THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master In Equity

Appellate Case No. 2016-001054

RECEIVED
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SC Court of Appeals

HSBC Bank USA, National Association, as Trustee for the Holders of the Deutsche ALT-A Securities, Inc. Mortgage Loan Trust, Mortgage Pass-Through Certificates Series 2007-OA4, assignee of Bank of America N.A., successor by merger to BAC Home Loans Servicing L.P., f/k/a Countrywide Home Loans Servicing, Inc., ... Appellant,

v.

Clifford L. Ryba; Beverly Ryba; Regions Bank; First Federal Savings and Loan Association of Charleston; Citibank (South Dakota) N.A., and Carol Garfield Goldberg, ... Defendants,

Of whom Carol Garfield Goldberg is the, ... Respondent.

RECORD ON APPEAL
VOLUME I

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

HSBC Bank of USA, National Association, as Trustee for the Holders of the Deutsche ALT-A Securities, Inc. Mortgage Loan Trust, Mortgage Pass-Through Certificates Series 2007-A4, assignee of Bank of America N.A., successor by merger to BAC Home Loans Servicing, L.P., f/k/a Countrywide Home Loans Servicing, Inc.,

Plaintiff,

–vs.–

Clifford L. Ryba; Beverly Ryba; Regions Bank; First Federal Savings and Loan Association of Charleston, Citibank (South Dakota) N.A., and Carol Goldberg,

Defendants.

THE COURT OF COMMON PLEAS
BEFORE THE MASTER IN EQUITY
CASE NO.: 2011–CP–10–7885

FILED
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JULIE J. ARMSTRONG
CLERK OF COURT

ORDER DENYING IN PART AND GRANTING IN PART PLAINTIFF'S MOTION TO ALTER, AMEND OR RECONSIDER OR FOR A NEW TRIAL

This matter came to be heard before on December 15, 2015 at Charleston, South Carolina. Present at the hearing were Matthew Tillman of Womble, Carlyle, Sandridge & Rice, L.L.P., and Ericka G. Lybrand of Rogers, Townsend, and Thomas, P.C., attorneys for the Defendants, as well as J. Kevin Holmes of the Steinberg Law Firm, L.L.P., attorney for the Defendant, Carol Goldberg. The Defendant, Clifford Ryba, was present without counsel but did not ask to be heard. The remaining Defendants were not present. The purpose of the hearing was to consider the Plaintiff's Motions to Alter, Amend or Reconsider the Court's Order Denying Foreclosure filed on June 22, 2015 or to grant a New Trial under Rule 59, S.C.R.C.P.

1. **Judgment against the Rybas.**

The Plaintiff moved to alter, amend, or reconsider the Court's Order on the grounds the Court failed to enter judgment in favor of the Plaintiff against the Defendants, Clifford L. Ryba and Beverly Ryba. The Defendant had no objection to this motion but noted the Defendant, Clifford L. Ryba, had filed bankruptcy. It was agreed the question of whether the Court should enter judgment against said Defendants would be held in abeyance and set for a later hearing with notice to the parties to take evidence on the issue.

2. **Agency.**

The Plaintiff moved to alter, amend, or reconsider the Court's Order or grant a new trial on the grounds the Plaintiff had failed to plead agency. The Defendant did not plead agency, however, the Court notes agency is not a special matter that must be plead under Rule 9, S.C.R.C.P. Preparing for trial the Defendant included in her pretrial brief South Carolina case law holding mortgage brokers are the agents of the lender, not the borrower. *See*: Brown v. Brown, 38 S.C. 173, 17 S.E. 452 (1893); Land Mortgage Investment & Agency Co. of America, Ltd., 49 S.C. 345, 26 S.E. 990 (1897); Blackwell v. British American Mortgage Co., 65 S.C. 105, 43 S.E. 395 (1902); American Mortgage Co. of Scotland v. Woodward, 83 S.C. 54, 65

S.E. 739 (1909).[1] The Plaintiff had notice of the case law when it received the Defendant's pretrial brief before trial. (Tr., pp. 6, and 169).

The Court did not rely on the case law cited by the Defendant in its Order. Instead, the Court found that Countrywide had constructive notice of the fraud committed to obtain title to the property based on the totality of the facts and circumstances detailed in the Court's Order but did find that the Defendants, Clifford L. Ryba, and First Rate Mortgage, LLC, were agents of Countrywide under South Carolina law as an additional sustaining ground for its Order.

The Defendant did not plead agency in her Answer but Rule 16 (b), S.C.R.C.P., allows amendments to conform to the evidence and provides, "When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings." A motion to amend to conform to the evidence "may be made upon motion of any party at any time, even after judgment..." "The Court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits."

The Plaintiff did not object to the agency case law cited in the Defendant's pretrial brief during the trial. No surprise witness was called to testify and no undisclosed document was produced by the Defendant. One of the issues that was

[1] The Court recognized § 40-58-78, was amended on January 1, 2010 to modify the common law rule brokers are agents of the lenders if the broker fee agreement contains explicit disclaimers. No disclaimer were introduced in this case.

tried by express or implied consent of the parties was whether Countrywide had actual or constructive knowledge of the fraud perpetrated to obtain title to the Defendant's property. The question of whether the mortgage broker was an agent of Countrywide went to issue whether Countrywide had notice of the fraud committed to obtain to the Defendant's property.

The Plaintiff alleged it was surprised and prejudiced by the Court's consideration of the agency case law. It is not clear how the Plaintiff was surprised by existing case law. The Plaintiff further argues, even if agency is considered:

> The rule imputing to the principal the agent's knowledge is placed by a majority of courts, including our own, on the ground that it is the duty of the agent to communicate to his principal all knowledge which he possesses material to the principal's business, and the presumption that he has done that duty. Under the operation of this reason, what are sometimes called exceptions or qualification to the rule have grown up. For example, an agent is not presumed to have communicated to his principal professional confidences received in representing a third person, or knowledge acquired while acting for himself or for a third parson and not for the principal, or where the knowledge is such that, according to human nature and experience, the agent is certain to conceal, or where the agent is acting in an adversary relation to the principal, or mediates a fraud against his principal or some third person in his own interest which would be defeated by disclosure.

Charleston Library Society v. Citizens & Southern Nat'l Bank, 201 S.C. 447, 23 S.E.2d 362 (1942); Mauldin Furniture Galleries, Inc. v. Branch Banking & Trust Co., 2012 U.S. Dist. LEXIS 121140, 2012 WL 3680426 (D.C.S.C. Aug. 27, 2012) *citing* Crystal Ice Co. v. First Colonial, 273 S.C. 306, 257 S.E.2d 496 (1979). The Defendant, Clifford L. Ryba, was perpetrating a fraud against the Defendant for his

own benefit and it is certain he tried to conceal that fraud from Countrywide. The Plaintiff's motion to alter, amend, or reconsider the Order on the ground the Defendant did not plead agency is granted and agency as an alternative sustaining ground of the Court's decision is deleted.

3. **Equitable Subrogation.**

The Plaintiff moved to alter, amend, or reconsider the Court's Order or grant a new trial on the grounds the Court had failed to rule that the Plaintiff was entitled to be equitably subrogated to the rights of Countrywide. Equitable subrogation was not plead by the Plaintiff and was not raised by the Plaintiff before or during trial. Equitable subrogation was not an issue tried by express or implied consent between the parties at trial. To the extent the Plaintiff's motion is a motion to amend to include a claim for equitable subrogation, the motion is denied. The Court further notes the Plaintiff's memorandum in support of its motion cites no case concerning the elements of equitable subrogation. Equitable subrogation is applicable when one jointly and severally liable for a mortgage debt is compelled to satisfy the debt to avoid foreclosure. Such a person is entitling to become equitably subrogated to the priority of the mortgagor against subsequent mortgagors. *See:* Dunn v. Chapman, 149 S.C. 163, 146 S.E. 818 (1929). Equitable subrogation is only available if the party who has paid the debt was secondarily liable for the debt. Id.; *see also:* United Carolina Bank v. Caroprop, LTD, 310 S.C. 1, 446 S.E.2d 415 (1994). Even if an amendment to allow a claim for equitable subrogation was granted, it

would not apply because Countrywide was not secondarily liable on the Defendant's mortgage that was satisfied with the proceeds from Countrywide's mortgage.

4. Pooling and Servicing Agreement (PSA).

The Plaintiff moved to alter, amend, or reconsider the Order or to grant a new trial on the grounds the Court should have found the Pooling and Service Agreement dated June 1, 2007 established the Plaintiff obtained title to the subject mortgage before the Defendant filed her *lis pendens* giving notice of her fraud claim and the mortgage was in default entitling the Plaintiff to the protection of the holder in due course or the shelter rules. As discussed at length in the Order, when and how the Plaintiff obtained possession of the note and mortgage was the subject of much controversy throughout these proceedings. Before trial, in the Plaintiff's pleadings and its motion for summary judgment, the Plaintiff and its predecessor in interest alleged they had obtained the subject note and mortgage by virtue of assignments filed with the Charleston County RMC Office on September 15, 2011 and May 21, 2012. (Plaintiff's Exhibits 6 and 8). At trail, however, the Plaintiff, for the first time, offered testimony it had obtained possession of the note and mortgage by virtue of the PSA agreement on June 1, 2007. Michael Ward, Vice President of Specialized Loan Servicing, who testified at trial about the PSA agreement did not bring a copy with him. (Tr. 123). At the conclusion of the Plaintiff's case, the Defendant moved for a directed verdict because the Plaintiff had failed to introduce any evidence what, if anything, the Plaintiff had paid Countrywide for the note and mortgage. Plaintiff's counsel represented to the

Court, "I think the terms of the PSA would express that there was a value associated with these loans that were securitized as part of this trust agreement." (Tr., p. 134). The Court did not rule on the Defendant's motion for a directed verdict but instead instructed the Plaintiff to forward a copy of the PSA agreement to Defendant's counsel. The Court then stated it would leave the issue open and the parties "could come back and we can argue that again if we need to." (Tr. 134 - 135). When the Plaintiff offered to submit a brief on the issue, the Court indicated that "would be great." (Tr. 135).

Plaintiff's counsel sent a copy of the PSA agreement to Defendant's counsel but it was neither offered nor admitted into evidence, no brief was submitted, and no hearing was requested. Nowhere does the transcript indicate the Court instructed the Plaintiff not to introduce a copy the PSA agreement into evidence. To the extent Plaintiff's motion is based on any claim the Court misled the Plaintiff into not introducing the PSA Agreement, the motion is denied.

A copy of the PSA agreement was attached to the Plaintiff's motion as Exhibit 4. The Court has reviewed the PSA agreement and finds it was an agreement between ACE Securities Corp., as the depositor, Wells Fargo Bank, N.A., as the master servicer and securities administrator, Clayton Fixed Income Services, Inc., as the credit risk manager, and the Plaintiff, HSBC Bank USA, National Association, as the Trustee. Countrywide was not a party to the PSA agreement. Nowhere does the PSA agreement say what, if anything, or when Countrywide was paid for the subject note and mortgage. The Schedule of Loans

included with the PSA agreement does include the subject note and mortgage but it does not say what, if anything, Countrywide was paid for the subject note and mortgage. Whatever mutual promises and covenants or other "good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged" that may have been exchanged between the parties to the PSA agreement, that consideration would not have flowed to Countrywide who was not a party to the agreement. (PSA, Exhibit 4, p. 6). The Plaintiff's motion to alter, amend, reconsider or for a new trial to allow the introduction of the PSA agreement is denied because, even if admitted, the PSA agreement does not show what or when anything of value was paid to Countrywide for the subject note and mortgage.

5. **Recasting**.

The Plaintiff moved to alter, amend, or reconsider the Order on the grounds the Defendant failed to establish the fraud perpetrated by the Defendant, Clifford L. Ryba, and First Rate Mortgage, L.L.C., constituted recasting prohibited by the Licensing Requirements of Certain Loan Brokers of Mortgages on Residential Real Property Act § 40–58–10, *et. seq.*, S.C. Code Anno., 1976 as amended. Section 40–58–70(6) of the Act in effect at the time of the transactions prohibited residential mortgage brokers from engaging in recasting. Section 40-58-20(9) defined recasting as a promise an individual can recoup a home sold to a third party with the intent of the original seller to rent the property for a specific time after which the original seller will have the option to repurchase the property back at a specified price. The section further provides the "specific time" would "normally"

be a year. Mortgage brokers were specifically prohibited from engaging in "recasting" a mortgage loan as a sale with a right to repurchase unless the mortgage applicant obtained the advice of a licensed attorney who is independent of the transaction who provided a document advising the applicant of the potential consequences of recasting. *See*: §§ 40–58–20(9) and 40–58–70(6), S.C. Code Anno., as amended in 1993. No evidence the Defendant received such independent legal advice or documentation of the potential consequences was provided to her was produced. There is no dispute the Defendant, Clifford L. Ryba, was a licensed mortgage broker himself and was an employee of First Rate Mortgage, LLC, the company that actually brokered the loan.

The Plaintiff argues, however, the recasting statute was not violated because the Defendant admitted there was no agreement as to when she would be permitted to repurchase her home. The primary rule of statutory construction is to ascertain and effectuate the intent of the legislature. Doe v. S.C. Dept. of Social Services, 407 S.C. 623, 757 S.E.2d 711 (2014). A statute as a whole must be given a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. 16 Jade Street, L.L.C. v. R. Design Const. Co., 398 S.C. 338, 728 S.E.2d 448 (2012). The Court is convinced it was the intent of the legislature to prohibit mortgage brokers from engaging in precisely the type of fraud the Defendant, Clifford L. Ryba, perpetrated in this case. It seems unreasonable that the legislature would intend that the prohibited conduct could be allowed by simply eliminating a specific time thereby making the scheme more attractive to the

victim. The Court is mindful, however, of the rule of statutory construction that when a statutes terms are clear and unambiguous on their face, there is no room for statutory construction and courts must apply the statute according to its literal construction. Miller v. Aiken, 364 S.C. 303, 613 S.E.2d 364 (2005).

Out of an abundance of caution, the Court grants the Plaintiff's motion to alter, amend, or reconsider its Order to delete the references to the scheme being perpetrated as illegal recasting, however, the Court's finding the conduct constituted fraud stands and is sufficient to sustain the Court's Order.

6. Fraud.

The Plaintiff moved to alter, amend, or reconsider the Court's Order or for a new trial on the ground the Defendant failed to prove the elements of fraud by clear and convincing evidence. The elements of fraud are well established under South Carolina law and set forth in the Court's Order. To establish her claim of fraud the Defendant was required to prove: (1) a misrepresentation, (2) its falsity, (3) its materiality, (4) either knowledge of its falsity or a reckless disregard of its truth; (5) intent that the misrepresentation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance of its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *See*: Michael G. Sullivan, Elements of Civil Causes of Action, SC Bar/CLE, p. 103 (2000); Kahn Construction Co. v. S.C. National Bank of Charleston, 275 S.C. 381, 384, 271 S.E.2d 414 (1980). The elements must be proven by "clear, cogent, and convincing evidence." Manship v. Newsome, 188 S.C. 6, 198 S.E. 428 (1938). The Court set forth its findings

regarding fraud in detail in the Court's Order but did not specifically reference the heightened standard of clear and convincing burden of proof. The Court has reviewed the findings and the record, including the testimony brought to the Court's attention by the Plaintiff's motion, and reaffirms those findings were established by clear and convincing evidence. The Plaintiff's motion to alter, amend, or reconsider its Order because the Defendant failed to prove the essential elements of fraud by clear and convincing evidence is granted in part and denied in part. The Court's Order should be amended to reflect that the elements of fraud were proved by clear and convincing evidence.

7. The Shelter Rule – Holder in Due Course.

The Plaintiff moved to alter, amend, or reconsider the Court's Order on the ground the Court misapplied the shelter rule. The Court found that the Plaintiff was the holder of the note and mortgage in question based on its actual possession of the original documents. The question remained, however, whether the Plaintiff met the requirements for protection under the holder in due course or the shelter rules. As set forth in the Court's Order, under South Carolina case law in order to be entitled to protection under the holder in due course rule, the purchaser must prove (1) he has actually paid the full purchase price; (2) he purchased and acquired the legal title, or the best right to it; and (3) he purchased the property in good faith, with integrity of dealing, and without notice of a lien or defect. Spence v. Spence, 368 S.C. 106, 628 S.E.2d 869 (2006). All three (3) conditions must exist before the purchaser had notice of a title defect or other adverse claim, lien, or asserted

interest in the property. S.C.Tax Commn. v. Belk, 266 S.C. 539, 543, 225 S.E. 2d 177, 179 (1976). The burden of proving the existence of the three (3) conditions is on the Plaintiff. Smith v. Faust, 107 S.C. 37, 92 S.E. 24 (S.C. 1917).

The Court ruled the Plaintiff was not entitled to protection under the holder in due course rule based on either the assignment dated September 15, 2011 or the assignment dated May 21, 2012 that were introduced into evidence because both assignments were made after the Defendant had filed her *lis pendens* giving statutory notice of her fraud claim, after the subject note and mortgage were in default. The PSA agreement discussed above also fails to show what or when the Plaintiff paid anything of value to Countrywide for the subject note and mortgage. The Plaintiff failed to prove it paid value and, therefore, is not entitled to the protection of the holder in due course rule in its own right. The Plaintiff argued further it is entitled to protection under the shelter rule because Countrywide, from whom it purchased the note and mortgage, paid value for the note and mortgage before the Defendant filed her *lis pendens*, and before the note and mortgage were in default and, therefore, they are entitled to the protection of the shelter rule.

The shelter rule is applicable if a note or mortgage is purchased from a holder in due course. Once someone in the chain of title purchases the note and mortgage from a holder in due course, "the title is **thenceforth** sanctified." In order for the Plaintiff to be entitled to the protection of the shelter rule, the Plaintiff had to prove Countrywide, in addition to proving they paid value and acquired the legal title, was a bona fide purchaser in good faith, integrity of dealing, and without

notice of a lien or defect. Thus the question became whether Countrywide had actual or constructive knowledge of the fraud committed to obtain title to the property preventing it from being a holder in due course.

As set forth in the Court's Order, notice can be either actual or constructive. When a person has knowledge of facts sufficient to put them on inquiry, the law presumes them to have knowledge of undisclosed facts such inquiry, if pursued with diligence, would have revealed. *See*: City of Greenville v. Washington Am. League Baseball Club, 205 S.C. 495, 32 S.E.2d 777 (1945); O'Leary-Payne v. R.R. Hilton Head, II, Inc., 371 S.C. 340, 638 S.E.2d 96 (S.C. App. 2006). The Court considered numerous facts that are set forth in the Court's Order:

1.The borrower as an employee of the mortgage broker was information readily ascertainable from the loan application.
2. The mortgage loan was not just a subprime mortgage loan. Michael Ward testified the subject note and mortgage applied for was a "no doc," negative amortization loan. The new refinance mortgage allowed the option to pay only a fraction of the "7 or 7.5%" interest rate of the loan and to accumulate the unpaid interest. (Tr. 120).
3. It was the fourth time the property had been refinanced in just two (2) years. The Court requested information from the Plaintiff on the applicable standards for the refinancing of mortgages at the relevant time but no such evidence was introduced by the Plaintiff at trial.
4. The subject property was claimed to be investment property on the loan application but the appraisal performed as part of the loan showed it was rented at a net monthly loss at substantially below fair market value (Defendant's Exhibits 14A and 17). Simply by requesting a copy of the lease agreement Countrywide would have discovered the property was rented back to the Defendant.
5. Inquiry into why the date of the alleged purchase was left blank on the loan application would have revealed the title was obtained from the Defendant for a fraction of its value immediately before the Countrywide mortgage.

Any suggestion the original Countrywide mortgage was simply a purchase money mortgage in an arm's length transaction ignores the other evidence in the

case. The closing documents show the proceeds from the loan were used to pay off the outstanding mortgage, to pay the mortgage broker's fee, to purchase title insurance, and to pay closing costs but that the Defendant was never paid anything for her $150,000.00 equity.

While none of these facts may have been enough considered individually to give notice of the fraud, when considered together they were sufficient to have put Countrywide on inquiry notice and that, if such an inquiry had been diligently conducted, Countrywide would have discovered the underlying fraud committed to obtained title to the property. Since the Court found Countrywide had constructive notice of the fraud, Countrywide was not a holder in due course and, therefore, the Plaintiff which purchased the mortgage from them is not entitled to the protection of the shelter rule. The Plaintiff's motion to alter, amend, or reconsider the Court's Order on the ground the Court misapplied the shelter rule is denied.

8. Other grounds to Alter or Amend.

The Plaintiff filed various additional grounds to alter, amend, or reconsider the Court's Order. Once the Plaintiff was substituted for Bank of America, there no longer was a reason to introduce the web pages describing the terms of the bank's purchase of Countrywide after it became insolvent. The Court's Order referenced the web pages only when discussing the procedural history and the arguments that had been raised at the summary judgment hearing. It is undisputed the transactions involved in this case occurred in 2005 and 2007, before the real estate market collapsed in 2008. The Court did not have to take judicial notice of this fact

to find that the Defendant had an equity of approximately $150,000.00 in her home as that fact was evident from the appraisal done as part of the mortgage loan process. (Defendant's Exhibit 17). Defendant's counsel argued that Countrywide was one of the largest subprime mortgage lenders and that abuses by subprime mortgage lenders led to the largest financial collapse of our generation. The Court's Order, however, did not rely on this recognized fact, in reaching its decision. Rather, what the Court said was:

> The Court wishes to take this opportunity to state this is a very fact specific case. It involved a licensed mortgage broker and his company engaging in a fraudulent and illegal scheme called recasting from which they profited. It involves Countrywide, now a defunct mortgage company, the Defendant aptly described as a poster child for the mortgage loan abuses that led to the largest financial crisis of our generation. And, it involves a financial institution willing to take the risk of Countrywide's suspect mortgages. Denying foreclosure under the facts of this case does not endanger the legal underpinnings of our financial system. It is well founded under existing South Carolina law and is consistent with the public policy that hold those who facilitate or turn a blind eye to or are willing to assume the risk should be held responsible rather than the victims of fraud ...

It was also undisputed that Countrywide purchased title insurance as part of the mortgage. It now further appears the Plaintiff hired a corporate credit risk manager and utilized credit default swaps as part of PSA agreement. The purchase of title insurance to protect against there being a defect in the title was a prudent business decision. The existence of title insurance was properly considered by the Court in balancing the equities in this case. The Plaintiff's motion to alter, amend, or reconsider the Court's Order on these various other grounds is denied.

IT IS HEREBY ORDERED that the Plaintiff's motion to alter, amend, or reconsider the Court's Order or grant a new trial on the ground the Court failed to enter judgment in favor of the Plaintiff against the Defendants, Clifford L. Ryba and Beverly Ryba, is held in abeyance to be heard in a separate hearing at which the Plaintiff will be permitted to introduce evidence on the issue; and

IT IS HEREBY ORDERED that the Plaintiff's motion to alter, amend, or reconsider the Order or grant a new trial on the ground the Defendant did not plead agency is granted and agency, as an alternative sustaining ground of the Court's finding Countrywide had constructive notice of the fraud committed to obtain title to the property, is deleted; and

IT IS HEREBY ORDERED that the Plaintiff's motion to alter, amend, or reconsider the Order or grant a new trial on the ground the Court failed to find the Plaintiff was equitably subrogated to the rights of Countrywide is denied; and

IT IS HEREBY ORDERED that the Plaintiff's motion to alter, amend, or reconsider the Order or grant a new trial on the ground the Court should have found the Pooling and Service Agreement dated June 1, 2007 established the Plaintiff's obtained title to the subject mortgage long the Defendant filed her *lis pendens* giving notice of her fraud claim and the mortgage was in default entitling the Plaintiff to the protection of the holder in due course or the shelter rule is denied because the PSA agreement, even if it had been admitted, does not show what or when anything of value was paid to Countrywide for the subject note and mortgage; and

IT IS HEREBY ORDERED that the Plaintiff's motion to alter, amend, or reconsider the Order or grant a new trial on the ground the Defendant failed to establish the fraud perpetrated to obtain title to the Defendant's home constituted recasting prohibited by the Licensing Requirements of Certain Loan Brokers of Mortgages on Residential Real Property Act § 40–58–10, *et. seq.*, S.C. Code Anno., 1976 as amended, is granted and references to recasting are deleted from the Court's Order, however, the Court's finding the conduct constituted fraud stands and is sufficient to sustain the Court's Order; and

IT IS HEREBY ORDERED that the Plaintiff's motion to alter, amend, or reconsider the Order or grant a new trial on the ground the Defendant failed to prove the elements of fraud by clear and convincing evidence is denied; and

IT IS HEREBY ORDERED that the Plaintiff's motion to alter, amend, or reconsider the Order or grant a new trial on the ground the Court misapplied the shelter rule is denied; and

IT IS HEREBY ORDERED that the Plaintiff's motion to alter, amend, or reconsider the Order or grant a new trial on the various other grounds asserted is denied.

AND IT IS SO ORDERED.

Mikell R. Scarborough
Master-In-Equity for Charleston County

Charleston, South Carolina
April 20, 2016

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	BEFORE THE MASTER IN EQUITY
COUNTY OF CHARLESTON	)	CASE NO.: 2011-CP-10-7885
HSBC Bank of USA, National Association, as Trustee for the Holders of the Deutsche ALT-A Securities, Inc. Mortgage Loan Trust, Mortgage Pass-Through Certificates Series 2007-A4, assignee of Bank of America N.A., successor by merger to BAC Home Loans Servicing, L.P., f/k/a Countrywide Home Loans Servicing, Inc.,	)	ORDER DENYING FORECLOSURE
Plaintiff,	)	
-vs.-	)	
Clifford L. Ryba; Beverly Ryba; Regions Bank; First Federal Savings and Loan Association of Charleston, Citibank (South Dakota) N.A., and Carol Goldberg,	)	
Defendants.	)	

FILED
2015 JUN 22 PM 12:11
JULIE J. ARMSTRONG
CLERK OF COURT

This matter was heard before me on March 24, 2015. Present at the hearing were the Plaintiff and their its attorneys, Matthew Tillman, of Womble, Carlyle, Sandridge & Rice, LLP, and Ericka G. Lybrand of Rogers, Townsend and Thomas, PC, as well the Defendant, Carol Goldberg, and her attorneys, Benjamin Goldberg, Esquire, and J. Kevin Holmes, of the Steinberg Law Firm, LLP. The Defendant, Regions Bank, has not sought to foreclose its second mortgage but has requested, if foreclosure is granted, any excess funds be paid over to them. The remaining

Defendants did not appear at the hearing. This was a final hearing on the merits on the Plaintiff's Amended Complaint for foreclosure.

The Plaintiff seeks to foreclose a note and mortgage entered into between Countrywide Home Loans Inc., and Clifford L. Ryba, and his wife on May 2, 2007 recorded in Book E 625 at page 517 in the Charleston County RMC Office. (Defendant's Exhibits 4 and 5). The mortgage was secured by real property located at 34 Tarleton Drive, Charleston, South Carolina 29407. There is no dispute the mortgage is in default.

The Plaintiff alleges it is a bona fide purchaser of the note and mortgage for value without notice also entitled to the protection of the shelter rule and, therefore, not subject to any claims or defenses of the Defendant. The Defendant alleges she was fraudulently induced into deeding her property to Ryba and his wife when she sought his help as a licensed mortgage broker to refinance her home, denies the Plaintiff is a bona fide purchaser for value without notice, and alleges the Plaintiff has no greater rights than its predecessor in title, Countrywide, which facilitated, turned a blind eye to, and profited from its agents' fraud and illegal recasting scheme.

The Plaintiff claims the mortgage was duly filed in accordance with § 30–7–10, S.C. Code Anno., 1976 as amended, and, therefore, valid as to all subsequent bona fide purchasers for value without notice. Section 30–7–10 is consistent with South Carolina case law providing a purchaser may assert a plea in equity if it is a bona fide purchaser for value without notice, by showing (1) he has actually paid

the full purchase price; (2) he purchased and acquired the legal title, or the best right to it; and (3) he purchased the property in good faith, with integrity of dealing, and without notice of a lien or defect. Spence v. Spence, 368 S.C. 106, 628 S.E.2d 869 (2006). In order to qualify as a bona fide purchaser for value without notice, all three (3) conditions must exist before the purchaser had notice of a title defect or other adverse claim, lien, or asserted interest in the property. S.C.Tax Commn. v. Belk, 266 S.C. 539, 543, 225 S.E. 2d 177, 179 (1976). The burden of proving the existence of the three (3) conditions is on the Plaintiff. Smith v. Faust, 107 S.C. 37, 92 S.E. 24 (S.C. 1917).

Before addressing the issues the Court feels compelled to discuss some of the procedural history of this case. This foreclosure was originally brought by Bank of America, N.A., successor by merger to BAC Home Loans Servicing L.P., f/k/a Countrywide Home Loans Servicing, Inc., which alleged it was the holder of the note and mortgage by reason of an assignment filed in the Charleston County RMC Office on September 15, 2011. (Plaintiff's Exhibit 8). The Complaint was amended substituting the Plaintiff which alleged it was the holder of the note and mortgage by reason of an assignment filed in the Charleston County RMC Office on May 21, 2012. (Plaintiff's Exhibit 6). Considerable time and effort was spent by the Court and the parties arguing the Plaintiff's motion for summary judgement based on these assignments. The Defendant raised several arguments why neither the Bank of America nor the Plaintiff were bona fide purchasers for value without notice. First, the Defendant argued the Bank of America and the Plaintiff had failed to

show they were the holder of the note because it was endorsed in blank and did not show who the note had been assigned to. Second, the Defendant argued neither the Bank of America nor the Plaintiff could be a holder in due course because they obtained their assignments after the *lis pendens* was filed giving statutory notice of the Defendant's claim on August 19, 2008. *See*: § 30–7–10, S.C. Code Anno., 1976 as amended; Pipkin v. Fletcher, 165 S.C. 98, 162 S.E.774 (1932). Third, the Defendant argued neither the Bank of America nor the Plaintiff could be a holder in due course because they obtained their assignments after the note and mortgage were in default. *See*: § 36-3-302 (1)(c), S.C. Code Anno., 1976 as amended. And, fourth, the Defendant argued Bank of America, the Plaintiff's predecessor in interest, could not be a holder in due course because it had obtained the note and mortgage as part of a bulk sale not in the regular course of Countrywide's business. *See*: § 36-3-302 (3)(c), S.C. Code Anno., 1976 as amended. The Defendant asked the Court to take judicial notice the real estate market collapsed in late 2007 and 2008 causing the Wall Street financial crisis and that Bank of America had purchased Countrywide on July 1, 2008 in what the Defendant described as a "fire sale" according to Bank of America's web postings. In response to these arguments, the Plaintiff filed a supplemental memorandum in support of summary judgment claiming it was entitled to the protection of the shelter rule. Under the scintilla of evidence standard, the Court ruled there remained material questions of fact and denied summary judgment. *See:* Hancock v. Mid-South Management Co., Inc., 673 S.C. 801, 381 S.E.2d 326 (S.C. 2009).

At trial, however, the Plaintiff introduced the testimony of Michael Ward, a vice president of the Plaintiff, to authenticate the documents and he testified the mortgage was actually assigned to the Plaintiff on June 1, 2007, long before the *lis pendens* was filed, Countrywide collapsed and was taken over by Bank of America, and the note and mortgage had gone into default. The prior assignments which were filed with the RMC Office and previously relied upon by the Plaintiff are inconsistent with the his trial testimony. If the trial testimony is to be believed, then the two prior assignments recorded in the RMC Office, referenced in pleadings, and relied upon in arguments before this Court were either the product of incompetence, the result of a total lack of accurate record keeping, or a complete sham. This Court is charged with the difficult task and responsibility of deciding cases affecting the lives of citizens whose homes are being foreclosed. Of necessity, the Court must rely on the accuracy of the documents submitted. The Court emphasizes a mortgage foreclosure is an action in equity and a party seeking to foreclose a mortgage must come before the Court with clean hands. Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 489 S.E.2d 472 (1997); Wachovia Bank, N.A. v. Coffey, 389 S.C. 68, 698 S.E.2d 244 (2010). The inconsistent testimony causes the Court to have great concern about the accuracy and reliability of the documents the Plaintiff relies upon.

The first issue to be decided is whether the Plaintiff is a bona fide purchaser of the note and mortgage for value. In response to the Defendant's argument made during the summary judgment hearing the note was endorsed in blank and did not

show to whom it had been assigned, the Plaintiff argued the blank endorsement made the note a bearer instrument and produced the original note. The Court was satisfied this proved the Plaintiff is the holder of the note. The question remained whether the Plaintiff paid value for the note. The Court would not hesitate to find that Bank of America obtained the note and mortgage as part of a bulk sale not in the ordinary course of Countrywide's business and, therefore, could not be a holder in due course. If the trial testimony is to be believed, however, it would now appear the Bank of America never was a holder of the note by merger or assignment. If the assignments are to be believed, the Court notes the assignments do not state what, if anything, of value was exchanged for the note and mortgage. The issue of whether the Plaintiff had paid value was raised during the hearing on the Plaintiff's motion for summary judgment. Other than Plaintiff's counsel saying the June 1, 2007 that was not introduced into evidence stated an unspecified consideration had been paid, there is no evidence what, if anything, the Plaintiff actually paid for the note and mortgage. When Michael Ward was asked by Defendant's counsel what the Plaintiff had paid for the note and mortgage, he replied he did not know. The Court finds the Plaintiff has failed to prove it was a bona fide purchaser for value.

The second issue to be decided is whether the Plaintiff is a bona fide purchaser of the note and mortgage without notice. The Court finds the Plaintiff is the holder of the note and mortgage but the issue of whether the Plaintiff had notice depends upon when the note and mortgage were assigned to them. The assignments that were filed with the RMC Office, cited in the pleadings, and relied

upon in arguments before the Court reflect the assignments were made after the *lis pendens* giving statutory notice of the Defendant's claim and after the note and mortgage were in default. As to the claim the Plaintiff became the holder of the note on June 1, 2007 pursuant to an agreement that was not introduced into evidence, the Court is unconvinced. The Plaintiff did not introduce a copy of the agreement and, other than representations of counsel, the Court has no way of knowing who the agreement was between, what the terms of the agreement were, or whether it included the subject note and mortgage. The Court does not suggest Plaintiff's counsel misrepresented the agreement but representations of counsel are not a substitute for evidence. For the reasons set forth above, the Court has serious concerns about the accuracy and reliability of the Plaintiff's documents. The Court finds the Plaintiff has not proven it obtained the note on June 1, 2007 pursuant to an agreement that has not been introduced. The only other evidence before the Court is that the Plaintiff obtained the assignment of the note and mortgage pursuant to the assignment dated May 21, 2012 that had been filed with the RMC Office, cited in the pleadings, and relied upon in proceedings before the Court. Under § 30–7–10, however, this assignment was made after the *lis pendens* was filed and, therefore, the Plaintiff would have had statutory notice of the Defendant's claim. Section 30-7-10 specifically applies to assignments:

> All deeds of conveyances of lands...**including *all assignments***...are valid so as to affect the rights of subsequent creditors... or purchasers for valuable consideration without notice, only from the day and hour from which they are recorded in the office of the register of deeds...In the case of a subsequent purchaser of real estate, or **in the case of a subsequent lien**

> **creditor on real estate for valuable consideration without notice, the instrument evidencing the subsequent conveyance or subsequent lien must be filed for the record in order for its holder to claim under this section as a subsequent creditor or purchaser for value without notice, and the priority is determined by the time of filing for record.**

See: Pipkin v. Fletcher, *supra*. The Court finds the Plaintiff had statutory notice of the Defendant's claim when it became the holder of the note and mortgage pursuant to the assignments filed with the RMC Office, cited in the pleadings, and relied upon by the Plaintiff in arguments before the Court. The Court finds the Plaintiff failed to prove it was a bona fide purchaser of the note and mortgage without notice.

Finding the Plaintiff failed to prove it was a bona fide purchaser for value without notice, however, does not end the inquiry. The Plaintiff further argues the deed between Ryba and the Defendant, if induced by fraud, was not void but voidable and, therefore, valid as any bona fide purchaser claiming through a bona fide purchaser for value without notice. Manship v. Newsome, 188 S.C. 6, 198 S.E.428 (1938); Smith v. Faust, *supra*. The Plaintiff argues an assignee stands in the shoes of the assignor and, even if they had statutory notice, they are entitled to the protection of the shelter rule. Liberty Loan Corp. of Darlington v. Mumford, 283 S.C. 134, 322 S.E.2d 17 (Ct. App. 1984) ("[W]henever in a succession of purchasers you reach one who is innocent and purchases in ignorance, the title is thenceforth sanctified."); *see also*: Goodwin v. Harrison, 231 S.C. 243, 98 S.E.2d 255 (1957); BAC Home Loans Serv. v. Kinder, 389 S.C. 619, 73 S.E.2d 547 (2012). The Plaintiff

argues since its predecessor in title, Countrywide, actually funded the note and mortgage before the *lis pendens* was filed, the Plaintiff stands in Countrywide's shoes and is entitled to the protection of the shelter rule. A review of the testimony and evidence is necessary to decide this issue.

The Defendant testified she inherited 34 Tarleton Drive, Charleston, South Carolina 29407, free of encumbrances, from her grandfather. Thereafter, she and her then husband mortgaged the property because they were adopting a child and her husband wanted to open a restaurant. Subsequently, her husband was incarcerated, his restaurant closed, and the Defendant was left with insufficient income to pay the mortgage. She obtained a short term loan to keep up the payments but needed to obtain long term financing. She mentioned her situation to Ryba, who informed her he was a licensed mortgage broker with First Rate Mortgage, LLC, and offered to help her obtain refinancing.

The Defendant testified she met with Ryba at the office of First Rate Mortgage, LLC, and answered questions as he filled out what she presumed was a mortgage loan application. A short time later, however, Ryba told the Defendant she could not qualify for a mortgage loan even with a co-signor. The Defendant testified Ryba then proposed the Defendant deed her home to him so he could obtain a mortgage in his name and that he would lease the home back to her for an amount equal to the mortgage payments and give her the right to repurchase the home from him by reimbursing him for his costs. The Defendant testified she was desperate to keep from losing her home, an inexperienced borrower, and she relied

upon Ryba because he was a licensed mortgage broker and worked for a mortgage brokerage firm. The There is no evidence the Defendant knew the proposed scheme is called recasting and prohibited under the law regulating mortgage brokers.

In furtherance of the scheme, the Defendant testified Ryba prepared a Residential Lease Agreement on August 12, 2005 leasing the property back to her for monthly rent of $850.00. (Defendant's Exhibit 2). Paragraph 14 of the lease agreement drafted by Ryba provided that the Defendant would be responsible for essential services and appliances because, "[t]enant is owner." The Defendant testified she understood the rent would be equal to and used to pay for the mortgage Ryba would obtain in his name to pay off her existing mortgage. The documents reveal the Defendant's mortgage had an outstanding balance of $199,689.75, including interest and fees, at the time of the closing. (Defendant's Exhibit 5). The Defendant testified Ryba then prepared an Agreement to Buy and Sell the property on August 16, 2005 for a stated consideration of $205,000.00 which she understood to be the amount needed to satisfy the existing mortgage and pay closing costs for the new mortgage. The Defendant testified she did not receive anything for her property which had a value of approximately $350,000.00. The Court takes judicial notice that this transaction occurred before the collapse of the real estate market in late 2007 and 2008, the Defendant's home was marketable, and a sale would have netted her approximately $150,000.00 in equity. The Defendant testified she did not want to sell her home and was only seeking help with refinancing. The Defendant testified she was not represented by a real estate agent in either the

lease or buy and sell agreements. The Defendant testified and the documents reveal she attended a closing at which she signed a deed transferring the property to Ryba and his wife on August 31, 2005. (Defendant's Exhibit 4). The Defendant testified she signed the deed based upon Ryba's representations. The Defendant testified she was not represented by an attorney at the closing. The lawyer who closed the loan, Roy Hutchinson, Esquire, testified he would not have closed the loan if he had he known of Ryba's representations.

The testimony of the closing attorney and the documents reveal that on that same day, Ryba and his wife obtained a mortgage from Countrywide in the principal amount of $163,500.00. (Defendant's Exhibit 6). The Defendant was not a party to the mortgage closing. The mortgage application was handled by Ryba and his employer, First Rate Mortgage, LLC. The proceeds of the loan, together with a second mortgage of unknown origin in the amount of $20,857.00 and cash from borrower in the amount of $21,199.11, were used to fund the transaction and to satisfy the Defendant's outstanding mortgage as shown by the HUD Settlement Statement. (Defendant's Exhibit 15). Whatever personal funds Ryba expended were more than reimbursed six weeks later when he and his wife obtained a second mortgage on the property from Regions Bank in the principal amount of $100,000.00 on October 11, 2005. The Defendant testified she had no knowledge of and did not participate in this second mortgage. The documents reveal that seven months later Ryba and his wife refinanced the Regions Bank second mortgage

increasing the principal amount to $115,000.00 on May 9, 2006. The Defendant testified she had no knowledge of and did not participate in this refinancing.

A year later Ryba and his wife refinanced the Countrywide mortgage increasing the principal amount to $172,000.00 on May 2, 2007. (Defendant's Exhibit 10). This is the mortgage sought to be foreclosed in this action. Prior to this refinance, Regions Bank agreed to subordinate its second mortgage on April 24, 2007. (Defendant's Exhibit 6). The Defendant testified she had no knowledge of and did not participate in this refinancing. The documents reveal the mortgage application was again handled by Ryba and his employer, First Rate Mortgage, LLC. (Defendant's Exhibit 14). The witness, Michael Ward, on cross examination admitted Countrywide relied upon First Rate Mortgage, LLC, to gather and submit complete and accurate information about the loan, however, he also testified this was a "no doc" loan, meaning Countrywide did not require the information on the loan application be verified or documented. The Uniform Residential Loan application was completed by First Rate Mortgage, LLC., and signed by Ryba and his wife on the day of the closing. The loan application disclosed Ryba was an employee of First Rate Mortgage, LLC. The year Ryba acquired the property was left blank on the application. The application described the property as an investment and disclosed that Ryba did not live on the property. The application further disclosed the property was rented for a significant net monthly loss and, based on the appraisal performed as part of the loan, the property was rented for less than fair market value. The attorney who closed the loan, David Chard,

Esquire, testified and the documents disclosed that $171,445.01 of the proceeds of the $172,000.00 mortgage were used to satisfy Countywide's prior mortgage and to pay fees, including the mortgage broker fee, title insurance, and closing costs. (Defendant's Exhibit 15). The appraisal valued the property at this time, still before the collapse of the real estate market, was $375,000.00. (Defendant's Exhibit 17).

The Defendant testified Ryba and his wife demanded she increase her rent payments from $850.00 to $1,600.00 a month and, when she refused, they tried to have her evicted from the property. The Defendant testified she retained Benjamin Goldberg, Esquire, who represented her before the Magistrate's Court and stopped the eviction proceedings. The Defendant testified Ryba failed to pay the property taxes and a delinquent tax notice was posted on her front door and that she paid the taxes to keep from losing the property. The Defendant testified Ryba hired a real estate agent to sell the home who put a "lock box" on her front door and for sale signs in the yard which she removed.

