

9

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Hon. James O. Spence, Master-In-Equity

Appellate Case No. 2016-001882

RECEIVED

FEB 17 2017

SC Court of Appeals

The Mill Homeowner's Association, Inc.....Plaintiff

v.

Randall W. Cofer and Corey C. Cofer,.....Respondents,

Regime Solutions, LLC, Third-Party Bidder, ...Appellant.

RECORD ON APPEAL

Eric C. Hale, S.C. Bar # 71768
Elias Fain, S.C. Bar #101193
Post Office Box 287
Columbia, SC 29202
(803) 726-3558 (Tel)
eric.hale@clarksonlawllc.com
elias.fain@clarksonlawllc.com
Attorneys for Appellant

James Randall Davis, S.C. Bar #1580
Davis Frawley, LLC
140 East Main Street, P.O. Box 489
Lexington, South Carolina 29071
Attorney for Respondents

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

DOCKET NO. 2014-CP-32-01270

The Mill Homeowners Association, Inc.

FILED

Plaintiff,

2014 JUL 28

A 9:04

ORDER OF REFERENCE

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

v.

Randall W. Cofer and Corey C. Cofer,

Defendant(s).

20143/8

Pursuant to Rules 53(b) of the South Carolina Rules of Civil Procedure, the above-entitled case is an action for foreclosure and may be referred to a Master in Equity or Special Referee in the above-entitled county by order of a circuit court judge or the clerk of court.

IT IS HEREBY ORDERED, that this action is referred to the The Honorable James O. Spence, as Master in Equity to take testimony and to direct entry of final judgment in this action under Rule 53(b), SCRPC, and all matters arising from or reasonably related to such action. The Master in Equity shall retain jurisdiction to perform all necessary acts incident to this foreclosure action including issuance of a writ of assistance or issuance of any rule to show cause including but not limited to any rule to show cause why a party should not be bound by the judgment of foreclosure. Further, the Master in Equity shall retain jurisdiction to hear any action contesting the validity of the foreclosure action or sale or any motions pursuant to the South Carolina Rules of Civil Procedure including but not limited to Rule 60(b). Judicial sales will be conducted pursuant to S.C. Code Section 15-39-680 or on any other convenient sale's date as may be determined by the Master in Equity/Special Referee.

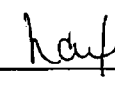
The hearing shall be held in the Office of The Honorable James O. Spence, Master in Equity for Lexington County, located at:

Marc H. Westbrook Judicial Center
205 E. Main Street Courtroom 2A or 3A
Lexington, SC 29072

and the final order by the Master in Equity or Special Referee shall be filed with the Clerk of Court for Richland County not later than sixty (60) days after the date of the hearing.



Circuit Court Judge for Lexington County or
Clerk of Court for Lexington County



South Carolina
7/23, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

FILED DOCKET NO. 2014-CP-32-01270

The Mill Homeowners Association, Inc.
Plaintiff,

2014 JUL 28

**AFFIDAVIT OF DEFAULT AND NON-
MILITARY SERVICE**

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

v.

Randall W. Cofer and Corey C. Cofer,
Defendant(s).

20143/8

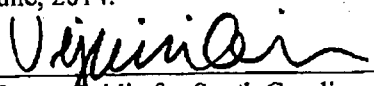
PERSONALLY APPEARED before me, the undersigned, who being duly sworn, deposes and says that she/he is one of the attorneys for Plaintiff in the above-entitled action and that more than thirty (30) days have elapsed since the service of the Summons and Complaint upon the Defendant(s) and that no Answer or Notice of Appearance has been served on Plaintiff's attorney as required by the Summons by the Defendant(s) Randall W. Cofer and Corey C. Cofer. Therefore, the Defendant(s) Randall W. Cofer and Corey C. Cofer is/are in default.

Further, that she/he has investigated the occupational status of Randall W. Cofer and Corey C. Cofer and they are not in the Military Service of the United States as contemplated by the provisions of the Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. Seq.


Stephanie C. Trotter
McCabe Trotter & Beverly, PC
P. O. Box 212069
Columbia, SC 29221
Telephone: 803-724-5002
Fax: 803-724-5001
Email: Stephanie.trotter@mccabetrotter.com
Attorneys for Plaintiff

June 12, 2014
Columbia, South Carolina

Sworn to before me this 12 day of
June, 2014.


Notary Public for South Carolina
My Commission Expires: 2/19/23

Allison Martin

From: Stephanie Trotter
Sent: Thursday, June 12, 2014 1:21 AM
To: Ginny Oliver
Subject: FW: SCRA Verification Results - Servicemembers Civil Relief Act Centralized Verification Service

From: Support@ServicemembersCivilReliefAct.com
Sent: Thursday, June 12, 2014 1:21:09 AM (UTC-05:00) Eastern Time (US & Canada)
To: Stephanie Trotter
Subject: SCRA Verification Results - Servicemembers Civil Relief Act Centralized Verification Service



Name	Customer	Case	Tracking Number
COFER, RANDALL W.		20143/8	201406114316

Based upon the information you have provided and our further research, as of 06/11/2014 ("Active Duty Status Date"), we report that there is no information in the Department of Defense Manpower Data Center ("DMDC") that indicates that the individual is in Active Duty Status.

Upon searching the data banks of the Department of Defense Manpower Data Center, based upon the information that you provided, the above is the status of the individual ("Subject") on the Active Duty Status Date, as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard). This status includes information on a Servicemember or his/her unit receiving notification of future orders to report for active duty.

Servicemembers Civil Relief Act Centralized Verification Service

By: **Roy L. Kaufmann**

Roy L. Kaufmann, Authorized Signatory

Date: 06/12/2014

For support: Support@ServicemembersCivilReliefAct.com or Support@SCRA.com

This report is based upon information that you have provided. Providing an erroneous name, social security number, date of birth or other information may cause an erroneous report to be provided. If you obtain further information about the person you may resubmit your request and we will provide new status report for that query. This response reflects status as of Active Duty Status Date only. For historical information, please resubmit your inquiry with a different Active Duty Status Date or contact the individual Military Service SCRA points-of-contact: <https://www.ServicemembersCivilReliefAct.com/live/link/points-of-contact.php>. If you have evidence that the individual is/was on active duty as of the Active Duty Status Date and you fail to obtain his additional information, punitive provisions of the SCRA may be invoked against you. See 50 USC Section 521(c).

The Servicemembers Civil Relief Act Centralized Verification Service processes SCRA verifications through the Defense Manpower Data Center (DMDC) which is an organization of the United States Department of Defense (DoD) that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military care and other eligibility systems.

This response reflects the following information: (1) the Active Duty status as of the Active Duty Status Date, (2) Whether the individual left Active Duty status within 367 days preceding the Active Duty Status Date, and (3) Whether the individual or his/her unit received early notification to report for active duty on the Date of Interest. Records do not predate September 30, 1985.

More information on Active Duty Status :

Active duty status as reported in this report is defined in accordance with 10 USC Section 101(d)(1). Prior to 2010 only some of the active duty periods less than 30 consecutive days in length were available. In the case of a member of the National Guard, this includes service under a call to active service authorized by the President or the Secretary of Defense under 32 USC Section 502(f) for purposes of responding to

national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy Training and Administration of the Reserves (TARs), Marine Corps Active Reserve (ARs) and Coast Guard Reserve Program Administrators (RPAs). Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps).

Coverage Coverage Under the SCRA is broader in Some Cases.

Coverage under SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this report.

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of SCRA extend beyond the last dates of active duty.

Those who could rely on this report are urged to seek qualified legal counsel to ensure that all rights guaranteed to Servicemembers under the SCRA are protected.

The information provided does not constitute a Consumer Report, as defined by the federal Fair Credit Reporting Act, 15 U.S.C. Section 1681 et seq. and may not be used to determine eligibility for credit, insurance, employment, or used for any other purpose governed by the FCRA.

Servicemembers Civil Relief Act Centralized Verification Service
For support: Support@ServicemembersCivilReliefAct.com



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To: Stephanie Trotter
Subject: SCRA Verification Results - Servicemembers Civil Relief Act Centralized Verification Service



Name	Customer	Case	Tracking Number
COFER, COREY		20143/8	201406114315

Based upon the information you have provided and our further research, as of 06/11/2014 ("Active Duty Status Date"), we report that there is no information in the Department of Defense Manpower Data Center ("DMDC") that indicates that the individual is in Active Duty Status.

Upon searching the data banks of the Department of Defense Manpower Data Center, based upon the information that you provided, the above is the status of the individual ("Subject") on the Active Duty Status Date, as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard). This status includes information on a Servicemember or his/her unit receiving notification of future orders to report for active duty.

Servicemembers Civil Relief Act Centralized Verification Service

By: **Roy L. Kaufmann**

Roy L. Kaufmann, Authorized Signatory

Date: 06/12/2014

For support: Support@ServicemembersCivilReliefAct.com or Support@SCRA.com

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national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy Training and Administration of the Reserves (TARs), Marine Corps Active Reserve (ARs) and Coast Guard Reserve Program Administrators (RPAs). Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps).

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Servicemembers Civil Relief Act Centralized Verification Service

For support: Support@ServicemembersCivilReliefAct.com



ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF Lexington

CASE NO. 2014-CP-12-01270

FILED

MOTION AND ORDER
INFORMATION FORM
AND COVER SHEET

2014 JUN 16 A 9:28

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

The Mill Homeowners Association, Inc.. ☒ Plaintiff
v.

Randall W. Cofer and Corey C. Cofer, ☐ Defendant

Check box above indicating submitting party

name, S.C.Bar no. and address of plaintiff's attorney

Stephanie C. Trotter (SC Bar #77680)

PO Box 212069 Columbia, SC 29221

telephone: 803-724-5002

fax: 803-724-5001

name, S.C.Bar no. and address of

Defendant's attorney

telephone:

email: other: .

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

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____

Court Reporter Needed: YES/NO

SECTION II: Motion Fee

- ☒ PAID —AMOUNT: \$125.00
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: Referred to Master by Motion and Order of Court

SECTION III: Motion Type

- ☐ Written motion attached
☒ Form Motion —

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


Signature of Attorney for Plaintiff/Defendant

June 13, 2014
Date submitted

JUDGE'S SECTION

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

JUDGE
CODE: _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____

(print name)

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED—AMOUNT DUE: _____

DATE FILED

FILED

2014 JUN 16 A 9:28

SCCA/233 (1/2003)

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

X ORIGINAL

STATE OF SOUTH CAROLINA 2015 FEB -2 11:15 AM THE COURT OF COMMON PLEAS

KK

COUNTY OF LEXINGTON

DOCKET NO. 2014-CP-32-01270

The Mill Homeowners Association, Inc.

Plaintiff,

JUDGMENT OF FORECLOSURE AND SALE
Deficiency Judgment Waived

v.

Randall W. Cofer and Corey C. Cofer

Defendant(s).

(20143/8)

A hearing was held 01/26/2015. Evidence was presented, which is reported herewith, and from the evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Notice of Lien was filed on 04/22/2013 in Book 16227 at Page 22.
2. The Lis Pendens was filed on 04/02/2014.
3. The Summons and Complaint were filed on 04/02/2014.
4. Service was made upon all Defendant(s) as shown by the proof(s) of service filed herein.
5. The Defendant(s) are in default.
6. The Defendant(s) are not in the Military Service of the United States of America, as contemplated under The Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. seq. as shown by affidavit, certificate or order filed herein.
7. Attorney for the Plaintiff has fully complied with the South Carolina Supreme Court Administrative Order 2011-05-02-01 dated May 2, 2011.
8. All Pro Se Defendant(s) and all attorneys of record were notified of the time, date, and place of the hearing by letter and certificate of mailing of record herein.
9. On 07/31/2006 the Defendant(s) took title to the subject property located at 113 Mill Haven Lane. The Defendant(s), by taking title to the subject property agreed to the governing documents for Plaintiff, which are of record herein.
10. The titleholder(s) of record in and to the subject property as of the filing of the lis pendens in this action is/are Randall W. Cofer and Corey C. Cofer.

1

11. Payment of the assessment has not been made as provided for by the Declaration, and the Plaintiff has elected to require immediate payment of the entire amount due thereon. Plaintiff has placed it in the hands of the attorney herein for collection by filing a Notice of Lien for unpaid assessments and initiating a foreclosure of that lien.

12. The sum of \$2075.00 is a reasonable fee to allow as attorney fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the Declaration.

13. Specifically, the Plaintiff's attorney is entitled to \$425.00 for services performed in filing a Notice of Lien for delinquent assessments. This service required the Plaintiff's attorney to research public real property records to identify the subject property, research court records to determine if there are any pending actions against the subject property, prepare and coordinate filing and service of the Notice of Lien, coordinate any payoff requests or payment plans with the Defendant, and eventually satisfy the Notice of Lien upon payment by the Defendant.

14. Plaintiff's attorney is further entitled to the additional sum of \$1,650.00 for prosecuting the foreclosure action. This service required the Plaintiff's attorney to obtain and review a title abstract for the subject property, prepare and file a lis pendens, summons and complaint for foreclosure, arrange for personal service of the initial pleadings, review the file to determine whether service was properly achieved and whether the Defendant is in default, and prepare and file an Affidavit of Default when the Defendant failed to respond. The Plaintiff's attorney also had to prepare and file a proposed order of reference for this case. Once the court set a final hearing date, Plaintiff's attorney had to send notice to the Defendant at least ten days prior to the final hearing. Prior to this hearing, Plaintiff's attorney was responsible for drafting a proposed transcript of testimony, an affidavit of costs, an affidavit of attorney's fees, a certification that this case is not subject to Administrative Order 2011-5-02-01, a proposed order, and a proposed notice of sale. Upon execution of this Judgment, Plaintiff's attorney will be responsible for ensuring the foreclosure sale is properly advertised, bidding on her client's behalf at any foreclosure sale, and preparing post-sale documents if her client should be the highest bidder at the sale. If her client takes title to the property at the foreclosure sale, Plaintiff's attorney will also be responsible for prosecuting any eviction proceedings necessary to clear the property for Plaintiff's possession.

15. The sum of \$2075.00 is reasonable based on the time necessarily devoted to representation of the Plaintiff during the several-month course of these proceedings. The services of counsel performed for the Plaintiff, including the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case, also support the amount awarded. The fees are also reasonable given the professional standing of the Plaintiff's counsel and her experience in handling assessment lien foreclosure matters. The fees awarded herein are also reasonable since they are less than the fees customarily awarded by this court for similar services in this county. Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a prompt foreclosure. Services anticipated to be performed until final adjudication contemplate completion of this matter within a reasonable time and do not include exceptional circumstances delaying conclusion beyond the normal time.

16. After all payments received by the Plaintiff have been credited, the amount due and owing with interest at the rate provided in the Declaration, and other costs and expenses of the within action, including an attorney's fee, secured by the Declaration, is as follows:

(a)	Principal due.....	\$1247.30
(b)	Interest from 01/01/2013 through January 15, 2015 at 18.0000% per annum	\$294.74
(c)	Late Fees and Other Charges	\$460.00
(d)	Costs of collection prior to hearing (service, filing, etc.).....	\$542.80
(e)	Attorney's fee	\$2075.00
(f)	Payments	(\$0.00)
		+
	TOTAL debt secured by the Declaration, including interest to date shown	\$4619.84

Interest for the period from the date shown in (b) above through the date of this judgment at above stated rate to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of 18.0000% per annum (pursuant to the terms of the Declaration) on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Declaration through the date to which such interest is computed.

17. Plaintiff is seeking the usual foreclosure of the property and has expressly waived the right to a personal or deficiency judgment.

IT IS THEREFORE ORDERED THAT:

1. There is due the sum of \$4619.84, as set out in the Findings of Fact *supra*, together with interest at the rate provided herein on the balance of principal from the date aforesaid to the date hereof.

2. The amount due in the preceding paragraph (the "Final Total Debt" as set out in the Findings of Fact *supra*) shall accrue interest at the rate of the respective Declaration rate per annum and together with such interest shall constitute the total judgment debt due the Plaintiff.

3. The amount of the judgment shall be subject to increase to permit the Plaintiff to recover additional costs, commissions and expenses not included in the minimum deposit previously made in compliance with S.C. Code Ann. §14-11-310 (1976). It may also increase to include supplemental compensation for attorney's services not contemplated by the initial fee award. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs and/or supplemental compensation. Such additional costs, commissions and expenses may be established by affidavit.

4. The Defendant is liable for the aforesaid judgment debt including interest at the rate of 18.0000% per annum shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

5. On default of payment at or before the time herein indicated, the premises described in the Complaint, as hereinafter set forth, shall be sold by the Master in Equity at public auction, at the Lexington County Courthouse, in the City of Lexington, County and State aforesaid on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on the next business day succeeding such holiday), on the following terms, that is to say:

a. For cash: The Master in Equity will require a deposit of 5% on the amount of the bid (in cash or equivalent) same to be applied to purchase price if compliance is made, but in the event compliance is not made, the deposit may be forfeited without further hearing and applied first to costs of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse to either make the required deposit at time of bid or comply with the other terms of the bid within 20 days, then the property may be re-sold on the same terms and conditions on the same or some subsequent Sales Day, but at the risk of the defaulting bidder(s).

b. Interest on the balance of the bid shall be paid through the day of compliance at the rate of 18.0000%.

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

and restrictions and easements and restrictions of record, and any other senior encumbrances. Specifically, this sale is subject to a senior mortgage held by Mers for Network Funding, LP recorded in Book 11263 at Page 122.

d. Purchaser to pay for any statutory commission on sale from the proceeds of the final bid amount.

e. Purchaser to pay for deed preparation, costs of recording the deed, and transfer taxes on the deed.

6. The bidding will not remain open after the date of sale and compliance with the bid may be made immediately.

7. Plaintiff may waive any of its rights, including its right to a deficiency judgment in accordance with Rule 71, South Carolina Rules of Civil Procedure, prior to sale.

8. The Master in Equity will, by advertisement according to law, give notice of the time and place of such sale and the terms thereof and will execute to the purchaser, or purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and if, upon such sale being made, the purchaser, or purchasers, should fail to comply with the terms thereof within 20 days after date of sale, then the Master in Equity may advertise the said premises for sale on the next or some other subsequent sales day at the risk of the highest bidder and so from time to time thereafter until a full compliance shall be secured.

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

10. The Master in Equity will apply the proceeds of the sale as follows:

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

NEXT: To the payment to the Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest (including attorney fees) or so much thereof as the purchase money will pay on the same;

NEXT: Any surplus should be held pending further Order of this court.

11. The Defendant named herein, and all persons whosoever claiming under Defendant, are forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said premises so sold, or any part thereof.

12. In accordance with Rule 77(d), SCRCP, the Clerk of Court shall serve a notice of

entry of this Judgment of Foreclosure upon all parties not in default for failure to appear herein.

13. The deed of conveyance made pursuant to said sale shall contain the names of only the first-named Plaintiff and the first-named Defendant(s), and the Defendant(s) who was/were the titleholder(s) of the property at the time of the filing of the notice of pendency of the within action, and the name of the grantee; and the Register of Deeds/Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

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

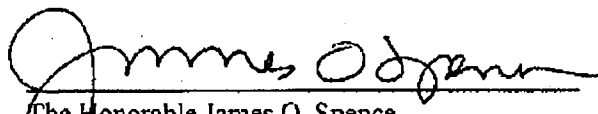
15. The following is a description of the premises herein ordered to be sold:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being near Lexington, County of Lexington, State of South Carolina, fronting on Mill Haven Lane, and being more particularly shown and delineated as Lot 175 of THE MILL Subdivision, Phase 2, on a plat prepared for Randall Cofer and Corey Cofer, by Cox and Dinkins, Inc., dated June 22, 2006, and recorded in Record Book 11263, page 119, in the Office of the Register of Deeds for Lexington County, and having such boundaries and measurements as will more fully appear by reference to said plat.

This being the same property to given to Randall W. Cofer and Corey C. Cofer by deed of D.R. Horton, Inc. dated 07/31/2006 and recorded in the Lexington County Register of Deeds Office on 08/01/2006 in Book 11263 at Page 120.

Property Address: 113 Mill Haven Lane

TMS: 005332-01-079


The Honorable James O. Spence
Master in Equity for Lexington County

Jan 27, 2015
Lexington, South Carolina

RECEIVED
JAN 27 2015
11:10 AM

2015 FEB -2 AM 10:22

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

FORM 4

JUDGMENT IN A CIVIL CASE

The Mill Homeowners Association, Inc.

2015 FEB -2

CASE NO. 2014-CP-32-01270

Randall W. Cofer

Corey C. Cofer

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Stephanie C Trotter
McCabe Trotter & Beverly, PC
PO Box 212069
Columbia, SC 29221

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

As required by statute, a foreclosure sale has been or will be scheduled, which will officially end the case.

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

Property Address: 113 Mill Haven Lane
TMS Number: 005332-01-079

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

Master in Equity or Special Referee

3068
Judge Code

Jan 29, 2015
Date



R0016

For Clerk of Court Office Use Only

This judgment was entered on the 2 day of Feb, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 4 day of Feb, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Stephanie C. Trotter

McCabe Trotter & Beverly, PC

PO Box 212059

Columbia, SC 29221

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Bill Cannon
CLERK OF COURT

Court Reporter:

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

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

ORIGINAL

K/K

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	2015 APR -6 AM 10:37	IN THE COURT OF COMMON PLEAS
Mill Homeowners Association Inc.	Plaintiff	Case Number: 2014CP3201270
-vs-	CLERK OF COURT LEXINGTON, SC	MASTER'S ORDER OF SALE AND DISBURSEMENT
Randall W Cofer, et al.,	Defendant	

UNDER AUTHORITY of a Decree herein dated January 29, 2015, I offered for sale to the highest bidder for cash, at public auction on March 2, 2015, the premises subject to this suit, and I received a high bid of \$4,857.00 from Regime Solutions, LLC and I executed and delivered a Master's deed to Regime Solutions, LLC and I have disbursed the funds as follows:

CONSIDERATION

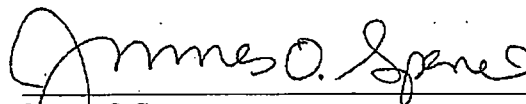
Master Filing Fees	\$125.00
Total Received from Bidder	\$4,857.00
Total Received by Master	<u>\$4,982.00</u>

DISBURSEMENTS

Master's Fees	\$100.00
Newspaper Advertisement	\$-0-
1% Commission	\$48.57
Master's Deed	\$25.00
Disbursed to Plaintiff	\$4,668.12
Total Disbursements by Master	<u>\$4,841.69</u>
Surplus Funds to be distributed pursuant to further order of this Court	<u>\$140.31</u>

It is so Ordered

April _____, 2015
Lexington, SC


James O Spence
Master-in-Equity, Lexington County

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP3201270**

Mill Homeowners
Association Inc

Randall W Cofer

Corey C Cofer

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

Judge Code

4/8/2015

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on 4/8/2015, to attorneys of record or to parties (when appearing pro se) as follows:

Stephanie Carol Trotter, Esq.
McCabe Trotter & Beverly, PC
PO Box 212069
Columbia, SC 29221-3200

Stephen Elias Fain, Esq.
125 Executive Pointe Boulevard
Columbia, SC 29210

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg

Court Reporter

Beth A. Carrigg - Clerk of Court

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

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

ORIGINAL

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

IN THE EQUITY COURT

The Mill Homeowner's Association, Inc.,)

Plaintiff,)

v.)

Randall W. Cofer and Corey C. Cofer,)

Defendants,)

Regime Solutions LLC,)

Purchaser at Foreclosure Sale)

Civil Action No.: 2014-CP-32-01270

ORDER

COPY

FILED
2015 FEB 17 PM 1:16
BETH A. CAMPBELL
CLERK OF COURT
LEXINGTON, SC

DATE OF HEARING: September 14, 2015;

JUDGE: The Honorable James O. Spence;

PLAINTIFF'S ATTORNEY: Stephanie Trotter;

DEFENDANTS' ATTORNEYS: Randy Davis & W. Joseph Maye;

ATTORNEY FOR REGIME SOLUTIONS, LLC: Eric Hale

This contested foreclosure sale, subject to a senior lien case, examines the respective rights of three parties: the Plaintiff, the defendant Owners, and the Third Party Purchaser. The parties dispute whether (1) proper notices were given Owners and (2) whether the bid amount shocks the conscience, requiring a resale of the property.

Plaintiff sold and advertized the property subject to a first mortgage. All parties agree that controlling case law requires that the senior lien amount must be factored into the court's examination of the adequacy of the sales price. Plaintiff and Third Party Purchaser argue that the senior lien amount should be added to the bid amount and then taken as a percentage of the

property value. Defendant Homeowners argue that the senior lien amount should be subtracted from the fair market value of their home and then the bid amount compared to their equity.

Defendants' Rule 60(b) (1) Motion seeks to set aside the March 2, 2015 Foreclosure Sale of their home located at 113 Mill Haven Lane, Lexington, South Carolina. Plaintiff and Purchaser argue that the sale should not be vacated sine the Purchaser bought the property subject to a first mortgage. The parties submitted briefs at the request of this Court on November 6, 2015. Having reviewed the materials submitted by Counsel, and having heard the arguments of Counsel, this Court vacates the sale.

PROCEDURAL BACKGROUND

A lien for homeowner's association dues was placed on Defendants' property on April 22, 2013. A Summons and Complaint for foreclosure was filed by the Plaintiff, The Mill Homeowner's Association, Inc., (herein after referred to as the homeowner's association or Plaintiff) on April 2, 2014, against the Defendants (herein after referred to as Defendants or the Cofers), and the Cofers were thereafter served. A foreclosure hearing was conducted on January 26, 2015. A Judgment of Foreclosure and Sale was granted on January 29, 2015, with the total secured debt calculated by Plaintiff to be \$4,619.84, inclusive of all principal, interest, late fees, costs, and attorney's fees. The Defendants' home was subsequently sold for \$4,857.00 to a third party purchaser, Regime Solutions, LLC, at public auction held on March 2, 2015. On May 19, 2015, Defendants filed a Motion pursuant to South Carolina Rule of Civil Procedure 60(b)(1) to overturn the sale and vacate the judgment against them. This Motion was then amended on July 17, 2015, to include the mortgage company as an interested party.

STATEMENT OF FACTS

Defendants Randall and Corey Cofer purchased their home located at 113 Mill Haven Lane, Lexington, South Carolina on July 31, 2006. The Cofer's purchase price was \$236,388.00. (See Defendants' Exhibit 6, Submitted at September 14, 2015 hearing). As of August 13, 2015, the remaining balance of Defendants' mortgage was \$124,799.32. (See Defendants' Exhibit 9, submitted at September 14, 2015 hearing). This leaves approximately \$111,000.00 of equity in the home earned by Defendants since purchasing the property in 2006. The Lexington County tax assessor's office list the "taxable land" and "taxable building" for 2015 as \$30,000 and \$193,857, respectively. (See Defendants' Exhibit 7, submitted at September 14, 2015 hearing). This property was subject to homeowner's association dues, enforced by the Plaintiff in this action, The Mill Homeowner's Association, Inc. The yearly dues at all times relevant to this action were for \$517.00. (See Defendant's Exhibit 3, submitted at September 14, 2015 hearing). In the beginning of 2013, Defendants Randall and Corey Cofer failed to make the requisite \$517.00 payment for homeowner's association dues and a lien was placed on their home shortly thereafter. In 2014, foreclosure was sought by Plaintiff.

The foreclosure hearing was scheduled initially for November 4, 2014, and then rescheduled for January 26, 2015. The Cofers claim that they never received the two Notice of Hearings, dated September 22, 2014 and December 19, 2014, respectively. Plaintiff has provided the Court with properly executed proof of service by US mail for both Notices.

At the January 26, 2015 foreclosure hearing, the charges sought against the Defendants were itemized by Plaintiff and a total debt of \$4,619.84 was presented to the Master in Equity. (See Statement of Indebtedness, Defendants' Exhibit 5.) The itemized debt asserted against the Defendants by Plaintiff is as follows:

- a. *Principal due*.....\$1247.30
- b. *Interest from 1/1/13 through 1/15/15 at 18% per annum*.....\$294.74
- c. *Late Fees and Other Charges*.....\$460.00
- d. *Costs of collection prior to hearing(service, filing, etc.)*.....\$542.80
- e. *Attorney's fees*.....\$2075.00

A Judgment of Foreclosure and Sale for the total debt of \$4,619.84 was awarded on January 29, 2015. The Cofers argue that they did not receive notice of the sale until the afternoon of Friday, February 27, 2015, wherein they immediately attempted to contact Plaintiff's counsel regarding the impending sale, but counsel could not be reached. Plaintiff again has provided the Court with a properly executed proof of service demonstrating the Notice of Sale was sent via US mail to the Cofer's home address. The Cofers' property was sold the following Monday morning, March 2, 2014, to Regime Solutions, LLC for the sum of \$4,857.00.

ISSUES PRESENTED

1. Was Plaintiff's service of the disputed Notices of Hearings and Notice of Sale proper in this matter?
2. Do the facts of this case present irregularities with this foreclosure sale as well as an inadequate bid price, such that this Court deems it proper to overturn the foreclosure sale to the third party purchaser?
3. Given the circumstances and facts of this particular matter, how should the sale price be calculated and compared to the value of the foreclosed home when determining whether the foreclosure sale price shocks the conscience of the Court?
4. Do the circumstances of this case demonstrate a foreclosure sale price so low as to shock the conscience of the Court?
5. Does the need for fundamental fairness to a debtor outweigh the public policy concerns for the rights of third party buyers and the desire for finality of sale?

6. What remedy is proper for compensating a third-party purchaser who has paid a winning bid for property sold at public auction, but has subsequently had their foreclosure sale overturned as a result of insufficient sale price?

LEGAL STANDARD

The review of a judicial foreclosure sale is equitable in nature and is left to the discretion of the trial court. *Fed. Nat'l Mortgage Ass'n v. Brooks*, 304 S.C. 506, 512, 405 S.E.2d 604, 607 (Ct.App.1991) (citing *Spillers v. Clay*, 233 S.C. 99, 102, 103 S.E.2d 759, 760 (1958)). Whether a judicial sale should be set aside is a matter within the discretion of the trial court. *Investors Sav. Bank v. Phelps*, 397 S.E.2d 780, 303 S.C. 15 (S.C. App., 1990).

DISCUSSION

While foreclosure law has developed over the centuries to reflect the changing market and government oversight, two things have remained constant. One, the lender is entitled to repayment of the mortgage debt, but no more. The lender does not have a right to claim any surplus or equity in the property. Raymond J. Werner & Robert Kratovil, Modern Mortgage Law and Practice, 32, (Prentice Hall PTR, 2d. 1981). Two, the owner's home and equity is guarded.

An examination of South Carolina law consistently reflects this policy. Professor Robert Felix, a contributor to Madam Chief Justice Jean Hofer Toal of South Carolina, notes that Toal, when addressing the theories of liability in residential housing in a case that reversed the Court of Appeals opinion that "appears to be a seamless web of proper legal analysis" by noting that the "result is repugnant to the South Carolina policy of protecting new home buyers." Robert Felix, Madam Chief Justice: Jean Hoefer Toal of South Carolina 97 (W. Lewis Burke, Jr. & Joan P. Assey ed., The University of South Carolina Press 2015 (2015)).

Similarly, when the equity battled shifted from standard mortgage foreclosures to contracts for deed, installments sales contracts, equitable type mortgages, etc, the court developed a series of questions required to be examined to determine what amount of equity the owner had in the property. If the owner had no equity, termination of the contract was required; the possession of some equity allowed for a period to redeem or pay-off debt, or if sufficient equity, the ability to sell property just like a legal mortgage. See Andrew S. Radeker, Esq., "Pleading Special Property Matters: Installment Land Sales Contracts, in 08-41 MASTER-IN-EQUITY BENCH/BAR 45-49 (October 10, 2008).

Some owner's home equity is also protected from judgment creditors during a statutory Supplemental Proceeding action. S.C. CODE ANN. § 15-41-30 (1990). requires the Economic Research Section of the Office of Research and Statistics of the State Board and Control to adjust each dollar amount for each subsection of debtor's interests. See S.C. CODE ANN§ 15-41-30(A)(1)-(14) (1990). The amount of home equity in 2008 was \$50,000. The adjusted amount January 24, 2014 was \$58,225.00. (This Homestead Exemption has not been argued, nor is it available in the context of a foreclosure.) The example is offered to show the state's policy of careful examination and protection of owner's equity, and its consideration by this court as one of factors in reaching this decision.

A fourth example of policy reflecting equity protection occurs during a tax sale. A defaulting taxpayer has the right to redeem property from a third party bidder when it provides for a post tax sale time limit to allow the defaulting taxpaying to redeem property sold at tax sale. S.C. CODE ANN § 12-51-90 & 100 (1976 as amended).

A final illustration of home related public policy is that the state taxes a home at a lower rate than non- home property. S.C. CODE ANN § 12-43-220(c)(1) (1975).

Here, the examination has shifted to a determination if the owner's equity should be protected from a stranger to the transaction, a third party bidder, in a sale subject to a senior lien.

The primary focus of the bid process is to pay off the plaintiff/creditor and protect equity in property so that in the event the third party bid generates surplus money, those funds representing the owner's equity would, by law, go first to the other entitled creditors, and then to the owner. South Carolina recognizes that the owner's equity, arguably at least to 10%, has a protected position in a first mortgage sale scenario as explained in the "shock the conscience" cases. The question here is if the same protection extends versus a third party bidder's profit expectation in a sale where the third party is taking property subject to a senior lien.

Notices of sale contain property sold subject to language. There is a critical difference between assuming a senior mortgage and taking subject to a senior mortgage. Black's Law Dictionary Sixth Edition (1990): "Assumption of mortgage. To take or acquire a mortgage or deed of trust from some prior holder. Accordingly, a purchaser may assume or take over the mortgage of the seller; often this requires permission of the mortgagee. This is distinguishable from acquiring property *subject to* a mortgage, because in latter case, the grantee is not contractually bound to pay the mortgage, whereas if he assumes the mortgage, he binds himself to the mortgagor to pay the mortgage and to fulfill all other terms and conditions." Black's Law Dictionary 123 (6th. Ed. 1990).

A person not assuming a loan, but buying it subject to the loan is a radically different proposition. "...The difference between the purchaser of land assuming a mortgage on it and simply buying subject to the mortgage, is that the former case he makes himself personally liable for the payment of the mortgage debt, while in the latter case he does not. When he takes the conveyance subject to the mortgage, he is bound only to the extent of the property..." *Id.* Since

the third party bidder took the property subject to the outstanding mortgage and did not assume the senior loan debt, he can simply choose to not pay the senior lien and walk away with only his bid at risk.

Given that this matter involves a homeowner's association foreclosure on property with an outstanding mortgage balance, this distinction is critical. A typical homeowner's association foreclosure fact pattern, the owner has first and/or a second mortgage, which may or may not be in default and or in active foreclosure. Homeowners are bewildered that they can be current on their mortgage, yet be foreclosed on for a homeowner's association lien, evicted from their home, and lose all their equity. The owner learns that the property was bought subject to restrictions, bylaws, etc that allow for their homeowner's association to seek foreclosure and eviction, and that attorney fees, if authorized by covenants and deemed reasonable by court review, can be greater than the initial debt owed to the homeowner's association.

A homeowner's association foreclosing its lien is most often in a similar situation to a second mortgage foreclosing subject to a first mortgage ahead of the homeowner's association lien. A second mortgage has an advantage in that it made its business decision to lend money based on knowledge of the first mortgage amount contained on mortgage and of the fair market value of the property.

The court has reviewed substantial amounts of relevant homeowner's association documents relating to assessments, ability to foreclose, attorney fee clauses, and interest and fee sections when hearing foreclosure cases and recognizes the tremendous pressure a homeowner's association faces when an owner stops paying assessments. When an owner defaults on their assessments, the homeowner's association loses part of the anticipated revenue stream needed to maintain such common areas as lights, security, trash pick-up, common area amenities, etc.

In most instances, the owner also has a mortgage that the homeowner's association lien is being foreclosed subject to. Normally, the homeowner's association lacks the funds, authority or financing to pay off the first mortgage. If no third party bidder comes forward, the homeowner's association is then faced with foreclosing its lien, and then evicting an owner who may or may not be current with the senior mortgage, so that the homeowner's association can attempt to recoup its lost revenue, attorney fees and costs, by renting the property during the time period before the senior mortgage forecloses on the homeowner's association's interest.

The Court also recognizes that the average third party bidder similarly has a multitude of issues to consider before bidding at a judicial sale.

"The well-published rise in defaults of subprime mortgages has created tempting opportunities to purchase real estate at bargain prices. With foreclosure sales being scheduled on a daily basis, foreclosing attorneys frequently receive calls from clients and others wanting to be walked through the potential pitfalls in the foreclosure bidding process. There are risks, so a potential bidder should learn as much as possible about the property and process prior to placing the first bid... In order to protect against the risks discussed above, a prudent bidder interested in buying property at foreclosure sale will, prior to making a bid, spend the time and money necessary to conduct to the extent possible, the same investigations conducted by buyers in traditional real estate transactions. Otherwise, the bidder may not get the anticipated bargain. Foreclosures sales may call for the clearest application of *caveate emptor*." Clifford P. Parson and C. Joseph Roof, Prudent Bidding at a Foreclosure Sale, South Carolina Lawyer, January 2009.

This article sets out many problems third party bidders know they must face such as buying property that is subject to a first-lien mortgage. In analyzing this matter, it is critical to understand that "subject to a first lien mortgage" does not mean the third party bidder is personally liable to pay the debt, or ever will pay. The debt follows the property. The third party bidder can choose simply not to pay the senior lien if the investment gamble does not come to fruition. This commonly occurs when the third party bidder and assignee are unable to agree how to, in essence, divide the owner's equity which is being dissipated during the time period between

initial third party bid and when, if ever, the third party purchaser or ultimate assignee ever pays off the loan.

The Court takes notice of the monthly Motions and Orders to vacate a sale based upon third party bidder's failure to comply with their bid, as well as the frequency in which third party bidders assign their bid during the normal post sale foreclosure review process. Further, the third party bidder, if successful, receives a Master-in-Equity deed to the property without having to pay off the senior lien, since the third party purchasers does not have to pay off the lien until the senior lien holder completes the foreclosure process. Again, the fact illustrates the critical differences between assuming a mortgage and purchasing subject to a senior mortgage.

I. Service was proper.

The Cofer's argument that the underlying Order should be vacated because they did not receive a copy of the Notices of Foreclosure Hearing or the Notice of Foreclosure Sale is not sufficient to vacate the Order. Defendants argue that if notice had been received, they would have had an opportunity to go to the hearing to argue against the debt calculation reached by the Plaintiff, as well as the premature filing of the lien, and if they had timely received the notice of foreclosure sale, they could have delayed the sale, addressed the disputed issues, and avoided the loss of their home to a third party bidder.

The Court acknowledges the issues that could have been addressed at foreclosure hearing, but the failure to receive notice argument proffered by Defendants is insufficient to warrant a setting aside the sale. Regime Solutions, LLC and the Plaintiff both argue correctly that Rule 5, SCRCP allows service by mailing to the last known address of Defendant. Plaintiff provided properly executed proof of service for these notices and Defendant does not contend that Plaintiff failed to properly send mail; they strictly argue that notices were not received.

Defendant's arguments suggesting that their mail was lost or otherwise undelivered, even if somehow provable in this instance, would not be sufficient basis to prove improper service of these notices.

Regardless of the factual question of whether mail was or was not received, Plaintiffs Proof of Service documentation creates a rebuttable presumption that the mailing of these notices was carried out appropriately. *State v. Langston*, 275 S.C. 442, 441, 272 S.E.2d 436, 437 (S.C. 1980); *In Re Eagle Bus Mfg. v. Rogers*, 62 F.3d 730, 735 (C.A.5 (Tex.), 1995). While denial of receipt does raise a factual issue, case law requires more than the mere allegation that mailing was not received in order to successfully rebut this presumption. *Id.* Defendant, in this circumstance, is without any further evidence to prove a failure of delivery, and consequently Defendants' motion to vacate the Order cannot be granted solely on these grounds.

II. The sale should be vacated on the basis of inadequacy of bid price, coupled with other circumstances surrounding the foreclosure sale.

While not solely sufficient to warrant vacating the Order, the notice issue, when coupled with the inadequate bid amount discussed in depth below, does warrant that the sale be vacated. Defendants make a logical analysis that can, and is true sometimes - that both sides are telling the truth. This Court acknowledges the fact that Plaintiff properly mailing notices and Defendants not receiving notices are not mutually exclusive occurrences. The Cofer's argument that they did not receive the foreclosure hearing notices is not sufficient to grant any form of relief; but it establishes the sort of "additional circumstances" or "slight irregularities" contemplated by the South Carolina jurisprudence which, that when coupled with inadequate sale price, warrant vacating the sale. See also 27 S.C. Jurisprudence §8.3(c) (1996); 14 A.L.R. Digest: Mortgages § 529(6)-(7); and 59A C.J.S. Mortgages § 864; *Investors Sav. Bank v. Phelps*,

397 S.E.2d 780, 303 S.C. 15 (S.C. App., 1990); *Wells Fargo Bank, Na v. Turner*, 662 S.E.2d 424, 378 S.C. 147 (S.C. App., 2008); *Poole v. Jefferson Standard Life Ins. Co*, 174 S.C. 150, 177 S.E. 24 (S.C., 1934); and *Howell v. Gibson*, 208 S.C. 19, 37 S.E.2d 271 (S.C., 1946). This Court finds that the shockingly low sale price, coupled with the notice issues, constitutes sufficient grounds for setting aside the foreclosure sale to Regime Solutions, LLC.

III. Bid price adequacy should be evaluated by comparing the Cofer's equity to Regime Solutions' bid price.

This case is distinguishable from first mortgage foreclosure shock the conscience cases. In those cases, all parties agree that South Carolina has no fixed bright line test to determine if a bid should be set aside for shocking the conscience. *E. Sav. Bank FSB v. Sanders*, 644 S.E.2d 802 (Ct. App. 2007). South Carolina case law has allowed a sale price at least 10% of the property value on a first mortgage case. *Investors Sav .Bank v. Phelps*, 397 S.E.2d 780 (S.C. App. 1990).

Here, however, the property was sold subject to a senior lien creating additional factors to be considered. Case law does dictate that if property is sold subject to a senior lien, the bidder must receive *some* type of credit for the lien amount outstanding; the parties to this action are in agreement as to this necessity. See *Arrow Bonding Co. v. Warren*, 732 S.E.2d 622 (2012); *Federal Nat. Mortg. Ass'n v. Brooks*, 405 S.E.2d 604 (S.C. App., 1991). In *Arrow Bonding*, the Court of Appeals affirmed the Master's decision to *add* the mortgage balance to the sale price in its analysis of whether the bid shocked the conscience of the court. The court notes specifically that "*under the circumstances of this case*" it disagreed with Appellant's argument that the mortgage should not be considered. *Id.* at 624 (emphasis added). In doing so the Court in *Arrow*

Bonding established that evaluation of judicial sale price adequacy is to be conducted on a case-by-case manner.

The Cofer's argue that the circumstances of this matter require a departure from the *Arrow Bonding* calculation. Instead, the facts at hand oblige the Court to consider the equity gained in the home against the bid price paid by the third party buyer. Regime Solutions and Plaintiff favor the calculation used in *Arrow Bonding*, and argue that the proper analysis should be to add the balance of the outstanding mortgage to their bid, and then determine the percentage by comparing this total to the full market value of the Cofer's property. The argument of Plaintiff and Regime Solutions fails scrutiny, both factually and legally.

First, there was no evidence at the hearing that Regime Solutions, LLC paid or will pay the senior mortgage still outstanding on the Cofer's property. Under the circumstances presented in *Arrow Bonding*, the Court of Appeals inferred that the third party buyer has, or will pay off the debt. Certainly if a third party buyer actually pays off a senior mortgage, it should get credit for doing so in the analysis. In that situation, a court would have to consider the owner's equity as against a percentage of the third party buyer's actual expenses paid.

Here, however, there is no evidence that the mortgage has been paid off or ever will be paid off. Regime Solutions, LLC is asking to receive credit for an *expense* it has not incurred. Regime Solutions has purchased the Cofer's property *subject to* the outstanding mortgage, and consequently Regime Solutions is not obligated to pay the senior lien. Paying off a lien and being subject to a lien are two different matters, and acquiring property subject to a lien under these circumstances does not afford a party the right to claim the lien *as part of its bid price*.

When a third party buyer bids on such property with intent to acquire the property subject to senior lien, it has several options. It may choose to pay off the senior lien, negotiate and then

assign its bid to another person who then must pay off the lien, evict the owner and rent the property until the first mortgage completes the foreclosure process, or simply default in complying with the bid, thereby forfeiting the initial bid fee. The court takes judicial notice of the number of monthly bid assignments and forfeited bids that the court encounters during the sales process. The court also takes notice of foreclosures wherein a senior lien holder forecloses on a homeowner's association that obtained title at a previous foreclosure. These occurrences are the result of calculated efforts. Savvy homeowner's associations and third party buyers perform calculated analyses as to whether or not they will be able to rent or sell the newly acquired property fast enough to recoup their respective debts or expenditures before the senior lien holder forecloses. It is very much a calculated business risk for those involved in the foreclosure sale process.

The Cofer's argue that Regime Solutions should get credit for the senior lien balance, but not by giving them credit as having paid the mortgage. Instead, credit for the mortgage should be provided by subtracting the amount of the senior lien from the fair market value of the property, which places the proper focus of inquiry back on owner equity, rather than on theoretical investments by the third party buyer in the property.

The Cofer's argue the basic position illustrated by *Federal Nat. Mortg. Ass'n v. Brooks*, and by the Restatement (Third) of Property 8.3(b) (1996).

The Restatement (Third) sets out the following example:

"Mortgagee foreclosed a mortgage on Blackacre by judicial action. The foreclosure is subject to a senior lien in the amount of \$50,000.00. Blackacre is sold at the foreclosure sale for \$19,000.00. The fair market value of Blackacre free and clear of liens at the time of the sale is \$150,000.00. The foreclosure proceeding is regularly conducted in compliance with state law. A state court is warranted in finding the sale price grossly inadequate and in refusing to confirm the sale." (Note Restatement also advocates a 20% ratio which South Carolina has

not adopted, but the principle rule is the same.) Restatement (Third) of Property § 8.3(b) (1996).

By way of example of how the 20% ratio is calculated, the Restatement demonstrates that the fair market value, minus the senior lien, equal \$100,000 in equity. The sale price of \$19,000, represents only 19% of the equity, and fails the 20% ratio test advocated as the baseline for finding gross inadequacy. *Id.*

In the *FNMA v. Brooks* case, the Special Referee's initial Order setting aside the judicial sale found the third-party purchaser's \$875 bid to constitute gross inadequacy as would shock the conscience of the court. *Id.* at 605. The Special Referee also found additional circumstances of noncompliance further allowing for the sale to be set aside. *Id.* This decision was appealed, and The Court of Appeals specifically evaluated the inadequacy of the judicial sale price by using a "real estate equity v. sale price" method of analysis. *Id.* at 606.

The value of the foreclosed *FNMA* property was determined to be \$52,500. *Id.* at 607. The balance of the remaining first mortgage was \$24,720.00. *Id.* at 605. This left \$27,780.00 of equity in the property. Even though the Appellant argued that the outstanding mortgage, *if added*, would raise the sale price to 49% of the property value, the Court of Appeals affirmed the Special Referee's decision, and stated as follows: "It cannot be gainsaid that the payment by Brooks of \$875 for equity over \$27,000 was adequate, albeit, it is no so grossly inadequate as to shock the conscience of the court." *Id.* at 605-606.

Stated more clearly, the Court of Appeals found that the sale price of \$875 was not adequate when compared to the established equity in the property. The Special Referee and the Court of Appeals did not find it necessary to add the mortgage balance to the sale price before conducting an analysis of the bid. *Id.* They instead subtracted the mortgage balance from the

property value and evaluated the sale on the basis of the equity the third-party buyer was receiving. *Id.* at 606. This is precisely the method of evaluation proposed by the Cofers.

The Court of Appeals reached the conclusion that the price paid for the equity received, in conjunction with the circumstances of noncompliance in the foreclosure decree, was a sufficient basis for setting aside the foreclosure sale and affirming the decision of the Special Referee. *Id.* at 607. Admittedly, the Court noted that it did not find this particular inadequacy one that would shock the conscience of the court; however, the circumstances of the case provided the Court of Appeals with a less stringent avenue for setting aside the sale, and the Court did not need to argue the shock the conscience standard in order to find grounds to affirm the Special Referee's Order. *Id.* at 606-607.

The decision in *FNMA v. Brooks* is a clear precedent for using real estate equity as the comparative measure for determining the inadequacy of a judicial sale price. Given the circumstances of this case this approach is proper as it affords due credit for the mortgage balance to the third party buyer, but does not presumptively allocate the mortgage balance as an expenditure that can be added to their bid and classified as the "sale price" for the auctioned property. As Regime Solutions acquired the Cofer property subject to the outstanding mortgage, adding that mortgage value to the bid value would be improper, as it does not reflect Regime Solutions' actions, or their legal obligations. While adding the value may be the proper analysis in certain circumstances, it is not proper in this instance, and this Court adopts the equity analysis used in *FNMA v. Brooks*.

IV. Regime Solutions' bid price is grossly inadequate, so as to shock the conscience of the Court and require a setting aside of the sale.

This Court finds that the bid price of \$4,857.00 is grossly inadequate and the foreclosure sale should be set aside.

