact
25 that SCB&T closed a construction-to-permanent

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 loan with no road maintenance agreement for Mr.
3 Walters?

4 A We may have.

5 Q Why?

6 A It wasn't determined what his permanent
7 financing was going to be because of his equity
8 in the property.

9 Q Okay. When did you get the permanent
10 road maintenance agreement?

11 A I don't know. I don't know the date.

12 Q Okay.

13 MR. HOLLOWAY: Is this an
14 additional document you'd like to
15 present?

16 MR. GECY: Yes it is.

17 MR. HOLLOWAY: Has this been
18 previously provided in discovery?

19 MR. GECY: Previously requested in
20 discovery and you objected to it and
21 didn't provide it.

22 MR. HOLLOWAY: You haven't
23 previously provided this in discovery?

24 MR. GECY: I've not. I just
25 printed it out.

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2 MR. HOLLOWAY: Okay. When did you
3 print this out?

4 MR. GECY: Sunday.

5 MR. HOLLOWAY: Sunday and today is
6 Tuesday.

7 MR. GECY: That's correct.

8 MR. HOLLOWAY: And you knew you
9 were going to provide these or ask
10 questions about these in depositions?

11 MR. GECY: I didn't have time to
12 review those documents.

13 MR. HOLLOWAY: Well, why did you
14 print them out?

15 MR. GECY: I wanted to see what
16 they said.

17 MR. HOLLOWAY: We'll be reviewing
18 this document in private.

19 MR. GECY: Time this for the
20 record, please.

21 (Whereupon, Mr. Holloway and Mr.
22 Jacobs exited at approximately
23 10:29 a.m. and re-entered the
24 proceedings at
25 approximately 10:32 a.m.)

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 (Whereupon, a short break was
3 taken.)

4 MR. GECY: Back on the record.

5 I'd like to note for the record,
6 Tom Holloway, the defendant witness,
7 Doug Jacobs, met for approximately
8 three minutes.

9 BY MR. GECY:

10 Q Okay. We're back on the record.

11 Mr. Jacobs, what is that document?

12 What does that document say?

13 A Which document are you referring to?

14 Q Which document were you guys reviewing?

15 A I don't remember. I don't know that
16 you ever marked it.

17 Q Can I see that document there, please.

18 I'm replacing 23. For the record, it
19 was the wrong set of production answers. It was
20 the two year old. I'm looking for the most
21 recent one received February 8th and Bonnie's
22 trying to help us out with that.

23 MR. HOLLOWAY: Are you withdrawing

24 23?

25 MR. GECY: If you want we can

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 leave it as 23 and I can just add
3 another one with that.

4 MR. HOLLOWAY: I don't care.
5 However you want to do it.

6 MR. WEGMANN: I don't -- that'll
7 be --

8 MR. HOLLOWAY: There's been to
9 testimony to it so it doesn't matter.

10 MR. WEGMANN: Right, right.

11 BY MR. GECY:

12 Q Mr. Jacobs, have you brought anything
13 with you today in preparation of this
14 deposition?

15 A No.

16 Q Okay. Have you had a chance to review
17 the document with Mr. Holloway?

18 A Which document?

19 Q The document you just spent
20 three minutes reviewing?

21 A Yes.

22 Q Okay. What is that document?

23 A I don't have it in front of me.

24 Q What were you reviewing with your
25 attorney?

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2 A A mortgage of some sort.

3 Q Was it a mortgage with South Carolina
4 Bank and Trust?

5 A Do you have that document?

6 Q I'm asking the questions. Answer the
7 questions.

8 A What was the question?

9 Q Was it a mortgage South Carolina Bank
10 and Trust closed for Mr. Walters?

11 A I believe it was.

12 Q Do you remember what the date was?

13 A No.

14 Q Why not?

15 A Because I don't have a photographic
16 memory and I don't have the document in front of
17 me.

18 Q Who is the attorney for South Carolina
19 Bank and Trust in the state court action?

20 A Tom Holloway.

21 Q Who is your attorney?

22 A Tom Holloway.

23 Q Are you paying Mr. Holloway any money?

24 MR. HOLLOWAY: That's none of your
25 business. Move onto the next question.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 BY MR. GECY:

3 Q Have you hired Mr. Holloway for private
4 representation?

5 MR. HOLLOWAY: Ben, that's an
6 improper question. I represent the
7 bank. He's a bank employee. I am
8 entitled to represent him in this
9 deposition and I do is your answer.

10 BY MR. GECY:

11 Q Do you have individual representation?

12 A I am represented by the bank's
13 attorney.

14 Q Okay, okay. You said you followed --
15 you said you prepared a road maintenance
16 agreement for Mr. Walters, out of an abundance
17 of caution. Was that South Carolina Bank and
18 Trust policy?

19 A Once he determined what type of loan he
20 may go for or may want on a permanent loan then
21 we looked at the requirements.

22 Q When did you decide it needed a road
23 maintenance agreement?

24 A When he said he wanted to possibly go
25 for a VA loan.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 Q It's your testimony that Mr. Walters
3 did not apply with South Carolina Bank and
4 Trust, originally, for a VA loan similar to Mr.
5 Hamner?

6 A Yes.

7 Q You're saying he did not do that?

8 MR. HOLLOWAY: Objection to the
9 form.

10 BY MR. GECY:

11 Q Did Mr. Walters originally apply for a
12 VA loan with you?

13 A No, he applied for a conventional
14 construction loan.

15 Q Did he ever notify you, in the
16 beginning, before the construction loan, that he
17 wanted a VA loan for permanent financing?

18 A Not to my recollection.

19 Q Did he ever provide you a DD214 at
20 application date or any military paperwork?

21 A Not to my recollection.

22 Q Have you spoken to Mr. Walters since
23 his closing in December?

24 A Yes.

25 Q What was the subject matter of that

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 conversation?