The documents reveal Mr. Goldberg filed a Summons and Complaint, Case No. 08-CP-10-4970, on behalf of the Defendant against the Rybas and First Rate Mortgage, LLC, alleging various causes of action, including fraud and recasting. (Defendant's Exhibit 18). At the same time, Mr. Goldberg filed a *lis pendens* giving statutory notice of the alleged fraud and the Defendant's claim. (Defendant's Exhibit 19).

The Defendant testified that Ryba filed for bankruptcy but did not list the Defendant as a creditor. Mr. Goldberg intervened in the bankruptcy and, as part of the settlement of the bankruptcy, Ryba and his wife transferred ownership of the property subject to the mortgages back to the Defendant by quick claim on October 26, 2012.

The Court must decide whether the Defendant has proven she was fraudulently induced into deeding her property to Ryba and his wife. The elements of fraud are well established under South Carolina law. To establish her claim of fraud the Defendant was required to show: (1) a misrepresentation, (2) its falsity, (3) its materiality, (4) either knowledge of its falsity or a reckless disregard of its truth; (5) intent that the misrepresentation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance of its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *See*: Michael G. Sullivan, Elements of Civil Causes of Action, SC Bar/CLE, p. 103 (2000); Kahn Construction Co. v. S.C. National Bank of Charleston, 275 S.C. 381, 384, 271 S.E.2d 414 (1980).

The Plaintiff objected to the admission of evidence concerning the alleged fraud on the grounds the oral agreement alleged by the Defendant violated the Statute of Frauds. *See*: §§ 27-35-20, 32-3-10(4), S.C. Code Anno., 1976 as amended. Generally, a contract for an interest in land must be in writing and signed by the party against whom enforcement is sought. *See:* Player v. Chandler, 299 S.C. 101, 382 S.E.2d 891 (1989). The statute is subject to exceptions including that other

written documents can establish or confirm the existence of the oral agreement satisfying the statute or that the oral agreement has been partially performed thereby avoiding the statute. The Court does not find the written lease agreement prepared by Ryba, which included a provision the Defendant was the owner of the property, or the written buy and sell prepared by Ryba, even if considered together, contained the essential elements of the contract alleged to satisfy the statute. Neither the lease nor buy and sell agreements contained a provision that Ryba would resell the property to the Defendant, the time such resale would take place, or the amount to be paid. Player v. Chandler, *supra*. Nor does the Court find that the Defendant's continued occupancy of the home and payment of rent, which was consistent with the lease agreement, is sufficient to show part performance in avoidance of the statute. Stackhouse v. Cook, 271 S.C. 518, 248 S.E.2d 482 (1978). The Court does find, however, that the protection afforded by the Statute of Frauds is a personal privilege of the parties to the agreement and a stranger to the oral contract cannot avail himself of the fact that the statute renders the contract unenforceable. Hatcher v. Harleysville Mut. Ins. Co., 266 S.C. 548, 225 S.E.2d 181 (1976). Furthermore, the Court finds that a Court of equity will not permit a statute intended to prevent fraud to be used as an instrument to effect a fraud. Aust v. Beard, 230 S.C. 515, 96S.E.2d 558 (1957); Gardner v. Nash, 225 S.C. 303, 82 S.E.2d 123 (1954). While a Court of equity will generally not enforce contracts relating to land which are not in writing as required by the Statute of Frauds, it will cancel conveyances obtained by fraudulent misrepresentations. Gardner v.

Nash, 225 S.C. 303, 82 S.E.2d 123 (1954). The Plaintiff's objection to the introduction of evidence concerning the underlying fraudulent and illegal nature of the transaction by which Ryba obtained title to the property mortgaged is overruled.

The Court finds the representations set forth above made by Ryba were both false and material. Ryba knew the representations were false and intended for the Defendant to act on them. The Defendant was desperate to save her home, not an experienced borrower, and was neither represented by a real estate agent nor a lawyer in the transactions. The Defendant not only relied but had the right to rely on Ryba's advice because he was a licensed mortgage broker who worked for a mortgage brokerage firm. The Defendant has suffered proximate damage by Ryba mortgaging her home multiple times withdrawing a substantial portion, if not all, of the equity and by his attempts to have her evicted from and to sell her home. The Court finds the Defendant has proven she was fraudulently induced into deeding her property to Ryba by clear and convincing evidence.

Furthermore, the Court finds mortgage loan brokers are licensed and governed by the Licensing Requirements of Certain Loan Brokers of Mortgages on Residential Real Property Act, § 40–58–10, S.C. Code Anno., 1976 as amended. Section 40–58–70(6) of the Act in effect at the time of the transactions prohibited residential mortgage brokers from engaging in recasting. Section 40-58-20(9) defines recasting as a promise an individual can recoup a home sold to a third party with the intent of the original seller to rent the property for a specific time at which

the original seller will have the option to repurchase the property back at a specified price. Mortgage brokers were specifically prohibited from engaging in recasting unless the mortgage applicant obtained the advice of a licensed attorney who is independent of the transaction who provided a document advising the applicant of the potential consequences of recasting. *See*: §§ 40–58–20(9) and 40–58–70(6), S.C. Code Anno., as amended in 1993. No evidence the Defendant received such independent legal advice or documentation of the potential consequences was provided to her was produced. The Court finds Ryba's recasting scheme was not just fraudulent, it was illegal.

Even if the underlying transaction was fraudulent and illegal, the Plaintiff maintains its argument, first raised in its supplemental memorandum in support of summary judgment, "[t]here is no evidence that Countrywide Bank was anything but a bona fide lender for value." As set forth above, in order for Countrywide to have been a bona fide lender for value it must have acted in good faith, with integrity of dealing, and without notice of a lien or defect. Spence v. Spence, *supra*. The Court notes Countrywide received $171,445.00 of the proceeds of the $172,000.00 loan sought to be foreclosed. These proceeds of this loan were used to pay off its previous loan in the amount of $163,500.00 with the balance used to pay broker fees, closing fees, costs, and title insurance. Nevertheless, the Court finds the payment of $163,500.00 to fund the original mortgage being refinanced constitutes payment of value. The question remains, however, whether

Countrywide had notice of the fraudulent and illegal acts committed by Ryba to obtain title to the property mortgaged.

Notice can be either actual or constructive. When a person has knowledge of facts sufficient to put them on inquiry, the law presumes them to have knowledge of undisclosed facts such inquiry, if pursued with diligence, would have revealed. *See:* City of Greenville v. Washington Am. League Baseball Club, 205 S.C. 495, 32 S.E.2d 777 (1945); O'Leary-Payne v. R.R. Hilton Head, II, Inc., 371 S.C. 340, 638 S.E.2d 96 (S.C. App. 2006). Countrywide had actual notice from the loan application Ryba was both the borrower and broker of the loan and an employee of First Rate Mortgage, LLC, it relied upon to obtain and verify information about the loan. While Michael Ward testified he had brokered two mortgage loans on his own property, no details of those loans were introduced and the Court does not know what types of loans were involved, whether they were "no doc" loans, or who the lenders were. Michael Ward was not qualified as an expert and his testimony about two personal loans is insufficient to establish this was or is an accepted practice in the mortgage loan industry. Countrywide had actual knowledge the "no doc" loan being applied for was not a typical mortgage loan. When asked how the original mortgage in the principal amount $172,000.00 could have increased so much, Michael Ward testified it was a loan that allowed the borrower to decide what payments to make and for unpaid interest to accumulate.* Countrywide had actual knowledge the date Ryba had acquired the property had been left blank on the application, Ryba did not reside on the property, and that, although described as an

* a Negative Amortization loan

investment, the property was rented at a significant net monthly loss below fair market rent. Countrywide had actual knowledge Ryba had financed and refinanced the property at least four times in two years. The Court specifically requested information from the Plaintiff regarding lending standards for multiple refinancing of property over a short period of time at the summary judgement hearing but no information in this regard was provided after the hearing or at trial. While none of these facts known to Countrywide may have been enough considered individually, when taken together the Court finds they were sufficient to have put Countrywide on inquiry.

The Court further finds, if an inquiry had been diligently conducted, Countrywide would have discovered the underlying fraudulent and illegal recasting scheme by which Ryba obtained title to the property being mortgaged. The fact that the borrower was also the broker Countrywide relied upon to produce complete and accurate information concerning the "no doc," flexible payment loan should have at least warranted a more thorough investigation. Had Countrywide inquired about when Ryba acquired the property, information left blank on the application, they would have discovered he acquired it immediately before the first Countrywide mortgage. Had they inquired about why the property described as an investment was rented for a significant net monthly loss at below fair market rent, they would have discovered it was rented back to the Defendant who deeded the property to Ryba. Had they asked for a copy of the lease, they would have discovered the lease in paragraph 14 said the Defendant was the owner of the property. Had they

inquired about how much had been paid for the property worth approximately $350,000.00 they would have discovered it was only $205,000.00 and the closing statement from their first loan showed the Defendant was never paid anything for her equity. The Court finds if Countrywide had asked some simple and fairly obvious questions it would have inevitably discovered Ryba had engaged in recasting that was prohibited by statute. The Court finds a diligent inquiry would have led Countrywide to the discovery the underlying transaction by which Ryba obtained title to the property mortgaged was fraudulent and illegal.

As an additional sustaining ground, the Court finds Ryba and First Rate Mortgage, LLC, were the agents of Countrywide under South Carolina law. Agency is a fiduciary relationship which results from the manifestation of consent by one person that another shall act on his behalf and subject to his control, and consent by the other to so act. *See*: F. Patrick Hubbard and Robert L. Felix, The South Carolina Law of Torts, 2nd Ed., SC Bar/CLE, p. 635 (1997); Restatement (Second) of Agency, § 1; Peoples Fed. Sav. & Loan Ass'n v. Myrtle Beach Golf & Yacht Club, 310 S.C. 132, 145–146; 425 S.E.2d 764, 773 (S.C. App. 1992). Ryba clearly had knowledge of the recasting scheme and, therefore, his employer, First Rate Mortgage, LLC, had knowledge of the scheme under the doctrine of *respondeat superior*. The treatis explains the *respondeat superior* doctrine literally means "let the master answer" and is founded on public policy:

> The reason which has supported the principle of *respondeat superior*, based upon the judicial interpretation and declaration of public policy, is that the principal, by selecting and directing the manner in which he shall execute the agency, should, in

> justice to third persons with the agent may deal, and who are not responsible either his selection or conduct, be held liable for his torts.

Id., at p. 635; Sams v. Arthur, 135 S.C. 123, 130, 133 S.E.2d 493 (1960). Vicarious liability is founded on fairness and the notion, "he who expects to derive advantage from an act which is done by another for him must answer for any injury that a third party may sustain from it." Vicarious liability also seeks to prevent the conduct from occurring and the injury being inflicted in the first place and recognizes the principal is often in a better position to provide an adequate remedy for the innocent victim and in a position to spread the risk. *Id.*, at p. 639; South Carolina Ins. Co. v. James C. Green & Co., 290 S.C. 171, 348 S.E.2d 617 (Ct. App. 1986).

The Court finds Countrywide agreed to allow Ryba and First Rate Mortgage, LLC, to handle the mortgage loan application in which Ryba was both the borrower and an employee of the broker. Countrywide directed and controlled what information Ryba and First Rate Mortgage, LLC, were required to obtain, verify, and submit or, perhaps more accurately, not required to obtain, verify, or submit. Countrywide benefited from the loan by receiving $171,455.00 of the $172,000.00 loan and paid Ryba and First Rate Mortgage, LLC, a broker's fee. Countrywide was in a position to and did protect itself from a defect in the title by requiring the purchase of title insurance as part of the loan transaction. The Court finds Countywide was vicariously liable for the fraudulent and illegal acts committed by Ryba and First Rate Mortgage, LLC, as its agents.

The Plaintiff argues, however, that Ryba and First Rate Mortgage, LLC, were independent contractors for whose torts Countrywide would not be liable. The rule a principal is not liable for the acts of an independent contractor, however, is subject to exceptions. *See:* The South Carolina Law of Torts, *supra.* at p. 636. In addition to the exceptions discussed in the treatise, the Court finds South Carolina law recognizes that a mortgage broker who procures a loan and performs other services at the direction of the lender is the agent of the lender, not the borrower. *See:* Brown v. Brown, 38 S.C. 173, 17 S.E. 452 (1893); Land Mortgage Investment & Agency Co. of America, Ltd., 49 S.C. 345, 26 S.E. 990 (1987); Blackwell v. British-American Mortgage Co., 65 S.C. 105, 43 S.E. 395 (1902); American Mortgage Co. of Scotland v. Woodward, 83 SC 54, 65 S.E. 739 (1909). While the Court recognizes § 40–58–78, has been amended and now may modify the common law rule if the broker fee agreement contains explicit disclaimers, this amendment did not become effective until January 1, 2010 and the Court further notes no such disclaimers have been produced in this case. The Court finds Ryba and First Rate Mortgage, LLC, were not independent contractors but were agents of Countrywide for whose acts Countrywide is vicariously liable.

Based on the foregoing discussion and findings, the Court finds that Countrywide was not a bona fide purchaser for value without notice. Countrywide had at least constructive knowledge of the fraudulent and illegal recasting scheme committed by its agents, Ryba and First Rate Mortgage, LLC. The Plaintiff, as their assignee, stands in their shoes. The Court wishes to emphasize this is a very

fact specific case. It involved a licensed mortgage broker and the company he worked for engaging in a fraudulent and illegal recasting scheme from which they profited. It involves Countrywide, a now defunct mortgage company the Defendant aptly described as a poster child for the mortgage loan abuses that led to the largest financial crisis of our generation, facilitating and turning a blind eye to the fraudulent and illegal recasting scheme it also profited from. And, it now involves a financial institution willing to take the risk when it agreed to purchase Countrywide's suspect mortgages seeking to profit as well. Denying foreclosure under the facts of this case does not endanger the legal underpinnings of our financial system. It is well founded under existing South Carolina law and is consistent with the public policy that holds those who facilitate, turn a blind eye to, or who are willing to assume the risk should be held responsible rather than the victims of fraud and illegal conduct.

The Court is mindful of the Plaintiff's argument the Defendant will receive a windfall if foreclosure is denied but notes the Defendant's property remains subject to the Regions Bank second mortgage in the principal amount of $115,000.00 that has also has not been paid since May of 2011. With accumulated interest, late fees, and probable attorney fees, any windfall to the Defendant is likely to be minimal. The Court further notes the Plaintiff can seek to recoup its loss by proceeding against the title insurance that was purchased as part of the loan. The facts and circumstances regarding the Regions Bank mortgage may be entirely different from this case and nothing contained in this Order should be interpreted as binding in

any foreclosure action they may bring. It is hoped, however, in light of this decision that Regions Bank and the Defendant will negotiate in good faith to restructure the loan so that the Defendant will not unfairly lose her home.

IT IS HEREBY ORDERED that foreclosure is denied.

AND IT IS SO ORDERED.

Mitchell R. Scarborough
Master-In-Equity for Charleston County

Charleston, South Carolina
4th day of June, 2015

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011- CP-10-7885

Bank of America
PLAINTIFF(S)

Clifford Ryba ET AL
DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), 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.

FILED
2013 MAR 12 AM 9:39
JULIE J. ARMSTRONG
CLERK OF COURT
BY

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: **By consent of the parties, and pursuant to Rule 53, this court hereby refers this case to the equity division of the court for final disposition. The Master-In-Equity shall enter final judgment with any appeals to be taken in accordance with 14-11-85. The reference fee shall be paid directly to the office of the Master-In-Equity; upon a failure to do so, the Master shall order the case to be dismissed without prejudice for failure to comply with the court's order.**

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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	2117 Judge Code	3/6/2013 Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**
	CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-10-7885

Bank of America, N.A., successor by merger to BAC Home Loans Servicing LP, fka Countrywide Home Loans Servicing LP,

Plaintiff,

v.

Clifford L. Ryba; Beverly Ryba; Regions Bank; First Federal Savings and Loan Association of Charleston; Citibank (South Dakota) N.A.; Carol Garfield Goldberg;

Defendant(s).

CONSENT ORDER ALLOWING INTERVENTION

FILED
2012 MAR -7 AM 11:10
JULIE J. ARMSTRONG
CLERK OF COURT
BY

(015262-00242)

The above-captioned matter is an action for foreclosure of real estate mortgage. Subsequent to the commencement of this action, Plaintiff was served with a Motion to Intervene by Carol Garfield Goldberg ("Mrs. Goldberg"). Mrs. Goldberg filed an action against Clifford Ryba, et al., together with a Lis Pendens in Case Number 2008-CP-10-4970 on August 29, 2008, in the Office of the Clerk of Court for Charleston County. Because of the complex history of that case, Plaintiff was not aware at the time it filed its own Lis Pendens that Mrs. Goldberg's action was still pending. Mrs. Goldberg claims an interest in the property which is the subject of the instant action.

Mrs. Goldberg seeks to intervene in the instant action. Plaintiff has consented to such intervention provided that Mrs. Goldberg be required to serve her responsive pleading pursuant to Rule 24(c), SCRP, within ten (10) days of service of this order upon her counsel.

NOW THEREFORE, pursuant to Rule 24 of the South Carolina Rules of Civil Procedure, for good cause indicated, and with the consent of the Plaintiff,

IT IS ORDERED THAT:

Carol Garfield Goldberg is hereby joined as a party defendant in the above-captioned action. She shall serve her responsive pleading on counsel for Plaintiff and the other answering parties within ten (10) days of service of this order upon her counsel.

Presiding Judge

Char., South Carolina

3/1, 2012

1 1 of 3

I CONSENT:

Robert P. Davis (Bar #74030)
Rogers Townsend & Thomas, PC
P. O. Box 100200
Columbia, SC 29202-9250
803-744-4444
Attorney for Plaintiff

I CONSENT:

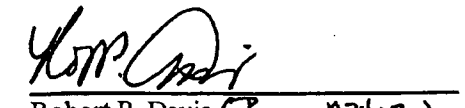
Benjamin Goldberg
One Carriage Lane, Bldg. H
Charleston, SC 29407
843-769-4595
Attorney for Carol Garfield Goldberg

I CONSENT:

J. Kevin Holmes
The Steinberg Law Firm
61 Broad Street
Charleston, SC 29401
843-720-2800
Attorney for Carol Garfield Goldberg

2 of 3

I CONSENT:



Robert P. Davis (Bar #74030)
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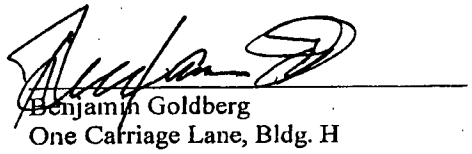
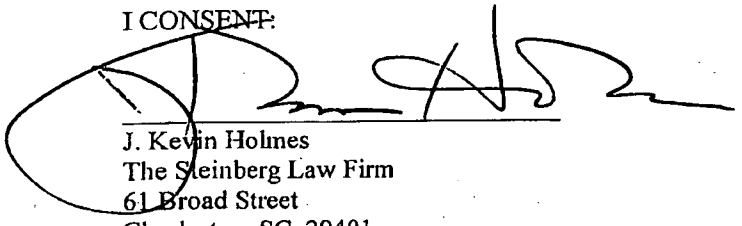
Columbia, SC 29202-9250
803-744-4444
Attorney for Plaintiff

I CONSENT:



Benjamin Goldberg
One Carriage Lane, Bldg. H
Charleston, SC 29407
843-769-4595
Attorney for Carol Garfield Goldberg

I CONSENT:



J. Kevin Holmes
The Steinberg Law Firm
61 Broad Street
Charleston, SC 29401
843-720-2800
Attorney for Carol Garfield Goldberg

9/3/08

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 08-CP-10-4970
CAROL GARFIELD GOLDBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	LIS PENDENS
	)	
CLIFFORD RYBA, BEVERLY RYBA AND FIRST RATE MORTGAGE, LLC,	)	
	)	
Defendants.	)	

FILED
AUG 29 2008
JULIE J. ARMSTRONG
CLERK, C.P. & G.S.

TO THE DEFENDANTS ABOVE NAMED:

Please take notice that an action has been commenced and is now pending by the Plaintiff against the Defendants, which affect the property described as follows:

ALL THAT LOT, PIECE OR PARCEL OF LAND, WITH THE BUILDINGS AND IMPROVEMENTS THEREON, SITUATE, LYING AND BEING IN CHARLESTON COUNTY, SOUTH CAROLINA, KNOWN AND DESIGNATED AS LOT NO. 461 AS SHOWN ON A PLAT OF A PORTION OF SOUTH WINDERMERE SUBDIVISION, MADE BY J.O'HEAR SANDERS, JR., SURVEYOR, DATED FEBRUARY 1953 AND RECORDED IN PLAT BOOK J. PAGE 44 IN THE RMC OFFICE FOR CHARLESTON COUNTY; SAID LOT HAVING SUCH SIZE, SHAPE AND DIMENSIONS, MORE OR LESS, AS WILL BY REFERENCE TO SAID PLAT MORE FULLY APPEAR, AND BEING BOUNDED AS SHOWN ON SAID PLAT.

BEING THE SAME PROPERTY CONVEYED TO CLIFFORD RYBA AND BEVERLY RYBA BY DEED OF CAROL A. GOLDBERG, FORMERLY KNOWN AS CAROL A. GARFIELD, DATED AUGUST 31, 2005, AND RECORDED SEPTEMBER 1, 2005, IN THE CHARLESTON COUNTY RMC OFFICE IN BOOK Y551, AT PAGE 150; SUBSEQUENTLY, CLIFFORD RYBA CONVEYED HIS INTEREST TO BEVERLY RYBA BY DEED DATED SEPTEMBER 20, 2005, AND RECORDED IN THE CHARLESTON COUNTY RMC OFFICE IN BOOK P554, AT PAGE 434; SUBSEQUENTLY BEVERLY RYBA CONVEYED A ½ UNDIVIDED INTEREST TO CLIFFORD F. RYBA BY DEED DATED MAY 2, 2007, AND RECORDED MAY 10, 2007 IN DEED BOOK D-625 AT PAGE 174.

TMS # 421-09-00-003

Benjamin Goldberg, Esq.
One Carriage Lane, Bldg. H
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(843)769-4595

Coming B. Gibbs, Jr., Esq.
P.O. Box 938
Charleston 29402-0938
(843)722-0033

Attorneys for Plaintiff

August 29, 2008
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 08-CP-10-4970
CAROL GARFIELD GOLDBERG,	)	
	)	
Plaintiff,	)	SUMMONS
	)	CAUSES OF ACTION
vs.	)	ONE: SPECIFIC PERFORMANCE
	)	TWO: BREACH OF CONTRACT
CLIFFORD RYBA, BEVERLY	)	ACCOMPANIED BY A
RYBA AND FIRST RATE	)	FRAUDULENT ACT
MORTGAGE, LLC,	)	AND OTHERS
	)	
Defendants.	)	

FILED
2008 AUG 29 AM 8:41
JULIE J. ARMSTRONG
CLERK OF COURT
BY

08-012807

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action and to serve a copy of your answer to the Complaint on the undersigned Benjamin Goldberg, Esq., at his address, One Carriage Lane, Building H, Charleston, SC 29407, within thirty (30) days after service hereof, exclusive of the day of such service, and, if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for a judgment by default for the relief demanded in this action.

Benjamin Goldberg, Esq.
One Carriage Lane
Building H
Charleston, SC 29407
(843)769-4595

Attorney for Plaintiff

August 29, 2008
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 08-CP-10-4970
CAROL GARFIELD GOLDBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	COMPLAINT
	)	JURY TRIAL DEMANDED
CLIFFORD RYBA, BEVERLY RYBA AND FIRST RATE MORTGAGE, LLC,	)	
	)	
	)	
Defendants.	)	

FILED
2008 AUG 29 AM 8:42
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Plaintiff for her Complaint alleges:

FIRST: The Defendants Clifford Ryba and Beverly Ryba (Clifford and Beverly) are residents of the County of Charleston.

SECOND: The Defendant First Rate Mortgage, LLC, (First Rate) was organized under the laws of the State of South Carolina and is doing business in the County of Charleston as a licensed mortgage broker.

THIRD: At the times hereafter set forth, Clifford was an employee of First Rate and a licensed loan originator.

FOURTH: Prior to August 31, 2005, the Plaintiff (Carol) was the owner of a home at 34 Tarleton Drive, TMS # 421-09-00-003, situate in the County of Charleston.

FIFTH: Carol, a single mother, and her young daughter had resided in her home for many years prior to August 31, 2005.

SIXTH: Carol had been a friend of Clifford and Beverly for years.

SEVENTH: Clifford, as a licensed loan originator and employee of First Rate Mortgage had experience in the mortgage brokerage business and the procurement of mortgages for clients.

EIGHTH: During the times hereafter set forth, Clifford was the agent, servant and employee of First Rate and held out to the public as such by First Rate.

NINTH: Before August 31, 2005, Carol experienced financial problems, but her efforts to obtain a mortgage loan were unsuccessful.

TENTH: She mentioned her financial distress to Clifford, who told her of his expertise in the mortgage brokerage business as a licensed loan originator and his employment with First Rate and said he could and would help her obtain a loan. Carol had no knowledge of the mortgage business.

ELEVENTH: Clifford thereafter advised Carol he could not obtain a loan in Carol's name, nor in the name of her stepfather.

TWELFTH: He told Carol that, in order to obtain a loan, the title to her home would have to be placed in Clifford's name.

THIRTEENTH: Clifford represented to Carol that, as her trusted friend and as a licensed loan originator, he would obtain a mortgage, pay the monthly payments, and maintain Carol's equity in her home.

FOURTEENTH: Carol would continue to occupy her home as a tenant and pay rent at $850.00 per month, which she was capable of paying based on her limited income, and the $850.00 per month would be applied to the payments on the mortgage to be obtained by Clifford.

FIFTEENTH: Clifford then presented to Carol a Contract of Sale for the conveyance of Carol's home to him, which Contract of Sale omitted any reference to the reconveyance or monthly rental.

SIXTEENTH: Upon request for written verification of the agreement, Clifford told Carol that no loan could be obtained with such a written agreement, and Carol agreed, relying upon Clifford as a trusted friend, licensed loan originator and agent of First Rate, the licensed mortgage broker.

SEVENTEENTH: On August 31, 2005, a closing was held, at which Carol conveyed her home to Clifford and his wife, Beverly, for a consideration of $205,000.00, by deed of the same date, recorded in the RMC Office of Charleston County on September 1, 2005, in Book Y-551, Page 150.

EIGHTEENTH: At the closing, First Rate received fees for its services in connection with the transaction.

NINTEENTH: Clifford and Beverly obtained two (2) mortgages on Carol's home: one in the amount of $163,500.00 to Countrywide Bank and the second in the amount of $20,870.00 to Regions Bank, both dated August 31, 2005 and recorded respectively in the RMC Office of Charleston County in Book Z-551, Page 831 and U-555, Page 654.

TWENTIETH: Clifford and Beverly also put up the sum of $21,199.11, which brought the total closing costs to $206, 232.44, it being understood that the $21,199.11 would be used for the maintenance of Carol's home, with the balance, if any, to be returned to Carol.

TWENTY-FIRST: Carol continued occupancy of her home and remains there to this day. She has paid the rent agreed upon of $850.00 per month, but thereafter upon repeated demands from Clifford, the rent was increased drastically without notice in various increased amounts to a high of $1,600.00 a month.

TWENTY-SECOND: Carol could ill afford to pay such drastically increased rents but was forced to do so, for she feared that she would lose her home due to threats from Clifford to either evict her or sell her home out from under her.

TWENTY-THIRD: In the meantime and without notice to Carol, Clifford conveyed his interest in Carol's home to Beverly by deed dated September 20, 2005, and recorded in the RMC Office of Charleston County on September 21, 2005, in Book P-555, Page 434.

TWENTY-FOURTH: Thereafter, again without notice to Carol, Beverly conveyed to Clifford his one-half interest in Carol's home by deed dated May 2, 2007, and recorded on May 10, 2007, in the RMC Office of Charleston County in Book D-625, Page 174.

TWENTY-FIFTH: On May 9, 2006, Beverly, without notice to Carol, mortgaged her home to Regions Bank in the amount of $115,000.00, which mortgage was recorded in the RMC Office of Charleston County in Book W-582, Page 499, on May 10, 2006.

TWENTY-SIXTH: On May 2, 2007, without notice to Carol, Clifford and Beverly mortgaged her home to Countrywide Bank for the amount of $172,000.00, which mortgage was recorded in the RMC Office of Charleston County on May 10, 2007, in Book E-625, Page 517.

TWENTY-SEVENTH: From the two mortgages above set forth of 2006 and 2007, the two original mortgages were satisfied, but there remained an overage of $80,767.56, which Clifford and Beverly converted to their own use and for their personal expenses and purposes, to the exclusion of Carol and without her knowledge.

TWENTY-EIGHTH: Clifford and Beverly refuse to convey Carol's home to her as agreed without payment by Carol to them of a grossly inflated figure, nor will they satisfy the mortgages which they improperly obtained, which are liens on Carol's home.

FOR A FIRST CAUSE OF ACTION
SPECIFIC PERFORMANCE

TWENTY-NINTH: She realleges Paragraphs ONE through TWENTY-EIGHTH as if here set forth.

THIRTIETEH: Carol is ready, willing and able to pay the correct amount due Clifford and Beverly, who refuse to accept but instead demand an inflated and unwarranted amount, refuse to pay off the mortgages which they improperly obtained that are liens on Carol's home and refuse to convey to Carol her home.

THIRTY-FIRST: Clifford and Beverly have also violated the warranty of good faith and fair dealing.

THIRTY-SECOND: In the alternative, should Clifford and Beverly continue their refusal to pay off the mortgages and fail to continue to make payments thereon, Carol's home may be foreclosed and she would be entitled to the value of her home, other costs and losses associated with her forced ejectment and move, prejudgment interest and attorney's fees.

FOR A SECOND CAUSE OF ACTION
BREACH OF CONTRACT WITH A FRAUDULENT ACT

THIRTY-THIRD: She realleges Paragraphs ONE through THIRTY-SECOND as if here set forth.

THIRTY-FOURTH: The breach of contract was infused with fraudulent intent related to the breach and accompanied by fraudulent acts, which were characterized by dishonesty, unfair dealing or unlawful appropriation of another's property by design, as above set forth.

THIRTY-FIFTH: As a result, Carol is entitled to actual and punitive damages, attorney's fees and costs.

FOR A THIRD CAUSE OF ACTION
FRAUD

THIRTY-SIXTH: She realleges Paragraphs ONE through THIRTY-FIFTH as if here set forth.

THIRTY-SEVENTH: Clifford made representations to Carol, which were false and made with knowledge of their falsity or made with reckless disregard of their truth or falsity.

THIRTY-EIGHTH: The representations were material and made with the intent that they would be acted upon.

THIRTY-NINTH: Carol was ignorant of the falsity of the representations and relied upon their truth, as she had a right to do, since Clifford was her trusted friend, a licensed loan originator and the agent, servant and employee of First Rate, a licensed mortgage broker.

FORTIETH: As a result, Carol has incurred actual and punitive damages, attorney's fees and costs.

FOR A FOURTH CAUSE OF ACTION
CONSTRUCTIVE FRAUD

FORTY-FIRST: She realleges Paragraphs ONE through FORTIETH as if here set forth.

FORTY-SECOND: Even if Clifford was not guilty of intent to deceive or actual dishonesty, which he is, he would nonetheless be guilty of constructive fraud and Carol would be entitled to actual and punitive damages, attorney's fees and costs.

FOR A FIFTH CAUSE OF ACTION
NEGATIVE REPRESENTATION

FORTY-THIRD: She realleges Paragraphs ONE through FORTY-SECOND as if here set forth.

FORTY-FOURTH: Clifford made false representations to Carol and had a pecuniary interest in making the representations, even though Clifford owed a duty of due care to Carol that he communicate truthful information to her.

FORTY-FIFTH: Clifford breached his duty of due care and Carol justifiably relied on the representations, which resulted in pecuniary loss, as a result of Carol's reliance on Clifford's representations.

FORTY-SIXTH: As a proximate result, Carol suffered actual and punitive damages, attorney's fees and costs.

FOR A SIXTH CAUSE OF ACTION
CONVERSION

FORTY-SEVENTH: She realleges Paragraphs ONE through FORTY-SIXTH as if here set forth.

FORTY-EIGHTH: Clifford and Beverly, without authorization, assumed control without authority and exercised the rights of ownership of the $80,767.56 belonging to Carol to her exclusion.

FORTY-NINTH: As a proximate result, Carol suffered actual damages including $80.767.56, punitive damages, attorney's fees and costs and is entitled to prejudgment interest.

FOR A SEVENTH CAUSE OF ACTION
UNJUST ENRICHMENT

FIFTIETH: She realleges Paragraphs ONE through FORTY-NINTH as if here set forth.

FIFTY-FIRST: Clifford and Beverly have been unjustly enriched at Carol's expense in that a benefit has been conferred upon them by Carol, for Clifford and Beverly obtained, to the exclusion of Carol, $80,767.56, among other things, which under circumstances that make it inequitable for them to retain this amount, which should be returned to Carol together with prejudgment interest and costs.

FOR AN EIGHTH CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY AGAINST CLIFFORD AND FIRST RATE

FIFTY-SECOND: She realleges Paragraphs ONE through FIFTY-FIRST as if here set forth.

FIFTY-THIRD: Clifford was a licensed originator and an employee, servant and agent of First Rate, which was a licensed mortgage broker and they owed a fiduciary duty to Carol.

FIFTY-FOURTH First Rate and Clifford actually induced and accepted Carol's confidence, which Carol had in them.

FIFTY-FIFTH: As a result, First Rate and Clifford, in equity and good conscience, were bound to act in good faith and with due regard to the interest of Carol and not to act on their own behalf.

FIFTY-SIXTH: First Rate and Clifford breached their fiduciary duties to Carol, and as a proximate result Carol sustained actual and punitive damages, attorney's fees and costs.

FOR A NINTH CAUSE OF ACTION VERSUS FIRST RATE AND CLIFFORD
UNFAIR TRADE PRACTICES, §39-5-10 ET SEQ CODE OF LAWS SC AS AMENDED

FIFTY-SEVENTH: She realleges Paragraphs ONE through FIFTY-SIXTH as if here set forth.

FIFTY-EIGHTH: First Rate and Clifford have committed unfair methods of competition and unfair or deceptive acts or practices in the conduct of their trade or commerce of licensed mortgage broker and licensed loan originator, which adversely affect the public interest because of their potential for repetition.

FIFTY-NINTH: Carol has suffered an ascertainable loss of money or property as a result of First Rate's and Clifford's use or employment of unfair or deceptive methods, acts or practices, which were a willful and knowing violation of the statute that First Rate and Clifford knew or should have known was a violation.

SIXTIETH: As a proximate result, Carol is entitled to actual damages, three (3) times actual damages sustained, reasonable attorney's fees and costs.

FOR A TENTH CAUSE OF ACTION VERSUS FIRST RATE
VIOLATION OF THE REGISTRATION OF LOAN BROKERS ACT
§ 40-58-10 ET SEQ CODE OF LAWS SC AS AMENDED

SIXT-FIRST: She realleges Paragraphs ONE through SIXTIETH as if here set forth.

SIXTY-SECOND: First Rate violated the terms of the act in the following particulars:

1 – In misrepresenting material facts or making false promises to influence, persuade or adduce an applicant for a mortgage or a mortgagor to take a mortgage.

2 – Engaging in recasting without following the requisites of the statute.

FOR A ELEVENTH CAUSE OF ACTION
REFORMATION

SIXTY-THIRD: She realleges Paragraphs ONE through SIXTY-SECOND as if here set forth.

SIXTY-FOURTH: A conveyance to Clifford and Beverly by Carol of her home was not within the contemplation of the parties.

SIXTY-FIFTH: Instead, it was Carol's intent to enter into a lease with an option to purchase with monthly rentals of $850.00, which were to be applied to the purchase price.

SIXTY-SIXTH: There was a mistake by Carol in executing the deed due to the inequitable conduct, deceit, concealment and imposition of fraud on the part of Clifford and Beverly. Clifford and Beverly have received from Carol the monthly payments of $850.00, as agreed, and have also received the drastically increased monthly payments under the threat of eviction or sale of the property and ouster of Carol from her home. In addition, they took $80,767.56, which belonged to Carol.

SIXTY-SEVENTH: The deed should be reformed to a lease with an option to purchase, and Carol is ready, willing and able to pay the correct price to purchase which the Defendants refuse to do, and they also refuse to satisfy the mortgages they placed on Carol's home.

FOR A TWELFTH CAUSE OF ACTION
DEED AS MORTGAGE

SIXTY-EIGHTH: She realleges Paragraphs ONE through SIXTY-SEVENTH as if here set forth.

SIXTY-NINTH: In the alternative, Carol would allege that her deed to Clifford and Beverly was in fact a mortgage.

SEVENTIETH: Carol never desired to sell her home, but was induced to do so by Clifford's fraud.

SEVENTY-FIRST: There was never any discussion as to the value of Carol's home and no appraisal was obtained.

SEVENTY-SECOND: The purchase price set forth in the deed from Carol to Clifford and Beverly is grossly inadequate as the value of Carol's home.

SEVENTY-THIRD: The Court should require an accounting directing the parties to disclose the correct amount due by Carol and, upon payment thereof, order Clifford and Beverly to convey Carol's home to her without encumbrances, which encumbrances should be satisfied by them.

FOR A THIRTEENTH CAUSE OF ACTION
EMOTIONAL DISTRESS

SEVENTY-FOURTH: She realleges Paragraphs ONE through SEVENTY-THIRD as if here set forth.

SEVENTY-FIFTH: Carol has suffered emotional distress by the extreme and outrageous acts intentionally inflicted upon her.

SEVENTY-SIXTH: For a period of approximately three (3) years, Clifford and Beverly have, without notice, increased the monthly payments, which Carol could ill afford to pay, but did so for she was afraid she would lose her home by the threats of eviction or the sale of her home by Clifford. In addition, Clifford and Beverly illegally converted the sum of $80,767.56, which belongs to Carol.

SEVENTY-SEVENTH: As a result of such abusive and egregious conduct, Carol has suffered and continues to suffer emotional distress, which distress will be overwhelming if she loses her home.

SEVENTY-EIGHTH: Carol, is therefore entitled to actual and punitive damages, attorney's fees and costs.

FOR A FOURTEENTH CAUSE OF ACTION
AGAINST FIRST RATE
NEGLIGENT SUPERVISION

SEVENTY-NINTH: She realleges Paragraphs ONE through SEVENTY-EIGHTH as if here set forth.

EIGHTIETH: First Rate owed a duty of due care to Carol, for the harm resulting to her as above set forth should have been reasonably anticipated by First Rate.

EIGHTY-FIRST: First Rate breached its duty to Carol by failing to use due care in supervising the actions of Clifford.

EIGHTY-SECOND: As a result of First Rate's negligence, Carol has sustained actual and punitive damages.

Wherefore Plaintiff requests the Court grant the following relief:

FIRST: As to the first cause of action, specific performance of the contract, or in the alternative, if the mortgages are foreclosed, for the value of her home, costs of her ejectment and relocation, prejudgment interest and attorney's fees.

SECOND: As to the second cause of action, actual and punitive damages, attorney's fees and costs.

THIRD: As to the third cause of action, actual damages, attorney's fees and costs.

FOURTH: As to the fourth cause of action, actual damages, attorney's fees and costs.

FIFTH: As to the fifth cause of action, actual damages, attorney's fees and costs.

SIXTH: As to the sixth cause of action, actual damages, including $80,767.56, with prejudgment interest, punitive damages, attorney's fees and costs.

SEVENTH: As to the seventh cause of action, $80,676.56, together with prejudgment interest, attorney's fees and costs.

EIGHTH: As to the eighth cause of action, actual and punitive damages, attorney's fees and costs.

NINTH: As to the ninth cause of action, actual damages, three (3) times actual damages sustained, reasonable attorney's fees and costs against First Rate and Clifford.

TENTH: As to the tenth cause of action, such damages by First Rate as the Court determines to be just.

ELEVENTH: As to the eleventh cause of action, the reformation of the deed to a lease with an option to purchase, a determination by the Court of the correct amount due by Carol and, upon payment thereof, order Clifford and Beverly to convey her home to Carol without encumbrances which should be satisfied by Clifford, Beverly and First Rate.

TWELFTH: As to the twelfth cause of action, declare that the deed is a mortgage, determine the correct amount due by Carol and, upon payment thereof, order Clifford and Beverly to convey her home to Carol without encumbrances which should be satisfied by Clifford, Beverly and First Rate.

THIRTEENTH: As to the thirteenth cause of action, actual and punitive damages, attorney's fees and costs.

FOURTEENTH: As to the fourteenth cause of action, actual and punitive damages.

And for such other and further relief as this Court deems appropriate.

Benjamin Goldberg, Esq.
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Charleston, SC 29407
(843)769-4595

Coming B. Gibbs, Jr., Esq.
P.O. Box 938
Charleston 29402-0938
(843)722-0033

Attorneys for Plaintiff

August 29, 2008
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A., successor by merger to BAC Home Loans Servicing LP, fka Countrywide Home Loans Servicing LP,

Plaintiff,

v.

Clifford L. Ryba; Beverly Ryba; Regions Bank; First Federal Savings and Loan Association of Charleston;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2011-CP-10-7885

LIS PENDENS
Deficiency Judgment Demanded

(015262-00242)

NOTICE IS HEREBY GIVEN THAT an action has been or will be commenced in this Court upon complaint of the above-named Plaintiff against the above-named Defendant(s) for the foreclosure of a certain mortgage of real estate given by Clifford L. Ryba and Beverly Ryba to Mortgage Electronic Registration Systems, Inc., as nominee for Countrywide Bank, FSB, its successors and assigns (MIN# 100133700021205 97-9) dated May 2, 2007, and recorded in the Office of the RMC/ROD for Charleston County on May 10, 2007, in Mortgage Book E625 at Page 517. Subsequently, this Mortgage was assigned to Bank of America, N.A., successor by merger to BAC Home Loans Servicing LP, fka Countrywide Home Loans Servicing LP, by assignment dated September 15, 2011 and recorded October 4, 2011 in Book 0210 at Page 521.

The premises covered and affected by the said mortgage and by the foreclosure thereof were, at the time of the making thereof and at the time of the filing of this notice, described as follows:

All that lot, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being in Charleston County, South Carolina, known and designated as Lot No. 461 as shown on a plat of a portion of South Windermere Subdivision, made by J. O'Hear Sanders, Jr., surveyor, dated February 1953 and recorded in Plat Book J, Page 44 in the RMC Office for Charleston County; Said Lot having such size, shape, and dimensions, more or less, as will by reference to said plat more fully appear, and being bounded as shown on said plat.

This being the same property conveyed to Clifford Ryba and Beverly Ryba, as joint tenants with the right of survivorship, by deed of Carol A. Goldberg f/k/a Carol A. Garfield, dated August 31, 2005 and recorded September 1, 2005 in Book Y551 at Page 150. Subsequently, Clifford Ryba conveyed his interest in the subject property to Beverly Ryba by deed dated September 20, 2005 and recorded September 21, 2005 in Book P554 at Page 434. Subsequently, Beverly Ryba conveyed an undivided one

half interest in subject property to Clifford L. Ryba by deed dated May 2, 2007 and recorded May 10, 2007 in Book D625 at Page 174.