The Cofers are current on their mortgage, and as of August 2015, the outstanding mortgage balance totaled \$124,799.32. The Cofers paid \$236,388.00 for their property in 2006, and the Court finds this figure to be the fair market value of the property. Defendant's bolstered their support for this figure by showing that the tax assessment for the combined home and property totals a similar value of \$223,857.00. Therefore, the Cofers have established \$111,588.68 of equity in their home.

At public sale, Regime Solutions successfully bid for the property with a bid amount of \$4,857.00. This bid fully satisfied the lien held by Plaintiff against the property, and resulted in surplus funds of \$140.31 which have been held in trust by this Office of this Court during the pendency of this litigation.

While there is no bright line rule for determining gross inadequacy of sale price, South Carolina courts have consistently found any sale price representing 10% or less of the value of the property to be grossly inadequate and warranting a setting aside of the sale. *Investors Sav. Bank v. Phelps*, 397 S.E.2d 780, 303 S.C. 15 (S.C. App., 1990); *Wells Fargo Bank, Na v. Turner*, 662 S.E.2d 424, 425-26, 378 S.C. 147 (S.C. App., 2008). Applying the analysis of *FNMA v. Brooks*, the Court finds that Regime Solutions' bid represents only 4.35% of the equity value they acquired in the Cofer's home, and as such this sale should not stand. This Court finds that the March 2, 2015 sale of the Cofer's 113 Mill Haven Lane property should be set aside.

V. Public policy and the need for finality of sale do not outweigh the need for ensuring fundamental fairness to the debtor.

Regime Solutions also argues that adopting the Cofer's argument to focus solely on the owner's equity and not their possible expenditures would impair the sale process. While the court agrees that there is a strong policy for finality of sale and the desirability of a bright line shock the conscience ruling, Regime Solutions' argument is not compelling. As noted in the above Parson and Roof South Carolina Law review article, third party buyers know the risks of bidding at a judicial sale. A third party buyer can conduct pre-sale research to obtain a better idea of the fair market value to debt ratio simply by reviewing tax assessments, the principal amount stated on the mortgage, and reviewing any foreclosure file jackets to determine if the party in default or foreclosure with their mortgage. The Complaint will contain allegations of note and mortgage terms (often containing a copy of the note with debt amount, interest rate and terms, etc) that a prospective bidder can then make some educated guess as to balance of debt since they know they are taking property subject to maximum first mortgage amount as stated on recorded mortgage.

Other courts have examined this policy argument. The Arizona *In re Krohn* case is persuasive authority for how courts of equity should evaluate the nature of the parties involved in a dispute seeking to set aside a judicial sale. While the specific matter dealt with a setting aside of a deed of trust, the Arizona Court applied a foreclosure sale analysis that mirrors the law of South Carolina. Under Arizona law, a foreclosure sale can be overturned by a showing of gross inadequacy of sale price or by inadequacy of sale price coupled with slight irregularities in the circumstances surrounding the sale. *In re Krohn*, 52 P.3d 774, 776 (Ariz., 2002). The Court in *In*

re Krohn notes that "where there is an inadequacy of price which in itself may not be grounds for setting aside a sale, slight additional circumstances or matters of equity may so justify." *Id.*

In Re Krohn addressed the stability of the "foreclosure industry", as well as the potential for discouraging bidders and creating a "chilled market". *Id.* at 779. In response, the Arizona Court states that "we have been presented with no data indicating that the traditional judicial foreclosure market has been disrupted by existing judicial oversight to prevent grossly inadequate prices, and such a result is not self-evident." *Id.*; See also *Ballentyne v. William Smith*, 205 U.S. 285, 291 (1907) (noting that the equities involved and the meager sale price outweigh the Court's concern for impairing bidder confidence in the stability of judicial sales).

The opinion goes on to say that:

"Indeed, purchasers continue to come forward, making deed of trust purchases without certain knowledge that the trustee has fully complied with the statutory procedural obligations and thus take a risk that the sale may be set aside for that reason. For example, there was no apparent flight from deed of trust sales after we vacated such a sale when we found a ninety-day statutory notice of sale did not negate the additional thirty-day notice required in the deed of trust itself. *Schaeffer v. Chapman*, 176 Ariz. 326, 861 P.2d 611, (1993).

Perhaps this is because most purchasers believe, as we do, that only the smallest minority of deed of trust sales are conducted without statutory compliance, just as we also believe that most purchasers will assume only the smallest number of deed of trust sales are concluded at a price that could shock the conscience of the court because of gross inadequacy. That said, we think it just as likely that the possibility of judicial oversight on the ground of gross inadequacy will result in higher prices. If so, we think this will serve rather than impair the public interest." *In re Krohn*, 52 P.3d at 780.

The opinion concludes that if judicial oversight of foreclosure sales has any effect at all on the bidding market, that effect would likely be to increase the sale prices reached at judicial sale, thereby promoting the public interest and promoting the actual purpose for which judicial sales are conducted. *Id.*; See *Looper v. Madison Guar. Sav. & Loan Ass'n*, 729 S.W.2d 156, 159 (Ark., 1987) (noting that "the law is such that inadequacy of price when so gross, need only be

coupled with slight circumstances to justify setting aside the sale. This is a court of equity, and foreclosure is historically an equitable proceeding to protect the debtor."). There is no reason to assume that the concerns expressed for the bidding market of South Carolina judicial sales would be subject to any greater detriment as that of Arizona, and the Arizona Court was not influenced in the slightest by this argument. The United States Supreme Court was likewise not persuaded by such a concern. *Ballentyne*, 205 U.S. at 291.

The Court acknowledges that absent special circumstances, a sale to a bona fide purchaser should not be upset by the courts. *In re Krohn*, 52 P.3d 780. However, "the status of bona fide purchaser by itself cannot insulate even a well meaning purchaser innocent of wrongdoing when other circumstances are present." *Id.* Bidders are charged with the knowledge that some difficulty in dealings exists, else a property would not be set for public auction. *Id.* The rule of caveat emptor applies, and purchasers at such sales have already assumed the risk that some unknown procedural error may arise. *Id.* "Such bidders can reasonably expect to get bargains at the expense of already troubled debtors." *Id.* "Knowledgeable purchasers can reasonably evaluate the fair market value of a property to make an appropriate bid that is not grossly inadequate." *Id.*

Fair market value cannot be realistically expected at foreclosure sale, the context of the proceeding itself inhibits it. *Id.* However, that does not excuse results that constitute gross inadequacy or even disproportionate prices coupled with very slight evidence of unfairness or irregularity. *Id.* at 782.

In re Krohn, at its core, "is a case about inequity on the one hand and unjust enrichment on the other. When these factors are present, our court has been available to give relief so long as there is no statutory prohibition." *Id.* (citing *Sparks v. Douglas & Sparks Realty Co.*, 19 Ariz.

123, 129, 166 P. 285, 288 (1917)). The importance of the nature of the parties involved in a foreclosure sale and the repugnance for allowing excessive profits at the expense of the drastic misfortune of a debtor are described by the Arizona Court in the following excerpts:

"There are, of course, those waiting for opportunities based on individual misfortune, and we believe this makes it even more important that courts of equity are open to assure debtors receive not only procedural but fundamental fairness. Windfall profits, like those reaped by bidders paying grossly inadequate prices at foreclosure sales, do no serve the public interest and do no more than legally enrich speculators." *Id.* at 779.

"If the legislature believes that the doors of the courthouse should be closed and the courts forbidden to grant relief to those who are unjustly and inequitably deprived of their homes by speculators or others seeking windfall profits, it may say so. . . . [T]he dissent asserts that there is no question of unjust enrichment in the present case because the purchaser at the trustee's sale 'was not the lender, but a third party'. We are unable to understand the distinction. It makes little difference whether a lender or speculator was unjustly enriched. The important considerations are the questions of inequity on the one hand and unjust enrichment on the other. When these are present, the court may use its equitable powers." *Id.* at 782.

The Arizona Supreme court is not alone in its defense against the sanctioning of unjust enrichment. This is the same conclusion reached by the Supreme Court of Arkansas, wherein the Arkansas Court argues that "it is not the purpose of the law to protect one who seeks to procure valuable property for little or no outlay." *Looper*, 729 S.W.2d at 160. Collectively, the courts that have addressed "the nature of the parties" inquiry, as it pertains to setting aside of judicial sales, have concluded that the rights of a real estate speculator are far outweighed by the right of fundamental fairness owed to the debtor.

This Court acknowledges the concerns regarding public policy, the rights of a third party buyer, and the desire to have finality in foreclosure sales. However, this Court agrees with the conclusion reached in *In re Krohn, Ballentyne*, and *FNMA v. Brooks*: these concerns do not

outweigh the substantial injustice that would result in allowing a third party buyer to be unjustly enriched at the significant detriment of the Cofers.

VI. Regime Solutions must be reimbursed for its loss of interest of its bid money.

Defendant recognizes that fundamental fairness in these circumstances require that the purchaser should be made as whole as is possible. Defendant argues that when tax sales are overturned, the bidding party is awarded interest on its bid value as set forth by statute. Given the similarity between a redeemed tax sale and a set aside foreclosure sale, this Court finds that such a remedy is proper in this matter. Regime Solutions is entitled to interest for its bid money in accordance with the interest schedule set forth in South section 12-51-90(B).

Section 12-51-90(B) directs that 3% interest be paid to the bidder for occurring within the first three months after the public sale. The foreclosure sale of the Cofer's home was conducted on March 2, 2015. By filing their Rule 60(b)(1) motion to set aside the sale, Defendant asserted proper legal grounds for vacating the sale on May 18, 2015. Regime Solutions is therefore entitled to 3% interest on its \$4,857.00 bid; Regime Solutions, LLC's interest totals \$145.71.

CONCLUSION

The sale of the Cofers' home to Regime Solutions, LLC should be overturned on multiple grounds. First, the bid price of \$4,857 for the \$111,588.68 of equity value established by the Cofers only represents 4.35% of the value of the property. This is well below the established 10% threshold needed to constitute a gross inadequacy of sale price that shocks the conscience of this Court; on this basis alone, vacating the sale is warranted. Secondly, while service by Plaintiff for all notices of foreclosure hearing and public sale were proper, the failure of delivery issues constitute "slight irregularities" and "additional circumstances", that when coupled with the inadequate bid price, create a circumstance that allow for the sale to be vacated. This Court finds

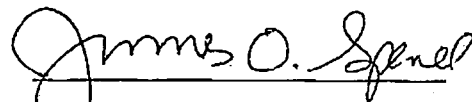
that vacating the foreclosure sale on this basis is also proper. Regime Solutions, LLC, as the successful bidder, is entitled to 3% interest for its bid amount of \$4,857.00, analogous to the tax sale redemption remedies of South Carolina Code of Laws Section 12-51-90(B).

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. Defendants' Motion pursuant to Rule 60(B)(1) to set aside the sale is hereby granted.
2. Plaintiff, the Mill Homeowner's Association, issue cash or certified funds to Regime Solutions, LLC in the amount of **Four Thousand Six Hundred and Sixty-Eight Dollars and Twelve Cents (\$4,668.12)**. This amount represents the net proceeds check paid to Plaintiff.
3. Defendants Corey and Randal Cofer issue cash or certified funds to Regime Solutions, LLC, in the amount of **One Hundred and Forty-Five Dollars and Seventy-One Cents (\$145.71)**. This amount represents 3% interest accrued for Regime Solutions' bid amount of \$4,857.00, as remedy pursuant to S.C. Code of Laws 12-51-90(B).
4. The County of Lexington issue a check to Regime Solutions, LLC in the amount of **Forty-Eight Dollars and Fifty-Seven Cents (\$48.57)**. This amount represents the 1% bid feed paid to County.
5. The Master-in-Equity Office issue a check to Regime Solutions, LLC in the amount of **One Hundred and Forty Dollars and Thirty-One Cents (\$140.31)**. This amount represents the surplus funds being held by the Master-in-Equity Office.
6. If Defendant fails to pay the stated interest set forth in item #3 within 30 days of the date of this Order, Regime Solutions, LLC may file to vacate this order, wherein they will be permitted to maintain ownership of the property.
7. If Defendant fails to pay the outstanding Homeowner's Association lien debt of **Four Thousand Six Hundred and Nineteen Dollars and Eighty-Four Cents (\$4,619.84)** (See Statement of Indebtedness, Defendants' Exhibit 5.) held by The Mill Homeowner's Association within 60 days of this Order, the Plaintiff may move to have the property resold at public auction.
8. As this sale has now been vacated, the recording of Master-in-Equity Deed recorded Deed Book 17498 at Page 335 is also vacated.

IT IS SO ORDERED.

Lexington, South Carolina
February 16, 2016



The Honorable James O. Spence
Master-in-Equity for Lexington County

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP3201270

Mill Homeowners
Association Inc

Randall W Cofer

Corey C Cofer

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

Judge Code

2/18/2016

Date

For Clerk of Court Office Use Only

This judgment was entered on 2/17/2016, and a copy mailed first class or placed in the appropriate attorney's box on 2/18/2016, to attorneys of record or to parties (when appearing pro se) as follows:

Stephanie Carol Trotter, Esq.
140 Stoneridge Drive Suite 650
Columbia, SC 29210

James Randall Davis, Esq.
PO Box 489
Lexington, SC 29071-0489

Stephen Elias Fain, Esq.
PO Box 287
Columbia, SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg, ppb

Court Reporter

Beth A. Carrigg - Clerk of Court

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

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

ORIGINAL

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON)

FOR THE ELEVENTH JUDICIAL CIRCUIT

C/A No. 2014-CP-32-01270

JP

THE MILL HOA, INC.)

V COFER ET AL. DEFENDANT)

RULE 59 ORDER

REGIME SOLUTIONS, INC)

THIRD PARTY BIDDER.)

Regime Solutions, LLC (Regime) motion to reconsider states that the narrow issue before the court is whether or not Regime is a BFP (Bonafide Purchaser for Value). Regime argues that this question has two components: (1) that it met the "for value" element necessary to qualify as a bonafide purchaser for value at the foreclosure sale, and (2) that Regime meets the without notice element.

Regime Solutions is not a BFP because the value they paid shocks the conscience of the court described in the trial order because there is no evidence that they paid the first mortgage or will pay the first mortgage. Regime bid on the property subject to the senior mortgage of record; they did not legally assume that first mortgage. A bidder buying property subject to a first mortgage could be a BFP if the actual value paid satisfied the shock the conscience criteria.

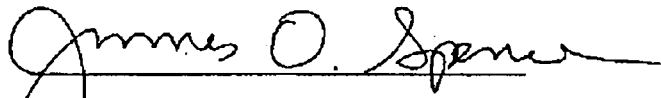
Regime is without notice to any unfilled claims at the time of the sale that the homeowner may have filed simply because Regime can't have notice of something that has not been filed at the time they bid. The trial court discussion of the possibility of sale or notice matters discussed in the Order relate to Cofer's actions and notice, not Regime's.

Regime is, however, on notice of both the shock the conscience case law and the filed pleadings and Order in the case, all of record before Regime bid. Both the Order and the Notice of Sale state that the sale is subject to a senior mortgage. Regime is on notice that there was a lien being foreclosed. Regime could have looked at this debt amount set out on Page 3 Paragraph 16 of the Order to determine the Plaintiff's debt as of the date of sale.

Similarly, while South Carolina law does not require that the first lien holder be named as a party, Regime would discover this fact through either a title search prior to sale or in the Order and Notice of sale, both of which contained the book and page of the Mortgage. Regime is on notice that there was a first mortgage in the face amount of the recorded mortgage. Regime could have used these two numbers (Order debt amount and face amount of first mortgage) to determine a bid amount that would have satisfied the shock the conscience bid amount. Or, Regime could have contacted the first mortgage to determine the pay-off amount and adjusted its bid accordingly.

Regime is not a BFP because the value paid shocks the conscience of the court. Regime is on notice of the record information that a prudent bidder would have discovered had the bidder conducted a standard title search of public information.

July 7, 2016



JAMES O. SPENCE/LEXINGTON MIE

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP3201270

Mill Homeowners
Association Inc

Randall W Cofer

Corey C Cofer

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

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Additional Information for the Clerk: _____

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Circuit Court Judge

Judge Code

7/11/2016

Date

For Clerk of Court Office Use Only

This judgment was entered on 7/8/2016, and a copy mailed first class or placed in the appropriate attorney's box on 7/11/2016, to attorneys of record or to parties (when appearing pro se) as follows:

Stephanie Carol Trotter, Esq.
140 Stoneridge Drive, Suite 650
Columbia, SC 29210

James Randall Davis, Esq.
PO Box 489
Lexington, SC 29071-0489

Eric Christopher Hale, Esq.
PO Box 287
Columbia, SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/ppb

Court Reporter

Beth A. Carrigg - Clerk of Court

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

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

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

The Mill Homeowners Association, Inc. **LETHA A. CARRICE**
Plaintiff, **CLERK OF COURT**
LEXINGTON

FILED

IN THE COURT OF COMMON PLEAS

2014 APR -2 DOCKET NO.

ORIGINAL

**SUMMONS
(NON-JURY)**

**FORECLOSURE OF REAL ESTATE
NON-ELIGIBLE FOR HOME
MODIFICATION PROGRAM**

v.

Randall W. Cofer and Corey C. Cofer,
Defendant(s).

2014CP3201270

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 140 Stoneridge Drive Suite 650, Post Office Box 212069, Columbia, South Carolina 29221, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the complaint. YOU WILL ALSO TAKE NOTICE that the Plaintiff will move for an order of reference or that the Court may issue a general order of reference of this action to a master/special referee, pursuant to Rule 53, South Carolina Rules of Civil Procedure.

S. Trotter

Stephanie C. Trotter
McCabe, Trotter & Beverly, P.C.
140 Stoneridge Drive Suite 650
Post Office Box 212069 (29221)
Columbia, SC 29210 803-724-5002
Email: Stephanie.Trotter@mccabetrotter.com
Attorneys for Plaintiff

Columbia, South Carolina
April 1, 2014

2014-LP-32 -348

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

The Mill Homeowners Association, Inc.,

Plaintiff,

v.

Randall W. Cofer and Corey C. Cofer,

Defendant(s).

FILED

IN THE COURT OF COMMON PLEAS

DOCKET NO.

ORIGINAL

2014 APR -2 P 3:34

BETH A. CARRICO
CLERK OF COURT
LEXINGTON

COMPLAINT
(NON-JURY)

FORECLOSURE OF REAL ESTATE
NON-ELIGIBLE FOR HOME
MODIFICATION PROGRAM

2014CP3201270

The Plaintiff herein, complaining of the acts or omissions of the Defendant(s) would show unto this Honorable Court as follows:

1. Upon information and belief, the Defendant(s) is/are a resident of the County of Lexington, State of South Carolina and the subject of this action is real property located in the County of Lexington, South Carolina.

2. Plaintiff is a corporation or other legal entity doing business in the State of South Carolina and has the right to bring this action.

3. Heretofore, on or about 07/31/2006 the Defendant(s) took possession of the property described in Exhibit A attached to this Complaint and incorporated herein by reference.

4. The herein described property is subject to governing documents for The Mill Homeowners Association, Inc. attached hereto as Exhibit B and incorporated herein by reference.

5. By taking possession of the property, Defendant(s) agreed to pay assessments and other charges allowed by the governing documents.

6. Pursuant to the governing documents a lien arises in favor of Plaintiff to secure payment of the unpaid charges.

7. Heretofore, on or about 04/22/2013, Plaintiff filed a Notice of Lien in connection with unpaid assessments on the herein referenced property owned by the Defendant(s).

8. Pursuant to the governing documents Plaintiff is entitled to foreclose on the aforementioned lien.

9. The Defendant(s) has failed to make consistent payments of the assessments and interest, although demand for payment has been made, and the Plaintiff after giving all required notices, has and does hereby elect to declare the entire balance payable at once. There is now due, owing and unpaid the

sum of \$1582.96 in principal, late fees, interest and other charges. Plaintiff is further entitled to recover reasonable attorney's fees and the cost of litigating this proceeding.

10. If Plaintiff secures the premises being foreclosed herein, Plaintiff's cost of securing said premises should be added to any judgment rendered on its behalf. If Plaintiff pays any utility charges constituting a lien on said premises, Plaintiff's advances should be added to any judgment rendered on its behalf.

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

1. Under the direction of this Court, ascertain and determine the amount due to Plaintiff as outlined by the governing documents, together with interest of 18.00% Per annum and reasonable attorney's fees and costs as outlined in the governing documents.

2. That said Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees, and for the costs of this proceeding.

3. That the premises be sold under the direction of this Court, the equity of redemption be barred, and that the proceeds of sale be applied as follows:

- a. First, to the costs and expenses of the within proceeding and said sale;
- b. Second, to the payment and discharge of the amount due under the governing documents, together with attorney's fees as aforesaid; and
- c. Third, the surplus, if any, be distributed pursuant to Rule 71, of the South Carolina Rules of Civil Procedure.

4. Plaintiff have judgment against the Defendant(s) for the full amount found to be due Plaintiff.

5. For such other and further relief as may be just and proper.

MCCABE, TROTTER & BEVERLY, P.C.



Stephanie C. Trotter
140 Stoneridge Drive, Suite 650
Post Office Box 212069 (29221)
Columbia, SC 29210
Phone: 803-724-5000
Fax: 803-724-5001
Email: Stephanie.Trotter@mccabetrotter.com
ATTORNEY FOR THE PLAINTIFF

Columbia, South Carolina
April 1, 2014

Exhibit A

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being near Lexington, County of Lexington, State of South Carolina, fronting on Mill Haven Lane, and being more particularly shown and delineated as Lot 175 of THE MILL Subdivision, Phase 2, on a plat prepared for Randall Cofer and Corey Cofer, by Cox and Dinkins, Inc., dated June 22, 2006, and recorded in Record Book 11263, page 119 , in the Office of the Register of Deeds for Lexington County, and having such boundaries and measurements as will more fully appear by reference to said plat.

This being the same property to given to Randall W. Cofer and Corey C. Cofer by deed of D.R. Horton, Inc. dated 07/31/2006 and recorded in the Lexington County Register of Deeds Office on 08/01/2006 in Book 11263 at Page 120.



09/17/2004 09:44:35:513
Rec Fee:\$68.00 St Fee:\$0.00
Co Fee:\$0.00 Pages:62
Lexington County ROD Debra M. Gunter
RESTRICTIONS BK:Pg 9573:389

DECLARATION
OF
PROTECTIVE COVENANTS
FOR
THE MILL
SUBDIVISION

Upon recording please return to:

Whitener & Wharton, P.A.
2001 Park Street
Columbia, South Carolina 29201

3.3 **Association as Successor to Declarant.** Upon the termination of the Class B membership as described above, the Association shall succeed to all of the rights, duties and responsibilities of the Declarant under this Declaration. The Association shall not, however, succeed to any rights of Declarant regarding any portion of any additional property which has not then been annexed to, and incorporated within, the Community, nor succeed to the any rights of the Declarant regarding any portion of undeveloped Property subjected to this Declaration that may be removed by the Declarant. The Association may delegate any of such rights, duties and responsibilities to the Architectural Review Committee or to any other committee or entity which it may choose to form.

ARTICLE IV ASSESSMENTS

~~4.1 Purpose of Assessment.~~ The assessments provided for in this Declaration shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots, as may be authorized from time to time by the Board. The assessments levied by the Association shall also be used for the administration, operation, improvement, maintenance, use and enjoyment of the Common Area, including the streets, the entrance landscaping to the subdivisions, whether or not located on Common Area, and including, but not limited to, the cost of repairs, replacements, additions, insurance, labor, equipment, materials, management and supervision, other personnel or contract services deemed appropriate, establishing a maintenance and replacement reserve, repaying loans incurred by the Association, including interest, the payment of taxes assessed against such Common Area, and the employment of attorneys, accountants and other professionals to represent the Association when necessary, and to provide such other services which the Association determines to be necessary or desirable. Additionally, in the event that any Owner fails to properly maintain the exterior of such Owner's residence, including the yard and any fence or fences on such Owner's Lot, the Board of Directors of the Association may, by majority vote, levy a special assessment against the Owner of such Lot, which assessment shall be in an amount equivalent to that required to properly maintain the exterior of such residence, fence, fences or yard or may expend portions of the assessments for maintenance of the exterior of such Owner's residence, yard or fence, in which event, the Owner shall be assessed for such expense of maintenance as provided for herein.

4.2 **Creation of the Lien and Personal Obligation for Assessments.** For each Lot owned within the Community, each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees, and is deemed to covenant and agree, to timely pay the Association: (1) annual assessments or charges, including any street maintenance, entrance landscaping, whether or not located on Common Area, and privacy costs, which assessments or charges may be assessed and/or collected on such basis as the Association deems appropriate, and (2) special assessments for capital improvements and other purposes, such assessments to be established and collected as hereinafter provided; and (3) default assessments which may be assessed against an Owner's Lot for failure to perform an obligation under this Declaration, or because the Association has incurred an expense on behalf of an Owner

under this Declaration or the Association documents. Declarant shall not be obligated to pay assessments for Lots which they own until such time as Lots owned by them are shown on a survey recorded in the office of the Register of Deeds for Lexington County, South Carolina, and such assessments shall be paid on such Lots prorata from the date of the recording of the survey, or in lieu thereof, Declarant may elect to pay assessments in accordance with Section 4.14 hereinbelow, or Declarant may elect to fund all or a portion of any initial budget deficits, the option of which shall be in Declarant's sole discretion.

4.3 Late Charges. All assessments shall accrue late charges, interest (not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due), and costs, including, without limitation, reasonable attorney's fees actually incurred. The assessments and charges shall be a continuing lien upon the Lot against which each assessment is made, and shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due and upon such Owner's successor in title if unpaid on the date of the conveyance of such Lot.

4.4 Personal Liability. Each Owner shall be personally liable for the portion of each assessment coming due while the owner of a Lot, and each grantee of an Owner, shall be jointly and severally liable for the assessments which are due at the time of conveyance; however, the liability of a grantee for the unpaid assessments of its grantor or immediately preceding Owner shall not apply to any first Mortgagee taking title through foreclosure proceedings, in which event, the prior owner shall continue to remain liable.

4.5 Certificate of Payment. The Association shall, within five (5) business days after receiving a written request, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate shall be binding upon the Association as of the date of issuance. The Board shall have the right to impose a reasonable charge for providing this certificate.

4.6 Annual Assessments. Annual assessments shall be levied equally on all Lots and shall be paid in such manner and on such dates as may be fixed by the Board. The Board may, in its sole discretion, distinguish between the occupied Lots and the unoccupied Lots for the purpose of annual assessments. If the Board sets a lower assessment for the unoccupied Lots, the Owner of an unoccupied Lot may not use the Common Areas unless such Owner pays the assessment established by the Board for occupied Lots. The Board may allow annual assessments to be paid in monthly, quarterly, semi-annual or annual periodic payments as determined by the Association's Board of Directors, and the Board shall have the right to accelerate any unpaid installments in the event an Owner is delinquent. Unless otherwise provided by the Board, the annual assessment shall be paid in annual installments. Declarant shall not be obligated to pay assessments for Lots which they own until such time as Lots owned by them are shown on a survey recorded in the office of the Register of Deeds for Lexington County, South Carolina, and such assessments shall be paid on such Lots prorata from the date of the recording of the survey, or in lieu thereof, Declarant may elect to pay assessments in accordance with Section 4.14 hereinbelow, or Declarant may elect to fund all or a portion of any initial budget deficits, the option of which shall be in Declarant's sole discretion.

4.7 **Computation of Annual Assessments.** The Board shall prepare a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve. The Board shall cause the budget and the assessments to be mailed or delivered to each member at least thirty (30) days prior to the end of the current fiscal year. The budget and the assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote. In the event the membership disapproves the proposed budget, or the Board fails to establish a budget for the succeeding year, the budget in effect for the then current year shall continue for the succeeding year until changed by the Board. In the event the Board's budget is disallowed, the Board shall have the right to make a new budget retroactive to the start of the fiscal year.

~~4.8~~ **Special Assessments.** ~~In addition to the other assessments authorized~~ by this Declaration, the Association may levy special assessments from time to time. Special assessments must be approved at a meeting by two-thirds (2/3) of the Class A Members and the approval of the Class B member(s) who are voting in person or by proxy at a meeting duly called for this purpose. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed. The Association may also determine special assessments on Owners for the following Association expenses (except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association):

(a) expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefitted according to the benefit received; and

(b) expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

(c) **For Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements upon any Common Area, including the streets, entrance walls, signs, and landscaping, including fixtures and personal property related thereto, or to make up any deficit or shortage in the current year's budget; provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of Class A members and the approval of the Class B member(s) who are voting in person or by proxy at a meeting duly called for this purpose. All special assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, semi-annual or annual basis as determined by the Association's Board of Directors. Notice of the amount and due dates for such special assessments must be sent to each Owner at least thirty (30) days prior to such due date.

(d) **For Exterior Maintenance, Yard and Fence.** In addition to the annual assessments authorized above, in the event that any Owner fails to properly maintain the exterior of such Owner's residence, including the yard and any fence or fences on such Owner's Lot, the Board of Directors of the Association may, by majority vote, levy a special assessment against the Owner of such Lot, which assessment shall be in an amount equivalent to that required to properly maintain the exterior of such residence, fence, fences or yard or may expend portions of the assessments for maintenance of the exterior of such Owner's residence, yard or fence, interest and penalty, in which event, the Owner shall be assessed for such expense of maintenance, interest and penalty.

4.9 Lien for Assessment. All sums assessed against any Lot, Owner, or member pursuant to this Declaration shall be secured by a lien on such Lot in favor of the Association.

4.10 Priority. The lien of the Association shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes; (b) liens for all sums unpaid on a first priority Mortgage or deed to secure debt, or (c) a lien arising by virtue of any Mortgage in favor of Declarant which is duly recorded in the land records of the county where the Community is located. All other Persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded shall be deemed to acknowledge that their liens shall be inferior to the lien of the Association for assessments in existence at that time or which arise in the future.

4.11 Effect of Nonpayment of Assessment. Any assessments (or installments) which are not paid when due shall be delinquent. Any assessment (or installment) which is delinquent for a period of more than ten (10) days shall incur a late charge in an amount set by the Board. If the assessment is not paid within thirty (30) days, a lien shall attach to the Owner's Lot. The lien shall cover all assessments then due or which come due until the lien is cancelled of record, and any other amounts provided in this Declaration or permitted by law. In the event that the assessment remains unpaid after thirty (30) days, the Association may, in its sole discretion, may take any or all of the following action:

(a) Assess an interest charge from the date of delinquency at the rate per annum two points above the prime rate charged by the Association's bank, or such other rate as shall have been established by the Board of Directors;

(b) Assess a late charge at the rate established by the Board per delinquency or such other charge as shall have been established by the Board of Directors;

(c) Suspend the voting rights of the Owner during any period of delinquency;

(d) Accelerate all remaining assessments for the fiscal year in question so that unpaid assessments for the remainder of the fiscal year shall be due and payable at once;

(e) Bring an action at law or in equity against the Owner personally obligated to pay the delinquent assessment by instituting suit to collect such amounts and foreclose its lien against the Lot, and interest, costs of collection and reasonable attorneys fees of such action of foreclosure shall be added to the amount of such assessment. The Association shall have the right to foreclose its lien through any method allowed by law. The Association shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, and convey the same.

No Owner may waive or otherwise escape liability of the assessments provided for herein by non-use of the Common Area or abandonment of such Owner's Lot.

4.12 No Set Off or Deduction. No Owner may waive or otherwise exempt himself from liability for the assessments provided for in this Declaration. No setoff, diminution, or abatement of any assessment shall be claimed or allowed by reason of any ~~alleged failure of the Association to take some action, for inconvenience or discomfort~~ arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority. The obligation to pay assessments is a separate and independent covenant on the part of each Owner and is not subject to setoff.

4.13 Application of Payments. All payments shall be applied first to costs, then to late charges, then to interest, and then to delinquent assessments.

4.14 Date of Commencement of Assessments. Assessments shall start on the first day of the month following the sale of the Lot to a Person other than Declarant. The first annual assessment shall be adjusted according to the number of days then remaining in that fiscal year.

4.15 Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant may (but shall not be required to):

(a) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association and the sum of the annual, special, and specific assessments collected by the Association in any fiscal year. Such advances by the Declarant to fund any deficits may, at Declarant's option, be paid in lieu of any assessments on Lots owned by Declarant. Such advances shall, upon request of Declarant, be repaid from assessments or may be evidenced by promissory notes from the Association in favor of the Declarant. The failure of Declarant to obtain a promissory note shall not invalidate the debt; or

(b) cause the Association to borrow such amount, or a general borrowing from a third party at the then prevailing rates for such a loan in the local area of the Community. Declarant, in its sole discretion, may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Area or any

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

The Mill Homeowners Association, Inc.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Plaintiff(s)

2014 APR 22 P 3:34

-CP-

vs.

Randall W. Cofer et. al.

BETH A. CARRICO
CLERK OF COURT
LEXINGTON

Defendant(s)

(Please Print)

Submitted By: Stephanie C. Trotter

McCabe, Trotter & Beverly, P.C.

140 Stoneridge Drive Suite 650 Columbia, SC 29210

SC Bar #: 77680

Telephone #: 803-724-5000

Fax #: 803-724-5001

Other:

E-mail: Stephanie.trotter@mccabetrotter.com

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts**
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

- Torts - Professional Malpractice**
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- Previous Notice of Intent Case #
20 -GP- -
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

- Torts - Personal Injury**
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

- Real Property**
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☒ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

- Inmate Petitions**
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

- Administrative Law/Relief**
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture-Consent Order (850)
- ☐ Other (899)

- Judgments/Settlements**
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript of Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement
- ☐ Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)

- Appellate**
- ☐ Arbitration (900)
- ☐ Magistrate Civil (910)
- ☐ Magistrate Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Commission (990)
- ☐ Employment Security Commission (991)

Special/Complex /Other

- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Sexual Predator (510)

- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions
- ☐ Motion to Quash Subpoena in Out-of-County Action (660)

☐ Other (799)☐ Other (999)Submitting Party Signature: S. TrotterDate: April 1, 2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

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

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

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

Office Address:

125 Executive Pointe Blvd., Ste. 204
Columbia, SC 29210

Law Office of Eric C. Hale, LLC

Telephone (803) 250-5252
Facsimile (866) 543-3040
eric@erichalelaw.com
elias@erichalelaw.com

Eric C. Hale, Esq.

Elias Fain, Esq.

March 18, 2015

Lexington County Clerk of Court
205 East Main Street
Lexington, SC 29072

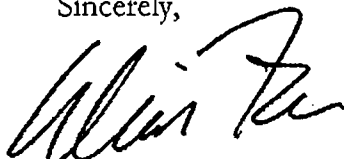
Dear Sir or Madam:

Enclosed please find the following items:

1. Notice and Motion for Rule to Show Cause and one (1) copy.
2. \$25 Motion fee check
3. \$35 Master in Equity fee check
4. Self-addressed, stamped envelope

Please file the Rule to Show Cause and give a copy to the Master in Equity along with the self-addressed, stamped envelope. Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Elias Fain

Enclosures

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF LEXINGTON)

CASE NO.: 2014-CP-32-01270)

Mill Homeowners Association, Inc.)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff,)

vs.)

Randall W. Cofer and Corey C. Cofer)

Defendant.)

Plaintiff's Attorney:

Elias Fain, Bar No. 101193

Address:

Law Office of Eric C. Hale, LLC

125 Executive Pointe Blvd.

Columbia, SC 29210

Phone: 803-250-5252 Fax _____

E-mail: elias@erichalelaw.com Other: _____

Defendant's Attorney:

_____, Bar No. _____

Address:

Phone: _____ Fax _____

E-mail: _____ Other: _____

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

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

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

SECTION I: Hearing Information

Nature of Motion: Rule to Show Cause

Estimated Time Needed: 15

Court Reporter Needed: ☒ **YES** / ☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

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

Signature of Attorney for ☐ Plaintiff / ☐ Defendant

Date submitted 3/18/15

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$** 25

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

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

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

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

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

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$** _____

☐ **CONTESTED - AMOUNT DUE: \$** _____

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Mill Homeowners Association, Inc.,

Plaintiff

vs.

Randall W. Cofer and Corey C. Cofer

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

MOTION FOR RULE TO SHOW CAUSE

C/A No. 2014-CP-32-01270

The Plaintiff would respectfully show unto this Honorable Court:

1. The above-described Plaintiff successfully completed a foreclosure of an unpaid assessment lien against the Defendant(s) affecting the following property:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being near Lexington, County of Lexington, State of South Carolina, fronting on Mill Haven Lane, and being more particularly shown and delineated as Lot 175 of THE MILL Subdivision, Phase 2, on a plat prepared for Randall Cofer and Corey Cofer, by Cox and Dinkins, Inc., dated June 22, 2006, and recorded in Record Book 11263, page 119, in the Office of the Register of Deeds for Lexington County, and having such boundaries and measurements as will more fully appear by reference to said plat.

This being the same property to given to Randall W. Cofer and Corey C. Cofer by deed of D. R. Horton, Inc. dated 07/31/2006 and recorded in the Lexington County Register of Deeds Office on 08/01/2006 in Book 11263 at Page 120.

Property Address: 113 Mill Haven Lane
TMS # 005332-01-079

2. A Judgment of Foreclosure and Sale was issued by this Court and the subject property was sold at public auction in accordance therewith on March 2, 2015. The successful bidder at the public auction was Regime Solutions, LLC.

3. The proceedings in regard to the foreclosure action are preserved in the Office of the ROD for Lexington County.

4. The Defendant(s) or others claiming through the Defendant(s) still occupy and have within the property certain items of personal property which they have failed and refused to

remove from the property although they have been given notice that the property is now owned by the successful bidder.

5. Regime Solutions, LLC is entitled to possession of the property as the successful bidder at the said sale in accordance with the Judgment of Foreclosure and Sale:

In the event the successful bidder is other than the Defendant(s) in possession herein, the Sheriff of Lexington County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and to put the successful bidder or his assigns in full, quiet and peaceable possession of said premises without delay, and, to keep said successful bidder or his assigns in such peaceable possession.

6. Regime Solutions is entitled to a Writ of Assistance to remove the said Defendant(s), together with any and all persons claiming under them, and all the personal property from the subject property, and to put the Plaintiff in possession thereof.

7. Where the terms "premises" or "property" are used herein, they shall mean the subject real estate and the improvements thereon, including fixtures. Personal property shall mean personal effects such as furniture or clothing.

WHEREFORE, Regime Solutions prays that this Court issue its Rule To Show Cause, requiring the Defendant(s) and/or occupants together with any and all persons claiming under them, to show cause why a Writ of Assistance should not be issued to the Sheriff of Lexington County for the removal of said Defendant(s) and/or occupants or any persons claiming under them, and all personal property on the subject property, including manufactured housing or similar personal property.

LAW OFFICE OF ERIC C. HALE, LLC



Eric C. Hale, S.C. Bar # 71768
Elias Fain, S.C. Bar #101193
125 Executive Pointe Blvd
Columbia, SC 29210

Dated: March 18, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Mill Homeowners Association, Inc.,

Plaintiff

vs.

Randall W. Cofer and Corey C. Cofer

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

RULE TO SHOW CAUSE

C/A No. 2014-CP-32-01270

**TO THE OCCUPANTS OF THE PROPERTY MORE FULLY DESCRIBED IN PARAGRAPH ONE
(1) OF THE MOTION:**

UPON reading and filing of the within Motion of Elias Fain, attorney for Regime Solutions, LLC, the successful bidder at the foreclosure sale, YOU ARE ORDERED to show cause, if any you can, before the undersigned:

The Honorable James O. Spence
Lexington County Master-In-Equity Court
205 East Main Street
Suite 204
Lexington, South Carolina 29072

on the _____ day of _____, 2015, at _____ o'clock ____M.,

as to why a Writ of Assistance should not be issued to the Sheriff of Lexington County, South Carolina ordering and directing him to remove you peaceably or by force, together with any and all persons claiming under you and all personal property located within or on the property located at: 113 Mill Haven Lane

Service of this Rule and Motion to Show Cause can be served on the above person by any means allowable under 4(d) SCRCP and may be perfected by posting the Motion and Rule to Show Cause upon the door of the house upon the property.

The Honorable James O. Spence
Master in Equity

Lexington, South Carolina

Dated: _____

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED THE COURT OF COMMON PLEAS

The Mill Homeowners Association, Inc.,

2015 MAY 19 A @ 40
Civil Action No.: 2014-CP-32-01270
BETH A. GARRIGO
Plaintiff, CLERK OF COURT
LEXINGTON CO.

v.

Randall W. Cofer and Corey C. Cofer,

Defendants,

Regime Solutions LLC,

Purchaser at Foreclosure Sale.

NOTICE OF MOTION AND MOTION
PURSUANT TO SCRCP RULE 60(b)(1)

TO: STEPHANIE TROTTER, ESQUIRE, ATTORNEY FOR PLAINTIFF and REGIME
SOLUTIONS LLC, PURCHASER AT FORECLOSURE SALE:

YOU WILL PLEASE TAKE NOTICE that the Defendants, by and through their undersigned attorney, will move before the Honorable James O. Spence, Lexington County Master-in-Equity at the Lexington County Courthouse, Lexington, South Carolina, pursuant to Rule 60(b)(1) of the South Carolina Rules of Civil Procedure, for an Order vacating the judgment filed in the above captioned matter due to the grounds in the Affidavit of Defendants, Brief attached hereto, and is based on the pleadings in this matter, Rules of Court, statutes, case law, and such other and further authority as the Court may deem appropriate.

DAVIS FRAWLEY, LLC
140 East Main Street, P.O. Box 489
Lexington, South Carolina 29071
(803) 359-2512

BY:

James Randall Davis

ATTORNEYS FOR DEFENDANTS

STATE OF SOUTH CAROLINA

FILED

COUNTY OF LEXINGTON

2015 MAY 19 A 3:40

IN THE COURT OF COMMON PLEAS

The Mill Homeowners Association, Inc.,

DETHA CARRISON
CLERK OF COURT
Plaintiff, Lexington, SC
Civil Action No.: 2014-CP-32-01270

v.

**AFFIDAVIT OF DEFENDANT
COREY C. COFER**

Randall W. Cofer and Corey C. Cofer,

Defendants,

Regime Solutions LLC,

Purchaser at Foreclosure Sale.

PERSONALLY appeared before me and Corey C. Cofer, who, being first duly sworn, says that:

1. I am a Defendant in the above captioned matter.
2. My husband and I presently reside at the residence which was foreclosed on which is known as Lot 175, Mills Subdivision, Phase II, having the property address of 113 Mill Haven Lane, Lexington, SC.
3. My husband and I purchased this property on July 31, 2006 and were the owners of the property at time of the foreclosure.
4. The Lexington County valuation of the property is \$237,000.00, as of May 7, 2015.
5. My husband and I have a first mortgage on the property in the amount of approximately \$125,742.19.
6. The foreclosure file in the Lexington County Clerk of Court's Office indicates that I was sent by mail a copy of the foreclosure hearing date which was January 26, 2015 at 9:00 a.m.
7. My husband and I were living at 113 Mill Haven Lane, Lexington, SC at the time the foreclosure hearing date was sent and did not receive notice by mail or any other method of this hearing date and did not attend the hearing.

8. The notice I received in this case was a receipt of the Judgment of Foreclosure which was received in the latter part of February 2015 by letter dated February 16, 2015 from the McCabe Trotter Beverly PC law firm.

9. Upon receipt of the Judgment of Foreclosure, my husband and I immediately made contact with several attorneys during the months of March and April, 2015 to retain counsel as to responding to the foreclosure sale.

10. My husband and I met with James Randall Davis, attorney, on April 30, 2015 in regards to the foreclosure

11. Our home was sold at the foreclosure sale in March 2015 and was conveyed to Regime Solutions LLC on March 5, 2015 and deed reflecting the transfer by this Court to Regime Solutions LLC shows that a Master's Foreclosure Deed was issued to Regime Solutions LLC on March 5, 2015 and recorded on March 9, 2015 and the consideration was \$4,857.00.

12. I believe that since we did not get notice of the foreclosure hearing and the fact that we have meritorious defenses to the Judgment of Foreclosure, the Judgment of Foreclosure should be set aside.

13. A Notice of Lien was filed against our property located at 113 Mill Haven Lane, Lexington, SC, by the Plaintiff on April 22, 2013 in the amount of \$1,029.03. This lien was effective as of April 17, 2013. Attached to this Affidavit is a letter we received showing that as of March 1, 2013, only \$592.00 was owed to the Plaintiff.

14. I believe there is a real controversy as to essential facts as to the amount that was owed to the Plaintiff.

15. I believe there is a discrepancy in the covenants for the subdivision where we live as to what interest could be charged on a delinquent assessment in that the covenant in one place state it is 18% interest annually and in another place it states the interest is prime plus 2% of the bank where the Plaintiff has its bank account. Late charges have been customarily in the amount of \$10.00 per month only.

16. The amount of the highest bid on the property was less than 5% of the real value of the property based on the Lexington County Assessor's most recent valuation.

FURTHER DEPONENTS SAYETH NOT.

Corey C. Cofer
Corey C. Cofer

SWORN to before me this 18th
day of May, 2015.

Nicole J. Price (L.S.)
Notary Public of South Carolina

My commission expires: 9/25/2017

BETH A. CARRIG
CLERK OF COURT
LEXINGTON COUNTY

2015 MAY 19 A 8:40

FILED

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

The Mill Homeowners Association, Inc.,

Plaintiff,

v.

Randall W. Cofer and Corey C. Cofer,

Defendants,

Regime Solutions LLC,

Purchaser at Foreclosure Sale.

FILED IN THE COURT OF COMMON PLEAS

2015 MAY 19 A 8:40

Civil Action No.: 2014-CP-32-01270

BETH A. CARRICO
CLERK OF COURT
LEXINGTON

AFFIDAVIT OF DEFENDANT

RANDALL W. COFER

PERSONALLY appeared before me Randall W. Cofer, who, being first duly sworn, says that:

1. I am a Defendant in the above captioned matter.
2. My wife and I presently reside at the residence which was foreclosed on which is known as Lot 175, Mills Subdivision, Phase II, having the property address of 113 Mill Haven Lane, Lexington, SC.
3. My wife and I purchased this property on July 31, 2006 and were the owners of the property at time of the foreclosure.
4. The Lexington County valuation of the property is \$237,000.00, as of May 7, 2015.
5. My wife and I have a first mortgage on the property in the amount of approximately \$125,742.19.
6. The foreclosure file in the Lexington County Clerk of Court's Office indicates that I was sent by mail a copy of the foreclosure hearing date which was January 26, 2015 at 9:00 a.m.
7. My wife and I were living at 113 Mill Haven Lane, Lexington, SC at the time the foreclosure hearing date was sent and did not receive notice by mail or any other method of this hearing date and did not attend the hearing.

8. The notice I received in this case was a receipt of the Judgment of Foreclosure which was received in the latter part of February 2015 by letter dated February 16, 2015 from the McCabe Trotter Beverly PC law firm.

9. Upon receipt of the Judgment of Foreclosure, my wife and I immediately made contact with several attorneys during the months of March and April, 2015 to retain counsel as to responding to the foreclosure sale.

10. My wife and I met with James Randall Davis, attorney, on April 30, 2015 in regards to the foreclosure

11. Our home was sold at the foreclosure sale in March 2015 and was conveyed to Regime Solutions LLC on March 5, 2015 and deed reflecting the transfer by this Court to Regime Solutions LLC shows that a Master's Foreclosure Deed was issued to Regime Solutions LLC on March 5, 2015 and recorded on March 9, 2015 and the consideration was \$4,857.00.

12. I believe that since we did not get notice of the foreclosure hearing and the fact that we have meritorious defenses to the Judgment of Foreclosure, the Judgment of Foreclosure should be set aside.

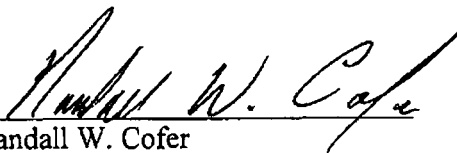
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14. I believe there is a real controversy as to essential facts as to the amount that was owed to the Plaintiff.

15. I believe there is a discrepancy in the covenants for the subdivision where we live as to what interest could be charged on a delinquent assessment in that the covenant in one place state it is 18% interest annually and in another place it states the interest is prime plus 2% of the bank where the Plaintiff has its bank account. Late charges have been customarily in the amount of \$10.00 per month only.

16. The amount of the highest bid on the property was less than 5% of the real value of the property based on the Lexington County Assessor's most recent valuation.

FURTHER DEPONENTS SAYETH NOT.


Randall W. Cofer

SWORN to before me this 19th
day of May, 2015.

 (L.S.)
Notary Public of South Carolina

My commission expires: 9/25/2017

BETH A. CARRIG
CLERK OF COURT
LEXINGTON, SC

2015 MAY 19 A 8:40

FILED

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

The Mill Homeowners Association, Inc.,

Plaintiff,

v.

Randall W. Cofer and Corey C. Cofer,

Defendants,

Regime Solutions LLC,

Purchaser at Foreclosure Sale.

FILED

IN THE COURT OF COMMON PLEAS

2015 MAY 19 A 8:40

ESTHER A. GARRARD Clerk of Court
Civil Action No.: 2014-CP-32-01270
LEXINGTON, SC

BRIEF OF DEFENDANTS

Rule 60(b)(1) authorizes relief from a final judgment because of mistake, inadvertence, or excusable neglect. The movant must justify the failure to act and establish a meritorious defense to the claim. The motion must be filed within a reasonable time but not later than one year after the entry of judgment.