3 A There was none. I saw him in the bank.

4 Q Did Mr. Walters tell you he has
5 discussed road maintenance agreements and/or
6 SCB&T loan closings with GMC Mortgage?

7 A Not sure I understand the question.

8 Q Did Mr. Walters inform you that he had
9 contacted GMC Mortgage for a mortgage
10 application, ever?

11 A I believe so when there was a credit
12 inquiry on his credit report from GMC Mortgage.

13 Q Is it's your testimony that GMC
14 Mortgage pulled Mr. Walters' credit bureau?

15 A I believe so.

16 Q Are you sure about that?

17 A No. That may have been how it came up
18 in conversation or he told me, one of the two,
19 that he had also applied at GMC Mortgage for a
20 VA loan.

21 Q And it's your testimony -- did you see
22 an inquiry from GMC Mortgage on Mr. Walters'
23 credit bureau?

24 A I don't remember.

25 Q Okay. You don't remember?

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 A You asked how it came up in
3 conversation. It would have been one of two
4 ways.

5 Q What did you say, earlier, South
6 Carolina Bank and Trust policy was to the VA in
7 reference to a road maintenance agreement?
8 SCB&T -- does SCB&T follow those guidelines if
9 it's a VA loan?

10 A Yes.

11 Q Did you say that out of an abundance of
12 caution there was a road maintenance agreement
13 prepared for Mr. Hester or excuse me, Mr.
14 Walters on Hester Lane?

15 A When he brought up he may seek VA
16 permanent financing.

17 Q The -- was there a road maintenance
18 agreement prepared for Mr. Walters on Hester
19 Lane?

20 A Yes, he had one prepared.

21 Q Who prepared that?

22 A I believe his attorney, Frampton
23 Harper.

24 Q Did you prepare that form?

25 A We gave him a blank form that was the

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 same as we gave to you.

3 Q Really?

4 A Originally, that you gave to Ken Tootle
5 who made it into his form.

6 Q Okay. And is that the same form that
7 you required had to be fully executed before a
8 construction loan could close for James Hamner?

9 A James Hamner loan, because of the
10 loan-to-value being over 80 percent, required
11 that.

12 Q And that's a SCBT guideline?

13 A Because it was to be a VA loan as
14 specified by the Hamners.

15 Q So Mr. Hamner's loan was a high-risk
16 loan for the bank?

17 MR. HOLLOWAY: Objection to the
18 form.

19 BY MR. GECY:

20 Q Was Mr. Hamner's loan a high-risk loan
21 for the bank?

22 A No.

23 Q Did he have to get an exception for
24 someone over your head to close on that loan?

25 A No.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 Q You had the authority to approve that
3 loan?

4 A No.

5 Q Who had the authority?

6 A It's within the bank's guidelines.

7 Q Who had the authority to approve
8 Hamner's loan?

9 A Bruce VanHorn.

10 Q Did Bruce approve you to go forward and
11 process Mr. Hamner's loan?

12 A As long as it met the guideline
13 requirements.

14 Q And what were those guideline
15 requirements.

16 A That it couldn't exceed the 90 percent
17 loan-to-value and it had to meet the permanent
18 financing guidelines so it was a sellable loan.

19 Q Do you know, for a fact, that Meridith
20 Lane is a private drive?

21 A Yes, that was stated in -- by the
22 appraiser --

23 Q -- Could that --

24 A --- that it was a private drive.

25 Q -- Could the appraiser have made a

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 mistake?

3 A They're certified appraisers and I
4 would have assumed that between the appraiser
5 and your attorney, Ken Tootle, that that would
6 have been discovered and no road maintenance
7 agreement would have been required then.

8 Q Could the appraiser have made a mistake
9 on Hester Lane with her comment or his comment,
10 'public road' or 'private road'?

11 A That's part of their research
12 requirement to determine.

13 Q And you go off -- is bank -- South
14 Carolina Bank and Trust go off of what an
15 appraiser documents on the appraisal?

16 A All lenders do.

17 Q All lenders do. Is it South Carolina
18 Bank and Trust policy to ask for an aerial photo
19 of a possible private drive, as you did in the
20 Hamner transaction, or was that a Doug Jacobs
21 condition?

22 A I don't remember asking for -- I could
23 have but I don't remember specifically asking
24 for an aerial photo.

25 Q Is that -- asking for an aerial photo,

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 is that SCBT policy or VA policy?

3 A VA policy is a road maintenance
4 agreement on a private road.

5 Q That's not what I asked you.

6 MR. WEGMANN: Let him finish his
7 answer.

8 THE WITNESS: That's what I had
9 for --

10 BY MR. GECY:

11 Q Does VA require an aerial photo of a
12 private drive?

13 A VA doesn't -- not to my knowledge, the
14 VA does not require an aerial photo.

15 Q Why did you require it for the Hamner
16 Meridith Lane transaction?

17 A I don't believe I required an aerial
18 photo.

19 Q How about an aerial view? Did you
20 require an aerial view?

21 A May have required an aerial view --

22 Q Why?

23 A -- to determine the properties that
24 bordered that property.

25 Q Was that out of an abundance of

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 caution?

3 A That was so that the seller's attorney
4 could prepare a road maintenance agreement for
5 those homeowners that resided on Meridith Lane.

6 Q Which was South Carolina Bank and Trust
7 policy that needed to happen before a
8 construction loan could close?

9 MR. HOLLOWAY: Objection.

10 BY MR. GECY:

11 Q Correct?

12 MR. HOLLOWAY: Objection to the
13 form.

14 BY MR. GECY:

15 Q Answer the question.

16 A Road maintenance agreement is a VA
17 policy.

18 Q And is it South Carolina Bank and Trust
19 policy to get those road maintenance agreements
20 before a construction loan is to close, is that
21 correct?