Property Address: 34 Tarleton Dr
Charleston, SC 29407

TMS# 421-09-00-003

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF
Samuel C. Waters (SC Bar #5958)
Reginald P. Corley (SC Bar #69453)
Ellie C. Floyd (SC Bar #68635)
Eve Moredock Stacey (SC Bar #5300)
Robert P. Davis (SC Bar #74030)
Vance L. Brabham, III (SC Bar #71250)
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Kelsey K. Lipscomb (SC Bar #77519)
Taryn M. Zange (SC Bar #70357)
220 Executive Center Drive
Columbia, SC 29210
Post Office Box 100200 (29202)
(803) 744-4444

Columbia, South Carolina
October 26, 2011

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Bank of America, N.A., successor by merger to BAC Home Loans Servicing LP, fka Countrywide Home Loans Servicing LP, Plaintiff, v. Clifford L. Ryba; Beverly Ryba; Regions Bank; First Federal Savings and Loan Association of Charleston; Defendant(s).	IN THE COURT OF COMMON PLEAS DOCKET NO. 11-CP-10-7885 SUMMONS (NON-JURY) FORECLOSURE OF REAL ESTATE MORTGAGE Deficiency Judgment Demanded

(015262-00242)

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, 220 Executive Center Drive, Suite 109, Post Office Box 100200, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTICE that 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 in equity/special referee, pursuant to Rule 53, of the South Carolina Rules of Civil Procedure.

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

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by Bank of America, N.A., successor by merger to BAC Home Loans Servicing LP, fka Countrywide Home Loans Servicing LP.

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

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Columbia, South Carolina
October 26, 2011

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-10-7885

Bank of America, N.A., successor by merger to BAC Home Loans Servicing LP, fka Countrywide Home Loans Servicing LP,

Plaintiff,

v.

Clifford L. Ryba; Beverly Ryba; Regions Bank; First Federal Savings and Loan Association of Charleston;

Defendant(s).

COMPLAINT

(NON-JURY)

FORECLOSURE OF REAL ESTATE MORTGAGE
Deficiency Judgment Demanded

(015262-00242)

Plaintiff alleges:

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

2. Pursuant to S.C. Code Section 33-15-101, Plaintiff is a corporation or other legal entity doing business in the State of South Carolina.

3. Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.

4. The Plaintiff's servicing agent for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program ("HMP"), but the subject loan is not eligible for modification because the property is vacant or has been condemned.

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

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

7. Heretofore, on or about May 2, 2007, Clifford L. Ryba and Beverly Ryba made, executed and delivered a certain Adjustable Rate Note ("Note") in the principal sum of $172,000.00, payable in monthly installments.

8. In order to secure the payment of the Note according to the terms and conditions thereof, Clifford L. Ryba and Beverly Ryba made, executed and delivered unto Mortgage Electronic Registration Systems, Inc., as nominee for Countrywide Bank, FSB, its successors and assigns (MIN# 100133700021205 97-9) a certain real estate mortgage ("Mortgage") covering the following described property and any and all improvements to the property, including but not limited to a mobile/manufactured home:

All that lot, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being in Charleston County, South Carolina, known and designated as Lot No. 461 as shown on a plat of a portion of South Windermere Subdivision, made by J. O'Hear Sanders, Jr., surveyor, dated February 1953 and recorded in Plat Book J, Page 44 in the RMC Office for Charleston County; Said Lot having such size, shape, and dimensions, more or less, as will by reference to said plat more fully appear, and being bounded as shown on said plat.

This being the same property conveyed to Clifford Ryba and Beverly Ryba, as joint tenants with the right of survivorship, by deed of Carol A. Goldberg f/k/a Carol A. Garfield, dated August 31, 2005 and recorded September 1, 2005 in Book Y551 at Page 150. Subsequently, Clifford Ryba conveyed his interest in the subject property to Beverly Ryba by deed dated September 20, 2005 and recorded September 21, 2005 in Book P554 at Page 434. Subsequently, Beverly Ryba conveyed an undivided one half interest in subject property to Clifford L. Ryba by deed dated May 2, 2007 and recorded May 10, 2007 in Book D625 at Page 174.

Property Address: 34 Tarleton Dr
Charleston, SC 29407

TMS# 421-09-00-003

9. The Mortgage was signed, witnessed and probated May 2, 2007; thereafter the Mortgage was recorded in the Office of the RMC/ROD for CHARLESTON County on May 10, 2007, in Mortgage Book E625 at Page 517. Subsequently, this Mortgage was assigned to Bank of America, N.A., successor by merger to BAC Home Loans Servicing LP, fka Countrywide Home Loans Servicing LP, by assignment dated September 15, 2011 and recorded October 4, 2011 in Book 0210 at Page 521.

10. The Mortgage evidences and secures the repayment of money advanced by Plaintiff or its predecessor in interest to, or on behalf of, the mortgagor(s) and constitutes a first lien on the mortgaged premises.

11. Any notice required by the terms of the Note and Mortgage or by state or federal laws has been given to the applicable Defendant(s).

12. After all payments received by the Plaintiff have been credited to the subject loan, the

loan is in default and due for May 1, 2011, and the conditions of the Note and Mortgage have been broken. Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due on the Note and Mortgage as of May 1, 2011, the principal sum of $187.663.47, with interest from April 1, 2011, advances, late charges, and also for the costs and disbursements of this action, including attorney's fees.

13. Pursuant to South Carolina Code Sections 29-3-650 and 29-3-660, Plaintiff specifically demands or reserves its right to a personal or deficiency judgment, unless heretofore or hereafter released, against the Notemaker(s) hereby obligated for the above-described debt.

14. Pursuant to the terms of the Mortgage, Plaintiff has employed counsel to prosecute this action and a reasonable value of services of counsel in this action is the sum as the Court may find appropriate.

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

16. Pursuant to the terms of the Mortgage and applicable state law, Plaintiff requests the mortgage be foreclosed and that the property be sold at public auction in accordance with law, subject to any liens for taxes, special assessments of record against such property, and existing easements or restrictions of record.

17. The hereinafter named Defendant(s) may have some interest in or lien upon the premises covered by the Mortgage set forth above, or some part thereof, but that such interests or liens are junior and subsequent to the lien of Plaintiff's Mortgage or, if specified below, have been paid in full and either should be satisfied of record or the lien released from the subject real estate. Said liens or interests are of record in the Office of the RMC or Clerk of Court of the aforesaid county and are described as follows:

A. Regions Bank, by virtue of a mortgage given by Beverly Ryba in the amount of $115,000.00, dated May 9, 2006, and recorded May 10, 2006 in Book W582 at Page 499 This mortgage was made subordinate to the Plaintiffs mortgage by subordination agreement dated April 24, 2007 and recorded May 10, 2007 in Book J625 at Page 183.

B. First Federal Savings and Loan Association of Charleston, by virtue of a judgment against Clifford L. Ryba and Beverly Ann Ryba in the amount of $75,450.00, dated September 16, 2011 and recorded on September 29, 2011 in Judgment Roll No. 2011-CP-10-7043

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

(1) Under the direction of this Court, ascertain and determine the amount

due upon the Note and Mortgage held by Plaintiff together with attorney's fees and costs of this action.

(2) Declare Plaintiff's Mortgage a first lien and render judgment of foreclosure for the amount so found to be due and owing thereon, together with any ad valorem taxes, or insurance premiums, and any other expenses which may be due and have been advanced by Plaintiff, with reasonable attorney's fees, and for the costs of this action.

(3) Order the reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency.

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

(5) Under the direction of this Court, sell the mortgaged premises, bar any equity of redemption, and apply the proceeds of sale as follows:

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

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

Third, to the distribution of any surplus pursuant to Rule 71, of the South Carolina Rules of Civil Procedure;

(6) Issue an order directing the Sheriff of Charleston County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary;

(7) Order such other and further relief as may be just and proper.

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF
Samuel C. Waters (SC Bar #5958)
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220 Executive Center Drive
Columbia, SC 29210
Post Office Box 100200 (29202)
(803) 744-4444

Columbia, South Carolina
October 26, 2011

NOTICE

1. As of October 24, 2011, you owe $222,274.69. Because of interest, late charges, attorney fees and other charges that vary from day to day, the amount due on the day you pay may be greater.

2. Bank of America, N.A., successor by merger to BAC Home Loans Servicing LP, fka Countrywide Home Loans Servicing LP is the Creditor to whom the debt is owed. BAC Home Loans Servicing, LP is the servicing agent for the Creditor to whom the debt is owed.

3. The debt described in this notice will be assumed to be valid by the Creditor's law firm unless you, the Consumer, within thirty (30) days after the receipt of this notice, dispute the validity of the debt or any portion thereof.

4. If you, the Consumer, notify the Creditor's law firm in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, the Creditor's law firm will obtain verification of the debt, and a copy of the verification will be mailed to you, the Consumer, by the Creditor's law firm.

5. If the Creditor named in this notice is different from the original Creditor, and if you, the Consumer, make a written request to the Creditor's law firm within the (30) days from the receipt of this notice, the name and address of the original Creditor will be mailed to you by the Creditor's law firm.

6. This notice should not be construed as a thirty (30) day grace period. If, in writing, you dispute the debt or any portion thereof or if you request the name and address of the original creditor within the thirty (30) day period that begins with your receipt of this notice, the law requires the Creditor's law firm to suspend its efforts (through litigation or otherwise) to collect the debt until the Creditor's law firm mails the requested information to you.

7. This notice pertains to your dealings with the Creditor's law firm as a debt collector. It does not affect your dealings with the court, and in particular it does not change the time at which you must answer the complaint. The summons attached to the complaint is a command from the court, not from the Creditor's law firm, and you must follow its instructions even if you dispute the validity or amount of the debt. The advice in this notice also does not affect the Creditor's law firm's relations with the court. The Creditor's law firm may file papers in any such suit according to the court's rules and the judge's instructions.

8. This is an attempt to collect a debt, and any information obtained will be used for that purpose. The information provided in paragraphs 1 and 2 above has been provided to us by the Creditor or Servicer. At this point in time, no attorney with this firm has personally reviewed the particular circumstances of your account. If you have previously received a discharge in bankruptcy, this notice is not and should not be construed as an attempt to collect a debt but only as an attempt to enforce a lien.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A., successor by merger to BAC Home Loans Servicing LP, fka Countrywide Home Loans Servicing LP,

Plaintiff,

v.

Clifford L. Ryba; Beverly Ryba; Regions Bank; First Federal Savings and Loan Association of Charleston;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-10-7885

NOTICE OF FORECLOSURE INTERVENTION
Deficiency Judgment Demanded

2011 OCT 27 AM 10:20
CLERK OF COURT
BY

(015262-00242)

PLEASE TAKE NOTICE THAT pursuant to the South Carolina Supreme Court Administrative Order 2011-05-02-01, you may have a right to Foreclosure Intervention.

To be considered for any available Foreclosure Intervention, you may communicate with and otherwise deal with the Plaintiff through its law firm, Rogers Townsend & Thomas, PC.

Rogers Townsend & Thomas, PC represents the Plaintiff in this action. Our law firm does not represent you. Under our ethical rules, we are prohibited from giving you any legal advice.

You must submit any requests for Foreclosure Intervention consideration within 30 days from the date you are served with this Notice. **IF YOU FAIL, REFUSE, OR VOLUNTARILY ELECT NOT TO PARTICIPATE IN FORECLOSURE INTERVENTION, THE FORECLOSURE ACTION MAY PROCEED.**

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF
Samuel C. Waters (SC Bar #5958)
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Columbia, South Carolina
October 26, 2011

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Bank of America, N.A., successor by merger to BAC Home Loans Servicing LP, fka Countrywide Home Loans Servicing LP, Plaintiff, v. Clifford L. Ryba; Beverly Ryba; Regions Bank; First Federal Savings and Loan Association of Charleston; Citibank (South Dakota) N.A.; Defendant(s).	IN THE COURT OF COMMON PLEAS DOCKET NO. 11-CP-10-7885 FIRST AMENDED SUMMONS (NON-JURY) FORECLOSURE OF REAL ESTATE MORTGAGE Deficiency Judgment Demanded

FILED
2011 DEC 29 AM 9:2
JULIE J. ARMSTRONG
CLERK OF COURT
BY

FILED
Charleston County, SC
JULIE J. ARMSTRONG
CLERK OF COURT

(015262-00242)

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, 220 Executive Center Drive, Suite 109, Post Office Box 100200, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

If you have been previously served with a Summons and Complaint or an Amended Summons and Complaint in this case and are responding to this Amended Summons and Complaint, pursuant to SCRCP 15(a), a party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within fifteen (15) days after service of the named amended pleading, whichever period may be the longer, unless the court otherwise orders. YOU WILL ALSO TAKE NOTICE that 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 in equity/special referee, pursuant to Rule 53, of the South Carolina Rules of Civil Procedure.

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

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by Bank of America, N.A., successor by merger to BAC Home Loans Servicing LP, fka Countrywide Home Loans Servicing LP.

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

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Post Office Box 100200 (29202)
(803) 744-4444

Columbia, South Carolina
December 9, 2011

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A., successor by merger to BAC Home Loans Servicing LP, fka Countrywide Home Loans Servicing LP,

Plaintiff,

v.

Clifford L. Ryba; Beverly Ryba; Regions Bank; First Federal Savings and Loan Association of Charleston; Citibank (South Dakota) N.A.;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-10-7885

FILED
2011 DEC 29 AM 9:25
JULIE J. ARMSTRONG
CLERK OF COURT
BY

FIRST AMENDED COMPLAINT

(NON-JURY)

FORECLOSURE OF REAL ESTATE
MORTGAGE
Deficiency Judgment Demanded

FILED
Clocked in date Canceled
2011 DEC 16 PM 3:02
JULIE J. ARMSTRONG
CLERK OF COURT

(015262-00242)

Plaintiff alleges:

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

2. Pursuant to S.C. Code Section 33-15-101, Plaintiff is a corporation or other legal entity doing business in the State of South Carolina.

3. Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.

4. The Plaintiff's servicing agent for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program ("HMP"), but the subject loan is not eligible for modification because the property is vacant or has been condemned.

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

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

7. Heretofore, on or about May 2, 2007, Clifford L. Ryba and Beverly Ryba made, executed and delivered a certain Adjustable Rate Note ("Note") in the principal sum of $172,000.00,

payable in monthly installments.

8. In order to secure the payment of the Note according to the terms and conditions thereof, Clifford L. Ryba and Beverly Ryba made, executed and delivered unto Mortgage Electronic Registration Systems, Inc., as nominee for Countrywide Bank, FSB, its successors and assigns (MIN# 100133700021205 97-9) a certain real estate mortgage ("Mortgage") covering the following described property and any and all improvements to the property, including but not limited to a mobile/manufactured home:

All that lot, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being in Charleston County, South Carolina, known and designated as Lot No. 461 as shown on a plat of a portion of South Windermere Subdivision, made by J. O'Hear Sanders, Jr., surveyor, dated February 1953 and recorded in Plat Book J, Page 44 in the RMC Office for Charleston County; Said Lot having such size, shape, and dimensions, more or less, as will by reference to said plat more fully appear, and being bounded as shown on said plat.

This being the same property conveyed to Clifford Ryba and Beverly Ryba, as joint tenants with the right of survivorship, by deed of Carol A. Goldberg f/k/a Carol A. Garfield, dated August 31, 2005 and recorded September 1, 2005 in Book Y551 at Page 150. Subsequently, Clifford Ryba conveyed his interest in the subject property to Beverly Ryba by deed dated September 20, 2005 and recorded September 21, 2005 in Book P554 at Page 434. Subsequently, Beverly Ryba conveyed an undivided one half interest in subject property to Clifford L. Ryba by deed dated May 2, 2007 and recorded May 10, 2007 in Book D625 at Page 174.

Property Address: 34 Tarleton Dr
Charleston, SC 29407

TMS# 421-09-00-003

9. The Mortgage was signed, witnessed and probated May 2, 2007; thereafter the Mortgage was recorded in the Office of the RMC/ROD for Charleston County on May 10, 2007, in Mortgage Book E625 at Page 517. Subsequently, this Mortgage was assigned to Bank of America, N.A., successor by merger to BAC Home Loans Servicing LP, fka Countrywide Home Loans Servicing LP, by assignment dated September 15, 2011 and recorded October 4, 2011 in Book 0210 at Page 521.

10. The Mortgage evidences and secures the repayment of money advanced by Plaintiff or its predecessor in interest to, or on behalf of, the mortgagor(s) and constitutes a first lien on the mortgaged premises.

11. Any notice required by the terms of the Note and Mortgage or by state or federal laws has been given to the applicable Defendant(s).

12. After all payments received by the Plaintiff have been credited to the subject loan, the loan is in default and due for May 1, 2011, and the conditions of the Note and Mortgage have been broken. Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due on the Note and Mortgage as of May 1, 2011, the principal sum of $187,663.47, with interest from April 1, 2011, advances, late charges, and also for the costs and disbursements of this action,

including attorney's fees.

13. Pursuant to South Carolina Code Sections 29-3-650 and 29-3-660, Plaintiff specifically demands or reserves its right to a personal or deficiency judgment, unless heretofore or hereafter released, against the Notemaker(s) hereby obligated for the above-described debt.

14. Pursuant to the terms of the Mortgage, Plaintiff has employed counsel to prosecute this action and a reasonable value of services of counsel in this action is the sum as the Court may find appropriate.

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

16. Pursuant to the terms of the Mortgage and applicable state law, Plaintiff requests the mortgage be foreclosed and that the property be sold at public auction in accordance with law, subject to any liens for taxes, special assessments of record against such property, and existing easements or restrictions of record.

17. The hereinafter named Defendant(s) may have some interest in or lien upon the premises covered by the Mortgage set forth above, or some part thereof, but that such interests or liens are junior and subsequent to the lien of Plaintiff's Mortgage or, if specified below, have been paid in full and either should be satisfied of record or the lien released from the subject real estate. Said liens or interests are of record in the Office of the RMC or Clerk of Court of the aforesaid county and are described as follows:

A. Regions Bank, by virtue of a mortgage given by Beverly Ryba in the amount of $115,000.00, dated May 9, 2006, and recorded May 10, 2006 in Book W582 at Page 499 This mortgage was made subordinate to the Plaintiffs mortgage by subordination agreement dated April 24, 2007 and recorded May 10, 2007 in Book J625 at Page 183.

B. First Federal Savings and Loan Association of Charleston, by virtue of a judgment against Clifford L. Ryba and Beverly Ann Ryba in the amount of $75,450.00, dated September 16, 2011 and recorded on September 29, 2011 in Judgment Roll No. 2011-CP-10-7043

C. Citibank (South Dakota) N.A., by virtue of a judgment against Clifford L. Ryba in the amount of $39,592.41, dated October 27, 2011 and recorded on October 27, 2011 in Judgment Roll No. 2011-CP-10-1577

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

(1) Under the direction of this Court, ascertain and determine the amount due upon the Note and Mortgage held by Plaintiff together with attorney's fees and costs of this action.

(2) Declare Plaintiff's Mortgage a first lien and render judgment of

foreclosure for the amount so found to be due and owing thereon, together with any ad valorem taxes, or insurance premiums, and any other expenses which may be due and have been advanced by Plaintiff, with reasonable attorney's fees, and for the costs of this action.

(3) Order the reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency.

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

(5) Under the direction of this Court, sell the mortgaged premises, bar any equity of redemption, and apply the proceeds of sale as follows:

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

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

Third, to the distribution of any surplus pursuant to Rule 71, of the South Carolina Rules of Civil Procedure;

(6) Issue an order directing the Sheriff of Charleston County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary;

(7) Order such other and further relief as may be just and proper.

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF
Samuel C Waters (SC Bar #5958)
Reginald P Corley (SC Bar #69453)
Ellie C Floyd (SC Bar #68635)
Eve Moredock Stacey (SC Bar #5300)
Robert P Davis (SC Bar #74030)
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Andrew W Montgomery (SC Bar #79893)
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Mary R Powers (SC Bar #16534)
William S Koehler (SC Bar#74935)
Jaclynn B Goings (SC Bar #77501)
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220 Executive Center Drive
Columbia, SC 29210
Post Office Box 100200 (29202)
(803) 744-4444

Columbia, South Carolina
December 9, 2011

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-10-7885

Bank of America, N.A., successor by merger to BAC Home Loans Servicing LP, fka Countrywide Home Loans Servicing LP,

Plaintiff,

v.

Clifford L. Ryba; Beverly Ryba; Regions Bank; First Federal Savings and Loan Association of Charleston; Citibank (South Dakota) N.A.; Carol Garfield Goldberg;

Defendant(s).

SECOND AMENDED SUMMONS
(NON-JURY)
FORECLOSURE OF REAL ESTATE MORTGAGE
Deficiency Judgment Demanded

FILED
2012 FEB -8 AM 10:38
JULIE J. ARMSTRONG
CLERK OF COURT
BY

(015262-00242)

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, 220 Executive Center Drive, Suite 109, Post Office Box 100200, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

If you have been previously served with a Summons and Complaint or an Amended Summons and Complaint in this case and are responding to this Amended Summons and Complaint, pursuant to SCRCP 15(a), a party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within fifteen (15) days after service of the named amended pleading, whichever period may be the longer, unless the court otherwise orders. YOU WILL ALSO TAKE NOTICE that 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 in equity/special referee, pursuant to Rule 53, of the South Carolina Rules of Civil Procedure.

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

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you

fail to do so, application for such appointment will be made by Bank of America, N.A., successor by merger to BAC Home Loans Servicing LP, fka Countrywide Home Loans Servicing LP.

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF
Samuel C. Waters (SC Bar #5958)
Reginald P. Corley (SC Bar #69453)
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Post Office Box 100200 (29202)
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Columbia, South Carolina
January 31, 2012

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-10-7885

Bank of America, N.A., successor by merger to BAC Home Loans Servicing LP, fka Countrywide Home Loans Servicing LP,

Plaintiff,

v.

Clifford L. Ryba; Beverly Ryba; Regions Bank; First Federal Savings and Loan Association of Charleston; Citibank (South Dakota) N.A.; Carol Garfield Goldberg;

Defendant(s).

SECOND AMENDED COMPLAINT

(NON-JURY)

FORECLOSURE OF REAL ESTATE MORTGAGE
Deficiency Judgment Demanded

FILED
2012 FEB -8 AM 10: 38
JULIE J. ARMSTRONG
CLERK OF COURT
BY

(015262-00242)

Plaintiff alleges:

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

2. Pursuant to S.C. Code Section 33-15-101, Plaintiff is a corporation or other legal entity doing business in the State of South Carolina.

3. Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.

4. The Plaintiff's servicing agent for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program ("HMP"), but the subject loan is not eligible for modification because the property is vacant or has been condemned.

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

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

7. Heretofore, on or about May 2, 2007, Clifford L. Ryba and Beverly Ryba made, executed and delivered a certain Adjustable Rate Note ("Note") in the principal sum of $172,000.00, payable in monthly installments.

8. In order to secure the payment of the Note according to the terms and conditions thereof, Clifford L. Ryba and Beverly Ryba made, executed and delivered unto Mortgage Electronic Registration Systems, Inc., as nominee for Countrywide Bank, FSB, its successors and assigns (MIN# 100133700021205 97-9) a certain real estate mortgage ("Mortgage") covering the following described property and any and all improvements to the property, including but not limited to a mobile/manufactured home:

All that lot, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being in Charleston County, South Carolina, known and designated as Lot No. 461 as shown on a plat of a portion of South Windermere Subdivision, made by J. O'Hear Sanders, Jr., surveyor, dated February 1953 and recorded in Plat Book J, Page 44 in the RMC Office for Charleston County; Said Lot having such size, shape, and dimensions, more or less, as will by reference to said plat more fully appear, and being bounded as shown on said plat.

This being the same property conveyed to Clifford Ryba and Beverly Ryba, as joint tenants with the right of survivorship, by deed of Carol A. Goldberg f/k/a Carol A. Garfield, dated August 31, 2005 and recorded September 1, 2005 in Book Y551 at Page 150. Subsequently, Clifford Ryba conveyed his interest in the subject property to Beverly Ryba by deed dated September 20, 2005 and recorded September 21, 2005 in Book P554 at Page 434. Subsequently, Beverly Ryba conveyed an undivided one half interest in subject property to Clifford L. Ryba by deed dated May 2, 2007 and recorded May 10, 2007 in Book D625 at Page 174.

Property Address: 34 Tarleton Dr
Charleston, SC 29407

TMS# 421-09-00-003

9. The Mortgage was signed, witnessed and probated May 2, 2007; thereafter the Mortgage was recorded in the Office of the RMC/ROD for Charleston County on May 10, 2007, in Mortgage Book E625 at Page 517. Subsequently, this Mortgage was assigned to Bank of America, N.A., successor by merger to BAC Home Loans Servicing LP, fka Countrywide Home Loans Servicing LP, by assignment dated September 15, 2011 and recorded October 4, 2011 in Book 0210 at Page 521.

10. The Mortgage evidences and secures the repayment of money advanced by Plaintiff or its predecessor in interest to, or on behalf of, the mortgagor(s) and constitutes a first lien on the mortgaged premises.

11. Any notice required by the terms of the Note and Mortgage or by state or federal laws has been given to the applicable Defendant(s).

12. After all payments received by the Plaintiff have been credited to the subject loan, the

loan is in default and due for May 1, 2011, and the conditions of the Note and Mortgage have been broken. Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due on the Note and Mortgage as of May 1, 2011, the principal sum of $187,663.47, with interest from April 1, 2011, advances, late charges, and also for the costs and disbursements of this action, including attorney's fees.

13. Pursuant to South Carolina Code Sections 29-3-650 and 29-3-660, Plaintiff specifically demands or reserves its right to a personal or deficiency judgment, unless heretofore or hereafter released, against the Notemaker(s) hereby obligated for the above-described debt.

14. Pursuant to the terms of the Mortgage, Plaintiff has employed counsel to prosecute this action and a reasonable value of services of counsel in this action is the sum as the Court may find appropriate.

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

16. Pursuant to the terms of the Mortgage and applicable state law, Plaintiff requests the mortgage be foreclosed and that the property be sold at public auction in accordance with law, subject to any liens for taxes, special assessments of record against such property, and existing easements or restrictions of record.

17. The hereinafter named Defendant(s) may have some interest in or lien upon the premises covered by the Mortgage set forth above, or some part thereof, but that such interests or liens are junior and subsequent to the lien of Plaintiff's Mortgage or, if specified below, have been paid in full and either should be satisfied of record or the lien released from the subject real estate. Said liens or interests are of record in the Office of the RMC or Clerk of Court of the aforesaid county and are described as follows:

A. Regions Bank, by virtue of a mortgage given by Beverly Ryba in the amount of $115,000.00, dated May 9, 2006, and recorded May 10, 2006 in Book W582 at Page 499 This mortgage was made subordinate to the Plaintiffs mortgage by subordination agreement dated April 24, 2007 and recorded May 10, 2007 in Book J625 at Page 183.

B. First Federal Savings and Loan Association of Charleston, by virtue of a judgment against Clifford L. Ryba and Beverly Ann Ryba in the amount of $75,450.00, dated September 16, 2011 and recorded on September 29, 2011 in Judgment Roll No. 2011-CP-10-7043

C. Citibank (South Dakota) N.A., by virtue of a judgment against Clifford L. Ryba in the amount of $39,592.41, dated October 27, 2011 and recorded on October 27, 2011 in Judgment Roll No. 2011-CP-10-1577

D. Carol Garfield Goldberg by virture of any interest she may claim in the subject property pursuant to that Lis Pendens filed in Case No. 08-CP-10-4970.

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

(1) Under the direction of this Court, ascertain and determine the amount due upon the Note and Mortgage held by Plaintiff together with attorney's fees and costs of this action.

(2) Declare Plaintiff's Mortgage a first lien and render judgment of foreclosure for the amount so found to be due and owing thereon, together with any ad valorem taxes, or insurance premiums, and any other expenses which may be due and have been advanced by Plaintiff, with reasonable attorney's fees, and for the costs of this action.

(3) Order the reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency.

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

(5) Under the direction of this Court, sell the mortgaged premises, bar any equity of redemption, and apply the proceeds of sale as follows:

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

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

Third, to the distribution of any surplus pursuant to Rule 71, of the South Carolina Rules of Civil Procedure;

(6) Issue an order directing the Sheriff of Charleston County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary;

(7) Order such other and further relief as may be just and proper.

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C Waters (SC Bar #5958)
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Post Office Box 100200 (29202)
(803) 744-4444

Columbia, South Carolina
January 31, 2012

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	CASE NO.: 2011-CP-10-07885
Bank of America, N.A., successor by merger to BAC Home Loans Servicing LP, fka Countrywide Home Loans Servicing LP, Plaintiff, vs. Clifford L. Ryba; Beverly Ryba; Regions Bank; First Federal Savings and Loan Association of Charleston Defendants.	**ANSWER OF DEFENDANT FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF CHARLESTON TO PLAINTIFF'S SECOND AMENDED COMPLAINT AND CONSENT TO REFERENCE**

TO: ANDREW W. MONTGOMERY ESQUIRE, ATTORNEY FOR PLAINTIFF:

The Defendant First Federal Savings and Loan Association of Charleston (hereinafter "First Federal"), by and through its undersigned attorneys, responds to the Plaintiff's Second Amended Complaint as follows:

1. The allegations of paragraph 1 do not require a response.

2. The allegations of paragraph 2 do not require a response.

3. The allegations of paragraph 3 are conclusions of law and do not require a response.

4. The Defendant lacks sufficient information to form a belief as to the allegations of paragraph 4 and therefore denies the same and demands strict proof thereof.

5. The Defendant admits so much of the allegations of paragraph 5 as alleges that First Federal has an interest in the property which is the subject of this action by virtue of a Judgment against Clifford L. Ryba and Beverly Ann Ryba in the amount of $75,450.00, dated September 16, 2011, and recorded September 29, 2011, in Judgment Roll No. 2011-CP-10-7043 but lacks sufficient information to form a belief as to the remaining allegations and therefore denies the same and demands strict proof thereof.

6. The Defendant lacks sufficient information to form a belief as to the

allegations of paragraph 6 and therefore denies the same and demands strict proof thereof.

7. The Defendant lacks sufficient information to form a belief as to the allegations of paragraph 7 and therefore denies the same and demands strict proof thereof.

8. The Defendant lacks sufficient information to form a belief as to the allegations of paragraph 8 and therefore denies the same and demands strict proof thereof.

9. The Defendant lacks sufficient information to form a belief as to the allegations of paragraph 9 and therefore denies the same and demands strict proof thereof.

10. The Defendant lacks sufficient information to form a belief as to the allegations of paragraph 10 and therefore denies the same and demands strict proof thereof.

11. The Defendant lacks sufficient information to form a belief as to the allegations of paragraph 11 and therefore denies the same and demands strict proof thereof.

12. The Defendant lacks sufficient information to form a belief as to the allegations of paragraph 12 and therefore denies the same and demands strict proof thereof.

13. The allegations of paragraph 13 do not require a response.

14. The Defendant lacks sufficient information to form a belief as to the allegations of paragraph 14 and therefore denies the same and demands strict proof thereof.

15. The Defendant lacks sufficient information to form a belief as to the allegations of paragraph 15 and therefore denies the same and demands strict proof thereof.

16. The Defendant lacks sufficient information to form a belief as to the allegations of paragraph 16 and therefore denies the same and demands strict proof thereof.

17. The Defendant admits so much of the allegations of paragraph 17 as alleges that First Federal has an interest in the property which is the subject of this action by virtue of a Judgment against Clifford L. Ryba and Beverly Ann Ryba in the amount of $75,450.00, dated September 16, 2011, and recorded September 29, 2011, in Judgment Roll No. 2011-CP-10-7043 but lacks sufficient information to form a belief as to the remaining allegations and therefore denies the same and demands strict proof thereof.

18. That the Defendant denies each and every allegation of the Amended Complaint not hereinabove specifically admitted or modified.

WHEREFORE having fully answered the Plaintiff's Second Amended Complaint; this Defendant consents to reference, requests notice of surplus funds, prays that the Court inquires into the facts and circumstances alleged in the pleadings as well as all documents on the public records and award First Federal its proper priority, costs, reasonable attorneys' fees and for such other and further relief as this Court deems just and proper.

CLAWSON AND STAUBES, LLC

Kristen N. Nichols
SC Bar No.: 74790
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
Telephone: (843) 577-2026

Attorneys for First Federal

Charleston, South Carolina
March 3, 2012

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading has been served upon opposing counsel by mailing, hand delivering or electronically forwarding a copy properly addressed and with sufficient postage affixed thereto on this 5th day of March, 2012.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CIVIL ACTION NO. 2011-CP-10-7885
	)	
Bank of America, N.A., successor by merger to BAC Home Loans Servicing LP, fka Countrywide Home Loans Servicing, Inc.,	)	
Plaintiff,	)	AMENDED ANSWER AND COUNTERCLAIMS OF DEFENDANT, CAROL GARFIELD GOLDBERG TO THE SECOND AMENDED COMPLAINT
vs.	)	
Clifford L. Ryba; Beverly Ryba; Regions Bank; First Federal Savings and Loan Association of Charleston; Citibank (South Dakota), N.A.; Carol Garfield Goldberg,	)	
Defendants.	)	

The Defendant, Carol Garfield Goldberg, for her Amended Answer and Counterclaims to the Second Amended Complaint alleges:

FIRST: She realleges herein all of the allegations in her Answer to the Second Amended Complaint dated March 12, 2012.

SECOND: She denies each and every allegation of the Second Amended Complaint not hereinafter admitted.

THIRD: She admits Paragraphs 1, 5, 6, 13, 14, 15 and 16.

FOURTH: She has no knowledge or information sufficient to form a belief as to the allegations of Paragraph 2.

FIFTH: Answering the allegations of Paragraph 3, she denies the same as herein set forth.

SIXTH: Answering the allegations of Paragraph 4, she denies so much thereof that alleges the property ("34 Tarleton Drive") is vacant or that it has been abandoned, for Mrs. Goldberg has been occupying the property since February 21, 1994. 34 Tarleton Drive

is therefore subject to the requirements of the Home Affordable Modification Program ("HMP") as set forth in Paragraph 4 of the Second Amended Complaint.

SEVENTH: Answering the allegations of Paragraph 7, she has no knowledge or information sufficient to form a belief, and therefore, denies the same and requires strict proof that the Rybas executed and delivered a certain Note as set forth to Countrywide Bank FSB.

EIGHTH: Answering the allegations of Paragraphs 8 and 9, she admits a mortgage and assignment as described therein are recorded in the RMC Office of Charleston County.

NINTH: Answering the allegations of Paragraphs 10 and 12, she has no knowledge or information sufficient to form a belief, and therefore, denies the same and requires strict proof thereof.

TENTH: She denies Paragraph 11.

ELEVENTH: Answering the allegations of Paragraph 17, she admits there are a mortgage and two judgments of record as set forth therein, but such instruments are subject to her title to 34 Tarleton Drive.

FURTHER ANSWERING THE SECOND AMENDED COMPLAINT SHE ALLEGES:

TWELFTH: She realleges Paragraphs First through Tenth as if set forth herein.

THIRTEENTH: Prior to the initiation of this mortgage foreclosure action on October 27, 2011, Mrs. Goldberg had filed a lawsuit against the Rybas, including a Lis Pendens, which was filed on August 29, 2008.

FOURTEENTH: The Lis Pendens placed Plaintiff on notice, to whom the mortgage was purportedly assigned on September 15, 2011, and all others subsequent to the filing that Mrs. Goldberg alleged Mr. and Mrs. Ryba fraudulently induced her to convey her property at 34

Tarleton Drive, to the Rybas on August 30, 2005 upon the Rybas' agreement to reconvey the property to her. The fraudulent action of the Rybas voided the deed so that the Rybas had no title to encumber.

FIFTEENTH: A rental agreement was entered into at the time of the conveyance to the Rybas whereby Mrs. Goldberg continued to occupy the premises at a monthly rental beginning at $850.00, which increased to $1,350.00 per month.

SIXTEENTH: Mrs. Goldberg's action against the Rybas is Case No. 2008-CP-10-8732, which is incorporated herewith by reference and made a part hereof.

SEVENTEENTH: On April 10, 2012, Plaintiff served upon Mrs. Goldberg a Certificate that 34 Tarleton Drive is not an "Owner-Occupied" dwelling which she denied and asserted her occupancy of the property since February 21, 1994.

EIGHTEENTH: Subsequent to Mrs. Goldberg's filing of the initial Answer to the Second Amended Complaint, the Defendant, Clifford L. Ryba ("Mr. Ryba"), the owner of a one-half (1/2) interest in 34 Tarleton Drive, filed in bankruptcy.

NINETEENTH: During the course of the bankruptcy proceeding, Mr. Ryba conveyed to Mrs. Goldberg his one-half interest in 34 Tarleton Drive, as did his wife, the Defendant Beverly Ryba, so that Mrs. Goldberg now has full legal title to 34 Tarleton Drive, Charleston, South Carolina, which changes the relationships of the parties; and the Plaintiff was aware of the conveyance at the time of the bankruptcy.

TWENTIETH: In this action, Plaintiff seeks to foreclose a mortgage for $172,000.00 dated May 2, 2007, which recites that the lender is Countrywide Bank FSB, the borrower is Clifford L. Ryba and Beverly Ryba, and the Note states the borrower owes lender

Countrywide Bank FSB $172,000.00 plus interest. Countrywide is or was a federal savings bank and its purported assignee, Plaintiff, are both subject to federal statutes.

TWENTY-FIRST: It further states that Mortgage Electronic Registration Systems, Inc. ("MERS") is a separate corporation acting solely as a nominee for lender and lender's successors and assigns and is the mortgagee.

TWENTY-SECOND: The mortgage requires all payments of principal, interest, taxes and insurance be paid by the borrower to lender and as Mrs. Goldberg is informed and believes, all such payments were made to the lender.

TWENTY-THIRD: No money was lent by or collected by MERS.

TWENTY-FOURTH: The mortgage was purportedly assigned by MERS to Plaintiff by assignment dated September 15, 2011 and recorded in the RMC Office for Charleston County on October 4, 2011.

TWENTY-FIFTH: The purported assignment was deficient, improperly recorded and void.

FURTHER ANSWERING THE SECOND AMENDED COMPLAINT AND FOR AFFIRMATIVE DEFENSES SHE ALLEGES:

FOR A FIRST AFFIRMATIVE DEFENSE

TWENTY-SIXTH: This Defendant realleges Paragraphs First through Twenty-Fifth as if herein set forth.

TWENTY-SEVENTH: The deed from Mrs. Goldberg to the Rybas, being induced by fraud, was void. The Rybas therefore did not have title to 34 Tarleton Drive when the mortgage was executed, so there could be no security interest.

FOR A SECOND AFFIRMATIVE DEFENSE

TWENTY-EIGHTH: This Defendant realleges Paragraphs First through Twenty-Seventh as if herein set forth.

TWENTY-NINTH: The mortgage at issue was purportedly assigned by MERS to Bank of America, N.A. and the assignee stands in the shoes of its assignor and takes title subject to any infirmities in and against its assignor.

FOR A THIRD AFFIRMATIVE DEFENSE

THIRTIETH: This Defendant realleges Paragraphs First through Twenty-Ninth as if herein set forth.

THIRTY-FIRST: The purported assignment is invalid and transfers no title to 34 Tarleton Drive.

FOR A FOURTH AFFIRMATIVE DEFENSE

THIRTY-SECOND: This Defendant realleges Paragraphs First through Thirty-First as if herein set forth.

THIRTY-THIRD: The Plaintiff was on notice of Mrs. Goldberg's claim prior to the purported assignment.

FOR A FIFTH AFFIRMATIVE DEFENSE

THIRTY-FOURTH: This Defendant realleges Paragraphs First through Thirty-Third as if herein set forth.

THIRTY-FIFTH: If Mrs. Goldberg's title was subject to Plaintiff's mortgage, she was entitled to all benefits therein.

FOR AN SIXTH AFFIRMATIVE DEFENSE

THIRTY-SIXTH: This Defendant realleges Paragraphs First through Thirty-Fifth as if herein set forth.

THIRTY-SEVENTH: This action cannot proceed for Mrs. Goldberg was and is entitled to notice and benefits pursuant to the mortgage, if valid.

FOR A SEVENTH AFFIRMATIVE DEFENSE

THIRTY-EIGHTH: This Defendant realleges Paragraphs First through Thirty-Seventh as if herein set forth.

THIRTY-NINTH: Plaintiff failed to mitigate its damages.

FOR AN EIGHTH AFFIRMATIVE DEFENSE

FORTIETH: This Defendant realleges Paragraphs First through Thirty-Ninth as if herein set forth.

FORTY-FIRST: The Plaintiff comes into this court with unclean hands.

FOR A NINTH AFFIRMATIVE DEFENSE

FORTY-SECOND: This Defendant realleges Paragraphs First through Forty-First as if herein set forth.

FORTY-THIRD: Where one of two innocent parties must suffer a loss caused by another, that party who could have used due diligence to avoid the loss should, in equity and good conscience, be required to bear it.

FOR A TENTH AFFIRMATIVE DEFENSE

FORTY-FOURTH: This Defendant realleges Paragraphs First through Forth-Third as if herein set forth.

FORTY-FIFTH: The Plaintiff was negligent in failing to collect rent from the Rybas after default and apply such rent to the balance due on the mortgage.

FOR AN ELEVENTH AFFIRMATIVE DEFENSE

FORTY-SIXTH: This Defendant realleges Paragraphs First through Forty-Fifth as if herein set forth.

FORTY-SEVENTH: The Plaintiff failed to exercise the covenant of good faith on behalf of Mrs. Goldberg.

FURTHER ANSWERING THE SECOND AMENDED COMPLAINT AND FOR A COUNTERCLAIM SHE ALLEGES:

FOR A FIRST COUNTERCLAIM

FORTY-EIGHTH: This Defendant realleges Paragraphs First through Forty-Seventh as if herein set forth.

FORTY-NINTH: The deed from Mrs. Goldberg to the Rybas conveying title to 34 Tarleton Drive, being void, the Rybas could not execute a valid mortgage. There is no mortgage and the case should be dismissed.

FOR A SECOND COUNTERCLAIM

FIFTIETH: This Defendant realleges Paragraphs First through Forty-Ninth as if herein set forth.

FIFTY-FIRST: Plaintiff has no standing to institute this action.

FOR A THIRD COUNTERCLAIM

FIFTY-SECOND: This Defendant realleges Paragraphs First through Fifty-First as if herein set forth.

FIFTY-THIRD: This proceeding may not proceed even if the mortgage is valid, for Mrs. Goldberg, under the mortgage, was entitled to notices and benefits prior to the institution and continuation of this action.

FOR A FOURTH COUNTERCLAIM

FIFTY-FOURTH: This Defendant realleges Paragraphs First through Fifty-Third as if herein set forth.

FIFTY-FIFTH: Plaintiff was under a duty to collect rent from the Rybas when it knew that Mrs. Goldberg was paying rent to the Rybas and the total amount which Plaintiff failed to collect should be paid to Mrs. Goldberg plus interest per year from such date.

WHEREFORE, this Defendant prays:

1. The Second Amended Complaint be dismissed and the Lis Pendens canceled;
2. This Defendant have judgment against the Plaintiff in the amount which Plaintiff failed to collect as rent; and
3. For such other and further relief as to this Court may be deemed proper.