Relief is discretionary with the trial court and the decision will not be disturbed on appeal unless there is a clear showing that the trial court abused its discretion. Precedent under the prior statute held that the trial court must make specific findings on the issues of excusable neglect and meritorious defense, but such findings are not required by Rule 52(b) SCRPC.

When considering a motion under Rule 60(b) the trial court considers the promptness with which relief was sought, the reasons for the failure to act promptly, the existence of a meritorious defense, and the prejudice to the other parties.

"It is commonly declared that the issuance of a writ of assistance rests in the sound discretion of the Court, and that it is issued only when the right is clear and free from doubt--when there is no equity or appearance of equity in defendant, and [31 S.E.2d 506] when the decree, and the sale and proceedings thereunder, are beyond suspicion; and it is certainly not customary to issue the writ where there is a bona fide contest as to the right to the possession of the land under the sale, or where the occupant claims by a new and independent right or title, or where the rights of the respective parties have not been fully and finally adjudicated in the principal suit." 5 C.J., § 4 at page 1317. See also 7 C.J.S., Assistance, Writ of, § 2. Griggs v. Griggs, 31 S.E.2d 505, 205 S.C. 272 (S.C. 1944).

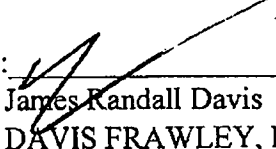
Most recently, the South Carolina Supreme Court has reiterated the rule: "Inadequacy of price will not justify setting aside a judicial sale unless the inadequacy is so gross as to shock the conscience of the court or is accompanied by other circumstances warranting interference by the court." Bonney, 300 S.C. at 365, 387 S.E.2d at 722 (emphasis added).

In the case of Investors Sav. Bank v. Phelps, 397 S.E.2d 780, 303 S.C. 15 (S.C. App., 1990), Bonney is further confirmed in that the proper standard to be applied in setting aside a foreclosure sale is that the sale price was so grossly inadequate as to shock the conscious. The amount bid by Mr. Flynn, \$510, was slightly more than 1% of the original amount of the note and mortgage. Even if the property was worth only a fourth of the amount loaned on it four and one-half years earlier, Mr. Flynn's bid would be only 4.2% of its value. In Poole, our Supreme Court set aside a foreclosure sale based, in part, on the fact that the high bid was \$500 for property worth more than \$5,000. In Looper, the Arkansas Supreme Court affirmed a decision to set aside a sale where the amount bid was 4.4% of the value of the property. The courts of New York consistently hold that foreclosure sale bids of less than 10% of value are unconscionably

low. See Polish Nat'l Alliance of Brooklyn, U.S.A. v. White Eagle Hall Co., Inc., 98 A.D.2d 400, 408, 470 N.Y.S.2d 642, 649 (1983) ("[F]oreclosure sales at prices below 10% of value have consistently been held unconscionably low in this State....").

For these reasons, we hold that the record contains sufficient evidence of the value of the property to support the decision of the Master that Mr. Flynn's bid was "so grossly inadequate so as to shock the conscience."

RESPECTFULLY SUBMITTED,

BY: 

James Randall Davis
DAVIS FRAWLEY, LLC
140 East Main Street, P.O. Box 489
Lexington, South Carolina 29071
(803) 359-2512

ATTORNEYS FOR DEFENDANTS

May 18, 2015

2015 MAY 19 A 8:40
BETH A. GARRIGS
CLERK OF COURT
LEXINGTON, SC

FILED

ORIGINAL
JM

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED

IN THE COURT OF COMMON PLEAS
FAMILY COURT

The Mill Homeowners Association, Inc.,

2015 MAY 19 4 30 40

CASE NO. 2014-CP-32-01270

Plaintiff,
v.

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON

MOTION INFORMATION FORM
AND COVER SHEET

Randall W. Cofer and Corey C. Cofer, et al.,

Defendant,

check box above indicating submitting party

name, S.C. Bar no. and address of plaintiff's attorney

telephone:
e-mail:

fax:
other:

name, S.C. Bar no. and address of defendant's attorney

James Randall Davis
Post Office Box 489
Lexington, SC 29071

telephone:
e-mail:

fax:
other:

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

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

SECTION I: Hearing Information

Nature of Motion: Motion Pursuant to SCRPC Rule 60(b)(1)

Estimated Time Needed: Court Reporter Needed: YES / NO

SECTION II: Motion Type

☒ Written motion attached

☐ Form Motion B

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

1/2
Signature of Attorney for Defendants

5/19/15
Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$25.00

☐ EXEMPT: ☐ Rule to Show Cause in Child Support or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

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

☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGES SECTION

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

☐ Other: _____

JUDGE _____

CODE: _____

Date: _____

CLERKS VERIFICATION

DATE FILED

Collected by: Janice

(print name)

5-19-15

☐ MOTION FEE COLLECTED: 25.00

☐ CONTESTED - AMOUNT DUE: _____

SCCA/233 (1/2003)

ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

The Mill Homeowners Association, Inc.,)
)
 Plaintiff,)

Civil Action No.: 2014-CP-32-01270

v.)

AMENDED
NOTICE OF MOTION AND MOTION
PURSUANT TO SCRPC RULE 60(b)(1)

Randall W. Cofer and Corey C. Cofer,)
)
 Defendants,)

Regime Solutions LLC,)
)
 Purchaser at Foreclosure Sale.)

and)

Network Funding, L.P.,)
)
 Mortgage Holder.)

FILED
 2015 JUL 17 PM 3:44
 J. A. CARRIOS
 CLERK OF COURT
 LEXINGTON SC

TO: STEPHANIE TROTTER, ESQUIRE, ATTORNEY FOR PLAINTIFF, REGIME SOLUTIONS LLC, PURCHASER AT FORECLOSURE SALE, and NETWORK FUNDING, L.P.:

YOU WILL PLEASE TAKE NOTICE that the Defendants, by and through their undersigned attorney, will move before the Honorable James O. Spence, Lexington County Master-in-Equity at the Lexington County Courthouse, Lexington, South Carolina, pursuant to Rule 60(b)(1) of the South Carolina Rules of Civil Procedure, for an Order vacating the judgment filed in the above captioned matter due to the grounds in the Affidavit of Defendants, Brief attached hereto,

ORIGINAL

and is based on the pleadings in this matter, Rules of Court, statutes, case law, and such other and further authority as the Court may deem appropriate.

DAVIS FRAWLEY, LLC
140 East Main Street, P.O. Box 489
Lexington, South Carolina 29071
(803) 359-3512

BY: _____

James Randall Davis

ATTORNEYS FOR DEFENDANTS

FILED

JUL 17 PM 3:44

JAMES A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

JUL232015

Common Pleas
Clerk : Beth A. Carrigg
Lexington County Judicial Center
Lexington, SC 29072
(803) 785-8212

Received From:	Davis, James Randall	Date:	7/17/2015
	PO Box 489	Receipt #:	185272
	Lexington, SC 290710489	Clerk:	jmarshall
Paying for:	Cofer, Randall W		
Transaction Type:	Payment	Reference #:	5025
Payment Type:	Check	Comment:	
	\$25.00	Non-Refundable	
Total Paid:	\$25.00		

Total Received: \$25.00
Change Due: \$0.00

Case #	Caption	Previous Balance	Amount Paid	Balance Due
2014CP3201270	Mill Homeowners Association Inc VS Randall W Cofer , defendant, et al	\$25.00	\$25.00	\$0.00

Total Cases: 1	\$25.00	\$25.00	\$0.00
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STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF EQUITY FOR THE
ELEVENTH JUDICIAL CIRCUIT

The Mill Homeowners Association, Inc.,)

Civil Action No.: 2014-CP-32-01270

Plaintiffs,)

-vs-)

Randall W. Cofer and Corey C. Cofer,)

Defendants,)

Regime Solutions, LLC)

Purchaser at Foreclosure Sale)

and)

Network Funding, L.P.,)

Mortgage Holder.)

**DEFENDANTS' BRIEF IN
SUPPORT OF THEIR MOTION
PURSUANT TO SCRPC RULE 60(b)(1)**

Defendants Randall and Corey Cofer, respectfully submit the following legal brief:

STATEMENT OF THE CASE

A lien for homeowners association dues was placed on Defendant's property on April 22, 2013. A Summons and Complaint for foreclosure was filed by the Plaintiff, The Mill Homeowners Association, Inc., on April 2, 2014, against the Cofers, and the Cofers were thereafter served. A foreclosure hearing was conducted on January 26, 2015. A Judgment of Foreclosure and Sale was granted on January 29, 2015, with the total secured debt calculated by Plaintiff to be \$4,619.84, inclusive of all principal, interest, late fees, costs, and attorney's fees. The Defendants' home was subsequently sold for \$4,857.00 to Regime Solutions LLC at public auction held on March 2, 2015. On May 19, 2015, Defendants filed a Motion pursuant to South

Carolina Rule of Civil Procedure 60(b)(1) to overturn the sale and vacate the judgment against them. This Motion was then amended on July 17, 2015, to include the mortgage company as an interested party.

STATEMENT OF FACTS

Defendants Randall and Corey Cofer purchased their home located at 113 Mill Haven Lane, Lexington, South Carolina on July 31, 2006. The Cofer's purchase price was \$236,388.00. (See Defendants' Exhibit 6, Submitted at September 14, 2015 hearing). As of August 13, 2015, the remaining balance of Defendants' mortgage was \$124,799.32. (See Defendants' Exhibit 9, submitted at September 14, 2015 hearing). This leaves approximately \$111,000.00 of equity in the home earned by Defendants since purchasing the property in 2006. The Lexington County tax assessor's office list the "taxable land" and "taxable building" for 2015 as \$30,000 and \$193,857, respectively. (See Defendants' Exhibit 7, submitted at September 14, 2015 hearing). This property was subject to homeowners association dues, enforced by the Plaintiff in this action, The Mill Homeowners Association, Inc. *The yearly dues at all times relevant to this action were for \$517.00. (See Defendant's Exhibit 3, submitted at September 14, 2015 hearing).* In the beginning of 2013, Defendants Randall and Corey Cofer failed to make the requisite \$517.00 payment for homeowners association dues and a lien was placed on their home shortly after. In 2014, foreclosure was sought by Plaintiff.

The foreclosure hearing was scheduled initially for November 4, 2014. The Notice of Hearing dated September 22, 2014, was not received by Defendants. The hearing was rescheduled for January 26, 2015. The Notice of Hearing dated December 19, 2014, was also not received by Defendants.

At the January 26, 2015 foreclosure hearing, the charges sought against the Defendants were itemized by Plaintiff and a total debt of \$4,619.84 was presented to the Master in Equity. (See Statement of Indebtedness, Defendants' Exhibit 5.) The itemized debt asserted against the Defendants by Plaintiff is as follows:

- a. *Principal due*.....\$1247.30
- b. *Interest from 1/1/13 through 1/15/15 at 18% per annum*.....\$294.75
- c. *Late Fees and Other Charges*.....\$460.00
- d. *Costs of collection prior to hearing(service, filing, etc.)*.....\$542.80
- e. *Attorney's fees*.....\$2075.00

A Judgment of Foreclosure and Sale for the total debt of \$4,619.84 was awarded on January 29, 2015. The Cofers did not receive notice of the sale until the afternoon of Friday, February 27, 2015, wherein they immediately attempted to contact Plaintiff's counsel regarding the impending sale, but counsel could not be reached. The Cofers' property was sold the following Monday morning to Regime Solutions, LLC for the sum of \$4,857.00.

ISSUES PRESENTED

1. What legal basis exists for allowing the court to compare the judicial sale price to the established real estate equity in a foreclosed home when evaluating whether the sale "shocks the conscience of the court"?
2. What legal basis exists for considering the nature of the third-party purchaser in relation to whether a sale should be overturned on the grounds of grossly inadequate sale price?
3. What is the applicable burden of proof relative to demonstrating proper service of legal documents?
4. Upon having his sale set aside, what remedy would exist for a third-party purchaser who has paid a winning bid for property sold at public auction?

BRIEF ANSWER

The Cofer's are undeniably requesting that the court not "assume" that Defendant Regime Solutions, LLC will pay the mortgage when evaluating the sufficiency of their bid price. However, the argument set forth by Regime Solutions obliquely requests that the Court "assume" that they *will* pay the mortgage. In truth, the Court cannot be absolutely sure of either possibility.

The result of this conundrum is that the Court's focus is augmented to include an evaluation of the "nature of the parties" involved. As is demonstrated below, a number of courts have considered the nature of the parties as part of its evaluation, and such analysis is a perfectly reasonable exercise of equitable discretion. The Cofer's argue that such discretion is absolutely warranted given the circumstances of their case; but it should be noted that the conundrum itself is arguably the absolute best argument for why a comparison of the bid price to the equity in the property is the best approach to evaluating the adequacy of a foreclosure sale. It allows the court to take into consideration an outstanding mortgage, by subtracting the balance from the overall value of the property, but it prevents an unfair assumption being made against either party.

ARGUMENT

- I. South Carolina common law has intentionally left the "shock the conscience" analysis as an undefined evaluation, wherein a court can fairly compare sale price to real estate equity as the measure for determining the adequacy of a judicial sale.**

Regardless of the nature of the parties involved, as is discussed below, the proposed evaluation of real estate equity compared to sale price requires a closer analysis in order to properly inform the court in this matter. Although Regime Solutions, LLC argues that the mortgage balance should be added to their sale price to determine the adequacy of their bid, an evaluation of the sale price compared to the Cofer's real estate equity is a far more accurate and fair measure of sale price adequacy. The collective opinions of South Carolina jurisprudence

have rendered the method in which a trial court evaluates sale price inadequacy to be a flexible and undefined endeavor. While the South Carolina Courts have never definitively proposed any particular method of evaluation as the primary analysis for review of judicial sales, *the Court of Appeals has used this exact method of real estate equity comparison as its analysis of sale price inadequacy.*

Courts across the nation have noted that there is no set equation or formula for determining whether a judicial sale should be upheld or overturned. *Looper v. Madison Guar. Sav. & Loan Ass'n*, 729 S.W.2d 156, 157 (Ark., 1987); *In re Krohn*, 52 P.3d 774, 783 (Ariz., 2002); *Ballentyne v. William Smith*, 205 U.S. 285, 290 (1907). Aside from suggesting an unofficial threshold that a sale price be at least 10% of the property value, the same is true for South Carolina courts. *Investors Sav. Bank v. Phelps*, 397 S.E.2d 780 (S.C. App. 1990). No standard formula has been provided and no case has directly held that an outstanding mortgage *must* be considered as part of the sale price when evaluating the adequacy of a successful bid at a judicial foreclosure sale.

The Court of Appeals decision in *Arrow Bonding Co. v. Warren* is the commonly cited South Carolina authority addressing inadequacy of judicial sales. In *Arrow Bonding*, the Court of Appeals affirmed the Master's decision to *add* the mortgage balance to the sale price in its analysis of whether the bid shocked the conscience of the court. See *Arrow Bonding Co. v. Warren*, 732 S.E.2d 622 (S.C. 2012). The court notes specifically that "*under the circumstances of this case*" it disagreed with Appellant's argument that the mortgage should not be considered. *Id.* at 624 (emphasis added). In doing so the Court in *Arrow Bonding* confirmed that evaluation of judicial sale price adequacy is to be conducted on a case-by-case manner.

The question of whether a judicial sale should be set aside is a matter left to the sound discretion of the trial court, and will not be disturbed absent an abuse of discretion. *Bloody Point Prop. Owners Ass'n, Inc. v. Ashton*, 762 S.E.2d 729, 731 (S.C. App., 2014) An abuse of discretion is either an error of law or unsupported factual conclusions. *Id.* With the evaluation of judicial sales left undefined and subject to a case-by-case analysis, a Master-in-Equity is free to weigh the equities of the parties and exercise discretion in how a judicial sale bid should be evaluated; in this case, the Equity Court is free to adopt the real estate equity comparison method argued by the Cofer's. This is especially true given that the Court of Appeals has already utilized this method once before. See *Federal Nat. Mortg. Ass'n v. Brooks*, 405 S.E.2d 604 (S.C. App., 1991).

In the matter of *Federal National Mortgage Association v. Brooks*, the Special Referee's initial Order setting aside the judicial sale found the third-party purchaser's \$875 bid to constitute gross inadequacy as would shock the conscience of the court. *Id.* at 605. The Special Referee also found additional circumstances of noncompliance further allowing for the sale to be set aside. *Id.* This decision was appealed, and The Court of Appeals specifically evaluated the inadequacy of the judicial sale price by using a "real estate equity v. sale price" method of analysis. *Id.* at 606.

The value of the foreclosed FNMA property was determined to be \$52,500. *Id.* at 607. The balance of the remaining first mortgage was \$24,720.00. *Id.* at 605. This left \$27,780.00 of equity in the property. Even though the Appellant argued that the outstanding mortgage, *if added*, would raise his sale price to 49% of the property value, the Court of Appeals affirmed the Special Referee's decision, and stated as follows:

"It cannot be gainsaid that the payment by Brooks of \$875 for equity over \$27,000 was adequate, albeit, it is not so grossly inadequate as to shock the conscience of the court." *Id.* at 605-606.

Stated more clearly, the Court of Appeals found that the sale price of \$875 was not adequate when compared to the established equity in the property. The Special Referee and the Court of Appeals did not find it necessary to add the mortgage balance to the sale price before conducting an analysis of the adequacy of the bid. *Id.* They instead *subtracted* the mortgage balance from the property value and evaluated the sale on the basis of the equity the third-party buyer was receiving. *Id.* at 606. This is precisely the method of evaluation proposed by the Cofers.

The Court of Appeals reached the conclusion that the price paid for the equity received, in conjunction with the circumstances of noncompliance in the foreclosure decree, was a sufficient basis for setting aside the foreclosure sale and affirming the decision of the Special Referee. *Id.* at 607. Admittedly, the Court noted that it did not find this particular inadequacy one that would shock the conscience of the court; however, the circumstances of the case provided the Court of Appeals with a less stringent avenue for setting aside the sale, and the Court did not need to argue the shock the conscience standard in order to find grounds to affirm the Special Referee's Order. *Id.* at 606-607. The decision in *FNMA v. Brooks* provides an explicit endorsement for using real estate equity as the comparative measure for determining the inadequacy of a judicial sale price.

In a factual comparison to the *FNMA* decision, the circumstances surrounding the judicial sale of the Cofer's home also present factors that weigh heavily in favor of setting aside the judicial sale. Like *FNMA v. Brooks*, there are additional circumstances demonstrating the impropriety of the sale. These include the numerous mistaken calculations of the debt, the premature filing of the initial lien, the Cofers' failure to receive the Notices of Foreclosure

Hearings, and the delayed receipt of the Notice of Sale, all of which were brought to the attention of the Master-in-Equity during the initial Rule 60(b)(1) hearing.

Had notice been received by the Cofers, they would have had an opportunity to argue against the debt calculation reached by Plaintiff, as well as the premature filing of the lien. Had they *timely* received notice of the foreclosure sale, they could have delayed the sale, addressed the disputed issues, and avoided the loss of their home to a third-party speculator. All of which constitute irregularities of the foreclosure. As the Court in *FNMA* noted, the instances of noncompliance in conjunction with the low sale price is sufficient to overturn the sale without the need to reach the issue of excusable neglect. *Id.* at 606. It stands to reason that excusable neglect is likewise irrelevant in this dispute between the Cofers and the Plaintiff, as the \$111,000 disparity between the sale price and real estate equity is sufficient to shock the conscience of the court, or is at a minimum, sufficient given the irregularities of the foreclosure sale.

The nature of the dispute is an additional factor that lends weight to the Cofers' request to set aside the foreclosure sale. The *FNMA* matter arose from a suit by the mortgage company, not the mortgagor, and the court in *FNMA* was not faced with a circumstance where the setting aside of sale would ultimately allow the original property owner to retain their home. This is certainly the case for the Cofers, and it is a distinction of substantial importance. Lastly, Appellant Brooks only received approximately \$27,000 in real estate equity as a third-party purchaser. *Id.* at 606. Here, Defendant Regime Solutions, LLC stands to gain \$111,000 of real estate equity. While the Court of Appeals did not agree with the Referee that the \$27,000 of equity rendered \$875 a grossly inadequate sale price, the acquisition of \$111,000 in equity for a sale price of just \$4,857 provides a laudable basis for finding gross inadequacy sufficient to shock the conscience of the court.

FNMA v. Brooks demonstrates that the courts have supported the use of the exact method of evaluation for which the Cofer's argue is proper in this case. In further support, the Court of Appeals also demonstrates that it is mindful of the fact that the matter is equitable in nature and that FNMA's petition was addressed to the discretion of the court. *Id.* at 607. The Court of Appeals agreed that "it would be most inequitable under the facts of this case to allow Brooks to be unjustly enriched at the expense of FNMA." *Id.* This poignant articulation is a reminder that the purpose behind foreclosure sales is not to provide speculators with windfall profits and unjust enrichment at the loss of an invested property owner or financier.

II. Courts have recognized the nature of the parties as a substantial component in determining whether a judicial sale should be upheld, and those courts have favored overturning judicial sales as opposed to allowing the unjust enrichment of speculators.

The Cofer's arguments made during their initial Rule 60(b)(1) hearing including a request that the Master not *add* the outstanding mortgage to its calculation of the sale price, but instead compare the bid price to the established equity in the home. The basis for this request, in part, was that the nature of Regime Solutions, LLC, as a real estate speculator, suggests that they are not likely to pay the balance of the mortgage. They are instead, far more likely to quickly resell the property and gain a substantial profit off of the equity established by the Cofer's. This argument boils down to an evaluation of the nature of the parties to the dispute, and the question of whether a court favors upholding a speculator's status as bona fide purchaser in spite of the unjust enrichment that would result. (See *In re Krohn*, 52 P.3d 774, 782 (Ariz., 2002).

This question was briefly addressed in the holding reached by the Court of Appeals in *FNMA v. Brooks*. There, the court concluded that "it would be most inequitable under the facts of this case to allow Brooks to be *unjustly enriched at the expense of FNMA*." *FNMA*, 762 S.E.2d at

607(emphasis added). While this demonstrates the approach taken by South Carolina courts in matters seeking to overturn foreclosure sales, courts from other jurisdictions have provided more thorough and emphatic arguments that the equity of the homeowner is favored over that of a real estate speculator.

The opinion reached by the Supreme Court of Arizona in *In re Krohn* is the best authority for how courts of equity should evaluate the nature of the parties involved in a dispute seeking to set aside a judicial sale. While the specific matter dealt with a setting aside of a deed of trust, the Arizona Court applied a foreclosure sale analysis that mirrors the law of South Carolina. Under Arizona law, a foreclosure sale can be overturned by a showing of gross inadequacy of sale price or by inadequacy of sale price coupled with slight irregularities in the circumstances surrounding the sale. *In re Krohn*, 52 P.3d 774, 776 (Ariz., 2002). The Court in *In re Krohn* notes that "where there is an inadequacy of price which in itself might not be grounds for setting aside the sale, slight additional circumstances or matters of equity may so justify. *Id.*

A number of the concerns expressed by Regime Solutions during the September 14, 2015 hearing are directly addressed by the *In Re Krohn* opinion. Before addressing the equities surrounding the nature of the parties, the Arizona Court addressed the stability of the "foreclosure industry" as well as the potential for discouraging bidders and creating a "chilled market". *Id.* at 779. In response, the Arizona Court states that "we have been presented with no data indicating that the traditional judicial foreclosure market has been disrupted by existing judicial oversight to prevent grossly inadequate prices, and such a result is not self-evident." *Id.*; See also *Ballentyne v. William Smith*, 205 U.S. 285, 291 (1907) (noting that the equities involved and the meager sale price outweigh the Court's concern for impairing the confidence in the stability of judicial sales). The opinion goes on to say that:

"Indeed, purchasers continue to come forward, making deed of trust purchases without certain knowledge that the trustee has fully complied with the statutory procedural obligations and thus take a risk that the sale may be set aside for that reason. For example, there was no apparent flight from deed of trust sales after we vacated such a sale when we found a ninety-day statutory notice of sale did not negate the additional thirty-day notice required in the deed of trust itself. *Schaeffer v. Chapman*, 176 Ariz. 326, 861 P.2d 611, (1993).

Perhaps this is because most purchasers believe, as we do, that only the smallest minority of deed of trust sales are conducted without statutory compliance, just as we also believe that most purchasers will assume only the smallest number of deed of trust sales are concluded at a price that could shock the conscience of the court because of gross inadequacy. That said, we think it just as likely that the possibility of judicial oversight on the ground of gross inadequacy will result in higher prices. If so, we think this will serve rather than impair the public interest." *In re Krohn*, 52 P.3d at 780.

The opinion astutely concludes that if judicial oversight of foreclosure sales has any effect at all on the bidding market, that effect would likely be to increase the sale prices reached at judicial sale, thereby promoting the public interest and promoting the actual purpose for which judicial sales are conducted. *Id.*; See *Looper v. Madison Guar. Sav. & Loan Ass'n*, 729 S.W.2d 156, 159 (Ark., 1987) (noting that "the law is such that inadequacy of price when so gross, need only be coupled with slight circumstances to justify setting aside the sale. This is a court of equity, and foreclosure is historically an equitable proceeding to protect the debtor."). There is no reason to assume that the concerns expressed for the bidding market of South Carolina judicial sales would be subject to any greater detriment as that of Arizona, and the Arizona Court was not influenced in the slightest by this argument. The United State Supreme Court was likewise not persuaded by such a concern. *Ballentyne*, 205 U.S. at 291.

Regime Solutions also argues that it is unaware of the circumstances between the debtor and lender in a given foreclosure sale, and that such ignorance to the dealings between the two should allow its status as a bona fide purchaser to be the controlling equity. The Arizona Court

also addressed this position with little sympathy. The Court acknowledges that absent special circumstances, a sale to a bona fide purchaser is not to be upset by the courts. *In re Krohn*, 52 P.3d at 780. However, "the status of bona fide purchaser by itself cannot insulate even a well meaning purchaser innocent of wrongdoing when other circumstances are present." *Id.* Bidders are charged with the knowledge that *some* difficulty in dealings exists, else a property would not be set for public auction. *Id.* The rule of caveat emptor applies, and purchasers at such sales have already assumed the risk that some unknown procedural error may arise. *Id.* "Such bidders can reasonably expect to get bargains because of the nature of foreclosure sales, but public policy and the courts should not endorse extraordinary bargains at the expense of already troubled debtors." *Id.* "Knowledgeable purchasers can reasonably evaluate the fair market value of a property to make an appropriate bid that is not grossly inadequate." *Id.*

This argument from the Arizona Courts opinion in *In re Krohn* leads into its discussion of the law for setting aside foreclosure sales, its emphatic defense of the purpose of foreclosure sales, and how the nature of the parties involved should be taken into consideration.

Fair market value cannot be realistically expected at foreclosure sale, the context of the proceeding itself inhibits it. *Id.* However, that does not excuse results that constitute gross inadequacy or even disproportionate prices coupled with very slight evidence of unfairness or irregularity. *Id.* at 782. *In re Krohn*, at its core, "is a case about inequity on the one hand and unjust enrichment on the other. When these factors are present, our court has been available to give relief so long as there is no statutory prohibition." *Id.* (citing *Sparks v. Douglas & Sparks Realty Co.*, 19 Ariz. 123, 129, 166 P. 285, 288 (1917)). The importance of the nature of the parties involved in a foreclosure sale and the repugnance for allowing excessive profits at the

expense of a the drastic misfortune of a debtor are described by the Arizona Court in the following excerpts:

"There are, of course, those waiting for opportunities based on individual misfortune, and we believe this makes it even more important that courts of equity are open to assure debtors receive not only procedural but fundamental fairness. Windfall profits, like those reaped by bidders paying grossly inadequate prices at foreclosure sales, do not serve the public interest and do no more than legally enrich speculators." *Id.* at 779.

...
"if the legislature believes that the doors of the courthouse should be closed and the courts forbidden to grant relief to those who are unjustly and inequitably deprived of their homes by speculators or others seeking windfall profits, it may say so. . . . [T]he dissent asserts that there is no question of unjust enrichment in the present case because the purchaser at the trustee's sale 'was not the lender, but a third party'. We are unable to understand the distinction. It makes little difference whether a lender or speculator was unjustly enriched. The important considerations are the questions of inequity on the one hand and unjust enrichment on the other. When these are present, the court may use its equitable powers." *Id.* at 782.

The Arizona Supreme Court is not alone in its defense against the sanctioning of unjust enrichment. This is the same conclusion reached by the Supreme Court of Arkansas, wherein the Arkansas Court argues that "it is not the purpose of the law to protect one who seeks to procure valuable property for little or no outlay." *Looper*, 729 S.W.2d at 160. Collectively, the courts that have addressed "the nature of the parties" inquiry, as it pertains to setting aside of judicial sales, have concluded that the rights of a real estate speculator are far outweighed by the right of fundamental fairness owed to the debtor.

The Cofer's loss of more than \$100,000 of equity in their home to a speculator's bid of \$4,857.00 cannot not, in the exercise of sound equity, be allowed. The arguments of the Arizona and Arkansas Supreme Courts, echoed by the South Carolina Court of Appeals in *FNMA*,

provide a substantial basis for setting aside the foreclosure sale and for granting the Cofers an opportunity to address their disputes and keep their home.

The Cofer's request that the Master-in-Equity exercise the broad discretion afforded to the Court and grant an Order setting aside the March 2, 2015 Judicial Sale, and allow for a hearing on the merits for the disputed lien.

III. The applicable burden for proving proper service rests on the party seeking to prove said service, and upon providing evidence of compliance with Rule 5(b)(1), a rebuttable presumption arises that the disputed mail was received.

Defendants Randall and Corey Cofer argue that they did not receive the Notice of Hearings allegedly mailed on September 22, 2014, and December 19, 2014. In conjunction with their motion to set aside the judicial sale pursuant to Rule 60(b)(1), the Cofers request that the Court of Equity take into consideration the fact that they were not aware of the Judgment of Foreclosure Hearing being conducted that ultimately led to the foreclosure and sale of their home.

The applicable rule regarding effective service by mail is found in South Carolina Rule of Civil Procedure 5(b)(1). Therein, the rule states that "service by mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint." *Green v. Green*, 465 S.E.2d 130, 132 (S.C. App., 1995) (citing South Carolina Rule of Civil Procedure 5(b)(1)). Mailing is considered complete when a document is deposited with the U.S. Postal Service, properly addressed, and with sufficient postage. *Id.* (citing *Southbridge Prop., Inc. v. Jones*, 355 S.E.2d 353 (1987)). Evidence of such mailing establishes a rebuttable presumption of receipt. *Bakala v. Bakala*, 352 S.C. 612, 625 (S.C., 2003).

The Cofers acknowledge that Plaintiff possess the current and accurate mailing address for their home, and they further acknowledge that Plaintiff possesses seemingly proper

Certificates of Service for both disputed mailings which would create the rebuttable presumption that the deposited Notices were received. However, as is articulated by the Court of Appeals in *Green v. Green*, it is an illogical assumption that the U.S. Postal Service is an infallible entity "given the volume of letters and packages constantly being processed and the number of human hands any one envelop may pass through." *Id.* at 132. In *Green*, the Court found no abuse of discretion with the Court permitting a motion to be heard when the timeliness of its receipt and filing was arguably past due based upon the postmark date. *Id.* at 134. The same argument is proffered here. Any number of mistakes or problems can result in mail being lost or improperly delivered, and either of those circumstances would constitute excusable neglect for the Cofers failing to appear, and it also provides support for granting the equitable relief of setting aside the judicial sale.

In similar fashion, the existence of a copy of a given correspondence, or a Certificate of Service by mail, does not definitively prove that such mailing was carried out, as any number of accidental mistakes could result in mail not being properly deposited, addressed, or metered. In no way or form does this argument seek to impugn the honesty or professionalism of the Plaintiff or their counsel; it is merely an acknowledgement that human error is possible. In rebuttal to the legal presumption established by Plaintiff's Certificates of Service, the Cofers can only offer their sworn affidavits indicating that the Notices were not received, and the fact that a legal matter of this magnitude would not lend itself to voluntary or intentional absenteeism. As is often the case, "proving the negative" is a difficult endeavor, and the idiom certainly applies to proving that notice was not received.

On the foregoing basis, the Cofers argue that notice of the foreclosure hearing was not effective and that such be taken into consideration for the equitable relief requested under Rule 60(b)(1).

IV. The proper remedy for a party whose bid is set aside due to gross inadequacy should mirror the procedure of redeemed tax sales and require that the bid price, plus interest, be returned to the third-party purchaser.

As part of the analysis of this matter, the question arises as to what remedy would be left for the successful third-party purchaser if the Master-in-Equity were to set aside the judicial sale on the basis of inadequacy of sale price. The South Carolina Code of Laws has not provided any statutory guidance to this question, and Counsel for Defendants Mr. and Mrs. Cofer has not discovered any specific common law remedy for this situation. However, there is an analogous scenario that provides a well established and fair remedy to a third-party buyer whose judicial sale was canceled.

A tax sale to a third-party purchaser that is later redeemed by the property owner before the expiration of the twelve month redemption period articulated by S.C. Code of Laws § 12-51-90(A) provides a very similar circumstance to a foreclosure sale being set aside. The Cofers argue that the remedy set forth by § 12-51-100 is the ideal remedy for Defendant Regime Solutions, LLC, if the Court rules to set aside the sale. Pursuant Section 12-51-100, the successful purchaser at a tax sale is refunded his purchase price, plus certain interest as set forth by the interest schedule in § 12-51-90(B). South Carolina Code of Law §§ 12-51-100 (2015 Edition). Given the similarity between a redeemed tax sale and a set aside foreclosure sale, this particular remedy seems best suited for the circumstances of this case.

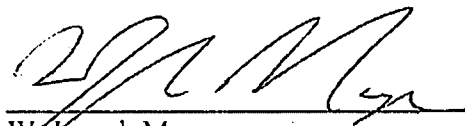
The Cofers argue that the judicial sale be set aside and that Regime Solutions, LLC, be entitled to payment equal to its \$4,857.00 bid, plus interest as calculated by pursuant to § 12-51-90(B).

CONCLUSION

For the above stated reasons, Defendants Corey and Randall Cofer argue that their Motion to set aside the sale pursuant to Rule 60(b)(1) be granted, and that a hearing be conducted regarding the disputed lien.

Respectfully submitted,

DAVIS | FRAWLEY, LLC
140 East Main Street, P.O. Box 489
Lexington, South Carolina 29071
(803) 359-2512



W. Joseph Maye

James Randall Davis

ATTORNEYS FOR THE DEFENDANTS
RANDALL AND COREY COFER

November 6, 2015

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

The Mill Homeowner's Association,
Inc.

Plaintiff

vs.

Randall W. Cofer and Corey C. Cofer

Defendant,

Regime Solutions, LLC

Third-Party Bidder.

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

**BRIEF OF ISSUES FROM THIRD-PARTY
BIDDER REGIME SOLUTIONS, LLC'S
MOTION TO RECONSIDER**

C/A No. 2014-CP-32-01270

INTRODUCTION

Third-Party bidder Regime Solutions, LLC (hereinafter "Regime") filed a Motion to Reconsider on March 1, 2016 following an order of the Court received by counsel on February 22, 2016. This motion requested that the Court make a finding on the issue of whether or not Regime was a bona fide purchaser (hereinafter "BFP"). The Court ordered that the motion be determined by briefs and outlined those issues to be briefed: 1) Can Regime meet the "for value" element necessary for qualifying as a BFP; and 2) Can Regime meet the "without notice" element necessary for qualifying as a BFP. The narrow issue before the Court is whether or not Regime is BFP. This determination is of particular import to Regime as a BFP "at a judicial sale is not affected by irregularities in the proceedings or even error in the judgment, under which the sale is made; but is required at his peril only to make inquiry as to the jurisdiction of the court which ordered the sale, and whether all proper parties were before the court when the order was made." *Bloody Point Prop. Owners Ass'n, Inc. v. Ashton*, 410 S.C. 62, 762 S.E.2d 729 (Ct. App., 2014) citing *Cumbe v. Newberry*, 251 S.C. 33, 37, 159 S.E.2d 915, 917 (1968); S.C. Code Ann. § 15-39-870 (2005). To set aside a judicial sale, "there must be such irregularity in the proceedings as to show that the sale was not fairly made, or that appellant was defrauded or

misled to his injury and loss". *Id.* citing *Wooten v. Seanch*, 187 S.C. 219, 222, 196 S.E. 877, 878 (1938); S.C. Code Ann. § 15-39-870 (2005). Thus this determination directly impacts the issues on appeal to the SC Court of Appeals as it directly relates to the finding of the Court that the sale should be set aside for inadequacy of sale price together with irregularities. The Court's "shock the conscience" analysis is unaffected by Regime's status as a BFP as even a BFP is subject to having a sale set aside for a sale price that shocks the conscience of the Court.

ARGUMENT

I. Does Regime Solutions Meet the "For Value" Element of Being a BFP?

To be considered a BFP a party must show (1) actual payment of the purchase price of the property, (2) acquisition of legal title to the property, or the best right to it, and (3) a bona fide purchase. *Robinson v. Estate of Harris*, 378 S.C. 140, 662 S.E.2d 420, 423, (S.C. App., 2008). A bona fide purchase is "in good faith and with integrity of dealing, without notice of a lien or defect." *Spence v. Spence*, 368 S.C. 106, 117, 628 S.E.2d 869, 874-75 (2006). Incorporated into this status as a BFP is the requirement that the purchaser pay value for the property and do so without notice of lien or defect. Defendants have argued that Regime cannot meet the value criteria of BFP because this court has determined that the bid price was insufficient.

To assert that Regime did not pay value for the subject property is not honestly asserted by the Defendants nor is it in fact what the record in this case reflects. Rather it is unrefuted that Regime paid \$4,857.00 as the successful bidder at the foreclosure sale and was duly issued a Master's Deed recorded in March of 2015. Regime would again assert that the adequacy of the bid is a consideration to be made in the "shocks the conscience" analysis and not appropriate for a determination of Regime's status as a BFP.

Words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. *Rowe v. Hyatt*, --- S.C. ---, 468 S.E.2d 649 (1996); *Paschal v. State Election Comm'n*, 317 S.C. 434, 454 S.E.2d 890 (1995); S.C. Code §15-39-870 states that a judicial sale is res judicata as to a bona fide purchaser for value without notice. The word "value" is not defined. The adequacy of the value is not discussed. Therefore, the plain meaning of the language should follow the *Robinson* analysis that value is "actual payment of the purchase price of the property". (emphasis added) *Robinson v. Estate of*

Harris, 662 S.E.2d at 423 citing *Spence v. Spence*, 368 S.C. 106, 117, 628 S.E.2d 869, 874-75 (2006).

There is no evidence or allegation in the record that Regime did not pay the purchase price of the property as bid on at the Master Sale. The Master's Deed recorded in the Lexington County R.O.D. in Book 17498 at Page 355 clearly recites that the bid amount was paid and receipt of same was acknowledge by the Court.

Frankly, S.C. law has not addressed directly what constitutes "value" in the determination of a bona fide purchaser at a foreclosure sale. However it stands to reason that a failure in value in the context of a purchaser at a foreclosure sale would only arise where the prevailing bid were not paid. While South Carolina law seems to be lacking in authority in this area, there is persuasive case law that agrees with the Regime's position. The Supreme Court of the State of Nevada has entertained the argument that a low purchase amount was not "valuable consideration" and rejected that notion. *Shadow Wood Homeowners Ass'n, Inc. v. N.Y. Cmty. Bancorp, Inc.*, 132 Nev. Advance Opinion 5. No 63180 (Nev., 2016). In *Shadow Wood* a third party bidder, Gogo Way, purchased a property at a homeowner's association foreclosure sale. *Id.* NYCB, the homeowner, argued that the low bid amount could not be valuable consideration. *Id.* at 22. The Nevada Supreme Court responded "[A]lthough, as mentioned, NYCB might believe that Gogo Way purchased the property for an amount lower than the property's actual worth, that Gogo Way paid "valuable consideration" cannot be contested." *Fair v. Howard*, 6 Nev. 304, 308, (1871) ("The question is not whether the consideration is adequate, but whether it is valuable."). *Id.*

Regime believes this is the correct way to interpret value in terms of a BFP determination: did Regime actually give consideration in exchange for the property? There is no argument to the contrary in this case. The sufficiency of the value remains subject to challenge under the standards set forth in *Eastern Savings Bank, FSB v. Sanders*, 373 S.C. 349, 644 S.E.2d 802 (Ct. App. 2007) where the SC Court of Appeals stated "a judicial sale can be set aside for two reasons: (1) if the inadequacy of the price is so gross as to shock the conscience of the court; or (2) if the price is inadequate and this inadequacy is accompanied by other circumstances that warrant the interference of the court." *Sanders*, 644 S.E.2d at 806. For reasons further discussed

below, Regime posits that, as a BFP, only the "shocks the conscience" analysis is appropriate in the instant case.

II. Does Regime Solutions Meet the "Without Notice" Element of Being a BFP?

Defendants contend that Regime cannot meet the notice requirements of being a BFP because existing lien(s) on the property destroy their status as such. Such a rigid reading would lead to absurd results and is contrary to existing law. The better inquiry is rather: "What was Regime on actual or constructive notice of and does that notice impact their status as a BFP as it relates to these Defendants?"

As a preliminary matter, Regime would first establish that they are a BFP as to the Defendants. A bona fide purchase is "in good faith and with integrity of dealing, without notice of a lien or defect." *Spence v. Spence*, 368 S.C. 106, 117, 628 S.E.2d 869, 874-75. Defendants have not claimed they have a lien on the property, but only that there were defects in the foreclosure proceeding in that they allegedly did not receive a copy of the Notices of Foreclosure Hearing or the Notice of Foreclosure Sale. This allegation was found by this Court to be insufficient to set aside the Order. In so concluding, the Court specifically found that "[r]egardless of the factual question of whether mail was or was not received, Plaintiff's Proof of Service documentation creates a rebuttable presumption that the mailing of these notices was carried out appropriately." This factual finding brings home the undeniable conclusion that Regime could have no actual or constructive knowledge of this alleged defect. There were no objections filed by the Defendants to the underlying foreclosure. Regime is only charged with matters that they had actual notice of and matters they were on constructive notice of as contained in the public record. Here, Regime was on constructive notice that the defendants were served with the summons and complaint, the case was properly referred to the master in equity, and that the defendants were mailed appropriate notices evidenced by affidavits of service that appear in the court's records. There was no indication at the time of the sale of the alleged irregularities in the underlying foreclosure. There is no allegation that Regime actually knew that the Defendants were going to assert that they had not received the notices. The court's file contained no indication, however slight, that this was anything other than a normal foreclosure proceeding. Therefore, as to the Defendants it is clear that Regime is a BFP.

Apparently conceding the foregoing factual analysis Defendants attempt to challenge Regime's status as a BFP, not by pointing to defects in the record, but instead by alleging that the nature of a homeowner's association foreclosure makes it impossible for Regime, or any third-party bidder, to be a BFP for value. The argument as advanced by the Defendants is that because Regime was on constructive notice of the HOA lien (and also the mortgage lien, although that lien was not noted by Defendants) then Regime could never be a BFP. As it pertains to the HOA lien, that argument is entirely without merit as the HOA lien was the thing that was foreclosed and was paid in full with the bid by Regime. Notwithstanding, Regime would concede that they could not claim BFP status as to the first priority mortgage. It is clearly in the record. However, Regime is at a loss to discern how the Defendants could assert the lien priority of a third-party to defeat Regime's status as a BFP as to the Defendants. Indeed, such an assertion defies principles of standing in so much as the Defendants are precluded from asserting the rights of another. Moreover, such an assertion runs contrary to established South Carolina law.

Bloody Point Prop. Owners Ass'n, Inc. v. Ashton, 410 S.C. 62, 762 S.E.2d 729 (Ct. App. 2014) addresses the BFP analysis in the context of an HOA foreclosure. In *Bloody Point* the foreclosed property owners, like in this case, filed a motion to vacate the foreclosure on the grounds that the price paid shocked the conscience and that service by publication was improper. *Id.*, 765 S.E.2d at 731. The *Bloody Point* Court went on to conclude that there was no evidence the third-party purchasers had any notice of the foreclosed property owners' claims. They were not properly served and therefore the third-party purchasers were bona fide purchasers and their title to the property was not affected by the foreclosed property owners' claims of defective service of process in the foreclosure action. *Id.* In light of that finding, the Court of Appeals concluded the third-party purchasers were bona fide purchasers without notice, and that the Court need not address foreclosed property owners' argument regarding improper service. *Id.*, 765 S.E.2d at 733. What is more, the third-party purchasers were determined to be bona fide purchasers, not as to the world, but as to the foreclosed property owners. The *Bloody Point* Court addressed in the second portion of its opinion the "shock the conscience" analysis notwithstanding the third-party purchasers' status as BFP's. *Id.*, 765 S.E.2d at 733-34. In so doing, the Court took into consideration in calculating the effective sale price paid by the third-party purchasers the unpaid taxes and fees the third-party purchasers which they took ownership of the property subject to. *Id.*, 765 S.E.2d at 731, 733-34 (\$8,800 bid at the sale; \$2,793.20 in

taxes and fees unpaid by foreclosed property owners added to the sale price; effectively paid \$11,593.20 for the property; Master did not abuse discretion in determining actual value of the property far less than \$115,932 required to shock the conscience of the court).

Similarly in the present case, Regime took its ownership subject to existing lien(s). This fact does not make Regime any less a BFP as to these Defendants. In fact the existence of unpaid lienholders only becomes relevant in the "shock the conscience" analysis of this Court. It defies reason to contend that the Defendants could assert the interests of a third-party lienholder to challenge Regime's status as a BFP. Regime urges a similar outcome to *Bloody Point* as it pertains to the Court's determination of Regime's status as a BFP.

Persuasive precedent is replete with examples of bidders at homeowner's association sales or junior mortgage sales being given bona fide purchase status. *See: Southeast and Associates, Inc. v. Fox Run Homeowners Ass'n, Inc.*, 704 So.2d 694 (Fla. App. 4 Dist., 1997) (Noting the existence of a mortgage). *Godsell v. United Guar. Residential Ins.*, 923 So.2d 1209 (Fla. App., 2005) (Bona fide purchaser for value status for bidder at a second mortgage foreclosure). *Demars v. Village of Sandalwood Lakes Homeowners Ass'n, Inc.*, 625 So.2d 1219 (Fla. App. 4 Dist., 1993) (Remanded to determine if the bidder could have bona fide purchaser status) *Gans v. Heathgate-Sunflower Homeowners Ass'n, Inc.*, 593 So.2d 549 (Fla. App. 4 Dist., 1992) (HOA foreclosure sale reversed for being "void" therefore defeating any innocent purchaser). *Saavedra v. CAPTIVA PRO. OWN. ASSOC. INC.*, 764 So.2d 926 (Fla. App., 2000) (Remanded to determine if the bidder could have bona fide purchaser status). *CitiMortgage, Inc. v. Country Gardens Owners' Ass'n* (D. Nev., 2013) (Bona fide purchasers in homeowners associations foreclosures can extinguish a first mortgage) *DTND Sierra Invs. LLC v. Bank of America, N.A.* (W.D. Tex., 2012) (Bona fide purchasers at homeowner's association foreclosure sales defeat a senior mortgage holder if they do not redeem as required by statute)

All these cases, whether the BFP prevailed or not, or was even determined to be a BFP or not, contemplate the *possibility* that a party can be a BFP even when there are senior liens or in a homeowner's association foreclosure, or both.

CONCLUSION

Regime is and was bona fide purchaser at the foreclosure sale herein. At the time of the foreclosure sale, the court file reflected Defendants had been served, were in default, and had

received appropriate notices. Regime made actual payment of the purchase price at the foreclosure sale and acquired title through this Court's deed. As a BFP, the sufficiency of the value paid is only an appropriate inquiry with regards to the "shock the conscience" analysis of this Court. Regime had no notice of any title defect or other adverse claim, lien, or interest in the other than those that it took the property subject to.

There is no evidence Regime had any notice of Defendants' claims they were not given proper notices of proceedings. Thus, Regime were bona fide purchasers and their title to the Property was not affected by Defendants' claims of defective notices in the foreclosure action. A purchaser in good faith at a judicial sale is not affected by irregularities in the proceedings or even error in the judgment, under which the sale is made. *Bloody Point*, 762 S.E.2d at 732; citing *Cumbe*, 159 S.E.2d at 917 (1968); S.C. Code Ann. § 15-39-870 (2005). As such, Regime respectfully requests this Court determine that Regime is a BFP and requests this Court reconsider its application of "inadequacy accompanied by other circumstances/irregularities" as a grounds for setting aside the sale.

CLARKSON LAW FIRM, LLC

By: 

Wyllie Clarkson, Esq. (S.C. Bar# 78244)

Eric C. Hale, Esq. (SC Bar # 71768)

Elias Fain, Esq. (SC Bar #101193)

Clarkson Law Firm, LLC

P.O. Box 287

Columbia, SC 29202

Dated: June 3, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

The Mill Homeowners Association, Inc.,

Plaintiff,

v.

Randall W. Cofer and Corey C. Cofer,

Defendants,

Regime Solutions LLC,

Purchaser at Foreclosure Sale.

and

Network Funding, L.P.,

Mortgage Holder.