22 A If it is determined that the permanent
23 loan requires it.

24 Q Did you know what the permanent loan
25 was going to be for Mr. Hamner?

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 A Yes.

3 Q What was that going to be?

4 A A VA loan.

5 Q Mr. Hamner ever explain to you he was
6 upset and had a lot of anxiety over this
7 transaction, he was scared about his family?
8 Did you ever see any of those emotions?

9 A No.

10 Q Never expressed any of that concern to
11 you?

12 A No.

13 Q Did Mr. Hamner trust you to handle his
14 mortgage transaction?

15 A I would assume so.

16 Q Did you mislead Mr. Hamner on any
17 documents that he signed with SCB&T?

18 A No.

19 Q What was the type of financing you
20 proposed for Mr. Hamner?

21 A Conventional construction loan.

22 Q Where does it say in the application it
23 was a construction loan?

24 A I don't have the application in front
25 of me.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 Q What is a conventional uninsured loan
3 with SCB&T?

4 A I don't know what a conventional
5 uninsured --

6 Q Is that a construction loan?

7 A No. A construction loan would be
8 insured.

9 Q Who's it insured by?

10 A It would be insured by the bank if the
11 loan-to-value was over 80 percent.

12 Q What other insurers are there of
13 construction loans?

14 A Title insurance, I don't know.

15 Q No, no, no, money, on the money, on a
16 construction loan, South Carolina Bank and Trust
17 construction loan, is there any second, third,
18 fourth, fifth party that insures that money?

19 A I'm not aware of any.

20 Q When the roll -- when the loan rolls to
21 permanent financing are there insurers that
22 insure those permanent loans like the VA?

23 A The VA would back the permanent loan.

24 Q And issue a guarantee, correct?

25 A Right.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 Q Does the FHA do the same thing?

3 A I believe so.

4 Q Does the FHA require road maintenance
5 agreements?

6 A They do now.

7 Q 2010 they -- in 2010 did they?

8 A No. They did not in 2010.

9 Q And you did not pursue that, did you?

10 A Customer didn't request that.

11 Q Okay. Did you offer it to the
12 customer?

13 A The customer specifically wanted a VA
14 loan.

15 Q Did you offer an FHA loan to the
16 customer?

17 A No.

18 Q Why not?

19 A Because the customer wanted a VA loan.

20 Q Do you think Mr. Hamner would have
21 closed if he had been offered an FHA loan?

22 A I can't speak for Mr. Hamner.

23 Q Mr. Hamner testified he was willing to
24 do just about anything to close on that
25 transaction.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 MR. HOLLOWAY: Objection to the
3 form and that's not the testimony.

4 BY MR. GECY:

5 Q I think the record reflects that Mr.
6 Gecy and Mr. Hamner went to great lengths to try
7 to make this transaction happen.

8 Did you interfere with that contract?

9 A No, I did not.

10 Q Did you misrepresent any guideline from
11 the VA or the bank on the Hamner transaction?

12 A No, I did not.

13 Q Did you misrepresent the truth in
14 lending statement?

15 A No, I did not.

16 Q Did you misrepresent the 1003
17 application?

18 A No, I did not.

19 Q Why was there a document in Mr.
20 Hamner's file that says it's not a variable rate
21 feature?

22 A Which document?

23 Q Plaintiff's Exhibit Number 2, addendum
24 to loan application, addendum to residential
25 loan application lot loan program information.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 Read what is circled in the top of that
3 document, please.

4 A 'This is not a variable rate mortgage'.

5 Q What does that mean to you?

6 A That that form pertains to a lot loan.

7 Q Was Mr. Hamner receiving a
8 construction-to-permanent loan or a lot loan?

9 A Construction-to-permanent loan.

10 Q Why did he sign a lot loan agreement?

11 A I don't know why that form is in the
12 construction loan print set.

13 Q Is that a misleading document to
14 anyone?

15 A No.

16 Q It's not. Does that not mislead Mr.
17 and Mrs. Hamner that they do not have a variable
18 rate feature when, in fact, they do?

19 A I don't believe so.

20 Q Do you think Mr. Hamner --

21 A -- period.

22 Q Do you think Mr. Hamner believed so?

23 A I don't think so.

24 Q Is this a normal pattern of conduct for
25 you at South Carolina Bank and Trust?

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 MR. HOLLOWAY: Objection to the
3 form.

4 BY MR. GECY:

5 Q Do you think this is an unfair trade
6 practice?

7 A No.

8 Q Do you think it's negligent?

9 A No.

10 Q Do you think it misrepresents what they
11 signed on the 1003 application?

12 A No.

13 Q Do you think it's a fraud?

14 A No.

15 Q Tell me what it says on the X mark
16 underneath there.

17 A 'Interest only period'.

18 Q Is Mr. Hamner, on his 1003 application,
19 receiving a 12-month interest only program?

20 A Yes.

21 Q Okay. Tell me where, on the front page
22 of the application, what it says under
23 'adjustable rate feature'.

24 A Two-year ARM.

25 Q What does that mean?

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 A It means that it's a two-year
3 adjustable rate mortgage.

4 Q Okay. When does it adjust?

5 A The rate adjusts at the 25th payment.
6 The interest only is for the first 12 months of
7 the construction period, which is the draw
8 period.

9 Q Okay. What if the construction goes
10 past those 12 months?

11 A Then it changes from interest only from
12 the 13th to the 24th month to principal and
13 interest at the same rate.

14 Q Okay. Did Mr. Hamner sign any
15 documents, whatsoever, for a VA loan?

16 A No.

17 Q Why not?

18 A Because the construction loan is a
19 conventional loan.

20 Q Okay.

21 A As the application states.

22 Q Did Bruce VanHorn testify that a
23 construction loan is a conventional loan?

24 A He may have. He doesn't do
25 conventional loans.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 Q Is there a section on that 1003
3 application for construction-to-permanent
4 financing three, four boxes down?