Respectfully submitted,

Benjamin Goldberg, Esquire
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Attorneys for Defendant,
Carol Garfield Goldberg

July 31st, 2013

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Bank of America, NA, successor by merger to BAC Home Loans Servicing LP, fka Countrywide Home Loans Servicing, Inc,

Plaintiff,

vs. CASE NO.: 2011-CP-10-7885

Clifford L. Ryba; Beverly Ryba; Regions Bank; First Federal Savings and Loan Association of Charleston; Citibank (South Dakota), NA; Carol Garfield Goldberg,

Defendant.

COPY

Hearing before the Honorable Mikell R. Scarborough, reported by Christine A. Smith, Notary Public, at 10:00 a.m. on March 24, 2015 at 100 Broad Street, Charleston, South Carolina.

Christine A. Smith, Court Reporter
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A P P E A R A N C E S

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(INDEX AT REAR OF TRANSCRIPT)

P R O C E E D I N G S

THE COURT: This morning we have for trial a case originally captioned, I think, Bank of America but now HSBC Bank USA as trustee for some Deutsche security holders -- anyway, versus Clifford Ryba, Beverly Ryba, Regions Bank, First Federal, CitiBank and Carol Goldberg as the Defendants. The case number is 2011-CP-10-7885. I have present for the plaintiff, Mr. Tillman?

MR. TILLMAN: Yes, sir. Matt Tillman for the Plaintiff.

MS. LYBRAND: Erica Lybrand, Your Honor.

THE COURT: And Ms. Lybrand, very good, for the Plaintiff. And for the Defendant, Ms. Goldberg, Mr. Goldberg and Mr. Holmes, correct?

MR. GOLDBERG: Yes, sir, correct.

THE COURT: No other Defendants present here today on this case?

MR. GOLDBERG: Not to our knowledge.

THE COURT: I've got it. I have had a chance -- I did get a pretrial brief on behalf of Ms. Goldberg from Mr. Holmes and Mr. Goldberg, and I did see an objection to that from Mr. Tillman.

Mr. Tillman, I've read the brief. I've

reviewed it. I understand you had some objections to it both on timeliness grounds and on some of the factual allegations in there. Of course you know all of that is a matter of proof, so I think I can distill between what's admissible evidence and what's not. That's going to be one of the issues we've got here today.

We're up for trial. I've asked my court reporter to mark all the exhibits. Have we been able to mark all the exhibits so far in this matter?

MR. TILLMAN: Yes, sir, on our side.

MR. HOLMES: Yes, sir.

THE COURT: And I'm sure some of them will be contested when we get to that point in time. Are there any matters we need to take up before we commence?

MR. TILLMAN: I have several, Your Honor.

THE COURT: All right.

MR. TILLMAN: First of all, on the Direct Examination of Michael Ward, who is the representative of our client, we would like to ask the Court to allow us to split that up between Erica and I. I will be doing the rest of them alone, but if that would be okay we would appreciate the Court allowing to us do that.

THE COURT: Any objection on the Defense side?

MR. HOLMES: No, Your Honor.

THE COURT: That will be fine. All right, Mr. Tillman?

MR. TILLMAN: I have also got two closing attorneys under subpoena to appear to testify. One is Roy Hutchinson, a local closing attorney. The other is David Chard. He's not here. I sent an e-mail to my paralegal. I would like for them to go first so I can get Mr. Hutchinson out.

THE COURT: Okay. Take them out of order. Any problem with that?

MR. HOLMES: No. In fact, we have Mr. Chard under subpoena as well.

THE COURT: All right.

MR. TILLMAN: The third, I'm not sure how you want to deal with this or that it even needs to be dealt with, but I did want to raise it. Regions Bank has a second mortgage on the property. From what I can tell, the counterclaim does apply to Regions -- it's a counterclaim against us basically saying the mortgage is void. That counterclaim hasn't been asserted against the second mortgagee. I don't know -- I haven't really thought through whether that presents a problem or not. They're not here, but

they have asked to have their rights protected. We just wanted to make the Court aware of that.

THE COURT: My understanding is they're not actively defending the matter. I read this in the brief, and in the event there's any surplus funds over there, they would be sticking their hand out to try and get any surplus funds to cover their mortgage is what I understand.

MR. TILLMAN: Right. My only concern --

THE COURT: I'm not aware of any action they've presented or any claims that they've presented at this point in time.

MR. TILLMAN: Right. My only concern would be -- let's say obviously I don't think this should be the case, but you ruled that the mortgage is void, our mortgage. You've still got another mortgage on the property. It is what it is.

And then I did want to at least raise the issue of their request for judicial notice of various incendiary facts concerning Countrywide Bank that were set forth in the pretrial brief. I don't know whether the Court wants to take argument on that right now or wait. I do contest the fact that there should be judicial notice on Countrywide and the bank's bad acts and the various things that were

placed in the media with postings and so forth. I don't think that's relevant to the particular issues here. They've got it showing that Countrywide acted inappropriately here, and I just don't think that's an appropriate scope for judicial notice.

THE COURT: Do you want to discuss that now or when it comes up?

MR. HOLMES: Well, my understanding of the judicial notice concept is that if the Court -- if there are facts that cannot be reasonably disputed the Court will take judicial notice of it. The documents that we're relying upon primarily are documents published by Bank of America when it purchased Countrywide.

There's one CBS News report later when Bank of America paid a very substantial fine for Countrywide's unethical practices. The purpose of that was raised, and the first instance was if they want to just put in the documents. So these other documents, we're relying on their face value, so under the rules of evidence that's the way it would normally happen unless there is reason to question the validity of the documents based on the circumstances of their preparation.

So if we raise the issue to say, we want you

to bring somebody here. He's indicated he has two closing attorneys that are familiar with the transaction themselves and not to stand on the documents themselves. So it may be that if they produce the closing attorneys then the need for those transactions later is not as great as it was.

THE COURT: Let's take that up as it comes in rather than doing that now.

MR. TILLMAN: And then the last issue is Erica Lybrand is with child, and I think she's going to need to take frequent breaks.

THE COURT: Ms. Lybrand, if you need a break, and we're in the middle of something just raise your hand.

MR. HOLMES: Your Honor, I object to that. That's a lot to ask.

THE COURT: And to the extent -- if you need to go out -- if you need to be here let me know and we'll stop the proceeding, and if you can just secrete yourself and come right back -- if we're at a point where you're comfortable doing that then certainly let me know about that. I'm happy to do that.

MR. TILLMAN: Thank you.

MS. LYBRAND: Thank you, Your Honor.

THE COURT: Does that take care of your matters then, Mr. Tillman?

MR. TILLMAN: Yes, sir.

THE COURT: Ms. Lybrand, do you have any other separate issues I need to address?

MS. LYBRAND: No, Your Honor.

THE COURT: And from the Defense standpoint? Mr. Holmes?

MR. HOLMES: The only unusual matter we have I put in the brief. Mr. Goldberg, he's been lead counsel on this case since 2008. He's here and he's doing much better, but I've noticed in our dealings that he does get tired. He's acquiesced. He liked the judicial notice that he's hardheaded.

THE COURT: I think we all like that notice.

MR. HOLMES: His wife probably agrees, so I think he's going to let me take the lead here. If he tells me at some point that he's getting tired I'll let you know.

THE COURT: Okay. That will be fine. Mr. Goldberg, same issue, you raise your hand. Don't throw anything at us.

MR. GOLDBERG: I don't want to say it, but my wife has agreed with him.

THE COURT: I'm sure there's an alliance

there. Usually it's the Goldberg brothers, but today it's the Goldberg cousins that are here I guess. I'm sure there's no relation.

MS. GOLDBERG: No, sir.

THE COURT: I'm familiar with that one, too. Anything else? If not then -- what I'd like to do -- we'll proceed. Generally, I run until about 12:30 or so, and then take a break somewhere between noon and 1:00, whatever's sort of normal, and then try to get back here at 2:00 today to recommence the afternoon sessions. I've got this case down for the entire day. I think we can try it in a day based on the representations we've had in the past. Let's just go from there.

Again, if anybody needs a break during the course of the proceeding -- I'm sometimes oblivious to that. You-all just make it apparent, and I'll be glad to go forward from there. Okay? Very good.

Mr. Tillman, you may proceed, sir.

MR. TILLMAN: Would you like an opening argument?

THE COURT: You know, I'm pretty familiar with this one. I don't think we're going to need any opening statements. Anybody here that is a 403 person that needs that absolute? I've got a few of

them. Why don't you give us about a five-minute spiel then and give these people some education.

MR. TILLMAN: This can last 30 or 40 minutes.

THE COURT: If you take that long I'll gavel you down. Okay?

MR. TILLMAN: Obviously, Your Honor, you know that this is a mortgage foreclosure proceeding. I think it's worth at least going through the timeline for you right off the bat so we can get to that.

THE COURT: Speaking of which, does anybody have a written timeline?

MR. TILLMAN: I've got it in my opening argument here. I can hand it to you if you want.

THE COURT: Go ahead and run down it.

MR. HOLMES: After the Summary Judgment Motion you asked that they prepare a timeline, which they did. I've got a copy of it here.

THE COURT: Great. Great.

MR. HOLMES: We can stipulate to that and go ahead and admit it.

THE COURT: That would be fine. That would be fine. I think the factual aspect or the timing aspect of that may be relevant here. I've been handed what's marked as Defendant's 1.

MR. TILLMAN: So just real quickly, Your

Honor?

THE COURT: Certainly.

MR. TILLMAN: On August 31st, 2005, Ms. Goldberg conveyed 34 Tarleton Drive to Clifford and Beverly -- I'm going to say Ryba. It may be Ryba.

THE COURT: I think it's Ryba; is it not?

MR. TILLMAN: Ryba.

THE COURT: Let's stick with that.

MR. TILLMAN: In May of -- during that timeframe, Countrywide Bank loaned the Rybas some money. They loaned them, I think, $205,000 to purchase the property. The property was purchased for $199,000 first to Carolina First and was paid off. Then in 2006 Regions Bank loaned some more money to the Rybas.

Obviously that mortgage was recorded. On May 2, 2007 we get to the refinance that we're here today to discuss. The Rybas executed and delivered a note in the amount of 172,000 to Countrywide Bank, along with that obviously a first mortgage. The Regions -- the existing Regions mortgage was then subordinated to our mortgage in that timeframe back in 2007. In July of 2008 Bank of America acquired Countrywide.

On August 19th, 2008 Ms. Goldberg filed a lis pendens and sued the Rybas. I think you're probably familiar with the general allegations, but generally she says they've procured the deed by fraud. We'll get more into that. That's when she filed those documents. There was an assignment from MERS in 2011.

On October 27th, 2011 this suit was commenced. May, 29, 2012, Bank of America assigned it to my client who has it now. October 26th, 2012, I think what happened is the lawsuit between Ms. Goldberg and the Rybas resolved when the Rybas deeded the property to Ms. Goldberg. In any event she deeded the property or they deeded the property to Ms. Goldberg such that she's the owner now. The Rybas remain the borrowers on the note.

Other than her defenses -- this obviously is standard in a foreclosure action. My client purchased the note and mortgage and they're foreclosing on it. It was assigned to them. We have all those documents. Ms. Goldberg asserted some counterclaims which state that the mortgage was void because the deed from her to the Rybas was void. I think if you look under the law of it, without getting too far into it, a void deed is one that is

forged or granted by somebody who is incapacitated and so forth, not one that wasn't procured by fraud and is voidable.

So really the main dispute here is whether or not, number one, Countrywide was a bona fide lender for value without notice under SC Code 37-10. And his clients, having been assigned that note and mortgage after Ms. Goldberg filed a lis pendens, is entitled to the protection as a bona fide lender under the Shelter Rule.

I think you'll see -- I think the evidence will show you that we can prove all of those elements. Number one, that the money was loaned, the mortgage was received, and it was properly assigned and so forth. I think it's also undisputed, the original, back in 2007 loaned the money and took a mortgage at a time when there was nothing of record concerning Ms. Goldberg's claim to the property. I'm not really sure exactly what her claim is other than pursuing some sort of equitable interest.

So in that situation I think it's pretty clear under the law that at least Countrywide was a bona fide owner for value without notice such that they get to foreclose on whatever Ms. Goldberg claims to have on the property. The secondary question to that

is, well, now that you have assigned it after she filed a lis pendens does the new lender or the new holder of the loan and mortgage also have the same benefit of the bona fide lender defense essentially, and I believe under several cases that we talk about, what they call the Shelter Rule, the answer to that is yes. There are a lot of reasons for that. The main one being, this is a bona fide purchaser and a bona fide lender rule.

So if a bona fide purchaser purchases property and someone files a lis pendens after they purchase it, adopting Ms. Goldberg's argument would mean that that person couldn't sell the property because the claim would attach to it. The same thing goes to the lender. The lender has to be able to sell their note and mortgage. Those things are marketable. It's part of our lending system to be allowed to transfer those documents.

The cases clearly state that that is the purpose of the Shelter ruling. We'll talk about that more, I guess, in closing. Second, I don't believe Ms. Goldberg will be able to specify any interest if she had the property. I don't think the Rybas are going to be here. This would be hearsay. She doesn't have anything in writing. There are all

kinds of reasons why, and I don't believe from an evidentiary standpoint that her claim is going to come into evidence and she's not going to be able to show that this was even a voidable deed at all.

Finally, I do want the Court to understand that a lot of this is going to be about -- because this is a Court of Equity about what's fair and what's not fair and how Ms. Goldberg is getting shafted and so forth. I do want the Court to remember as it hears the evidence. Ms. Goldberg had a $199,000 mortgage on the property when she owned it. That was paid off by my client's predecessor and predecessor lender and then we refinanced. What they are seeking now is to have this mortgage declared invalid and then basically arguing that what she has is scot-free despite the fact that at the beginning of all this she had $199,000 owed on the property. There was a mortgage that got paid off. There's no dispute as to that.

So if we're looking at it from a matter of equity, whether you look at it as a matter of equitable subrogation or just the determination of which parties should suffer the loss, I do want the Court to remember that this is not a case of an entirely seemingly innocent borrower or owner. She

did receive an extensive benefit or a significant benefit from the original loan -- original loan given to the Rybas to purchase the property, and that's been refinanced since then.

So I do want the Court to be mindful of that as we go through. Thank you.

THE COURT: All right, Mr. Tillman. Mr. Holmes?

MR. HOLMES: Your Honor, I'm glad Mr. Tillman began by talking about this being a Court of Equity. Fairness, we think, does play an important role in this case. This is a very fact-specific case. We do not believe that a ruling in this case is going to collapse our financial system. This is a case that involves a licensed mortgage broker and mortgage company he worked for committing a fraud, committing an illegal act in talking Ms. Goldberg into transferring her property to them under the guise they were helping her obtain a mortgage. What they were really doing was helping themselves to the substantial equity in her home she inherited from her grandfather.

It's a case that involves a now defunct mortgage company, Countrywide. It didn't exercise control of this loan. It had the right to exercise

control of the loan. We will offer some evidence that they controlled what information was required. They controlled what was needed to close the loan. They had information that was presented to them that is sufficient to put them on an inquiry as to what the nature of this transaction truly is. Had they diligently pursued any of that information they would have discovered this loan was fraudulent and illegal.

It also involves Bank of America that picked up Countrywide when it was going under and they bought it for pennies on the dollar according to their own financial statement. It appears to us, and maybe we can get into that if we can get the people who handle the transactions that actually there was insurance on the mortgage.

MR. TILLMAN: Your Honor, objection.

THE COURT: So noted, okay.

MR. HOLMES: So what we take the position in is that this case is not trying to undermine South Carolina law. It's based on South Carolina law. South Carolina law says that -- and public policy that those who have the right to control a transaction -- and we either facilitate or turn a blind eye to fraud or illegal conduct should be the ones who bear risk, bears the burden. That's what

we're going ask to have happen in this case.

We take the position that neither the current Plaintiff, Deutsche Bank, is who I refer to them as, or Bank of America on their own can occupy holder in due course status for several reasons. The loan was in default at the time they purchased it. Mr. Goldberg had filed his lis pendens before they obtained it by signing it. The actual transfer of this mortgage was not done in the ordinary course of Countrywide's business. It was done as part of a bulk sale, part of a fire sale.

Now, we further claim that they have the burden of proof that they paid value without notice and that if we get into the documents and we get into the transaction we take the position that they had enough evidence that had they diligently searched it they would have uncovered what was going on.

So Your Honor, that's basically our position. We think that Ryba, a licensed mortgage banker was an employee and the originator and the borrower of this loan, of First Rate Mortgage. First Rate Mortgage, under South Carolina law, absent some disclaimer is the agent of the lender. There's documents that we will introduce that will indicate that Countrywide controlled the transaction. They decided what

evidence was required. They decided what had to be verified.

So for that reason we take the position that First Rate is really the agent of Countrywide, and therefore Countrywide is responsible for the fraud that was committed.

Thank you. The reasons that they're not holders in due course on the loan is because they were in default and because it was a fault transaction out of the ordinary course in the transfer of business that's based under the Uniform Commercial Code. We cited the code.

THE COURT: Very good. Thank you, sir. All right, Mr. Tillman?

MR. TILLMAN: I would like to call Roy Hutchinson, please.

ROY HUTCHINSON,

being first duly sworn, testified as follows:

THE COURT: Your full and name and address for the record, please?

THE WITNESS: LeRoy Phillips Hutchinson, and the office address is: 147 Wappoo Creek Drive, Suite 202, Charleston, 29412.

THE COURT: Thank you, sir.

EXAMINATION

BY MR. TILLMAN:

Q. Good morning, Mr. Hutchinson. Thank you for coming today. First of all, will you please let the Court know what you do for a living?

A. I'm a South Carolina licensed lawyer. I've been practicing in Charleston since 1992, mostly real estate law. I would say about 90 percent of what I do is real estate, residential mostly and some closings.

Q. By that do you mean you do residential closings?

A. Oh, exactly. Yes.

Q. Where do you practice?

A. In the Wappoo Center on James Island.

Q. Can you just briefly describe -- I know this is the Master in Equity, but can you briefly describe the process for handling a real estate closing? Residential?

A. Sure. So we get a contract from -- in this case I'm going to talk about purchase and not about refinance. We get a contract from the purchaser or from the purchaser's agent. I go search the title. It's a public record. It reflects any liens or any judgments or whatever it might be of record against the seller. It would call for payoffs. We bring

everybody together.

If the loan is financed obviously we have loan documents, so we have the borrower sign the loan documents. The seller signs a deed of conveyance and other verifications. We make payoffs to mortgage companies. I take the deed down to the RMC office along with the mortgage and record those documents. That's pretty much it.

Q. Do you typically get a title search on the property?

A. I do, yes.

Q. And do you prepare a HUD-1 form when closing a real estate transaction?

A. Yes.

Q. And can you briefly explain the purpose of a HUD-1 for me?

A. Well, when a settlement statement is -- a HUD-1 is a Housing and Urban Development mandated form that we do in real estate transactions, residential real estate transaction, so what it does is it's a form where a seller's costs are detailed, borrower's costs are detailed. Back in 2005 we had a two-page form. And so the second page is the details of charges that both borrower and seller are going to pay.

The first page is a summary page which ends up at the very bottom of it -- I should know this -- the left-hand side is the borrower's, what they have to bring at closing. The right-hand side is what the seller takes away from the closing. It's a summary of the transactions.

Q. Do you recall performing a real estate closing regarding the sale of 34 Tarleton Drive from Carol Goldberg to Clifford and Beverly Ryba back in 2005?

A. I do.

Q. You were the closing attorney for that transaction?

A. I was.

Q. Did you prepare a HUD-1 form for that transaction?

A. I did.

Q. Would you please look at this document and tell me what it is?

A. This is the HUD-1 settlement statement I prepared for the transaction, for the sale of 34 Tarleton Drive, Charleston, 29407.

Q. Is that a document that you kept in the ordinary course of your business?

A. Yes.

MR. TILLMAN: Your Honor, I would ask that

that be admitted as Exhibit 1.

THE COURT: Any objection?

MR. HOLMES: No objection, Your Honor.

THE COURT: Without objection.

Q. (BY MR. TILLMAN) How much was the loan -- if you would refer to that Exhibit, please. How much was the loan in this particular case?

A. Two loans. We have a first mortgage loan of $163,500 and the second mortgage loan is 20,857.

Q. Was an existing mortgage paid off?

A. It was an existing mortgage to Carolina First that was paid off, yes.

Q. In what amount?

A. $199,689.75.

Q. Did you also prepare the deed for this transaction?

A. Yes, I did.

Q. I would ask to you to look at this document, and let me know if you recognize it.

A. I do recognize it. It's the deed I prepared and is signed by Ms. Goldberg as part of our sale.

Q. Is that a true and accurate copy of the deed kept in your ordinary course of business?

A. Yes. Also on record at the RMC office.

MR. TILLMAN: Your Honor, I would move that

that deed be moved into evidence as Exhibit 2, please.

MR. HOLMES: No objection.

THE COURT: Without objection.

Q. (BY MR. TILLMAN) What kind of deed is this?

A. This is a general warranty deed.

Q. Can you briefly describe what a general warranty deed is?

A. A general warranty deed is a deed whereby the seller agrees to defend the buyer against any claims whatsoever against title be they mortgages that are unrecorded or unrecorded liens, anything that's a claim against title that arises through the borrower, or excuse me, through the seller, and not only the seller but also previous owners of the prior chain of title.

Q. Were there any reservations or reversionary interests in that deed?

A. No.

Q. Do you recall having any indication that Ms. Goldberg was claiming some sort of interest in the property at the time she sold it?

A. No.

Q. If you had such knowledge would you have prepared the deed as it is written or as it was

recorded?

A. No.

Q. How would it have been different?

A. Well, I think probably I would have prepared a second document that would have been like a right to purchase or something like that whereby she would have a right to purchase after the closing from the Rybas, maybe something like that. I didn't reflect on it. It wasn't brought to my attention.

Q. Did you review your file?

A. Oh, yes.

Q. Did you discover any such document?

A. I didn't. I specifically reviewed the purchase contract, and nothing. No mention of such a document. No mention of such a right to reclaim or have the title conveyed back.

Q. I'm going to hand you another document and ask that you review that and let me know, number one, if it came from your file, and number two, what the document is?

A. Yes. It did come from my file. It is an owner's affidavit and indemnity through date of closing, August 31, 2005, signed by Ms. Goldberg. It basically -- just to summarize it explores -- it's for title insurance, general warranty deed purposes.

Are there any claims or any judgments or potential liens including mechanic's liens against this property that we need to take care of at closing that have not been revealed by the public record, so basically that's what the affidavit seeks to do. That information is what we seek to explore or to obtain.

Q. Was this document kept in your ordinary course of business?

A. Yes.

Q. It was in your file?

A. Yes.

MR. TILLMAN: Your Honor, I ask that this be admitted as Exhibit 3.

MR. HOLMES: Without objection.

THE COURT: Exhibit 3.

Q. (BY MR. TILLMAN) And Mr. Hutchinson, can you please read Paragraph 4 for me?

A. Paragraph 4 from the Owner's Affidavit and Indemnity Agreement reads as follows: "The undersigned" -- this is Ms. Goldberg is the undersigned -- "the undersigned affirms that there are no tenancies, occupancies, or other occupations, or any other leases, chattel mortgages, financing statements, retention or reversion of title

agreements, liens or contracts (including, without limitation, real and/or personal property taxes, assessments, regime fees, mortgages, and/or judgments) against the undersigned and/or affecting the property and/or any personal property located therein (including without limitation, heating and air conditioning systems, fixtures, appliances, furnishings or equipment) except as follows and (if no mortgages or other liens outstanding, write 'none')."

Q. And again, who signed this document?

A. Ms. Goldberg.

Q. Were you a witness to her signature?

A. I was.

Q. Would you have closed this transaction in the manner it was closed if you were aware of any interest Ms. Goldberg claimed to the property?

A. No.

MR. TILLMAN: That's all I have. Thank you.

EXAMINATION

BY MR. HOLMES:

Q. Did you also close the mortgage loan on the same date?

A. Pardon me?

Q. Did you also close the mortgage loan on the

same date?

A. I did. It's the same transaction.

Q. And did you bring any paperwork or a file with regards to the mortgage loan?

A. Did I today?

Q. Yes.

A. No, sir.

Q. Were you asked to produce the copies of the mortgage at closing?

A. No, sir. The mortgages are part of the public record now.

Q. But you do a closing statement when you do the mortgage transaction as well?

A. Yes. Actually Exhibit A is that settlement statement.

Q. So there's not a separate one for the mortgage that covers both the deed and --

A. Yes, sir. Both buyer and seller.

Q. And who hired you to be the attorney in this closing?

A. Mr. Ryba.

Q. Who paid you to be the attorney in this closing?

A. Mr. Ryba and Ms. Goldberg paid for deed prep, too.

Q. Now, you said you start with a contract to buy and sell?

A. Yes.

Q. Did you have a copy of the contract to buy and sell?

A. Yes.

Q. And who prepared the contract to buy and sell?

A. Well, I don't know, but I didn't.

Q. Let me show you what we marked as Defendant's Exhibit No. 3. Is this a copy of the agreement to buy and sell?

A. It looks familiar. Let me, if I may, look all the way through.

Q. Sure.

A. I'm not sure whether the contract I have in my file actually has Beverly Ryba's signature on it as well. This one does not. In any event it -- otherwise it looks like the one that I have in my file.

Q. Can you turn to Page 6 of 6?

A. Yes.

Q. And who does it indicate is the listing agent and the company representing the seller?

A. Seller representing self as the listing agent. Buyer representing self for selling agent.

Q. So did Ms. Goldberg have a real estate agent advising her on this transaction?
A. Not to my knowledge.
Q. Did she have an attorney advising her in regards to this transaction?
A. Not to my knowledge.
Q. Okay.
A. Other than deed preparation and preparation of affidavits.
Q. Who prepared the deed?
A. I did.
Q. How much did the deed cost?
A. $100.
Q. Did she actually give you a check for $100, or did that come out of the closing?
A. It came out of the closing.
Q. Okay. May I see the closing statement?
A. Yes, sir.
MR. HOLMES: Do you have an extra copy?
MR. TILLMAN: I don't.
Q. (BY MR. HOLMES) All right. Now, the purchase price of the property was $205,000?
A. I believe so. Reading off the deed I'm sure it was 205. That should be reflected on the subject statement.

Q. As part of a mortgage transaction which you did at the same time you did the deed, was there an appraisal done of the property?

A. Well, let me look at the settlement statement to see if there is a fee for the appraisal. There is not.

Q. No appraisal? So the mortgage company is making a loan on a property without an appraisal of its value?

A. That's the lender's call. That's not within my jurisdiction to order.

Q. Is that usual or unusual?

A. I would say it's -- in a purchase transaction I would say, yes, it is unusual.

Q. Did you have any idea of how much the house was worth?

A. No.

Q. And if I represented to you the house was worth $350,000, and the contract says she's selling it for $205,000 would that raise a red flag to you?

A. Well, not necessarily. The reason is because contracts come to me signed and are assumed to be negotiated between the parties, and if this is their agreement I don't -- go behind or try to figure out the reasoning as to why this purchase price rather

than another purchase price.

Q. Okay. Did you know -- the contract to buy the property was dated August 16, 2005. And you were closing this mortgage, I believe it was, on August 31, 2005?

A. Correct.

Q. Did you have anything to do with the obtaining of the loan from Countrywide?

A. No, sir.

Q. Who handled the submission of all the documents to obtain approval for the loan from Countrywide?

A. Typically it's the loan officer, so my guess, without knowing, is that Mr. Ryba submitted whatever documentation the lender required.

Q. Did you know that Mr. Ryba was a licensed mortgage broker?

A. Yes.

Q. Did you know that he worked for a company called First Rate Mortgage Company?

A. Yes.

Q. Does the closing statement indicate that First Rate Mortgage Company got an origination fee? Did they make any money, pay any fee for arranging this loan?

A. No.
Q. It doesn't?
A. No origination fee.
Q. Any fees paid to the --
A. Let me see.
Q. What's this processing fee to First Rate Mortgage, $599?
A. Well, that's a separate line item on the settlement statement. The origination fee is Line Item 801, so there's no figure there. There's a processing fee, yes, of 599.
Q. So First Rate Mortgage got paid $600 for processing the loan for Clifford Ryba who was the borrower?
A. $599, yes.
Q. Not only was he the borrower, he was an employee at First Rate Mortgage?
A. I don't know.
Q. You don't know?
A. No.
Q. Okay. Had you known Clifford Ryba was a licensed broker employed by First Rate Mortgage that was doing this loan application would that have caused you some concern?
A. No.

Q. It wouldn't? Okay. Now, of the closing, the $205,000, how much was Ms. Goldberg receiving?

A. Referring to the settlement statement her bottom line is zero. She received no funds.

Q. So she's getting nothing from this transaction other than the satisfaction of the mortgage on property?

A. Correct.

Q. Now, I just want to make sure. This is -- the mortgage that arose out of this is the August 31st, 2005 Countrywide mortgage to Clifford Ryba and his wife, Beverly, for $163,500?

A. Yes. Plus the second mortgage of 20,857.

Q. Who was the second mortgage to and from?

A. Well, it doesn't say on my settlement statement, but if I recall from my review of the file it was America's wholesale lender, which is to say Countrywide.

Q. So Countrywide is not just doing the original mortgage. They were also doing a second mortgage at the same time?

A. That's correct.

Q. Is this the mortgage, the August 31st, 2005, $163,500 mortgage?

A. It appears to be, yes, sir.

MR. HOLMES: Your Honor, I'll offer the mortgage.

THE COURT: Go ahead.

MR. HOLMES: I've labeled this as Defendant's No. 6.

Q. (BY MR. HOLMES) And you've prepared the deed?

A. I did.

Q. Now, this owner's affidavit, did I understand you correctly to say that the owner's affidavit listed no encumbrances on the property?

A. Well, I did say that, but if you look at Paragraph 4, there are three items that are also mentioned. One is taxes for the current year. One is the mortgage we paid off. And the third one is -- is there a third one? I'll take a look. There are only two -- those two things I just mentioned.

Q. It said there were no tenancies on the property?

A. Correct.

Q. Did you explain what tenancies meant to Ms. Goldberg?

A. I doubt it, but that's a commonly understood term I believe.

Q. Did you explain there were no reversion of titlement agreements to Ms. Goldberg?

A. Probably not in specific detail.
Q. Okay. Because there was a mortgage on the property; we agree to that?
A. Right. You're speaking to the one that was paid off?
Q. Right.
A. And that's listed here as one of the encumbrances.
Q. And if you had been advised that there was a tenancy agreement, improper in effect, would you have closed the loan?
A. Yes.
Q. You would have?
A. Yes.
Q. What if you had been advised that there was a rental agreement to rent the property back to Ms. Goldberg?
A. Yes.
Q. You still would have closed it?
A. That's not unusual for an owner to retain possession for a time.
Q. Let me show you what I've marked as Defendant's Exhibit No. 2. We'll introduce this later. Does that appear to be a residential rental agreement?

A. It does.
Q. Would you turn to Paragraph 14 for me?
A. Yes, sir.
Q. What does it say about who's responsible for essential services and appliances?
A. The landlord is required to provide essential services.
Q. If you look down it says, Tenant is owner; does it not?
A. Well, it says, Tenant is -- I think you could read that as owner.
Q. Can you think of anything else you could read it as?
A. Answer, A-N-S-W-E-R.
Q. That wouldn't make any sense. Tenant is owner. If you had known that there was a lease renting the property back to Ms. Goldberg who was not receiving anything from this sale and the lease said, Tenant is owner, would that have raised any concerns to you?
A. Well, I would have questioned it, yes. Tenant is owner. Tenant can't be owner. You can't be a tenant if you own your property.
Q. Exactly. As an attorney you would have felt some obligation to advise Ms. Goldberg of this fact?

A. Yes.

Q. You can't be an owner and a tenant at the same time. Legally that doesn't work.

So when she said there were no tenancies on the affidavit that you prepared and she signed, there was a tenancy on the property?

A. This documents is dated 12, August, so that predates my affidavit, however I'm seeing it for the first time now.

Q. And it predates the agreement to buy and sell by four days?

A. Yes. She's still the owner at that point, though, on August 12th. There's no date. Excuse me. The 12th of August is the date on this rental agreement. Again, she was still the owner on that date.

Q. Okay. Now, if you had known that Ms. Goldberg understood that she would have a right to repurchase this property would you oppose it?

A. No.

Q. Do you know if Ms. Goldberg was represented by a real estate agent in entering into the rental agreement?

A. I do not know.

Q. Do you know if she was represented by a lawyer

in entering into the rental agreement?

A. I do not know.

Q. Are you familiar with the South Carolina law dealing with what is called recasting?

A. No.

Q. You're not? Okay. I'm going to represent to you that Section 40-58-10 of South Carolina law specifically prohibits a mortgage broker from engaging in what's called recasting. Recasting is defined as -- instead of doing a loan you get the owner of the property to deed the property over to you and rent it back to them with a promise to resell it later. That's an illegal transaction. If you had known that that's what was going on in this case would you have closed the loan?

A. No.

Q. Do you recall ever receiving any document from Clifford Ryba or First Rate Mortgage or anything where Ms. Goldberg signed any kind of statement that she had had an attorney, an independent attorney, advising and counseling her in this transaction?

A. No.

Q. That at any time that either Ryba or First Rate were exclusively agents of hers?

A. No.

MR. HOLMES: So I don't want to get out of whack. Can I have the lease agreement? I haven't put that in yet. We'll put it in later.

THE COURT: All right.

MR. HOLMES: That's all the questions I have, Your Honor.

THE COURT: All right, Mr. Tillman?

EXAMINATION

BY MR. TILLMAN:

Q. I just want to be clear here. Was there an existing mortgage on the property?

A. Yes.

Q. How much was the mortgage?

A. Well, the payoff on it was $199,689.75.

Q. Was it your understanding that Ms. Goldberg owed that money?

A. Yes.

Q. Did she owe that money after this closing was over?

A. No.

Q. Therefore she received something in this closing, correct?

A. Yes, the extinguishment of this debt.

Q. You touched on this a moment ago, but I want you to look at the residential rental agreement

again, and tell me what is the date of it again?
A. The date is 12 August, 2005.
Q. Who owned the property on August 12, 2005?
A. Ms. Goldberg.
Q. Does that make the note, the tenant as owner, does that make more sense to you now?
A. It makes more sense to me now, yes, and that she was the owner on the date of the rental agreement.
Q. Is it unusual for the seller in a transaction not to be represented by an attorney?
A. Not unusual.
Q. So that didn't raise any red flags in and of itself for you?
A. Correct.
Q. And again, nobody associated with this transaction, Goldberg, the Rybas, nobody indicated to you that Ms. Goldberg intended to or did retain an interest in this property, correct?
A. That is correct.
MR. HOLMES: Just one question.
THE COURT: All right.

EXAMINATION

BY MR. HOLMES:
Q. Would it be unusual for somebody that owns

property to rent it back to themselves?
A. It's hard to imagine such a contract because the owner doesn't need to rent from themselves.
Q. Would it be unusual for Mr. Ryba, who does not own the property at this point, to be entering into a lease agreement to lease it back to her?
A. That is not unusual.
Q. That somebody who doesn't own property enters into a lease agreement?
A. Well, I have clients and it's mostly commercial people that rent to college students, for example. They will -- is this property that I'm thinking about buying, can I make it work? The way I make it work is to have it rented, right? It's not unusual for a prospective owner to scout out prospective tenants.
Q. In this case the prospective tenant is the owner of the property?
A. On August 12th 2005, correct.
Q. Are you familiar with a 15-day lease or a short-term lease that would accomplish what you're talking about?
A. Well, I am.
MR. HOLMES: No further questions.
THE COURT: Very good. Mr. Hutchinson, thank

you very much, sir. You can step down.

(Witness excused.)

MR. TILLMAN: I call David Chard.

DAVID CHARD,

being first duly sworn, testified as follows:

THE COURT: For the record your full name and address, please.

THE WITNESS: My full name is Richard David Chard, and my address is 867 Law Lane in Mt. Pleasant.

THE COURT: Thank you, sir.

EXAMINATION

BY MR. TILLMAN:

Q. Mr. Chard, thank you for being here this morning. I'm doing my best to get you out as quickly as possible. I'm going to hand you -- I don't have it right now.

Mr. Chard, what do you do for a living?

A. I'm a lawyer.

Q. Do you do real estate closings?

A. Yes, sir.

Q. You do residential real estate closings?

A. All kinds.

Q. How long have you been doing that work?

A. For 37 years.

Q. As part of that work do you perform title searches?
A. I don't do title searches.
Q. Do you commission title searches?
A. Yes.
Q. And the results are provided to you?
A. That's correct.
Q. Do you rely on those results?
A. I do.
Q. Do you do refinances as well?
A. Oh, yes, definitely.
Q. Do you recall doing a refinance transaction on 34 Tarleton Drive with Clifford and Beverly Ryba in 2007?
A. I do.
Q. Do you recall having any indication that the former owner of the property claimed an interest in the property at the time?
A. None whatsoever.
Q. Did the title search results reveal any interest in the property claimed by a former owner at the time?
A. None at all.
Q. Would you have closed the deal if you were aware of how they are reported or unreported claim of

an interest by a former owner of the property at the time of the refinance?

A. I would not have.

Q. Why is that?

A. Several reasons. The primary one is title insurance is unavailable, and the second reason is that it could lead to some type of claim down the road if the former owners had a claim against the property.

Q. Is it fair to say that the Rybas didn't inform you of any claim by a former owner of the property?

A. That is correct.

Q. Is it safe to say that at the time of the close of the property you had absolutely no knowledge that Carol Goldberg claimed either a recorded or unrecorded interest in the property?

A. That is correct.

MR. TILLMAN: That is all I have. Thank you.

EXAMINATION

BY MR. HOLMES:

Q. Are you ready?

A. I'm ready.

Q. Who did you represent in this closing?

A. I represented the Rybas. I was hired and paid by the Rybas.

Q. And how were you paid?
A. I was paid at the closing.
Q. Out of the proceeds of the mortgage refinance?
A. Let me double check that. The Rybas did bring a small amount of money to add to the amount of the loan that they were getting. Indirectly I was paid -- primarily I was paid out of the proceeds of the loan.
Q. Was Ms. Goldberg present?
A. No, sir, she was not.
Q. To your knowledge did she have any notice of this?
A. To my knowledge she did not.
Q. The loan that you were getting ready to refinance was a loan from what company?
A. Countrywide is the lender that had the mortgage that got paid off at the closing.
Q. And who would have decided -- did Countrywide have any employees locally here in the Charleston area to your knowledge?
A. Yes, they did.
Q. Where were they located?
A. Countrywide had an office over in one of those big buildings off Leeds Avenue. It's called Faber Place, right along in there.

Q. Okay. Now, were you provided any documents concerning the loan application process?

A. Not the application. I would have received the loan instructions in preparation for closing, and I would have received the loan -- what we call the loan package which is the note, the mortgage, and all the ancillary documents.

Q. Didn't you receive a -- let me show you this document. Can you identify that document?

A. I cannot identify this document.

Q. Mr. Chard, didn't you give that document to Ms. Goldberg?

A. I will look through the file. I do not recognize that. That does not look to be the document that was in the closing package.

Q. Please look through your file and see if you can find that document.

A. Mr. Holmes, I do not see a copy in my file.

Q. Is that the only file you maintain --

A. Yes, it is.

Q. -- on this transaction? And you have not taken anything out of that file before you brought the file here in court today?

A. I have not.

Q. You said you also didn't have a copy of the

residential loan application?

A. No, you didn't ask me that. I do have a copy of that.

Q. Oh, you do. Okay. Let me show you what I've marked as Defendant's Exhibit No. 14. Is that a copy of the residential loan application?

A. Yes, it is.

Q. This mortgage is being closed on what date?

A. May, 2, 2007.

Q. Okay. And what is the date that the residential loan application was completed?

A. This one is dated May 2, 2007.

Q. So that's on the same day as the closing for the mortgage, the loan application is being completed?

A. This copy of it -- now, it's very normal for the borrower to submit on the day he files for the loan, applies for the loan. Then the closing attorney gets another one, the loan package. So that's what this one undoubtedly was.

Q. So that would be the document I showed you and you did not have a copy of it? This is dated, it looks like March 20, 2007?

A. That's right.

Q. This would be what was submitted to the

mortgage company before they filled out the loan application?

MR. TILLMAN: Objection. Speculation.

THE WITNESS: I don't know what goes on in the loan application process. I do not recognize that document. That is not one that closing attorneys get. I think that might have come from Mr. Ryba's file, but it didn't come from mine.

Q. (BY MR. HOLMES) If we look down here -- it's a $172,000 loan. It's a refinance, correct?

A. Are you looking at the application?

Q. I am. Do you have a copy of that in front of you?

A. That is correct, 172,000.

Q. And then if you look down a little bit further it says, complete year acquired. Did Mr. Ryba disclose when he acquired this property on his loan application?

A. That is not filled in.

Q. Now, did Mr. Ryba disclose who his employer was on this application?

A. Yes, he did.

Q. Who was his employer?

A. First Rate Mortgage.

Q. All right. Now, you indicated that you didn't

do the title examination, but you contracted that?
A. That's correct.
Q. Can you tell the Court how many times he's refinanced this property since August 31, 2005 when he acquired it from Ms. Goldberg until May 2, 2007?
A. A title search typically lists only the outstanding mortgages, so if there had been one between 2005 and 2007 I would not necessarily know that.
Q. If there was one from another company it was the second mortgage; you would know that?
A. I would know that.
Q. Okay. And if I told you that the property was initially financed by Countrywide, and then there were two refinances by Regions Bank and this is the second refinance by Countrywide, would that sound about right to you?
A. That does not sound right.
Q. Regions had junior mortgages, so they were not refinances of Countrywide's mortgage?
A. I didn't mean to suggest they were.
Q. They were subordinated to the Countrywide person?
A. Correct.
Q. In fact, in this transaction they signed an

agreement to subrogate (sic), make sure there was no question, that their mortgage was subrogated to Countrywide?

A. To the new Countrywide mortgage.

Q. To the new Countrywide?

A. That is correct.

Q. Because they were subrogated (sic) to the old Countrywide?

A. We call it subordinated.

Q. What did I say, subrogated?

A. You have your insurance hat on.

Q. There you go. Were you aware of any concern or any problem or information provided to Countrywide -- Ryba was not living on the property? We agree with that? Did you know that Ryba was not living on the property?

A. Yes.

Q. Did you know who was living on the property?

A. No.

Q. Had you known the person living on the property was Ms. Goldberg would that have caused you some concern?

A. No.

Q. If you had known that in 2005 to 2007 -- less than two years -- Mr. Ryba had increased the amount

of mortgage debt on that property from roughly 200,000 to $287,000. Would that have raised any concerns?

A. I don't think so.

Q. If you had known that Mr. Ryba had an agreement to sell the property back to Ms. Goldberg would that have raised some concerns?

A. As long as it wasn't recorded and therefore had some type of encumbrance on the property I don't think it would matter what his agreement was with the previous owner.

Q. Because if it wasn't recorded it wouldn't be enforceable?

A. Against the lender, yes.

Q. Did you have any information that, in fact, it was rented to Ms. Goldberg at below market value for a net monthly rental loss of about $600?

MR. TILLMAN: Object to the form to the extent he talks about the loan market value. That fact is not in evidence.

THE COURT: Do you want to rephrase it?

MR. HOLMES: All right.

Q. (BY MR. HOLMES) Did you know that the property was rented to Ms. Goldberg for a negative cash flow of about $600 a month?