IN THE EQUITY COURT
FOR THE ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2014-CP-32-01270

**DEFENDANT'S BRIEF IN
RESPONSE TO
THIRD PARTY BIDDER REGIME
SOLUTIONS, LLC'S MOTION TO
RECONSIDER**

The Defendants, Randall and Corey Cofer, respond to the Rule 59(e), SCRCF, motion filed by Third Party Bidder, Regime Solutions LLC, as follows:

A Rule 59(e) motion is reserved to those situations where a judgment should be altered or amended because the trial court failed to consider a material issue which was properly raised before the court. If the trial court has effectively addressed all materials issues, then such a motion should be denied. *Wilder Corp. v. Wilkes*, 330 S.C. 71, 497 S.E.2d 731 (1998). Defendants argue that the Court has effectively addressed all material issues raised by the parties.

Nevertheless, Defendants hereby address the issues raised by Regime Solutions, LLC's Rule 59 Motion.

ISSUES

1. Can Regime Solutions meet the "for value" element necessary for qualifying as a bona fide purchaser at a foreclosure sale when their bid price has failed to survive the court's analysis as to bid adequacy?
2. Can Regime Solutions meet the "without notice" element necessary for qualifying as a bona fide purchaser at a foreclosure sale when Regime Solutions is under constructive notice of the existing liens and circumstances of the foreclosure being conducted?

ARGUMENTS

- I. **Regime Solutions, LLC cannot qualify as a bona fide purchaser for value, when their bid has failed to survive the Court's analysis as to bid adequacy.**
 - a. **Analysis by South Carolina courts have shown that the question of bona fide purchaser for value does not negate an equity court's authority to evaluate bid adequacy for circumstances warranting an overturning of sale.**

The jurisprudence of South Carolina does not directly identify and address the question of whether "bid inadequacy" negates the ability to achieve bona fide purchaser for value status. However, the Court of Appeals has answered the question as the circumstances of this case require. In evaluating the "for value" element in South Carolina case law, the answer is found in the manner in which the Court conducted its analyzed, not in the Court's ruling.

In *Bloody Point Property Owners Association, Inc. v. Ashton*, the Court of Appeals addressed two different issues posed by the appellant. The first questioned asked whether the purchaser at foreclosure sale bore the status of bona fide purchaser for value, without notice of

deficiency. *Bloody Point Prop. Owners Ass'n, Inc. v. Ashton*, 410 S.C. 62, 762 S.E.2d 729 (S.C. App., 2014). The Court of Appeals, states:

"[u]pon the execution and delivery by the proper officer of the court of a deed for any property sold at a judicial sale under a decree of a court of competent jurisdiction the proceedings under which such sale is made shall be deemed res judicata as to any and all bona fide purchasers for value without notice, notwithstanding such sale may not subsequently be confirmed by the court." (citing S.C.Code Ann. § 15-39-870 (2005)). "The rationale for the statute is the well-established public policy of protecting good faith purchasers and upholding the finality of a judicial sale." (citing *Robinson v. Estate of Harris*, 378 S.C. 140, 144-45, 662 S.E.2d 420, 422 (Ct.App.2008)). *Id.* at 732.

The court found that the third party purchaser lacked actual or constructive notice of Appellant's claims, but it did not provide any discussion as to the application or meaning of the "for value" language also present in determining BFP status. *Id.* Regardless, the Court found the third party purchaser to hold BFP status. Yet, even in its affirmation of BFP status, the court's own subsequent citation of *Wooten v. Seanch* demonstrates that overturning a sale can still occur given the right circumstances and irregularities. *Id.*

Far more telling to this end, however, was that after the Court of Appeals found that third party purchaser qualified as a bona fide purchaser for value under section 15-39-870, the Court still proceeded to analyze the adequacy of the foreclosure sale price. *Id.* at 733. While the Court ultimately found that the bid was adequate in comparison to the property value, the fact that Court conducted the analysis at all is telling as to whether bid inadequacy analysis can be prevented against a supposed third party BFP. Had the Court felt as though BFP status of a third party purchaser negates the Court's authority to overturn a sale for bid inadequacy, there would have been absolutely no need for further analysis by the Court. Given the manner in which the

Court of Appeals proceeded in *Bloody Point*, the analysis and ruling of the Master-in-Equity in this matter was proper.

The *Bloody Point* decision does not perfectly answer the issue of whether the "for value" element can be met if a court finds a bid to be inadequate. If the bid price had been inadequate in the circumstances presented by the Appellant in *Bloody Point*, then the Court very well could have ruled differently as to BFP status. See *Alsobrook v. Alsobrook*, 14 S.C. 170 (S.C., 1880). The Court of Appeals does, at the very least, demonstrate that the power to overturn a sale on the basis of bid inadequacy is not negated by potential BFP status. While better clarity to this issue would certainly be welcomed in South Carolina jurisprudence, the application of the law is clear and there are no authority wherein a South Carolina court has upheld BFP status as a basis to refuse equitable relief to a property owner when the circumstances support overturning the sale. See *Poole v. Jefferson Standard Life Ins. Co.*, 174 S.C. 150, 177 S.E. 24 (S.C., 1934); *Federal Nat. Mortg. Ass'n v. Brooks*, 405 S.E.2d 604 (S.C. App., 1991).

b. A logical evaluation of the bona fide purchaser elements and the definition of valuable consideration demonstrate that the "for value" element cannot be met in the face of bid inadequacy sufficient to shock the conscience of the court.

Upon examination of the elements of determining BFP status, the "for value" element logically possesses significance in its meaning as it relates to a judgment of adequate value or inadequate value. Contrary to the arguments of Regime Solutions, "for value" does not simply imply that the element is met if *some money of any amount* was paid by the third party purchaser.

The title "Bona fide purchaser, for value" indicates that significance exists within the term "value". In establishing that the individual concerned is a "purchaser" the title has already demonstrated that *some value* was exchanged; any other conclusion would render the individual merely a recipient, not a purchaser. Therefore, the "for value" term that follows the description of

the individual as a purchaser renders the term significant in that it require a measure of adequacy.

This analysis is also supported in the definition of "valuable consideration". Blacks Law Dictionary defines valuable consideration as: "a class of consideration upon which a promise may be founded, which entitles the promisee to enforce his claim against an unwilling promisor." Black's Law Dictionary 1390 (5th. Ed. 1979). As is demonstrated in the definition, the term "valuable" applies a certain class of consideration with a requirement of adequacy in order to protect the promisee. This proposition is further supported by the fact that some courts, in their recitation of BFP requirements, refer to the elements as "fair value". *Collier v. Shell Oil Co.*, 534 So.2d 1015, 1018 (Miss. 1988); See *Pleasant Hollow Homeowners Ass'n v. Webster*, 285 S.W.3d 421, 424 (Mo. App., 2009). The courts in South Carolina, in applying a 10% threshold for bid adequacy have essentially clarified what constitutes "for value / valuable consideration" in the context of foreclosure sale prices.

c. Other jurisdictions have clearly decided that sale price inadequacy is a bar to the third party achieving BFP status.

While the courts of South Carolina have not directly addressed the issue of how the "for value" element of BFP status is determined in the face of sale price inadequacy, other jurisdiction have done so. Those courts have emphatically ruled that sale price inadequacy negates BFP status.

The Supreme Court of Mississippi, in evaluating a foreclosure sale, has stated, "The consideration Lackey paid for this lease is so grossly inadequate as to shock the conscience and to defeat any challenge even of one otherwise claiming the status of a bona fide purchaser." The court found that a price so low as to shock the conscience of the court creates constructive notice that issues may exist in the sale of the property. *Hill v. Thompson*, 564 So.2d 1, 10 (Miss. 1989). Likewise, the Montana court equates "bona fide" as a term inherent to sufficiency of price, stating: "When the disparity between the true value of property transferred and the price paid is so great as

to strike the understanding with the conviction of unfair dealing or fraud, or that the transaction is not bona fide, or so great as to shock the conscience of a correct mind, it will be sufficient to avoid the sale." *Hart-Parr Co. v. Schafer*, 73 Mont. 429, , (Mont., 1925). Other courts are even more blatant about the inability to achieve BFP status in the face of a grossly inadequacy price. *First American Title Ins. Co v. Action Acquisitions, LLC*, 169 P.3d 127, 131, 216 Ariz. 537 (Arizona App., 2011) (stating that "purchasers who acquire property for grossly inadequate price are not bona fide purchasers for value.") *United States v. West*, 299 F.Supp. 661, 668 (D. Del., 1969) (stating that "it is the general rule that a person who purchases property for grossly inadequate consideration is not a bona fide purchaser.") *McAnnally v. Panther*, 26 S.W.2d 478, 480 (Tex. Civ. App. 1930) (noting that "the rule is well settled that, where the price is grossly inadequate, the purchaser cannot be a bona fide purchaser for value." The South Carolina 10% threshold for judicial sale adequacy is simply an application of the general rule in the context of foreclosure sales.

II. Given the nature of the proceedings for foreclosure sale, Regime Solutions, and any third party bidder under these circumstances, cannot qualify as a bona fide purchaser without notice.

a. Regime Solutions fails the third element necessary for BFP status.

Regime Solutions, as a third party bidder at a judicial foreclosure sale, was under at least constructive notice of the lien and deficiencies in process against Defendants in this matter and therefore fail the third necessary element for acquiring BFP status.

Regime Solutions cites the *Robinson v. Estate of Harris* decision and sets forth the three elements for qualifying as a bona fide purchaser without notice. These include: (1) actual payments of the purchase price of the property, (2) acquisition of legal title to the property, or the best right to it, and (3) a bona fide purchase. *Robinson v. Estate of Harris*, 378 S.C. 140, 662 S.E.2d 420, 423 (S.C. App., 2008). A "bona fide purchase", in explanation, is a good faith and with integrity of

dealing, without notice of a lien or defect." *Spence v. Spence*, 368 S.C. 106, 117, 628 S.E.2d 869, 874-75 (2006).

Regime Solutions fails to fulfill the third element necessary to qualify as a BFP. Defendants argue that considering Regime Solutions' business and the circumstances of sale, Regime Solutions was under *at least* constructive notice of the lien, given that the lien had been filed by Plaintiff against Defendants for the homeowners association dues which are the basis for the foreclosure action in this matter. Said Notice of Lien was filed on April 22, 2013 with the Lexington County Registry of Deeds, at Book number 16227, Page number 22. Parties are charged with constructive notice of any instrument within the chain of title to property that is properly recorded and therefore made public record. *South Carolina Dep't of Transp. v. Horry County*, 391 S.C. 76, 705 S.E.2d 21 (S.C., 2011).

In addition to the Notice of Lien being properly recorded, the Court notes that a third party bidder would also have access to the foreclosure file jacket which would also contain the Notice of Lien and circumstances of the foreclosure. [Order, p. 18]. Either source puts Regime Solutions on at least constructive notice of the lien, the circumstances of foreclosure, the late service of notice of the judicial sale date, and those who did or did not attend the hearings and sale. Knowing any of these issues removes any possibility of BFP status for Regime Solutions in this matter. *Bloody Point Prop. Owners Ass'n, Inc.*, at 732.

While BFP Status may protect a purchaser against unknown small irregularities or errors, a third party purchaser is *required* to make inquiry as to the jurisdiction of the court which ordered the sale, and whether all proper parties were before the court when the order was made. *Robinson v. Estate of Harris*, 662 S.E.2d 420, 422, 378 S.C. 140 (S.C. App., 2008). If Regime Solutions had satisfied this requirement they would have been informed of the Cofer's absence from any of

the proceedings for foreclosure and would have been put on clear inquiry notice of the service issues raised at Defendants' 60(b)(1) hearing.

b. The nature of the proceedings involved prevents the acquisition of BFP status.

Regime Solutions argues that in order to qualify as a BFP "without notice of lien or defect" they simply must not have notice of the particular irregularity being argued in subsequent hearings. This interpretation is in error. Bona fide purchaser for value, without notice is a status used for transactions of all kinds, not just judicial sales, and its application outside of judicial sale require the purchaser be ignorant of *any* circumstances or difficulty of dealings which would put him on constructive notice that a prior owner has some claim or right to assert in relation to the property. In the context of judicial foreclosure sales, the very nature of the sale demonstrates that there may be subsequent rights asserted from the indebted original owner.

In addition to the irregularities of process argued at hearing, Regime Solutions has actually *created* an entirely new right for which Defendants are entitled to pursue in court. Regime Solutions, LLC is on notice of the laws of South Carolina, including the rules of equity which empower a court to overturn a sale which does not arise to at least 10% of the property's value. In placing a bid of \$4,857 for a property they knew to be worth over \$200,000.00, Regime Solutions risked the possibility that a court may find their bid sufficiently inadequate so as to shock the conscience of the court. Therein, Regime Solutions created a new defect in proceedings and was on constructive notice of its propensity to result in further litigation from the original property owners. In doing so, they further prevented their status as BFP.

As was brought up by the Court during the Rule 60(b)(1) hearing, there is an issue of how a bidder can ever qualify as an innocent third party purchaser for value and receive protection as such, given the inherent circumstances of foreclosure sales. [Transcript of Hearing, p. 42]. Defendants

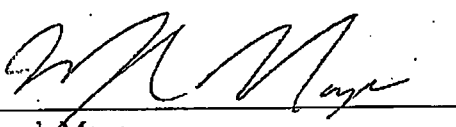
argue, that given the nature of the foreclosure sale itself, it is impossible for a third party bidder to gain BFP status when the foreclosure process requires some form of lien or encumbrance to move forward. The nature of the sale essentially constitutes actual notice of liens and deficiencies. Similarly, in such judicial sale scenarios there are statutory and equitable protections which allow the property owner to redeem, or in this case, overturn a sale under certain circumstances. Such mechanisms are explicitly contrary to the BFP status and protections, which might explain why South Carolina case law relating to inadequacy of bid seldom ventures into an analysis of BFP status.

For the above reasons, Regime Solutions is not a bona fide purchaser without notice, and the Order of the Master-in-Equity should be affirmed in its entirety.

CONCLUSION

Defendants' arguments set forth above demonstrate that the "for value" element and "without notice" element necessary for bona fide purchaser status cannot be met in the context of a judicial sale wherein the third party purchaser's bid was deemed inadequate sufficient to overturn the sale.

DAVIS FRAWLEY, LLC
140 East Main Street, P.O. Box 489
Lexington, South Carolina 29071
(803) 359-2512

BY: 

W. Joseph Maye
James Randall Davis
ATTORNEYS FOR DEFENDANTS

COPY

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Hon. James O. Spence, Master-In-Equity

Case No. 2014-CP-32-01270

FILED

2016 SEP 12 A 11:45

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

The Mill Homeowner's Association, Inc., Plaintiff

v.

Randall W. Cofer and Corey C. Cofer, Defendants

Regime Solutions, LLC, Third Party Bidder

of which

Regime Solutions, LLC.....Appellant

Randall W. Cofer and Corey C. Cofer.....Respondents

NOTICE OF APPEAL

Appellant Regime Solutions, LLC appeal the order on Defendant Randall W. Cofer and Corey C. Cofer's Motion to Vacate Sale and the subsequent Motion to Reconsider of the Honorable James O. Spence.

The initial order was filed February 17, 2016 and received by Appellant on February 22. On March 1 Appellant filed a Motion to Reconsider. That motion was denied by order dated July 8, 2016, notice of which was received by Appellant on August 25, 2016.

A copy of both orders on appeal is attached hereto and incorporated by reference.

(Signature Page to Follow)



Eric C. Hale, S.C. Bar # 71768
Post Office Box 287
Columbia, SC 29202
(803) 726-3558 (Tel)
eric.hale@clarksonlawllc.com
Attorney for Appellant

Other Counsel of Record:

James Randall Davis
Davis, Frawley, Anderson, McCauley, Ayer, Fisher & Smith, LLC
PO Box 489
Lexington, South Carolina 29071-0489
803-359-2512 (Tel)
randy@oldcourthouse.com

2016 SEP 12 A 11:45
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

FILED

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Hon. James O. Spence, Master-In-Equity

Case No. 2014-CP-32-01270

The Mill Homeowner's Association, Inc., Plaintiff

v.

Randall W. Cofer and Corey C. Cofer, Defendants

Regime Solutions, LLC, Third Party Bidder

of which

Regime Solutions, LLC.....Appellant

Randall W. Cofer and Corey C. Cofer.....Respondents

PROOF OF SERVICE

I certify that I have served Appellant's Notice of Appeal by depositing a copy of it in the United States Mail, postage prepaid, on September 9, 2016, addressed to their attorney of record, James Randall Davis PO Box 489, Lexington, South Carolina 29071-0489.



Eric C. Hale, S.C. Bar # 71768
Post Office Box 287
Columbia, SC 29202
(803) 726-3558 (Tel)
Email:
eric.hale@clarksonlawllc.com
Attorney for Appellant

FILED
2016 SEP 12 A 11:45
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF LEXINGTON C/A. No. 2014-CP-32-01270
3 The Mill Homeowners)
Association, Inc.,)
4)
Plaintiff,)
5)
vs.)
6)
Randall W. Cofer and Corey C.)
7 Cofer,)
8)
Defendants.)
9)
Regime Solutions, LLC,)
10 Purchaser at Foreclosure Sale.)
11 and)
12 Network Funding, L.P.,)
13 Mortgage Holder.)
14)
_____)

15
16 MOTION HEARING

17 *****

18 Monday, September 14, 2015

19 2:00 p.m - 3:06 p.m.
20

21 The hearing before the Honorable James O.
22 Spence, Master-in-Equity for Lexington County,
23 was taken at 205 East Main Street, Courtroom 2B,
24 Lexington, South Carolina on the 14th day of
25 September, 2015 before Cassandra E. Vance, Court
Reporter and Notary Public in and for the State
of South Carolina.

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APPEARANCES:

Jaime L. McSweeney, Esquire
McCabe, Trotter, & Beverly, P.C.
140 Stoneridge Drive, Suite 650
Columbia, South Carolina 29210
Attorney for the Plaintiff

W. Joseph Maye, Esquire
J. Randall "Randy" Davis, Esquire
Davis, Frawley, Anderson, McCauley, Ayer, Fisher &
Smith, LLC
Post Office Box 489
140 East Main Street
Lexington, South Carolina 29071
Attorney for the Defendants

Eric C. Hale, Esquire
Law Office of Eric C. Hale, LLC
125 Executive Pointe Boulevard, Suite 204
Columbia, South Carolina 29210
Attorney for Regime Solutions, LLC

Also Present:

Randall and Corey Cofer

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STIPULATIONS

It is stipulated and agreed that this
hearing is being taken pursuant to the South
Carolina Rules of Civil Procedure.

1 THE COURT: We're on the Mill Homeowners
2 Association versus Cofer. It's Case
3 2014-CP-32-1270. And that is pursuant to
4 Mr. Hale's motion for Rule to Show Cause. And I
5 believe we also have a notice of motion and
6 Motion to Vacate or Void pursuant to Rule 60;
7 that is Mr. Davis and Mr. Maye, which I think
8 probably we're going to want to do maybe that one
9 first?

10 MR. HALE: I think that would be appropriate
11 as the latter would seem like foregone conclusion
12 then --

13 THE COURT: All right.

14 MR. HALE: -- on that.

15 THE COURT: Okay. Thank you. All right?

16 MR. MAYE: Your Honor, Joseph Maye for the
17 Defendants, Randall and Corey Cofer. They're
18 here today to see how things come out.

19 Your Honor, I've -- as a matter of
20 housekeeping, I've already provided the court
21 reporter with 15 exhibits. Co-counsel has
22 copies -- or, excuse me, opposing counsel has
23 copies.

24 And just to give you a factual background of
25 how we're here today, the Cofers purchased their

1 property on July 28th, 2006. The property
2 address is 113 Mill Haven Lane, Lexington, South
3 Carolina. And as many properties are, it's
4 subject to yearly HOA assessments. And for all
5 times relevant to what we're discussing today,
6 those assessments were \$517 a year.

7 On March 1st, 2013, the Cofers received a
8 letter -- Ms. Cofer received a letter stating
9 that the balance due on the 2013 HOA assessments
10 was \$592.

11 And as I go through these different figures,
12 the actual amounts of money owed is very crucial,
13 so I'll slow down as I go through.

14 So 592 was mentioned in the March 1st, 2013
15 letter. On April 17th, a notice of lien was
16 executed and filed April 22nd and the balance
17 stated in the notice of lien was \$1,129.03 and
18 that was only a difference of four months of
19 time.

20 In December 11th, 2013, they received an
21 invoice stating that the balance for the 2013
22 assessments was only \$822. And in that same
23 invoice, they also noted that the upcoming 2014
24 dues added to it would make it five -- \$1,339, so
25 essentially 822 plus 517.

1 In April -- April 2nd, 2014, a lis pendens,
2 summons and complaint was filed, and those were
3 personally served on Ms. Cofer. And in the
4 complaint, the balance changed yet again to
5 \$1,582.96. And then it seeks to reasonable
6 attorney's fees after stating that amount.

7 Your Honor, the Cofers did not receive any
8 notice of foreclosure for the initial hearing
9 November 4th, 2014, which was ultimately
10 rescheduled, and they also did not receive notice
11 of the foreclosure hearing in January 26th, 2015.
12 And that's stated in their affidavit.

13 They also did not receive in time the
14 judgment of foreclosure and sale until Friday
15 afternoon prior to the sale occurring. I believe
16 it was February 27th, 2015. And by that time,
17 their attempts to get ahold of opposing counsel
18 didn't give them time to seek any remedy to stop
19 the sale.

20 And in that judgment and foreclosure sale,
21 as well as the statement of indebtedness, the
22 principal balance was stated to be, yet again a
23 different number, \$1,247.

24 After the sale occurred, the Cofers'
25 property was sold to Regime Solutions for total

1 compensation of \$4,857. Your Honor, we're here
2 today under our motion under 60(b)(1), and to a
3 certain extent 60(b)(4), to set aside the sale,
4 as well as seek relief under the judgment and
5 have it set aside.

6 Under Bloody Point Properties case, which is
7 cited at 762 S.E.2d 729, there's essentially two
8 things you can show to the court that would
9 warrant a court stepping in and setting aside a
10 sale that has already occurred.

11 And the first is that the price is so low
12 that it "shocks the conscious (sic)" of the
13 court. And under Bloody Point Properties, they
14 have -- the court says that "Consistently, courts
15 in South Carolina have said anything below
16 10 percent of the value of the property is
17 sufficient to shock the conscious of the court."

18 The second part of that analysis is, if the
19 court finds that the property value is not low
20 enough to shock its conscious, so to speak, there
21 have -- there may be other circumstances
22 warranting interference by the court.

23 So if there's something that went on in the
24 proceedings, some kind of factual issue, then the
25 court can take that into consideration in

1 deciding that it should, in fact, set aside the
2 sale.

3 Your Honor, it is the Defendant's position
4 that the price alone in this matter is sufficient
5 under the rule of law to set aside this sale.

6 In 2006, when the Cofers purchased their
7 property, their purchase price was \$236,388. A
8 current county tax assessor agrees with that
9 price and the county, as I said, is essentially
10 \$223,857. And I can make reference to any of the
11 exhibits if the Court wants to examine any of
12 these figures, but I wanted to get it out.

13 THE COURT: All right. Well, I've got all
14 the documents.

15 MR. MAYE: Okay.

16 THE COURT: And I'm familiar with the
17 argument.

18 MR. MAYE: Your Honor, with those two
19 figures in mind and you're looking at the sale
20 price that occurred, that represents -- if you're
21 judging by the sale price that they paid in
22 2006 -- two percent of the sale price.

23 THE COURT: All right. Let's hold on here
24 because I want to address that issue first.

25 MR. MAYE: Sure.

1 THE COURT: How does the fact that it was
2 sold subject to the first mortgage come into your
3 debt calculation? Because, I mean, it was sold
4 subject to a first mortgage. So whoever bought
5 it not only had to pay what they bid for it, but
6 they would have to pay the outstanding debt of
7 the mortgage in order to get it cleared.

8 MR. MAYE: Yes, Your Honor. I believe
9 you're citing the Aaron (sic) Bonding vs. Warren
10 decision.

11 Our opinion in that matter is the court
12 gives leniency for determining whether the
13 circumstances of a particular case warrant
14 including the mortgage as part of the sale price.
15 And in this particular instance, we argue that
16 it's not. And the reason being is this.

17 This property wasn't sold at public sale to
18 a home buyer that intends to remain in the
19 property and pay the mortgage for the duration of
20 its -- of however long it takes to pay it off.

21 This was bought by an investment company
22 that is in the business of buying property at
23 public sale and flipping it and selling it to a
24 third-party, preferably as soon as possible.

25 THE COURT: Well, they still, though --

1 given that, they still -- somebody still has to
2 pay off the mortgage.

3 MR. MAYE: Right. But the point I was
4 trying to get at is, essentially, as far as the
5 investment company is concerned, they're looking
6 to flip this price (sic). The better -- the more
7 equitable way of looking at sale price compared
8 to property value is to determine what equity is
9 in the value -- in the property at the time of
10 the sale occurring.

11 So, essentially, if you've got an investment
12 company trying to buy and then flip property,
13 what a better equitable determination of "does
14 the price they paid shock the conscious" is to
15 look at what equity are they purchasing of the
16 property, and will be subsequently getting back
17 in return because their business practice doesn't
18 require them -- doesn't -- in fact, their
19 business practice is best suited when they flip
20 the property as soon as possible. So two, three
21 months at most, they find a new buyer, and
22 they -- they capitalize on their investment.

23 If you look at the value of the property
24 that the Cofers paid in comparison to the
25 mortgage and subtract the two figures, you're

1 left with still \$111,000 worth of equity, for
2 which they only paid 4875 or 4857, which still
3 comes out less than five percent.

4 So the end result is, this company is buying
5 up this property, paying \$4800 for it, and then
6 six months down the road, three months down the
7 road, two months down the road, however fast they
8 can flip the property, they're making a hundred
9 thousand dollars off of it.

10 And it's -- based on that and based on the
11 fact that the Courts have set up the "shock the
12 conscious" test is simply a valuation of what
13 kind of equity are you purchasing and what are
14 you paying to get that equity.

15 That seems to be what the court is getting
16 at is, how much did you pay for what you're
17 getting out? And in this circumstance, we find
18 that what they're really getting is
19 111,000-dollars worth of equity and then they're
20 going to flip it as soon as they possibly can.

21 And under that theory, we argue that in this
22 matter, the mortgage should not be included as
23 part of the sale price but should instead just be
24 deducted from the value of the property to
25 determine what kind of "shock the conscious" and

1 benefit the buyer really got.

2 THE COURT: All right. So -- so under the
3 current court ruling, as I understand your
4 argument -- and, Mr. Hale, I'm going to allow you
5 to comment on this -- we would all agree that the
6 current case laws says, if you just use a ratio
7 of what it sold for, they've got the percentage.
8 It's two percent or -- it's ten percent or
9 whatever the case has held. So the courts have
10 come to a percentage in that strictly legal
11 analysis line of cases. You would agree, right?

12 MR. MAYE: Yes, Your Honor. I think there's
13 still leniency as to determine what figures are
14 determined as what that percent is created from.

15 THE COURT: Well, assuming you're right,
16 assuming you're right on that, then what's your
17 number -- I mean, you're not saying that the law
18 should be that a third-party bidder should not
19 make a profit when they come to bid on
20 third-party properties.

21 MR. MAYE: No.

22 THE COURT: So what's your scale on how much
23 profit is too much?

24 MR. MAYE: Your Honor, under our analysis
25 for this case, our argument should be that if a

1 company has purchased a property at public sale
2 and the equity that's in that property when they
3 obtain it is greater than ten percent of the
4 price they've paid, then that sale still shocks
5 the conscious because of the drastic difference
6 between what they paid as to what they're
7 getting.

8 THE COURT: Now, does that go just for a
9 party that's buying it to sell it or would that
10 also go for somebody who's buying it to live in?

11 MR. MAYE: Our argument would be it's a
12 case-by-case analysis. If it's --

13 THE COURT: Okay.

14 MR. MAYE: If it's someone who has not been
15 in the habit of buying properties at public sale
16 and can show at court that they intend to stay
17 there and live there, then that's something for
18 the court to take under consideration.

19 THE COURT: Okay. All right.

20 MR. MAYE: But --

21 THE COURT: Okay.

22 MR. MAYE: Essentially, that's our argument
23 as for the "shock the conscious" part of this
24 analysis.

25 But the court goes on to say that if the

1 price isn't low enough on its own to "shock the
2 conscious," the court can consider other
3 circumstances or irregularities that have
4 occurred that may warrant the court still
5 stepping in, even though the price isn't where
6 the court would want it to be.

7 Now, in our opinion based on the equity,
8 we've still shown the price to be sub five
9 percent under any valuation of what the property
10 is worth.

11 But in addition to that, there were a number
12 of irregularities that have occurred from the
13 start of this process to the end. As I've
14 already stated, when I was going through the
15 brief facts, the Cofers did not receive notice of
16 the hearing.

17 THE COURT: All right. Hold on a minute.
18 Did they get notice of the hearing? Do y'all
19 know, Mr. Hale?

20 MR. HALE: I would not -- my client wasn't
21 party to the foreclosure action. We were just
22 the successful bidder, so I'll leave that to her
23 to tell you.

24 MS. MCSWEENEY: Jamie McSweeney on behalf of
25 the Plaintiff. We actually have a memo in

1 opposition to the Defendant's motion and we've
2 attached the notices of hearing that were sent to
3 the Defendants that have certificates of mailing
4 showing that the notices were sent to the
5 Defendants at their last known address.

6 THE COURT: All right. Was it sent -- there
7 were two hearings. There was one that was
8 postponed --

9 MS. MCSWEENEY: Right.

10 THE COURT: -- and then there was a second
11 one. The first one was set for November 14th,
12 2014, at 9:30.

13 MS. MCSWEENEY: Right.

14 THE COURT: And there was a notice of
15 hearing that was mailed -- either dated or mailed
16 September 24th, 2014. And then the hearing was
17 rescheduled to January 26th, '15, at
18 9:00 o'clock. And I believe this is the one
19 Mr. Maye is saying that they did not get a notice
20 of hearing to.

21 MR. MAYE: To that point, Your Honor, we're
22 arguing that neither of those notices were
23 received.

24 THE COURT: All right. They weren't
25 received. You're not arguing they weren't

1 mailed. You're just saying they weren't
2 received.

3 MR. MAYE: They were not received. We
4 recognize that they have certificates of service
5 on their end, but our clients under their
6 affidavit have said they never received any
7 notice of hearing.

8 THE COURT: Okay. All right. When was the
9 second notice sent?

10 MS. MCSWEENEY: Your Honor, if I can just
11 hand this up.

12 THE COURT: Yes, ma'am.

13 MS. MCSWEENEY: And I'll flip it to the
14 second notice. There you go (tendering).

15 THE COURT: And I apologize for this, but I
16 can't read my handwriting for the second one.

17 MS. MCSWEENEY: So the second notice of
18 hearing was sent on December 19th, 2014.

19 THE COURT: Okay. All right. And it's 113
20 Mill Haven Lane; that's the correct address. And
21 you're not -- y'all aren't contesting they may
22 not have mailed it. You're arguing, "We didn't
23 receive it."

24 MR. MAYE: That's correct, Your Honor.

25 THE COURT: Okay. All right. Thank you. I

1 just wanted to make --

2 MR. MAYE: We essentially can't know what's
3 happened at their office. We recognize they have
4 certificates of service. Our simple position is,
5 is whatever they did or didn't do, we did not
6 receive it.

7 THE COURT: All right.

8 MR. MAYE: So that's -- that's the first
9 issue as to irregularities that have occurred in
10 the proceedings going from establishment of the
11 lien, foreclosure, and to sale.

12 The second, Your Honor, is the issue of the
13 proper balance of these assessments. As I listed
14 going through the facts, there were -- let's see.
15 The letter said \$592 in April 2013. The notice
16 of -- or, excuse me, in March 2013. The notice
17 of lien, just one month -- or one and a half
18 months later, that number jumped to \$1,129.03.

19 Now, the notice of lien does make -- sets
20 out that the figure is representative of costs
21 and interest and attorney's fees and of such of
22 that matter, but it is not clear as to what's
23 being charged, how much for any of the -- any of
24 that figure. So it's hard to tell how you get
25 from \$592 to 1,129.

1 In addition to that fact, Your Honor, if the
2 assessments are only \$517 per year, we're not
3 sure how they can even get to \$592 in essentially
4 a two-month span.

5 THE COURT: All right. Let me ask you a
6 question, because I want to make sure I
7 understand what your legal argument is here.
8 Y'all aren't -- y'all aren't denying that they
9 got served at home.

10 MR. MAYE: With the -- with the complaint?

11 THE COURT: With the summons and complaint.

12 MR. MAYE: They did get served.

13 THE COURT: All right.

14 MR. MAYE: Yes, we're not contesting that.

15 THE COURT: Did they -- did they answer?

16 MR. MAYE: They did not answer.

17 THE COURT: All right. So they were in
18 default. So had they come -- obviously if they
19 had no notice, they couldn't come. But had they
20 come to a default hearing, they could not have
21 contested they were in default, but they could
22 have questioned the math.

23 MR. MAYE: They could have questioned the
24 math, yeah.

25 THE COURT: And they had an absolute right

1 to question the math --

2 MR. MAYE: Right.

3 THE COURT: -- bring an attorney, have a
4 witness, have a court reporter, all of that. But
5 it's kind of academic because they didn't come.
6 And the reason you're arguing is they didn't come
7 is, is you say they didn't get notice, they
8 didn't get notice, so they didn't know to come.

9 MR. MAYE: Exactly, Your Honor.

10 THE COURT: So -- okay. All right. I just
11 want to make sure I was following along.

12 MR. MAYE: Yes, Your Honor. So just to
13 recap, the initial 592 balance, we're not sure
14 how they even get to 592 because after only two
15 months, that's an additional 70-something dollars
16 worth of fees that are unaccounted for an
17 un-itemized.

18 That number jumps to \$1129 in a month and a
19 half. When they -- on the invoice that they
20 received in December, that number changed again
21 and they were stated that the value -- or the
22 balance of the 2013 dues was only 822. So
23 they've gone up almost 500 or over 500 and then
24 come back down another 300.

25 And then the number changes again when the

1 lis pendens, summons and complaint were filed, as
2 that document demonstrates that the current
3 balance being sought was \$1,580.96.

4 There's -- we've looked at it in every way
5 possible. We cannot make the math work for any
6 of these numbers. But the big telling document
7 as to whether these numbers were right or wrong
8 is in the judgment of foreclosure sale and
9 statement of indebtedness.

10 And in that document, they for the first
11 time itemize what they're claiming the principal
12 balance to be for assessments, what they're
13 claiming to be the interest for those
14 assessments, what they're stating to be the
15 attorney's fees, the costs. They've broken it
16 down.

17 And in that document, they state that the
18 total balance for principal was \$1,247. So yet
19 again, that number has changed.

20 But our point is this: If you're looking
21 strictly at principal for assessments, there's
22 only, in our opinion, one number that should be,
23 but you could make an argument for two.

24 The first is, they claimed a lien on the
25 2013 dues and that's what they sought an action

1 for. So that principal should be \$517. That is
2 the principal balance of assessments and if
3 you're going to calculate interest and costs and
4 attorney's fees and everything else, that's in a
5 different category.

6 Now, if they're rolling in 2014's
7 assessments, because they filed this in early
8 2014, then that number should only be one other
9 number and that's 517 times two.

10 THE COURT: Does the homeowner's
11 association -- let's analogize -- I want to make
12 sure I understand the argument.

13 Is the homeowner's association calculation
14 like a note calculation? For example, if it says
15 you have to make a payment every month and if you
16 don't pay it, then the next month there's a
17 principal payment and there's interest that
18 continues to accrue.

19 So when you file a complaint, there's a
20 number due. When you get to hearing, there's a
21 different number because you've not made
22 principal payments and not made your interest
23 payments.

24 So I guess what I'm asking is, is in the
25 homeowner's association documents, it says, as

1 you've said, you have an annual due, an annual
2 assessment that's due. What did it say about
3 continuing or interest and what the interest rate
4 was?

5 MR. MAYE: If I could answer that in one
6 moment, Your Honor?

7 THE COURT: Yeah.

8 (Mr. Maye confers with co-counsel.)

9 MR. MAYE: Your Honor, we do agree with the
10 Court's assessment that the lien acts like a note
11 and that they're seeking to collect on that note.
12 As far as the Court's understanding of how
13 interest is accrued on the assessments, the
14 assessments are made yearly.

15 THE COURT: Right.

16 MR. MAYE: They're saying the total amount
17 is due, one payment beginning of the year, and
18 then that's it. That's what happens every single
19 year.

20 With the way they've laid out the charges in
21 the judgment and foreclosure and the statement of
22 indebtedness, they have a column strictly for
23 principal. And then right below it, they have a
24 column for interest from date of being late to
25 present.

1 THE COURT: Right.

2 MR. MAYE: And they have a calculation for
3 that.

4 Our argument is, if they're strictly
5 separating the principal, there are only two
6 possible numbers that that could be. And that's
7 if you're only -- and our argument is, they're
8 only suing for one year's. If they're suing for
9 one year's, that's \$517.

10 If they're suing for both years,
11 principal-wise, that can only be \$1,034, which is
12 517 times two. And then they can calculate
13 interest from here to there is a total of and
14 then adds it to the column.

15 THE COURT: All right.

16 MR. MAYE: Our argument is, if that number
17 can at most be \$1,034, then they're \$213 over
18 what they should have charged, for strictly
19 principal.

20 THE COURT: Okay.

21 MR. DAVIS: But it's in the complaint.

22 MR. MAYE: Yeah. And they're stating in the
23 complaint that they are seeking interest, as well
24 as costs and attorney's fees, but they made out a
25 different figure in that number -- in that

1 document.

2 There's no consistency in what they're
3 requesting, but that final document shows that it
4 can't possibly be the correct principal balance.

5 THE COURT: Okay. All right.

6 MR. MAYE: The third -- and these kind of
7 start to wrap onto one -- or each other. The
8 third argument, after you get past what the
9 balance for principal is, there's a discrepancy
10 with what the attorney's fees were charged for.

11 And the first argument is that it's a
12 procedural incorrect occurrence in this matter.
13 And that is, is in their motion under 55(b)(3),
14 did they did not seek to claim attorney's fees to
15 the Court.

16 And I've got a copy of the motion if the
17 Court wants to look at it, but they made no claim
18 for attorney's fees in their motion for default
19 judgment. And under 55(b)(3), they have to.

20 Second to that, there's been no affidavit
21 submitted by the attorneys saying what the
22 attorney's fees are; and that's also under
23 55(b)(3). Both of those are required to claim
24 attorney's fees in this matter and neither were.

25 Now, in addition to the procedural issue on

1 attorney's fees, we also think that there's a
2 miscalculation of attorney's fees and that's
3 exhibited in the notice of lien.

4 As I've demonstrated earlier, it went from
5 592 to \$1129 in the notice of lien; that's more
6 than double.

7 The only way we could figure out how they
8 get to that number is to assume that they've
9 rolled some kind of attorney's fees into that
10 number.

11 But if that's the case, then they're double
12 charging because the 1129 is as close to the
13 balance of the foreclosure statement of
14 indebtedness as any other number gets.

15 To the extent -- would the Court like
16 clarification on that?

17 THE COURT: No, I'm -- I'm going to let you
18 finish your argument and I'm going to hear from
19 them, because I'm confused about what got filed
20 at the foreclosure hearing and what you're saying
21 was not filed. So I'll ...

22 MR. MAYE: Those are the two arguments for
23 attorney's fees, essentially a procedural
24 argument and a valid argument.

25 The fourth issue for irregularity occurring

1 is the interest rate. And on page nine of the
2 covenants, there are -- there's issue as to what
3 interest can be charged.

4 They charged 18 percent against our clients;
5 however, the language of the covenant says that
6 it is prime plus two of the bank in which the HOA
7 is currently using. I can quote it for you if
8 you would like, but that's essentially how it's
9 laid out.

10 And the fact that they're relying on the
11 covenants to charge interest in the first place,
12 the issue of charging 18 instead of the prime
13 plus two, which given the time that all this
14 occurred would have been probably far lower,
15 there's issue as to an overcharge of interest
16 because 18 would have given them a greater
17 amount.

18 And, lastly, the invoice that was received
19 in December of 2013, the reverse side of that --
20 and I'm going to -- I want to quote it for you;
21 give me one moment.

22 This is Exhibit 3. On the reverse side, the
23 beginning paragraph states that "This billing
24 statement is for" -- such a poor copy, I can
25 barely read it -- "2014 annual assessments. All

1 payments are due on January 1st, 2014, and are
2 considered late after 5:00 p.m., January 31st,
3 2014." So for the month of January, they are not
4 late.

5 The following paragraph, after you see the
6 P.O. Box, the paragraph states, "According to the
7 covenants, the board of directors has an
8 obligation to enforce the delinquency process.
9 Payments received after 5:00 p.m. on January
10 31st, 2014, are considered 30 days late and will
11 be subject to association fees and a 10-dollar
12 administration fee."

13 So they have conflicting language in the
14 very invoices that they're sending to their
15 customers, essentially, in saying that you're not
16 late for the entire month of January, but as soon
17 as February rolls around, you're 30 days late.

18 Those two clauses are not compatible, in our
19 opinion, and at the very best, they create an
20 ambiguity as far as someone reading this document
21 is concerned who's not a lawyer. It confuses me
22 and I am a lawyer.

23 The issue here is that -- further down it
24 says, "Accounts 90 days past due will have a lien
25 filed against the property with additional late

1 fees and legal fees applied to your account."

2 Our statement as far as this document is
3 concerned is that, if they're not late after
4 January, then they filed their lien too early,
5 because only approximately 81 days passed between
6 the filing of their notice of lien and when our
7 clients were actually late and it has to be 90.
8 And if they filed too early, then that gives --
9 that would render the judgment void under (b) (4)
10 under Rule 60.

11 And as far as the sale is concerned, that's
12 our arguments, Your Honor. I've got some
13 additional discussion as far as setting aside the
14 judgment, but if the Court would prefer to step
15 back.

16 THE COURT: All right. Let -- if y'all want
17 to confer.

18 MR. DAVIS: Just a second, Your Honor.

19 MR. MAYE: Sorry.

20 THE COURT: Yes, sir.

21 (Mr. Maye confers with co-counsel.)

22 MR. MAYE: Your Honor, just to kind of recap
23 and hopefully add a little bit of clarity, the
24 initial notice of the assessments being due in
25 the March 1st letter said it was \$592. Within a

1 month and a half, the notice of lien more than
2 doubled that to 1129, I believe.

3 By the time they had filed -- let me step
4 back. In the invoice received seven months after
5 that date, that number went back down to \$822.

6 So our clients are being told you owe 592;
7 pay us now. Then the notice of lien says,
8 actually you owe us \$1129; pay us now. And then
9 in their next invoice received seven months
10 later, they're saying actually you only owe \$822;
11 pay us now. There's been no consistency with
12 those three documents.

13 But one more time in the complaint, they
14 say -- they cite the number being \$1500 and a
15 little bit more. I forget the exact -- \$1582.
16 So they've gone up, back down, and then way back
17 up.

18 THE COURT: And this was over a period of
19 how much time?

20 MR. MAYE: A total of about a year.

21 MR. DAVIS: March.

22 MR. MAYE: From March 1st, 2013, to April, I
23 believe -- yeah, April of 2014.

24 THE COURT: All right. And they were
25 getting those liens?

1 MR. MAYE: Yes, they received those.

2 THE COURT: And they got those and
3 no -- nothing between them and the HOA?

4 MR. MAYE: Could you clarify, Your Honor?

5 THE COURT: Well, I mean, did they tender
6 part payment or ...

7 MR. MAYE: They did not.

8 THE COURT: So nothing. Just they'd get the
9 liens and it would be the different amounts.

10 MR. MAYE: Yes.

11 THE COURT: Okay. All right.

12 MR. MAYE: And then, again, as we've pointed
13 out, the major document being the last document,
14 the judgment of foreclosure and then statement of
15 indebtedness, that number changes again, but this
16 time they've at least gone to the point of
17 categorizing every single charge.

18 And the principal of that document is, one,
19 wrong, based on my arguments earlier, but, two,
20 doesn't coincide with any of the other figures
21 that it could be.

22 THE COURT: All right. And y'all
23 got -- when did your client get a copy of the
24 notice of judgment?

25 MR. MAYE: February 27th of 2015, which was

1 basically no working days between then --

2 THE COURT: Well, when was the sale?

3 MR. MAYE: The following Monday. I believe
4 it was March 2nd, if I remember the dates
5 correctly.

6 THE COURT: Okay. All right.

7 MR. DAVIS: One last thing. See if there's
8 any objection to the exhibits, any objections.

9 MR. MAYE: Yeah. Any objection?

10 MR. HALE: No.

11 MS. MCSWEENEY: No.

12 THE COURT: All right. How many
13 objections -- evidence -- I mean exhibits have
14 been marked, Madam Court Reporter?

15 THE COURT REPORTER: I believe it's 15.

16 THE COURT: Fifteen? And no objection to
17 any of the --

18 MS. MCSWEENEY: Well --

19 THE COURT: I mean, you reserve your right
20 to argue about the relevance and what they --

21 MS. MCSWEENEY: Right.

22 THE COURT: -- mean, but as far as them
23 being documents that were sent ...

24 MS. MCSWEENEY: That's fine.

25 THE COURT: Yeah, that's what they're being

1 introduced for.

2 Okay. I mean, both sides are free to argue
3 what they meant and how to interrupt them, but I
4 think they're just entering them to say these are
5 documents that went back and forth between the
6 two parties.

7 MR. MAYE: For the most part, Your Honor.
8 There is some additional documents that are
9 created via public indexes, but --

10 THE COURT: Okay.

11 MR. MAYE: -- for the most part it's ...

12 THE COURT: All right.

13 (Defendant's Exhibit Nos. 1 through 15 were
14 admitted into evidence.)

15 MS. MCSWEENEY: Okay. Jaime McSweeney on
16 behalf of the Plaintiff.

17 So we've reviewed the affidavits that were
18 submitted by the Defendants and none of the
19 affidavits acknowledge the fact that the
20 Defendants were served in April of 2014 and then
21 they didn't act until July of 2015. There's no
22 explanation for why they didn't respond to the
23 complaint.

24 This is a motion that was filed pursuant to
25 Rule 60(b)(1) and in their affidavits, they do

1 not offer any facts to support excusable neglect,
2 mistake, inadvertence, or surprise. And that is
3 what they need to do in order to satisfy their
4 burden to set aside a judgment.

5 They have not pled with particularity any
6 facts that would explain this failure to act.
7 And that's our -- that's our main point here is
8 that they're putting the cart before the horse.

9 They're arguing they have meritorious
10 defenses, yet they still haven't satisfied that
11 evidentiary burden.

12 And this is a default judgment. It's not
13 just a regular default, so the standard is
14 higher, and the affidavits just simply do not
15 meet that burden.

16 And with regards to their allegation that
17 they did not receive the notice of hearing, like
18 I said earlier, we have evidence, our
19 certificates of service, that show that the
20 notice of hearing was mailed out to the last
21 known address of the Defendants in conformance
22 with Rule 5. And, furthermore, that's not
23 necessarily a basis for setting aside a judgment.

24 So, aside from that, that's the only
25 argument I see that meets the 60(b)(1) prong and

1 it fails.

2 And then, finally, we arrive here and
3 there's a third-party purchaser who purchased the
4 property at a foreclosure sale.

5 So the interest in preserving the finality
6 of these judgments is very important, because if
7 every time the Defendant comes forward and they
8 don't offer an explanation for why they didn't
9 respond to the complaint, yet we still set aside
10 the judgment, there would indeed be a chilling
11 effect on the effectiveness of the foreclosure
12 sales and you wouldn't preserve the finality.

13 So where the Defendants haven't come forward
14 and offered testimony, evidence to show why they
15 didn't respond to the complaint, we can't delve
16 further into this. That's our main issue.

17 And with regards to the sales price, I'm
18 going to let Mr. Hale argue the majority of that
19 and I confer with his position; however, we did
20 cite Arrow Bonding Company in our memorandum, as
21 well, and we feel that the Defendants' analysis
22 under that case law is faulty.

23 THE COURT: All right. Thank you.

24 MS. MCSWEENEY: You're welcome.

25 THE COURT: Let him do his ...

1 All right. Mr. Hale, can you address the
2 inadequacy of bid price argument?

3 MR. MAYE: Sure. Sure, Your Honor. As far
4 as the adequacy of bid price, Arrow is the
5 commanding case before the Court right now.

6 Arrow involved a situation of a -- I believe
7 an Arrow Bonding Company, who had liens and
8 effected a sheriff's sale. And then went and bid
9 at their own sheriff's sale and recieved the
10 property back. But all the properties, like in
11 this case, were purchased subject to a senior
12 encumbrance.

13 And then the affected party came back and
14 said that shocks the conscious. It's below ten
15 percent. That's kind of the bright-line law of
16 the land, as it were.

17 And the Court said, "No, it doesn't shock
18 the conscious. Yes, it's below ten percent if we
19 just take the fair market value and take the bid
20 as a function of that."

21 But we can't just do that. We have to take
22 the bid. We have to then add it to the amount of
23 the mortgage. And in Arrow Bonding, there was
24 no -- there was no evidence of the amount of the
25 mortgage as has been submitted in this case right

1 here.

2 And so the Court said, "The only evidence we
3 have of the amount of the mortgage is what is on
4 the public index."

5 And so they said, "Well, we take the bid
6 amount, add it to the -- add it to the
7 outstanding mortgage or add it to the mortgage,
8 and we take the tax index and we say this is 70,
9 80, 60, 50 percent, doesn't shock the conscience;
10 therefore, we're not going to vacate the sale."