5 A There is.

6 Q Does it say 'complete this line if it's
7 a construction-to-permanent loan'?

8 A The purpose of the loan, it says
9 'purchase'.

10 Q I want you to read me for the record
11 what that highlighted area says right there.

12 A 'Complete this line if construction or
13 construction-to-permanent loan'.

14 Q Was this Hamner loan a
15 construction-to-permanent loan?

16 A Yes.

17 Q Is that document misleading?

18 A The document was prepared in accordance
19 to the way the disclosures were required to be
20 disclosed at the time when this was done.

21 Q Did you follow the proper federal
22 disclosure procedures?

23 A Yes.

24 Q Does Mr. Hamner have to sign any other
25 adjustable rate disclosures not included in that

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 package right there?

3 A No.

4 Q He does not?

5 A I don't believe so.

6 Q And that's your testimony?

7 A Not at the loan application, yes.

8 Q Not at the loan application. Are there
9 rules governed by the state, federal government,
10 RESPA, truth in lending, Regulation Z for
11 adjustable rate mortgages?

12 A Yes.

13 Q Do banks have to disclose, multiple
14 times, when a consumer is getting an adjustable
15 rate mortgage out of an abundance of caution?

16 A Have to disclose, I don't understand
17 the question.

18 Q Are there pamphlets for adjustable rate
19 mortgages that clients have to receive?

20 A Yes.

21 Q Did you give Mr. Hamner one?

22 A All clients get them.

23 Q Did you give Mr. Hamner one?

24 A I would say yes.

25 Q Why did Mr. Hamner not know he had an

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 adjustable rate mortgage on this application for
3 10 Meridith Lane?

4 A I don't know. He signed that he had an
5 adjustable rate mortgage.

6 Q What if Mr. Hamner closed that loan and
7 went into default, do you think the bank would
8 have any liability to him?

9 A I don't know.

10 Q Do you think you would have any
11 liability to him, as a loan officer?

12 A No. He would sign a final 1003 at
13 closing.

14 Q To correct any mistakes?

15 A Or it would be --

16 Q Right.

17 A -- if the loan was to continue and any
18 mistakes were found you're required to
19 re-disclose them.

20 Q What if they found out Mr. Hamner was
21 no longer employed, would they update that on
22 the application?

23 A Yes..

24 Q What if Mr. Hamner got dishonorably
25 discharged and no longer had any income and his

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 wife didn't qualify, would he get a VA loan with
3 SCB&T?

4 A He wasn't the veteran applying for a VA
5 loan.

6 Q Did we need his income to qualify for
7 the loan?

8 A I don't remember.

9 Q What if his wife got dishonorably
10 discharged and didn't have any income, would
11 SCB&T be able to close his loan on an updated
12 application?

13 A If we found out that to be true during
14 the loan application period before it closed
15 then we would have to deny them for those
16 reasons.

17 Q What if you had already closed on a
18 construction loan and the bank already had that
19 loan, what would happen?

20 A It would have to go to the loan
21 operations for them to make a determination.

22 Q Would you call in a note?

23 A It would have to go to the loan
24 operations for determination. I don't know.

25 Q Okay.

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2 A I don't make that decision.

3 Q In this scenario, what was the
4 amortization on Mr. Hamner's loan?

5 A 360 months.

6 Q Could the bank call his note on a 360
7 month amortization or did y'all have some hidden
8 balloon feature in there for him?

9 MR. HOLLOWAY: Objection to the
10 form.

11 BY MR. GECY:

12 Q Did you have a hidden balloon feature
13 in the Hamner --

14 A No.

15 Q -- application or truth in lending?

16 A No.

17 Q Did you have any hidden clauses that
18 accelerated a note if he did not convert over?

19 A Nothing that wasn't disclosed.

20 Q That's not what I asked you.

21 A That's what I answered.

22 Q Do you think it's fair to have those
23 clauses on consumers?

24 MR. HOLLOWAY: Objection to the
25 form.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 THE WITNESS: The clauses and
3 requirements of the loan are disclosed
4 in the loan application.

5 BY MR. GECY:

6 Q Are lenders allowed to prey on
7 consumers?

8 A No.

9 Q Are there strict rules and guidelines
10 that prohibit that behavior?

11 A Yes.

12 Q Do you follow those rules?

13 A Yes.

14 Q Did you follow those rules on the
15 Hamner 10 Meridith Lane application?

16 A Yes.

17 Q Did you follow those rules on the
18 Walters transaction at 12 Hester?

19 A Yes.

20 Q Would it surprise you that Hester Lane
21 is, in fact, a private road?

22 A The VA appraiser said it's a
23 county-maintained road.

24 Q Okay. But out of an abundance of
25 caution you got a road maintenance agreement?

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 A Uh-huh.

3 Q Is that correct?

4 A Yes.

5 Q Is that a South Carolina Bank and Trust
6 policy to do that?

7 A If there's a question as to whether the
8 road is public or private.

9 Q What are the requirements on a private
10 drive with the VA and the bank when there are
11 multiple parties on that private drive?

12 A I don't have the document in front of
13 me.

14 Q Well, your e-mails -- your repeated
15 e-mails say that everyone's got to sign it, and
16 that's what failed this transaction, is
17 everybody has had to sign a road maintenance
18 agreement, Doug.

19 MR. HOLLOWAY: Objection to the
20 form.

21 BY MR. GECY:

22 Q And you imposed those rules and a
23 family suffered, my family suffered because of
24 your actions. You didn't follow the policy and
25 that's why we're here today and this is the

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 moment of truth and you can come clean or you
3 can't come clean. We got a problem here.