A. I did not.
Q. Would that have caused any concerns?
A. No, it would not.
Q. How much of the $172,000 mortgage here, the August 2nd, 2007 -- who got the money?
A. At closing there were nine checks written. 171,000 went to Countrywide to pay off the existing first mortgage. The remaining 1,500 or so went to things like the RMC office, the title searcher, my fee, the appraisal, those sorts of things.
Q. Is one of those sorts of things title insurance?
A. Yes.
Q. How much was paid out of this closing?
A. Let me make sure I didn't answer that too quickly, yes. Check No. 40833, $401 covered the title insurance premium.
Q. Were fees paid to First Rate Mortgage Company?
A. It looks like First Rate got a check for $350.36.
Q. So of the $172,000 loan, $171,445.01 went to pay back the first mortgage to Countrywide?
A. That is correct.
Q. So the rest of the proceeds went to pay First Rate Mortgage and to buy title insurance on the

property; is that correct?

MR. TILLMAN: Objection to these questions about insurance, Your Honor.

THE COURT: Overruled.

Q. (BY MR. HOLMES) Now, how much did Mr. Ryba get out of this?

A. Mr. Ryba did not get any money from the closing. In fact, he had to bring 1,221.69.

Q. I know the answer to this, but I want to put it on the record. How much did Ms. Goldberg get out of this closing?

A. Ms. Goldberg was not involved in this closing.

Q. Not involved at all? Did not receive a penny?

A. No.

Q. And Mr. Chard, let me show you what I've marked as Plaintiff's Exhibit No. 16. Is that a copy of your letter transmitting the $141,000 to Countrywide the following day?

A. It is.

Q. Would you look at the second page; is that a copy of your check?

A. Yes, sir.

Q. And did you get that document from Ms. Goldberg?

A. I am sure I gave the letter -- I don't know if

there's a copy of the check in our file. If you would like me to look through here page-by-page and see if it's in there I will.

Q. It might be important to go through.

A. Yes, sir, I did.

Q. Mr. Chard, in your experience as a loan closer have you ever had the opportunity to become familiar with the statute dealing with recasting?

A. No, I have not.

MR. HOLMES: That's all the questions I have. Thank you very much.

MR. TILLMAN: I have just one follow up.

EXAMINATION

BY MR. TILLMAN:

Q. Was it unusual to have multiple refinancings on property around this time?

A. No, it was not.

Q. That was a fairly typical event?

A. It was.

Q. So that didn't raise any red flags with you?

A. No, it did not.

MR. TILLMAN: Thank you.

EXAMINATION

BY MR. HOLMES:

Q. This was part of the old days when companies

like Countrywide were refinancing loans like crazy; is that correct?

A. There was a lot of refinancing going on back then.

Q. This was prior to the financial meltdown in late 2007 and 2008?

A. It was in May. I think it was probably starting about then.

Q. So you're saying it's not unusual. Would it be unusual today to have somebody refinancing a property that many times in less than two years?

A. Again, you're using the word refinancing, and I think you're looking at second mortgages. It's not unusual, when the interest rates are dropping for a customer to refinance every year. I've got people who have refinanced five or six times.

Q. Let's make sure we have our terms straight. August 31, 2005, Mr. Ryba borrows $163,500. Okay? August -- May 2, 2007, he's now borrowing 172,000; is that correct?

A. That is correct.

Q. If I told you that on October 11, 2005, one month, 11 days after you closed -- not you, I'm sorry -- the last gentleman -- closed the first Countrywide loan he borrowed $100,000 from Regions

Bank posting the property as collateral and then on May 9, 2006, he increased that from 100 to $115,000. That's not just refinancing to get a better interest rate. That's refinancing and drawing equity from the property, isn't it?

A. That is.

MR. HOLMES: No further questions.

THE COURT: Mr. Chard, do you recall ever getting any request for information or to look into multiple refinancings or purchases and then multiple refinancings of property from either a lender or a mortgage insurance company to look further into those? Did you ever get any kind of notice from a title insurance company or a lender about that?

THE WITNESS: Not that I recall, Your Honor.

THE COURT: Thank you. If you'll hand the Court Reporter the exhibits? I'll take those.

THE WITNESS: This is Exhibit 14, but it's not accurate. It's got pages that don't go with the loan application, and it's missing a couple of pages.

THE COURT: Let's clear that up while we're here.

MR. TILLMAN: It's also my understanding that those weren't marked.

MR. HOLMES: They are marked.

MR. TILLMAN: They weren't offered.

THE COURT: That's what I want to clear up. Let's clear that up. I think one of them you did not identify is my recollection, right?

THE WITNESS: That is correct.

THE COURT: So you've got, what, two documents over there? There is a third one on the table. This is No. 14?

THE WITNESS: Yes, sir.

THE COURT: Is that the loan application dated May 2 of '07?

THE WITNESS: Yes, sir, it is.

THE COURT: You-all are offering that into evidence?

MR. HOLMES: I am.

MR. TILLMAN: Which one is that?

THE COURT: No. 14, I believe it is, Defendant's 14. It's the loan app.

THE WITNESS: That's the one that's not accurate.

MR. TILLMAN: Your Honor, I have an objection to it if it's not accurate.

THE COURT: Let's figure that one out. First of all, how do you know it's not accurate? That's my first question for you. What is that based upon?

THE WITNESS: It's got Page 1 and then it skips to Page 3. There's no Page 2. Then there's a Page 1 again. There's no Page 4, and then this document is, I think, part of the mortgage.

THE COURT: All right. Do you want to take a look at that one?

MR. HOLMES: I see what he's saying.

THE COURT: Okay. It's not a complete document is what you're saying?

THE WITNESS: That's correct.

MR. TILLMAN: My objection would be authentication obviously.

MR. HOLMES: Since he's got it with him let's just put in the copy he has. We got it from him.

THE WITNESS: No, I've got it.

THE COURT: You have the actual one? That's the one you do have in hand? All right.

THE WITNESS: Uh-huh.

THE COURT: Is that acceptable then to put it in with the actual --

MR. TILLMAN: It is.

THE COURT: All right. We'll make a copy of that and do that, correct that one. Any objection to the other ones coming in?

MR. TILLMAN: I don't even know which ones he

wanted to enter.

THE COURT: Let's make sure we've got them.

MR. TILLMAN: Can we approach?

THE COURT: Sure. Sure. Sure.

MR. TILLMAN: I don't have any problems with the rest of it.

THE COURT: All right.

(PLF. EXH. #1, Note, was marked and placed into evidence.)

(PLF. EXH. #2, Title, was marked and placed into evidence.)

(PLF. EXH. #3, Affidavit, was marked and placed into evidence.)

(DFT. EXH. #2, Residential Rental Agreement, was marked and placed into evidence.)

(DFT. EXH. #3, Agreement to Buy and Sell Real Estate, was marked and placed into evidence.)

(DFT. EXH. #6, Mortgage, 8/31/05, was marked and placed into evidence.)

(DFT. EXH. #14A, Loan Application, was marked and placed into evidence.)

THE COURT: I have Plaintiff's 1, 2, and 3 in evidence?

MR. TILLMAN: That's correct.

THE COURT: And then I have Defendant's 2, 3,

and 6 in front of me I'm assuming in evidence without objection. 14 was the one that was objected to. Let's replace it with 14A. This is 16. Come take a look at these.

(Off-the-record conference.)

THE COURT: It looks like the Uniform Residential Loan Application, 14A would be the correct version of that loan app. I believe he testified it was from May 2, 2007, signed on the top right by the Rybas and on the last page again, Page 4 of 4.

MR. TILLMAN: The rental agreement Defendant's 8; is that right?

MR. HOLMES: No, that's 2.

THE COURT: The rental agreement is 2, yes.

MR. TILLMAN: And the sales agreement is 3.

THE COURT: 3. I have checked off 2, 3, 6, and 14A for the Defendants; and 1, 2, 3 for the Plaintiffs.

It's almost noon. Let's take a little break. Mr. Tillman, do you want to keep moving forward?

MR. TILLMAN: I think Ms. Lybrand would like to take a quick break.

THE COURT: Let's take a quick break right now, and we'll strategize for the next half an hour

or so. Take five minutes. Thank you.

(A recess transpired.)

THE COURT: Mr. Tillman, who do you have next?

MR. TILLMAN: Michael Ward for the Plaintiff.

THE COURT: Let's get started with him.

MR. TILLMAN: We're ready if they are.

MR. HOLMES: We're ready.

THE COURT: Mr. Ward, come on up, sir.

MICHAEL WARD,

being first duly sworn, testified as follows:

THE COURT: Give us your full name and address, please.

THE WITNESS: Michael Lee Ward, W-A-R-D, and the address is: 8742 Lucent Boulevard, L-U-C-E-N-T, Suite 300, Highlands Ranch, Colorado. 80129.

THE COURT: Highland?

THE WITNESS: Highlands Ranch.

THE COURT: Thank you, sir. Ms. Lybrand?

EXAMINATION

BY MS. LYBRAND:

Q. Mr. Ward, what company do you work for?

A. I am employed by Specialized Loan Servicing.

Q. Specialized Loan Servicing. What's your current job title?

A. I am the second assistant vice-president of

default management.

Q. What is that job duty? What does that entail, your job?

A. I assist in overseeing a portion of our default servicing departments or default documents department as well as spending quite a bit of time testifying at trials and depositions in connection with those.

Q. Okay. And are you authorized to testify on behalf of SLS or Specialized Loan Servicing today at this hearing?

A. Yes, I am.

Q. Is Specialized Loan Servicing the loan servicer for this loan?

A. We are, yes.

Q. So Specialized Loan Servicing services the loan for the named Plaintiff, HSBC Bank USA as trustee, et cetera?

MR. HOLMES: Your Honor, I would ask that we please not lead the witness.

THE COURT: All right. I'm going to allow it up to there. Go ahead. We have to get that done.

Q. (BY MS. LYBRAND) In the ordinary course of business does Specialized Loan Servicing maintain records for the mortgage loan that we're here on

today?

A. Yes, we do.

Q. And has SLS adopted business records of the prior owners and services of this loan?

A. Yes, we have.

Q. As part of your job duties are you familiar with the records maintained by your company in regards to this loan?

A. Yes, I am.

Q. And do you have personal knowledge of this loan based upon your review of those records?

A. Yes, I do.

Q. Okay. I'm handing you a couple of documents.

MS. LYBRAND: Your Honor, these are originals of the note and mortgage in this case. I have copies that I plan to admit into evidence. I have copies for opposing counsel as well.

THE COURT: All right.

Q. (BY MS. LYBRAND) Are these two documents the original note and mortgage in this matter?

A. Yes, they are.

Q. And were these documents maintained in the ordinary course of your business?

A. Yes.

MS. LYBRAND: Your Honor, I would like to move

to admit the note as Exhibit 4 and the mortgage as Exhibit 5.

THE COURT: Any objection to those, Mr. Holmes?

MR. HOLMES: No, Your Honor.

MS. LYBRAND: And just for the record, Your Honor, these exhibits have been redacted as to the loan numbers and the personal identifying information. The originals are not redacted. I just wanted to make that known.

THE COURT: Thank you.

MR. HOLMES: No objection.

THE COURT: This would be the Rybas' note and Ryba mortgage from 2007; is that correct?

MS. LYBRAND: That is correct, Your Honor.

THE COURT: Thank you.

Q. (BY MS. LYBRAND) Mr. Ward, according to the note, who is the borrower?

A. There are the typed names of Clifford L. Ryba and Beverly Ryba as well as including signatures over the typed names.

Q. Thank you. And when was the note signed?

A. May 2, 2007.

Q. And according to the note who was the original lender?

A. Countrywide Bank, FSB.
Q. And does this note cover the subject property address of 34 Tarleton Drive, Charleston, South Carolina, 29407?
A. Yes, it does.
Q. And at the time the note was signed what was the principal amount borrowed under this note?
A. 172,000.
Q. And does this document provide that the holder is entitled to reasonable attorney's fees and costs incurred in collecting past due amounts?
A. Yes, it does.
Q. Is the note endorsed?
A. Yes, there are two endorsements.
Q. Can you please identify those endorsements?
A. Yes. The first endorsement is from Countrywide Bank, FSB, to Countrywide Home Loans, Inc. The second endorsement is from Countrywide Home Loans, Inc., into blank.
Q. And just to clarify, so this note is currently endorsed in blank; is that correct?
A. Correct.
Q. On the same day that the note was given did the borrower (sic) also give (sic) a mortgage?
A. Yes.

Q. And what was the date that the mortgage was signed?

A. May 2nd, 2007.

Q. Can you identify who signed the mortgage, please?

A. Again, there are the typed names of Clifford L. Ryba and Beverly Ryba as well as blue ink signatures over the typed names.

Q. And does this mortgage cover the same address as 34 Tarleton Drive?

A. Yes, it does.

Q. Was there a prior mortgage? Based upon your review of the records was there a prior mortgage given to Regions Bank?

A. Yes, there was.

Q. I'm giving you a copy of the document. Does this appear to be a subordination of a mortgage to Regions Bank?

A. Yes.

Q. And can you indicate, based upon your review of the records, what this meant in regards to the loan that we're here on today?

A. Well, Regions Bank is subordinating to a new first mortgage, basically agreeing to be in second position in title and enforcement to the first

mortgage dated May 2, 2007, for the $172,000.

Q. And is it your understanding that this created a first mortgage lien in Countrywide's mortgage dated May 2, 2007?

A. Yes.

MS. LYBRAND: And I would like to move to admit the subordination agreement as Plaintiff's Exhibit 6?

MR. HOLMES: No objection.

THE COURT: Without objection. Thank you.

Q. (BY MS. LYBRAND) Have the note and mortgage been -- has the mortgage been assigned in this case?

A. It has, yes.

Q. I just handed you a document. Can you identify that document, please?

A. Yes. This is an Assignment of Mortgage.

Q. Who is the assignor?

A. This is -- they assigned it to HSBC Bank USA National Association.

Q. I'm sorry. These got mixed up. Let me hand you a different one. Sorry for that mixup. What is this document? Who is the assignor of this document I just handed you?

A. The assignor on this one is Bank of America National Association Successor by Merger.

Q. Is that the assignor or the one who is getting the assignment?

A. I'm sorry that's the assignee. MERS as Mortgage Electronic Registration System as nominee for Countrywide Bank, FSB.

Q. And you just mentioned, but can you say it again? Who is this being assigned to?

A. It's being assigned to Bank of America National Association Successor by Merger to BAC Home Loan Servicing, LP, formerly known as Countrywide Home Loans Servicing, LP.

Q. And based upon your review of the records was Bank of America, who was the assignee of this assignment, were they ever the owner of this loan?

A. No, they weren't.

Q. In what capacity did Bank of America act in regards to this loan?

A. They were the servicer or the prior servicer to my employer, SLS.

Q. And once the loan was originated was this loan sold?

A. You can say sold, yes. It was securitized into a trust effective June 1 of 2007. It was sold and securitized, yes.

Q. And do you recall the name of the trust or who

the trustee of the trust was at that time?
A. Yes. It's HSBC Bank National Association as Trustee for the Deutche Bank ALT-A Securities. I would have to double check the exact Pass-Through.
Q. Is that the name of the Plaintiff in this matter?
A. Yes.
Q. And Countrywide, at the time that the loan was originated, did they remain the servicer of the loan after this was securitized?
A. That's correct. Yes.
Q. When BOA purchased or Bank of America purchased Countrywide, what did Bank of America obtain in regards to this loan?
A. The servicing rights that Countrywide held at the time.
Q. So there was no ownership transfer of this loan at the time that Bank of America took over as servicer; is that correct?
A. Correct.
Q. If you'll go back to the document I provided to you prior to the last assignment? You identified it as being assigned to HSBC Bank?
A. Yes.
Q. If you can identify the assignor?

THE COURT: Let me go back one second. Which document number were we just speaking of?

MS. LYBRAND: Document No. 8 is what I think is marked as the one to Bank of America, and then this one we're talking about is marked 7.

THE COURT: All right.

Q. (BY MS. LYBRAND) Can you identify who is assigning the mortgage as part of this document?

A. Yes. Bank of America -- actually, it's Mortgage Electronic Registration Systems is the nominee for Countrywide Bank, FSB. Bank of America is the authorized assignor on behalf of that.

Q. Who is it being assigned to?

A. To the current Plaintiff, which is HSBC Bank, USA National Association as Trustee for the holders of the Deutche Bank ALT-A Securities and the full named trust.

Q. And was this maintained in the ordinary course of your business?

A. It is, yes.

MS. LYBRAND: I move to admit this Assignment of Mortgage. I think it's Plaintiff's 7.

THE COURT: You want both in, 7 and 8?

MS. LYBRAND: That's correct.

THE COURT: Mr. Holmes?

MR. HOLMES: No objection.

(PLF. EXH. #7, Assignment of Mortgage, was marked and placed into evidence.)

(PLF. EXH. #8, Assignment of Mortgage, was marked and placed into evidence.)

Q. (BY MS. LYBRAND) And based upon your review of the records, when this assignment was completed was there a sale of the loan or anything like that to HSBC?

A. No. Assignments of Mortgage are typically a housekeeping matter, keeping the general public on notice of a prior transaction or transfer, I guess, of the fact. So no, there was no sale.

Q. So based upon your prior testimony, HSBC USA as Trustee had already had title to this or ownership of this loan at the time of this assignment?

A. Correct.

Q. Okay. Is the Plaintiff HSBC the current holder or owner of the note and mortgage in this case?

A. Yes.

Q. In the ordinary course of your business do you maintain an electronic payment history?

A. Yes, we do.

Q. I'll hand you this document: Is this a copy

of the electronic payment history for this loan?

A. This is a copy of the Specialized Loan Servicing payment Transaction History, yes.

Q. And does this -- does the electronic payment history record credits and charges to them?

A. Yes.

Q. And is it updated at or near the time of the credits or charges?

A. It is, yes.

Q. And have you reviewed the payment history on this loan?

A. Yes, I have.

Q. And this is an accurate copy of the payment history you reviewed?

A. Again, this is the SLS payment history. I also reviewed a copy of the Countrywide/Bank of America Payment Transaction History as well.

MS. LYBRAND: And I would like to move to admit this payment history as Exhibit 9, Your Honor.

MR. HOLMES: No objection.

THE COURT: All right. Is this document strictly the SLS Payment History or does it include all of it?

MS. LYBRAND: It's just the SLS.

THE COURT: All right.

MS. LYBRAND: And this is also redacted just as a matter for the record.

THE COURT: Exhibit 9.

(PLF. EXH. #9, SLS Payment History, was marked and placed into evidence.)

Q. (BY MS. LYBRAND) At some point did Clifford and Beverly Ryba fall behind in their monthly mortgage payments and default under the terms of this note and mortgage?

A. Yes, they did.

Q. I'm going to hand you a copy of a document. Is this a copy -- excuse me -- as a result of the borrowers falling behind in their monthly mortgage payments was a demand letter sent to the Rybas?

A. Yes, it was.

Q. And can you explain what a demand letter is for the Court?

A. Yes. There is a provision or a paragraph in the mortgage or the deed of trust in Paragraph 22 that pertains to default and the borrower's rights to reinstate or cure any remedies the lender or the beneficial interest may have if they don't, so per Paragraph 22, the breach letter goes to accelerate or puts the borrower on notice of default under the repayment terms the amount necessary to bring the

loan current, a timeframe in which they're allowed to do that prior to the possibility of acceleration.

Again, it outlines that they have the right to assert a defense or bring an action to -- assert the nonexistence of a default and things of that nature. Basically this document is known as a breach letter. It comports with Paragraph 22 of the mortgage or deed of trust.

Q. And is this a copy of the letter sent to Clifford L. and Beverly Ryba on June 16th, 2010?

A. Yes.

Q. And this is notifying them of their obligations and their right to reinstate prior to acceleration?

A. Correct.

Q. And was this maintained in the ordinary course of your business?

A. It is.

MS. LYBRAND: I move to add this exhibit, the demand letter, as Plaintiff's 10.

MR. HOLMES: No objection.

THE COURT: Objection?

MR. HOLMES: No objection.

THE COURT: No objection. I'm sorry. Thank you.

Q. (BY MS. LYBRAND) As a result of this default, Mr. Ward, do Clifford and Beverly Ryba -- did they owe certain sums of money to the Plaintiff?

A. They did until the time they filed a Chapter 7 bankruptcy. So yes and no.

Q. Is there still a debt on this loan?

A. There is.

Q. And have you reviewed the records maintained by your company to determine what that amount of the debt is?

A. Yes.

Q. Have you prepared or has your company prepared a summary of the amounts due and owing on this note and mortgage?

A. We did, yes.

Q. I'm going to hand you this document. Is this a summary that your company prepared in regards to the amount owed on this note and mortgage?

A. Yes, it is.

Q. Have you reviewed this?

A. I have, yes.

Q. And can you tell me, based upon your review of these records what the principal amount owed on this loan is?

A. Yes. $187,663.47.

Q. And what is the interest amount owed? From what date to today's date?

A. The interest is calculated from the date of default on the loan. Keep in mind the interest is always paid in arrears, so the loan is due for May 1 of 2010 -- interest from that point through 4/1/2010. So May 1, 2010 through current, today's date, $46,165.84.

Q. And were there certain sums advanced by your client or the prior servicers to pay escrow amounts?

A. Taxes and insurance, yes.

Q. How much has been advanced?

A. $39,990.37.

Q. And have there been any property inspections done on this property?

A. Yes, there have.

Q. And have certain amounts been advanced for those inspections?

A. Yes.

Q. And what is that amount?

A. $169.45.

Q. And finally have there been any BPOs done on this property?

A. There was one BPO, yes.

Q. And has there been a fee advanced for that?

A. Yes.
Q. And what was that amount?
A. $115.
Q. And this document that I handed to you, it shows amounts owed for attorney's fees and costs. Is that an accurate reflection of the total attorney's fees and costs in this matter?
A. It is as of the date that this was prepared, so anything that accrued after that point would not be reflected on here.
Q. And is this an amount that your company has paid, or a prior servicer has paid for attorney's fees?
A. Yes.
Q. So this would not reflect unbilled or unpaid fees?
A. That's correct.
Q. And there's also a charge on here, a $5 charge for a payoff statement. Is that a charge that you're seeking to recover at this time?
A. Yes.
Q. So the total debt amount is $274,104.13; is that correct? Less these attorney's fees?
A. Less the fees, yes.
Q. And does the Plaintiff, in fact, ask for

reasonable attorney's fees and costs as far as this action?

A. Yes, we are.

MS. LYBRAND: Move to admit the judgment figures as Plaintiff's 11.

THE COURT: Any objection?

MR. HOLMES: Not as to the admission of it.

MS. LYBRAND: Finally, Your Honor, I have an Affidavit of Attorney's Fees that I would like to admit as Plaintiff's 12.

THE COURT: Have you provided that to Mr. Holmes?

MS. LYBRAND: I will provide a copy of the affidavit.

(PLF. EXH. #11, SLS, Summary of Costs, was marked and placed into evidence.)

(PLF. EXH. #12, Affidavit of Attorney's Fees, was marked and placed into evidence.)

THE COURT: The total on that is what?

MS. LYBRAND: It is -- this has a typo on it. It should be 21,416.25. It has a comma by the 2.

THE COURT: 21,416.25.

MS. LYBRAND: That's correct.

THE COURT: All right. And the 274 was inclusive of some or all of that?

MS. LYBRAND: Not any of that. I separated it out.

THE COURT: Thank you. Very good.

EXAMINATION

BY MR. TILLMAN:

Q. Mr. Ward, I'm just going to ask you a few questions about your review of the file. Can you please just briefly describe your work history and experience?

A. Yes. I began -- do I go from current back?

Q. How about from college up.

A. I didn't go to college.

Q. Good for you.

A. I have over the last 11 years -- I've spent prior to my employment with Specialized Loans Servicing, I originated loans with Wells Fargo Home Mortgage for one year, and went from Wells Fargo to the wholesale side of First National Mortgage Sources. I was a wholesale broker. I spent three years there. I started in January of 2008 with Specialized Loan Servicing. I've held various positions including my current position within our default department.

Prior to all that I grew up playing hockey and went into managing hockey and sporting goods retail

stores prior to going into banking.

Q. Do you have experience in reviewing the type of information lenders review to determine whether to approve a loan or not?

A. I am used to loan applications, lender conditions, in order to get final approvals, things of that nature, yes.

Q. And in your experience, in your past work experience, have lenders approved loans in which there was an issue as to title generally?

A. No, not in my experience.

Q. And why is that?

A. Well, it would jeopardize their position as a lienholder and potentially their ability to enforce that lien to recover monies lent, any number of reasons.

Q. Would it be fair to say that it's not in their best interest?

A. Typically, yes.

Q. What kind of documents are included in the loan file maintained by SLS?

A. We have quite a few, actually. The origination file has underwriting information based on the original submission, communications back and forth, condition information as far as documentation

needed to issue final approval. There are disclosures, loan applications, final applications, transmittal summaries, appraisals. That's the majority of what I remember reviewing pertaining to origination and then all of the records created and maintained through the course of servicing to date.

Q. Do those records include some sort of note or transaction or log?

A. Yes.

Q. Well, what is it called in this particular instance?

A. You can refer to it as a transaction log or even call it collection notes internally. It's just a chronological history of the loan itself.

Q. And how is that chronological history generated?

A. It's all maintained in an electronic format within our loan servicing platform with the ability to print it on demand if needed.

Q. Does the loan file maintained by SLS include documents generated by the previous holders' note and mortgage?

A. Yes.

Q. And you have access to those?

A. Yes, I do.

Q. Did you review those?
A. I have.
Q. And in this case does the loan file contain documents generated by Countrywide?
A. Yes.
Q. Do you feel -- upon your review are you now familiar with the contents of the documents in the entire loan file?
A. Yes, I am.
Q. Based on your review of the loan file are you confident that Countrywide, or any of the previous lenders had no knowledge of a dispute related to title in this case?
A. Yes, I am.
MR. HOLMES: Your Honor, I'm just going to object to that. I don't think he's qualified him as an expert for an opinion.
MR. TILLMAN: I'll rephrase.
Q. (BY MR. TILLMAN) Did you see anything in the loan file that would indicate any knowledge on behalf of SLS or previous servicers or holders of a disputed title in this case?
MR. HOLMES: Same objection.
THE COURT: I think he can answer the second one. I will sustain it as to the first, but I'll

overrule it as to the second one. All right? That's based upon the record that he's reviewed, correct?

MR. TILLMAN: Correct.

THE COURT: Go ahead.

THE WITNESS: I'll probably have to give you a two-part answer. SLS was aware of this given the pending litigation when we took over servicing in November of 2012, so based on that, yes. Prior to that, dating back to the origination package that I reviewed, no, there was no indication.

Q. (BY MR. TILLMAN) Let me rephrase that. Based on your review of the loan file does there appear to be any indication of a dispute as to title prior to the lis pendens being filed by Ms. Goldberg?

A. No.

Q. In your experience have you ever seen a lender approve a residential loan despite the fact that there was a disputed issue as to title?

A. No, I haven't.

MR. TILLMAN: Thank you very much.

THE COURT: Do you want to start, or do you want a break?

MR. HOLMES: Let's break.

THE COURT: I'm assuming this will take a while?

MR. HOLMES: It will take a while.

THE COURT: It's about 12:30. Let's break, and let's plan to come back and get started at 2:00. Be here and be ready to start back at 2:00. Thank you very much. I'll see you then.

(A luncheon recess transpired.)

THE COURT: Let's get Mr. Ward to come on up. Are you ready to proceed, Mr. Holmes?

MR. HOLMES: I am, Your Honor.

THE COURT: Mr. Goldberg has left us?

MR. HOLMES: Yes, sir.

THE COURT: Is he feeling all right?

MR. HOLMES: No. No. I may have a matter to take up with Your Honor.

THE COURT: Mr. Ward, Mr. Holmes is going to cross examine you at this time. Thank you, sir.

EXAMINATION

BY MR. HOLMES:

Q. Mr. Ward, I would like to start back with your education and experience if I may?

A. Sure.

Q. You said you do not have a college education; is that correct?

A. Correct.

Q. And did I hear correctly that right after that

you said you had eleven years of education?

A. Work history, not education.

Q. Do you have a high school diploma?

A. I have a GED.

Q. When did you get your GED?

A. I honestly don't remember the year.

Q. Now, you said you worked, if I'm not mistaken, before your current job as a loan originator?

A. Correct.

Q. Who was that with again?

A. Two different employers. I spent a year with Wells Fargo Home Mortgage, and I spent three years with First National Mortgage Sources.

Q. National Mortgage Sources, are they mortgage brokers?

A. Yes.

Q. And the first company you worked with you were a loan originator for a bank?

A. Correct.

Q. And in that capacity, did you have to obtain a license to become a loan originator?

A. At the time, no.

Q. Since then have you obtained a license to be a loan originator?

A. I have, yes.

Q. And in what state do you hold that license?
A. I have it in Colorado, Ohio, and Texas, I believe. I held a couple of others but I've dropped those within the last year.
Q. And did you have to take any courses, education, training, to take the test to become a loan originator?
A. Yes.
Q. And we use the term here, a mortgage broker. Is that what a loan originator is?
A. Yes, a form of it.
Q. Are you licensed as a mortgage broker?
A. I am licensed -- I'm not entirely sure how they classify it. It is under the NMLS, the National Mortgage Licensing System. I am licensed to originate loans even though I don't. I guess I could be either a broker or retail depending on the type of employment I pursued if I chose to do that.
Q. I believe that after that you worked as a wholesale loan broker. What is a wholesale loan broker?
A. Well, for instance, when I was with Wells Fargo I worked actually in a couple of different branches. I was only allowed to present and sell Wells Fargo Mortgage products. When I worked for

First National I could broker to any bank or entity that we had a brokerage agreement with based on the loan's criteria and underwriting guidelines, et cetera, so I could go to Countrywide, I could go to Bank of America, anyone with which First National had a brokerage agreement.

Q. Is there a separate license to become a wholesale broker? Is that the same?

A. You're talking now?

Q. When you were doing it?

A. When I was doing it I wasn't required to. Wells Fargo was considered an exempt entity because they were a charter bank, and then at the time licensing was not required for the wholesale portion of it.

Q. To your knowledge today would you have to be licensed to a wholesale broker?

A. Yes.

Q. Are you licensed as a wholesale broker?

A. I guess you would say, yes, because the entity I work for is considered a nonexempt entity. To give you a little history on it, the only reason I'm licensed -- because we are a nonexempt entity, a chartered bank or something to that effect, we negotiate loss mitigation options. Multiple states

consider that a form of origination so therefore you have to hold licensure.

Q. In studying to become a mortgage broker did you ever run across the term, recasting.

A. It sounds familiar, yes.

Q. I will represent to you that recasting is -- instead of making a loan to somebody you say, deed your property over to me. I'll obtain a loan and rent the property back to you, you pay me rent to cover the mortgage, and I'll give you an option to repurchase the property. Are you familiar with that?

A. Yes.

Q. Is that a prohibited transaction?

A. It is.

Q. Has it always been prohibited, in your experience, as a loan originator?

A. I can tell you specifically, since the time I've held licensure, yes. I don't know that I ever ran into it when I was originating, so I would be guessing at that point in time. Currently, yes.

Q. When you're originating a loan, who is it that decides what information has to be gathered in support of the loan application?

A. Well, it's always sent to underwriters. Keep in mind, when I was originating -- you originate

your -- the majority of the lender's criteria is laid out based on the type of loan you go for, so if you go for a full docked loan or a full document loan based on bank statements and tax returns and all that, then as a broker or originator you would gather all that up front or attempt to and whatever conditions come back come back.

There are other types of programs for stated income, no ration, no doc, bank statements, et cetera, et cetera, that require a varying set of documents, but ultimately you're going to look at whatever the type of loan is that you're going to try and qualify for, submit the information based on that, and then we go through an underwriting group that is used based on the bank's criteria.

If you do a really good job they send you a full loan approval that says, good job, we don't need anything else, or they'll send you a conditional loan approval that says, we need you to update X, Y, and Z or we want additional requirements or documentation.

Q. So then would it be fair that depending on what kind of loan you're applying for the mortgage lender decides what information it wants to consider in order to grant that loan?

A. I would say that's a fair statement.

Q. And in the process of gathering the information to submit it to the mortgage company who is responsible for verifying the accuracy of the information?

A. Can you be more specific?

Q. Oh, say if somebody comes in and says, my last name is John D. Rockerfeller, and I'm worth a gazillon dollars. The loan originator is supposed to say, well, we're going to need some proof of this employment and income?

A. Well, again, depending on what type loan you apply for, yes. There are some programs where if your credit score and history are high enough you don't have to prove anything. So depending on what you apply for, you would try to gather sufficient documentation to support the submission requirements and underwriting requirements to basically prove your case I guess.

Q. So unless the mortgage company doesn't care, if it asks for these documents you would gather it and verify it and submit it?

A. Right. Right. Right. And submit that to the underwriters for verification.

Q. I believe you testified that you started as a loan originator back in 2008; is that correct?

A. Not quite. I started with my current employer, Specialized Loan Servicing in January of '08. It would have been -- I don't remember the exact month, but it was in 2004 that I started with Wells Fargo.

Q. So that's 11 years until today?

A. Yes.

Q. So you started for Specialized Loan Servicing back in 2008?

A. January, yes.

Q. And can we agree that if I say SLS I'm talking about Specialized Loan Servicing?

A. Agreed.

Q. SLS, okay. Now, I assume their home office is located in Colorado where you live?

A. Correct. Yes.

Q. And what kind of business entity is SLS?

A. SLS is a third-party loan servicing company.

Q. Is it a sole proprietorship? Is it a partnership? Is it a limited liability corporation? A corporation?

A. I'm sorry. It's an LLC.

Q. Let me ask you, did you testify you were a vice president at SLS?

A. I am a second assistant vice president.

Q. How many second assistant vice presidents does SLS have?

A. Quite a few.

Q. Quite a few. Are you the only guy that travels around the country to testify in cases such as this to verify the documents in foreclosure proceedings?

A. No.

Q. So all of the other guys that travel around the country that testify about documents are they second assistant vice presidents, too?

A. No.

Q. What are your duties as second assistant vice president of SLS?

A. Well, when I originally accepted the position I oversaw our default document department. I had about 21 default document associates and two managers. I was sporadically testifying in trials and depositions. As trials and depositions and litigation picked up nationwide I decided I didn't want to be in the office as much and they let me transition into primarily testifying at trials and depositions and handling ancillary management responsibilities within the default doc department.

Q. And has there ever been, to your knowledge, a

specific corporate resolution or anything that appoints you as the custodian of records for the corporation?

A. I am on the secretary's certificate as an officer. I am also a signing officer for MERS, but as far as a specific designation on paper I don't believe there is one.

Q. Okay. And you were asked if you had authority to speak on behalf of SLS? What is that authority? Is that just your position in the default servicing department?

A. Yes.

Q. Now, in addition to going around the country testifying what other duties do you have in the default servicing department?

A. Well, again, I work with the default document department, so they handle everything basically pertaining to defaulted loans, anything from verifying foreclosure complaints to affidavits of indebtedness, bankruptcy documents, proof of claims, assignments of mortgage, substitution of trustees, and then I sit on a couple of advisory boards as far as policy and procedures as it pertains to that department.

Q. Did you participate in generating any of the

documents that have been introduced in this courtroom today?

A. Yes.

Q. Did you participate in generating the statement of the account?

A. Yes.

Q. How was that generated?

A. That's generated in our default document department as well. The numbers contained within that are pulled from the loan servicing platform that we use, Fiserv. They are compiled and then categorized in order to give us a total amount we're seeking as a judgment?

Q. All right. Now, when exactly did SLS take over servicing this mortgage loan?

A. November 1st of 2012.

Q. Okay. And when you took it over you took over the documents that would have been maintained by the prior servicing company?

A. Yes.

Q. Bank of America I assume?

A. Yes.

Q. And they would have had the original loan origination documents from Countrywide?

A. Correct.

Q. Okay. Now, the documents then, the original documents, are Countrywide documents?

A. As far as the entity named on them?

Q. Well, I thought you said at one point in your testimony that that would include the loan application, the underwriting statements, the condition information, the appraisal, the origination, the title insurance, the servicing records, all that?

A. Yes, that's correct.

Q. So that was all generated by Countrywide?

A. The origination documents, yes.

Q. And you do understand that Countrywide is no longer in existence?

A. Yes.

Q. And do you understand that they are no longer in existence because they engaged in some loan practices that turned out to be less than admirable?

MR. TILLMAN: Objection, Your Honor. Facts not in evidence.

THE COURT: He can ask it. Overruled. Go ahead.

THE WITNESS: I am aware that they were merged or purchased by Bank of America, but the underlying facts, no.

Q. (BY MR. HOLMES) Do you know how much Bank of America purchased them for?

A. I do not.

Q. Do you know how much on the dollar Bank of America paid to buy Countrywide?

A. No, I don't.

Q. Do you know whether Bank of America obtained Countrywide in the ordinary course of Countrywide's business, or was it a bulk sale?

MR. TILLMAN: Objection, Your Honor. That's a legal definition he's asking him to opine on.

THE COURT: Do you want to restate that?

Q. (BY MR. HOLMES) Do you know if Bank of America purchased Countrywide in the ordinary course of Countrywide's business?

A. I honestly don't know how to answer that.

Q. Okay. Now, I believe you testified that at the time SLS took over servicing this account, you were aware of the litigation in this case?

A. Yes.

Q. And just generally what is your understanding of what the litigation involved?

A. Well, title claims, primarily what's open in our litigation management department for, that would have held up the typical foreclosure track.

Q. Okay. Is that all you know about the underlying dispute?

A. Well, I've since learned additional information, but at the time that came over we were provided preliminary information, and that's what we received.

Q. Have you since learned -- the claim is that Mr. Ryba mortgaged the property and obtained it by fraud?

A. I did see that as a claim, yes.

Q. And in fact, he obtained it in violation of what is known as recasting?

A. I'm learning that now. I don't know that I had seen it previously, but I'm aware of it now.

Q. Did you understand, or based on the information that you learned, that dates could be important in this case as to when somebody obtained an interest in the property based on what the litigation is about?

A. Yes.

Q. Did you testify on direct examination that really HBSC or someone purchased this mortgage as part of a securitized transaction in June of 2007?

A. Yes.

Q. Did you bring any documents with you to prove

that today?

A. I did not, no.

Q. Did you think that might be important?

A. I reviewed them in preparation, but the attorneys didn't ask me for them, so I didn't put a lot of thought into it past that.

Q. Well, explain this to me because this loan didn't close until May 2nd, 2007 and your testimony now is that in June of 2007, like a month later, this mortgage has already been processed. It's been logged in. It's part of a securitized package. It's been marketed to Wall Street -- somebody in Wall Street has bought it all within the space of 30 days?

A. Yes.

Q. When they purchased it, did they purchase any insurance to go with it in case it turned out that this mortgage was bad?

A. What do you mean?

Q. Well, we hear about these default swaps, people buying these mortgages and buying insurance to protect them in case these mortgages turned out to be not what they were purported to be?

A. That is beyond what I would know, so I don't know.

Q. Well, when you looked through the documents

and it was talking about when HBSC, or whatever it is, got it you didn't see anything in there about whether there was insurance on this transaction?

A. I did not.

Q. Was there insurance on the mortgage itself, mortgage insurance?

A. No.

Q. There wasn't? Why would -- as part of the closing, this is the settlement statement from that (indicating).

MR. TILLMAN: Your Honor, I'll stipulate there's title insurance involved.

THE COURT: All right.

MR. HOLMES: Your Honor, this is the closing statement, Defendant's Exhibit No. 15.

THE COURT: We already have one in evidence.

MR. HOLMES: As long as it's in. I just had it marked.

MR. TILLMAN: I think this is the other one.

THE COURT: That's the 2007 one.

MR. TILLMAN: No objection.

THE COURT: Without objection, okay.

Q. (BY MR. HOLMES) Did I understand you correctly to say that nobody filed an assignment of this mortgage to this bank until May 21st of 2012? That's

like five years later.

A. I would have to look at the documents to refresh my memory on the date, but it was quite some time after, yes.

Q. This is Plaintiff's Exhibit No. 7. That's the assignment of the mortgage?

A. Yes. May 21, 2012.

Q. And it's your testimony in this Court today that waiting five years to file an assignment is just like housekeeping?

A. Yes.

Q. Isn't the filing of an assignment important?

A. It depends on why it's being filed, so it could be.

Q. It could be important to file a notice of assignment because that's you putting notice on record that we now own this property?

A. No. Typically with assignments of mortgage, at least in my experience -- for instance, if you look at who was -- the entities that are associated with that assignment of mortgage, you have MERS, the Mortgage Electronic Registration for Countrywide Bank, FSB, right?

If you look back at the original mortgage, this is what we call a MOM loan or a MERS as Original

Mortgagee. So this was assigned into the MERS system at origination. You are not allowed to initiate any type of default proceedings or loans or anything to that effect in the name of MERS. So it goes into MERS at origination and stays there until there's an event that requires an assignment taken out of that system, so in this case default.

It theoretically can sit in the MERS system without ever having an assignment of mortgage if there's no reason to pull it out. So again, I would have to revert back and say it's purely a housekeeping matter.

Q. I thought you testified on direct examination that this mortgage went into default in 2010.

A. Yes. Due for May of 2010, I believe.

Q. So you waited two years to file the assignment after it already went into default?

A. There was a prior assignment out of MERS into Bank of America, I believe it was in 2011. I would have to double check.

Q. 2011, correct?

A. Correct.

Q. So they waited a year before they filed any assignment out of MERS?

A. Roughly, yes.

Q. Do you understand that the assignment would be subject to any prior filings concerning title to that property?

MR. TILLMAN: Objection to the form. That's a misstatement of law, Your Honor.

Q. (BY MR. HOLMES) Is it listed as an assignment subject to a prior filed lis pendens?

A. No.

Q. It's not?

A. No.

Q. And how do you know that?

A. I've personally reviewed and signed countless assignments of mortgage on behalf of MERS and the entities we service for. It's not a MERS requirement. It's not an investor requirement. There's never been an internal or an external requirement that says we have to do that.

Q. Are you familiar with South Carolina law?

A. I am not familiar with it, no.

Q. So if South Carolina says all deeds and conveyances of land, including assignments, are subject to a valid -- pending anything that's been filed before that.

MR. TILLMAN: Objection, Your Honor. That's another misreading of the statute and questioning of

a fact witness on a legal issue.

THE COURT: I think he testified he's not familiar with it.

MR. HOLMES: I'll withdraw.

THE COURT: Okay.

Q. (BY MR. HOLMES) At the time the assignment was made in this case, there's no question that the loan was in default?

A. Correct.

Q. There's no question that at the time the assignment was made Mr. Goldberg, on behalf of Ms. Goldberg, had filed a lis pendens concerning this property?

A. I would agree with that.

Q. And in fact, at the time that this assignment was filed the lawsuit had already been filed by Ms. Goldberg?

A. Yes, I believe so.

Q. You indicated that you were familiar with loan applications?

A. Yes.

Q. Just out of curiosity in your experience is it unusual that the loan application is signed the same day the mortgage is entered into?

A. Well, I mean, I've purchased a couple of

properties. I think anyone else has. You always sign your final loan application at closing as well, so I don't find that uncommon, no.

Q. Is it unusual to leave blanks on the loan application?

A. Well, if there's -- I mean no information to put into that field I think it would be appropriate to leave it blank. Is there something specific you were referring to?