11 Let me hand up my memorandum here, Your
12 Honor, only because it aids me in showing you my
13 calculations (tendering).

14 MR. HALE: I'll admit, I believe my
15 calculations were based off of a slightly lower
16 number, but the concept remains the same.

17 If you'll turn to the third page of the
18 memorandum, at the bottom I set forth the
19 calculation. I use their mortgage amount, the
20 \$125,742.19; adding to that the bid amount, for
21 an effective sales price of \$130,600, give or
22 take a few cents. And then we have the
23 appraisal, which I have down as 197,000 and some
24 change. I believe theirs was slightly higher
25 than that. But getting the picture, the

1 effective bid price was two-thirds of the fair
2 market value.

3 That being the case, that doesn't shock the
4 conscience. I found no case in South Carolina
5 where a court has said 60 percent, 50 percent
6 shocks the conscience. In fact, I'm sure Your
7 Honor probably conducts them all the time where
8 they're selling at 50 percent.

9 THE COURT: All right. But they had two
10 arguments. They said -- they said, "We
11 understand the shock the conscience legal thing,"
12 but they also said, "We should look at it by how
13 much equity they're making." And, in essence, if
14 you're making over ten percent equity, that
15 should shock -- if I understood that right.

16 MR. MAYE: (Nods head affirmatively.)

17 THE COURT: The position was, is that if a
18 bidder makes more than ten percent?

19 MR. MAYE: That's correct, Your Honor.

20 THE COURT: -- of the equity, then that
21 should shock the conscience and the sale should
22 be voided?

23 MR. MAYE: That's essentially correct, Your
24 Honor.

25 THE COURT: Okay. All right.

1 MR. HALE: I think I'll restate it so I feel
2 like I have it correctly.

3 Instead of adopting the mentality that was
4 adopted in the Arrow Bonding case, they're
5 advancing a different mentality wherein the bid
6 price would have to exceed ten percent of the
7 equity in the homes. I believe that's what we're
8 getting at, is -- I want to make sure before I
9 start arguing.

10 MR. MAYE: I believe that's correctly
11 stated; yes, Your Honor.

12 THE COURT: All right.

13 MR. HALE: So couple of things to that.
14 First off, my client, as we've all noted here,
15 was a third-party purchaser for value.

16 The only thing that they have, the only
17 thing they're charged with under South Carolina
18 law is matters that are public.

19 Now, in this particular case, there would be
20 a mortgage out there for 200-and-some-odd
21 thousand dollars. They don't have any privity
22 with the bank. They don't know the account
23 number. They don't have any privity with the
24 former homeowners. My client has no way of going
25 to the bank and saying, "Hey, how much equity is

1 in this property? How much is left over? How
2 much am I going to have to pay you to get this
3 taken care of?"

4 So that number is an impossible moving
5 target. My client simply can't know it and as a
6 third party is not charged with trying to have to
7 figure it out, to divine it.

8 Moreover, if the theory that is advanced
9 here today prevails, it has the effect of
10 basically quashing judicial foreclosures for
11 homeowner's associations and for second liens,
12 second lienholders of any nature.

13 Anybody who's not holding a first senior
14 mortgage on the property has to then try to
15 divine an imaginary number that they can't any
16 way of getting to until we've got the property at
17 the sale. And then we have to, what, have a new
18 sale to get the number up to a point that's high
19 enough that it meets over the ten percent
20 threshold? I would --

21 THE COURT: You could -- you could figure
22 out the number. I mean, you could --

23 MR. HALE: We could guess.

24 THE COURT: You said there's no way to
25 figure it out. I mean, you could -- you could

1 theoretically get the tax assessment, you could
2 then go get the judgment roll to find out what
3 the debt is, right? The order, it says this
4 is -- I mean, you know what ...

5 MR. HALE: What I'm saying, we have no way
6 of divining is the amount that's left over on the
7 first mortgage.

8 THE COURT: Well -- on the first mortgage.

9 MR. HALE: Right. So we don't know what
10 we're getting into. We've paid \$48,900 (sic).
11 They could have refinanced, done a loan
12 modification. It could be a continuing note that
13 allows them to take additional amounts out.

14 THE COURT: Right.

15 MR. HALE: And we have no way of knowing
16 that. So we take it subject only to the idea
17 that there's a 200,000-dollar note and mortgage
18 out there that we're going to be obligated to pay
19 at some future date.

20 Now, in this case, they've offered evidence
21 that that mortgage has been paid down. But as a
22 third-party bidder, we have no way of knowing
23 that. And to charge us with this knowledge at
24 this late date puts an impossible burden and it
25 has a huge chilling effect on any bidding beyond

1 that of the HOA.

2 And, again, as I pointed out, Your Honor, my
3 client is a third party to this transaction.
4 We're only charged with what we know.

5 There was a lot of statements about things
6 that were amiss and awry and I would submit that
7 all of those would have been properly raised
8 through an appearance in the underlying case and
9 are not proper now.

10 There's been no showing of newly discovered
11 evidence, no excusable neglect or whatnot, to
12 bring any of those in.

13 But even if, even if Your Honor was inclined
14 to look at that, the sanctity of the sale cannot
15 be touched. Your Honor has the ability to hold
16 the sanctity of the sale intact and, nonetheless,
17 reopen the judgment so that you can reapportion
18 the monies that were paid, if that was what Your
19 Honor was so inclined.

20 And I've got a whole litany of case law out
21 there that says that third-party bidders at
22 foreclosure sale are not subject to all of these
23 challenges after-the-fact. That's collateral
24 attack after-the-fact, unless it was something we
25 could have known about.

1 And we certainly couldn't have known that
2 the lien amounts and the numbers and all this
3 other stuff that was being argued. The
4 attorney's fees and whatnot, my client had no way
5 of knowing any of that.

6 THE COURT: All right.

7 MR. HALE: Thank you, Your Honor.

8 THE COURT: All right. Thank you.

9 I do want to ask something that has -- that
10 has troubled me as a Judge for a long time and
11 we've had speakers, I think, at seminars
12 addressing this issue.

13 How can a third-party purchaser be an
14 innocent purchaser for notice when they know that
15 the person did not get notice of the foreclosure
16 order until three days before the sale and they
17 would've had 30 days to file an appeal or ten
18 days to file a rule to -- a Rule 59, which
19 would've all been after the sale?

20 So I guess my question is -- which has been
21 raised before -- is if it's being sold like that,
22 is not a purchaser -- I mean, there's a line of
23 cases that says everything you say. It says
24 everything about the innocent purchaser for
25 value, third-party, all of that. I think that

1 presupposes the time lines have been met.

2 What happens when the time lines are not
3 met? Are you, in essence, then like a -- and I'm
4 just -- I'm violating a rule right now, because
5 I'm talking as I'm thinking. All right? So this
6 is me talking as I'm thinking, attorneys and
7 everybody in the courtroom.

8 I mean, are you -- is a third-party
9 purchaser then akin somewhat to a purchaser at a
10 tax sale? Because a purchaser at a tax sale
11 knows they've got a year to redeem it. They can
12 file an action. If there's anything wrong with
13 it, you can -- you can undo it. I'm purchasing
14 it subject to the right of redemption.

15 So how can a third-party purchaser say
16 I'm -- get under the protection, innocent
17 third-party purchaser for value, without notice,
18 without knowledge, given the fact that you can
19 check the public record and see there ain't --
20 the homeowner who's about to lose the house has
21 not been served with the order and notice of
22 sale? Sometimes even until after the sale has
23 occurred.

24 MR. HALE: The judgment you mean?

25 THE COURT: Yeah, the judgment.

1 MR. HALE: Because the sale would be
2 advertised, presumably.

3 THE COURT: Right. The sale -- I mean, it's
4 been advertised, but the notice of sale was
5 not -- I mean, there's case law that says what
6 that is. That's ...

7 MR. HALE: My answer to that, Judge, would
8 be -- although I believe in our present
9 circumstances, it was more of an academic
10 endeavor, being as how this was not raised by the
11 Defendants in this case.

12 MR. DAVIS: I'm sorry, go ahead.

13 MR. HALE: That's all right.

14 I mean, I do understand that they argued
15 that they did not receive notice of the judgment,
16 but -- okay. Let's assume that that was the
17 basis they were going to go forward on this case.

18 No 59 motion was filed. No appeal was
19 taken. So time passed on the 59; that's gone.
20 It's ten days. It's way gone at this point in
21 time. And --

22 THE COURT: Well, it was gone -- I mean, it
23 was -- the ten days would have run -- I'm doing
24 rough math here. If I understood it right, their
25 ten days would have run the Monday after the

1 sale, right? If they got three days --

2 MR. HALE: The following Monday, if I'm not
3 mistaken.

4 THE COURT: Right.

5 MR. HALE: I think they said they got it
6 basically on a Friday --

7 THE COURT: Right.

8 MR. HALE: -- and they got -- then they --

9 THE COURT: Sale was on a Monday.

10 MR. HALE: Sale was on a Monday, so one,
11 two, three, and then seven more --

12 (Simultaneous speaking.)

13 THE COURT: (Inaudible) a week later. Yeah.

14 MR. HALE: Yeah. And so their time would
15 have been ten days after the sale, that's
16 correct, to file a Motion to Reconsider.

17 THE COURT: Right.

18 MR. HALE: And, honestly, I probably
19 wouldn't be here today arguing this before Your
20 Honor had a motion been timely filed to that --
21 in that regard; nor had an appeal been timely
22 taken.

23 But they got it. They say they got it and
24 they did none of that. Instead, we have this
25 motion here today complaining about

1 improprieties, but nobody's really -- there's
2 not -- the prejudice is -- is passed. It's long
3 passed, if it ever existed.

4 THE COURT: All right. Thank you.

5 MR. DAVIS: Your Honor, may I respond?

6 THE COURT: Technically, only one lawyer
7 from one firm is supposed to be able to talk --
8 one moment. But if y'all can ...

9 MR. HALE: I have no problem with it; it's
10 fine.

11 THE COURT: Okay. He says he has no problem
12 with Mr. Davis responding.

13 MR. DAVIS: Okay. Your Honor, in reference
14 to the argument about what's a public -- what's a
15 public record for the third-party purchaser, the
16 mortgage -- obviously the mortgage on the
17 property is -- that's a public record.

18 But under the -- as I read the case law on
19 "shock the conscious," that stands alone by
20 itself as a reason to set something aside.

21 And in this case, again, our argument is
22 that these people are investment people and
23 they're going to go sell the property to somebody
24 else and you shouldn't count the mortgage.

25 And the case that's cited by both sides

1 here, the Arrow vs. Warren case, does say that
2 the court in some circumstances does not have to
3 count that mortgage. And it's cited on the third
4 page of that case and it does say that. So you
5 don't have to in every case. It's not mandatory
6 to count -- to count the mortgage.

7 The other thing in regards to the -- the
8 argument of the Rule 59 and Rule 60, you still
9 have a right to file Rule 60, even though the ten
10 days have past.

11 And I can't see where that makes any
12 difference in regards to raising the issue about
13 the short period of time between the date of
14 receiving notice of sale and the actual sale,
15 because in this case, the affidavit by Ms. Cofer
16 and Mr. Cofer does indicate that they got it the
17 Friday before the sale.

18 So there is something in the record which
19 establishes they just got the notice of sale --
20 this is in February and it was a March sale. So
21 we're talking about -- it was two or three days
22 at the most between the date of the notice --
23 receiving the notice and the date of the sale.

24 The other -- the other item -- let me --
25 that's it, Your Honor.

1 THE COURT: Okay. All right. Here's the --
2 anything else, anybody?

3 MR. HALE: I just wanted to also tell Your
4 Honor, just in candor with the Court, I've had
5 this identical motion already defended in
6 Richland County. It is presently pending on
7 appeal. Brian Boger represents the former
8 homeowners.

9 And I do have a copy of the order, if Your
10 Honor wants to see it at all. Richland County --
11 I know it's just persuasive, but Judge Strickland
12 came down on our side of this case for these very
13 identical issue. And I can give you a copy of
14 the order if you wanted to see that or not. I
15 didn't think you would.

16 THE COURT: All right. I'll let -- I'll let
17 y'all address that in what I'm going to ask you
18 for.

19 MR. HALE: Okay.

20 THE COURT: So this case is -- the issue's
21 on appeal with, I guess, Board of Appeals?

22 MR. HALE: That's correct.

23 THE COURT: What's the trial order date?

24 MR. HALE: The trial date? The matter came
25 before us --

1 THE COURT: I mean, it should be clocked --
2 I can see the clock right over --

3 MR. HALE: Yeah, we heard it on
4 February 15th. The order was clocked in
5 April 21st and --

6 THE COURT: Of?

7 MR. HALE: Of this year.

8 THE COURT: Okay. So it's --

9 MR. HALE: So it's -- all I've got is a
10 notice of appeal thus far.

11 THE COURT: So it's a long time off from
12 being decided.

13 MR. HALE: Absolutely.

14 THE COURT: All right. Here's the two --
15 the two issues that I'd like some follow-up from,
16 because -- and I want to back up.

17 What I've heard y'all say is, is my clients
18 admit they got served. They didn't answer
19 their -- you don't have to get up. They got
20 served. They didn't answer. They're in default.

21 MR. MAYE: With the complaint, yes, Your
22 Honor.

23 THE COURT: With the complaint. They got
24 served a bunch of notices with different amounts.

25 MR. MAYE: Yes, Your Honor.

1 THE COURT: And they got that.

2 MR. MAYE: Yes, Your Honor.

3 THE COURT: And the same notice -- and the
4 notices of hearing that were sent, were sent all
5 to the same address where they were served and
6 got those previous notices.

7 MR. MAYE: As far as we know.

8 THE COURT: All right. But they say they
9 didn't get it.

10 MR. DAVIS: That's correct.

11 THE COURT: Okay. What does the law say
12 about what the burden is in those cases? If --
13 if you say, "I mailed it to that address,"
14 everybody says it's their address, and the
15 Defendant says, "I didn't get it," who's got the
16 burden? What does the case law say about that?

17 I mean, there's law that says, "I didn't get
18 served personally," talks about how -- what
19 happens and how you shift the burden. But what
20 does the mailing burden say?

21 Does the law say, "I have to prove they
22 received it," or does the law say, "I have to
23 show I mailed it," all right? What does the law
24 require under notices of hearing. All right? So
25 address that. I think that's Rule 5. I think

1 there's some case law on that.

2 The second thing to -- that I'd like some
3 argument on is this idea that you can create a
4 new classification of "shock the conscious" based
5 on who the successful bidder is.

6 Because as I understand what y'all are
7 arguing, you're saying that there should be a
8 different standard for a third-party investor as
9 opposed to a -- someone who's buying it for a
10 home.

11 Now, I'm trying to -- and I want some
12 argument on why that should be, why that should
13 not be, and if there's any legal basis anywhere
14 of distinguishing between third-party bidders who
15 are buying it to live in, third-party bidders who
16 are buying it as a speculating. All right?

17 Because that does seemingly could put a
18 tremendous damper on people bidding at public
19 sale. And the purpose of public sale is you want
20 to get -- you want a sale that is not chilled.
21 You want the price to be bid as close as you can
22 to market value or more because that pays off the
23 debt, that pays off creditors, and if there's
24 more money, there is a surplus generated, which
25 would go back to the homeowner.

1 So we have a statutory scheme that kind of
2 does that. And y'all are saying that there was a
3 hundred -- how much equity did y'all think there
4 was at the time of sale, approximately?

5 MR. MAYE: Your Honor, the equity comes out
6 to about 111, \$112,000. The outstanding mortgage
7 at the moment is about 124,000.

8 THE COURT: Okay. All right. Because there
9 was a surplus generated, but it wasn't any -- I
10 mean, it was a hundred dollars. It wasn't a
11 thousand or 10,000 or 20 or anything like that.
12 It was -- it was --

13 MR. MAYE: Correct, Your Honor.

14 THE COURT: Okay. And as I'm sitting here
15 listening to the argument, I mean, the
16 only -- the only place I know of that I'm
17 familiar in this field where it matters if you're
18 a homeowner or a not homeowner was in the federal
19 tenant act.

20 Because in the federal tenant act, if you're
21 buying a property to move into it, tenant got
22 less time. If you're buying it as a third-party
23 investor, tenant got more time.

24 So when they did the federal landlord/tenant
25 act, they did distinguish between somebody living

1 in it and somebody doing it for profit.

2 So, anyway, those are the kind of the two
3 things, because admittedly it seems to me, all
4 the argument that have been made about the debt
5 calculation, if that was -- that was arguments
6 that could have been made at the hearing,
7 challenged.

8 It could have been challenged and, you know,
9 if people had shown up and, you know, with an
10 attorney that day, hearing gets continued -- I
11 mean, y'all know. Hearing gets continued. You
12 postpone it, you bring back a court reporter, you
13 bring back a witness, and you have people crossed
14 on it.

15 So all that could have happened. It didn't.
16 And one side's saying that that shows that it's
17 fatally flawed, but the other side's saying it
18 was fatally flawed because you didn't show up to
19 argue and your argument is a circular argument,
20 we didn't show up because we didn't get notice,
21 we didn't receive it.

22 So there's got to be a legal thing where
23 someone files an affidavit of service and
24 somebody says, "I didn't get it," what's the case
25 law? Who's got the burden and has it been met

1 and do you show it?

2 And then the second thing is, is this
3 argument that don't count the mortgage, don't
4 count the mortgage, case says you don't. And, in
5 essence, don't count the mortgage because this
6 wasn't somebody buying it to live in their house.
7 It's a third -- it's a for-profit person. And
8 this is their house. They shouldn't be able --
9 you know, it's too much of a profit, in essence.

10 MR. MAYE: Yes, Your Honor, I'm going to add
11 one more thing to that point.

12 THE COURT: All right. Okay.

13 MR. MAYE: Essentially, the argument is, is
14 it's not just a for-profit. It's the likelihood
15 that they actually intend to assume the mortgage.

16 The mortgage is thrown into the sale price
17 because the court assumes whoever's buying this
18 property is going to have to pay the mortgage.

19 In circumstances such as this, that's highly
20 unlikely as a -- compared to someone buying a
21 home to live in where they are most certainly
22 going to have to pay the mortgage.

23 THE COURT: All right.

24 MR. MAYE: That's our -- that's our issue as
25 a matter of equity of whether it should be

1 considered.

2 THE COURT: All right. If they don't -- if
3 they don't pay the mortgage, if -- if -- let's
4 follow that out. Let's follow that argument out.

5 If a third-party buys it commercially, not
6 residentially but commercially, one of two things
7 happens: They flip it or they don't. In most
8 situations, they get it sold or they don't.

9 If they -- if they sell it, then what
10 happens is the mortgage gets paid off. All
11 right?

12 MR. MAYE: Yes, Your Honor.

13 THE COURT: And profit flows where?

14 MR. MAYE: The remaining profit of whatever
15 equity existed in the court would go to the --

16 THE COURT: Flows here.

17 MR. MAYE: -- to the seller.

18 THE COURT: Right? Unless it's so much that
19 it generates a surplus.

20 MR. MAYE: Yes, Your Honor.

21 THE COURT: And in this case, the only
22 generated -- it generated under 200-dollar
23 surplus, I think. It's what my surplus notice
24 says, so.

25 MR. MAYE: I apologize, Your Honor. I

1 thought we were discussing when the third-party
2 buyer goes to sell it again.

3 THE COURT: That's what we're talking about.

4 MR. MAYE: Right.

5 THE COURT: When he -- when -- he either --
6 the third-party buyer does one of two things. He
7 either -- he either closes the loan, because he
8 sold it to somebody else. Now, there was a
9 surplus generated at the sale.

10 MR. MAYE: Uh-huh (affirmatively responds).

11 THE COURT: All right? There's a surplus
12 generated at the sale based on what he bid. Then
13 that money goes first to other creditors and then
14 to the homeowner; that was under \$200.

15 MR. MAYE: Correct.

16 THE COURT: But in this case, when you do
17 the closing, you pay off the first mortgage
18 company and that's about it and then your closing
19 costs and then, you know, whatever profit you
20 make with who you sold it to; that's how that
21 closing goes.

22 If they don't close it, what happens is, is
23 our 30-days or 20-days period goes by and we
24 start being concerned about why we haven't got
25 the bids yet.

1 And then we get a letter or communication
2 from the third-party that basically says,
3 "Uhhhhhhhh (phonetic)." And then very shortly
4 after that, we get a motion and order from the
5 bank or the HOA that says, "Void the sale. They
6 didn't comply with the bid," and then we resell
7 the thing all over.

8 So if they don't do that then, and they
9 don't have that sale, then at some point, if the
10 clients aren't current on the mortgage -- are
11 they current on their mortgage now?

12 MR. MAYE: I believe so, Your Honor, yes.

13 THE COURT: All right. Are y'all current on
14 your mortgage.

15 MR. COFER: (Nods head affirmatively.)

16 THE COURT: All right. So you've not
17 received any kind of foreclosure notice on the
18 mortgage.

19 MRS. COFER: No, sir.

20 MR. COFER: No, sir.

21 THE COURT: Okay. All right. Yeah. I
22 mean, if they're current on the mortgage, then
23 they've got the property. And then at some
24 point, they quit paying and then you got to pay
25 the mortgage.

1 MR. HALE: That's correct. And I'm sure my
2 client would love to assume a mortgage; however,
3 most lenders don't have -- they're not going to
4 just take a loan and throw it over to my client.
5 We have no -- again, Gramm-Leach-Bliley, FDCPA,
6 the whole litany of privacy laws and whatnot, we
7 have no way of communicating or affecting that at
8 all.

9 THE COURT: Okay.

10 MR. HALE: Even if we wanted to, it's just I
11 have to wait almost until foreclosure. It's just
12 the -- and it's almost we have to wait until
13 foreclosure to do anything with these properties,
14 candidly.

15 THE COURT: All right. Tell me -- and this
16 is the -- and this is the third thing, since
17 we're proposing equitable -- new equitable
18 remedies and things here. Were I to rule that
19 there was a third class to be admitted, what's
20 the remedy?

21 MR. MAYE: The remedy as to?

22 MR. DAVIS: He just asked the question.

23 THE COURT: Yeah. What's the remedy? What,
24 in all fairness, is the remedy to the person who
25 bid the property's got the money -- I mean, is it

1 like a tax sale where y'all have to pay them back
2 for what they bid in plus the loss of their
3 money?

4 I mean -- I mean, for example, in a tax
5 sale, if your bidder is overdone and it's
6 overturned, what happens?

7 MR. HALE: Well, then I'm going to be paid
8 back all my bid plus -- well, if it's overturned,
9 I'm just going to get my bid back.

10 THE COURT: All right.

11 MR. HALE: If you redeem, I'm going to get
12 my bid back plus all of my interest at 12 percent
13 for the -- assuming you wait until the very
14 last --

15 THE COURT: For a time period, right?

16 MR. HALE: Right.

17 THE COURT: So in this I want y'all to both
18 propose: If you do that, what should the remedy
19 be to allow me to exercise a redemption amount?

20 MR. MAYE: Your Honor, if I can just bring
21 one more --

22 THE COURT: Yes, sir.

23 MR. MAYE: -- point to the Court's
24 attention. Given that a lot of our discussion
25 today has dealt with a good faith purchaser for

1 value and bona fide purchaser for value, we
2 conducted some research on that issue as we knew
3 it would come up.

4 And as far as we could tell under South
5 Carolina Secretary of State's website, Regime
6 Solutions, LLC, is not a registered company
7 within South Carolina. And it's our opinion that
8 they're conducting business in buying and selling
9 properties repeatedly and -- or in violation of
10 statute in doing so.

11 So one of our arguments would be that
12 they're not a bona fide purchaser for value.

13 MR. HALE: And if I was to have known of
14 this argument, I would have brought the statute
15 out that says that they can buy and sell
16 property.

17 THE COURT: All right. I'll let y'all
18 address that in your memo.

19 MR. HALE: Thank you.

20 MR. MAYE: Thank you, Your Honor.

21 THE COURT: All right. Okay. All right?

22 So those three or four issues. And then if
23 there's anything else that y'all think that needs
24 to be addressed, copy each other in a memo and
25 say, "Oh, yeah, we think we need to address this

1 issue." All right?

2 MR. MAYE: Okay.

3 THE COURT: We will need a transcript. If
4 you will -- if you will share the memo, the trial
5 order with them (indicating).

6 MR. HALE: From the other case?

7 THE COURT: From Richland County. And I
8 understand it's a trial order, but if you'll
9 share a copy with them and then when you submit
10 your memo, just send it in to me and I'll read it
11 then.

12 MR. HALE: Very good.

13 THE COURT: All right? Can y'all think of
14 anything else?

15 MR. DAVIS: Your Honor, are you saying on
16 this -- this is -- this is a Richland County case
17 here?

18 MR. HALE: It is, but it's on appeal.

19 THE COURT: It's a trial order on appeal.

20 MR. DAVIS: Okay. Can we respond to this?

21 THE COURT: Yes.

22 MR. DAVIS: Very good.

23 THE COURT: Yes, that's what I'm saying is,
24 is all it is is persuasive authority right now
25 because it's --

1 MR. DAVIS: Okay.

2 THE COURT: -- a trial order under appeal,
3 but there has been lawyers and judges who've
4 dealt with it, so it's like any other trial
5 order.

6 All right. Now, Madam Court Reporter,
7 normal deal, if you will send the original
8 transcript to me. I'll file it. And when you
9 send it to me, courtesy copy one attorney to
10 their law firm and then -- do you want -- y'all
11 both want a transcript?

12 MS. MCSWEENEY: (Nods head affirmatively.)

13 MR. HALE: (Nods head affirmatively.)

14 THE COURT: Well, then give them your cards
15 and courtesy copy both of these attorneys. So
16 it'll be going out to three attorneys.

17 And that's your 30-day period to order it
18 and get your memo in, all right? Because you're
19 going to have to get your transcript from her, so
20 you need to probably get her card or just leave a
21 card with her.

22 And she's going to send the original and the
23 exhibits to me and say, "You said you filed it;
24 do it." Make sure it does get filed with the
25 clerk of court.

1 All right. Anything further?

2 MR. HALE: We just have our memos in from 30
3 days from the date that she e-mails it?

4 THE COURT: She mails it to me saying that
5 the transcript is ready.

6 Now, if something comes up and you need
7 additional time, just get together on a global
8 e-mail and get an agreement on when you're going
9 to submit it.

10 What we don't want to occur is one person to
11 send theirs in and then three days later the
12 other person say, "I need seven more days."

13 MR. HALE: Right.

14 THE COURT: And then you get into the
15 endless cycle of reply memos. Let's don't do
16 that. Not that that's ever happened with anybody
17 we know, but let's don't --

18 MR. HALE: My only concern is actually the
19 inverse of that, but I'll address that with them.
20 I'm just concerned that, you know, taxes probably
21 are coming due and stuff like that and I'm
22 imagining on the public index right now, that
23 notice is going to be coming to my client.

24 THE COURT: I believe the tax sale, if you
25 go by -- and y'all both would be interested in

1 this, if the mortgage company's not paying it --
2 is it escrowed?

3 MR. COFER: That's correct.

4 MR. HALE: Okay. Good.

5 THE COURT: So that might be something that
6 y'all confirm, that it's being paid.

7 But I did notice when I was making my daily
8 deposit, which we are required to do under the
9 new state system, they have a printed sheet at
10 the tax office over there for public consumption
11 and taking, all the dates on the tax sale; when
12 the notices are being mailed, when payments are
13 due, when the sale is out there. So y'all can go
14 by there and get the updated dates.

15 MR. MAYE: All right.

16 THE COURT: Okay. Thank you all.

17 MR. HALE: Thank you.

18 MS. MCSWEENEY: Thank you.

19 THE COURT: All right. Thank you.

20 (There being nothing further, the hearing
21 concluded at 3:06 p.m.)

22

23

24

25

1 CERTIFICATE OF REPORTER

2
3 I, Cassandra E. Vance, Court Reporter and
4 Notary Public in and for the State of South
5 Carolina, do hereby certify that I reported the
6 hearing of The Mill Homeowners Association, Inc.
7 v. Randall Cofer and Corey Cofer on the 14th day
8 of September, 2015; that the foregoing is a true
9 and accurate transcription taken by stenographic
10 means.

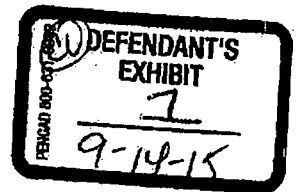
11 I further certify that I am neither attorney
12 nor counsel for, nor related to or employed by,
13 any of the parties connected with this action,
14 nor am I financially interested in said cause.

15 IN WITNESS WHEREOF, I have hereunto set my
16 hand and seal this 29th day of September 2015.

17
18
19
20 Cassandra E. Vance, Court Reporter
Notary Public for South Carolina

21 My commission expires: 2-26-2018
22
23
24
25

The Mill Homeowners Association, Inc.
c/o Southern Community Services



03/01/2013

Randall Cofer
Corey Cofer
113 Mill Haven Lane
Lexington, SC 29072

RE: Account # dr-mill 0175 10
Property 113 Mill Haven Ln., Lexington, SC 29072

Dear Homeowner:

Please find attached a statement indicating all delinquent assessments due from you to the Association as of 03/01/2013. If you feel that this past due invoice has been sent in error, please notify the Association immediately so any error may be corrected.

Payment of assessments is an obligation of every homeowner in the community. Each homeowner, by accepting a deed, agrees to abide by the By-Laws and/or Covenants for The Mill Homeowners Association, Inc..

If you fail to bring your account current within thirty (30) days from the date of this letter, the Association, without further notice, will turn your account over to the Association's attorney for collection as allowed by the By-Laws and/or Covenants for The Mill Homeowners Association, Inc.. The first action will be to place a lien against your property. The cost for filing a lien against your property will be charged by the attorney is \$425.00. Please note that this amount will be added to the lien being placed upon your property along with finance charges and/or collection cost. After the lien is placed, if you still choose not to satisfy your debt, the Association may instruct the attorney to proceed with a foreclosure action against you. Please note the attorney's fees and costs of approximately \$2,500.00 will be added to your account.

If you are having a financial hardship we do offer a payment plan. There is a \$30 convenience fee to set up a payment plan. Our payment plan consists of putting 25% down with 3 additional payments there after. You will need to contact SCS to set up a formal payment plan agreement.

The Association would like to avoid any type of legal action; however, the Association must treat all homeowners similarly and support the efforts of those who have paid their assessments.

All payments should be made payable to The Mill Homeowners Association, Inc. c/o SCS and mailed to the Association at PO BOX 290189 Columbia SC 29229. If you have any questions, please contact Sheri at 803-744-5361 or scothran@scs-carolina.com.

Thank you for your attention to this matter. We look forward to an amicable resolution.

Your current balance is \$592.00

Sincerely,

HOA Fees \$517.00

Sheri Cothran
Southern Community Services

Southern Community Services, LLC
PO BOX 290189 Columbia, SC 29229 • Telephone 803-865-5470 • Fax 803-865-5471



2013019535 FILED, RECORDED, INDEXED
04/22/2013 16:43:28:837
REC FEE: \$18.00 ST FEE: \$8.00
CO FEE: \$8.00 Pages: 2
Lexington County R.O.D. Debra H. Gunter
UNPAID ASSESSMENTS Bk:Pg 16227:22

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

The Mill Homeowners Association, Inc.,

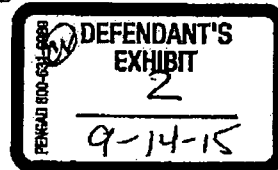
Plaintiff,

v.

Randall W. Cofer and Corey C. Cofer
Defendant(s).

IN THE COURT OF COMMON PLEAS

NOTICE OF LIEN



20143/8

YOU WILL PLEASE TAKE NOTICE that The Mill Homeowners Association, Inc. does hereby file the within Notice of Lien in connection with the unpaid assessments, fines, interest, costs and attorney's fees in the sum of \$1129.03 on charges, accrued as of April 17, 2013 which amount is justly due and owed to The Mill Homeowners Association, Inc. .

The premises affected by the lien is described as follows:

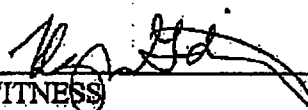
113 Mill Haven Lane

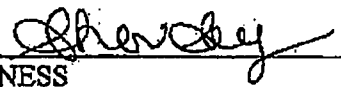
Located in Lexington County, South Carolina.

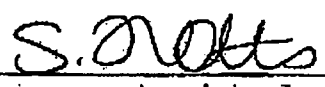
TMS NUMBER: 005332-01-079

The amount listed above as being due is the total amount due to The Mill Homeowners Association, Inc. as of the date of this Notice of Lien.

IN WITNESS WHEREOF, The Mill Homeowners Association, Inc. has hereunto set its hand and seal this 17th day of April, 2013.


WITNESS


WITNESS


The Mill Homeowners Association, Inc.
By: D. Ryan McCabe or Stephanie C. Trotter
Its: Counsel

After Recording Return To:
McCabe Trotter & Beverly, PC
PO Box 212069
Columbia, SC 29221

SAT

STATE OF SOUTH CAROLINA)

COUNTY OF Lexington)

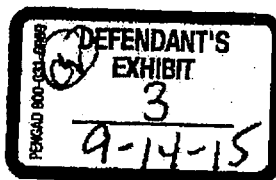
PERSONALLY appeared before me the undersigned, who states that (s)he saw the within The Mill Homeowners Association, Inc. by its Counsel, D. Ryan McCabe or Stephanie C. Trotter, sign seal and deliver the within Notice of Lien and that (s)he with the other witness witnessed the execution thereof.


WITNESS

SWORN to before me this 17th
day of April, 2013.


Notary Public of the State of South Carolina
My Commission Expires: 8-24-2021

THE MILL HOMEOWNERS' ASSOCIATION
C/O SOUTHERN COMMUNITY SERVICES
PO BOX 290189
COLUMBIA SC 29228
RETURN SERVICE REQUESTED



The Mill Homeowners' Association

***** AUTO**5-DIGIT 29072
2214558 3829WEBP 5073 1 1 1



RANDALL COFER
COREY COFER
113 MILL HAVEN LN
LEXINGTON SC 29072-8235

To receive future statements electronically,
visit <http://www.estmt.net>

Your Registration ID: 1148-0652-M7xL



DESCRIPTION OF CHARGES

RE: 113 Mill Haven Ln. Lexington SC 29072

Date	Description	Charges	Credits	Balance
01/01/2014	BALANCE FORWARD			822.00
01/01/2014	MASTER ASSOCIATION	517.00	0.00	
	NEW BALANCE			1,339.00

IMPORTANT MESSAGE

This is your notice of payment due for your 2014 Annual assessments. Please detach the payment coupon below and include with your check in the envelope provided. It will be mailed to our payment processing center. If you have any questions pertaining to your invoice, please contact our office at (803) 865-5470. You may also contact customersupport@scs-carolina.com. Please see the back of this invoice for more important information.

Thank you! We look forward to working with you and the community in the coming year!

Date Paid _____

Check # _____

Amount _____

The Mill Homeowners' Association 00013793

01/01/2014

\$1,339.00

RANDALL COFER
COREY COFER

Make Payable To: The Mill Homeowners' Association

THE MILL HOA
C/O SOUTHERN COMMUNITY SERVICES
PO BOX 531289
ATLANTA GA 30353-1289



Assn ID
OTMH

Mgmt ID
0989

0989 00000TMH R00184 00000000000013793 4 00133900 00133900 1



Dear Homeowner:

This billing statement is for your 2014 Annual assessments. All payments are due on January 1, 2014 and considered late if after 5:00 p.m. January 31, 2014.

Please note: All HOA payments, including automatic bill pay through your bank, should be made payable to your association and mailed to our lockbox with the coupon that is attached to your statement. That address is:

P.O. Box 531289, Atlanta, GA 30353-1289

According to the covenants, the Board of Directors has an obligation to enforce the delinquency process. Payments received after 5:00 p.m. on January 31, 2014 are considered thirty (30) days late and will be subject to association late fees and a \$10 administration fee. Accounts sixty (60) days past due will receive an attorney warning letter with additional administration fees and late fees added to your account. Accounts ninety (90) days past due will have a lien filed against the property with additional late fees and legal fees (minimum charge of \$450) applied to your account. Any late fees, administration fees, and/or legal fees incurred during this process will be the homeowner's responsibility. If you have a questions or concerns, please contact Sheri at scothran@scs-carolina.com or 803-744-5361.

Please note that if your account has been previously notified of legal action, this invoice does NOT reflect any additional legal fees charged by the attorney. Please contact the office of McCabe, Trotter, and Beverly at (803) 724-5002 for a full account balance and payment options.

Thank you,

Southern Community Services

Southern Community Services, LLC is an Accredited Association Management Company®

www.scs-carolina.com

PO Box 290189 • Columbia, SC 29229 • Telephone 803-865-5470 • Fax 803-865-5471

SCANNED

X

ORIGINAL

STATE OF SOUTH CAROLINA 2015 FEB -2 11:10:22 THE COURT OF COMMON PLEAS

KK

COUNTY OF LEXINGTON

DOCKET NO. 2014-CP-32-01270

The Mill Homeowners Association, Inc.

BETH A. GARRIGUE
CLERK OF COURT
LEXINGTON, SC

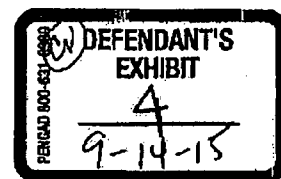
Plaintiff,

JUDGMENT OF FORECLOSURE AND SALE
Deficiency Judgment Waived

v.

Randall W. Cofer and Corey C. Cofer

Defendant(s).



(20143/8)

A hearing was held 01/26/2015. Evidence was presented, which is reported herewith, and from the evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Notice of Lien was filed on 04/22/2013 in Book 16227 at Page 22.
2. The Lis Pendens was filed on 04/02/2014.
3. The Summons and Complaint were filed on 04/02/2014.
4. Service was made upon all Defendant(s) as shown by the proof(s) of service filed herein.
5. The Defendant(s) are in default.
6. The Defendant(s) are not in the Military Service of the United States of America, as contemplated under The Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. seq. as shown by affidavit, certificate or order filed herein.
7. Attorney for the Plaintiff has fully complied with the South Carolina Supreme Court Administrative Order 2011-05-02-01 dated May 2, 2011.
8. All Pro Se Defendant(s) and all attorneys of record were notified of the time, date, and place of the hearing by letter and certificate of mailing of record herein.
9. On 07/31/2006 the Defendant(s) took title to the subject property located at 113 Mill Haven Lane. The Defendant(s), by taking title to the subject property agreed to the governing documents for Plaintiff, which are of record herein.
10. The titleholder(s) of record in and to the subject property as of the filing of the lis pendens in this action is/are Randall W. Cofer and Corey C. Cofer.

L

11. Payment of the assessment has not been made as provided for by the Declaration, and the Plaintiff has elected to require immediate payment of the entire amount due thereon. Plaintiff has placed it in the hands of the attorney herein for collection by filing a Notice of Lien for unpaid assessments and initiating a foreclosure of that lien.

12. The sum of \$2075.00 is a reasonable fee to allow as attorney fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the Declaration.

13. Specifically, the Plaintiff's attorney is entitled to \$425.00 for services performed in filing a Notice of Lien for delinquent assessments. This service required the Plaintiff's attorney to research public real property records to identify the subject property, research court records to determine if there are any pending actions against the subject property, prepare and coordinate filing and service of the Notice of Lien, coordinate any payoff requests or payment plans with the Defendant, and eventually satisfy the Notice of Lien upon payment by the Defendant.

14. Plaintiff's attorney is further entitled to the additional sum of \$1,650.00 for prosecuting the foreclosure action. This service required the Plaintiff's attorney to obtain and review a title abstract for the subject property, prepare and file a lis pendens, summons and complaint for foreclosure, arrange for personal service of the initial pleadings, review the file to determine whether service was properly achieved and whether the Defendant is in default, and prepare and file an Affidavit of Default when the Defendant failed to respond. The Plaintiff's attorney also had to prepare and file a proposed order of reference for this case. Once the court set a final hearing date, Plaintiff's attorney had to send notice to the Defendant at least ten days prior to the final hearing. Prior to this hearing, Plaintiff's attorney was responsible for drafting a proposed transcript of testimony, an affidavit of costs, an affidavit of attorney's fees, a certification that this case is not subject to Administrative Order 2011-5-02-01, a proposed order, and a proposed notice of sale. Upon execution of this Judgment, Plaintiff's attorney will be responsible for ensuring the foreclosure sale is properly advertised, bidding on her client's behalf at any foreclosure sale, and preparing post-sale documents if her client should be the highest bidder at the sale. If her client takes title to the property at the foreclosure sale, Plaintiff's attorney will also be responsible for prosecuting any eviction proceedings necessary to clear the property for Plaintiff's possession.

15. The sum of \$2075.00 is reasonable based on the time necessarily devoted to representation of the Plaintiff during the several-month course of these proceedings. The services of counsel performed for the Plaintiff, including the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case, also support the amount awarded. The fees are also reasonable given the professional standing of the Plaintiff's counsel and her experience in handling assessment lien foreclosure matters. The fees awarded herein are also reasonable since they are less than the fees customarily awarded by this court for similar services in this county. Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a prompt foreclosure. Services anticipated to be performed until final adjudication contemplate completion of this matter within a reasonable time and do not include exceptional circumstances delaying conclusion beyond the normal time.

16. After all payments received by the Plaintiff have been credited, the amount due and owing with interest at the rate provided in the Declaration, and other costs and expenses of the within action, including an attorney's fee, secured by the Declaration, is as follows:

(a)	Principal due.....	\$1247.30
(b)	Interest from 01/01/2013 through January 15, 2015 at 18.0000% per annum	\$294.74
(c)	Late Fees and Other Charges	\$460.00
(d)	Costs of collection prior to hearing (service, filing, etc.).....	\$542.80
(e)	Attorney's fee	\$2075.00
(f)	Payments	(\$0.00)
		+
	TOTAL debt secured by the Declaration, including interest to date shown.....	\$4619.84

Interest for the period from the date shown in (b) above through the date of this judgment at above stated rate to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of 18.0000% per annum (pursuant to the terms of the Declaration) on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Declaration through the date to which such interest is computed.

17. Plaintiff is seeking the usual foreclosure of the property and has expressly waived the right to a personal or deficiency judgment.

IT IS THEREFORE ORDERED THAT:

1. There is due the sum of \$4619.84, as set out in the Findings of Fact *supra*, together with interest at the rate provided herein on the balance of principal from the date aforesaid to the date hereof.

2. The amount due in the preceding paragraph (the "Final Total Debt" as set out in the Findings of Fact *supra*) shall accrue interest at the rate of the respective Declaration rate per annum and together with such interest shall constitute the total judgment debt due the Plaintiff.

3. The amount of the judgment shall be subject to increase to permit the Plaintiff to recover additional costs, commissions and expenses not included in the minimum deposit previously made in compliance with S.C. Code Ann. §14-11-310 (1976). It may also increase to include supplemental compensation for attorney's services not contemplated by the initial fee award. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs and/or supplemental compensation. Such additional costs, commissions and expenses may be established by affidavit.

4. The Defendant is liable for the aforesaid judgment debt including interest at the rate of 18.0000% per annum shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

5. On default of payment at or before the time herein indicated, the premises described in the Complaint, as hereinafter set forth, shall be sold by the Master in Equity at public auction, at the Lexington County Courthouse, in the City of Lexington, County and State aforesaid on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on the next business day succeeding such holiday), on the following terms, that is to say:

a. For cash: The Master in Equity will require a deposit of 5% on the amount of the bid (in cash or equivalent) same to be applied to purchase price if compliance is made, but in the event compliance is not made, the deposit may be forfeited without further hearing and applied first to costs of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse to either make the required deposit at time of bid or comply with the other terms of the bid within 20 days, then the property may be re-sold on the same terms and conditions on the same or some subsequent Sales Day, but at the risk of the defaulting bidder(s).

b. Interest on the balance of the bid shall be paid through the day of compliance at the rate of 18.0000%.

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

and restrictions and easements and restrictions of record, and any other senior encumbrances. Specifically, this sale is subject to a senior mortgage held by Mers for Network Funding, LP recorded in Book 11263 at Page 122.

d. Purchaser to pay for any statutory commission on sale from the proceeds of the final bid amount.

e. Purchaser to pay for deed preparation, costs of recording the deed, and transfer taxes on the deed.

6. The bidding will not remain open after the date of sale and compliance with the bid may be made immediately.

7. Plaintiff may waive any of its rights, including its right to a deficiency judgment in accordance with Rule 71, South Carolina Rules of Civil Procedure, prior to sale.

8. The Master in Equity will, by advertisement according to law, give notice of the time and place of such sale and the terms thereof and will execute to the purchaser, or purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and if, upon such sale being made, the purchaser, or purchasers, should fail to comply with the terms thereof within 20 days after date of sale, then the Master in Equity may advertise the said premises for sale on the next or some other subsequent sales day at the risk of the highest bidder and so from time to time thereafter until a full compliance shall be secured.

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

10. The Master in Equity will apply the proceeds of the sale as follows:

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

NEXT: To the payment to the Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest (including attorney fees) or so much thereof as the purchase money will pay on the same;

NEXT: Any surplus should be held pending further Order of this court.

11. The Defendant named herein, and all persons whosoever claiming under Defendant, are forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said premises so sold, or any part thereof.

12. In accordance with Rule 77(d), SCRCP, the Clerk of Court shall serve a notice of

entry of this Judgment of Foreclosure upon all parties not in default for failure to appear herein.

13. The deed of conveyance made pursuant to said sale shall contain the names of only the first-named Plaintiff and the first-named Defendant(s), and the Defendant(s) who was/were the titleholder(s) of the property at the time of the filing of the notice of pendency of the within action, and the name of the grantee; and the Register of Deeds/Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

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

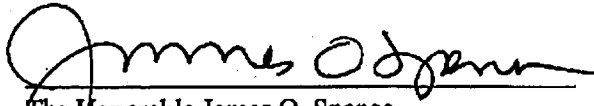
15. The following is a description of the premises herein ordered to be sold:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being near Lexington, County of Lexington, State of South Carolina, fronting on Mill Haven Lane, and being more particularly shown and delineated as Lot 175 of THE MILL Subdivision, Phase 2, on a plat prepared for Randall Cofer and Corey Cofer, by Cox and Dinkins, Inc., dated June 22, 2006, and recorded in Record Book 11263, page 119, in the Office of the Register of Deeds for Lexington County, and having such boundaries and measurements as will more fully appear by reference to said plat.

This being the same property to given to Randall W. Cofer and Corey C. Cofer by deed of D.R. Horton, Inc. dated 07/31/2006 and recorded in the Lexington County Register of Deeds Office on 08/01/2006 in Book 11263 at Page 120.

Property Address: 113 Mill Haven Lane

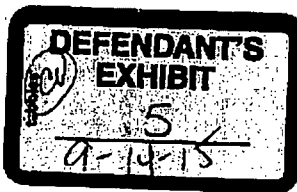
TMS: 005332-01-079


The Honorable James O. Spence
Master in Equity for Lexington County

Jan 27, 2015
Lexington, South Carolina

BETH A. CANNING
CLERK OF COURT
LEXINGTON COUNTY

2015 FEB - 2 AM 10: 22



ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

KK

COUNTY OF LEXINGTON

2015 FEB -2

FILE NO. 2014-CP-32-01270

The Mill Homeowners Association, Inc.
Plaintiff,

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON

STATEMENT OF INDEBTEDNESS
Deficiency Judgment Waived

v.

Randall W. Cofer and Corey C. Cofer

Defendant(s).

SCANNED

(20143/8)

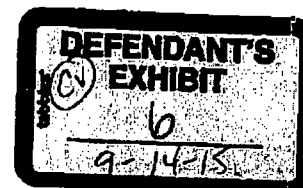
After all payments received by the Plaintiff have been credited, the amount due and owing with interest at the rate provided in the governing documents, and other costs and expenses of the within action, including an attorney's fee, secured by the governing documents, is as follows:

- (a) Principal due.....\$1247.30
- (b) Interest from 01/01/2013 through
January 15, 2015 at 18.0000% per annum\$294.75
- (c) Late Fees and Other Charges\$460.00
- (d) Costs of collection prior to
hearing (service, filing, etc.).....\$542.80
- (e) Attorney's fee\$2075.00
- (f) Payments(\$0.00)

TOTAL debt secured by the Declaration,
including interest to date shown.....\$4619.84

Stephanie C. Trotter
McCabe, Trotter & Beverly, P.C.
P. O. Box 212069
Columbia, South Carolina 29221
Telephone: 803-724-5002
Fax: 803-724-5001
Email: stephanie.trotter@mccabetrotter.com
Attorney for Plaintiff

Columbia, South Carolina
January 22, 2015



2006042481 FILED, RECORDED, INDEXED
 08/01/2006 15:17:45:420
 Rec Fee: \$10.00 St Fee: \$614.96
 Co Fee: \$268.15 Pages: 2
 Lexington County ROD Debra M. Gunter
 DEED Bk: Pg 11263:120

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

TITLE TO REAL ESTATE
 BY A CORPORATION

KNOW ALL MEN BY THESE PRESENTS, That

D. R. HORTON, INC.

(hereinafter called Grantor) in the State aforesaid, for and in consideration of the sum of Two Hundred Thirty-Six Thousand Three Hundred Eighty-Eight and No/100 (\$236,388.00) Dollars to it in hand paid at and before the sealing of these presents, by **RANDALL W. COFER** and **COREY C. COFER**, Husband and Wife (hereinafter called Grantees) of 113 Mill Haven Lane, Lexington, SC 29072, in the State aforesaid, (the receipt whereof is hereby acknowledged) has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, unto the said Grantees, as Joint Tenants With Right of Survivorship and not as tenants in common, their heirs and assigns:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being near Lexington, County of Lexington, State of South Carolina, fronting on Mill Haven Lane, and being more particularly shown and delineated as Lot 175 of THE MILL Subdivision, Phase 2, on a plat prepared for Randall Cofer and Corey Cofer, by Cox and Dinkins, Inc., dated June 22, 2006, and recorded in Record Book 11263, page 119, in the Office of the Register of Deeds for Lexington County, and having such boundaries and measurements as will more fully appear by reference to said plat.