4 MR. HOLLOWAY: Is there a
5 question?

6 MR. GECY: No, that's not a
7 question, that's a statement.

8 MR. HOLLOWAY: Okay. Please limit
9 your deposition to questions.

10 BY MR. GECY:

11 Q Does the VA require a builder I.D. for
12 a builder?

13 A Yes.

14 Q Did you check Gecy's VA builder I.D.
15 before the construction loan closed?

16 Excuse me, did you check for -- did you
17 check to see if Gecy had a VA builder I.D.
18 number?

19 A I believe you supplied me with a VA
20 builder I.D. number.

21 Q That's right. Did you check to see if
22 Mr. Hester had a VA builder I.D. number for his
23 contractor prior to closing?

24 A His builder had a VA builder I.D. prior
25 to closing.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 Q The first loan? The construction loan
3 he did?

4 A No.

5 Q Did you check before you closed the
6 construction loan?

7 A No.

8 Q Why not?

9 A Because he didn't request a VA
10 permanent. He had the loan-to-value to qualify
11 for anything he wanted.

12 Q In that particular transaction of Mr.
13 Walters, what if the builder could not get a VA
14 builder number, what would have happened?

15 A He would have gone conventional on his
16 permanent financing.

17 Q What if the customer rejected and said
18 he didn't want to go that direction, he wanted a
19 VA loan like Mr. Hamner said? Would you have
20 forced him to go conventional or would you have
21 turned his loan down like you did Mr. Hamner?

22 A I would have told him he could seek a
23 mortgage somewhere else.

24 Q And that's your fiduciary duty, isn't
25 it?

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 A To tell them to seek a loan somewhere
3 else?

4 Q To help them? To assist them?

5 A Yes.

6 Q What if there was another seller on the
7 side of Mr. Hester's transaction, did you -- do
8 you feel that you had a standard duty of care to
9 the seller or standard duty of care to Mr.
10 Hester or Mr. Walters, excuse me?

11 A There was no seller.

12 Q If there was?

13 A There was no seller.

14 Q Exhibit 26, Plaintiff's Exhibit 26, is
15 that a construction loan document by South
16 Carolina Bank and Trust?

17 MR. HOLLOWAY: Has this document
18 previously been provided in discovery?

19 MR. GECY: That's the one you just
20 reviewed, Mr. Holloway, for
21 three minutes.

22 MR. HOLLOWAY: Has it previously
23 been provided in discovery? —

24 MR. GECY: I've already answered
25 that?

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 MR. HOLLOWAY: The answer's no?

3 MR. GECY: It's on the record how
4 I answered it.

5 MR. HOLLOWAY: Are there any
6 attachments that you failed to include,
7 such as the planned unit development
8 plat and related exhibits?

9 MR. GECY: That's all I got off my
10 printer.

11 MR. HOLLOWAY: You didn't --

12 MR. GECY: I did not remove any
13 documents.

14 MR. HOLLOWAY: You didn't attach
15 the exhibit which showed the
16 subdivision plat and the platted roads?

17 MR. GECY: I didn't print that
18 off.

19 MR. HOLLOWAY: Why did you exclude
20 that from the exhibit?

21 MR. GECY: I didn't exclude it. I
22 didn't print it off.

23 MR. WEGMANN: This is a different
24 mortgage.

25 MR. HOLLOWAY: Yeah.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 MR. WEGMANN: I'm just --

3 MR. HOLLOWAY: I'd like copies of
4 all the documents that you haven't
5 previously provided before me today.

6 MR. GECY: I'll get you copies.
7 You've already reviewed both of those
8 documents for the record at length with
9 your clients.

10 MR. HOLLOWAY: -- previously
11 submitted document entitled Exhibit 22.
12 Why did you not put the attachments of
13 the planned unit development plat with
14 the platted roads and platted
15 subdivision? Did you intentionally
16 exclude that, for any reason?

17 MR. GECY: I don't know what
18 you're talking about. I've never seen
19 that, okay?

20 MR. WEGMANN: Just for the record
21 both documents -- and all I'm talking
22 about is completeness here -- both
23 documents are missing a page.

24 MR. GECY: I don't care what you
25 say is completeness. I'll take all of

1 GECY - D. JACOBS (DIRECT EXAMINATION)
2 them out and just use the first page.
3 Is that what y'all want me to do?
4 MR. WEGMANN: No, Ben.
5 MR. GECY: Okay.
6 MR. WEGMANN: I'm just --
7 MR. GECY: It doesn't matter how
8 complete. There's 400 pages down there
9 on this transaction. I didn't print
10 them all off. I printed off the
11 bullshit that I see right here.
12 MR. WEGMANN: All I'm saying is
13 it's not the document --
14 MR. GECY: How about I just take
15 them off and use the front page. Is
16 that good enough for y'all --
17 MR. HOLLOWAY: Let the record
18 reflect that Mr. Gecy's yelling at
19 counsel.
20 MR. GECY: Okay, yeah. I'm upset,
21 okay. And I object to you guys keep
22 interrupting me after you reviewed the
23 documents.
24 MR. HOLLOWAY: If you would have
25 provided them in advance, as the rule

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 requires, we wouldn't have to do that.

3 MR. GECY: Maybe if you would have
4 given me the courtesy to give the
5 request production we wouldn't be in
6 this because these questions were in
7 the request for production and you
8 didn't provide it.

9 MR. HOLLOWAY: I understand that's
10 your position.

11 MR. GECY: Okay.

12 (Whereupon, Plaintiff's Exhibit
13 Number 26 was marked for
14 identification.)

15 BY MR. GECY:

16 Q Number 22, what date was the VA loan
17 closed?

18 A December 16th 2013.

19 Q Exhibit 26 for the plaintiff, what date
20 was the construction loan closed?

21 A October 25th 2012.

22 Q Who's the lender on that?

23 A South Carolina Bank and Trust.

24 Q What is the difference in timeframe

25 between the construction loan and the VA loan,

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 your best guess?