Q. How about the date you acquired the property you're putting the mortgage on?

A. I don't know actually. Keep in mind, that's prepared by the lender, the final one. If they didn't require that I'm sure they would leave it blank.

Q. Who would provide the application?

A. Well, the initial 1003 or the loan application is completed by whoever is submitting that loan application for approval. Then you have a final 1003 with all of your final information that the lenders use to verify -- that you're required to sign at closing as part of the closing package.

Q. Well, what about if the loan application says that the person that is applying for the loan is an employee of the broker of the loan? Is that unusual?

A. No, it's not.
Q. It's not unusual?
A. No, I've purchased two properties that way. You're not allowed to do your own loan, but as the mortgage broker you can still buy or finance a property.
Q. You said you're not allowed to do your own loan?
A. Right.
Q. Well, isn't this loan through Mr. Clifford Ryba?
A. Yes, it is.
Q. Isn't he the one who is working for the broker?
A. I would have to look at that again, but I believe he is, yes.
Q. So isn't he doing his own loan?
A. No. The broker would be doing it. It's not -- like Michael Ward couldn't do Michael Ward's loan, so someone else at the brokerage or another broker or bank would have to do, in this instance, my loan if I was the broker.
Q. Would that have maybe raised any red flags about whether or not all the information that's been requested has been provided?

A. Again, it depends on the type of loan program. If he had exceptional credit and chose to do a stated income or a no doc or no ratio loan and he met the lender requirements -- I don't think there would be any red flags.

Q. What kind of loan was this?

A. It was stated no doc. Based on the underwriting it looks like no doc.

Q. So in this loan Countrywide is saying, we'll make you a loan. We don't require any documents in support of it. Is that what you're saying?

A. No income documents, yes.

Q. No income documents, okay. Well, if the loan application says that the property is leased, wouldn't the mortgage company want to know who it's leased to, what it's leased for?

A. No.

Q. Is that another part of a no doc loan?

A. It's all part of the stated income portion of that loan, yes.

Q. How about if it's leased and the lease is bringing like negative $600 a month in rental income?

A. Well, keep in mind, underwriting requirements, they're still this way, and SLS even uses them in loss mitigation calculations. The industry accounts

for a 25 percent vacancy rate on any rental income, so if you put $1,000 a month on your application as to what you're receiving they're going to give you credit for $750. So it's not unusual to see negative or net rental amounts in the negative. It's all factored into the total debt-to-income ratio, so if they stated the income, you know, at whatever it was that would offset any negative rental income that was appropriate for his position, I don't see why they would question it.

Q. Not even including that he's the loan originator making the loan, submitting the documents?

A. I don't know that he was. If you have something I will take a look at it.

Q. You said you're also familiar with the appraisals?

A. I've seen a lot of appraisals, yes.

Q. Did you look at the appraisal in this case?

A. I scrolled through it, yes.

Q. Well, did you scroll through the part that said that it was the single comparable rate schedule?

A. Yes.

Q. And did you notice that the Comparable No. 1 was renting for $1,525 a month?

A. To be honest with you I didn't scrutinize all

the figures on that. I did see the rent analysis, though.

Q. If there's -- another unit that was rented for $1,475 a month. Would you say the rent they were claiming at that point of $1,050 a month was below market value?

A. Not being an appraiser, I don't know. It's less than those amounts, but beyond that I'm not sure.

Q. Is this a copy of the appraisal that you perused through when you looked at the origination documents?

A. It appears to be, yes.

MR. HOLMES: Your Honor, I would offer this as Defendant's Exhibit No. 17.

THE COURT: Defendant's 17?

MR. TILLMAN: No objection to its admission, maybe as to the contents.

THE COURT: That was the 2007 appraisal?

MR. HOLMES: Yes, Your Honor.

(DFT. EXH. #17, Appraisal, was marked and placed into evidence.)

Q. (BY MR. HOLMES) How about if the loan application had asked the question, have you had an ownership interest in a property in the last three

years and that's left blank?

A. In a property or in the property?

Q. It says, Have you had an interest in a property in the last three years, blank.

A. Well, I think it would depend on if any other mortgage obligations showed up on a credit report. I think that would probably have to be changed if there were, but if there weren't then it would most likely be accurate.

Q. I don't exactly know how to do this, but the loan application that we've admitted that's supposed to be the correct application, it has a place for when the face-to-face interview was conducted.

A. Okay.

Q. All right. And does it have a place there for somebody to sign it?

A. It does, yes.

Q. Has anybody signed it?

A. No.

Q. Why would the mortgage lender want to have a face-to-face interview with the borrower?

A. Well, it also goes in connection with -- it says, Name and address of interviewer as employee, and then it says, Countrywide Bank, FSB, so this again, is the final one from closing. In my

experience with these, as a broker, you can take a telephonic -- back in the day, quote/unquote, you could take a telephonic application and then the borrower would sign at closing. You could meet them in person and sign it in person. Again, this is Countrywide's information and not the broker information. I don't know to be honest with you.

Q. Whoever is supposed to be doing this face-to-face interview is supposed to be an agent of Countrywide?

MR. TILLMAN: Judge, object to the question. It calls for a legal conclusion.

Q. (BY MR. HOLMES) Is that what it says on there?

A. It does say, Countrywide Bank, FSB, and then it provides interviewer name, type and print, and then a signature and then a phone number.

THE COURT: I'll allow it.

MR. HOLMES: I really don't want to have -- we had a different copy of it.

THE COURT: Okay.

MR. HOLMES: I don't know how to do it, but this one, in fact, does have a name and it does indicate he's the agent for Countrywide?

THE COURT: Is it the same guy on this

document or is it a different --

MR. HOLMES: Well, that document doesn't have his name on it. It doesn't say that he's the agent. Actually, it says wholesale lender itself or as agent for Countrywide Bank, FSB.

THE COURT: You provided that to Mr. Tillman and Ms. Lybrand?

MR. TILLMAN: Your Honor, that's the one I objected to.

MR. HOLMES: I didn't want to misrepresent to the Court that it was left blank.

THE COURT: Just for the record, the Court's knowledge of these is similar to what was testified to earlier. Typically when somebody makes the application they meet with whoever their applicant is and then at closing a different document comes in just to confirm what happened. That's been my experience. In 20 years of doing that I haven't done it in 12.

Q. (BY MR. HOLMES) Let me show you this and ask you if you came up to the CWBC e-Approve decision in the case?

A. This one does not look familiar. When I reviewed the underwriting notes I didn't specifically see this, so I would have to say, no.

Q. Okay. Are you familiar with the -- in your experience, the CWBC e-Approve system?

A. Not specifically this one, but I am familiar with some of the automated underwriting systems used. I use GMAC a lot, Bank of America a lot. Back in the day -- First Franklin. Most of the broker setups had them so you could get your initial-initial approval based on all your input information and then submit this with your application for underwriting.

Q. Do you have any information that the CWBC system isn't the Countrywide Bank Corporation?

A. I have no reason to believe it's not.

Q. Okay. And these systems that would be created, they would be created by the mortgage lender?

A. They were the lender systems, yes.

Q. And they would be accessed by mortgage brokers?

A. Yes.

Q. Who would enter in all the data, and then they would tell them whether or not they're preapproved or not for the loan they're applying for?

A. Correct.

Q. Do you know why the CWBC is saying, Dear Partner?

A. I do not, no.

Q. This would be a document that would be issued to the mortgage broker?

A. It should be, yes.

Q. And if those documents are addressed, Dear Partner, it would seem to indicate that the partnership is between the mortgage lender and the broker?

MR. TILLMAN: Your Honor, he's asking questions about a document that hasn't been entered into evidence, and I don't believe it can be. No discovery was served in this case. We don't have a representative here for Countrywide. He's reading from a document which is not in evidence.

THE COURT: Unless he has some personal knowledge about how that works?

THE WITNESS: Not that particular system, Your Honor.

MR. HOLMES: Just for the record, Judge, I believe there was discovery served and answered and that document was produced as a document received from Mr. Chard by Mr. Goldberg.

MR. TILLMAN: I'm not aware that you-all ever served any discovery in this case.

MR. HOLMES: We'll cross that bridge later.

THE COURT: All right. Assuming it's based on the memo and based on what that letter says it starts out, Dear Partner; is that right?

MR. HOLMES: That's right. My co-counsel, Mr. Goldberg, who gave me the documents --

THE COURT: You got them somewhere.

Q. (BY MR. HOLMES) All right. So in reviewing the origination documents in this case, did you notice that this property had just been acquired by Mr. Ryba literally like 13 days before he got -- 14 days -- before he got the first mortgage from Countrywide?

A. That information I did not see. The information that I reviewed pertaining to the May of 2007 Countrywide loan, subordination, refinance, et cetera, so the '05 one I didn't specifically see as part of the origination file.

Q. So that loan would have been satisfied by the '07 loan?

A. Yes.

Q. Okay. Was there information in there that since that original loan the property had been refinanced twice by Regions Bank?

A. There was the subordination for the Regions mortgage that I remember seeing. I don't remember

anything beyond that as far as additional refinances.
Q. Okay. And then this 2007 -- May, 2, 2007, that would have been the second financing of the property by Countrywide?
A. I believe so, yes.
Q. Was there anything in the file that would have shown that the title had gone from Mr. and Ms. Ryba to Ms. Ryba, and back to Mr. and Ms. Ryba in nine months?
A. I'm sorry. That was a little confusing -- from the Rybas to the Rybas to the Rybas?
Q. From Mr. and Ms. Ryba, to Ms. Ryba, and back to Mr. And Ms. Ryba?
A. I don't remember seeing anything like that.
Q. Do you remember seeing any documents indicating that the mortgage debt on this property had increased from August 31, 2005, to May 2nd, 2007, from 163,500 to 280,000 something?
A. I think I was able to make that deduction based on the subordination lien and the new loan amount, so yes.
Q. Okay. Now, this particular mortgage from Countrywide, who got the money from the mortgage?
A. Well, I believe -- and I would have to double check the HUD statement that was used to satisfy the

prior Countrywide loan.

Q. So the proceeds -- the $172,000 proceeds for this loan went to satisfy the old loan that was held by Countrywide?

A. Yes.

Q. So Countrywide was loaning money to Ryba to pay itself back?

A. I guess in a way, yes.

Q. Did Ryba get anything out this transaction?

A. I don't believe so, beyond the new loan.

Q. I think we went over this on the first -- well, maybe not -- was there mortgage insurance as part of this transaction?

A. Well, when you say mortgage insurance I think something else. I think of insurance that the lender buys with that loan, like private mortgage insurance or borrower-paid insurance, so I was thinking -- the different terminology that you use. Title insurance, yes; mortgage insurance, no.

Q. So there's title insurance? If there's anything wrong with this title Countrywide is protected?

A. I'm not a lawyer so I don't really know the scope of all of that with the endorsements, but there was title insurance, yes.

Q. I don't -- the documents you submitted about the payment history of this, it only goes back to, I think, 2013?

A. That is just the SLS payment transaction history, yes.

Q. So this only goes back to 2013. Was there anything in the file about the payment history before that?

A. Yes.

Q. And did you bring those documents with you?

A. I did not, no.

Q. Okay. Do you have any information that Mr. Ryba, who was collecting rent on the property, had paid for the property since 2010?

A. No. The last payment was received on April 14th of 2010. That was the last incoming funds on it from what I can tell.

Q. He indicated there were some payments made to the taxes?

A. Yes.

Q. Do you have any information on that, at least on one occasion, where nobody paid the taxes and Ms. Goldberg had to pay the taxes?

A. I could tell you, based on that document during the time that SLS serviced it. I would need

to reference the prior servicer history to look at any other advances. I couldn't specifically say, no.

Q. Maybe I just don't understand financing. The loan was $172,000 in 2007?

A. Yes.

Q. How is it that the principal on the loan in 2015 is now $187,663.47?

A. The loan was originated as a -- it is what was referred to back in the day as a payoff or a negative amortization loan. So with that if you take a look at the provisions in the first paragraph of the note it allows for minimum payment option based on a 2.25 percent interest rate, keeping in mind that the fully indexed interest rate was somewhere around 7 or 7 1/2.

So each month when Mr. and Ms. Ryba got their payment coupon they had four different payment options: Minute option based on that 2.25 percent, an interest-only payment option based on the contractual, fully amortized rate, a 30-year principal and interest option, and then a 15-year principal and interest option.

In the event that they made that minimum payment amount calculated at 2.25 percent interest, who knows what it is from there. The difference

between the contractual interest or the fully amortized interest and the 2.25 interest is added to the balance of the loan, so in fact, the terms of the loan document allow for it to go up to the maximum of 115 percent of the original loan amount and then it would recast and reamortize when one of two things happened: Either that ten-year initial minimum payment option runs its course or they hit the 115 percent and that option goes away and it fully recasts.

So essentially, long story short, Mr. and Ms. Ryba made the minimum payment option based on that 2.25 percent thus increasing the unpaid principal balance on a monthly basis.

Q. Had they always had the option of just paying the interest only? The low option?

A. From what I could tell, yes.

Q. Had they been doing that -- is that the same arrangement there was on the first loan?

A. The 2005 loan? I honestly don't know. I'm not sure what the terms of that were.

Q. But they've been doing it since they got the 2007 loan?

A. From what I can tell, yes.

Q. Just out of curiosity if you had $172,000 when

would it max out at 115 percent? Would that number be 187,000?

A. 172, you should be at like 194,000 and change, give or take, would be your 115.

THE COURT: He just got his college degree for you, Mr. Holmes.

MR. HOLMES: He just did. I figured he would know.

Q. (BY MR. HOLMES) I'm still curious. Why didn't you bring me any documents showing when Deutsche Bank obtained this loan?

A. In all honesty the attorneys didn't ask for them, so I didn't think we would need them, so I didn't print them.

Q. But you were familiar with the litigation in this case and knew that there was a suggestion of that? Ms. Goldberg was claiming that she owned this land that had been taken from her by fraud?

A. In all honesty, most of the trials that I testify in, you have to be able to prove possession prior to the time of filing in addition to conditions received and things of that nature.

So how can I -- can I date this back to the time of filing? Did we have standing when this was filed? So for me it's the normal process to go get

those. I wasn't asked to bring them so I didn't.

Q. There's nothing on file that that transaction took place before Mr. Goldberg filed the lis pendens?

A. You can pull up the Pooling and Servicing Agreement on the SEC's website. It is public information. The attached mortgage loan schedule with all the pertinent assets is not public because it contains non-public information. If you go into SEC.gov and look in their e-oscar (sic) portion or whatever you can actually look at that PSA.

Q. You're better at numbers than I am, so you could just go log on right now to the SEC and you could show us -- or you could show us that in June, 2007 the bank owned some securities but we wouldn't know which ones?

A. Right.

Q. And we couldn't find that?

A. Right. Because of the non public information and information privacy.

Q. Could you pick up your cell phone and call the home office and have them ship that to us?

A. If that's what you're asking me to do and they want it, sure.

MR. HOLMES: I would like to see it, yes, sir. That would be all the questions, I have.

THE COURT: All right. Mr. Tillman?

EXAMINATION

BY MR. TILLMAN:

Q. In your review of the loan file did you notice anything that you considered unusual about this transaction?

A. No, I didn't.

MR. TILLMAN: Thank you.

EXAMINATION

BY MR. HOLMES:

Q. Is it your testimony that there's nothing unusual about the loan originator not saying when he got the property, working for whoever it is that's the broker -- he's the loan originator and the borrower, he's rented the property to we don't know who for less than fair market value for negative rent a month -- none of those things are unusual at all in mortgage lending?

MR. TILLMAN: Again, I'll object to the statement about less than fair market value.

THE COURT: Go ahead if you can answer that.

THE WITNESS: Well, as I stated before, if the lender inquired to know the date of acquisition of the property then they would have had a condition for that and it would have been in there in my

experience.

As I stated, I bought two properties, an investment condo and my primary residence, both while being a mortgage broker, so that would be like saying, you can't give loans to school bus drivers because you don't like the color yellow. For me that's not unusual.

And then renting it for less than fair market value, I would have to look at the calculations they use as far as what amount of rental credit they gave and what amount was disclosed or stated on the application. So in my experience it's not unusual.

Honestly I think it all goes -- if they stated the income high enough and the ratio still fell in line, it could be completely negative. They probably still would have approved it. So in all honesty I don't find it unusual, no.

Q. It's not unusual for a lender who is loaning money on an investment of property that is rented to not ask who it is rented to?

A. If it was stated income or a no doc loan it's not unusual at all.

Q. So if they decided, we don't care who it's rented to or what it's rented for, whether it's fair market rent or not, that's a choice they make?

A. Well, as long as the other compensating factors in the file or submission offset that, yes.

Q. If in your experience as a loan originator they found out that somebody obtained a piece of property worth $350,000 for $205,000, rented the property back to the person that was selling it that got nothing from the sale and now was refinancing it for the third time to withdraw equity out of that house, you don't think that would raise a red flag?

MR. TILLMAN: Objection, Your Honor. I think there's evidence she did get plenty from the sale. She got a $199,000 note paid off.

MR. HOLMES: I'll agree to that.

Q. (BY MR. HOLMES) She didn't get any cash out of that sale?

A. Not that I saw, no.

Q. So somebody is getting a loan on a piece of property he's acquired two weeks before that he's leased back to the person at less than fair market value for negative rent who hasn't gotten anything out of this property. Do you think the reasonable mortgage company would say, you know, I would like to know some more about that transaction. I would like to see that lease. I'd like to see what's going on?

A. I think had it been submitted as a full doc

loan possibly depending on what was submitted, but given the fact that it was a stated income, limited document loan, and those were their guidelines at the time, I don't find it unusual, no.

Q. So they decide that they don't care about any documents, make the loan -- that's just the way Countrywide did business?

MR. TILLMAN: Objection, Your Honor. It's mischaracterizing testimony.

MR. HOLMES: I'll withdraw. Thank you.

THE COURT: All right. Thank you.

EXAMINATION

BY THE COURT:

Q. I have two lines of inquiry that are just picking up right where we were. I don't know if you've only looked at the 2007 mortgage or both the 2007 and 2005, but my question to you is, how do you know what type of loan it is? No doc loan, stated income loan, how do you know that from what you've seen?

A. In the underwriting notes that are contained within the origination file, there are two specific entries that pertain to verification of employment. It says, Obtain verification of employment on Clifford Ryba and Rebecca -- whatever her first name

is. It says, Verbal VOE or verification of employment, no income verification required. It specifically states it on each of those for each borrower. So it's a limited or stated income doc.

Q. Meaning that they state that's their income and that's accepted by the lender to be true?

A. Right. As time progresses lenders instituted reasonability requirements. You couldn't say that a fry cook at McDonald's made $12,000 a month. It wouldn't pass the reasonability requirements.

So if a mortgage broker submitted saying he made 8,000 or 10,000 a month, or whatever it was -- back in the day you could do that without trying honestly. So as long as it was reasonable for the industry in the position they didn't go on a fishing expedition.

Q. So by stating what that income was on its face would not require some documentation of that. In fact, in this instance they said a verbal statement was sufficient; is that right?

A. Right. As long as it met all the other submission requirements, credit score, credit history, all of the other loan-to-value requirements, things of that nature for that doc or that loan submission, there would be no reason to go looking

for anything else.

Q. And did you look at the 2005 loan to see if that was the same type of loan or not?

A. I didn't only because we don't -- SLS doesn't have those business records. I saw the subordination agreement for the Regions -- whoever it was -- that second mortgage that was subordinated with this transaction, but I did not see the '05 documents.

Q. Because it was satisfied?

A. It predated everything that we have, yes.

Q. Now, what about the name of the Plaintiff? Does that tell us when it was that the loan was sold and held as the certificates series 2007 A-4, does that have any significance?

A. That pertains to the entire trust name and agreement, which again, you can pull up on the SEC's website. There's two, really one, specific portion that you can look at in there. It's specifically Section 2.01 that relates to the conveyance of the mortgage loan into the trust. Then the closing date of that trust, which is June 1, 2007 is on the cover page as well. It gives you all the pertinent parties, the depositor, the trustee, custodian, servicer, et cetera. So that's where my knowledge comes from as far as possession and all that with the

closing date and the conveyance of the mortgage loans in Section II.

Further up it's servicing authorities contained within Section III, and then it gives you all other types of information as well.

Q. So it's your testimony that the loan was placed into that trust effective June 1 of '07?

A. Yes.

Q. And has remained there since?

A. Yes.

Q. Servicing has transferred from Countrywide to BANA to SLS?

A. Yes.

Q. You've been in possession of the documents in your company since November of '12; is that right?

A. Well, there's always a lot of working parts that go with it. So SLS -- Wells Fargo is actually the custodian, so they house all the physical files in connection with this named trust. So they have held it since the inception of the trust.

SLS requested those documents and ultimately sent them to Rogers Townsend as part of this litigation. I don't know the exact date, but it was last year in 2014 which we received from Wells Fargo as the custodian.

Q. I've got you. Currently, they're in RTT. Their obligation, I assume, would be to return them to you-all and get them back to the custodian at Wells Fargo?

A. Yes, Judge.

THE COURT: All right. Any questions in follow-up to that?

MR. TILLMAN: No, Your Honor.

THE COURT: Mr. Holmes?

MR. HOLMES: Just one second. No, Your Honor.

THE COURT: Very good. Thank you, Mr. Ward. You may step down.

(Witness excused.)

THE COURT: Mr. Tillman, anything further?

MR. TILLMAN: No. We're done, Your Honor. Plaintiff rests.

THE COURT: Ms. Lybrand?

MS. LYBRAND: Nothing, Your Honor.

THE COURT: Plaintiff rests?

MR. TILLMAN: Yes, sir.

THE COURT: Very good. Mr. Holmes?

MR. HOLMES: Can we take about five minutes?

THE COURT: Sure. Sure. Let's take five. We'll come back at 3:30; how about that?

(A recess transpired.)

THE COURT: Plaintiff rests. Mr. Holmes? Motion?

MR. HOLMES: The only motion I can think of at this point would be that they haven't offered any evidence of what was paid for the mortgage and whether anybody paid anything of value for this particular mortgage. That's probably going to be within this document they want to send. I didn't want to waive that at this point.

THE COURT: All right.

MS. LYBRAND: Your Honor, I don't believe that amount was in that PSA, but I would just remark that the payment amount, the amount that was paid for the loan is irrelevant to the standing for the Plaintiff to proceed at his foreclosure. It's relevant to the ability to collect on the debt that's owed on the note and the mortgage. This is just a situation where -- this is also -- the PSA itself.

Unfortunately most third parties don't have standing to contest the terms of the securitization of these loans.

THE COURT: The Pooling and Servicing Agreement is what this PSA is, right?

MS. LYBRAND: Right. And then additionally the debt itself is owed by Mr. and Ms. Ryba. I

understand that Ms. Goldberg is claiming that she should have an interest in this property or that the mortgage should be void, but the issue of how much one entity paid to another entity to obtain the ownership of this loan mortgage is irrelevant to her claim about whether or not the mortgage itself is void or that the assignments of mortgage, you know, have been recorded after her lis pendens and those issues.

So we would just respond that any sort of payment information regarding how much HSBC as the Plaintiff paid to Countrywide for the purpose of securitization of these loans be irrelevant to this particular matter.

THE COURT: How would that be relevant back in the 2007 time frame?

MR. HOLMES: Because in order for them to be immune from or exempt from any claims against the property, they have to show that they paid value for it without notice of the claim. This is news to us that the -- they're saying that they obtained the loan in 2007.

So I'm assuming that will be answered by this document. I don't know whether this is just an agreement that we're going to put all these mortgages

together and at some later time we're going to sell them as a bulk, or whether this is an actual transfer for value. So I do think that they paid value for it in order to assume the protection of a holder in due course. That's our position. I don't know. If this is just an agreement that all the loans that are done by Countrywide during this period of time, we're going to package all those together and we're going to put it in some securitized -- at some later date we're going to sell them on the world market, then I don't know that that's paying value. I think it is relevant. I would at least like to look at it.

MS. LYBRAND: I think the terms of the PSA would express that there was a value associated with these loans that were securitized as part of this trust agreement. I would object to any amounts being provided as part of that agreement specifically in reference to the loan itself.

THE COURT: What I'll do -- I'm going to allow you to get that and send that over to Mr. Holmes and let him review it. I'll keep that issue open for now. I have seen some of those Pooling and Servicing Agreements before. I think some of these issues are going to become fairly apparent if you look at the document. How that is and what that means, we'll

come back and we can argue that again if we need to.

MS. LYBRAND: And I'll also be happy to submit a post-trial brief on that issue if that's an issue.

THE COURT: That would be great. Okay? So for now, I'm going to find that they've established what they needed to establish to move forward on a scintilla basis. So any evidence -- there's a motion for nonsuit, so I'll allow the Plaintiff's case to continue.

From the Defense standpoint?

MR. HOLMES: I've got one slight problem. Mr. Goldberg would proffer to the Court -- would testify that he obtained the e-Approve document from Mr. Chard, but he's not available today. He's not feeling well. I can submit an affidavit. That's where we are.

Beyond that I'm prepared to put in my fraud case through the Plaintiff. I don't know that that's really where we are right now, and whether we need to. They contest that. Whether or not Mr. Ryba and First Rate Mortgage Company -- they committed a fraudulent transaction or an illegal transaction. I'm certainly willing to put Ms. Goldberg up for that purpose.

THE COURT: Mr. Tillman?

MR. TILLMAN: My only position on that is that she's going to be testifying about an alleged interest -- an alleged interest that she received in real estate based on an oral agreement and the statute of frauds precludes that. So even if she testified I don't think that she can even make a claim for any interest in this property. It's got to be in writing. It's an interest involving real estate. It's an oral agreement.

You can put her up if there's a writing somewhere, yes, but if not I think it's frivolous.

THE COURT: Do you want to be heard on that separate at all or not?

MS. LYBRAND: No.

MR. HOLMES: My answer to that would be to prove fraud. Second of all, there were documents that were prepared by Ryba in furtherance of a scheme which we have in evidence, so it's part performance. So it would be at least to allow our grounds.

THE COURT: I think you can proceed if you like. I think there's a basis for that. There's an issue of part performance that maybe comes into play, and whatever parole evidence may be admissible. On the question -- the real issue in the case is whether or not that impacts your client; is it not?

MR. TILLMAN: Well, of course. We have several layers of arguments here. This is just one of them, obviously. We've also got hearsay issues and so forth. I just don't think I can stipulate to the fraud.

THE COURT: Let's go ahead and take testimony then. Let's do that.

MR. HOLMES: I call Carol Goldberg.

THE COURT: Ms. Goldberg, come on up.

CAROL GOLDBERG,

being first duly sworn, testified as follows:

THE COURT: Please state your full name and address for the record.

THE WITNESS: Carol Goldberg, 34 Tarleton Drive, Charleston, South Carolina, 29407.

EXAMINATION

BY MR. HOLMES:

Q. Ms. Goldberg, were you at one time the owner of 34 Tarleton Drive, Charleston, South Carolina, 29407?

A. Yes, sir.

Q. And how did you acquire that property?

A. In 1994 my grandfather gave me that property. My family -- I grew up in that house, my dad lived in that house. We sold it to my grandfather and he died

and gave it back to me. That's where I'm raising my daughter -- fourth generation in that house, so it's very special to me.

Q. At the time you inherited the house from your grandfather did it have any mortgages on it?

A. No.

Q. Thereafter did you and your then husband decide to mortgage the home?

A. Yes, sir, we did.

Q. Why did you decide to put a mortgage on the home?

A. After we got married we wanted to adopt a baby and so we put that money -- we got a mortgage for that and he wanted to open a restaurant because my family had a jewelry store and I already had a business. So we opened up one for him, and I took out a mortgage for both.

Q. Subsequent to that did something happen to your husband?

A. Yes. He got arrested and he got incarcerated.

Q. What happened to his restaurant?

A. It went fast and it got closed and I was a single parent. All at one time.

Q. And you indicated that your family owned a jewelry store. What happened to the jewelry store?

A. And at the same time my family's jewelry store closed after 80 years. So I was a single mom with nothing. So I got a good job but I wasn't able to pay the mortgage back that we took on for the adoption and for the restaurant.

Q. Did you secure short-term financing to pay the mortgage for a period of time?

A. Yes. Mr. Jerry Zucker came to me, and he offered me short-term financing on my house. We did that for three years. I paid every penny back on time, everything the way it should have been.

Q. As the short-term loan was coming due, did you attempt to secure long-term financing?

A. When it was ready to be over, the last payment, he said, it's time for you to secure financing on your own, so I seeked out long-term financing myself.

Q. And who did you talk with about getting long-term financing?

A. That afternoon Mr. Zucker told me that I needed to go ahead and get a long-term mortgage, so I left work and I was going to see my little girl's swim meet. So I was sitting there with all the parents and we were sitting there, and everybody was laughing.

I happened to be sitting next to Clifford Ryba, who I grew up with and our kids were good friends, our parents were good friends, so I knew him. We were talking and he said, what's going on? What's up with you today? I said, well, I'm going to have to get a mortgage on my house. I just found that out like an hour before.

He said, what am I? Chopped liver? I'm here. I'm going to help you. Don't you worry. Everything is good. I've got it. That's how we started talking about the mortgage?

Q. And did you meet with Mr. Ryba to discuss getting a mortgage?

A. He told me -- he said, let's get started tomorrow morning. No problem. Meet me at my office. So I thought --

Q. Which office was that?

A. His office.

Q. Which was --

A. He said, I work at First Rate Mortgage.

Q. What was the name on the door of the office?

A. First Rate Mortgage, LLC.

Q. Now, did Mr. Ryba indicate to you whether or not he was a licensed mortgage broker in the state of South Carolina?

A. Yes, he did.
Q. So you met with Mr. Ryba at First Rate Mortgage?
A. Yes. He told me to come on by the next day, and I did, and I remembered where it was because I passed it on the way to work every single day. It was right around the corner. I recognized the name on the building so I went up to his office.
Q. When you met with Mr. Ryba did you give him information concerning your Social Security number, age, driver's license, date of birth, all that stuff?
A. Yes. He just asked me a few questions and wrote some things down, and that was it.
Q. What did you think he was filling out when you were answering these questions?
A. I assumed it was a mortgage. That's what he represented, that he was getting a mortgage for me.
Q. Subsequently did he contact you to tell you whether or not you were able to qualify for a mortgage?
A. Yes. He called me back immediately, maybe the next day, and said I did not qualify for a loan. I couldn't get it. He suggested that I get a cosigner, which I was not sure who to get, and he suggested -- my stepfather was 80 years old. He said, what about

your stepfather? He had seen him come to swim meets. He remembered him and said, why don't we call him? Maybe he could cosign. So I got the two of them together, and they spoke and apparently he was not able to be a cosigner. He was not approved as well.

Q. So who said your stepfather would not be approved as a cosigner?

A. Cliff did, Ryba.

Q. And then what happened?

A. After that, I was not sure what to do. So he and his wife called me, Beverly Ryba. I went to meet with them, and he said the only way --

MR. TILLMAN: Your Honor, I object to any hearsay testimony on what Mr. Ryba said about the deal.

THE COURT: I'll sustain it. Just move it through.

Q. (BY MR. HOLMES) Was it your understanding that a proposal was made under the terms of which you could obtain financing?

A. Yes.

Q. What did that agreement entail? What would you do?

A. In order to get the financing?

Q. Yes.

A. So when he told me I couldn't get financed, is that what you want me to say?

Q. Yes.

A. Okay. When I couldn't get financed he said, him and his wife sat down with me.

Q. We're trying to get away from what he said. Just tell me what the deal was.

A. I sat down with them and he told me right off the bat --

Q. Let's get away from what he said. What did you have to do to get financing?

A. I had to give the deed of my property to him and his wife.

Q. What were they going to do back?

A. They were going to get a mortgage in their name and then lease the property back to me.

Q. And what would you be paying them each month?

A. $850.

Q. What was the $850 for?

A. That was to cover the insurance -- that was the mortgage. He had told me at the time that I had the right to repurchase the property as long as he was reimbursed for his expenses, property taxes, insurance.

Q. Did you subsequently meet with Mr. Ryba to

discuss a lease agreement for the property?

A. Yes.

Q. Were you represented by a real estate agent?

A. No, I was not.

Q. Were you represented by a lawyer?

A. No, I was not.

Q. Who prepared the lease agreement?

A. Mr. Ryba did.

Q. What is the date of that agreement?

A. August 12, 2005.

Q. And under that agreement how much were you supposed to pay for rent?

A. $850 a month.

Q. At that time he did not own the property, you owned the property?

A. That's right.

Q. Did you subsequently meet with him to enter into an agreement to sell him the property?

MR. TILLMAN: I'm sorry to interrupt. I just want to preserve my object on the statute of frauds issue.

THE COURT: Objection noted. Very good. Noted and preserved. Okay? Very good.

Q. (BY MR. HOLMES) And do you remember when that was?

A. August 12, 2005.
Q. The agreement to buy and sell, let me show you Defendant's Exhibit No. 3; is that the agreement?
A. Yes.
Q. And what's the date of that agreement?
A. August 31, 2005.
Q. August 16th?
A. Oh, that one, August 16th, 2005. I'm sorry.
Q. Were you represented by a real estate agent in the sale?
A. No, I sure was not.
Q. Were you represented by a lawyer in the sale?
A. No, sir.
Q. Who prepared that document?
A. Mr. Ryba and his wife.
Q. What was your understanding of the $205,000?
A. I'm sorry?
Q. What was your understanding of why you were selling it to him for $205,000?
A. To put the loan in his name so I could get the property back in my name.
Q. Do you know what the outstanding balance was of your mortgage at that time?
A. 205 I --
Q. Before we move into the residential agreement

look at Paragraph 12. What does that say?

A. Tenant obligations.

Q. Yes.

A. That I would pay for every repair and everything in my home.

Q. Why is that?

A. Because I was the owner of the property.

Q. Was that pointed out to you?

A. It was understood the whole time.

Q. Okay. And subsequent to that there was a closing at the lawyers office. He testified earlier this morning. Did you attend that closing?

A. Yes.

Q. Did you have a lawyer with you?

A. No, sir.

Q. And did you sign the deed to the property at that time?

A. Yes.

Q. Do you know what the value of your home was at that time?

A. Approximately 349,000.

Q. Did you agree that Mr. Ryba could take out additional loans on your property?

A. Absolutely not.

Q. Were you ever notified that he took out an

additional loan on the property?
A. No.
Q. Did you participate in the mortgage loan that was taken out on that same day, August 31, 2005?
A. No.
Q. Were you aware on October 11th, 2006, six weeks later, Mr. Ryba and his wife took out a second mortgage in the amount of $100,000?
A. I was totally unaware of any of that.
Q. Did you articulate that in the closing at all?
A. I would never do that.
Q. I need to back up one second. The closing that took place at the lawyer's office on August 31, 2005, did you receive any money from that closing?
A. Not a penny.
Q. When the later -- there was a second mortgage of $100,000 to Regions Bank did you receive any money from that mortgage?
A. Never a penny.
Q. Did you have any knowledge of the title to the property switching back and forth from Mr. and Ms. Ryba, to Ms. Ryba, and back to Mr. and Ms. Ryba?
A. Absolutely not.
Q. Were you aware in May of 2006 that they increased their second mortgage from $100,000 to

$115,000?

A. No, sir.

Q. Did you have any knowledge of that loan?

A. No.

Q. Did you participate in that loan?

A. No.

Q. Did you receive anything from that loan?

A. Never a penny.

Q. Now, in May of 2007 were you aware that Mr. and Ms. Ryba were going to refinance the Countrywide loan again?

A. They didn't discuss anything with me, nothing.

Q. You didn't participate in that?

A. No.

Q. Did you receive any money from that loan?

A. Never.

Q. Now, after May of 2007 what happened with the rent on your house?

A. Mr. Ryba -- I paid $850 a month and then I started getting letters from him. They were increasing to maybe 1,060 and then 1,260 and then 1,300. He escalated it all the way up to $1,600. That was double what I had originally planned to pay.

Q. Did you have the money to pay that?

A. No.

Q. Did you agree to pay that?
A. No.
Q. What happened?
A. So I did not pay him, and I come home and I get a letter in the mail from the Magistrate's office saying that I'm being evicted. So I get in touch with Mr. Benjamin Goldberg and he becomes my attorney to help me. We went to the Magistrate's office and she stopped all eviction processes on me.
Q. How many times did he try to evict you?
A. A lot. With every increase he came up with.
Q. Now, did there come a time when he tried to sell the house from under you?
A. Yes.
Q. Tell me about that.
A. So after we got all that eviction process stopped she told him to keep that property and just let it be and let me pay every month. It wasn't a few days later that I come home from being in synagogue, on the Jewish holiday with my little girl, and I see a For Sale sign in my yard and a lock box on my front door.

While I was in synagogue, with Mr. Ryba at the same time, he hired a real estate agent to come do this on that day.

Q. What did you do with the real estate sign and lock box?

A. I chunked it and took everything off the front door so she wouldn't see that. That was just not going to happen.

Q. Did you continue to pay the rent like you had agreed to pay?

A. We started paying 50 percent of it at that point.

Q. That was later, wasn't it?

A. Yes. I paid him every month on time always.

Q. Now, did Mr. Goldberg file a lawsuit on your behalf?

A. Yes, he did.

Q. Do you know whether he filed what's called a lis pendens at the same time?

A. He sure did.

Q. Did Mr. Ryba continue to pay the mortgage payments?

A. Apparently not. I paid him every single month.

Q. Were you paying him the rent you had agreed to back in 2010?

A. Yes. I continued to pay until I found out he was not paying Bank of America any longer.

Q. You were paying him but he wasn't paying?
A. I was paying him for like a year and a half's worth of payments and -- he got my money.
Q. Did there come a time when somebody put a tax notice on your house?
A. Oh, yes. I forgot. I'm sorry. Soon after the For Sale sign incident I come home again with my little girl, after working all day. I picked her up and there is a big poster on my front window that says, Your house is being auctioned off by a tax sale because you failed to pay the property taxes. So I took that down, too.
Q. Who paid the property taxes at that time?
A. I paid it.
Q. Subsequent to this do you know if Mr. Ryba filed for bankruptcy?
A. Yes.
Q. What happened with First Rate Mortgage Company?
A. First Rate Mortgage folded. They're gone. The sign's off the building and that is all I know about that.
MR. HOLMES: That's all the questions I have, Your Honor.
THE COURT: Very good.

EXAMINATION

BY MR. TILLMAN:

Q. Ms. Goldberg, I'm sorry to meet you under these circumstances. I'll try to be as brief as I can.

A. I understand.

Q. You testified that it's your understanding that you had a deal with the Rybas; is that correct?

A. Yes, sir.

Q. Was any part of that deal in writing?

A. No, sir, it wasn't.

Q. Was it ever confirmed in writing later on that you know of?

A. I'll be honest with you. I mentioned it to him constantly. Every time it was, Cliff, we need to put this in writing. The first day I said, let's get it in writing. He said, I'll get it done. I'll get it done. I'm busy but I'll get it done. I called him constantly every week. I'm not stupid. I told him I wanted it in writing. He said, I'll take care of it.

Q. But it was never reduced to writing?

A. No, sir, it wasn't but I asked over and over.

Q. And you didn't sell the property to the Ryba's in 2005; is that correct?

A. I deeded it to them.
Q. As part of that transaction they obtained financing; is that right?
A. (Witness nods head.)
Q. Did you understand that they would obtain financing to purchase it?
A. They told me that that's what they were going to do.
Q. And as part of that purchase they did pay off roughly $199,000 that you owed on the property?
A. (Witness nods head.)
Q. Is that a yes?
A. Yes.
Q. Let's talk about the terms of the deal you had with the Rybas. When were they supposed to sign the property back?
A. He told me that until I was -- he said, you just need to repay me for what I've invested in it, and we will put the deed back in your name, give it to you. It was supposed to be very simple like that. It was supposed to be very quick.
Q. Was there any deadline for buying the property back?
A. We didn't get that far.
Q. Were you supposed to also repay them for the

taxes?

A. Yes, sir. That's what I said earlier.

Q. Were you supposed to repay them for closing costs associated with the transactions to buy the property?

A. I wanted to pay back everything so I could get that house back. That was my goal. I tried.

Q. Were there any other terms of the deal that we haven't discussed today?

A. No, sir.

Q. Did you ever discuss with them whether they were free to finance the property and refinance it and so forth?

A. We didn't discuss any of that.

Q. And he ultimately did -- you ultimately got the property back; is that correct?

A. Yes, sir.

Q. What did you pay for it?

A. He just gave it back to me. This has been going on for so many years. We've been in mediation for hours and hours. We've tried to work it out. We've tried over and over. Then he said, I'll give it back to you. No. I'm going to file bankruptcy. Oh, you can't have it. He did it. He knew what he was doing. He knew what he was doing to me.

Q. How much do you owe Mr. Ryba today?
A. I don't owe him anything.
Q. I thought you just testified that you were supposed to pay Mr. Ryba all fees and --
A. The original -- I guess it was 199. Is that what we discussed earlier?
Q. That would be what you owe him today?
A. That's what I was hoping we would pay off. Me and him, it would be taken care of.
Q. Is it your contention, sitting here today, that you do not owe that money to Mr. Ryba?
A. I do owe it to him. He owes it to you-all.
Q. Let me show you real quick -- is this the deed by which you transferred the property to the Rybas? I'm referring to Plaintiffs' Exhibit No. 2; is that it?
A. Yes.
Q. Did you sign that?
A. Yes.
Q. Did you have an opportunity to review it on the day of the closing?
A. Well, it was pretty rushed. It was right after I got off work and I went to Mr. Hutchinson's office.
Q. But it was done in the attorney's office,

correct?

A. Uh-huh.

Q. And you were sitting there as he presented the deed for signature?

A. Yes.

Q. And during that meeting with the closing attorney did you tell the closing attorney that you had a deal with the Rybas to repurchase the property?

A. I didn't think that was for me to talk to him about. He wasn't my attorney. He was Cliff's attorney.

Q. Could you have told him?

A. I did not know that I had that option.

Q. You knew that Cliff was obtaining financing to purchase the property; is that correct?

A. He told me so.

Q. Did you ever verbally tell any representative of the lender that you had a deal to repurchase the property?

A. No. But in retrospect I wish I had.

Q. Let me show you number -- do you have the rental agreement back there with you?

A. Which one?

Q. Defendants' Exhibit 2, residential rental agreement, did you sign that document?

A. Yes, sir.
Q. Did you have an opportunity to review it before you signed it?
A. Again, that was a rushed one he threw at me quickly. He handed it to me real fast.
Q. Would you read what it says right below the title on that document?
A. This form is not used for option to purchase.
Q. Would that have been of concern to you if you had read it?
A. Yes, sir.
Q. It's true you never filed any document in court evidencing your claim to the property until 2008; is that correct? Until Mr. Goldberg filed the lis pendens?
A. I don't recall. I'm not sure on the dates. I'm so sorry. It's been a really long eight years.
Q. I understand. To your knowledge is that the first time any document was filed for you?
A. Yes, sir.
Q. And do you seek to have my client's mortgage voided in this case?
A. I would like to have my house back, and I would like to have a mortgage that I can pay for and make good.