22574
 NICHOLSON LAW FIRM

This being a portion of property conveyed to D. R. Horton, Inc. by deed of John Homer Mathias, Jr., William L. Mathias, Catherine E. Mathias, Amy M. Cleary, Barbara J. Mathias and John W. Mathias, dated April 22, 2004, and recorded in Record Book 9223, Page 173, in the Office of the Register of Deeds for Lexington County.

TMS# 005332-01-079

This conveyance is made subject to easements and restrictions of record and otherwise affecting the property.

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

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said Grantees, as joint tenants with right of survivorship, Their Heirs and Assigns forever.

COUNTY OF LEXINGTON

SOUTH CAROLINA

ONLINE SERVICES

SITE MAP

CONTACT US

Data last updated: 09/03/2015

TMS# 005332-01-079 [Show Map](#)**TAX YEAR:** 2015**OWNER:** COFER, RANDALL W & COREY C**ADDRESS:** 113 MILL HAVEN LN
LEXINGTON, SC 29072**PROPERTY ADDRESS:** 113 MILL HAVEN LN**LEGAL DESCRIPTION:** THE MILL PH II LOT 175 .22 AC**DEED BOOK & PAGE:** 11263-120**PLAT:** 11263-119**LAND USE:** 1001:RESIDENTIAL - IMPROVED**TAX DISTRICT:** 1**ASSESSMENT INFORMATION**

LOTS: 1
ACRES:
TAXABLE LAND: 30000
TAXABLE BUILDING: 193857
ASSESSMENT LAND: 1200
ASSESSMENT BUILDING: 7750
HOMESTEAD EXEMPTION: 0
TAX RELIEF EXEMPTION: 8950

BUILDING INFORMATION

SQUARE FOOT LIVING AREA: 2849
UNFINISHED AREA:
YEAR BUILT: 2006
NUMBER OF BEDROOMS: 4
NUMBER OF FULL BATHS: 3
NUMBER OF HALF BATHS:
HEATING SYSTEM:
HEAT: HT AND AIR-CENTRAL HEAT AND AIR

SALES INFORMATION

SALE DATE	SELLER	BUYER	PRICE	BOOK/PAGE
03/05/2015	COFER, RANDALL W & COREY C	REGIME SOLUTIONS LLC	4857	17498-335
07/31/2008	HORTON, D R INC	COFER, RANDALL W & COREY C	236388	11263-120

Lexington
CountyGood Friends and
Great Communities

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R00195



2015089717 FILED, RECORDED, INDEXED
 03/09/2015 09:21:31:398
 REC FEE: \$18.00 ST FEE: \$13.00
 CD FEE: \$5.50 Pages: 2
 Lexington County R.O.D. Debra M. Gunter
 DEED Bk:Pg 17496:335

MASTER'S DEED

STATE OF SOUTH CAROLINA
 COUNTY OF LEXINGTON

FORECLOSURE

To all whom these Presents shall concern:

I, James O Spence, as Master in Equity for Lexington County, in the said State, send Greetings:

WHEREAS, in a action in the Court of Common Pleas in Lexington County between
 ✓ Mill Homeowners Association Inc VS Randall W Cofer , defendant, et al Case No.
 ✓ 2014CP3201270, by an Order dated on January 29, 2015, it was decreed that the property
 hereinafter described should be sold by the Master in Equity for Lexington County on the terms
 and for the purposes mentioned in the order(s) granted in the case as by reference thereto will
 appear.

NOW THEREFORE KNOW ALL MEN, That I, the undersigned, as Master in Equity for ✓
 Lexington County, pursuant to the foregoing and in consideration of the sum of \$4,857.00 as
 paid by the hereinafter named grantee, the receipt whereof is hereby acknowledged, have
 granted, bargained, sold, and released, and by these presents do grant and release unto the
 grantee, Regime Solutions, LLC, the following described property:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being near
 Lexington, County of Lexington, State of South Carolina, fronting on Mill Haven Lane, and being more
 particularly shown and delineated as Lot 175 of THE MILL Subdivision, Phase 2, on a plat prepared for
 ✓ Randall Cofer and Corey Cofer, by Cox and Dinkins, Inc., dated June 22, 2006, and recorded in Record
 Book 11263, page 119 , in the Office of the Register of Deeds for Lexington County, and having such
 boundaries and measurements as will more fully appear by reference to said plat.

This being the same property to given to Randall W. Cofer and Corey C. Cofer by deed of D.R. Horton,
 Inc. dated 07/31/2006 and recorded in the Lexington County Register of Deeds Office on 08/01/2006 in
 Book 11263 at Page 120. -

Property Address: 113 Mill Haven Lane -
 TMS# 005332-01-079 -

Grantee Address -
P.O. Box 65417
Orange Park FL 32065

TOGETHER with all and singular the hereditaments, rights, members, and appurtenances
 whatsoever to the said property belonging or in any wise incident or appertaining, and the
 reversions and remainders, rents, issues, and profits thereof, and also any estate, right, title,
 interest, dower, possession, benefit, claim, or demand therein whatsoever of all parties to the said
 suit and of all other persons who might rightfully claim the same or any part thereof, by, from, or
 under them, or either of them;

TO HAVE AND TO HOLD the said property, with its hereditaments, privileges, and
 appurtenances; unto the said grantee, his/her/its/their heirs/successors and assigns for their own
 use, benefit, and behoof, forever.

IN WITNESS WHEREOF, I, the undersigned, as Master in Equity for Lexington County, under and by virtue of the said order(s) have hereunto set my Hand and Seal this the 5th day of March, 2015, in the year of our Lord, 2015, and in the two hundred thirty nine year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED, AND DELIVERED
in the Presence of:

Lester M. Shady
(Witness)
Gail R. Faircloth
(Witness)

James O. Spence (L.S.)
James O Spence
Master-in-Equity, Lexington County

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, Gail R. Faircloth, do hereby certify that James O Spence, as Master in Equity for Lexington County, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 5th day of March, 2015

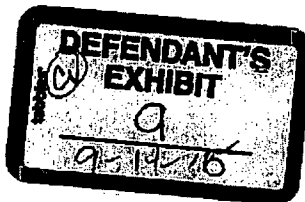
Gail R. Faircloth
Notary Public for South Carolina

My Commission expires: 9-25-24

ENTER IN GRANTOR INDEX: 1. Judge of the Master-in-Equity for
Lexington County
2. Randall W. Cofer and Corey C. Cofer



Return Mail Operations
PO Box 14411
Des Moines, IA 50306-3411



Statement date 08/13/15
Loan number 0202724084
Property address
113 MILLHAVEN LN
LEXINGTON SC 29072

Customer Service Online
wellstargo.com

Fax
1-866-278-1179

Telephone
1-866-234-8271

Correspondence
PO Box 10335
Des Moines, IA 50306

Hours of operation
Mon - Fri 8 a.m. - 10 p.m.
Sat 8 a.m. - 2 p.m. CT

Payments
PO Box 660455
Dallas TX 75266

We accept telecommunications relay service calls.



1AT 02292/018292/002292.0060 1 ACT9Z5 708
COREY C COFER
113 MILLHAVEN LN
LEXINGTON, SC 29072-8235

Payment summary

Principal	\$240.04
Interest	\$648.75
Escrow	\$274.02
Current payment 09/01/15	\$1,162.81
Overdue payment(s) 08/01/15	\$1,289.82
Total payment due 09/01/15	\$2,452.63
After 09/16/15 a late charge may apply	\$44.44

Balance summary

Unpaid principal balance	\$124,799.32
Unapplied funds balance	\$124.38
Escrow balance	\$1,795.27
(Contact Customer Service for your payoff balance)	
Interest rate	6.250%
Maturity date	08/36

Year to date summary

Total received*	\$10,540.76
Principal	\$1,866.35
Interest**	\$5,243.97
Escrow	\$3,208.24
Fees and other charges	\$222.20

*This total may include the Unapplied funds balance from the Balance summary section.

**This information should not be used for tax purposes. If you have tax related questions please consult your tax advisor.

Activity since your last statement

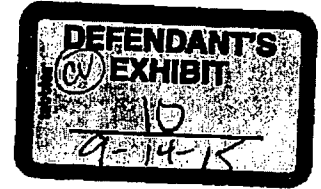
Date	Description	Total	Principal	Interest	Escrow	Other
08/11	Payment	\$1,289.82	\$237.56	\$651.23	\$401.03	

Important messages

Make life easier

Looking for a way to simplify your finances? The Preferred Payment PlanSM is a convenient, flexible way for you to manage your mortgage payments and money. Check out wellstargo.com/payonline or call 1-866-386-8539 to enroll.

2004049778 FILED, RECORDED, INDEXED
05/17/2004 09:44:35
Rec Fee: \$68.00 St Fee: \$12.00
Co Fee: \$8.00 Pages: 62
Lexington County ROD Debra H. Bunter
RESTRICTIONS Bk: Pg 9573:309



DECLARATION
OF
PROTECTIVE COVENANTS
FOR
THE MILL
SUBDIVISION

Upon recording please return to:

Whitener & Wharton, P.A.
2001 Park Street
Columbia, South Carolina 29201

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DECLARATION OF PROTECTIVE COVENANTS

FOR

THE MILL SUBDIVISION

THIS DECLARATION is made on this the 24th day of August, 2004 by **D.R. HORTON, INC.** (herein referred to sometimes as "D.R. Horton, Inc." and sometimes as the "Declarant").

WITNESSETH

WHEREAS, D.R. Horton, Inc. is the owner of the property described on Exhibit "A," attached hereto and incorporated herein by reference; and

WHEREAS, D.R. Horton, Inc. desires to subject its property described on Exhibit "A" and possibly other property, to the covenants, conditions, easements and provisions of this Declaration in order to create one or more residential communities, initially to be known as the "The Mill subdivision"; and

WHEREAS, D.R. Horton, Inc. as Declarant intends to develop the real property in phases, but reserves the right to remove any portion of the undeveloped property described on Exhibit "A" from the provisions of this Declaration by filing a written instrument in the office of the Register of Deeds for Lexington County, SC, removing such property; and

WHEREAS, Declarant desires to provide for the preservation of the value and amenities of the property and to assure a flexible and appropriate development and improvement of the property for the overall benefit of the entire development; and

WHEREAS, the Declarant intends by this Declaration to impose upon the property certain covenants, conditions, easements and restrictions for the administration, maintenance, preservation, use and enjoyment of the property under a general plan of development, and desires to provide for the management of the property and any amenities by means of a homeowners association which shall hold title to the common areas for the use and benefit of the owners.

DEDICATION OF PROPERTY:

NOW THEREFORE, D.R. HORTON, INC. hereby declares that the real property described on Exhibit "A" of this Declaration (the "Property"), including any improvements which may be (but are not required to be) constructed on the Property, is subjected to the provisions of this Declaration. Such real property shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens contained in this Declaration. The provisions of this Declaration shall run with the title to the property subjected to this Declaration. This Declaration shall be binding on all persons having any right, title, or interest in all or any portion of the property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion thereof.

ARTICLE I **DEFINITIONS**

The following capitalized words, when used in this Declaration (unless the context shall prohibit), shall have the following meanings:

"Area of Common Responsibility" shall mean the Common Area, together with such other areas, if any, for which the Association has responsibility pursuant to this Declaration, any recorded plat, other covenants, contracts, or agreements.

"Association" shall mean The Mill Homeowners Association, Inc., a South Carolina nonprofit corporation, its successors and assigns, which shall govern The Mill subdivision.

"Board" or "Board of Directors" shall mean the governing body of the Association, selected as provided in the By-Laws.

"By-Laws" shall refer to the By-Laws of the Association, attached as Exhibit "B."

"Common Area" shall mean, if any, the real property, interests in real property, and personal property, easements, and other interests, together with improvements located on that property (if any) which are now or are hereafter owned by the Association for the common use and enjoyment of some or all of the Owners, whether or not specifically designated as "common area" on any recorded plat.

"Community" shall mean the real property and interests described on Exhibit "A" and such additions to that property as may be made by Declarant or by the Association pursuant to this Declaration.

"Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Association's Board of Directors. Such determination must be consistent with the Community-Wide Standard originally established by the Declarant.

"Declarant" shall mean D.R. Horton, Inc. The Declarant may appoint and designate a successor Declarant by designating such appointment or designation in a deed filed in the real property records of the office of the Register of Deeds of Lexington County, South Carolina.

"Declaration" shall mean this Declaration of Protective Covenants for The Mill subdivision and shall include any amendment or Supplementary Declaration hereto.

"Lot" shall mean any plot of land within the Community, whether or not improvements are constructed on that land, which constitutes or will constitute, after the construction of improvements, a single-family dwelling site as shown on a plat recorded in the land records of Lexington County, South Carolina. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, all of the right, title, and interest of an Owner in the Common Area and membership in the Association.

"Mortgage" shall mean any mortgage, security deed, deed of trust, or similar instrument used for the purpose of encumbering real property in the Community as security for the payment or satisfaction of an obligation.

"Mortgagee" shall mean the holder of a Mortgage.

"Occupant" shall mean any Person occupying all or any portion of a Lot or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

"Open Space" means land and/or water within the Community, owned by the Association, which is designed and intended for the common use or enjoyment of each Owner, which may contain such accessory structures and improvements as are necessary and appropriate for passive recreational purposes and utilities, but which may not be further subdivided and which is or may be designated as "Open Space," "Common Area," or "Amenity Area" on the plat or plats of the property subjected to this Declaration. All Open Space shall be considered part of the Common Area, but all Common Area is not as restricted as Open Space is. The Association shall determine whether an area constitutes an "Open Space," subject to the restrictions contained in this Declaration.

"Owner" shall mean the record owner, whether one or more Persons, of the fee simple title to any Lot located within the Community; excluding any Person holding such interest merely as security for the performance or satisfaction of any obligation.

"Person" means a natural person, corporation, joint venture, partnership (general or limited), limited liability company, limited liability partnership, association, trust, or other legal entity.

"Supplementary Declaration" means an amendment or supplement to this Declaration which subjects additional restrictions and obligations on the land described therein, or both.

"Total Association Vote" means all of the votes attributable to members of the Association. If the Total Association Vote is taken during a time while Declarant has the right to appoint members of the Board of Directors, a Total Association Vote approving some item or proposition must contain the affirmative vote of Declarant or the item or proposition will be deemed not to have been approved.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

2.1. Property Subjected to this Declaration. The real property which is subject to the covenants and restrictions contained in this Declaration is the real property described in **Exhibit "A."**

2.2 Other Property. Only the real property described in Section 2.1 is made subject to this Declaration. However, Declarant may subject additional property to this Declaration by recording one or more amendments hereto or supplementary declarations. Declarant specifically reserves right, but shall not be obligated, to annex additional property into the subdivision and Declarant specifically reserves the right, but shall not be obligated to impose these covenants and restrictions upon said additional property.

2.3 Removal of Property Subjected to this Declaration. There is no guarantee being given by Declarant that all of the property made subject to this Declaration will be developed and/or will remain subject to this Declaration. Declarant expressly reserves the right to remove, and shall have the right to release, all or any portion of the undeveloped property described on **Exhibit "A"** from the provisions of this Declaration, at any time, in its sole discretion by filing a written instrument in the office the Register of Deeds for Lexington County, SC, removing such property. The determination of whether such property shall be considered "undeveloped" shall be in the sole discretion of the Declarant.

ARTICLE III

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

3.1 Membership. Except as otherwise stated in this Declaration, every Owner of a Lot in the Community shall be deemed to have a membership in the Association. If a Lot is owned by more than one Person, there shall be only one (1) membership per Lot, and the votes and rights of use and enjoyment shall be as provided in this Declaration and in the By-Laws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote be cast nor more than one (1) office held for each Lot owned, except as otherwise stated in this Declaration.

3.2 Voting. The Association shall have two (2) classes of voting membership:

(a) **Class A:** Class A members shall be all Owners with the exception of the Declarant and shall be entitled to **one (1) vote** for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members and shall be entitled to rights of membership and of the use and enjoyment appurtenant to such ownership. The vote for each such Lot shall be exercised as they among themselves determine, and the Secretary of the Association shall be notified of such designation prior to any meeting, but in no event shall more than one vote be cast with respect to any such Lot. In the absence of such notification, the vote allocated to such particular Lot shall be suspended in the event more than one person or entity seeks to exercise the right to vote. Any Owner of a Lot which is leased may assign his voting right to the tenant, provided that a copy of the assignment is furnished to the Secretary of the Association prior to any meeting at which the tenant exercises the voting right. In the event the Owner is an entity, that entity shall, by written resolution, designate the individual who shall be authorized to exercise the voting rights of that Lot and shall deliver an original or certified copy of such written resolution to the Secretary of the Association, who shall file it with the Association's books and records.

(b) **Class B:** The Class B member(s) shall be the Declarant and any successor of Declarant who takes title to all or a portion of the Property for the purpose of development and sale and who is designated as a successor declarant in a recorded instrument in accordance with this Declaration. Declarant shall be entitled to five (5) votes for each Lot owned and five (5) votes for each one-half (0.50) of an acre of undeveloped land owned and subjected to this Declaration. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(1) December 31, 2010; or

(2) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

Notwithstanding the provisions above, the Class B membership shall not terminate if, within one hundred twenty (120) days after the condition set forth in Section 3.2(b)(2) is fulfilled, all or a portion of any additional property is incorporated into the Community and as a result, the number of votes of the Class B member(s), determined on the basis of five (5) votes per Lot owned, is greater than the number of votes held by Class A members. From and after the termination of the Class B membership, Declarant and any designated successor Declarant shall be entitled to one (1) vote for each Lot owned. At such time, or at any earlier time as Declarant may desire to voluntarily relinquish its Class B membership, Declarant shall call a meeting of the Owners to inform the members of the termination of the Class B membership and to transfer control of the Association to the Owners, to be evidenced by a written notice recorded in the office of the Register of Mesne Conveyances for Lexington County, South Carolina.

3.3 Association as Successor to Declarant. Upon the termination of the Class B membership as described above, the Association shall succeed to all of the rights, duties and responsibilities of the Declarant under this Declaration. The Association shall not, however, succeed to any rights of Declarant regarding any portion of any additional property which has not then been annexed to, and incorporated within, the Community, nor succeed to the any rights of the Declarant regarding any portion of undeveloped Property subjected to this Declaration that may be removed by the Declarant. The Association may delegate any of such rights, duties and responsibilities to the Architectural Review Committee or to any other committee or entity which it may choose to form.

ARTICLE IV ASSESSMENTS

4.1 Purpose of Assessment. The assessments provided for in this Declaration shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots, as may be authorized from time to time by the Board. The assessments levied by the Association shall also be used for the administration, operation, improvement, maintenance, use and enjoyment of the Common Area, including the streets, the entrance landscaping to the subdivisions, whether or not located on Common Area, and including, but not limited to, the cost of repairs, replacements, additions, insurance, labor, equipment, materials, management and supervision, other personnel or contract services deemed appropriate, establishing a maintenance and replacement reserve, repaying loans incurred by the Association, including interest, the payment of taxes assessed against such Common Area, and the employment of attorneys, accountants and other professionals to represent the Association when necessary, and to provide such other services which the Association determines to be necessary or desirable. Additionally, in the event that any Owner fails to properly maintain the exterior of such Owner's residence, including the yard and any fence or fences on such Owner's Lot, the Board of Directors of the Association may, by majority vote, levy a special assessment against the Owner of such Lot, which assessment shall be in an amount equivalent to that required to properly maintain the exterior of such residence, fence, fences or yard or may expend portions of the assessments for maintenance of the exterior of such Owner's residence, yard or fence, in which event, the Owner shall be assessed for such expense of maintenance as provided for herein.

4.2 Creation of the Lien and Personal Obligation for Assessments. For each Lot owned within the Community, each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees, and is deemed to covenant and agree, to timely pay the Association: (1) annual assessments or charges, including any street maintenance, entrance landscaping, whether or not located on Common Area, and privacy costs, which assessments or charges may be assessed and/or collected on such basis as the Association deems appropriate, and (2) special assessments for capital improvements and other purposes, such assessments to be established and collected as hereinafter provided; and (3) default assessments which may be assessed against an Owner's Lot for failure to perform an obligation under this Declaration, or because the Association has incurred an expense on behalf of an Owner.

under this Declaration or the Association documents. Declarant shall not be obligated to pay assessments for Lots which they own until such time as Lots owned by them are shown on a survey recorded in the office of the Register of Deeds for Lexington County, South Carolina, and such assessments shall be paid on such Lots prorata from the date of the recording of the survey, or in lieu thereof, Declarant may elect to pay assessments in accordance with Section 4.14 hereinbelow, or Declarant may elect to fund all or a portion of any initial budget deficits, the option of which shall be in Declarant's sole discretion.

4.3 Late Charges. All assessments shall accrue late charges, interest (not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due), and costs, including, without limitation, reasonable attorney's fees actually incurred. The assessments and charges shall be a continuing lien upon the Lot against which each assessment is made, and shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due and upon such Owner's successor in title if unpaid on the date of the conveyance of such Lot.

4.4 Personal Liability. Each Owner shall be personally liable for the portion of each assessment coming due while the owner of a Lot, and each grantee of an Owner, shall be jointly and severally liable for the assessments which are due at the time of conveyance; however, the liability of a grantee for the unpaid assessments of its grantor or immediately preceding Owner shall not apply to any first Mortgagee taking title through foreclosure proceedings, in which event, the prior owner shall continue to remain liable.

4.5 Certificate of Payment. The Association shall, within five (5) business days after receiving a written request, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate shall be binding upon the Association as of the date of issuance. The Board shall have the right to impose a reasonable charge for providing this certificate.

4.6 Annual Assessments. Annual assessments shall be levied equally on all Lots and shall be paid in such manner and on such dates as may be fixed by the Board. The Board may, in its sole discretion, distinguish between the occupied Lots and the unoccupied Lots for the purpose of annual assessments. If the Board sets a lower assessment for the unoccupied Lots, the Owner of an unoccupied Lot may not use the Common Areas unless such Owner pays the assessment established by the Board for occupied Lots. The Board may allow annual assessments to be paid in monthly, quarterly, semi-annual or annual periodic payments as determined by the Association's Board of Directors, and the Board shall have the right to accelerate any unpaid installments in the event an Owner is delinquent. Unless otherwise provided by the Board, the annual assessment shall be paid in annual installments. Declarant shall not be obligated to pay assessments for Lots which they own until such time as Lots owned by them are shown on a survey recorded in the office of the Register of Deeds for Lexington County, South Carolina, and such assessments shall be paid on such Lots prorata from the date of the recording of the survey, or in lieu thereof, Declarant may elect to pay assessments in accordance with Section 4.14 hereinbelow, or Declarant may elect to fund all or a portion of any initial budget deficits, the option of which shall be in Declarant's sole discretion.

4.7 Computation of Annual Assessments. The Board shall prepare a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve. The Board shall cause the budget and the assessments to be mailed or delivered to each member at least thirty (30) days prior to the end of the current fiscal year. The budget and the assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote. In the event the membership disapproves the proposed budget, or the Board fails to establish a budget for the succeeding year, the budget in effect for the then current year shall continue for the succeeding year until changed by the Board. In the event the Board's budget is disallowed, the Board shall have the right to make a new budget retroactive to the start of the fiscal year.

4.8 Special Assessments. In addition to the other assessments authorized by this Declaration, the Association may levy special assessments from time to time. Special assessments must be approved at a meeting by two-thirds (2/3) of the Class A Members and the approval of the Class B member(s) who are voting in person or by proxy at a meeting duly called for this purpose. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed. The Association may also determine special assessments on Owners for the following Association expenses (except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association):

(a) expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefitted according to the benefit received; and

(b) expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

(c) **For Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements upon any Common Area, including the streets, entrance walls, signs, and landscaping, including fixtures and personal property related thereto, or to make up any deficit or shortage in the current year's budget; provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of Class A members and the approval of the Class B member(s) who are voting in person or by proxy at a meeting duly called for this purpose. All special assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, semi-annual or annual basis as determined by the Association's Board of Directors. Notice of the amount and due dates for such special assessments must be sent to each Owner at least thirty (30) days prior to such due date.

(d) **For Exterior Maintenance, Yard and Fence.** In addition to the annual assessments authorized above, in the event that any Owner fails to properly maintain the exterior of such Owner's residence, including the yard and any fence or fences on such Owner's Lot, the Board of Directors of the Association may, by majority vote, levy a special assessment against the Owner of such Lot, which assessment shall be in an amount equivalent to that required to properly maintain the exterior of such residence, fence, fences or yard or may expend portions of the assessments for maintenance of the exterior of such Owner's residence, yard or fence, interest and penalty, in which event, the Owner shall be assessed for such expense of maintenance, interest and penalty.

4.9 Lien for Assessment. All sums assessed against any Lot, Owner, or member pursuant to this Declaration shall be secured by a lien on such Lot in favor of the Association.

4.10 Priority. The lien of the Association shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes; (b) liens for all sums unpaid on a first priority Mortgage or deed to secure debt, or (c) a lien arising by virtue of any Mortgage in favor of Declarant which is duly recorded in the land records of the county where the Community is located. All other Persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded shall be deemed to acknowledge that their liens shall be inferior to the lien of the Association for assessments in existence at that time or which arise in the future.

4.11 Effect of Nonpayment of Assessment. Any assessments (or installments) which are not paid when due shall be delinquent. Any assessment (or installment) which is delinquent for a period of more than ten (10) days shall incur a late charge in an amount set by the Board. If the assessment is not paid within thirty (30) days, a lien shall attach to the Owner's Lot. The lien shall cover all assessments then due or which come due until the lien is cancelled of record, and any other amounts provided in this Declaration or permitted by law. In the event that the assessment remains unpaid after thirty (30) days, the Association may, in its sole discretion, may take any or all of the following action:

(a) Assess an interest charge from the date of delinquency at the rate per annum two points above the prime rate charged by the Association's bank, or such other rate as shall have been established by the Board of Directors;

(b) Assess a late charge at the rate established by the Board per delinquency or such other charge as shall have been established by the Board of Directors;

(c) Suspend the voting rights of the Owner during any period of delinquency;

(d) Accelerate all remaining assessments for the fiscal year in question so that unpaid assessments for the remainder of the fiscal year shall be due and payable at once;

(e) Bring an action at law or in equity against the Owner personally obligated to pay the delinquent assessment by instituting suit to collect such amounts and foreclose its lien against the Lot, and interest, costs of collection and reasonable attorneys fees of such action of foreclosure shall be added to the amount of such assessment. The Association shall have the right to foreclose its lien through any method allowed by law. The Association shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, and convey the same.

No Owner may waive or otherwise escape liability of the assessments provided for herein by non-use of the Common Area or abandonment of such Owner's Lot.

4.12 No Set Off or Deduction. No Owner may waive or otherwise exempt himself from liability for the assessments provided for in this Declaration. No setoff, diminution, or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action, for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority. The obligation to pay assessments is a separate and independent covenant on the part of each Owner and is not subject to setoff.

4.13 Application of Payments. All payments shall be applied first to costs, then to late charges, then to interest, and then to delinquent assessments.

4.14 Date of Commencement of Assessments. Assessments shall start on the first day of the month following the sale of the Lot to a Person other than Declarant. The first annual assessment shall be adjusted according to the number of days then remaining in that fiscal year.

4.15 Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant may (but shall not be required to):

(a) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association and the sum of the annual, special, and specific assessments collected by the Association in any fiscal year. Such advances by the Declarant to fund any deficits may, at Declarant's option, be paid in lieu of any assessments on Lots owned by Declarant. Such advances shall, upon request of Declarant, be repaid from assessments or may be evidenced by promissory notes from the Association in favor of the Declarant. The failure of Declarant to obtain a promissory note shall not invalidate the debt; or

(b) cause the Association to borrow such amount, or a general borrowing from a third party at the then prevailing rates for such a loan in the local area of the Community. Declarant, in its sole discretion, may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Area or any

of the improvements maintained by the Association shall be given in connection with such loan; or

(c) acquire property for, or provide services to, the Association or the Common Area. Declarant shall designate the value of the property or the services provided and such amounts, at the request of the Declarant, be evidenced by a promissory note. Failure to obtain a promissory note shall not invalidate the obligation referred to in this Section.

**ARTICLE V
MAINTENANCE & CONVEYANCE
OF COMMON AREA TO ASSOCIATION**

5.1 Association's Responsibility. (a) The Association shall maintain in good repair the Common Area, including (without limitation) maintenance, repair, and replacement of all landscaping and improvements situated on the Common Area. The Association shall also maintain all detention ponds and areas in or about the Community or any Lot thereon, if any, to the extent maintenance of such is required and is not otherwise maintained by a governmental entity or third party.

(b) The Association shall also maintain all Community entry features, Common Areas, and operate and maintain street lights (if not maintained and operated by a governmental entity) for the Community including the expenses for water and electricity, if any, provided to all such entry features, Common Areas, and street lights; all storm water detention facilities and easements serving the Community (to the extent such facilities and easements are not maintained by a governmental entity); and all property outside of Lots located within the Community which was originally maintained by Declarant.

(c) The Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Community, where the Board has determined that such maintenance would benefit the Owners.

(d) In the event that the Association determines that the need for maintenance, repair, or replacement of property described above is caused through the willful or negligent act of an Owner, or the family, guests, lessees, or invitees of any Owner, and is not covered or paid for by insurance, in whole or in part, then the Association may perform such maintenance, repair, or replacement at such Owner's sole cost and expense, and all costs thereof shall be an special assessment against such Owner subject to the Association's lien and collection rights provided for in this Declaration.

(e) All maintenance shall be performed consistent with the Community-Wide Standard.

5.2 Owner's Responsibility. Except as provided in Section 5.1(a) above, all maintenance of the Lot and all structures, parking areas, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall

maintain such Lot in a manner consistent with the Community-Wide Standard and this Declaration. In the event that the Board determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair, or replacement of items for which such Owner is responsible, the Association may perform such maintenance, repair, or replacement for the Owner at the expense of the Owner. Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work, which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at such Owner's sole cost and expense, and all costs shall be assessed against the Owner as a special assessment.

5.3 Conveyance of Common Area by Declarant to Association. The Declarant may convey to the Association any personal property, any improved or unimproved real property, leasehold, easement, or other property interest located within or adjacent to the Community. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Area to be maintained by the Association for the benefit of all or a part of its members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section.

ARTICLE VI

ARCHITECTURAL REVIEW

6.1 Purpose. In order to maintain a high quality residential development, to assure that all houses and other structures are of appropriate size, harmonious in design, properly located in relationship to neighboring structures and adapted to the terrain of each Lot, Declarant has retained full architectural control as herein provided. Accordingly, no building, fence, wall or other structure of any kind, or alterations or additions or change of exterior appearance thereto shall be commenced, erected or maintained upon the Property or any Lot until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing by Declarant or by the Architectural Control Committee, as defined in Section 6.2 of this Article.

6.2 Architectural Review Committee. (a) The "Architectural Review Committee" shall mean, as follows: So long as Declarant owns any portion of the property subjected to this Declaration, the Architectural Review Committee shall mean the Declarant, unless Declarant shall elect to transfer such control to the Association or to an Architectural Review Committee whose members shall be Lot Owners.

(b) The Architectural Review Committee may be established such that it is divided into two (2) subcommittees, with one (1) subcommittee having jurisdiction over modifications and the other having jurisdiction over new construction.

(c) The Board may employ architects, engineers, or other persons as it deems necessary to enable the Architectural Review Committee to perform its review.

(d) The Architectural Review Committee may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified Persons, which shall have full authority to act on behalf of the committee for all matters delegated.

(e) Written design guidelines and procedures shall be promulgated for the exercise of this review, which guidelines may be provided to Owners for a reasonable fee.

(f) So long as the Declarant owns any property for development or sale in the Community, the Declarant shall have the right to appoint all members of the Architectural Review Committee. Upon the expiration or earlier surrender in writing of such right, the Board shall appoint the members of the Architectural Review Committee.

(g) At such time as all of the Lots in the Community have been fully developed, permanent improvements constructed thereon, and such Lots have been sold to permanent residents, or at such time as Declarant desires to transfer control to an Architectural Review Committee, the Declarant shall notify the President of the Board of Directors of the Association to that effect. Declarant will then execute a written instrument transferring control to the Board of Directors of the Association and record it in the office of the Register of Mesne Conveyances for Lexington County, South Carolina. Thereupon, the Declarant's rights and obligations as the Architectural Review Committee shall forthwith terminate; and, thereafter, the Board of Directors of the Association shall have the right, power, authority, and obligation to establish a successor Architectural Review Committee and prescribe rules and regulations pursuant to which such Committee shall serve and act. Any such successor Architectural Review Committee shall be composed of at least three (3) but not more than seven (7) Owners. The term of each committee member shall be determined by the Board of Directors of the Association.

6.3 Review and Approval of Plans. (a) No building, fence, wall or other structure of any kind, or alteration or addition or change of exterior appearance thereto, may be commenced, erected or maintained on any Lot, until two (2) sets of plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to the Architectural Review Committee for written approval (i) as to conformity and harmony of external design and general quality with the standards of the Community and (ii) as to the location of structures in relation to surrounding structures and topography and finished ground elevation. The Architectural Review Committee reserves the right in its sole discretion to approve or disapprove all plans and specifications submitted. In the event the Architectural Review Committee fails to approve or disapprove such design and location within forty-five (45) days after said plans and specifications have been submitted in writing, Owner shall, by certified mail to

the Architectural Review Committee, addressed to the office of the Architectural Review Committee, state the date the plans were submitted originally, the date of the plans, the person preparing the plans and a request for approval. If Owner has not received a reply from the Architectural Review Committee within fifteen (15) days of the date such notice was mailed, the approval by the Architectural Review Committee will not be required.

(b) As a condition of approval under this Section, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration. In the discretion of the Architectural Review Committee, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest. The Architectural Review Committee shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction that is in violation of these restrictions. Any Board member or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these Persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Association, in the event of noncompliance with this Section, the Board may, as provided in this Declaration, record in the appropriate land records a notice of violation naming the violating Owner.

(c) Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the Architectural Review Committee including, but not being limited to:

(1) a site plan showing the location of all proposed and existing structures on the Lot including building setbacks, open space, driveways, walkways and parking spaces, including the number thereof;

(2) a foundation plan;

(3) a floor plan;

(4) exterior elevations with cross-sections of all proposed structures and alterations to existing structures, as such structures which will appear after all backfilling and landscaping are completed;

(5) specifications of materials, color scheme, lighting schemes and other details affecting the exterior appearance of all proposed structures and alterations to existing structures; and

(6) plans for landscaping and grading.

(d) Upon approval by the Architectural Review Committee of any plans and specifications submitted pursuant to this Declaration, a copy of such plans and specifications, as approved, shall be deposited for permanent record with the Architectural Review Committee and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Lot or structure of any plans and specifications shall not be deemed a waiver of the Architectural Review Committee's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot or structure. Approval of any such plans and specifications relating to any Lot or structure, however, shall be final as to that Lot and structure and such approval may not be rescinded thereafter, provided that there has been strict adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

(e) Neither Declarant, nor any member of the Architectural Review Committee shall be responsible or liable in any way for any defects in any plans or specifications approved by the Architectural Review Committee, nor any structural defects in any work done according to such plans and specifications or for the location of the house rough-staked on any Lot. Further, neither Declarant, nor any member of the Architectural Review Committee, shall be liable in damages to anyone submitting plans or specifications for approval under this Article, or to any Owner affected by this Declaration by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications or the location of any such house. Every person who submits plans or specifications to the Architectural Review Committee for approval agrees, by submission of such plans and specifications, and every Owner of any Lot agrees, that he will not bring any action or suit against Declarant, or any member of the Architectural Review Committee, to recover for damages, and such right, if any, to institute any action or suit, is waived.

(f) During construction, any employee or agent of the Architectural Review Committee may, after reasonable notice, at any reasonable time, enter upon any Lot and structure thereon for the purpose of ascertaining compliance with the provisions of the Declaration; and neither the Architectural Review Committee, nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

6.4 Violations. If any structure shall be erected, placed, maintained or altered upon any Lot, other than in accordance with the plans and specifications approved by the Architectural Review Committee, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article. If, in the opinion of the Declarant, or the Board of Directors of the Association upon recommendation of the Architectural Review Committee, such violation shall have occurred, the Board of Directors shall provide written notice to the Owner by certified mail, setting forth the nature of the

violation and the specific action required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within thirty (30) days after the mailing of the aforesaid notice of violation, then the Board of Directors of the Association or Declarant shall have the right to file a lien against such Owner's Lot, proceed at law or in equity for the recovery of damages, or for injunctive relief or both.

ARTICLE VII

USE RESTRICTIONS AND RULES

7.1 General. This Section sets out certain use restrictions which must be complied with by all Owners and Occupants. These use restrictions may only be amended as provided in this Declaration. In addition, the Board may, from time to time, without consent of the members, promulgate, modify, or delete other use restrictions and rules and regulations applicable to the Community. Such use restrictions and rules shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled, or modified in a regular or special meeting by a majority of the Total Association Vote.

7.2 Residential Use. (a) All Lots shall be used for residential purposes exclusively. No business or business activity shall be carried on in or upon any Lot at any time, except with the written approval of the Board. The provisions of this Section shall not apply to the Common Area. Leasing of a Lot to an Occupant for use as a residence shall not be considered a business or business activity. Private offices may be maintained in dwellings located on any of the Lots so long as such use is incidental to the primary residential use of the dwelling.

(b) The Board may permit, but shall not be obligated to allow, a Lot to be used for business purposes so long as such business, in the sole discretion of the Board, does not otherwise violate the provisions of the Declaration or By-Laws, does not create a disturbance, and does not unduly increase traffic flow or parking congestion and complies with all local government requirements for permits, zoning and other regulations. The Board may issue rules regarding permitted business activities.

(c) The Declarant shall have the right to operate a sales-office and a construction office from one or more Lots within the Community specifically including, but not limited to, maintaining business offices, storage areas, construction yards and equipment, signs and sales offices.

7.3 Subdivision of Lots. (a) No lot or contiguous group of Lots may be subdivided or replatted in any manner which would bring about a greater number of Lots, except by Declarant. Declarant hereby expressly reserves the right to subdivide, reduce, enlarge or change the boundary lines of any Lot, including the right to replat any Lot or Lots owned by Declarant. Any such division, boundary line change, or replatting shall not be

in violation of the applicable subdivision and zoning regulations. Declarant's right to replat any Lot shall include the right to increase or decrease the size of any Lot, combine Lots or portions thereof, change the configuration of streets and otherwise make changes on the final plat for the Community as to how the streets and common areas in the Community are laid out.

(b) No Lot shall be subdivided, reduced in size or its boundary lines changed, except by Declarant, without the prior written approval of the Architectural Review Committee. The Architectural Review Committee may, but shall not be obligated to, allow adjacent Lot Owners or purchasers to acquire an additional Lot or Lots, or a portion thereof, for the purpose of adding said Lot or Lots, or such portion, to the Lots already owned or being purchased by them when approved, in advance, in writing, by the Architectural Review Committee. In such case, where less than a full Lot is involved, the portion of such additional Lot shall be merged with and become an integral part of the Lot which is already owned or is being purchased by the buyer of such Lot, and, in such event, shall be subject to these restrictions as one Lot and the building line requirements provided herein shall apply to such Lots as resubdivided or combined.

7.4 Building Size Requirements. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one single family residence, the size, design, configuration, location, height, materials, colors, etc. of which must be approved by the Architectural Review Committee in advance of construction. No building on any Lot shall exceed three and one-half (3-1/2) stories in height. The term "story" or "stories" shall include any garage, basement or similar area.

7.5 Setbacks and Building Lines.

(a) In no event shall any dwelling be erected and located upon any such Lot closer to the front property line, closer to the rear property line and closer to the side property lines than those setback measurements shown on recorded plats of the Community filed by the Declarant, or as may be determined by the Declarant or the Architectural Review Committee, after Declarant has transferred control of the Association to the Lot Owners. The area included within these setback lines is the buildable area. All enclosed areas of the residence must be contained within the buildable area; provided, however, eaves, overhangs or gutters and foundations may extend beyond the buildable area if approved by the Architectural Review Committee. On corner lots, the secondary frontage may generally be one-half (1/2) of the minimum frontage required herein unless otherwise noted on recorded plats.

(b) No building shall be erected or maintained so as to encroach upon any maintenance, utility or drainage easement.

(c) The Architectural Review Committee, in its sole discretion, may vary any or all of the front, rear, and/or side setback lines by not more than twenty-five (25%) percent of the distance required herein and may vary the square footage by not more than

ten (10%) percent of the square footage required herein; provided, however, that so long as Declarant owns any property in the Community, Declarant shall have the right to vary such setback lines and square-footage requirements by any amount, in its sole discretion. After Declarant turns over control of the Architectural Review Committee to the Association, any variance by the Architectural Review Committee in excess of the twenty-five (25%) percent for the setback lines and ten (10%) percent for the square footage requirements must be approved by the Owners holding not less than a majority of the voting membership.

(d) In addition, those Lots which have a property line in common with any perimeter boundary of the Community shall be required to maintain a sufficient natural and/or landscaped buffer not less than ten (10') feet deep along the full length of the perimeter boundary property line.

7.6 Walls and Fences. No fence or wall shall be erected, placed or altered on any Lot nearer to any street than the said minimum front building setback line unless the same be retaining walls which do not in any event rise above the finished grade elevation of the earth embankment so retained, reinforced, or stabilized, except that this restriction shall not apply to fences or walls which have been approved by the Architectural Review Committee pursuant to this Declaration. The exposed part of the retaining walls shall be made of such material as is approved in writing in advance by the Architectural Review Committee.

7.7 Terraces, Detached Garages and Eaves. For the purpose of determining compliance or non-compliance with the foregoing building line requirements, terraces, stoops, eaves, wing-walls, and steps shall be considered as a part of the structure. All detached structures shall be placed to the rear of the main dwelling unless approved otherwise in writing by the Architectural Review Committee.

7.8 Fences. No fence or fencing type barrier of any kind shall be placed, erected, allowed, or maintained upon any Lot without the prior written consent of the Architectural Review Committee. Under no circumstances shall any fence be placed, erected, allowed, or maintained upon any Lot closer to the street than the rear one-third (1/3) of the residence located on the Lot. (Privacy fencing constructed no more than six (6) feet in height shall be preferred by the Architectural Review Committee.) Notwithstanding the foregoing, the Declarant shall have the right to erect fencing of any type, at any location, on any Lot during the period that such Lot is being used by Declarant as a model home. The Board of Directors shall have the right to erect fencing of any type considered appropriate or desirable by the Board at any location on the Common Area.

7.9 Storage Sheds and Garages. Construction, installation, or placement of a storage shed, tree house, play house, detached garage, or a building separate from the main house on the Lot is not permitted without the prior written consent of the Architectural Review Committee, in its sole discretion. All plans (which must include the length, width, height, materials, colors, and location) must be submitted to the Architectural Review Committee for written approval prior to obtaining building permits or starting construction.

The structure must be constructed, installed, or placed in a location inconspicuous as much as possible from public view. No two-story structures of this nature are permitted on any Lot within the Community. All materials used in the construction of such buildings must match the main dwelling located on the Lot.

7.10 Compliance with Zoning and Subdivision Regulations. In no event shall any residence be erected and located upon any Lot in a manner which violates the requirements and provisions of the applicable city or county zoning ordinances and subdivision regulations in effect where the Community is located.

7.11 Obstructions to View at Intersection. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem. The lower branches of trees and other vegetation shall not be permitted to obstruct the view at intersections and it shall be the responsibility of the respective Lot Owner upon whose Lot such branches or vegetation exist to insure that the view of traffic at intersections is unimpeded.

7.12 Completion of Construction. All improvements commenced on any Lot in the Community shall be prosecuted diligently to completion and shall be completed within one (1) year from its commencement, unless such improvements are being constructed by Declarant, or unless an exception is granted in writing by the Architectural Review Committee. If an improvement is commenced and construction is then abandoned for more than ninety (90) days, or if construction is not completed within the required one-year period, then after notice to the Owner of the Lot, the Association shall have the right to impose a fine of Five Hundred and no/hundredths (\$500.00) Dollars per day, or such other amount as the Association shall deem appropriate, on the Owner of the Lot until construction is resumed, or the improvement is completed, unless the Owner can prove to the satisfaction of the Architectural Review Committee that such abandonment is due to circumstances beyond the Owner's control. Such charges shall be considered a default assessment and lien as provided in hereinabove. Landscaping shall be completed within ninety (90) days after the completion of an improvement on the Lot or a fine of Ten and no/hundredths (\$10.00) Dollars per day, or such other amount as the Association may deem appropriate, shall be levied against the Lot Owner. The Association may also take appropriate court action, whether at law or in equity, to compel the immediate completion of any residence not completed within one (1) year from the date of commencement of construction.

7.13 Aesthetics, Nature Growth. (a) Trees which have a diameter in excess of four (4) inches measured two (2) feet above the ground and distinctive flora shall not be intentionally destroyed or removed except with the prior written approval of the Architectural Review Committee. Prior to clearing any Lot for the construction of a house and/or other structure, the Owner and/or builder must first rough-stake the house and intended location of driveway(s) on the Lot and obtain the prior written approval of the Architectural Review Committee as to the location of the house and/or structures that they are in compliance with the plans and specifications submitted to the Architectural Review

Committee as described herein. Once written approval is received from the Architectural Review Committee as to the location of the rough-staking, all vegetation within ten (10) feet of the approved location of the construction may be removed with consideration for the remaining vegetation. In the event the Architectural Review Committee fails to approve or disapprove the location of the rough-staked structures within thirty (30) business days from the date it received notice in writing that said structure has been rough-staked, approval shall be deemed given by the Architectural Review Committee.

7.14 Delivery Receptacles, Property Identification Markers and all other Streetscapes. All mailboxes, property identification markers, entrance gates, fences, lights and all other streetscapes must conform to the design standards established by and on file with the Architectural Review Committee.

7.15 Signs. No sign of any kind shall be erected by an Owner or Occupant within the Community without the prior written consent of the Architectural Review Committee. Notwithstanding the foregoing, the Board and the Declarant shall have the right to erect reasonable and appropriate signs. "For Sale" and "For Rent" signs and security signs consistent with the Community-Wide Standard and any signs required by legal proceedings may be erected upon any Lot. The provisions of this Section shall not apply to any Person holding a Mortgage who becomes the Owner of any Lot as purchaser at a judicial or foreclosure sale conducted with respect to a first Mortgage or as transferee pursuant to any proceeding in lieu thereof.

7.16 Vehicles. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans, and automobiles.

(a) Unless and except to the extent that the Occupants of a Lot shall have more vehicles than the number of parking areas serving their Lot, all vehicles shall be parked within such parking areas on their Lot. Where the Lot contains a garage, "parking areas" shall refer to the number of garage parking spaces. All single-family detached homes shall contain a garage; carports shall not be permitted. Garage doors shall be kept closed at all times, except during times of ingress and egress from the garage.

(b) No vehicle, boat, motor home, trailer, recreational vehicle, or trailer may be left upon any portion of the Community (including the roads serving the Community) for a period longer than five (5) days, unless it is stored in a garage or stored in another area designated or approved by the Board. Vehicles, boats, motor homes, trailers, or recreational vehicles which are either unlicensed or inoperable for a period of five (5) days or more may not be stored upon any portion of the Community (including the roads serving the Community) at any time unless fully enclosed in a garage.

(c) No unlicensed vehicle shall be left upon any portion of the Community (including roads serving the Community), except in a garage or other area designated by the Board.

(d) Upon request of Declarant or the Board, such vehicles identified in 7.16(b) and 7.16(c) above must be removed by the Owner. The Association shall have the

right to remove any such vehicle if not removed by the Owner within ten (10) days of notice, and the costs of such removal shall be an assessment against such Owner.

(e) Trucks with mounted campers which are an Owner's or Occupant's primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal.

(f) No motorized vehicles shall be permitted on pathways or unpaved Common Area except for public safety vehicles and vehicles authorized by the Board.

7.17 Leasing. Lots may be leased for residential purposes. All leases shall have a minimum term of at least six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's property.

7.18 Occupants Bound. All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions, or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid in a reasonable period of time, the fine may then be levied against the Owner, but shall, if not paid, remain the responsibility of the Owner.

7.19 Clothes Lines and Garbage Containers. No clothes lines, exposed garbage containers (except for local governmental required containers) equipment and other unsightly objects are to be erected or used on any Lot except when they are screened to conceal such items from the streets and adjoining properties and general view. All residential utility service lines to residences shall be underground. All fuel tanks must be buried.

7.20 Garbage and Refuse Disposal. (a) No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept on the Lots, except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. If such litter or other material is found on any Lot, the same shall be removed by the Owner of such Lot, at the Lot Owner's expense, upon written request of the Architectural Review Committee. No such items shall be burned in any fashion within the boundaries of said Lot.