3 A 14 months.

4 Q 14 months?

5 A Uh-huh.

6 Q When did you obtain a road maintenance
7 agreement?

8 A When the customer stated he was looking
9 to go to a VA loan.

10 Q Would you be surprised if that's not
11 Mr. Walters' testimony?

12 MR. HOLLOWAY: Objection.

13 THE WITNESS: I don't know what
14 Mr. Walters' testimony is.

15 BY MR. GECY:

16 Q That's right, you don't know.

17 Exhibit Number 25, plaintiff, count me
18 how many parcels of land are around Mr. Walters
19 property there on Hester Lane.

20 A Looks like three, possibly four.

21 Q All of them. Is it maybe eight? Could
22 it be nine?

23 A Three, possibly four.

24 Q Let the record reflect there are one,
25 two, three, four, five, six, seven, eight, nine,

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 ten, eleven potential Hester Lane users of the
3 private road Hester Lane or public road.

4 MR. HOLLOWAY: Objection to the
5 form.

6 BY MR. GECY:

7 Q Whichever it is.

8 MR. HOLLOWAY: Objection.

9 BY MR. GECY:

10 Q Why did you not contact all nine to ten
11 property owners about signing a road maintenance
12 agreement out of an abundance of caution?

13 A Not my responsibility to contact the
14 homeowners.

15 Q Did you ask for an aerial view of
16 Hester Lane for Mr. Walters' road maintenance
17 agreement?

18 A I don't know.

19 Q Do you think all of these people would
20 have signed the road maintenance agreement?

21 A I don't know.

22 Q Do you think this violates South
23 Carolina Bank and Trust policy?

24 A No.

25 Q Does it violate the VA policy?

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 A No.

3 Q Why not?

4 A VA said it was a -- the VA appraiser
5 said it was a county-maintained road.

6 Q So if that turns out to be a private
7 road and there needs to be a correction, would
8 South Carolina Bank and Trust possibly have to
9 buy that loan back?

10 A I don't know the requirements.

11 Q Did Mr. Wegmann's office or Mr.
12 Harper's office prepare the road maintenance
13 agreement?

14 A I believe Mr. Walters' sought counsel
15 from his attorney that closed his loan.

16 Q Did you assist, in any way or form, on
17 that road maintenance agreement?

18 A Similar to the Hamners where I provided
19 a road maintenance agreement template.

20 Q Did you inform Mr. Hamner's counsel
21 that everyone on a private drive had to sign a
22 road maintenance agreement?

23 A Everyone to the subject property.

24 Q Did you inform Walters' attorneys or
25 Mr. Walter that everyone on the road, if it was

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 a private drive, had to sign a road maintenance
3 agreement?

4 A Yes.

5 Q You informed him of that?

6 A Yes.

7 Q Did you receive fully executed road
8 maintenance agreements from all those parties?

9 A No.

10 Q Why not?

11 A Mr. Walters told me he was the first
12 property owner on the road.

13 Q Does that document reflect that?

14 A No.

15 Q Has Mr. Walters committed fraud by
16 making that statement to obtain a VA loan?

17 A I don't believe so.

18 Q Is that a misrepresentation of what Mr.
19 Walters actually owns?

20 A He -- I believe he told me what he
21 believed to be true as the first property owner
22 on the road.

23 Q What are the penalties of making false
24 statements?

25 A I don't know.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 Q Let me let you read it in the loan
3 application here. I want to you read me for the
4 record a document that you have signed and the
5 Hamners have signed and I'm sure Mr. Walters has
6 signed and I want you to read from the very
7 beginning for the record and I want you to stop
8 down there.

9 A The document speaks for itself.

10 MR. HOLLOWAY: I'm going to take a
11 break, take two minutes to use the
12 restroom off the record. It's going to
13 take a long time to read that. I can't
14 wait.

15 (Whereupon, a short break was
16 taken.)

17 MR. HOLLOWAY: Thank you.

18 Continue.

19 (Whereupon, the record
20 was read back as requested.)

21 BY MR. GECY:

22 Q Ask you another question.

23 Mr. Jacobs, please tell me what that
24 document is in front of you.

25 A That is page three of the loan

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 application.

3 Q Did you sign that document?

4 A Yes.

5 Q What was the date?

6 A February 13th 2010.

7 Q What date did Mr. and Mrs. Hamner sign
8 it?

9 A February 13th 2010.

10 Q Okay. Can you read me that statement
11 in its entirety for the record.

12 A The document is a standard document.
13 It speaks for itself.

14 Q I asked you to read it for the record.

15 A Am I required to read it for the
16 record?

17 MR. HOLLOWAY: You can read it. I
18 mean it says what it says but if he
19 wants to hear it out loud, go ahead and
20 read it out loud.

21 THE WITNESS: He might not know
22 what it says so I'll read it.

23 'Each of the undersigned
24 specifically represents to the lender
25 and to the lender's actual or potential

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 agents, brokers, processors, attorneys,
3 insurers, servicers, successors and
4 assigns and agrees and acknowledge that
5 (1) the information provided on this
6 application is true and correct as of
7 the date set forth opposite my
8 signature and that any intentional or
9 negligent misrepresentation of this
10 information contained in this
11 application may result in civil
12 liability, including monetary damages,
13 to any person who may suffer any loss
14 to reliance upon my misrepresentation
15 that I have made on this application
16 and/or in criminal penalties including
17 but not limited to fine or imprisonment
18 or both under the provisions of Title
19 18 United States Code Section 1001 ET
20 SEQ.

21 (2) The loan requested personal to
22 the application (the loan) will be
23 secured by the mortgage or deed of
24 trust on the property described in this
25 application.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 Number (3) The property will not
3 be used for any illegal or prohibitive
4 purpose or use.