Q. Would you agree with me that you owe someone at least $199,000?
A. Yes, sir. Definitely. And I would like that.
Q. And that residential rental agreement, you talk a little bit about where it says, Tenant as owner on there; do you remember that?
A. Yes, sir.
Q. At the time you signed that document did you still own the property?
A. That day, yes. It should be that day. I did see him write that.
Q. And I'm going to hand you what's been marked as Plaintiffs Exhibit No. 3.
A. Where is that?
Q. Right here. This is the owner's affidavit and indemnity agreement. Would you review that and let me know if you signed that document?
A. Yes, sir.
Q. You don't dispute that's your signature?
A. It is, yes, sir.
Q. And then lastly, I think you're aware that this property was refinanced in 2007?
A. I heard.
Q. I understand. Do you recall an appraiser ever coming by your house?

A. Yes.
Q. You do? Did you speak to that appraiser?
A. I believe only one time did somebody come to the house to do an appraisal.
Q. I want to make sure we have our times right. I don't want to confuse you.
A. I don't know about the time. It's been a really long time. I'm so sorry. He did have somebody come do an appraisal at some point, but I am pretty sure that it was later.
Q. I understand. I'm not trying to trick you into testimony. What I want to do is clear this up. You bought the house in 2005, right?
A. Right.
Q. And at that point Cliff and Beverly bought the house for 205,000?
A. There was no appraisal done at that time.
Q. No appraisal?
A. No, sir.
Q. Let's fast forward to 2007. There was an appraisal or an appraiser that came by the house?
A. I remember there being one appraisal done.
Q. Did you ask the appraiser why he was appraising the house or she was appraising the house?
A. I didn't. I really trusted Mr. Ryba I have to

tell you for so many years. I figured this was for something important.

Q. I understand. I have to ask you the questions. Okay? So in 2007 did you express any concern to Mr. Ryba that an appraiser was coming by your house?

A. He just told me to have the house nice and clean. He was having somebody come by and look at it.

Q. But did you ever ask him why?

A. No.

MR. TILLMAN: That's all I have. Thank you very much.

THE COURT: Mr. Holmes, any follow-up?

MR. HOLMES: Yes. Just a second.

THE COURT: Okay. Sure.

EXAMINATION

BY MR. HOLMES:

Q. Ms. Goldberg, what is an indemnity agreement? Do you know?

A. No, sir, I don't know.

Q. It indicates on here that there are no tenancies on the property? What's a tenancy?

A. Somebody's living in that property. That would be me. I have lived there from that day

forward.

Q. You were occupying the property?

A. I have never left that property since I inherited it in 1994.

Q. And did you occupy that property under a lease that Mr. Ryba had prepared to give to you in accordance with your agreement?

A. Yes.

Q. This agreement says there are no tenancies or occupancies or lease agreements?

A. I haven't left.

Q. Well, you signed this. Did you understand what this was about?

A. No, sir.

Q. Did anybody explain it to you?

A. No, sir.

Q. Do you know what a retention or a reversion of title agreement is?

A. No, sir. I'm not a lawyer.

Q. Did anybody explain that to you?

A. No, sir.

MR. HOLMES: That's all the questions I have.

EXAMINATION

BY MR. TILLMAN:

Q. Just real quickly, Ms. Goldberg, what is your

education level?

A. My education level? I have a college degree. I have half a master's program. I have 35 years in the jewelry business. I sell very expensive items. I negotiate big deals. I'm pretty smart, but I don't --

Q. Do you consider yourself --

A. I am not a lawyer.

Q. Do you consider yourself a fairly sophisticated business person?

A. Yes, sir.

Q. Did anyone prevent you from getting a lawyer to represent you in this transaction with the Rybas?

A. Nobody prevented me.

Q. You were free to do it?

A. I did it because I trusted him. I relied on him. He was a licensed mortgage broker. I trusted in the one thing I needed from him. Seek out people for what you need and I needed him. He was at the right place at the right time, and that was exactly when I needed somebody that day. Mr. Zucker had told me.

MR. TILLMAN: Thank you.

MR. HOLMES: Nothing further.

EXAMINATION

BY THE COURT:

Q. Ms. Goldberg, when you met with Mr. Ryba and you-all started on this transaction, did you-all discuss how long this was going to take?

A. He made it sound like it was going to happen soon. He said, look, let's just get this. Let's get this mortgage going. It's all good. We're going to put it right back in your name.

Q. Okay.

A. He knew. We were all friends. We saw each other so much. He wanted this.

Q. Did you-all discuss -- was it for a year or two years or three years?

A. He said, as soon as I was able to do it.

Q. Okay. And then let me take you to the day of the closing when you did sign that deed. I'm assuming you were just there to sign your documents and left?

A. He told me, he said, meet me after work at Mr. Hutchinson's office on Wappoo, and -- it was right down the street. Just come right after work and sign it. That's all you need to do. That's all.

Q. Were you there when the Rybas were signing all their documents or not.

A. I think he said, this is all we need from you.

Thank you.

Q. That's when the deed was signed and that owner's affidavit we talked about?

A. Yes, sir.

THE COURT: Any follow-up to those?

MR. HOLMES: No, Your Honor.

MR. TILLMAN: No, sir.

THE COURT: Thank you, ma'am. You may step down.

(Witness excused.)

THE COURT: Mr. Holmes?

MR. HOLMES: Defendant rests.

THE COURT: Very good. I want to make sure -- do you-all have any reply or anticipate any?

MR. TILLMAN: No, Your Honor.

THE COURT: Let's go through exhibits and make sure you've got them in there. I've got checkmarks by all the Plaintiff's exhibits. I'm assuming they're all in evidence. I don't have that for the Defendants. Let's make sure we've got what we've got.

(Off-the-record conference.)

MR. HOLMES: Not all of mine are in.

THE COURT: This timeline is the supplement to the hearing. So that one there is in. 2, I've got

as the Residential Rental Agreement. We've been through that ad nauseam. 3, Agreement to Buy and Sell Real Estate; it's in.

MR. HOLMES: 4 is the deed. That's in.

THE COURT: 4 is the deed? Okay.

MR. HOLMES: 5 is the closing statement. That's in. 6 is the Countrywide Mortgage. That's in.

THE COURT: That's in. I've got that in.

MR. HOLMES: 7 and 8 were the Regions mortgages. I did not put those in.

THE COURT: We don't need those.

MR. HOLMES: The next one is 10, I think. The 2007 --

THE COURT: It's a 2007 mortgage? I think those came in through the Plaintiff. Those are Plaintiff's 4 and 5 is the mortgage and the note.

MR. HOLMES: So the next one would be 14, but we put in 14A.

THE COURT: 14A, we corrected that one.

MR. HOLMES: We have that closing settlement statement.

THE COURT: 15 I have.

MR. HOLMES: We have the correspondence and the check.

THE COURT: 16.

MR. HOLMES: And the appraisal.

THE COURT: The appraisal is 17. I've got it.

MR. HOLMES: We've agreed to put in Mr. Goldberg's summons and complaint.

THE COURT: So 18 and 19? Very good.

MR. TILLMAN: Do you have some of them up there with you?

THE COURT: I put them all up there (indicating). I do have 1, I'm sorry. I do have Defendants' 1. I do have that one.

MR. TILLMAN: I don't see Plaintiff's 8 down here anywhere.

(Off-the-record conference.)

THE COURT: Then the Pooling and Servicing Agreement has been shipped?

MS. LYBRAND: Yes. I e-mailed it to Mr. Holmes as we were sitting here.

THE COURT: I'm keep the record open for that document or response, whatever you want to have. And then as to Mr. Goldberg's authentication of -- what was it?

MR. HOLMES: All he can authenticate was that he got it from Mr. Chard, who for some reason testified that he wasn't familiar with it.

THE COURT: That was the Countrywide e-Approve letter from '07?

MR. HOLMES: That said, Dear Partner, yes.

THE COURT: So all the evidence is in? Mr. Tillman?

MR. TILLMAN: I have a Nonsuit Motion for -- there are four counterclaims. I've got a copy of the answer if you want to look at it. The first one says that the mortgage is void. I talked about it a little earlier in my opening. This is really an argument that the mortgage was voidable. That's not really pled, but that being the case we certainly don't have any evidence that the mortgage was void or forged or an incapacitated person signed the deed or something like that, so we certainly don't have any evidence that it's void.

Now, if you construe that firsts counterclaim to say that it's voidable then I also think they haven't carried their burden to show that it was fraudulently paid by the Rybas because he ended up -- they didn't have any deal on when he would sell it back or how, and effectively he gave it back. It happened.

Now, it took a while and he mortgaged. They didn't have a deal on whether he would mortgage the

property or not. None of that was reduced to any sort of writing. It doesn't even sound like there was a meeting of the minds on it. It doesn't sound like there was a representation here on which she relied. She relied on, you're going to take it. You're going to buy it from me right now and I'm going to have the right to buy it back for what you have in it and she got it back for nothing. Now, it was mortgaged but they didn't have an agreement on it. I honestly don't think they've proven that it was fraudulently obtained.

On the second counterclaim these are really answers. This is more of a housecleaning thing. The second counterclaim is that there is no standing. I think that's an affirmative defense. I certainly think that goes out.

The third counterclaim is that they were entitled to certain notices and so forth under the mortgage. I think that's also a defense. I think maybe that goes out. I don't think that's an affirmative claim.

The fourth counterclaim is that somehow the lender had a duty to collect rent. I didn't hear any testimony or see any documents related to that, so I think there's no evidence to support that either.

Also, getting back to the first counterclaim, I'll reiterate my argument. We have a statute of frauds issue. Agreements required to be in writing. No action shall be brought whereby the charge of person upon any contract for sale of lands thus the agreement's in writing. I think this was not in writing, which she testified it wasn't. She could have gotten it in writing. She requested it, but it never happened and she didn't follow up after that.

I think they're going to make an argument of agency here. It appeared in the pretrial brief. I think that number one, that wasn't pled. We didn't have any notice that that was coming so obviously we didn't have an opportunity to defend that even if it was -- even if it was prosecuted or even if it was pled. The other thing is the only reason agency would be an issue is First Rate was the agent of Countrywide. What they're trying to do in this case -- it's all about who knew what. So did you know that there was an issue -- did you have actual knowledge, did you have constructive knowledge of Ms. Goldberg's claim prior to loaning the money?

So it's all about who knew what and whether knowledge could be imputed. There was no evidence put on the record about what First Rate knew. Nobody

from First Rate was here. The Rybas weren't here. So even if they were deemed to be the agent of Countrywide as the principal we don't know what would be imputed to Countrywide. We don't know what they knew. So anyway that's what I have on the nonsuit.

THE COURT: All right, sir. Very good. Mr. Holmes?

MR. HOLMES: First Rate is the employer of Ryba. They have notice of -- whatever Ryba knew, they knew. There is evidence that Ryba engaged in recasting the loan with misrepresentations to obtain title to this property. In terms of the notices, we resolve that you agreed that Ms. Goldberg, she had an interest in the property. She was entitled to notice and the right to try and work it out which we've done, and I compliment the Plaintiff's attorney and Mr. Goldberg, they talked for a good, long time trying to work it out. They just were unsuccessful. I don't think -- he gave the property back so --

THE COURT: When was that, the 2012 timeframe?

MR. HOLMES: No. I think that was more like '13 or '14.

THE COURT: Was that part of the bankruptcy arrangement?

MR. HOLMES: No. Your Honor kindly ruled that

this was an unusual case and that she should at least have the right to try and work out an arrangement on the loan. So the notices and stuff, that's really not an issue anymore. We think the the question -- what it's going to come down to is at the time the current Plaintiff obtained the loan did they have -- did they pay value for it? Did they have notice of any claim?

That could either be statutory because of the filing of the lis pendens or actual. I don't know. It's a little bit -- the argument that the mortgage broker is the agent of the lender is just under South Carolina law. It's one of those quirks in the law.

If you go back and read the cases they're really all usury cases. The mortgage lender is saying, I'm not responsible for usury because I didn't charge the usurious fee. It was the broker charge. The Court always informed me as near as I can tell, if you got all the information from the broker and you gave your money to the broker who disbursed the funds and you paid the broker you're stuck with whatever the broker did.

If he charged an exorbitant fee that made it usurious then under the law all you can do is recover

the amount of the loan. I don't think that the argument that, well, she got the property back -- once Mr. Ryba filed bankruptcy and whatnot else she got it back subject to a mortgage now of apparently $287,000 just from this mortgage. There's another mortgage that was 115,000. They're not here, but I assume nobody's paid on that since 2010 and with fees and interest that's probably another couple hundred thousand dollars.

So giving it to her back when all of the equity has been looted out of it was not the agreement. That's sort of where we are. I put my legal arguments in the brief. I would like to see what this document is, and have a look at it. If I have something to say I can let Plaintiff's counsel know. I'm sure whatever I say they will have their say. We can get that done hopefully rather quickly. I certainly hope I don't have to read 400 pages tonight of financial documents.

MR. TILLMAN: We demand that this be done by tomorrow, Your Honor.

MR. HOLMES: Forget everything nice I said about Plaintiff's lawyer.

THE COURT: You'll skim it quickly, based on my prior reading, but somewhere buried in there is

some information you probably want to look at. As to those counterclaims -- I think I understand Defendant's position as to the mortgage, whether it's void or voidable, you're going to make a substantial difference in what remedy that you-all seek.

As to the issue of standing, the question of notice, is that resolved at this time?

MR. HOLMES: Notice is resolved. I'm not quite sure what Mr. Goldberg was referring to in standing. I would assume that the person who holds the mortgage would have standing.

MR. TILLMAN: I just think he pled an affirmative defense as to the counterclaim.

THE COURT: Well, I'm going to find they have standing. I don't think there's a question about that. I'm going to deny that counterclaim.

What about this lender duty to collect rent; is that an issue still?

MR. HOLMES: I think it's unfortunate in this case that Ms. Goldberg continued to pay her rent as was agreed and Mr. Ryba, while he stopped paying the mortgage, was just pocketing that money. There was an agreement if I understand correctly -- there was a rider in here that originally I don't think that Mr. Ryba told them the property was rented but then

they found out it was. So there was a rider that said it was rented. I think there's a provision in there that said they would have a right if he stopped paying to collect rent.

THE COURT: To collect rent. Okay. I'm with you. He's no longer a party, so I guess that takes care of that one.

All right. I'll be glad to hear from you-all, but let me tell you in sort of summation -- I'll take the void and voidable issue and the agency question -- I need some more guidance on that. I'm going to ask you-all -- what I normally do in these cases and that's to have you-all submit to me proposed orders. I generally like those within 30 days unless that's a problem.

So let me tell you that those issues are of interest to me. I would like to hear from you just in sort of summation here. This morning when we got started I was reviewing what was being discussed and the void/voidable argument was before me, and again I want to reiterate -- my understanding of the law is void means void and is void as to all. Voidable is a different standard and a different test. Okay? So you-all can brief that. Certainly I'm happy to hear from you now.

The other one that got my attention was the issue of the holder in due course as presented by the Defendants versus the argument about the Shelter Rule that the Plaintiff's were relying upon.

So I would like to hear from you-all just briefly now on that issue, and then ask you-all to put that together for me in the form of a proposed order as to how I should rule on the question of Plaintiff's rights to -- where the Plaintiff stands relative to their right really to foreclose and where that foreclosure should be and whether or not the Defendant is entitled to assert these Defenses that they've raised.

So let me start, Mr. Tillman, with you if I could?

MR. TILLMAN: Okay. I'm going to try to be as brief as possible.

THE COURT: Sure. I don't need long. I'm doing it for those people's benefit. They're ready to go.

MR. TILLMAN: You've certainly got a grasp of all this. I don't think I need to talk about whether we put in an appropriate level of evidence regarding the actual note and mortgage so I'll leave that be, but there's no evidence that demonstrates that the

Plaintiff -- this mortgage was given by Countrywide with knowledge or constructive knowledge that Ms. Goldberg had a claim.

The other thing that I think that came out today is that not only is that the case, but before we even get to the Shelter Rule we have established that the lender owns this, essentially, from 2007, which was prior to when she filed her lis pendens anyway. So that even takes the Shelter Rule out of it.

That means at that time, unless the Plaintiff sitting here today had knowledge, actual or constructive, then they get foreclosed. This is a voidable issue. It is a deed procured by fraud which means it's voidable, not void.

A voidable deed is not enforceable against good faith whether it's for value without notice. So as of that date in 2007, the date that Countrywide loaned the money and the date that the note and mortgage were transferred to the Plaintiff sitting here today, and that's the only evidence you have before you, there was nothing on file, nothing on record that would put us on actual constructive notice that Ms. Goldberg had a claim.

Now, if you'll look at Spence versus Spence,

which is the case I asked you-all to pull for me, and I appreciate your doing that, which is 628 S.E.2d 69, what they say in that case is that normally -- so we clearly don't have actual notice. There's no evidence that there's actual notice. They were getting constructive notice and they made a lot of arguments and a pretrial brief and so forth. There was constructive notice.

If you look at that Spence v. Spence case, it says, the constructive notice in the context of a real estate transaction often is grounded in an examination of the public record because it is the proper recording of documents asserted in interest or claim in real property which gives constructive notice to the world. Clearly, there was nothing on the record to give us constructive notice in 2007.

Now, let's just assume, for the sake of argument that we either didn't prove or did not own the loan and mortgage, the note and mortgage, in 2007. So then we get to, okay, it was assigned later on in 2011 after Ms. Goldberg had filed a lis pendens. It's pretty clear under the Shelter Rule that -- I'll quote a case: Liberty Loan of Darlington versus Mumford, 283 S.C. 134, it's in my summary judgment documents.

"Wherever in a succession of purchasers you reach one who is innocent, who purchases in ignorance, the title is therefore, or thenceforth sanctified." Basically it says, if you buy it from a bona fide purchaser, if you buy the mortgage and note from a bona fide lender and the statute makes no distinction between the two, you're good.

Otherwise, you can't sell the property, a bona fide purchaser can't sell the property. A bona fide lender can't transfer the mortgage, sign the note, sell it, securitize it, do all the things that our lending system requires.

If you look at -- I won't give you this long quote, just to save time, but there's a case that's unreported but it's Musick, M-U-S-I-C-K, versus Dicks, Court of Appeals, 2010, there's a long block quote in there about why we have the Shelter Rule. It is essentially what I just told you. It's for the marketability of both property owned by bona fide purchasers and bona fide lenders. I'll try to get you that citation real quick. That's would be 2010 SC Appellate -- let me give you the Westlaw cite. That's easier. 2010 Westlaw 100-800-89.

I will also point out that in the pretrial brief of Ms. Goldberg one of the things that she

argues is that the statute requires -- states that an assignment basically -- let me go back and look at her documents so I can properly argue this. Bear with me, Your Honor. I apologize.

The argument is basically that the 30-7-10, the good faith purchaser/lender rule, applies not only to mortgages recorded but assignments. So what they're trying to say is that that statute says that if you get an assignment after, in this case, Ms. Goldberg records her interest you're no longer a good faith lender or purchaser which is not the right reading of the statute.

The statute says, all deeds of conveyances of lands, and I want to paraphrase it, including all assignments, are only valuable or excuse me -- only serve as notice from the day and hour from which they are recorded as to subsequent lien creditors or purchasers.

So they have got it backwards. Essentially what they're saying is, your assignment is only good against a subsequent creditor when it's recorded, not hey, creditor, you've got the assignment after we recorded your note. Do you see what I'm saying? It's a little confusing.

THE COURT: Right. Right.

MR. TILLMAN: And then you know I just reiterate that we have a statute of frauds issue. This thing wasn't in writing. There's a reason we have the statute of frauds. There's a reason we have recording statutes. We have all those things so that there's evidence for somebody who is truly innocent, like Countrywide, and all of the people who purchase the note and mortgages to know that that's out there.

You heard testimony from Michael earlier that there's no way a lender would consummate this loan knowing that Ms. Goldberg claimed an interest or even suspected it. The same thing with real estate attorneys. They said the same thing. We're exposing ourselves to liability if we close a loan either knowing or suspecting that another party claims an interest in the property, and we don't run that down.

I think that evidence is in there. I've discussed it in my prior motion that I do not think there was enough evidence for fraud inducement here. I won't rehash that.

Getting to the equity of the matter, I want you to keep in mind that although there have been a lot of discussion here, testimony and so forth, about how unfair this was to Ms. Goldberg, I do want you to keep in mind that as between the people sitting here

today she was the person that could have stopped this. She could have asked for an attorney. She could have read what she signed. She's the one that got $199,000 when the first transaction closed. She could have stopped this.

There was nothing that Countrywide could have done. It's certainly nothing that would be in the ordinary course of a lending transaction to protect itself here. There was nothing on record. She didn't tell anybody at the closing. Those are the kinds of things that happen so that people know, wait, maybe I shouldn't lend this money. She's the one that could have stopped this.

I also just want to point out that, you know, they made several arguments in their pretrial brief of different things that put Countrywide on constructive notice of Ms. Goldberg's claimed interest. I'll rattle them off real quickly. The property was rented for a negative cash flow, that there were multiple refinances. The date of acquisition was left blank on the loan application. That Ms. Goldberg was paid less than the value of the property at the time of purchase in 2005. Everybody who sat on that stand today testified that there's nothing unusual, nothing that raises a red flag about

any of that.

Nobody testified that there is something that raises a red flag. Now, it was argued because there's testimony on it. So there's certainly no constructive notice brought about by those facts. Then I won't rehash the agency argument other than to say, they didn't plead it, but it's their burden to both plead and prove it and they didn't. Thank you, Your Honor.

THE COURT: Thank you, Mr. Tillman. Mr. Holmes?

MR. HOLMES: Your Honor, part of the reason for the respondeat superior doctrine is that those who profit from a transaction, those who have the right to control the transaction, those that are in the best place to be responsible for the transaction, should be held responsible. To suggest as we sit here today that Countrywide was totally innocent in this transaction is a little incredulous in my mind.

Since they, in our position -- they're doing business with -- the person who's borrowing the money is an employee of the broker is supposed to gather and verify the information to be submitted.

It's not surprising, I guess, since I know what happened in 2008, when the entire economy about

went into meltdown, that we heard, oh, no. We have no doc loans. We'll loan money. We won't ask any questions. You don't have to verify anything. I'm not suggesting that the facts that Countrywide knew, the facts that there were blanks in the application -- how long have you owned the property; the fact that there was negative cash flow on this mortgage; it was rented -- those facts in and of themselves should have told them that this was a fraudulent transaction.

Those facts were enough to put them on inquiry notice to ask a few questions, that they're dealing with somebody who has an obvious conflict of interest. Mr. Ward, I think he did testify that oh, no, we couldn't do that. We can't be our own mortgage broker for a loan. That's improper.

Had they asked some very simple questions -- wait a minute now, when did you get this property? I just got it 14 days ago. Well, who did you get it from? Well, I got it from Ms. Goldberg. Well, who is Ms. Goldberg? Well, she's the one who is renting the property back from me.

That in and of itself, I submit, would have been enough to put them on inquiry notice that this is a prohibited transaction by a mortgage broker in

our state called recasting which is what we claim it was.

So we take the position that you can't turn a blind eye to a transaction that you facilitate, you don't ask any questions about, and that you profit from, and then come back later and say, wait a minute. I'm totally innocent. It's not my fault. I should walk away from it.

If this case boils down to a question of whether or not the person who took this from Countrywide stands in Countrywide's shoes, and those are pretty tight shoes, and I wouldn't want to stand in them. I think I used in brief that Countrywide Bank could be the poster child for the meltdown of the economy.

This loan, if we look at it in its entirety -- this property is just acquired. It's financed a total of four times in literally one year and nine months. The title is switched back and forth several times, three or four times in the time period. It's supposed to be -- he's buying this property for $205,000 which would be enough to pay off the mortgage which is what Ms. Goldberg said she thought they were doing.

In a year and a half he's already got this

mortgage up to $287,000, and now we find out today that this is some kind of mortgage that they sent you the bill. It says, you've got an option. You can choose Option One. Just pay this amount and then you're not really paying off the mortgage. In fact, the mortgage is going up, up, up.

So we take the position that if the buyers are standing in the shoes of Countrywide then there is enough evidence in this case that they had constructive notice that had they asked even basic questions they would have discovered that this was an illegal transaction.

THE COURT: Assuming the Court rules in your favor, what's the remedy that you-all seek?

MR. HOLMES: Well, you know, they keep talking about -- well, you get the property back but you owed $196,000 on it. That's true. Even if they give it back from there -- we've now heard there's insurance on the title -- she's still left with a $115,000 mortgage that hasn't been paid since 2010. I'm sure there's attorney's fees and interest and everything that's going to pile up on top of that.

She's not going to be making a windfall here. She will be stuck with a piece of property that will still have the mortgage. She will have to be able to

finance that mortgage, or I'm sure Regions Bank will come back and foreclose this, and hopefully Mr. Goldberg will be better by then.

So I don't know. Our position is -- in my mind, and I know this is simplistic because I know the difference between void and voidable, but if somebody, you know, tricks another person, uses fraud to get the property and then turns around and borrows a bunch of money, which apparently the mortgage lender is just closing a blind eye to, when it goes south between the mortgage company and the person who was the victim of the fraud, the person who's the victim of fraud is just left.

That's unfortunate but they are experienced bankers, they being the mortgage companies. There's mortgage insurance or title insurance on this property. If there's a cloud on the title then they have recourse. I submit -- I don't know how this -- I haven't seen the agreement yet. I don't know whether anybody paid anything for this mortgage. Did it just go into a whole group of mortgages that were bundled all together that were then going to be sold on whatever exchange they sold them on at some future date?

I don't know what the deals were. I do know

that I've read all about -- the people that were doing this, they were buying these mortgages from companies -- they're buying no doc mortgages from companies. They're big -- they're experienced people. They took the risk. They took the risk that some of these loans were going to be bad. This loan was bad. It was bad from the beginning.

They're in a much better position to spread that risk and in a much better position to protect themselves than the innocent person who was the victim of the fraud committed by the mortgage broker, licensed mortgage broker, who worked for a licensed mortgage company that we contend under South Carolina law was the agent of the lender.

Now, if they can show that they got this property back when they're claiming now in 2007 that they paid value without any notice of any claim then that's a problem. I understand that. That's why I want to see the documents.

THE COURT: Very good. I appreciate you-all's efforts. I think you-all have both done a good job for your clients. This is just one of those ones that, as we've talked about all day, harkens back to when things were fast and loose in the mortgage industry. I don't think they've got pick and pay

loans anymore, and I know firsthand that mortgage guidelines are a lot stricter today than they were in 2007 and '05 for that matter.

What I would like to do here, as I've indicated, it's my usual course of business to ask that you-all prepare me a proposed order finding in your favor. If I'm clear on something I like to rule and get it out of the way. This is a tough case, and ir certainly will impact Ms. Goldberg and her family's house for a long time. It's not one you see every day. It's just not.

I know I wasn't familiar with the term that you used earlier today, rebranding? Recasting? I wasn't familiar with that term. I had to look that up. I found it in an old statute. I've located that. It's interesting. I've heard it before, but I don't know that I've seen it to this level and in this courtroom. I've heard of it happening. I just haven't had evidence of it before.

This is an unfortunate situation for all concerned, I think. I don't see anybody coming out ahead in this particular one.

So on behalf the Plaintiff, Mr. Tillman and Ms. Lybrand, thank you for a job well done. Mr. Ward, I appreciate you coming down. I hope you

enjoy Charleston while you're here.

Ms. Goldberg, you've got good counsel, and I'm sorry Mr. Goldberg's not with us for the whole day, but I know he's tired. Mr. Holmes, I'll look to hear from you-all.

It's my practice to get you-all to send me orders within 30 days and try to get you-all an answer within 30 days of that. If I have a question or some other matter comes up certainly contact me and my staff, and if we need to get back in on the record we can do that. If this is just something you-all can submit by letter or affidavit or something I'm happy to take it that way as well. All right?

MR. HOLMES: I don't know what's going to happen with the document that's been produced. I'm not sure whether they will -- I'll get an affidavit from Mr. Goldberg on that one document. You had mentioned earlier that if I found something in that document that I could argue about you would want an opportunity to respond to it. If that pops up --

THE COURT: And to the extent or the event it needs to be in camera I am happy to do it that way as well. I just want you-all to be protected on that from a protection standpoint. Very good. Thank

you-all very much.

(PLF. EXH. #4, Note, was marked and placed into evidence.)

(PLF. EXH. #5, Mortgage, was marked and placed into evidence.)

(PLF. EXH. #6, Assignment of Mortgage, was marked and placed into evidence.)

(PLF. EXH. #10, Demand Letter, was marked and placed into evidence.)

(DFT. EXH. #1, Supplement to Hearing on Motion for Partial Summary Judgment, was marked and placed into evidence.)

(DFT. EXH. #5, Closing Statement, was marked and placed into evidence.)

(DFT. EXH. #15, Closing Settlement Statement, was marked and placed into evidence.)

(DFT. EXH. #16, Correspondence, was marked and placed into evidence.)

(DFT. EXH. #18, Summons and Complaint, was marked and placed into evidence.)

(DFT. EXH. #19, Lis Pendens, was marked and placed into evidence.)

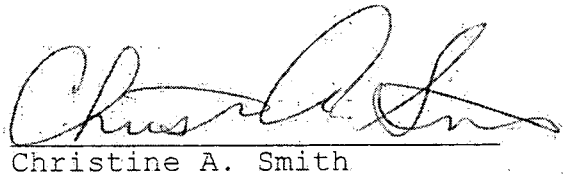
(The proceedings were concluded at 4:49 p.m.)

State of South Carolina)
)
County of Charleston) C E R T I F I C A T E

I, Christine A. Smith, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 23rd day of April, 2015 at Charleston, Charleston County, South Carolina.



Christine A. Smith
Notary Public
My Commission Expires
May 12, 2021

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Bank of America, NA, successor by merger to BAC Home Loans Servicing LP, fka Countrywide Home Loans Servicing, Inc,

Plaintiff,

vs. CASE NO.: 2011-CP-10-7885

Clifford L. Ryba; Beverly Ryba; Regions Bank; First Federal Savings and Loan Association of Charleston; Citibank (South Dakota), NA; Carol Garfield Goldberg,

Defendant.

Hearing before the Honorable Mikell R. Scarborough, reported by Christine A. Smith, Notary Public, at 3:24 p.m. on December 15, 2015 at 100 Broad Street, Charleston, South Carolina.

Christine A. Smith, Court Reporter
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PROCEEDINGS

THE COURT: We're now on the record. This is HSBC Bank -- it was Bank of America -- versus Ryba, 2011-CP-10-7885. Present today for the Plaintiff is Mr. Matt Tillman of the Charleston Bar, and for the Defendant, Carol Goldberg, is Mr. Kevin Holmes. This is Defendant's memo to alter or amend. Mr. Tillman?

MR. TILLMAN: Your Honor, I'm a little surprised. Erica Lybrand, who was also the bank's counsel is supposed to be here as is counsel for Clifford and Beverly Ryba. I'm not sure what is going on.

MR. RYBA: I'm Mr. Ryba.

THE COURT: Mr. Ryba is present. Mr. Ryba, are you expecting counsel today?

MR. RYBA: No, sir. They didn't think it was necessary to be here, Your Honor. Sorry for not standing up.

MR. TILLMAN: Anyway, Erica is not here. She was supposed to participate. I'll do what I can. Do you need me to go back through the facts of the case?

THE COURT: I don't think so.

MR. TILLMAN: Well, I guess my first argument regarding error in the order is that a lot of the

underpinnings of the order is that this was an improper recasting matter by Mr. Ryba in that he engaged in recasting as a mortgage broker when he entered into the agreement with Ms. Goldberg.

If you look at the statute from the time -- if you look at the statute from back in 2005 regarding recasting it defines that as a promise for an individual to recoup a home sold to a third party with the intent of the original seller to rent back the property for a specific time at which the original seller will have the option to buy the property back at a specific price for a specific period of time which would normally be one year.

So that definition from the statute, which is 40-58-20(9) is not ambiguous. It requires a specific time and a specific price.

Ms. Goldberg testified that there was no specific time for this alleged repurchase, and that there was no specific price for the repurchase. In as much as the finding that there was illegal recasting going on here, underpins the order. We feel that that's an error. The testimony where Ms. Goldberg testified that there was no specific time or price for the repurchase is in the transcript on Page 153.

The next argument relates to Mr. and Mrs. Ryba. They were served with this lawsuit and didn't appear so they are in default. However, they were not served with notice of the hearing that we had at the trial that you conducted, and we would just ask that, number one, we mark as Exhibits 5 and 6 to my Motion for Reconsideration the affidavits of service of the lawsuit and the affidavits of the service of this hearing.

I'm just asking the Court to grant a new trial in as much as to allow us to bring suit on the note against Mr. and Mrs. Ryba because they weren't here, and like I said they did not receive notice of the trial that you conducted earlier. I don't know if you want to hear from Mr. Ryba on that before we go further or not. I have those two Exhibits.

THE COURT: The premise being that you should be able to at least sue on the note, correct?

MR. TILLMAN: Correct, and get the amount owed as of whenever we open the trial up for the suit on the note portion. Now, Mr. Ryba, and I'm not sure whether Ms. Ryba filed for bankruptcy at some point, and I'm not sure whether their liability on the note -- whether one or both of them's liability on the note has been discharged by that bankruptcy.

That is certainly something that if we set up a date to try that portion we can find out and inform the Court between now and then. I just don't know at this point. That's an issue that Mr. Holmes raised in his memo in opposition, and also Mr. Ryba's lawyer told me on the phone that he thought maybe one or both of them had been discharged.

THE COURT: Based upon that do you still wish to proceed then with an action against them?

MR. TILLMAN: Well, I certainly want to schedule a proceeding. Now, it may be that I tell you that it's not worth the time and cancel it, but I don't have the bankruptcy documents with me to make a representation on that today.

THE COURT: Ms. Lybrand's shown up. Ms. Lybrand, do you have any information on that one way or the other?

MS. LYBRAND: I don't have any specific information, but it was my understanding -- and I could be wrong. I would have to go back and look, but it was my understanding that Mr. Ryba was the only one that filed the bankruptcy, and so Mrs. Ryba may be -- we may be able to collect against her in that regard. The other issue, I think just in general, that was establishing that debt for purposes

of that proceeding, and I think that's what he's asking for.

THE COURT: Why don't we -- I'm willing to entertain that. Why don't we hold off on that until you decide who you want to go after. You may have some problems with the Bankruptcy Court if you proceed with legal recourse when the person that has been protected is discharged from Bankruptcy. I don't want to needlessly create new litigation.

MR. TILLMAN: I understand. Do you mind if I mark Exhibits 5 and 6, the affidavits of service?

THE COURT: That will be fine.

(DFT. EXH. #5, Affidavit of Service, was marked for identification.)

(DFT. EXH. #6, Affidavit of Service, was marked for identification.)

MR. TILLMAN: 5 will be the Affidavit of Service as to the lawsuit, which would evidence their default, and 6 would be the Affidavit of Service of this hearing, which obviously they got it, since Mr. Ryba is here.

Moving on now we get into the issue about my client is a bona fide creditor providing without notice under 30-7-10. You generally ruled that there was no evidence that we actually paid value for the

note from Bank of America, and one of the issues there was, number one, Michael Ward, who we brought, testified that yes, we did pay value although he wasn't sure of it at the time, but the amount at the time he referenced the Pooling and Servicing Agreement. As I read the transcript the Court instructed us to send the Pooling and Servicing Agreement to Mr. Holmes and that you would reopen the issue if necessary if there was a dispute about that agreement.

So part of your order is that we didn't put the Pooling and Servicing Agreement into evidence. I would ask that we be able to do that now given the instruction from the Court on the day of the hearing. We did send the document. The Pooling and Servicing Agreement is attached as Exhibit 2 to the Motion to Alter or Amend. We did send the document to Mr. Holmes as you instructed I think that day or the next day. That is Exhibit 3 to my motion.

So we asked that the Pooling and Servicing Agreement be entered into evidence. If you look at the Pooling and Servicing Agreement it has a schedule of loans that were securitized and purchased as part of the Pooling and Servicing Agreement. Again, Mr. Ward, our witness, testified that there was value

paid for the note, and we believe that that demonstrates that my client did actually pay value for the note in this case.

Sort of along those same lines we go to the Shelter Rule. The Court acknowledged on Page 17 of the order that the original lender, Countrywide -- and just to refresh your memory, Countrywide was the original lender to Mr. Ryba to buy the property. Countrywide refinanced that note, and then it was sold to my client.

You acknowledged in the order that Countrywide paid value when it refinanced the original Carolina First note, which was the first mortgage that Ms. Goldberg had on the property, so Carolina First -- Mr. Ryba, when he purchased the property, uses that money to basically pay off the mortgage -- the note and the mortgage that was on the property when Ms. Goldberg owned it. So in your order you basically said that that was value and that we believe that under the Shelter Rule we're protected as an assignee of the original lender for that value paid.

Now, of course, we get into whether that original lender was a bona fide lender without notice. We believe that as long as we can prove that

it did not have notice of Ms. Goldberg's claim, actual constructive notice, that that value is to us under the Shelter Rule, which is the Liberty Loan case that I've cited in my motion.

The Court also held that we had record notice of Ms. Goldberg's claim when we took -- when we purchased the note. That was based on the fact that the actual assignment to my client was filed in 2012, but I believe the testimony showed from Mr. Ward that we actually bought the note in 2007 under the Pooling and Servicing Agreement, and that the assignments weren't filed until later.

I think if you look at the transcript at about 70 -- that's where Mr. Ward's testimony is -- the Pooling and Servicing Agreement is obviously dated June 1, 2007, and I'd argue to the Court that the actual recording and the assignment in this context is not dispositive or frankly important because if you look at the statute under 37-10 -- I'm going to paraphrase it because it's such a long and confusing statute, so just bear with me when I'm paraphrasing.

It basically says that all deeds and conveyances of land including any assignments are valid so as to affect the right of substantive creditors or bona fide purchasers when they are

recorded.

Well, the reading of that statute is basically that whatever claim you have to the land has to be recorded before the subsequent creditor takes or the bona fide purchaser takes the property. So in other words, I believe the order is backwards. So in other words, our assignment wouldn't have had to have been recorded. Ms. Goldberg's claim would have had to have been recorded before a bona fide subsequent creditor, which is us, loaned the money.

So her recording was in 2008 with a lis pendens. Our recording was number one in 2005 with the original mortgage; number two in 2007 when the refinance mortgage was recorded. Respectfully, I believe the order has got that backwards about who needs to record first. The assignment needs to be recorded.

For instance, if somebody had an argument that they were a subsequent purchaser to us then our assignment -- the date of our assignment recording would be at issue. So respectfully I would ask the Court to change that ruling.

THE COURT: Take me back to the timeframe, the 2005/2007 timeframe.

MR. TILLMAN: Sure. 2005 -- I think it was

August 31, 2005, when Mr. Ryba bought the property. Countrywide Mortgage -- there's a second mortgage in there at some point. I don't remember the exact date. That's Regions Bank. In 2007 Countrywide -- Mr. Ryba basically refinances the original mortgage, adds a little bit to it, pays off the original Countrywide loan and mortgage. That gets satisfied, and now we have a new one in 2007. That's May -- I don't remember the exact date in 2007.

June 1st, 2007, all that gets securitized and sold to the Plaintiff. There was some confusion about that at the hearing. That's in the order, but that's the first the Court had heard of it. I acknowledge that that was the first the Court had heard of it. So June 1st, 2007, it was securitized and sold as evidenced by the Pooling and Servicing Agreement.

Then in 2008, Ms. Goldberg files a lis pendens in her lawsuit against Mr. Ryba, and then we get into 2011 and 2012 when the actual assignments are recorded.

THE COURT: Okay.

MR. TILLMAN: So that's the timeline.

THE COURT: Pursuant to statute, right? Assignment comes later?

MR. TILLMAN: Right. Exactly.

THE COURT: What you're saying is that the loan itself, which would have been the 2007 refi, was packaged up and sold, and then the Pooling and Servicing Agreement which was dated June 1 of '07?

MR. TILLMAN: Right. Which was before the lis pendens, which my argument here is that when you read the statute it's -- basically your claim has to be recorded before the subsequent person takes. So her claim is recorded in 2008. We didn't take when we filed the assignments in 2011 and 2012. We took when we purchased the loan in 2007.

THE COURT: All right.

MR. TILLMAN: My next argument is that there's a large portion of the order in which the Court states that Countrywide had constructive notice of Ms. Goldberg's claim. We think there are several errors of fact. Contrary to the evidence -- first the Court says that Countrywide had actual notice that Mr. Ryba was the borrower and broker of the loan. That's in the order at 18. There's nothing in any document that provides that Mr. Ryba was the actual broker of the loan, only that he worked for First Rate which was the broker of the loan. He was an employee.

The Plaintiff (sic) never introduced any expert testimony or any evidence or so forth that said it would be improper for an employee of a broker to obtain the loan or that that should put anybody on any kind of notice of inquiry that something was wrong.

As a matter of fact, Michael Ward, our witness, testified that it wasn't unusual for a loan application to state that the applicant is an employee of the broker. That's in the transcript at 107.

He testified that someone else at the brokerage could have brokered the loan for another employee. That's in the transcript at 108. The closing attorney from the original loan back in 2005, Roy Hutchinson, said he's been doing this for years. He testified that it didn't cause him any concern that Mr. Ryba was an employee of First Rate.

Again, the Plaintiff produced no contrary evidence to that, so it appears that the only evidence actually in the record is that this was not an improper practice to put anybody on any kind of inquiry notice of an issue. Then there was some discussion about Michael Ward testifying that he brokered two loans on his own property. That was not

actually his testimony. His testimony was that his company brokered two loans for him while he was an employee there, which is similar to what Mr. Ryba did.

The Court also said that Countrywide had actual knowledge that a no doc loan was not a typical mortgage loan -- that's in the order at 18 -- but there's no evidence in the record that at the time all this occurred, 2005, was the doc loan, and 2007 as well -- that that was in any way unusual.

Michael Ward testified that a no doc loan -- a no doc loan is not a -- he didn't testify that it was a no doc loan like you don't give them any documents. He basically said -- it's another way to say stated income. They don't verify your income. What he said was that it wouldn't raise any red flags. That's in the transcript at 108.

There's no testimony from any expert, no document, no testimony from the Plaintiff, no testimony from any of the witnesses that a no doc loan was in any way atypical at the time this was going on, which is relevant. If somebody's on notice there's got to be something that's unusual at the time this happened. There's just no evidence to support that that was in any way unusual at the time.

The Court also noted -- I'm going through this in detail because the Court ordered that as a group all these facts put them on constructive notice. So I'm addressing all the facts. I know it's tedious. I apologize.

The Court also stated that Countrywide had actual knowledge that although this was an investment property rented at far below market value -- that's in the order at Pages 18 and 19 -- there's no evidence demonstrated that Countrywide had that information or that they would know what fair market value for this property was. There's certainly no evidence that that information was unusual, that a negative rental -- in other words, a negative cash flow rental, was unusual or would have raised any red flags or have expert testimony on that. There are no loan officers who testified to that fact.

There was really no evidence presented concerning what actual fair market rental value for Ms. Goldberg's house was at the time. There were no appraisers, no experts. Ms. Goldberg isn't qualified to make that determination.

So Michael Ward, again, testified that it wasn't unusual to see negative or net rental amounts in a loan application or an appraisal. That was in

the transcript at 109. The closing attorney for the refinance, David Chard, testified that a negative rental amount would have raised no red flags with him at all.

So this would have been Ms. Goldberg's burden to show that Countrywide should have been on notice, number one, that this was a low rental amount, a negative rental amount; and number two, that that was somehow unusual at the time. It should have raised red flags. It should have put Countrywide on notice that there's a potential issue and they need to look deeper.