(b) All garbage cans, woodpiles, hot tubs, spas, and related equipment, and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly

removed and shall not be allowed to accumulate. Declarant reserves the right to dump and bury rocks on property within the Community as needed for efficient construction and to allow developers and builders within the Community to bury rocks removed from a building site. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community, except that Declarant may maintain a "burn pit" during development and construction of the Community.

7.21 Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats, or other usual and common household pets in a reasonable number, as determined by the Board. No pets shall be kept, bred, or maintained for any commercial purpose. Dogs which are household pets shall be kept within a dwelling, enclosed yard, or a yard area bordered by an "invisible fence" designed for animal control, unless on a leash. No pet which has caused any damage or injury shall be walked in the Community, whether on a leash or otherwise. All pets shall be registered, licensed, and vaccinated as required by law. Pets which endanger health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners or Occupants, determined in the sole discretion of the Board, must be removed by their owner upon request of the Board. The Board may establish rules which may require that Owners and/or Occupants who own pets remove any feces or other animal waste from the Lots or other property on which it is deposited.

7.22 Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes shall be located, installed, or maintained upon the exterior of any Lot unless required by law.

7.23 Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including, without limitation, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Community.

7.24 Antennas. No radio or television transmission or reception towers or antennae shall be erected on any Lot unless cable television is not available to any Lot,

in which event customary antennae which do not exceed ten (10) feet in height above the roof ridge of any house will be permitted. In no event shall free standing transmission or reception towers or antennae, nor shall any satellite disks be permitted, except small satellite dishes no larger than eighteen (18") inches in diameter with the Association's approval. Any such satellite dishes must be installed behind the main residential dwelling located on any such Lot, hidden from view from the street on which such Lot fronts or such other location as may be approved in writing by the Architectural Review Board. The Architectural Review Board shall also have the right to establish rules and guidelines for the color, size, location, quantity, installation and other issues regarding satellite dishes on any Lot.

7.25 Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may alter, obstruct, or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains, the right to alter same being expressly reserved to Declarant.

7.26 Guns. The use of firearms in the Community is prohibited. The term "firearms" includes rifles, pistols, "BB" guns, pellet guns, and small firearms of all types.

7.27 Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Community, except for temporary lines as required during construction, and lines installed by or at the request of Declarant.

7.28 Air-Conditioning Units. No window air conditioning units may be installed.

7.29 Lighting. Except as may be permitted by the Architectural Review Committee, exterior lighting visible from the street shall not be permitted except for (a) approved lighting as originally installed on a Lot; (b) one (1) decorative post light, (c) street lights in conformity with an established street lighting program for the Community; (d) seasonal decorative lights; or (e) front house illumination of model homes.

7.30 Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags, and similar items must be approved by the Architectural Review Committee.

7.31 Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Architectural Review Committee.

7.32 Swimming Pools and Hot Tubs. No swimming pool shall be constructed, erected, or maintained upon any Lot, without the prior written approval of the Architectural Review Committee. Hot tubs and portable spas shall not be permitted without the prior written consent of the Architectural Review Committee and then only if enclosed by an approved fence.

7.33 Gardens and Play Equipment. Notwithstanding anything contained in this Declaration to the contrary, no vegetable gardens, hammocks, statuary, swing sets or similar play equipment, basketball goals or similar athletic equipment, boats or boating equipment, pools, fences, clothes drying equipment, dog houses, dog runs or other pet enclosures, signs, retaining walls or any other structure or thing which, in the sole discretion of the Board or its designee, tends to detract from the appearance of the Community, shall be erected or permitted on any Lot without the prior written consent of the Architecture Review Committee or its designee. Any such items must be located between the rear of the dwelling located on the Lot and the rear lot line. Without limiting the foregoing, basketball goals may be installed provided they are constructed of black poles, permanently mounted, not visible from the street, and the Architectural Review Committee approves the location, height, and type of goal and post.

7.34 Exteriors. Any change to the exterior color of any improvement located on a Lot, including, without limitation, the dwelling, must be approved by the Architectural Review Committee.

7.35 Exterior Security Devices. No exterior security devices, including, without limitation, window bars, shall be permitted on any residence or Lot. Signs less than six inches (6") by six inches (6") placed on the Lot or the exterior of the residence stating that such residence is protected by a security system shall not be deemed to constitute an exterior security device.

7.36 Entry Features. Owners shall not alter, remove, or add improvements to any entry features constructed by the Declarant on any Lot, or any part of any easement area associated therewith without the prior written consent of the Architectural Review Committee.

ARTICLE VIII INSURANCE AND CASUALTY LOSSES

8.1 Insurance on Common Area. The Board of Directors or the duly authorized agent of the Association shall have the authority to, and shall obtain, insurance for all insurable improvements whether or not located on the Common Area which the Association is obligated to maintain. This insurance shall provide, at a minimum fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

8.2 Liability Insurance. The Board shall obtain a general commercial liability policy applicable to the Common Area covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents. The public liability policy shall have a combined single limit of at least one million (\$1,000,000.00) dollars. If available, the Board is also authorized to obtain directors' and officers' liability insurance coverage.

8.3 Insurance Coverage Through Declarant. The Board is authorized to obtain the insurance coverage required hereunder through the Declarant and to reimburse Declarant for the cost thereof. The Board shall not be required to comply with the provisions of this Section if it has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant.

8.4 Premiums. Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

8.5 Miscellaneous. All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective benefitted parties, as further identified below. Such insurance shall comply with these provisions:

(a) All policies shall be written with a company licensed to do business in South Carolina, with a rating of not less than "A" as determined by *Best's Key Rating Guide*, or if no longer available, by another comparable rating guide.

(b) Exclusive authority to settle losses under policies obtained by the Association shall be vested in the Association's Board of Directors; however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(c) In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

(d) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually.

(e) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(1) A waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and Occupants and their respective tenants, servants, agents, and guests;

(2) A waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(3) That no policy may be cancelled, invalidated, or suspended on account of any one or more individual Owners;

(4) That no policy may be cancelled, subjected to non-renewal, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct, and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner, or Mortgagee;

(5) That any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(6) That no policy may be canceled, subjected to non-renewal, or substantially modified without at least thirty (30) days prior written notice to the Association.

(7) In addition to the other insurance required by this Section, the Board shall obtain worker's compensation insurance to the extent necessary to satisfy the requirements of applicable laws, and shall obtain a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall be determined in the minimum amount of three (3) months' assessments plus reserves on hand. Bonds shall contain a waiver of all defenses provision based upon the exclusion of persons serving without compensation and may not be canceled, subjected to non-renewal, or substantially modified without at least thirty (30) days prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler coverage, and flood insurance, if and to the extent necessary to satisfy the requirements of the, Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the U.S. Department of Veterans Affairs, or the U.S. Department of Housing and Urban Development.

8.6 Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots, and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket "all-risk" casualty insurance on the Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an "all-risk" policy, if reasonably available, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. If all-risk coverage is not reasonably available, Owners shall obtain, at a minimum, fire and extended coverage. The policies required hereunder shall be in effect at all times. Authority to adjust losses under policies obtained by an Owner shall be vested in the Owner. The losses under policies obtained by an Owner shall be vested in the Owner. The Association shall have the right, but not the obligation, at the expense of the Owner, to acquire the insurance required to be maintained by the Owner if the Owner fails to provide a valid policy to the Association with a prepaid receipt within ten (10) days after receipt by the Owner of a written request from the Association. If the Association does acquire insurance on behalf of any Owner, the cost thereof shall be assessed against the Owner and the Lot as a special assessment.

8.7 Damage and Destruction – Insured by Association.

(a) **In General.** Immediately after damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board, or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. The Board shall have the enforcement powers specified in this Declaration necessary to enforce this provision.

(b) **Repair and Reconstruction.** Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five (75%) percent of the Total Association Vote otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

(c) If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners in proportion to the number of Lots owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

(d) In the event that it is determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event, the property shall be restored to its natural state and maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition.

8.8 Damage and Destruction – Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within seventy-five (75) days after such damage or destruction.

In the event of noncompliance with this provision, the Board shall have all enforcement powers specified in this Declaration.

8.9 Insurance Deductible. In the event of damage or destruction to the Common Areas or other areas or improvements maintained by the Association, the deductible for any casualty insurance policy carried by the Association shall be paid by the Association, but the Association may allocate the cost thereof among any Persons who are responsible, in whole or in part, for such damage or destruction.

ARTICLE IX CONDEMNATION

In the event of a taking by eminent domain of any portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking, at least seventy-five percent (75%) of the Total Association Vote shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor.

ARTICLE X ANNEXATION OF ADDITIONAL PROPERTY

10.1 Unilateral Annexation By Declarant. (a) The Declarant shall have the unilateral right, privilege, and option, from time to time, until seven (7) years after the recording of this Declaration to subject to the provisions of this Declaration the following property ("Annexation"):

Exhibit "A." (1) Any property which is adjacent to the property described on

(2) Any tract of land, of which any portion is located within a five (5) mile radius of the property described in **Exhibit "A."**

(b) Annexation may be accomplished by filing for record in the county in which the property to be annexed is located a Supplementary Declaration describing the property being subjected.

(c) Any such annexation shall be effective upon the filing for record of such Supplementary Declaration unless otherwise provided therein.

(d) Declarant shall have the right, in connection with the annexation of other property, to modify the terms of this Declaration as it may apply to the annexed property.

(e) As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of existing Owners are

not materially adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property.

(f) The rights reserved unto Declarant to subject additional land to the Declaration shall not impose any obligation upon Declarant to subject any of such additional land to this Declaration or to the jurisdiction of the Association. If such additional land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent Owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

10.2 Other Annexation. Upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots of the Class A Members and the approval of the Declarant or Class B Member(s) (so long as the Declarant owns any property in the Community or has the right to unilaterally annex additional property to the Community), voting in person or by proxy, the Association may annex any other real property not specifically described herein and subject it to the provisions of this Declaration by describing the property to be annexed in a Supplementary Declaration, which shall be signed by the President of the Association, whose signature shall be attested by the Secretary of the Association, and any such annexation shall be effective only upon the filing for record of such Supplementary Declaration in the register of deeds office for the county in which such property is located, unless a later effective date is provided therein.

10.3 Withdrawal of Property. So long as Declarant owns any portion of the property subject to this Declaration, whether improved or unimproved, the Declarant reserves the right to amend this Declaration for the purpose of removing any portion of the Community which has not been improved with residential dwellings from the provisions of this Declaration. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant.

ARTICLE XI

MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders of first Mortgages on Lots in the Community. The provisions of this Section apply to both this Declaration and the By-Laws, notwithstanding any other provisions contained therein.

11.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Lot of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days; and

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

11.2 No Priority. No provision of this Declaration or the By-Laws gives, or shall be construed as giving, any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to, or a taking of, the Common Area.

11.3 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

11.4 VA/HUD Approval. As long as the Declarant has the right to appoint and remove the directors of the Association and so long as the project is approved by the U.S. Department of Housing and Urban Development ("HUD"), or the U.S. Department of Veterans Affairs ("VA"), for insuring or guaranteeing any Mortgage in the Community, the following actions shall require the prior approval of the VA or HUD, as applicable: annexation of additional property to the Community, except for annexation by Declarant in accordance herewith or pursuant to a plan of annexation previously approved by the VA or HUD as applicable; dedication of Common Area to any public entity; mergers and consolidations of the Association; dissolution of the Association; and material amendment of the Declaration, By-Laws, or Articles of Incorporation.

11.5 Applicability of Article. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or South Carolina law for any of the acts set out in this Article.

11.6 Amendments by Board. Should the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, HUD, or VA subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

ARTICLE XII
OPEN SPACE; COMMON AREAS

12.1 Open Space. The term, "Open Space," means land within the property, owned by the Association, which is designed and intended for the common use or enjoyment of each Owner, which may contain such accessory structures and improvements as are necessary and appropriate for passive recreational purposes and utilities, but which may not be further subdivided and which is or may be designated as "Open Space" or "Common Area" or "Amenity Area" on the plat or plats of the property. All Open Space shall be considered Common Area, but all Common Area is not as restricted as Open Space is. Open Space shall not be used for any residence. In addition, any areas designated as "Wetlands," that are located outside the boundaries of a Lot, but within the boundaries of the Community shall also be considered a Common Area. The Association shall determine whether an area constitutes an "Open Space," subject to the restrictions contained in this Declaration.

12.2 Common Areas. The Common Areas shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Owners. There shall be no obstruction or alteration of, nor shall anything be stored, altered or constructed in, or removed from, the Common Area without the prior written consent of the Board.

12.3 Restoration and Repair. In the event that any portion of the Common Areas are damaged or destroyed by casualty, it shall be repaired or restored to substantially the condition prior to the damage or destruction by the Association, unless it is determined by the Association not to be reasonably practicable under the circumstances.

12.4 Insurance. No use shall be made of the Common Areas which will increase the rate of insurance upon the property without the prior consent of the Board. No Owner shall permit anything to be done or kept on the Common Areas which will result in cancellation of insurance or any part of the Common Areas or which will be in violation of any law. No waste shall be committed in the Common Areas.

12.5 Nuisances. No obnoxious or offensive activity shall be allowed upon the Common Areas, nor any use or practice which is the source of annoyance or nuisance to Owners or guests or which interferes with the peaceful possession and proper use of the Common Areas by Owners. The Board shall have the power to adopt reasonable rules and regulations governing the use of the Common Areas and the personal conduct of the members and their guests thereon, and to establish fines for the infraction thereof as herein provided. In addition, the Board may also suspend the right of a member to use the Common Areas, after notice and hearing for a period of sixty (60) days, as a result of such members infraction of such published rules and regulations.

12.6 Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the Common Areas or any part thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies pertaining to

maintenance, replacement, modification or repair of the Common Areas shall be as is specified in this Declaration.

ARTICLE XIII OTHER EASEMENTS

13.1 Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Area adjacent thereto, and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration). Such reciprocal appurtenant easements for encroachment and overhang shall be allowed to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Area, or between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point. In no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, Occupant, or the Association.

13.2 Easements for Use and Enjoyment. (a) Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Area which shall be appurtenant to, and shall pass with, the title to each Lot, subject to the following provisions:

(1) the right of the Association to charge reasonable dues, assessments and other fees for the use of any portion of the Common Area, including the streets, the entrance landscaping, whether or not located on Common Area, any recreational facilities situated upon such Common Area and for privacy protection;

(2) the right of the Association to limit the number of guests of Lot Owners and tenants who may use the Common Area, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his family, tenants, guests, and invitees;

(3) the right of the Association to suspend the voting rights of a Lot Owner and the right of an Owner to use the recreational facilities available for use by the Community, if any, for any period during which any assessment against such Owner's Lot which is hereby provided for remains unpaid; and, for a reasonable period of time, for an infraction of the Declaration, By-Laws, or rules and regulations;

(4) the right of the Association to borrow money for the purpose of improving the Common Area, or any portion thereof, or for construction, repairing, or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Area provided that the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements, and privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot

Owner encumbering any Lot or other property located within the Community. Any such Mortgage on the Common Area shall be subject to approval by the Declarant and at least two-thirds (2/3) of the Total Association Vote (excluding votes held by the Declarant). Any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements, or privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community;

(5) subject to the rights of the Declarant, the right of the Board to dedicate or grant licenses, permits, or easements for utilities or other facilities (including, but not limited to, drainage facilities) that are necessary or desirable, over, under, and through the Common Area to governmental entities for public purposes with an instrument signed by at least a majority of the members of the Board and recorded in the office of the Register of Deeds for Lexington County, South Carolina.

(6) subject to the rights of the Declarant, the right of the Association to dedicate or transfer all or any portion of the Common Area subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by the affirmative vote of the Declarant and at least two-thirds (2/3) of the Total Association Vote (excluding votes held by the Declarant), which has been recorded in the office of the Register of Deeds for Lexington County, South Carolina.

(7) The right of Declarant, so long as Declarant owns any portion of the property subjected to this Declaration, to create new Common Area, to place advertising signs and literature in any Common Area and to use portions of the Common area, including any improvements thereon;

(8) The right of the Declarant to mortgage, pledge or hypothecate any Common Area, except streets, as security for debts incurred in connection with the improvements to be placed on the Common Area, provided, however, Declarant shall be responsible for such debt(s), and shall pay all principal, interest and other payments as they come due; and

(9) Subject to all easements and rights-of-way shown on any recorded plat of the property subjected to this Declaration or any portion thereof and to any other easements of record as of the date this Declaration is recorded; and

(b) **Delegation.** Any Lot Owner may delegate such Owner's right of use and enjoyment in and to the Common Area and facilities located thereon to the members of such Owner's family and to such Owner's tenants and guests or contract purchasers who actually reside on the Lot, and shall be deemed to have made a delegation of all such rights to the occupants of such Owner's Lot, if leased. Subject to the provisions of this Declaration, the Owner of an unoccupied Lot may delegate such rights to the members of the Board of Directors of the Association.

13.3 Easements for Utilities. There is hereby reserved to the Declarant and the Association blanket easements upon, across, above, and under all property within the Community, including all Lots, for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof. This easement shall include, without limitation, gas, water, sanitary sewer, telephone, electricity, cable television, security, as well as storm drainage and any other service or system which the Declarant or the Association might decide to have installed to service the Community. It shall be expressly permissible for the Declarant, the Association, or the designee of either, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, pipes, cables, and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or the Board, as the case may be, shall have the right to grant such easement over all areas within the Community, including but not limited to Lots and Common Areas.

13.4 Easement for Drainage. Declarant hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water across all Community property for the purpose of altering drainage and water flow. This right shall include, but is not limited to, altering swales, installing drains, drainage ditches, pipes, inlets, headwalls, and altering channeling, or piping waterflow across any Lot or any property in the Community. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

13.5 Easement for Entry. In addition to the other rights reserved to Declarant and the Association, the Declarant or the Association shall have the right (but not the obligation) to enter upon any property or Lot within the Community for emergency, security, and safety reasons. This right may be exercised by the Declarant or its designee, any officer of the Board, and all governmental employees, policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of afire, slope erosion, or other hazard or condition in the event an Owner or Occupant fails or refuses to cure the condition upon request by the Board.

13.6 Easement for Maintenance. Declarant hereby expressly reserves a perpetual easement for the benefit of Declarant or the Association across such portions of the Community, determined in the sole discretion of the Declarant and the Association, as are necessary to allow for the maintenance required by this Declaration. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owners' property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

13.7 Easement for Entry Features. There is hereby reserved to the Declarant and the Association an easement for ingress, egress, installation, construction, landscaping, and maintenance of entry features and similar streetscapes for the Community, over and upon each Lot as more fully described on the recorded subdivision plats for the Community. The easement and right herein reserved shall include the right to cut, remove, and plant trees, shrubbery, flowers, and other vegetation around such entry features and the right to grade the land under and around such entry features.

13.8 Construction and Sale Period Easement. Notwithstanding any provisions contained in the Declaration, the By-Laws, Articles of Incorporation, use restrictions, rules and regulations, design guidelines, and any amendments thereto, until Declarant's right unilaterally to subject property to this Declaration terminates and thereafter so long as Declarant owns any property in the Community for development or sale, Declarant reserves an easement across the Community for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of the Community as Declarant may reasonably deem necessary. This reserved easement shall include an easement for such facilities and activities which, in the sole opinion of Declarant, may be required, convenient, or incidental to the development, construction, and sales activities related to property within or near the Community. This easement shall include, without limitation:

- (a) the right of access, ingress, and egress for vehicular and pedestrian traffic and construction activities over, under, on, or in any portion of the Community as well as any Lot in the Community;
- (b) the right to tie into any portion of the Community with driveways, parking areas, and walkways;
- (c) the right to tie into or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services;
- (d) the right (but not the obligation) to construct recreational facilities on Common Area;
- (e) the right to carry on sales and promotional activities in the Community;
- (f) the right to place direction and marketing signs on any portion of the Community, including any Lot or Common Area;
- (g) the right to construct and operate business offices, signs, construction trailers, model residences, and sales offices incidental to the construction, development, and sales activities; and
- (h) Declarant and any such builder or developer may use residences, offices, or other buildings owned or leased by Declarant or such builder or developer as

model residences and sales offices, and may also use recreational facilities available for use by the Community as a sales office or for marketing purposes without charge. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, and reasonable steps shall be taken to protect such property from damage. Any damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended without the Declarant's express written consent until the Declarant's rights hereunder have terminated as provided in this Declaration.

13.9 Irrigation Easements. There is hereby reserved to the Declarant and the Association a blanket easement to pump water from streams and other bodies of water located within the Community for irrigation purposes.

13.10 Fence Easement. Declarant hereby reserves an easement across any Lot which borders upon or contains a portion of any water facility, detention pond, or retention pond for the purpose of access to such facility or pond, and for the purpose of erecting any fence which is either required by the subdivision development and construction plans or governmental regulation, rule, ordinance, or plan approval requirement.

13.11 Reservation of Easements. Declarant reserves for itself, its successors and assigns, a right-of-way and easement to erect, maintain and use electric and telephone poles, wires, cables, conduits, storm sewers, drainage swales, sanitary sewers, water mains, gas sewer and water lines and other public conveniences or utilities on, in or over the Common Areas.

13.12 Additional Easements. Declarant reserves the right to impose further restrictions and to grant or dedicate additional easements and rights-of-way over the property owned by Declarant. In addition, Declarant hereby reserves the right to grant easements and rights-of-way over, under and through the Lots and Common Areas so long as Declarant shall own any portion of the property located within the Community. The easements and rights-of-way granted by Declarant shall not structurally weaken any improvements or unreasonably interfere with the enjoyment of the Common Areas.

ARTICLE XIV CONSERVATION EASEMENT: WETLANDS

14.1 Conservation Easement. Pursuant to the following documents:

(a) Declaration of Restrictive Covenants Regarding Wetlands, dated July 19, 2000, and recorded August 8, 2000 in the Office of the Register of Deeds for Lexington County, South Carolina, in Record Book 5914 at page 17; thereafter re-recorded on September 18, 2000 in Record Book 5970 at page 140; and

(b) Deed of Conservation Easement granted from Amy M. Cleary, Barbara J. Mathias, Catherine E. Mathias, John Homer Mathias, Jr., John W. Mathias, and William L. Mathias in favor of Carolina Wildlife Care, Inc., dated November 26, 2003 and recorded

December 30, 2003 in Record Book 8934 at page 84; thereafter amended by Partial Assignment of Reserved Rights dated April 22, 2004 and recorded June 25, 2004 in Record Book 9367 at page 268,

(the "Conservation Easement"), specific property within the Community is made subject to restrictions on certain activities. The Conservation Easement is intended to preserve its subject property in its natural condition forever. The Conservation Easement prohibits certain activities on the subject property and allows specific parties the right to enforce the terms of the Conservation Easement.

14.2 Streams and Wetlands. (a) Owners shall have no riparian rights with respect to the waters in any stream, pond, pool or wetlands (herein "waterways") within the Community and shall not be permitted to withdraw water from any waterways that may exist in the Community or from any waterway which is made available for the use by the Owners and Occupants within the Community without having first obtained the prior written consent of the Board or its designee. As long as the Declarant has the right unilaterally to subject property to this Declaration or owns any property in the Community for development and/or sale, Declarant may authorize and grant easements to withdraw water from such waterways without the consent of the Association.

(b) Notwithstanding anything contained in this Declaration to the contrary, no vegetable gardens, hammocks, statuary, swing sets or similar play equipment, basketball goals or similar athletic equipment, boats or boating equipment, pools, fences, clothes drying equipment, dog houses, dog runs or other pet enclosures, signs, retaining walls or any other structure or thing which, in the sole discretion of the Board or its designee, tends to detract from the appearance of the Community, and especially the waterways, shall be permitted on any Lot which abuts or is appurtenant to any waterways within the Community or any waterways made available for the use of all Owners and Occupants within the Community, without the prior written consent of the Architecture Review Committee or its designee.

ARTICLE XV GENERAL PROVISIONS

15.1 Enforcement. Each Owner and Occupant shall comply strictly with the Bylaws, the rules and regulations, the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and any such restrictions which may be placed in the deed to such Owner's Lot, if any. In the event of a violation or breach, or threatened violation or breach, of any of the same, the Association, the Board, the Declarant, the Architectural Review Committee or any aggrieved Lot Owner, jointly or severally, shall have the right to proceed at law or in equity for the recovery of damages, or for injunctive relief, or both to enforce all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, as it may be amended, or adopted or imposed by the Association, its Board, the Declarant or the Architectural Review Committee. Reasonable notice and a reasonable opportunity to cure such violation shall

be given to the delinquent party prior to commencing any legal proceedings. The Board may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws, or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Association, or in a proper case, by an aggrieved Owner. Failure by the Association, the Board, the Declarant, the Architectural Review Committee or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate land records a notice of lien, a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions, or design guidelines and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

15.2 Self-Help. In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon any Lot or any other portion of the Community to abate or remove, using such force as may be reasonably necessary, any structure, thing, or condition which violates this Declaration, the Bylaws, the rules and regulations, or the use restriction. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days written notice of its intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after reasonable notice. All costs of self-help, including reasonable attorney's fees, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

15.3 Duration. The provisions of this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by Declarant, the Association, the Board or any Owner, their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless a written instrument signed by the then Owners of two-thirds (2/3) of the Lots and the Declarant (if the Declarant still owns any property in the Community or has the right to annex additional property) is recorded within the year immediately preceding the beginning of a ten (10) year renewal period in the office of the Register of Mesne Conveyances for Lexington County, South Carolina.

15.4 Amendment.

(a) **By Declarant.** So long as the Declarant is the owner of record of any property in the Community, or has the right to annex additional property, or has the right to subject additional property to this Declaration, Declarant reserves the right unto itself, its successors and assigns, to unilaterally change, clarify any ambiguities in, correct errors in, or otherwise add to, amend, modify, delete and alter this Declaration or any provision thereof without the consent or approval of any of the Owners, which amendment shall be in writing and recorded in the office of the Register of Mesne Conveyances for Lexington County, South Carolina; provided that any such amendment shall not materially adversely affect the substantive rights of any Lot Owners hereunder, nor shall it materially adversely affect title to any Lot, without the consent of the affected Lot Owner.

(b) **For Owners.** At such time as Declarant has turned over control of the Association to the Association, then this Declaration may be amended at any time thereafter, and from time to time, upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots within the Community and evidenced by a written agreement recorded in the office of the Register of Deeds for Lexington County, South Carolina; provided, however, that no amendment shall alter any obligation of any Owner to pay ad valorem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein, provided further, however, and notwithstanding anything herein to the contrary, as long as Declarant owns any property within the Community, this Declaration may not be amended or terminated without the written consent of Declarant. Any amendment or termination must be recorded in the office of the Register of Mesne Conveyances for Lexington County, South Carolina.

(c) **Compliance; Affecting Title, Affecting Mortgage Holders.**

This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation, or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association, the Department of Housing and Urban Development, the Veterans Administration, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or private insurance company to insure or guarantee Mortgage loans on the Lots subject to this Declaration provided that any such amendment shall not adversely affect the title to any Owner's Lot unless any such Lot Owner shall consent in writing. No amendment to the provisions of this Declaration shall alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded the holder of any mortgage encumbering any Lot affected thereby unless such holder shall consent in writing thereto. Any such amendment shall not become effective until the instrument evidencing such change has been filed for record in the office of the Register of Mesne Conveyances for Lexington County, South Carolina. The written consent thereto of any mortgage holder affected thereby shall also be filed with such amendment.

(d) **Agreement by Grantee.** Every purchaser or grantee of any interest in any real property now or hereafter subject to this Declaration, by acceptance of a deed or other conveyance therefor, hereby agrees that this Declaration may be amended as provided in this section.

15.5 Partition. The Common Area shall remain undivided, and no Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering

any portion of the property, including, but not necessarily limited to, the Lots located within the Community.

15.6 Gender and Grammar. In interpreting words in this Declaration, unless the context shall otherwise provide or require, the singular shall include the plural, the plural shall include the singular and the use of any gender shall include all genders, when applicable.

15.7 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end, the provisions of this Declaration are declared to be severable.

15.8 Headings; Captions. The headings and captions contained in this Declaration are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

15.9 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

15.10 Indemnification. To the fullest extent allowed by applicable South Carolina law, the Association shall indemnify every officer of the Association and director of the Association against any and all expenses, including, without limitation, attorney's fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit, or other proceeding to which such officer or director may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. This indemnification shall also include attorney's fees and expenses incurred in enforcing this indemnification. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

15.11 Books and Records.

(a) **Inspection by Members and Mortgagees.** This Declaration, the Bylaws, copies of rules and use restrictions, membership register, books of account, and minutes of meetings of the members of the Board and of committees shall be made available for inspection and copying by Declarant or any member of the Association or by the duly appointed representative of any member and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to such Person's interest as a member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

(b) **Rules for Inspection.** The Board shall establish reasonable rules with respect to: (1) notice to be given to the custodian of the records; (2) hours and days of the work when such an inspection may be made; and (3) payment of the cost of reproducing copies of documents.

(c) **Inspection by Directors.** Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extra copies of documents at the reasonable expense of the Association.

15.12 Financial Review. A review of the books and records of the Association shall be made annually in the manner as the Board may decide provided that after having received the Board's financial statements at their annual meeting, by a majority of the Total Association Vote, the Owners may require that the accounts of the Association be audited as a common expense by a certified public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of audited financial statements within ninety (90) days of the date of the request.

15.13 Notice of Sale, Lease, or Acquisition. In the event an Owner sells or leases such Owner's Lot, the Owner shall give to the Association, in writing, prior to the effective date of such sales or lease, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require. Upon acquisition of a Lot, each new Owner shall give the Association, in writing, the name and mailing address of the Owner and such other information as the Board may reasonably require.

15.14 Agreements. Subject to the prior approval of Declarant (so long as Declarant owns any property for development or sale in the Community, or has the right to unilaterally annex additional property to the Community), all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

15.15 Implied Rights. The Association may exercise any right or privilege given to it expressly by the Declaration, the By-Laws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

ARTICLE XVI VARIANCES

Notwithstanding anything to the contrary contained herein, the Declarant and the Board or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the By-Laws and any rule, regulation, or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

ARTICLE XVII LITIGATION

No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least two-thirds (2/3) of the Total Association Vote. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in this Declaration, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended during the time period when Declarant owns any property for development or sale in the Community, or has the right to unilaterally annex additional property to the Community unless such amendment is made by the Declarant.

ARTICLE XVIII CAPITALIZATION OF ASSOCIATION

Upon acquisition of record title to a Lot by the first Owner other than Declarant or a builder, a contribution of \$400.00 ("Initiation Fee") shall be made by or on behalf of the purchaser to the Association as set forth below. The Initiation Fee shall be in addition to, not in lieu of, any annual or special assessments. The Initiation Fee shall be payable at closing, shall not be prorated, and the Association shall have all rights under the Declaration for enforcement of assessments if it is not paid. The Initiation Fee referred to in this paragraph is payable only one time, and will not be charged subsequent purchasers of a Lot once paid.

IN WITNESS WHEREOF, the undersigned, by its duly authorized officers or members, have executed the foregoing Declaration to be effective as of the date first above written.

Signed, Sealed and Delivered
In the Presence of:

D.R. HORTON, INC.

Allyson E. Jones
Patricia A. Butler

By: Jonathan P. Giles (Seal)
Jonathan P. Giles
Its: Vice President

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

PROBATE

Personally appeared before me, the undersigned witness, who being first duly sworn, deposes and says that (s)he saw the within named D.R. HORTON, INC. by Jonathan P. Giles, its Vice President, sign, seal and as its act and deed, deliver the foregoing Declaration; and that (s)he with, the other witness, witnessed the execution thereof.

Allyson E. Jones

Sworn to before me this
24th day of August, 2004.

Patricia A. Butler (L.S.)
Notary Public For South Carolina
My Commission expires: 01-08-11

EXHIBIT "A"

PROPERTY SUBJECT TO THIS DECLARATION

All that certain piece, parcel, or tract of land, together with the improvements thereon, situate, lying and being on the northwestern side of Barr Road, near the Town of Lexington, in the County of Lexington, in the State of South Carolina; and being more particularly shown and delineated as **PARCEL A (which is inclusive of Parcels A-1 & A-2, for a total of 74.34 acres)** as shown on boundary survey prepared for D.R. Horton, Inc., by Drafts Surveying, Inc., dated January 22, 2004, and recorded on March 8, 2004 in the Office of the Register of Deeds for Lexington County, SC, in **Record Book 9080 at page 88** and in **Plat Book 755, Slide #2**; and having the boundaries and measurements as shown on the last mentioned plat; reference being craved thereto as often as is necessary for a more complete and accurate legal description.

This being the same property conveyed to D.R. Horton, Inc. by deed of John Homer Mathias, Jr., William L. Mathias, and Carolyn E. Mathias by deed of Ernestine B. Mathias, recorded March 30, 2004 in the Office of the Register of Deeds for Lexington County in **Record Book 9223 at page 173**.

TMS: (portion of) 005300-03-006

EXHIBIT "B"

**BYLAWS
OF
THE MILL
HOMEOWNERS ASSOCIATION, INC.**

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BYLAWS
OF
THE MILL HOMEOWNERS ASSOCIATION, INC.

ARTICLE I
NAME MEMBERSHIP, APPLICABILITY AND DEFINITIONS

- 1.1 **Name.** The name of the corporation shall be The Mill Homeowners Association, Inc. ("Association").
- 1.2 **Membership.** The Association shall have two (2) classes of membership, as is more fully set forth in that certain Declaration of Protective Covenants for The Mill subdivision ("Declaration"), the terms of those of which pertain to membership are specifically incorporated by reference herein.
- 1.3 **Definitions.** The capitalized words used in these Bylaws shall have the same meaning as set forth in the Declaration, unless the context shall correspond otherwise.

ARTICLE II
ASSOCIATION: MEETINGS, QUORUM, VOTING, PROXIES

- 2.1 **Place of Meetings.** Meetings of the Association shall be held at the Association's principal office or at such other suitable place convenient to the members as may be designated by the Board, either in the Community or as convenient to the Community as possible and practical.
- 2.2 **First Meeting and Annual Meetings.** An annual or special meeting shall be held within one year from the date the Declaration is recorded. Annual meetings shall be set by the Board so as to occur no later than sixty (60) days after the close of the Association's fiscal year.
- 2.3 **Special Meetings.** The President may call special meetings. In addition, it shall be the President's duty to call a special meeting of the Association if so directed by resolution of the Board or upon a petition signed by at least five (5%) percent of the Total Association Vote (the consent of the Declarant shall not be required). The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting, except as stated in the notice.
- 2.4 **Notice of Meetings.** It shall be the duty of the Secretary to mail or to cause to be delivered to the Owner of each Lot (as shown in the records of the

Association) and to the Declarant, so long as Declarant owns any real property within the Community, a notice of each annual or special meeting of the Association stating the time and place where it is to be held and in the notice of a special meeting, the purpose thereof. If an Owner wishes notice to be given at an address other than his or her Lot, the Owner shall designate such other address in writing to the Secretary. The mailing or delivery of a notice of meeting in the manner provided in this Section shall be considered service of notice. Notices shall be served not less than ten (10) nor more than sixty (60) days before a meeting.

2.5. Waiver of Notice. Waiver of notice of a meeting of the members shall be deemed the equivalent of proper notice. Any member may, in writing, waive notice of any meeting of the members, either before or after such meeting. Such written notice shall be delivered to the Secretary for inclusion in the Association's minutes. Attendance at a meeting by a member, whether in person or by proxy, shall be deemed waiver by such member of notice of the time, date, and place thereof, unless such member specifically objects to lack of proper notice at the time the meeting is called to order.

2.6. Adjournment of Meetings. If any meetings of the Association cannot be held because a quorum is not present, a majority of the members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

2.7. Voting. The voting rights of the members shall be as set forth in the Articles of Incorporation and the Declaration, and such voting rights are specifically incorporated by this reference.

2.8. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing, dated, and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of such member's Lot, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a member, or of written revocation, or upon the expiration of eleven (11) months from the date of the proxy.

2.9. Quorum. The presence, in person or by proxy, of twenty-five (25%) percent of the total eligible Association vote shall constitute a quorum at all meetings of the Association. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum. Any amendment to this Section shall comply with the provisions of the South Carolina Nonprofit Corporation Act, S.C. Code Section 33-31-10, et seq.

2.10. Action Without A Formal Meeting. Any action to be taken at a meeting of the members, or which may be taken at a meeting of the members, may be taken

without a meeting if one or more written consents setting forth the action so taken shall be signed by members holding at least eighty (80%) percent of the Association's voting power. Action taken without a meeting shall be effective on the date that the last consent is executed, and consented to by the Declarant (so long as Declarant owns any property within the Community) unless a later effective date is specified therein. Each signed consent shall be delivered to the Association and shall be included in the minutes of meetings of members filed in the permanent records of the Association. Written notice of member approval pursuant to this Section must be given to all members who have not signed the written consent. Provided, however, that so long as Declarant holds a majority of the voting power of the Association, Declarant may take action without a meeting, in its sole discretion.

2.11. Action By Written Ballot. Any action to be taken at any annual, regular, or special meeting of members may be taken without a meeting if approved by written ballot as provided herein. The Association shall deliver a written ballot to each member entitled to vote on the matter. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot of an action shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting held to authorize such action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve each matter other than election of directors; and specify the time by which a ballot must be received by the Association in order to be counted. A timely written ballot received by the Association may not be revoked without the consent of the Board. The results of each action by written ballot shall be certified by the Secretary and shall be included in the minutes of meetings of members filed in the Association's permanent records.

ARTICLE III

BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS

A. Composition and Selection.

3.1. Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors. Except as provided in Section 3.2, the directors must reside in the Community and shall be members or spouses of such members; however, no person and his or her spouse may serve on the Board at the same time.

3.2. Directors Appointed by Declarant. The Declarant shall have the right to appoint or remove any member or members of the Board or any officer or officers of the Association until such time as the first of the following events shall occur: (a) seven years from the date the Declaration was recorded; (b) the date on which seventy-five (75%) percent of the Lots shall have been conveyed to Persons who have purchased such Lots for the purpose of construction of a residence and/or resale of such Lot and

residence; or (c) the surrender by Declarant in writing of the authority to appoint and remove directors and officers of the Association. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant such authority to appoint and remove directors and officers of the Association. The directors selected by the Declarant need not be Owners or residents in the Community.

3.3. Number of Directors. The Board shall consist of three members. After the Declarant's right to appoint directors and officers terminates, the Board may expand the number of directors to five or seven members, which shall be filled by a vote of the members in accordance with Section 3.5(b).

3.4. Nomination of Directors. Elected directors shall be nominated from the floor and may also be nominated by a nominating committee, if such a committee is established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

3.5. Election and Term of Office. Owner-elected directors shall be elected and hold office as follows:

(a) After the Declarant's right to appoint directors and officers terminates, the Association shall call a special meeting to be held at which Owners shall elect three directors.

(b) Thereafter, directors shall be elected at the Association's annual meeting. All eligible members of the Association shall vote on all directors to be elected, and the candidate(s) receiving the most votes shall be elected.

At the special meeting in which the Owners initially elect directors, two directors shall be elected to two-year terms and one director shall be elected to a one-year term. At the expiration of the initial term of office of each respective Owner-elected director, a successor shall be elected to serve for a term of two years. The directors shall hold office until their respective successors shall have been elected by the Association.

3.6. Removal of Directors. At any regular or special meeting of the Association duly called, any one or more of the directors may be removed, with or without cause, by a majority of the Total Association Vote and a successor may then and there be elected to fill the vacancy thus created. A director whose removal has been proposed by the Owners shall be given at least ten (10) days' notice of the calling of the meeting and the purpose thereof and shall be given an opportunity to be heard at the meeting. Additionally, any director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than 30 days may be removed by a majority vote of the remaining directors at a meeting. This Section shall not apply to directors appointed by Declarant.

3.7. Vacancies. Vacancies in the Board caused by any reason, excluding the removal of a director by vote of the Association, shall be filled by a vote of the majority of the remaining directors, even though less than a quorum, at any meeting of the Board. Each person so selected shall serve the unexpired portion of the term.

B. Meetings.

3.8 Organizational Meetings. The first meeting of the Board following each annual membership meeting shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

3.9. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the directors, but at least four (4) such meetings shall be held during each fiscal year with at least one per quarter. Notice of the regular schedule shall constitute sufficient notice of such meetings. So long as the Declarant has the right to appoint directors to the Board, Declarant shall have the option to hold only one (1) meeting per fiscal year.

3.10. Special Meetings. Special meetings of the Board shall be held when requested by the President, Vice President, or by any two directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the director or to a person at the director's home or office who would reasonably be expected to communicate such notice promptly to the director; (d) electronic message, fiber optic, or telecommunication to the director; or (e) by commercial delivery service to such director's home or office. All such notices shall be given or sent to the director's address, telephone number, or other place of delivery as shown on the Association's records. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or telecommunication shall be given at least forty-eight (48) hours before the time set for the meeting.

3.11. Waiver of Notice. The transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present, and (b) either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.12. Quorum of Board of Directors. At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board. A meeting at which a quorum of directors is present initially may continue to transact business, notwithstanding the withdrawal of directors, if at least a majority of the required quorum for that meeting approves any action taken. If the Board cannot hold a meeting because a quorum is not present, a majority of the directors at such meeting may adjourn the meeting to a time not less than five (5) or more than thirty (30) days from the date of the original meeting. At the reconvened meeting, if a quorum is present the Board may transact, without further notice, any business which it might have transacted at the original meeting. Any

amendments to this Section shall comply with the provisions of the South Carolina Nonprofit Corporation Act, S.C. Code Section 33-31-10, et seq.

3.13. Compensation. No director shall receive any compensation from the Association for acting in such capacity.

3.14. Open Meetings. All meetings of the Board shall be open to all members, but members other than directors may not participate in any discussion or deliberation, unless expressly so authorized by the Board.

3.15. Executive Session. The Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

3.16. Action Without A Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if one or more consents, in writing, setting forth the action so taken, shall be signed by a majority of the directors and delivered to the Association for inclusion in the minutes for filing in the corporate records.

3.17. Telephonic Participation. One or more directors may participate in and vote during any regular or special Board meeting by telephone conference call or similar communication equipment by means of which all persons participating in the meeting can hear each other at the same time, and those directors so participating shall be present at such meeting. Any such meeting at which a quorum participates shall constitute a meeting of the Board.

C. Powers and Duties.

3.18. Powers. The Board shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles, or these Bylaws directed to be done and exercised exclusively by the members. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board shall have the power to and be responsible for the following, in way of explanation, but not limitation:

- (a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the common expenses;
- (b) making assessments to defray the common expenses and establishing the means and methods of collecting such assessments;
- (c) providing for the operation, care, upkeep, and maintenance of all areas which are the maintenance responsibility of the Association;

(d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;

(f) making and amending use restrictions and rules and regulations;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) enforcing by legal means the provisions of the Declaration, these ByLaws, and the rules and regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(i) paying the cost of all services rendered to the Association or its members which are not directly chargeable to Owners;

(k) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, and specifying the maintenance and repair expenses and any other expenses incurred; and functions.

(l) contracting with any Person for the performance of various duties and

3.19. Management Agent. The Board may employ for the Association a professional management agent or agents at a compensation established by the Board to perform such duties and services as the Board shall authorize. The Declarant or an affiliate of the Declarant may be employed as managing agent. The term of any management agreement shall not exceed one (1) year and shall be subject to termination by either party, without cause and without penalty, upon not more than ninety (90) days' written notice.

3.20. Borrowing. The Board shall have the power to borrow money without the approval of the members of the Association provided that the Board shall obtain membership approval in the same manner as for special assessments, in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities, or the total amount of such borrowing exceeds or would exceed ten thousand (\$10,000.00) dollars of outstanding debt at any one time.

3.21. Fining or Suspension Procedure. The Board shall not impose a fine (a late charge shall not constitute a fine) or suspend a member's right to use any part of the Common Property unless and until the following procedure is followed:

(a) **Notice.** Written notice shall be served upon the violator by first-class or certified mail sent to the last address of the member shown on the Association's records, specifying:

- (1) the nature of the violation, the fine or suspension to be imposed, and the date, not less than fifteen (15) days from the date of the notice, that the fine or suspension will take effect;
- (2) that the violator may, within ten (10) days from the date of the notice, request a hearing regarding the fine or suspension imposed;
- (3) the name, address, and telephone numbers of a person to contact to challenge the fine or suspension;
- (4) that any statements, evidence, and witnesses may be produced by the violator at the hearing; and
- (5) that all rights to have the fine or suspension reconsidered are waived if a hearing is not requested within ten (10) days of the date of the notice.

(b) **Hearing.** If a hearing is requested, it shall be held before the Board in executive session, and the violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. No fine or suspension shall be imposed prior to the date that is five (5) days after the date of the hearing.

(c) **Enforcement.** In any action or proceeding to enforce the Declaration, these Bylaws, the rules and regulations of the Association, or decision of the Board, the Association shall be entitled to recover all expenses from the violator, including all attorney's fees.

ARTICLE IV **OFFICERS**

4.1. Officers. The officers of the Association shall be a President, Secretary, and Treasurer. Any two or more offices may be held by the same person, excepting the offices of President and Secretary. The President and Treasurer shall be elected from among the members of the Board. The Board may appoint such other officers, including one or more Vice Presidents, Assistant Secretaries, or Assistant Treasurers, as it shall deem desirable.

4.2. Election, Term of Office, and Vacancies. Except during the period in which the Declarant has the right to appoint the officers of the Association under Section 3.2, the officers of the Association shall be elected annually by the Board at the first meeting of the Board following each annual meeting of the members. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board for the unexpired portion of the term.

4.3. Removal. Any officer may be removed by the Board whenever, in its judgment, the best interests of the Association will be served thereby.

4.4. President. The President shall be the chief executive officer of the Association and shall preside at all Association and Board meetings. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the South Carolina Nonprofit Corporation Act.

4.5. Vice President. If appointed by the Board, the Vice President shall act in the President's absence and shall have all powers, duties, and responsibilities provided for the President when so acting.

4.6. Secretary. The Secretary shall keep the minutes of all meetings of the Association and of the Board and shall have charge of such books and papers as the Board may direct and shall, in general, perform all duties incident to the office of the secretary of a corporation organized in accordance with South Carolina law.

4.7. Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may be designated by the Board from time to time.

4.8. Resignation. Any officer may resign at any time by giving written notice to the Board. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

ARTICLE V COMMITTEES

Committees to perform such tasks and to serve for such periods as may be designated by the Board are hereby authorized. Each committee shall be composed and shall operate in accordance with the terms of the resolution of the Board designating the committee or with rules adopted by the Board.

ARTICLE VI MISCELLANEOUS

6.1. Fiscal Year. The fiscal year of the Association shall be the calendar year, unless otherwise determined by resolution of the Board.

6.2. Parliamentary Rules. Roberts Rules of Order (current edition) shall govern the conduct of all Association proceedings, when not in conflict with South Carolina law, the Articles of Incorporation, the Declaration, these Bylaws, or a ruling made by the person presiding over the proceeding.

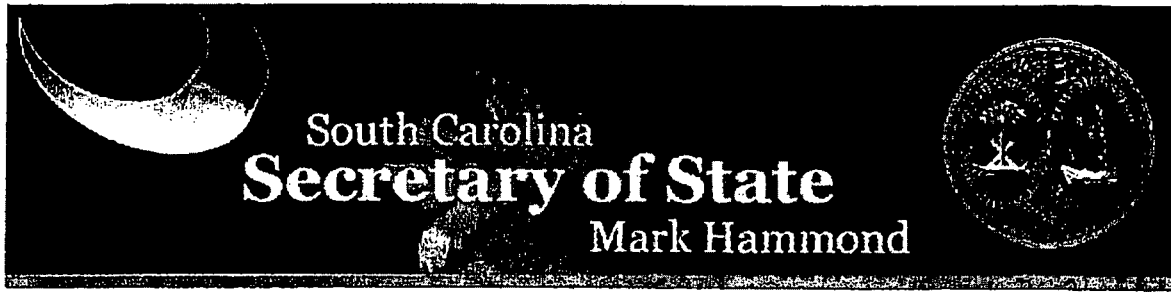
6.3. Conflicts. If there are conflicts or inconsistencies between the provisions of South Carolina law, the Articles of Incorporation, the Declaration, and these Bylaws, the provisions of South Carolina law, the Declaration, the Articles of Incorporation, and the Bylaws (in that order) shall prevail.

6.4. Amendment. These Bylaws may be amended by the Board if such amendment is necessary: (a) to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any title insurance company to issue title insurance coverage with respect to the Lots subject to the Declaration; (c) to meet the requirements of an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to the Declaration; or (d) to enable any governmental agency or private insurance company to insure or guarantee Mortgage loans on the Lots subject to the Declaration

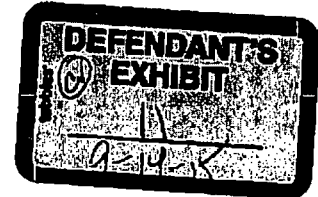
Further, so long as Declarant has the right unilaterally to subject additional property to the Declaration, Declarant may unilaterally amend these Bylaws for any other purpose; however, such amendment shall not materially adversely affect the substantive rights or title of any Lot Owner without the consent of the affected Lot Owner.

In addition, these Bylaws may be amended upon the affirmative vote or written consent, or any combination thereof, of at least two-thirds (2/3) of the Total Association Vote, and the consent of Declarant, so long as Declarant owns any property within the Community.