5 (4) All statements made in this
6 application are made for the purpose of
7 obtaining a residential mortgage loan.
8 The property will be occupied as
9 indicated in this application the
10 lender, its services, successors and/or
11 assigns may retain the original and/or
12 electronic record of this application)
13 whether or not the loan is approved.

14 Number (7) the lender and its
15 agents, brokers, insurers servicers,
16 successors and assigns may continuously
17 rely on the information contained in
18 this application and I am obligated to
19 amend -- obligated to amend and/or
20 supplement the information provided in
21 this application if any of the material
22 facts that I have represented herein
23 should change prior to closing of the
24 loan in the event that my payments on
25 the loan become delinquent the lender,

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 its servicers, successors and/or
3 assigns may, in addition to any other
4 rights and remedies that it may have
5 relating to such delinquencies, report
6 my name and account information to one
7 or more consumer reporting agencies.

8 Number (9) Ownership of the loan
9 and/or administration of the loan,
10 account may be transferred with such
11 notice as may be required by law.

12 Number (10) Neither lender nor its
13 agents, brokers, insurers, servicers,
14 successors and/or assigns have made any
15 representation or warranty express or
16 implied to me regarding the property or
17 the condition or value of the property
18 and number (11), My transmission of
19 this application as an electronic
20 record containing my electronic
21 signature as those terms are denied in
22 applicable federal and/or state laws
23 excluding audio and video recordings or
24 my facsimile transmission of this
25 application containing a facsimile of

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 my signature shall be as effective,
3 enforceable and valid as if a paper
4 version of this application were
5 delivered containing my original
6 written signature acknowledgement each
7 of the undersigned hereby acknowledges
8 that any owner of the loan, its
9 servicers, successors and assigns may
10 verify or reverify any information
11 contained in this application or obtain
12 any information or data relating to the
13 loan for any legitimate business
14 purpose through any source including a
15 source named in this application or a
16 consumer reporting agency.' End of
17 paragraph.

18 BY MR. GECY:

19 Q Thank you. Did Mr. Walters sign a
20 similar document to that?

21 A It was two years later. I would assume
22 its similar.

23 Q Did he sign a 1003, residential 1003
24 application with South Carolina Bank and Trust?

25 A Yes, he did.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 Q Did Mr. Walters say he was the only
3 person on Hester Lane?

4 A When that came up for a possibility of
5 a road maintenance agreement that's what he
6 believed.

7 Q Did you do any due diligence to see if
8 that was the case?

9 A I gave him instructions to see his
10 attorney and a copy of a template that was
11 provided by another local attorney as I did with
12 you for a road maintenance agreement.

13 Q Did you ever go and inspect Mr.
14 Walters' property during construction?

15 A Yes.

16 Q Were there any other houses around it?

17 A Past it.

18 Q How --

19 A It appeared to be marsh -- it appeared
20 to be marshland prior to his property on either
21 side.

22 Q But you could tell there were other
23 residents using -- could you tell there were
24 other residents using Hester Lane?

25 A Past his.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 Q Could you tell that other residents
3 were using Hester Lane?

4 MR. HOLLOWAY: You don't have to
5 yell at him, please.

6 THE WITNESS: Past his. Yes, past
7 his.

8 BY MR. GECY:

9 Q Yes.

10 A Yes, past his.

11 Q How many people did it appear were past
12 his?

13 A I have no idea.

14 Q And when you say 'people', are you
15 describing vertical constructed houses?

16 A Residences.

17 Q Residences. Did there appear -- did
18 there appear to be any lots that were vacant
19 around Mr. Walters' home?

20 A Did not appear to be any vacant lots
21 prior. It appeared to be marshland, tidal
22 marshland.

23 Q Would the VA and South Carolina Bank
24 and Trust still require a road maintenance
25 agreement if there was no residence on lots

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 access on a private drive, would they require
3 that party to sign a road maintenance agreement
4 if there was no home on it?

5 A Yes.

6 Q They would require them to sign it?

7 A If there was a property between the
8 subject property and the publicly-maintained
9 road.

10 Q Was your statement and Mr. VanHorn's
11 statement that all parties had to sign the road
12 maintenance agreement upon Meridith Lane for
13 Hamner's closing?

14 A From the subject property to the
15 publicly-maintained road.

16 Q Okay. The document you have in front
17 of you, Exhibit 25, does there appear to be
18 other people between Mr. Walters' residence and
19 Lost Island Road for the public road?

20 A You're asking a question that doesn't
21 pertain to Mr. Walters because he had the
22 ability to do whatever loan program he decided
23 at the end because his loan-to-value was in
24 line.

25 Q That wasn't my question.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 A That's my answer.

3 Q Does it appear that there are other
4 residences between Mr. Walters' residence and
5 the public road in that document?

6 MR. HOLLOWAY: Residences or lots?

7 MR. GECY: Lots, residences in
8 that document.

9 THE WITNESS: I can't attest to
10 residences. What you have printed from
11 somewhere appears to be there are
12 possibly three or four.

13 BY MR. GECY:

14 Q Would that be parcels of land?

15 A Parcels. There appears to be three or
16 four parcels.

17 Q Does it appear that there are three or
18 four parcels of land between Mr. Walters'
19 property and Lost Island Road on Exhibit 25?

20 A Exhibit 25 does not show Lost Island
21 Road.

22 Q Okay.

23 (Whereupon, Plaintiff's Exhibit
24 Number 27 was marked for
25 identification.)

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 BY MR. GECY:

3 Q In both directions on Hester Lane, does
4 it appear there are other parcels between him
5 and the end of the road in both directions?

6 A It does appear that there are other
7 parcels.

8 Q How many on each side?

9 A It appears that there are two possibly
10 four -- three, possibly four.

11 Q And what side is that on as you're
12 viewing the document, your left or your right?

13 A Two on the Walters, as your document
14 states the lots. I don't know that to be the
15 case because your document doesn't print the
16 names of those parcels nor is there any other
17 reference to it but it appears to be two on his
18 property side and possible -- one, for sure, and
19 possibly two on the other parcel side.

20 Q Okay. Let the record reflect that
21 Hester Lane runs approximately east to west.

22 MR. HOLLOWAY: Objection to the
23 form.

24 BY MR. GECY:

25 Q Exhibit Number 27, Plaintiff's Exhibit,

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 can you please tell me how many documented
3 addresses there are on Hester Lane?

4 MR. HOLLOWAY: I'm going to object
5 to 27 as not being previously provided
6 and to the extent it contains
7 information it speaks for itself but
8 given that and given the fact that the
9 witness has previously seen it answer
10 his questions, please.

11 BY MR. GECY:

12 Q Please read for the record the R
13 numbers starting at 7 Hester Lane and finish at
14 the last address and R number for Hester Lane,
15 please state the name of the person that appears
16 to own the property.

17 MR. HOLLOWAY: Just read the
18 document as best you can. It says what
19 it says.

20 THE WITNESS: R200 018 000 0194
21 0000, 7 Hester Lane, little Creek.

22 R200 018 000 0195 0000, 9 Hester
23 Lane.

24 R200 018 000 0200 0000, 8 Hester
25 Lane.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 R200 018 000 0201 0000, 10 Hester
3 Lane.

4 R200 018 000 0202 0000, 12 Hester
5 Lane, which is the property in
6 question, Robert Walters.

7 BY MR. GECY:

8 Q Keep going.

9 A That's the only properties that would
10 be in question on the road maintenance
11 agreement.

12 Q Please keep reading --

13 MR. HOLLOWAY: We'll stipulate the
14 document says what it says.

15 BY MR. GECY:

16 Q Please read the document for the
17 record.

18 A R200 018 000 0196 0000, 13 Hester Lane,
19 which is past the subject property.

20 R200 018 000 0203 0000, 14 Hester Lane,
21 Little Creek past the subject property.

22 R200 018 000 0204 0000, 16 Hester Lane,
23 Little Creek.

24 Q Okay. Thank you.

25 Is it your testimony that people past

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 Mr. Walters' property to the west do not need to
3 sign a road maintenance agreement?

4 A A road maintenance agreement is
5 required from the subject property to the
6 publicly-maintained road.

7 Q Did you require Mr. Ferguson to sign
8 the road maintenance agreement for 10 Meridith
9 Lane?

10 A I didn't require Mr. Ferguson to do
11 anything. You drafted the --

12 Q Uh-huh.

13 A -- road maintenance agreement with your
14 attorney.

15 Q Was it necessary for Mr. Ferguson to
16 sign a road maintenance agreement on 10 Meridith
17 Lane?

18 A If you put him on the road maintenance
19 agreement then -- then you put him on the road
20 maintenance agreement.

21 Q What if I just put me on the road
22 maintenance agreement, would you have accepted
23 it?

24 A No.

25 Q Why not? You accepted it for Mr.

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 Walters.

3 A You weren't a property owner from the
4 subject property to the publicly-maintained
5 road. Mr. Walters' appraisal said it was a
6 county-maintained road.

7 Q So is it your testimony that you have
8 to be a property owner to fill out a road
9 maintenance agreement and take responsibility
10 for that road?

11 A Or an HOA.

12 Q So no third party could be responsible
13 for the road and take over the residence? Uncle
14 Sam --

15 A An HOA could be a third party and
16 takeover for the residence. It says it in the
17 VA guideline.

18 Q Where? Where in the VA guideline?

19 A In the document you provided yesterday
20 as a --

21 Q What section is that?

22 A You don't know where it's at?

23 Q How many pages are in that document?

24 Do you actively review the lender's handbook for
25 the VA?

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 A Absolutely.

3 Q Can the VA make an exception on a road
4 maintenance agreement?

5 A Nope.

6 Q You're positive on that?

7 A Yes.

8 Q Let's see what we got here.

9 MR. HOLLOWAY: Let the record reflect
10 Mr. Gecy's throwing his papers around again.

11 MR. GECY: Let the record reflect
12 that I've already made the VA handbook
13 as an exhibit so I don't want any
14 objections to what I'm presenting.

15 BY MR. GECY:

16 Q What is an MPR, Mr. Jacobs?

17 A Don't know.

18 Q Been doing VA loans a long time. You
19 don't know what an MPR is in a lender handbook?

20 A Obviously you know. Tell us.

21 Q How long have you been doing VA loans?

22 A Eight years.

23 Q Have you ever called the VA call center
24 in Atlanta, Georgia to ask any questions about
25 the VA handbook?

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 A Yes.

3 Q Have you ever called to get any
4 exceptions on a loan at that phone number?

5 A I've called to ask questions for their
6 guidance on their requirements.

7 Q That's right. Because sometimes -- are
8 there sometimes -- are there situations that are
9 sometimes impractical how they apply to the VA
10 handbook?

11 A That's the VA's determination. If it
12 is not unpractical.

13 Q That's right. And does the VA have a
14 section that addresses those impractical
15 situations?

16 A I'm sure they do.

17 Q That's right, they do. Did you order a
18 VA appraisal for Mr. Hamner on 10 Meridith Lane?

19 A No.

20 Q Could you have submitted for an
21 exception without applying for a VA loan?

22 A I don't know.

23 Q You couldn't because there was no VA
24 I.D. number. There was no VA appraisal.

25 MR. HOLLOWAY: Objection to the

1 GECY - D. JACOBS (DIRECT EXAMINATION)

2 form.

3 MR. GECY: I'm done for right now.

4 Your witness.

5 MR. WEGMANN: I don't have

6 anything.

7 MR. HOLLOWAY: Free to go.

8 (Whereupon, the deposition of

9 Doug Jacobs was concluded at

10 approximately 11:46 p.m.)

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