The U.S. Department of Veterans Affairs (if it is then guaranteeing Mortgages in the Community or has issued a project approval for the guaranteeing of such mortgages) and/or the U.S. Department of Housing and Urban Development (if it is then insuring any Mortgage in the Community or has issued a project approval for the insuring of such mortgages) shall have the right to veto amendments to these Bylaws for as long as the Declarant has the right to appoint and remove the directors and officers of the Association.

**Corporate Search Results** as of 9/14/2015 3:07:53 AM

1. REGIME MANAGEMENT & MAINTENANCE, INC.
2. REGIME MANAGEMENT REAL ESTATE HOLDINGS, LLC
3. REGIMENTAL HONOURS LTD. CO.



Total Items: 3

Disclaimer: The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at his own risk.

COUNTY OF LEXINGTON

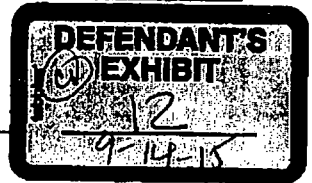
SOUTH CAROLINA

ONLINE SERVICES

SITE MAP

CONTACT US

Data last updated: 09/10/2015



TMS# 007642-01-146 [Show Map](#)
 TAX YEAR: 2014
 OWNER: REGIME SOLUTIONS INC
 ADDRESS: 2581 COUNTY RD 220 #307
 MIDDLEBURG, FL 32068
 PROPERTY ADDRESS: 131 SILVERBERRY DR
 LEGAL DESCRIPTION: VILLAGES @ WHITENOLL PH 3 LOT 135 .23 AC
 DEED BOOK & PAGE: 16601-309
 PLAT: SL-880-1
 LAND USE: 1001:RESIDENTIAL - IMPROVED
 TAX DISTRICT: 1

ASSESSMENT INFORMATION		BUILDING INFORMATION	
LOTS:	1	SQUARE FOOT LIVING AREA:	1824
ACRES:		UNFINISHED AREA:	
TAXABLE LAND:	15000	YEAR BUILT:	2006
TAXABLE BUILDING:	110770	NUMBER OF BEDROOMS:	3
ASSESSMENT LAND:	900	NUMBER OF FULL BATHS:	2
ASSESSMENT BUILDING:	6650	NUMBER OF HALF BATHS:	1
HOMESTEAD EXEMPTION:	0	HEATING SYSTEM:	
TAX RELIEF EXEMPTION:	0	HEAT:	HT AND AIR-CENTRAL HEAT AND AIR

SALES INFORMATION			
SALE DATE	SELLER	BUYER	PRICE BOOK/PAGE
10/09/2013	BERMUDEZ, FRANK	REGIME SOLUTIONS INC	3500 16601-309
01/29/2007	NVR RYMARC HOMES OF SOUTH CAROLINA LLC	BERMUDEZ, FRANK	125770 11715-276
09/28/2006	NKD, INC	NVR RYMARC HOMES OF SOUTH CAROLINA LLC	66000 11426-50

Lexington
County



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Great Communities

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STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

COURT OF COMMON PLEAS
13-CP-32-0706

THE VILLAGES AND MANORS OF)
WHITEKNOLL HOMEOWNERS)
ASSOCIATION, INC.)

Plaintiff(s))

VS.)

FRANK BERMUDEZ)

Defendant(s))

2013051219 FILED, RECORDED, INDEXED
18/11/2013 12:27:54:44B
REC FEE: \$18.00 ST FEE: \$9.10
CO FEE: \$3.85 Pages: 2
Lexington County R.O.D. Debra M. Gunter
DEED Bk:Pg 16681:389

DEED

BY

JUDICIAL

ORDER OF THE

MASTER-IN-EQUITY COURT

WHEREAS a foreclosure action involving the above named parties was decided by the Master-in-Equity Court by an Order of Reference from the Court of Common Pleas; and

WHEREAS the Master-in-Equity Court did Order and Decree on **, 2013, that the property hereinafter described should be sold at public sale by the said Court on the terms and for the purposes stated in the Order and Decree of the said Court; and

WHEREAS the Master-in-Equity Court after public advertisement of the said property as required by law, openly at public auction, sold the said property for the highest bid received to Regime So/utions, LLC on October 7, 2013, for the sum of three thousand five hundred & 00/100 (\$ 3,500.00) Dollars.

NOW, I, the undersigned as Judge of the Master-In-Equity Court for Lexington County, in consideration of the sum of three thousand five hundred & 00/100 (\$ 3,500.00) Dollars, paid to the said Court, the receipt of which is hereby acknowledged, have granted bargained, sold and released, and by these presents, do grant, bargain, sell and release unto the said Regime Solutions, Inc. its successors and assigns:

DESCRIPTION OF PROPERTY

All that certain place, parcel or lot of land, together with any improvements thereon, situate, lying and being near Red Bank, in the County of Lexington, State of South Carolina, and being shown and designated as Lot 135, Villages of Whiteknoll, Phase Three on a Plat prepared by Baker & Associates, Inc., dated March 3, 2006 and recorded April 20, 2006 in the Office of the ROD for Lexington County in Record Book 10993 at Page 80. Reference for a more complete and accurate description; all measurements being a little more or less.

This being the identical property conveyed unto Frank Bermudez by deed of NVR Rymare Homes of South Carolina, LLC on January 29, 2007 and recorded in the Lexington County ROD Office in Book 11715 at Page 276.

Property Address: 131 Silverberry Drive
TMS# 007642-01-146

(13-)

Together with all and singular the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining; and all the estate, right, title, claim and interest whatsoever of the parties to the cause aforesaid, and each of them, in and to the same, and of all other persons rightfully claiming from, under, or by these or any of them.

TO HAVE AND TO HOLD, all and singular, the premises before mentioned unto the said ~~Regime~~ Solutions, Inc. its successors and assigns. ✓

IN WITNESS WHEREOF, I, the said Judge of the Master-In-Equity Court for Lexington County, under and by virtue of the aforesaid Order and Decree, have here unto set my hand and seal, this 9th day of October, 2013 in the two hundred and thirty-eighth year of the sovereignty and independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of

Leslie M. Shealy
Rhonda Driggers

James O. Spence
Judge, Master-in-Equity Court
For Lexington County

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

I, Rhonda Driggers, do hereby certify that Judge James O. Spence personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand this 9th day of October 2013.

Rhonda Driggers
Notary Public for South Carolina
My Commission Expires: 10/28/2018

ENTER IN GRANTOR INDEX: 1. Judge of the Master-in-Equity for
Lexington County

2. Frank Bermudez

GRANTEE'S ADDRESS: 2561 County Road 220 #307
Middleburg FL 32068

2100

COUNTY OF LEXINGTON

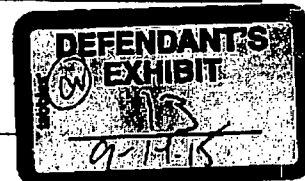
SOUTH CAROLINA

ONLINE SERVICES

SITE MAP

CONTACT US

Data last updated: 09/10/2015



TMS# 003353-03-015 | Show Map

TAX YEAR: 2014

OWNER: REGIME SOLUTIONS LLC

ADDRESS: 2561 COUNTY RD 220 #307

MIDDLEBURG, FL 32068

PROPERTY ADDRESS: 253 FARMING CREEK WAY

LEGAL DESCRIPTION: FARMING CREEK V LOT 215

DEED BOOK & PAGE: 16601-311

PLAT: 10505-298

LAND USE: 1001:RESIDENTIAL - IMPROVED

TAX DISTRICT: 1

ASSESSMENT INFORMATION

LOTS: 1
 ACRES: 30000
 TAXABLE LAND: 135910
 TAXABLE BUILDING: 1800
 ASSESSMENT LAND: 8150
 ASSESSMENT BUILDING: 0
 HOMESTEAD EXEMPTION: 0
 TAX RELIEF EXEMPTION: 0

BUILDING INFORMATION

SQUARE FOOT LIVING AREA: 2161
 UNFINISHED AREA:
 YEAR BUILT: 2005
 NUMBER OF BEDROOMS: 4
 NUMBER OF FULL BATHS: 2
 NUMBER OF HALF BATHS: 1
 HEATING SYSTEM:
 HEAT: HT AND AIR-CENTRAL HEAT AND AIR

SALES INFORMATION

SALE DATE	SELLER	BUYER	PRICE	BOOK/PAGE
05/06/2015	DEWEY, DOROTHY J ETALS	JPMORGAN CHASE BANK NATIONAL ASSOCIATION	125600	17704-72
10/09/2013	DEWEY, DOROTHY J	REGIME SOLUTIONS LLC	4019	16601-311
08/26/2005	CENTEX HOMES	DEWEY, DOROTHY J	147810	10505-278
10/10/2001	MUNGO COMPANY INC	CENTEX HOMES	76000	6711-62

Lexington
County



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STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

COURT OF COMMON PLEAS
13-CP-32-1263

FARMING CREEK HOMEOWNERS')
ASSOCIATION, INC.)
Plaintiff(s))
VS.)
DOROTHY J. DEWEY)
Defendant(s))

2013051220 FILED, RECORDED, INDEXED
10/11/2013 12:27:54:620
REC FEE: \$18.00 ST FEE: \$11.70
CD FEE: \$4.95 Pages: 2
Lexington County R.O.D. Debra M. Gunter
DEED Bk:Pg 16681:311

DEED
BY
JUDICIAL
ORDER OF THE
MASTER-IN-EQUITY COURT

WHEREAS a foreclosure action involving the above named parties was decided by the Master-in-Equity Court by an Order of Reference from the Court of Common Pleas; and

WHEREAS the Master-in-Equity Court did Order and Decree on September 5, 2013, that the property hereinafter described should be sold at public sale by the said Court on the terms and for the purposes stated in the Order and Decree of the said Court; and

WHEREAS the Master-in-Equity Court after public advertisement of the said property as required by law, openly at public auction, sold the said property for the highest bid received to Regime Solutions, LLC on October 7, 2013, for the sum of four thousand nineteen and 00/100 (\$ 4,019.00) Dollars.

NOW, I, the undersigned as Judge of the Master-In-Equity Court for Lexington County, in consideration of the sum of four thousand nineteen and 00/100 (\$ 4,019.00) Dollars, paid to the said Court, the receipt of which is hereby acknowledged, have granted bargained, sold and released, and by these presents, do grant, bargain, sell and release unto the said Regime Solutions, LLC its successors and assigns:

DESCRIPTION OF PROPERTY

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, being shown and delineated as Lot 215 on a plat of Farming Creek Phase Eight prepared by Belter and Associates, Inc. dated September 19, 2002, last revised June 24, 2003; being more particularly shown on a plat prepared for Dorothy J. DeWey, by Cox and Dinkins, Inc., dated August 2, 2005 recorded September 9, 2005 in the Office of the Register of Deeds for Lexington County, South Carolina in Book 10505 at page 298 with reference to said plat for a more complete and accurate description thereof.

This being the identical property conveyed unto Dorothy J. DeWey by deed of Centex Homes on August 26, 2005 and recorded in the Lexington County ROD Office in Book 10505 at Page 278.

Property Address: 253 Farming Creek Way

TMS: 003353-03-015

Together with all and singular the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining; and all the estate, right, title, claim and interest whatsoever of the parties to the cause aforesaid, and each of them, in and to the same, and of all other persons rightfully claiming from, under, or by these or any of them.

TO HAVE AND TO HOLD, all and singular, the premises before mentioned unto the said **Regime Solutions, LLC** its successors and assigns.

IN WITNESS WHEREOF, I, the said Judge of the Master-In-Equity Court for Lexington County, under and by virtue of the aforesaid Order and Decree, have here unto set my hand and seal, this 9th day of October, 2013 in the two hundred and thirty-eighth year of the sovereignty and independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of

Leslie M. Shealy
Rhonda Driggers

James O. Spence
Judge, Master-in-Equity Court
For Lexington County

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

I, Rhonda Driggers, do hereby certify that Judge James O. Spence personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

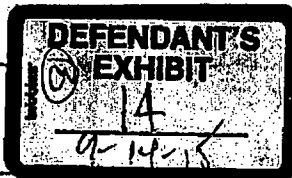
Witness my hand this 9th day of October 2013.

Rhonda Driggers
Notary Public for South Carolina
My Commission Expires: 10/28/2018

ENTER IN GRANTOR INDEX: 1. Judge of the Master-in-Equity for
Lexington County

2. Dorothy J. DeWey

GRANTEE'S ADDRESS: 2561 County Road 220 #307
Middleburg FL 32068



Last Name: First Name: Middle Name: List Type: Detail			To Date: State: Tract: Block: TaxMap: Instrument: Sort Type: date		
Regime Solutions%					
9/14/2016 10:57:13 AM					
Date: 10/11/2013 11:48:00 AM Type: Quitclaim Deed Legal: 2013084980 Ins: Sub: 2013084980 Loc: Bldg: 1 Tract: 1 Pha: 1 BookPage: R 1801: 3232 TaxMap: 21912 11 04 Related: 1718:114	Address: 331 FOX SQUIRREL CIRCLE 1 Name: REGIME SOLUTIONS LLC		Date: 1/8/2014 2:43:00 PM Type: Master's Deed-Foreclosure Legal: 2014001107 Ins: Sub: 2014001107 Loc: Bldg: 72 Tract: 3 4 & 5 Pha: 3878 BookPage: R 1919: 3878 TaxMap: 20413 10 08 Related: 1489:1172	Address: 318 STUEBER DRIVE 13 Name: REGIME SOLUTIONS	
Date: 10/29/2013 2:48:00 PM Type: Quitclaim Deed Legal: 2013090745 Ins: Sub: 2013090745 Loc: Bldg: 185 Tract: 1 Pha: 1 BookPage: R 1805: 3128 TaxMap: 18104 05 02 Related: 1802:3486	Address: 4 SILVERLEAF COURT 2 Name: REGIME SOLUTIONS LLC		Date: 1/8/2014 2:43:00 PM Type: Master's Deed-Foreclosure Legal: 2014001108 Ins: Sub: 2014001108 Loc: Bldg: 28 Tract: 5 Pha: 3681 BookPage: R 1919: 3681 TaxMap: 18204 02 10 Related: 1572:586	Address: 9 RED WINDS COURT 14 Name: REGIME SOLUTIONS	
Date: 10/30/2013 10:14:00 AM Type: Quitclaim Deed Legal: 2013091189 Ins: Sub: 2013091189 Loc: Bldg: 12 Tract: 1 Pha: 1 BookPage: R 1905: 3904 TaxMap: 17216 02 60 Related: 1802:3486	Address: 129 SUMMERVALE DRIVE 3 Name: REGIME SOLUTIONS LLC		Date: 1/8/2014 2:43:00 PM Type: Master's Deed-Foreclosure Legal: 2014001109 Ins: Sub: 2014001109 Loc: Bldg: 69 Tract: 2 Pha: 3684 BookPage: R 1919: 3684 TaxMap: 20310 03 14 Related: 1343:2631	Address: 109 BIRCH HOLLOW DRIVE 15 Name: REGIME SOLUTIONS	
Date: 11/13/2013 12:07:00 PM Type: Deed Legal: IN COUNTY CORRECTIVE DEED 1901/3232 Ins: Sub: 2013095674 Loc: Bldg: 110 Tract: 1 Pha: 1 BookPage: R 1809: 1039 TaxMap: 21912 11 04 Related: 1718:114 1901:3232	Address: 331 FOX SQUIRREL CIRCLE 4 Name: REGIME SOLUTIONS LLC		Date: 1/8/2014 2:43:00 PM Type: Master's Deed-Foreclosure Legal: 2014001110 Ins: Sub: 2014001110 Loc: Bldg: 55 Tract: THREE Pha: 3887 BookPage: R 1919: 3887 TaxMap: 20313 08 02 Related: 708:3750	Address: 1 KENDRICK COURT 16 Name: REGIME SOLUTIONS	
Date: 12/2/2013 4:03:00 PM Type: Master's Deed-Foreclosure Legal: 2013096985 Ins: Sub: 2013096985 Loc: Bldg: 8 Tract: 1 Pha: 1 BookPage: R 1912: 3447 TaxMap: 17515 04 09 Related: 1580:1151	Address: 132 THOMASTON DRIVE 5 Name: REGIME SOLUTIONS		Date: 2/10/2014 4:26:00 PM Type: Master's Deed-Foreclosure Legal: 2014008363 Ins: Sub: 2014008363 Loc: Bldg: 41 Tract: 1 Pha: 2854 BookPage: R 1925: 2854 TaxMap: 20110 01 28 Related: 320:1752	Address: 118 PICKWICK DRIVE 17 Name: REGIME SOLUTIONS	
Date: 12/2/2013 4:03:00 PM Type: Master's Deed-Foreclosure Legal: 2013099986 Ins: Sub: 2013099986 Loc: Bldg: 447 Tract: FIVE Pha: 3450 BookPage: R 1912: 3450 TaxMap: 17609 08 07 Related: 1287:2276	Address: 2081 WILKINSON DRIVE 6 Name: REGIME SOLUTIONS		Date: 2/10/2014 4:26:00 PM Type: Master's Deed-Foreclosure Legal: 2014008364 Ins: Sub: 2014008364 Loc: Bldg: 42 Tract: B Pha: 2857 BookPage: R 1925: 2857 TaxMap: 13882 01 06 Related: 1189:2185	Address: 1820 TALL PINES CIRCLE 18 Name: REGIME SOLUTIONS	
Date: 12/2/2013 4:03:00 PM Type: Master's Deed-Foreclosure Legal: 2013099987 Ins: Sub: 2013099987 Loc: Bldg: 79 Tract: 3 Pha: 3453 BookPage: R 1912: 3453 TaxMap: 20305 09 21 Related: 651:2580	Address: 10 FRASIER BAY COURT 7 Name: REGIME SOLUTIONS		Date: 2/10/2014 4:26:00 PM Type: Master's Deed-Foreclosure Legal: 2014008365 Ins: Sub: 2014008365 Loc: Bldg: 363 Tract: 10 11 AND 12 Pha: 2860 BookPage: R 1925: 2860 TaxMap: 04110 02 02 Related: 1254:341	Address: 127 WENLOCK CIRCLE 19 Name: REGIME SOLUTIONS	
Date: 12/2/2013 4:03:00 PM Type: Master's Deed-Foreclosure Legal: 2013099988 Ins: Sub: 2013099988 Loc: Bldg: 218 Tract: 6K Pha: 3456 BookPage: R 1912: 3456 TaxMap: 20506 03 01 Related: 1492:1377	Address: 601 CARTGATE CIRCLE 8 Name: REGIME SOLUTIONS		Date: 3/5/2014 8:49:00 AM Type: Master's Deed-Foreclosure Legal: 2014015088 Ins: Sub: 2014015088 Loc: Bldg: 81 Tract: THREE Pha: 398 BookPage: R 1930: 398 TaxMap: 20313 04 08 Related: 410:1580	Address: 207 KENDRICK ROAD 20 Name: REGIME SOLUTIONS	
Date: 12/5/2013 10:31:00 AM Type: Master's Deed-Foreclosure Legal: 2013100799 Ins: Sub: 2013100799 Loc: Bldg: 21 Tract: 1 Pha: 1840 BookPage: R 1913: 1840 TaxMap: 03505 01 29 Related: 1738:1782	Address: 200 REDBOURNE LANE 9 Name: REGIME SOLUTIONS		Date: 3/5/2014 8:49:00 AM Type: Master's Deed-Foreclosure Legal: 2014015089 Ins: Sub: 2014015089 Loc: Bldg: 328 Tract: FOUR Pha: 399 BookPage: R 1930: 399 TaxMap: 17811 02 08 Related: 1257:985	Address: 717 ELDERBERRY LANE 21 Name: REGIME SOLUTIONS	
Date: 12/6/2013 10:31:00 AM Type: Master's Deed-Foreclosure Legal: 2013100800 Ins: Sub: 2013100800 Loc: Bldg: 11 Tract: 1 Pha: 1843 BookPage: R 1913: 1843 TaxMap: 20413 09 57 Related: 1417:3042	Address: 34 AVINGTON COURT 10 Name: REGIME SOLUTIONS		Date: 3/5/2014 8:49:00 AM Type: Master's Deed-Foreclosure Legal: 2014015070 Ins: Sub: 2014015070 Loc: Bldg: 112 Tract: 4 & 5 Pha: 402 BookPage: R 1930: 402 TaxMap: 20216 08 06 Related: 1017:3732	Address: 112 LARKSPUR LANE 22 Name: REGIME SOLUTIONS	
Date: 12/5/2013 10:31:00 AM Type: Master's Deed-Foreclosure Legal: 2013100801 Ins: Sub: 2013100801 Loc: Bldg: 39 Tract: 4 & 5 Pha: 1848 BookPage: R 1913: 1848 TaxMap: 22203 03 03 Related: 903:1810	Address: 520 NAUTIQUE CIRCLE 11 Name: REGIME SOLUTIONS		Date: 3/25/2014 2:58:00 PM Type: Quitclaim Deed Legal: 2014021157 Ins: Sub: 2014021157 Loc: Bldg: 11 Tract: 1 Pha: 2059 BookPage: R 1934: 2059 TaxMap: 20413 09 57 Related: 1813:1843	Address: 34 AVINGTON COURT 23 Name: REGIME SOLUTIONS LLC	
Date: 12/5/2013 10:31:00 AM Type: Master's Deed-Foreclosure Legal: 2013100802 Ins: Sub: 2013100802 Loc: Bldg: 24 Tract: TWO Pha: 1849 BookPage: R 1913: 1849 TaxMap: 17816 04 40 Related: 1169:3228	Address: 158 MASON RIDGE CIRCLE 12 Name: REGIME SOLUTIONS		Date: 5/8/2014 3:31:00 PM Type: Master's Deed-Foreclosure Legal: 2014034351 Ins: Sub: 2014034351 Loc: Bldg: 66 Tract: 5 Pha: 2244 BookPage: R 1944: 2244 TaxMap: 20413 06 45 Related: 907:302	Address: 319 STUEBER DRIVE 24 Name: REGIME SOLUTIONS	

Date: 8/8/2014 3:31:00 PM Type: Master's Deed-Foreclosure Legal: A LONGCREEK PLANTATION NEAR TOWN OF BLYTHEWOOD Address: 613 CARTGATE CIRCLE 25 Name: REGIME SOLUTIONS	Ins: 2014034382 Sub: WINDERMERE Lot: 183 Bk: 183 Tract: V11 B BookPage: R 1844 : 2247 TaxMap: 20510 03 01 Related: 689:2128	Date: 4/29/2015 2:07:00 PM Type: Unpaid Assessment Lien Legal: \$585.17 Address: 165 RABON SPRINGS DRIVE 38 Name: REGIME SOLUTIONS LLC	Ins: 2015032712 Sub: RABON FARMS Lot: 11 Bk: 11 Tract: 1 BookPage: R 2023 : 3218 TaxMap: 20001 05 18
Date: 7/25/2014 11:30:00 AM Type: Quitclaim Deed Legal: Address: 109 BIRCH HOLLOW DRIVE 26 Name: REGIME SOLUTIONS LLC	Ins: 2014053711 Sub: SOUTHWOOD Lot: 69 Bk: 69 Tract: 2 BookPage: R 1961 : 818 TaxMap: 20310 03 14 Related: 1919:3684	Date: 5/7/2015 1:48:00 PM Type: Master's Deed-Foreclosure Legal: Address: 141 RABON SPRINGS ROAD 39 Name: REGIME SOLUTIONS	Ins: 2015034709 Sub: RABON FARMS Lot: 11 Bk: 11 Tract: 1 BookPage: R 2028 : 11 TaxMap: 20001 05 12 Related: 1458:1853
Date: 8/22/2014 1:52:00 PM Type: Master's Deed-Foreclosure Legal: Address: 4 NORTH BAY CROSSING 27 Name: REGIME SOLUTIONS	Ins: 2014081349 Sub: MAGNOLIA BLUFF AT LAKE C Lot: 53 Bk: 53 Tract: 1 BookPage: R 1965 : 263 TaxMap: 20510 03 55 Related: 688:2783	Date: 5/7/2015 1:48:00 PM Type: Master's Deed-Foreclosure Legal: IN COUNTY Address: 105 DEER PASS WAY 40 Name: REGIME SOLUTIONS	Ins: 2015034710 Sub: 315 Lot: 315 Bk: 315 Tract: 1 BookPage: R 2026 : 14 TaxMap: 20313 01 02 Related: 350:1366
Date: 8/22/2014 1:52:00 PM Type: Master's Deed-Foreclosure Legal: Address: 25 CADDIS CREEK COURT 28 Name: REGIME SOLUTIONS	Ins: 2014081350 Sub: WYNROSE Lot: 148 Bk: 148 Tract: TWO BookPage: R 1988 : 288 TaxMap: 05107 05 12 Related: 64:615	Date: 5/7/2015 1:48:00 PM Type: Master's Deed-Foreclosure Legal: Address: 321 KINGSTON TRACE ROAD 41 Name: REGIME SOLUTIONS	Ins: 2015034711 Sub: KINGSTON TRACE Lot: 73 Bk: 73 Tract: TWO BookPage: R 2028 : 17 TaxMap: 23108 05 17 Related: 848:440
Date: 8/22/2014 1:52:00 PM Type: Master's Deed-Foreclosure Legal: Address: 165 RABON SPRINGS ROAD 29 Name: REGIME SOLUTIONS	Ins: 2014061351 Sub: RABON FARMS Lot: 17 Bk: 17 Tract: 1 BookPage: R 1888 : 289 TaxMap: 20001 05 18 Related: 1442:2827	Date: 5/7/2015 1:48:00 PM Type: Master's Deed-Foreclosure Legal: PARCEL IN COUNTY CONTAINING 0.55 OF AN ACRE Address: 5 WYNFORD PLACE 42 Name: REGIME SOLUTIONS	Ins: 2015034712 Sub: CLUB COLONY Lot: 11 Bk: 11 Tract: 1 BookPage: R 2028 : 20 TaxMap: 20401 04 12 Related: 1382:768
Date: 8/22/2014 1:52:00 PM Type: Master's Deed-Foreclosure Legal: Address: 516 SILVER SPOON LANE 30 Name: REGIME SOLUTIONS	Ins: 2014061352 Sub: JACOBS CREEK Lot: 17 Bk: 17 Tract: 1 & 3 BookPage: R 1988 : 272 TaxMap: 25908 08 05 Related: 1328:1634	Date: 5/12/2015 10:49:00 AM Type: Order Legal: CIA NO 2013CP40 00151 Address: 43 Name: REGIME SOLUTIONS LLC REGIME SOLUTIONS LLC	Ins: 2015035601 Sub: 1819:3687 Lot: 1819:3687 Bk: 1819:3687 Tract: 1 BookPage: R 2028 : 2780 Related: 1819:3687
Date: 8/8/2014 4:26:00 PM Type: Master's Deed-Foreclosure Legal: Address: 13 GATEWOOD WAY 31 Name: REGIME SOLUTIONS	Ins: 2014064734 Sub: GATEWOOD Lot: 113 Bk: 113 Tract: II BookPage: R 1971 : 2290 TaxMap: 23008 10 13 Related: 1010:163	Date: 5/18/2015 8:18:00 AM Type: \$585.17 of Unpaid Assessment Legal: \$585.17 Address: 165 RABON SPRINGS DRIVE 44 Name: REGIME SOLUTIONS LLC	Ins: 2016036795 Sub: 160 Lot: 160 Bk: 160 Tract: 1 BookPage: R 2028 : 160 TaxMap: 20001 05 18 Related: 2028:3216
Date: 11/5/2014 3:50:00 PM Type: Unpaid Assessment Lien Legal: \$638.27 Address: 319 STUEBER DRIVE 32 Name: REGIME SOLUTIONS	Ins: 2014081517 Sub: 20413 06 46 Lot: 20413 06 46 Bk: 20413 06 46 Tract: 1 BookPage: R 1984 : 3702 TaxMap: 20413 06 46	Date: 5/18/2015 8:37:00 AM Type: Unpaid Assessment Lien Legal: \$960.15 Address: 613 CARTGATE CIRCLE 45 Name: REGIME SOLUTIONS	Ins: 2015036850 Sub: 270 Lot: 270 Bk: 270 Tract: 1 BookPage: R 2028 : 270 TaxMap: 20510 03 01
Date: 12/22/2014 8:14:00 AM Type: \$638.27 of Unpaid Assessment Legal: \$638.27 Address: 33 Name: REGIME SOLUTIONS	Ins: 2014083337 Sub: 1884:3702 Lot: 1884:3702 Bk: 1884:3702 Tract: 1 BookPage: R 1894 : 2222 Related: 1884:3702	Date: 7/6/2015 10:28:00 AM Type: Quitclaim Deed Legal: MISSING GRANTEE ADDRESS Address: 127 WENLOCK CIRCLE 46 Name: REGIME SOLUTIONS LLC	Ins: 2015048294 Sub: HEATHERSTONE Lot: 363 Bk: 363 Tract: 10, 11 AND 12 BookPage: R 2040 : 1901 TaxMap: 04116 02 02 Related: 1925:2860
Date: 2/9/2015 12:15:00 PM Type: Master's Deed-Foreclosure Legal: Address: 205 DENBY CIRCLE 34 Name: REGIME SOLUTIONS	Ins: 2015008793 Sub: DENBY PLACE Lot: 14 Bk: 14 Tract: ONE BookPage: R 2004 : 970 TaxMap: 23213 01 31 Related: 578:124	Date: 8/3/2015 9:28:00 AM Type: Master's Deed-Foreclosure Legal: Address: 212 DUTCHFORK CREEK TRAIL 47 Name: REGIME SOLUTIONS	Ins: 2015056552 Sub: ROLLING CREEK Lot: 1.6 Bk: 1.6 Tract: IV BookPage: R 2047 : 721 TaxMap: 02611 04 21 Related: 1227:749
Date: 2/9/2015 12:15:00 PM Type: Master's Deed-Foreclosure Legal: IN COUNTY Address: 212 KENDRICK ROAD 35 Name: REGIME SOLUTIONS	Ins: 2015008794 Sub: 92 Lot: 92 Bk: 92 Tract: 1 BookPage: R 2004 : 873 TaxMap: 20313 07 02 Related: 1157:856	Date: 8/3/2015 9:28:00 AM Type: Master's Deed-Foreclosure Legal: @ SUMMIT RIDGE Address: 254 LEGEND OAKS DRIVE 48 Name: REGIME SOLUTIONS	Ins: 2015056553 Sub: LEGEND OAKS Lot: 86 Bk: 86 Tract: 3 BookPage: R 2047 : 724 TaxMap: 23116 04 21 Related: 1087:377
Date: 3/6/2015 2:18:00 PM Type: Master's Deed-Foreclosure Legal: Address: 144 RABON SPRINGS ROAD 36 Name: REGIME SOLUTIONS	Ins: 2015015547 Sub: RABON FARMS Lot: 93 Bk: 93 Tract: 1 BookPage: R 2010 : 2370 TaxMap: 20001 06 25 Related: 1683:1254	Date: 8/3/2015 9:28:00 AM Type: Master's Deed-Foreclosure Legal: Address: 11 AUTUMN RUN WAY 49 Name: REGIME SOLUTIONS	Ins: 2016056554 Sub: AUTUMN RUN PATIO HOMES Lot: 14 Bk: 14 Tract: ONE BookPage: R 2047 : 727 TaxMap: 23104 01 13 Related: 1178:3193
Date: 3/25/2015 1:47:00 PM Type: Quitclaim Deed Legal: Address: 37 Name: REGIME SOLUTIONS LLC	Ins: 2015020219 Sub: AVEBURY Lot: 66 Bk: 66 Tract: 6 BookPage: R 2014 : 2438 TaxMap: 20413 06 45 Related: 1844:2244	Date: 8/3/2015 9:28:00 AM Type: Master's Deed-Foreclosure Legal: OF WILDEWOOD WRONG DERIVATION SHOULD R1338444 Address: 209 GATE POST LANE 50 Name: REGIME SOLUTIONS	Ins: 2015056555 Sub: GATES THE Lot: 398 Bk: 398 Tract: 1 BookPage: R 2047 : 730 TaxMap: 23108 07 32 Related: 1338:443

Date: 8/3/2015 9:29:09 AM Type: Master's Deed-Foreclosure Legal: Address: 134 SEA HAWK LANE 51 Name: REGIME SOLUTIONS	Ins: 2015066556 Sub: TWIN EAGLES Lot: 134 Blk: Tract: Phs: 4 BookPage: R 2047 : 733 TaxMap: 14515 01 58 Related: 906:2188
Date: 8/13/2015 8:15:00 AM Type: Unpaid Assessment Lien Legal: \$621.93 Address: 501 CARTGATE CIRCLE 52 Name: REGIME SOLUTIONS	Ins: 2015059710 Sub: Lot: Blk: Tract: Phs: BookPage: R 2050 : 679 TaxMap: 20506 03 01
Date: 8/13/2015 8:15:00 AM Type: Unpaid Assessment Lien Legal: \$532.47 Address: 316 STUEBER DRIVE 53 Name: REGIME SOLUTIONS	Ins: 2015059712 Sub: Lot: Blk: Tract: Phs: BookPage: R 2050 : 683 TaxMap: 20413 10 05
Date: 8/18/2015 8:15:00 AM Type: Unpaid Assessment Lien Legal: \$936.69 Address: 513 CARTGATE CIRCLE 54 Name: REGIME SOLUTIONS	Ins: 2015060872 Sub: Lot: Blk: Tract: Phs: BookPage: R 2051 : 354 TaxMap: 20510 03 01
Date: 9/8/2015 9:55:00 AM Type: Set of Unpaid Assessment Legal: \$532.47 Address: 316 STUEBER DRIVE 55 Name: REGIME SOLUTIONS	Ins: 2015068819 Sub: Lot: Blk: Tract: Phs: BookPage: R 2058 : 2399 TaxMap: 20413 10 08 Related: 2050:883

James Randall Davis
Patrick J. Frawley
Jeff M. Anderson
John J. McCauley
Corey M. Ayer &
Ryan M. Wingard
W. Joseph Maye

0 American Board of Trial Advocates
A Certified Circuit Court Mediator

Davis | Frawley ^{llc}

Attorneys at Law

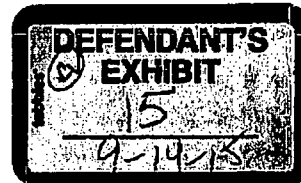
Of Counsel
Robert K. Bouknight
George S. Nicholson, Jr.

Francis C. Jones
(1919 - 1968)

Hubert E. Long
(1921 - 2000)
Since 1961

August 24, 2015

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**
Network Funding, L.P.
c/o National Registered Agents, Inc.
2 Office Park Court
Columbia, South Carolina 29223



RE: The Mill Homeowner Association, Inc. v. Randall W. Cofer and Corey C. Cofer, et al.
Civil Action No.: 2014-CP-32-01270
Our File No.: 30387

Dear Sir or Madame:

Please be advised that a hearing in the above referenced matter has been scheduled for September 14, 2015 at 2:00 p.m. before The Honorable James O. Spence, Lexington County Master-in-Equity, at the Lexington County Judicial Center, 205 East Main Street, Lexington, South Carolina. I hereby giving you notice as Registered Agent for Network Funding, L.P.

Sincerely,

Nicole T. Price
Nicole-T. Price
Paralegal

Old Courthouse Place | 140 East Main Street | Post Office Box 489
Lexington, South Carolina 29071-0489
Telephone: (803) 359-2512 | Facsimile: (803) 359-7478 | www.oldcourthouse.com

R00271

James Randall Davis
Patrick J. Frawley
Jeff M. Anderson
John J. McCauley ♦
Carey M. Ayer Δ
John F. Fisher
Judith Callison Fisher
Lisa Lee Smith Δ ‡
Ryan M. Wingard
A. Jewitte Dooley
W. Joseph Maye

Of Counsel
Robert K. Bouknight
George S. Nicholson, Jr.

Davis | Frawley ^{LLC}
Attorneys at Law

Francis C. Jones
(1919 - 1968)

Hubert E. Long
(1921 - 2000)

Since 1961

♦ American Board of Trial Advocates
Δ Certified Circuit Court Mediator
‡ Certified Circuit Court Arbitrator

July 16, 2015

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

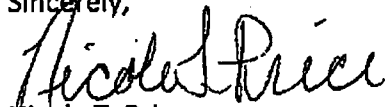
Network Funding, L.P.
c/o National Registered Agents, Inc.
2 Office Park Court
Columbia, South Carolina 29223

RE: The Mill Homeowner Association, Inc. v. Randall W. Cofer and Corey C. Cofer, et al.
Civil Action No.: 2014-CP-32-01270

Dear Sir or Madame:

Enclosed, please find our Notice of Motion and Motion Pursuant to SCRPC Rule 60(b)(1) which I hereby serve upon you as Registered Agent for Network Funding, L.P.

Sincerely,



Nicole T. Price
Paralegal

Enclosure

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

The Mill Homeowners Association, Inc.,)

Plaintiff,)

v.)

Randall W. Cofer and Corey C. Cofer,)

Defendants,)

Regime Solutions LLC,)

Purchaser at Foreclosure Sale.)

and)

Network Funding, L.P.,)

Mortgage Holder.)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2014-CP-32-01270

CERTIFICATE OF SERVICE

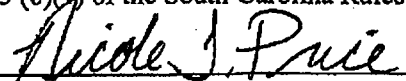
FILED
JUL 17 PM 3:44
CLERK OF COURT
LEXINGTON SC

I, Nicole T. Price, a paralegal with the law firm of DAVIS FRAWLEY, LLC, do hereby certify that I have served the following with the foregoing **AMENDED NOTICE OF MOTION AND MOTION PURSUANT TO SCRPC RULE 60(b)(1)**, by mailing a copy of same, postage prepaid and return address clearly indicated on said envelope, to them at the following address:

Stephanie C. Trotter, Esquire
Post Office Box 212069
Columbia, South Carolina 29221

Eric C. Hale, Esquire
125 Executive Pointe Blvd.
Columbia, South Carolina 29210

on this 16th day of July, 2015 all in accordance with Rule 5 (b)(1) of the South Carolina Rules of Civil Procedure.


Nicole T. Price
DAVIS FRAWLEY, LLC
140 East Main Street
Lexington, South Carolina 29071
ATTORNEYS FOR DEFENDANTS

Lexington, South Carolina

FILED COPY

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

2015 JUN 22 AM 10:16

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

The Mill Homeowners Association, Inc.,

ETHA A. CARRIGG
CLERK OF COURT
LEXINGTON SC

CASE NUMBER: 2014-CP-32-01270

Plaintiff(s),

vs.

AFFIDAVIT OF SERVICE

Randall W. Cofer and Corey C. Cofer,

Defendant(s).

Regime Solutions, LLC,

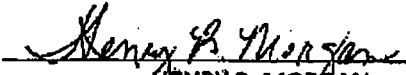
Purchaser at Foreclosure Sale.

PERSONALLY appeared before me the Affiant, Henry B. Morgan, who, being duly sworn, states the following facts:

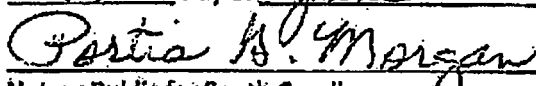
Affiant is a licensed Private Investigator in the State of South Carolina and in said capacity is authorized to perform the service of documents. Furthermore, Affiant is not a party to this action.

On June 16, 2015, about 3:45 p.m., Affiant served a copy of the below listed documents on Regime Solutions, LLC, by personally serving National Registered Agents, Inc., as Registered Agent. Service was made by delivering copies of the subject documents to Pam Johnson, who is authorized to accept documents for National Registered Agents, Inc., at 2 Office Park Court, Suite 103, Columbia, 29223, Richland County, South Carolina.

- NOTICE OF MOTION AND MOTION PURSUANT TO SCRPC RULE 60(b)(1)
- AFFIDAVIT OF DEFENDANT COREY C. COFER
- AFFIDAVIT OF DEFENDANT RANDALL W. COFER
- BRIEF OF DEFENDANTS


HENRY B. MORGAN
Henry B. Morgan Consulting, LLC

SWORN to and subscribed to before me this

17th Day of June, 2015

Notary Public for South Carolina

My Commission Expires: 02/07/2022

MASTER'S DEED

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FORECLOSURE

To all whom these Presents shall concern:

I, James O Spence, as Master in Equity for Lexington County, in the said State, send Greetings:

WHEREAS, in a action in the Court of Common Pleas in Lexington County between Mill Homeowners Association Inc VS Randall W Cofer, defendant, et al Case No. 2014CP3201270, by an Order dated on January 29, 2015, it was decreed that the property hereinafter described should be sold by the Master in Equity for Lexington County on the terms and for the purposes mentioned in the order(s) granted in the case as by reference thereto will appear.

NOW THEREFORE KNOW ALL MEN, That I, the undersigned, as Master in Equity for Lexington County, pursuant to the foregoing and in consideration of the sum of \$4,857.00 as paid by the hereinafter named grantee, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant and release unto the grantee, Regime Solutions, LLC, the following described property:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being near Lexington, County of Lexington, State of South Carolina, fronting on Mill Haven Lane, and being more particularly shown and delineated as Lot 175 of THE MILL Subdivision, Phase 2, on a plat prepared for Randall Cofer and Corey Cofer, by Cox and Dinkins, Inc., dated June 22, 2006, and recorded in Record Book 11263, page 119, in the Office of the Register of Deeds for Lexington County, and having such boundaries and measurements as will more fully appear by reference to said plat.

This being the same property to given to Randall W. Cofer and Corey C. Cofer by deed of D.R. Horton, Inc. dated 07/31/2006 and recorded in the Lexington County Register of Deeds Office on 08/01/2006 in Book 11263 at Page 120.

Property Address: 113 Mill Haven Lane
TMS# 005332-01-079

Grantee Address -
P.O. Box 65417
Orange Park FL 32065

TOGETHER with all and singular the hereditaments, rights, members, and appurtenances whatsoever to the said property belonging or in any wise incident or appertaining, and the reversions and remainders, rents, issues, and profits thereof, and also any estate, right, title, interest, dower, possession, benefit, claim, or demand therein whatsoever of all parties to the said suit and of all other persons who might rightfully claim the same or any part thereof, by, from, or under them, or either of them;

TO HAVE AND TO HOLD the said property, with its hereditaments, privileges, and appurtenances, unto the said grantee, his/her/its/their heirs/successors and assigns for their own use, benefit, and behoof, forever.

IN WITNESS WHEREOF, I, the undersigned, as Master in Equity for Lexington County, under and by virtue of the said order(s) have hereunto set my Hand and Seal this the 5th day of March, 2015, in the year of our Lord, 2015, and in the two hundred thirty-ninth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED, AND DELIVERED
in the Presence of:

Leslie M. Shady
(Witness)
Gail R. Faircloth
(Witness)

James O. Spence (L.S.)
James O. Spence
Master-in-Equity, Lexington County

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, Gail R. Faircloth, do hereby certify that James O. Spence, as Master in Equity for Lexington County, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 5th day of March, 2015

Gail R. Faircloth
Notary Public for South Carolina

My Commission expires: 9-25-24

ENTER IN GRANTOR INDEX: 1. Judge of the Master-in-Equity for Lexington County
2. Randall W. Cofer and Corey C. Cofer

2/11/2015 FILED, RECORDED, INDEXED
03/07/2015 09:12:13 1447
REC. HRS: 15.00 ET FILE: 10.00
CO. FILE: 10.00 Page: 1
Lexington County, R.D. Debra M. Gunter
MORRIS- 501 2414 174384333

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON)

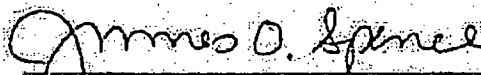
RELEASE OF LIEN

✓ CASE CAPTION: The Mill HOA, Inc. vs. Randall W. Cofer and Corey C. Cofer

CASE #: 2014-CP-32-01170

I, The Honorable James O. Spence, as Master in Equity for Lexington County, South Carolina, pursuant to foreclosure proceedings in the above action, do hereby declare notice of lien recorded in Book 16227 at page 22 in the ROD/RMC office for Lexington County, is released, cancelled and satisfied by sale under the foreclosure on March 2, 2015, as to the property described.

This 5th Day of March, 2015


James O. Spence, Master in Equity
Lexington County

Lexington County Registrar of Deeds
Customer Ticket

Print Time: 3/9/2015 9:21:47 AM

Ticket Number: 1257774
Ticket Time: 3/9/2015 9:21:31 AM
Clerk: T. F.
Submitter Name:
PUBLIC

Documents: 2
DEED

3/9/2015 9:21:31 AM
Instrument: 201500717
Book: 17428 Page: 335
Record Time: 03/09/2015 09:21:31:390
Recording Fee: \$ 18.00
Pages: 1 \$ 18.00
County Stamp Fee: \$ 5.50
State Stamp Fee: \$ 12.00
Amount: \$ 35.50

CHARGE

3/9/2015 9:21:31 AM
Instrument: 201500718
Book: 17428 Page: 335
Record Time: 03/09/2015 09:21:31:447
Recording Fee: \$ 5.00
Pages: 1 \$ 5.00
Amount: \$ 5.00

CHARGE 1

DEED

3/9/2015 9:21:31 AM
Unit Fee: \$ 2.00
Amount: \$ 2.00

PAYMENT 1

CASH

3/9/2015 9:21:31 AM
Amount: \$ 35.50

TOTAL:

Document Fees: \$ 35.50
Charges: \$ 2.00
Total Charges/Fees: \$ 37.50
Total Payments: \$ 35.50

Drawdown Balance: \$ 2.00

R00278

2006042481 FILED, RECORDED, INDEXED
05/01/2006 15:17:45:428
Rec Fee:\$18.00 St Fee:\$614.90
Co Fee:\$260.15 Pages:2
Lexington County ROD Debra M. Gunter
DEED Bk:Pg 11263:120

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

TITLE TO REAL ESTATE
BY A CORPORATION

KNOW ALL MEN BY THESE PRESENTS, That

D. R. HORTON, INC.

(hereinafter called Grantor) in the State aforesaid, for and in consideration of the sum of Two Hundred Thirty-Six Thousand Three Hundred Eighty-Eight and No/100 (\$236,388.00) Dollars to it in hand paid at and before the sealing of these presents, by RANDALL W. COFER and COREY C. COFER, Husband and Wife (hereinafter called Grantees) of 113 Mill Haven Lane, Lexington, SC 29072, in the State aforesaid, (the receipt whereof is hereby acknowledged) has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, unto the said Grantees, as Joint Tenants With Right of Survivorship and not as tenants in common, their heirs and assigns:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being near Lexington, County of Lexington, State of South Carolina, fronting on Mill Haven Lane, and being more particularly shown and delineated as Lot 175 of THE MILL Subdivision, Phase 2, on a plat prepared for Randall Cofer and Corey Cofer, by Cox and Dinkins, Inc., dated June 22, 2006, and recorded in Record Book 11263, page 119, in the Office of the Register of Deeds for Lexington County, and having such boundaries and measurements as will more fully appear by reference to said plat.

22574
NICHOLSON LAW FIRM

This being a portion of property conveyed to D. R. Horton, Inc. by deed of John Homer Mathias, Jr., William L. Mathias, Catherine E. Mathias, Amy M. Cleary, Barbara J. Mathias and John W. Mathias, dated April 22, 2004, and recorded in Record Book 9223, Page 173, in the Office of the Register of Deeds for Lexington County.

TMS# 005332-01-079

This conveyance is made subject to easements and restrictions of record and otherwise affecting the property.

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

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said Grantees, as joint tenants with right of survivorship, Their Heirs and Assigns forever.

And the said Grantor, does hereby bind itself and its successors, to warrant and forever defend all and singular the said premises unto the said Grantees, Their Heirs and Assigns, against itself and its successors and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

IN WITNESS WHEREOF, Grantor has caused these presents to be executed in its name by Ann K. Ivey, its Assistant Vice President, and its corporate seal to be hereto affixed this 31 day of July, 2006.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Brenda Y Berry
[Signature]

D. R. HORTON, INC.

BY:

[Signature]
Name: Ann K. Ivey
Title: Assistant Vice President

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

PERSONALLY appeared before me the undersigned witness who, in oath, says that s/he saw the within-named Grantor, by Ann K. Ivey, its Assistant Vice President, sign the within Deed, and the said Corporation, by said officers, seal said Deed, and, as its act and deed, deliver the same, and that s/he with the other witness whose signature appears above witnessed the execution thereof.

Brenda Y Berry
Witness

SWORN to before me this 31st
day of July, 2006.

[Signature] (Seal)
Notary Public for South Carolina

My Commission Expires: GEORGES NICHOLSON, JR.
MY COMMISSION EXPIRES

The Nicholson Law Firm
File No. 22574

MARCH 15, 2009

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Hon. James O. Spence, Master-In-Equity

Appellate Case No. 2016-001882

RECEIVED

FEB 17 2017

SC Court of Appeals

The Mill Homeowner's Association, Inc.....Plaintiff

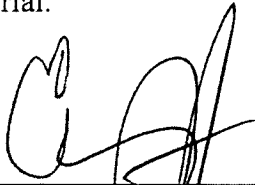
v.

Randall W. Cofer and Corey C. Cofer.....Respondents,

Regime Solutions, LLC..... Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Eric C. Hale, S.C. Bar # 71768

Elias Fain, S.C. Bar # 101193

Post Office Box 287

Columbia, SC 29202

(803) 726-3558 (Tel)

eric.hale@clarksonlawllc.com

elias.fain@clarksonlawllc.com

Attorneys for Appellant