There's just no evidence supporting that. As a matter of fact, the evidence from Mr. Chard and Mr. Ward shows otherwise. We believe the Court erred in finding that -- had Countrywide inquired about when Mr. Ryba acquired the property, which was information left blank in his application, it would have discovered that he acquired it immediately before the Countrywide mortgage -- that's in the order at 19.

We believe that that runs contrary to another -- or contradicts another portion of the Court's order which was on Page 11 which states that the proceeds from the first loan were used to fund

the purchase transaction from Ms. Goldberg. In other words, the Countrywide loan money was directly used to pay off the existing note and mortgage, and -- an argument is that a purchase transaction is not unusual in any way, shape, or form, so the date wouldn't have raised any red flags.

I mean, Countrywide loans him the money and he purchases the property with the money. That's not unusual in any way. So the date on the application is not of any consequence.

And so if you take all of those things that I just discussed, the only thing that would support -- the only facts that the Court has cited to support its finding that Countrywide had constructive notice are the blank date on the application and the fact that the property had been refinanced several times since the 2005 purchase. That's going to include the second mortgages and home equity lines and so forth.

Even if you look at Mr. Chard's testimony, Mr. Chard said, No, multiple refinancings were not unusual at the time. That's in the transcript at 56, so again, the only evidence in the record is that the multiple refinancings were not unusual, would not have placed Countrywide on any sort of constructive notice at the signing at the time.

Also, the Court didn't address what Countrywide would have discovered had it actually scrutinized the transaction. First of all, the rental agreement that Ms. Goldberg signed specifically states, Don't use if an option to purchase is in place. She signed the agreement to purchase and sell. It says nothing about a repurchase option. So they get the rental agreement -- I mean the agreement to buy and sell -- the rental agreement says, Yeah, I don't have an option to purchase. The agreement by itself says nothing about it.

They would have seen Ms. Goldberg sign an affidavit -- an indemnity agreement as part of the deal which states there were no occupancies in the property, which runs contrary to her contention that she's renting it with a right to repurchase. The closing attorney -- Ms. Goldberg testified that she actually did attend the closing and didn't mention to the closing attorney that she had a repurchase option, and so had Countrywide actually done the inquiry into what happened, they would have seen documents that appear to show that there was absolutely no claim from Ms. Goldberg.

Then the Court also made note that the lease,

the rental agreement, provides that the tenant as owner, that that was a red flag as well. That was in the order at Page 19. If you looked at the rental agreement, which is Defendants' Exhibit 2, it was signed on August -- or dated August 12, 2005. This closing didn't occur until August 31st, 2005. That is Defendant's Exhibit 5, the HUD statement.

So when she signed that document the tenant was the owner. She was the tenant, and until August 31st she also owned the property, so that was a true statement, so Countrywide went to that document and would have seen a true statement right there based on the timing.

And then so the Court also rules that Ryba and First Rate Mortgage were agents of Countrywide such that Ryba's knowledge of the recasting scheme was imputed to Countrywide, and therefore they were on notice of the issue. That's in the Order at 20.

As I discussed earlier there is no basis in the statute to find that this was illegal recasting because there was no specific time and no specific price agreed upon between Ms. Goldberg and Mr. Ryba.

They didn't plead agency, and that prejudice says we didn't have time to conduct discovery on the issue. It's Ms. Goldberg's burden to show the facts

supporting this alleged agency, and she didn't produce any facts that showed the agency. The Court notes that Countrywide directed and controlled the information that Ryba and First Rate were required to submit. There's nothing in the testimony that shows that anywhere. There are no documents concerning the relationship between First Rate and Countrywide of what was required of First Rate. There are no good witnesses here from First Rate or Countrywide.

So Ms. Goldberg has to show some level of control, and has to show some evidence that Countrywide is controlling its alleged agents, First Rate and Mr. Ryba, and there's just no evidence of that. The only evidence is that First Rate -- somebody at First Rate brokered the loan and then Countrywide made the loan. That's not evidence. And I'll also point out that the Court cites some cases for the blanket proposition that mortgage brokers at the time were agents of the lenders, but I believe those cases don't stand for that proposition.

Those are all normal agency cases, fact specific, dealing with control, dealing with parent agency, dealing with those sorts of things. As a matter of fact, the last case cited, American Mortgage Company versus Woodward, 83 S.C. 521,

provides that intermediaries may be agents of the lender or at least agents of both the lender and the borrower. So it's just not clear in those cases. That is just a blanket rule.

Finally, the key issue with the agency or the agency issue is that -- or computing Mr. Ryba's knowledge up through First Rate, up to Countrywide, but if you looked at the case I cited, Charleston Library Society versus Citizens Southern National Bank -- and I'll read you a quote. It cites 201 S.C. 447.

It basically says you can't impute knowledge, whether knowledge is such that according to human nature and experience the agent is certain to conceal or where their agent is acting in an adversary relation to the principal or meditates a fraud against a principal or some third person in his own interest which would be defeated by disclosure.

So even if we assume that somehow -- we have proven that Mr. Ryba was the agent of Countrywide I don't believe -- I mean the Court's found that he's perpetrating a fraud that disclosure of which would adversely impact him, and I believe under that case you can't impute that knowledge to Countrywide.

We also believe the Court erred in holding

that Ms. Goldberg proved that Mr. Ryba fraudulently induced her to deed the property such that the deed or the mortgage are voidable. She's got to prove that Mr. Ryba made a misrepresentation to her that she relied on to her detriment. I take it sort of the assumption is because she said, He told me I could buy the property back, that this was somehow a representation that she relied on, but if we delve into the actual testimony and the actual documents they doesn't support that finding. The Purchase and Sale Agreement says nothing about the repurchase option. The rental agreement says it's not to be used until the option to purchase is in place.

Ms. Goldberg testified that she knew Mr. Ryba was going to finance the property with the very loan that my client refinanced. She knew he was going to get the loan. It's not like she didn't know that there was going to be a mortgage on the property after she sold it. That's in the transcript at 153.

She testified that there were no discussions and she had no understanding about whether Mr. Ryba was going to refinance those loans. So now we have a situation where she clearly didn't rely on some representation that he wasn't going to refinance that original loan. That's in the transcript at 154.

So she knew her alleged repurchase option was, in fact, going to be subject to an existing mortgage and it was left open whether that existing mortgage was going to be refinanced. So I would just argue to the Court that the testimony shows that she didn't rely on his assurances for much of anything as it related to how these transactions were going to be funded and whether there was going to be encumbrances on the property. As a matter of fact, she knew there was going to be an encumbrance on the property.

Of course Mr. Ryba did deed the property back to her as they agreed. That was after they filed a lawsuit. I get that, but that's a fact. We also think the Court erred in even allowing Ms. Goldberg to testify about the Purchase and Sale -- excuse me -- about the alleged unwritten repurchase option barred by the Statute of Frauds.

This is a real estate contract, so it clearly applies. I'll point out that in Ms. Goldberg's case against Mr. Ryba, Judge Dennis ordered in that case that the Parole Evidence Rule barred testimony concerning this alleged repurchase option and that she had no breach interest so he granted summary judgment as to her Breach of Contract Action in that case. So we believe that the Parole Evidence Rule

certainly will bar her testimony on that, but even if she's allowed to testify we don't think they have proven fraudulent inducement, particularly to the fact that there's no misrepresentation, and she certainly didn't rely on it as it relates to financing the purchase.

Also, the Court didn't address our right to be equitably subrogated. Again, going back to the original purchase where Mr. Ryba bought the property back in 2005, the HUD statement that was marked shows that if they paid off a $199,000 note to Carolina First that already had a mortgage on the property, so we think at the very least we ought to be subrogated to -- our mortgage ought to be enforceable up to that 199,000 or else Ms. Goldberg gets a windfall.

I know that Mr. Holmes is going to argue that that was not pled in the case and that we shouldn't be allowed to argue. Number one, it's a matter of equity. We believe that it's -- I'm not aware of a case that says you have to plead equitable subrogation.

Number two, he's asking that he be allowed to amend to add the agency defense or the agency allegation because that was never pled. If that's going to be the case I don't see any reason why we

shouldn't be able to amend No. 15(a) to assert the equitable subrogation argument. I mean, the evidence is in. It's clear. It's uncontroverted. She owed 199,000 to Carolina First Bank. That got paid off. It got paid off as a direct result of our assignor's loan, so we believe that certainly fits the equitable subrogation elements.

Then finally, I won't get into this in too much detail, and the Court can read it in the brief, but we think the Court improperly took the position that there's a certain point regarding Countrywide's bad acts.

The real estate market collapsed. The value of the property and so forth, without giving oral argument on the issue -- and also, we believe that the Court's reliance on the ability of the Plaintiffs to mitigate its damages through title insurance was also in error. I don't think that's a relevant consideration to be taken into account when determining whether, as a matter of equity, the bank or the lender can foreclose. I'm not aware of a case that supports that.

Further, there's no evidence that title insurance actually will cover it. I'm here but that doesn't mean that we don't have reservations of

rights and so forth that may impact their ability to recover from the title insurance company.

Thank you for entertaining all of that.

THE COURT: As Mr. Runyon says, Why do we call it insurance?

MR. TILLMAN: That's right. I get that. I understand that. Anyway, thank you for entertaining all of that.

THE COURT: All right, Mr. Tillman. Thank you. It is a lot. Mr. Holmes, let me turn to you.

MR. HOLMES: It is a lot.

THE COURT: You don't have to address it seriatim. I don't require that.

MR. HOLMES: With regard to the Recasting Statute, I think it's important that the Recasting Statute is specifically included in the section regulating mortgage loan brokers registered on residential real estate, real property.

So included within Title 40, Section 58 is the definition of what a mortgage broker's not allowed to do, and a mortgage broker is not allowed to say, Well, rather than get you a mortgage on your property that you came to me for, you go ahead and deed the property to me, I'll get a mortgage in my name, and then I'll lease it back to you, and sell the property

back to you at a later date.

If this case doesn't show that this is a recasting transaction I don't know what would be. Now, there are some provisions in here. They can do it, but they have to do specific disclosures, and they have to have Ms. Goldberg sign a statement that she has an independent lawyer that's representing her in the transaction. It's a consumer protection law that's designed to protect people who don't have the experience and knowledge in mortgage transactions who turn to a professional who is licensed by the state who has a sign on his door that he's a licensed mortgage company for help that they will not be taken advantage of.

So I think the Recasting Statute does apply in this case. I think that's exactly what happened in this situation. I don't have any -- I don't know. We don't have to address too much about reopening it against the Rybas. We don't really have any objection to that, but we did point out that we believe Mr. Ryba has filed bankruptcy so that may not be an available action.

Then we get to the Pooling Agreement, and you know, in this case we've been round and round about when did -- first we thought it was Bank of America,

and then it was Deutche Bank or Wells Fargo. I'm not sure who it is. When did they actually get the mortgage? Our position was that the statute dealing with the notice, it doesn't just apply to the mortgages. It applies to assignments of mortgages by its very terms.

So that was a big issue all the way through the case until we get here in the courtroom in the middle of the trial and all of a sudden we're told, well, no. No. We didn't get these mortgages by assignments as we've been alleging since this case started and in our pleadings and Motions for Summary Judgment. We actually got it under a Pooling and Servicing Agreement in June of 2010.

We get through the trial and I'm the one -- I made the motion. I said, Well, they haven't proven what they paid for value. That's when this came up. You said, Well, they talked about this Pooling Agreement. Send them a copy of it. They did. Your Honor said, If you want, we can reconvene. We can have a hearing on it. You also said if you want to submit a brief on the issue you can do that.

Well, they did send the agreement to me. It's in the record now, so I ask you to look at it. If you look at the agreement, Countrywide isn't even a

party to the agreement. Whatever it says in this agreement that for other good and valuable consideration, this is what's going on, that doesn't go to the benefit of Countrywide. Countrywide, and we don't know -- Countrywide apparently turned over thousands of mortgages to this Pooling Agreement.

We don't know what they were paid for, when they were paid for, were they paid for up front, were they paid only after the mortgages were securitized and sold? We don't know. It's not in the agreement. We do know the agreement does contain lots of provisions for credit default swaps, who's going to manage the risks and the actions.

So I don't -- even if you look at this 600-page document, or whatever it is, there's nothing in here that says what Countrywide received or was paid for this mortgage or when.

I think I've already addressed -- well, the Shelter Rule is the next point. See, the Shelter Rule is not just -- the Shelter Rule is if you buy from somebody who is a holder in due course, then you're protected. The title is sanctified. So it only comes into play if Countrywide is a holder in due course. In order for Countrywide to be a holder in due course, it's not just paying back. You found

they paid when they funded the initial loan, but they have to do it without notice of any problems, in good faith, and fair dealing, an arm's-length transaction.

So that became the issue in the case, did Countrywide have enough knowledge of what was going on in this case that they can be held constructively with constructive notice of the fraud and illegal casting. I think it is important. The way the order is written, no one factor in and of itself is enough to say, well, that proves it right there. It's only the totality of the circumstances. Maybe it's not wrong for a mortgage broker, a licensed mortgage broker working for a mortgage broker firm to broker, their own mortgages. It would at least raise some conflict of interest and then we would say, well, maybe we ought to look at this a little more here.

Then if you start looking at -- there's a place on the mortgage application. It says, Well, how long have you owned this property? It was left blank. There must be a reason there's a place on the form to say how long have you owned it? The year you acquired it? It's not just there to take up space, but it's left blank. Had they asked that they would have found out that he was just acquiring this property.

He's acquiring it for basically 60 percent of its fair market value. They keep saying, Well, there's no evidence of what the property was worth. Well, there was an appraisal that was done. They know how much the property was worth. They know how much it was rented for. They know what the comparable rents are in the neighborhood.

They ask on the form, what is -- the property will be -- and it says, Investment property. Well, who has investment property that they're renting for two-thirds of the fair market rent at a net monthly loss to themselves? Maybe in and of itself that wouldn't be enough, but you start putting some of these things together, and they start adding up.

You know, who was the property rented to? They would have found out -- if they would have just asked who the property was rented to they would have found out that it was rented to Ms. Goldberg who is the person that owned it, which certainly should raise a flag since it's illegal for a mortgage broker to enter into an agreement to take title to a piece of property and rent it back to the owner. Now, that's by law. That should raise a red flag to somebody to say, Wait a minute. What's going on here? How can you be buying a piece of property for

$200,000 that is worth $350,000 and not giving them anything out of the transaction?

I think if you do look at all of it together, it's enough to put them on notice to ask certain basic questions about what is going on in this transaction.

The testimony in terms of her having committed fraud -- it's unfortunate, but in every fraud case every time the Plaintiff comes to Court in a fraud case and says, I was defrauded of my property, they always end up looking like they were stupid. Excuse me. They were just gullible and taken advantage of. That's just the nature of the way it works.

Her story was consistent with what she was looking for. She wasn't looking to sell her home. To come into Court here today -- Mr. Tillman, I don't mean any disrespect, but to say that the day Mr. Ryba purchased her home, like it was an arm's-length fair transaction, that's just not supported by the evidence that we heard.

You had a mother with a child who had financial problems. She was desperate to save the home she got from her grandfather. She was never looking to sell it. She was looking to get a mortgage loan. It's only because Mr. Ryba said, You

can't quality for one, but I've got a deal for you. Just sign it over to me. I'll get the mortgage and give it back to you, let you rent it back.

The agency, and I admit that everything we're working up on this case, trying to get ready -- at least before the trial, I did file a pretrial brief, and I laid out what our defense was in absolute detail right down to the argument that the mortgage broker would be the agent of Countrywide under existing South Carolina law. The testimony was that Countrywide decided what kind of information it would require on this loan.

They're the ones who could have asked for any documentation or not asked for it. They asked for information that's not provided. The information they are provided doesn't make sense. It's economic insistences but they make no inquiries at all, none, that we can tell.

My understanding of the law is that you cannot be willfully blind to what's going on and then claim, Oh, I didn't have any notice. So to come in today and say, Well, I don't have any direct evidence that Countrywide, that's been bankrupt now for I don't know how many years -- since about 2009 I suspect -- I didn't have any evidence or direct testimony that

they knew that this loan, this -- Your Honor, the word for it is a reverse amortization loan with a variable interest rate, a no doc loan -- it was a sub prime mortgage. As near as I can tell it's a sub prime mortgage on steroids.

So they decide what they want. They decide they can ask any questions they want to, and they don't. They don't ask anything. They just let it go through. They have a form that says, We're going to have -- you know, once we get the application we'll have a review. We'll go over it in person and all, and it turns out that that wasn't even done until the day of the closing. I think that's the day it was signed.

So I believe that there is evidence in the record taken in its totality that would show that Countrywide was offering a loan. It was a sub prime loan. It was a loan they decided didn't need to have any documentation supporting it. They asked for information and when it wasn't given to them they never asked any questions as to why not.

When they were given information it was inconsistent with basic common sense on why would you have investment property rented at $500 less than market value at a loss every month. They didn't ask

any questions. I figured you get to a point where now it's willful blindness to what's out there.

In regards to the equitable subrogation I cite the cases in there. That applies -- if I read the cases correctly, you and I own a piece of property together, and it's going into foreclosure. I default and you pay the mortgage, you then become equitably subrogated to the mortgage company because you paid it off. So you then stand in the shoes. An element of it is they have to be secondarily liable on the original mortgage. Countrywide was never secondary liable on that mortgage so they can't be equitably subrogated.

I don't know what Judge Dennis's ruling has to do with this at this late stage, but I do know that Ms. Goldberg appealed that decision. It was on appeal when Mr. Ryba filed bankruptcy. It just put a stop to all of that. So there never was any final judgment from Judge Dennis that would be binding in this case.

I had filed my brief. I'm trying to address every one of the issues. If there's any issue that you have a particular concern about let me know.

THE COURT: On the issue you brought up about the amendment for agency, what's your position there?

Did you put them on notice?

MR. HOLMES: My amendment -- this is a case in which the legal theory of the case is changing throughout, and so we're responding to the allegations. When they first alleged that it was Bank of America that owned the loan, we came up with what I thought would be a creative greater argument of why Bank of America couldn't be a holder in due course because it didn't buy Countrywide in an arm's length transaction, and in fact, ordered a bulk sale. I think we figured it out that it was .09 cents on the dollar.

So then we changed it up, and now it became the HBS Bank, and we argued at length at summary judgment, and Your Honor was concerned enough that Your Honor said at that hearing, you know, when we have the final hearing, how about bringing in some evidence about what are the standards for issuing loans? That was never produced.

And then we get -- before that I filed a motion in which I laid out my agency argument. The rule is, you can amend the pleadings to conform to the proof at any time even after the verdict so long as it's within justice and there's no surprise.

Well, everybody acknowledged that I served a

pretrial brief before trial. They knew that's what I was going to argue, so I think that in fairness and under the facts of this case that it's an Amendment to conform to the proof because the facts are changing at all times, and we're trying to respond to the new allegations.

THE COURT: Thank you, Mr. Holmes. Any reply?

MR. TILLMAN: Yes, Your Honor. First of all, I'll point out that there was no testimony just discussed by Mr. Holmes. He didn't quote you one piece of the contract in making all of those statements.

Number two, we talked a little bit about the Recasting Statute, and he quoted you specific language about what we would have needed to do to make the recasting appropriate. Specific, unambiguous language of the statute. The specific unambiguous language of the statute requires the deal to be for a specific price at a specific time.

Ms. Goldberg testified they didn't have a specific price, and there was no specific time. This was not recasting under the statute. It's plain and simple.

The PSA, the Pooling and Servicing Agreement, I will say that the Motion for Summary Judgment

didn't talk about the Pooling and Servicing Agreement. I will also say that they never served discovery requests on such that they could make the claim that our testimony was a surprise. Nobody was ever deposed. We weren't served discovery requests. So the Pooling -- it's not like we had some duty to get them the Pooling and Servicing Agreement before trial.

We came here. We brought the man. Mr. Ward testified about the Pooling and Servicing Agreement. Now I've put it in here. I don't think there's anything inappropriate about that. The document speaks for itself. This was a securitized mortgage and note that was paid for as part of a pool of loans. We believe that's value. On that point I do want to add that we can either be a bona fide lender in two ways.

Number one, we can be a bona fide lender for value without notice because remember this is June 1st, 2007. Lis pendens is in 2008. We can be a bona fide lender for value without notice if we show you that we, the Plaintiff now, paid value without notice of Ms. Goldberg's claim.

Clearly, we didn't have notice in 2007 of her claim. The only issue is whether we actually paid

value. We believe the PSA shows that. We can also be -- the second bite of the apple is to be protected under the Shelter Rule, which means that if the Court finds that Countrywide was a bona fide lender for value without notice we take that as an assignee. So there's two ways that we can prevail here. I didn't want the Court to get confused by that. If you have any questions just let me know. I didn't want that to go unsaid.

He talked a little bit about the appraisal, showing the value of the property, but I think our dates are getting confused a little bit. Remember, Mr. Ryba purchased this property at allegedly 60 percent on the dollar in 2005. The appraisal was in 2007. That appraisal that was put in the record was from 2007 from the refinance and not from the purchase. So I believe that that is not even an appropriate basis on which to make any kind of finding regarding fair market value.

Mr. Holmes said, Well, what if Countrywide had asked certain basic questions? Well, who would they ask such questions to? What would they ask? What would they see if they asked those questions? Those are all things that are kind of important when you say somebody is on constructive notice that Mr. Ryba

defrauded Ms. Goldberg. None of that has ever been argued. There's no evidence of it. What should they have done? I don't know. I still don't know what they should have done. I know if they would have asked for the rental agreement it says there is no option to purchase in place.

On the equitable subrogation issue, the -- Mr. Holmes argued that we weren't secondarily liable. There are plenty of cases out there where a refinance lender is allowed to step into the shoes of a prior lender when they've paid that off, when they've paid off the note or the money owed to the prior lender.

That's what being secondarily liable is. In other words, if I don't pay that off, if that money is not used to pay that off, then the borrower still owes it. That's secondarily liable. So there are plenty of cases that allow a refinance lender to step ahead into the shoes of a prior lender.

I'll also point out that the agency issue -- we talked about the changing nature of the case and all that kind of stuff, but remember, the agency issue relates to what happened in 2005. Was Clifford Ryba the agent of First Rate Mortgage, and was First Rate Mortgage the agent of Countrywide in 2005 when he purchased the property? That has never changed in

the case.

That fact has been the same fact from day one. It was the same fact that it was back in 2008 when they brought the case against Mr. Ryba. If agency was going to be pled it should have been pled right off the bat, not a day before trial with the emergence of the pretrial brief.

Then finally, I would just ask if the Court would allow me to mark Judge Dennis's Motion for Summary Judgment for whatever it's worth to get it in the record -- excuse me, his order on the Motion for Summary Judgment in the prior case just for whatever it's worth to get it the record? We believe it shows issue preclusion, but that would be obviously for the Court to decide.

THE COURT: Mr. Holmes, do you want to be heard on that?

MR. HOLMES: Your Honor, that wasn't timely filed. It wasn't filed at the trial. Whatever Judge Dennis ordered was appealed, so it wasn't a final order, and it wouldn't have any effect, so I would object to it.

THE COURT: I'm going to exclude it. I'm not going to allow that. Okay?

Here's what I would like you to do, though. I

would like each of you to present me with proposed orders. Ms. Lybrand, did you want to be heard today on anything in particular?

MS. LYBRAND: No. I can provide -- I think Mr. Tillman -- the primary reason I'm here is to discuss the nature of the PSA and I think that Mr. Tillman addressed that. Discovery wasn't served on us, so Mr. Holmes didn't seek to require the information, which would have resulted in this PSA being previously provided to him. He would have had that knowledge. He could have sought information as to how Countrywide was a participant in that transaction, and he could have sought additional information as to the value, but the nature of the document itself is very clear as to the purchase of those loans, the deposit of those loans into the trust, and the certificates and the value that was presented as part of those certificates being issued to the certificate holders.

THE COURT: Who were the parties to that agreement?

MS. LYBRAND: The ALT-A Security Corp is the depositor. Wells Fargo Bank is the master servicer and securities administrator. Clayton Fixed Income Services, Inc., is the credit risk manager. HSBC

Bank USA National Association is the trustee, who is the trustee Plaintiff, and then the certificates for the Series 2007-084.

In the documents the documents indicate the ALT-A-Security Corps, as the depositor, was the owner of the note at the time that that loan was deposited into the trust.

THE COURT: Who was the owner? I'm sorry.

MS. LYBRAND: The depositor was ALT-A Security Corp, and so ALT-A Security Corp had likely obtained ownership of that note prior to the deposit into this note as a means to create the pooling and servicing of the note.

Again, any of that information could have been discovered, and any of the additional information with regard to the parties to the agreement could have been discovered, and Mr. Holmes and Mr. Goldberg chose not to seek any discovery or take any depositions prior to trial. So any allegation or discussion about it being unfair that he was notified of this at the time of the trial seems a little preposterous in that he had plenty of opportunity to do so and did not.

THE COURT: Very good. So what I'm going to ask that you each do is to provide me with proposed

orders as to why I should or should not grant the motion, and I would like you to spend some time on the issue of the amendment being sought at the agency discussion and equitable subrogation discussion and those orders, and then also on the argument, which I think has been pretty well made today, and that has to do, of course, with the issue of recasting -- okay -- the facts in support of it. I think the Defendant's position -- the totality and circumstances, and the Plaintiff's position is that it's got to meet the strict language of the statute. Okay? So just focus there.

It's my practice to give you-all 30 days. I know we're going into the holidays. Does that provide you-all with enough time to get something to me?

MR. TILLMAN: That's plenty of time.

THE COURT: And I'll get you an answer within 30 days of that. Okay?

MR. HOLMES: Thank you, Your Honor.

MR. TILLMAN: Thank you.

THE COURT: Back to the issue of Mr. Ryba and that amendment, Mr. Tillman, I think you just need to make sure of -- he's been protected by the bankruptcy stay. I've been down that road myself. You don't

want to go down that road. If Ms. Ryba is not then I think that's the next question.

MR. TILLMAN: And do you want me to put that -- I'll get that information. Do you want me to put it in the proposed order and serve it on his attorney?

THE COURT: Why don't you do that separately?

MR. TILLMAN: Okay.

THE COURT: In other words, not in this order, but do that separately so that we get that and then contact certainly Mr. Ryba or Ms. Ryba's counsel. Okay?

MR. TILLMAN: Okay, great. Thank you.

THE COURT: Thank you-all.

(The proceedings were concluded at 4:25 p.m.)

State of South Carolina)
)
County of Charleston) C E R T I F I C A T E

I, Christine A. Smith, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 27th day of May, 2016 at Charleston, Charleston County, South Carolina.

_____
Christine A. Smith
Notary Public
My Commission Expires
May 12, 2021

B. Type of Loan					
1. ☐ FHA 2. ☐ FmHA 3. ☒ Conv. Unins. 4. ☐ VA 5. ☐ Conv. Ins.		6. File Number: 05RRP80A	7. Loan Number: 112421445	8. Mortgage Insurance Case Number:	

C. NOTE: *This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside of closing; they are shown here for informational purposes and are not included in the totals.*

D. NAME AND ADDRESS OF BORROWER: Clifford Ryba and Beverly Ryba

E. NAME AND ADDRESS OF SELLER: Carol A. Goldberg and
34 Tarleton Drive
Charleston, SC 29407 TIN:

F. NAME AND ADDRESS OF LENDER: America's Wholesale Lender
P.O. Box 10212
Van Nuys, CA 91410

G. PROPERTY LOCATION: 34 Tarleton Drive
Charleston, SC 29407

H. SETTLEMENT AGENT: Roy Hutchinson

PLACE OF SETTLEMENT: 147 Wappoo Creek Drive, Suite 202
Charleston, SC 29412 TIN:

I. SETTLEMENT DATE: August 31, 2005

PENGAD 800-631-6989

PLAINTIFF'S EXHIBIT 1 3-24-15

J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER:		400. GROSS AMOUNT DUE TO SELLER:	
101. Contract Sales Price	$205,000.00	401. Contract sales price	$205,000.00
102. Personal Property		402. Personal property	
103. Settlement charges to borrower: (from line 1400)	$1,232.44	403.	
104.		404.	
105.		405.	
ADJUSTMENTS FOR ITEMS PAID BY SELLERS IN ADVANCE		ADJUSTMENTS FOR ITEMS PAID BY SELLERS IN ADVANCE	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. GROSS AMOUNT DUE FROM BORROWER: ▶	$206,232.44	420. GROSS AMOUNT DUE TO SELLER: ▶	$205,000.00
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)	$163,600.00	502. Settlement charges (line 1400)	$4,633.92
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204. Proceeds from second mortgage	$20,857.00	504. Payoff of first mortgage loan Carolina 1st	$199,589.75
205.		505. Payoff of second mortgage loan	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
ADJUSTMENTS FOR ITEMS UNPAID BY SELLERS		ADJUSTMENTS FOR ITEMS UNPAID BY SELLERS	
210. City/town taxes to		510. City/town taxes to	
211. County taxes 01/01/051 to 08/31/05	$676.33	511. County taxes 01/01/05 to 08/31/05	$676.33
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. TOTAL PAID BY/FOR BORROWER: ▶	$185,033.33	520. TOTAL REDUCTIONS IN AMOUNT DUE SELLER: ▶	$205,000.00
300. CASH AT SETTLEMENT FROM/TO BORROWER:		600. CASH AT SETTLEMENT TO/FROM SELLER:	
301. Gross amount due from borrower (line 120)	$206,232.44	601. Gross amount due to seller (line 420)	$205,000.00
302. Less amount paid by/for borrower (line 220)	$185,033.33	602. Less total reductions in amount due seller (line 520)	$205,000.00)
303. CASH (☒ FROM (☐ TO) BORROWER: ▶	$21,199.11	603. CASH (☐ FROM) (☒ TO) SELLER: ▶	$0.00

Previous Editions Obsolete — Amended 10/97 — HUD-1 (3-86) - RESPA, HB 4305.2

SUBSTITUTE FORM 1099 SELLER STATEMENT: The information contained in Blocks E, G, H, and I and on line 401 (or, if line 401 is asterisked, lines 403 and 404) is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction will be imposed on you if this item is required and the IRS determines that it has not been reported.

SELLER INSTRUCTIONS: If this did not include your principal residence, see Form 2119, Sale or Exchange of Principal Residence, for any gain, and your income tax return for other transactions, complete the applicable parts of Form 4797, Form 6252 and/or Schedule D (Form 1040).

You are required by law to provide (see box H) with your correct taxpayer identification number. If you do not provide (see box H) with your correct taxpayer identification number, you may be subject to civil and criminal penalties imposed by law, and Under penalty of perjury, I certify that the number shown on this statement is my correct taxpayer identification number.

On-Line Tax Information Systems, Inc. — Seller's Signature

Page 1

GOLD00102

ROA_0335

		PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
700.	TOTAL SALES / BROKER'S COMMISSION: BASED ON PRICE $ 0 % =		
	DIVISION OF COMMISSION (LINE 700) AS FOLLOWS:		
701.	$ to no real estate agents retained		
702.	$ to		
703.	Commission paid at settlement		
704.			
	ITEMS PAYABLE IN CONNECTION WITH LOAN:		
801.	Loan origination fee %		
802.	Loan discount %		
803.	Appraisal fee to		
804.	Credit report fee First Rate Mortgage	$0.00	$26.85
805.	Lender's inspection fee		
806.	Mortgage insurance application fee to:		
807.	Assumption fee		
808.	Processing fee to First Rate Mortgage	$0.00	$599.00
809.	Express mail fee to First Rate Mortgage	$0.00	$16.85
810.	Flood zone certification fee to America's Wholesale Lender	$0.00	$28.00
811.	Tax service fee paid to Countrywide Tax Services	$0.00	$60.00
	ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE:		
901.	Interest from 08/31/05 to 09/01/05 @ $ 6.16 / day	$0.00	$6.16
902.	Mortgage insurance premium for mos. to		
903.	Hazard insurance premium for 1 yrs. to State Farm	$0.00	$1,639.00
904.	Flood insurance Premium for 1 year to State Farm	$0.00	$1,115.00
905.			
	RESERVES DEPOSITED WITH LENDER:		
1001.	Hazard insurance months @ $ per month		
1002.	Mortgage insurance months @ $ per month		
1003.	City property taxes months @ $ per month		
1004.	County property taxes months @ $ per month		
1005.	Annual assessments months @ $ per month		
1006.	Flood insurance months @ $ per month		
1007.	months @ $ per month		
1008.	Aggregate Accounting Adjustment		
	TITLE CHARGES:		
1101.	Settlement or closing fee to		
1102.	Abstract or title search to Amy Johnson	$0.00	$179.00
1103.	Title examination to		
1104.	Title insurance binder to		
1105.	Document preparation to Roy Hutchinson (deed, affidavits, certifications, satisfaction)		$100.00
1106.	Notary fees to		
1107.	Attorney's fees to Roy Hutchinson	$242.44	$107.56
	(includes above items Numbers): 1101, 1103, 1105		
1108.	Title insurance to Investors Title Insurance Company	$387.00	
	(includes above items Numbers):		
1109.	Lenders coverage $ 163,500.00		
1110.	Owner's coverage $ 163,500.00	$50.00	
1111.			
1112.			
1113.			
	GOVERNMENT RECORDING AND TRANSFER CHARGES:		
1201.	Recording fees: Deed $ $10.00 ; Mortgage $ $18.00 ; Releases $	$28.00	
1202.	City/county tax / stamps: Deed $ $758.50 ; Mortgage $		$758.50
1203.	State tax / stamps: Deed $; Mortgage $		
1204.			
1205.			
	ADDITIONAL SETTLEMENT CHARGES:		
1301.	Survey to		
1302.	Pest inspection to		
1303.	Line 812. Commitment fee to America's Wholesale Lender	$525.00	
1304.	Line 813. Yield spread premium to First Rate Mortgage $2,043.75 POC AWL		
1305.			
1306.			
1307.			
1400.	TOTAL SETTLEMENT CHARGES (Enter on line 103, Section J and line 502, Section K)	$1,232.44	$4,633.92

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Borrower: Clifford Ryba Date: August 31, 2005 Seller: Carol A. Goldberg Date: August 31, 2005

Borrower: Beverly Ryba Date: August 31, 2005 Seller: _____ Date: _____

The HUD-1 Settlement Statement which I have prepared is a true and correct account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

_____ Date: _____ Settlement Agent: Roy Hutchinson Date: August 31, 2005

WARNING: It is a crime to knowingly make false statements to the United States on this or any similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

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SSI, FORM 1129

BK E Y551 PG 150

STATE OF SOUTH CAROLINA)
) TITLE TO REAL ESTATE
COUNTY OF CHARLESTON)

KNOW ALL PERSONS BY THESE PRESENTS, THAT I, CAROL A. GOLDBERG, formerly known as CAROL A. GARFIELD, in the County and State aforesaid, in consideration of the sum of TWO HUNDRED FIVE THOUSAND AND NO/HUNDREDS DOLLARS ($205,000.00) to me in hand paid at and before the sealing of these presents by CLIFFORD RYBA and BEVERLY RYBA, the receipt and sufficiency of which are hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said CLIFFORD RYBA and BEVERLY RYBA, as Joint Tenants with Rights of Survivorship, and not as Tenants in Common, their Heirs and Assigns the following real property, to wit:

SEE EXHIBIT A ATTACHED HERETO FOR PROPERTY DESCRIPTION

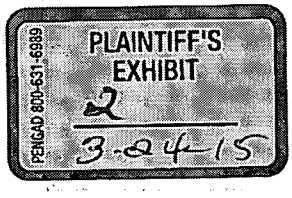
GRANTEES' ADDRESS: 16 Fieldfare Way
Charleston, SC 29414

TOGETHER with all and singular the Rights, Members, Heriditaments and Appurtenances to the said Premises belonging or in anywise incident or appertaining.

SUBJECT to zoning ordinances, restrictions, easements, rights-of-way and other matters affecting the property as previously recorded in the R.M.C. Office for Charleston County.

TO HAVE AND HOLD, all and singular, the said Premises before mentioned unto the said CLIFFORD RYBA and BEVERLY RYBA, as Joint Tenants with Rights of Survivorship, and not as Tenants in Common, their Heirs and Assigns in fee simple forever.

AND I do hereby bind myself, my Heirs, Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said CLIFFORD RYBA and BEVERLY RYBA, as Joint Tenants with Rights of Survivorship and not as Tenants in Common, their Heirs and Assigns, against me and my Heirs, and against every person whomsoever lawfully claiming, or to claim the same or any part thereof.



WITNESS my Hand and Seal, this 31st day of August, 2005, in the Two Hundred Thirtieth Year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

First Witness

Second Witness

Carol A. Goldberg (L.S.)
CAROL A. GOLDBERG, formerly known as CAROL A. GARFIELD
formerly known as
Carol A. Garfield

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PROBATE

PERSONALLY appeared before me the undersigned witness who, being duly sworn, did depose and say that s/he saw the within named CAROL A. GOLDBERG, formerly known as CAROL A. GARFIELD sign, seal and, as her act and deed, deliver the within written Title to Real Estate, and that s/he with the other subscribing witness witnessed the execution thereof.

First Witness Signs Again

SWORN TO BEFORE ME
this 31st day of August, 2005.

Notary Public of South Carolina
My Commission Expires: 2-5-07

EXHIBIT "A"

ALL that lot, piece or parcel of land, with the buildings thereon, situate, lying and being in the County of Charleston, State of South Carolina, and known and designated as Lot No. 461, as shown on a plat of a portion of the subdivision known as South Windermere, made by J. O'Hear Sanders, Jr., Surveyor, dated February 1953, and recorded in the R.M.C. Office for Charleston County in Plat Book "J", Page 44; said lot having such size, shape and dimensions, more or less, as will by reference to said plat more fully appear, and being bounded as shown on said plat.

BEING the same property conveyed to Grantor Carol A. Garfield n/k/a Carol A. Goldberg by Deed of Distribution of the Estate of Louis Garfield (Charleston County Probate File No. 93-ES-10-00757) dated February 21, 1994, and recorded February 22, 1994 in Book F239, Page 434, in the RMC Office for Charleston County.

TMS NO. 421-09-00-003

BK: Y551 PG 153

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

AFFIDAVIT

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

1. I have read the information on this Affidavit and I understand such information.

2. The property is being transferred BY CAROL A. GOLDBERG fka CAROL A. GARFIELD TO CLIFFORD RYBA and BEVERLY RYBA ON AUGUST 31, 2005

3. Check one of the following: *The DEED is*
   (a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
   (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
   (c) _____ EXEMPT from the deed recording fee because (exemption# _____)
   (Explanation If required) _____
   (If exempt, please skip items 4-6, and go to item 7 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
   (a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $ 205,000.00
   (b) _____ The fee is computed on the fair market value of the realty which is $ _____
   (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is $ _____

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

6. The DEED Recording Fee is computed as follows:
   (a) $205,000.00 the amount listed in item 4 above
   (b) 0.00 the amount listed in item 5 above (no amount place zero)
   (c) $205,000.00 Subtract Line 6(b) from Line 6(a) and place the result.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as : closing attorney/settlement agent

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

LeRoy P. Hutchinson

Grantor, Grantee, or Legal Representative connected with this transaction

LeRoy P. Hutchinson

Print or Type Name here

SWORN TO BEFORE ME THIS 31st day of August, 2005.

Notary Public for South Carolina
My commission expires: 2-5-07

BK Y551PG154

RECORDER'S PAGE

***NOTE*: This page MUST remain with the original document**

FILED
September 1, 2005
3:52:55 PM
BK Y551PG150
Charlie Lybrand, Register
Charleston County, SC

Filed By:

Roy Hutchinson
147 Wappoo Creek Dr.
Suite 202
Charleston SC 29412

mff
LTV

DESCRIPTION	AMOUNT
Recording Fee	$ 10.00
State Fee	$ 533.00
County Fee	$ 225.50
Postage	
TOTAL	$ 768.50

$ Amount (in thousands): 205

DRAWER: B

AUDITOR STAMP HERE
RECEIVED FROM RMC
OCT - 4 2005
PEGGY A. [illegible] EY
CHARLESTON COUNTY AUDITOR

PID VERIFIED BY ASSESSOR
REP
DATE 10/04/05

DO NOT STAMP BELOW THIS LINE

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

OWNER'S AFFIDAVIT AND INDEMNITY AGREEMENT

On this 31st day of August, 2005, before me appeared the undersigned, to me personally known, who being duly sworn, said that:

1. He/she is the owner of the property described on Exhibit A attached hereto and incorporated herein by reference (hereinafter the "Property").

2. He/she ✓ is ___ is not a resident of the State of South Carolina and ✓ is ___ is not a citizen of the United States of America, and has never been known by any other name except (IF NONE, WRITE "NONE"; if known by another name, give name and dates known as same): none

3. The undersigned has owned the Property continuously for 11.5 years last past, and his/her enjoyment thereof has been peaceable and undisturbed, and the title to said Property, or any portion thereof, has never been disputed or questioned during his/her period of ownership; nor does the undersigned know of any facts or allegations by which the title to or possession of said Property, or any portion thereof, might be disputed or questions, or by reason of which any claim to any of said Property might be asserted adversely to Seller and his/her successors in title, except as follows (IF NONE, WRITE "NONE"): none

4. The undersigned affirms that there are no tenancies, occupancies or other occupations, or any other leases, chattel mortgages, financing statements, retention or reversion of title agreements, liens or contracts (including, without limitation, real and/or personal property taxes, assessments, regime fees, mortgages and/or judgments) against the undersigned and/or affecting the Property and/or any personal property located therein (including, without limitation, heating and air conditioning systems, fixtures, appliances, furnishings or equipment) except as follows (IF NO MORTGAGES OR OTHER LIENS OUTSTANDING, WRITE "NONE"): none

(a) Real property taxes for and user fees for 2005 and subsequent years.

(b) Mortgage from Carol A. Goldberg to Jerry Zucker recorded in Book P452, Page 695 to secure $200,000.00 (to be paid at closing).

5. The undersigned affirms that all work, labor and materials supplied to the Property (including, with limitation, architect, engineer and surveyor fees) have been fully paid, and that he/she knows of no contract for the making of repairs or improvements on or to the Property except as follows (IF NONE WRITE "NONE"):

See HUD-1 Settlement Statement for payments to service providers

6. The undersigned affirms that there are no pending divorce proceedings or property settlement agreements or court orders that affect the ownership of the Property except as follows (IF NONE, WRITE "NONE"): None

7. No proceedings in bankruptcy have ever been instituted by, or against, the undersigned, nor has he/she ever made an assignment for the benefit of creditors except as follows (IF NONE, WRITE "NONE"): None

8. The undersigned knows of no action or proceeding relating to the Property which is now pending in any state or federal court in the United States of America, nor does he/she know of any state or federal judgment or any state or federal lien of any kind or nature (including, without limitation, tax liens) which now constitute a lien or charge upon the Property except as follows (IF NONE, WRITE "NONE"): None

9. The undersigned agrees to indemnify, defend and hold harmless Clifford Ryba and/or Beverly Ryba, LeRoy P. Hutchinson, America's Wholesale Lender and/or Investors Title Insurance Company from any and all losses, costs, damages and expense of every kind (including, without limitation, attorney's fees) in connection with any claims arising out of any misrepresentation (whether intentional or negligent) or inaccuracy contained in this affidavit.

LeRoy P. Hutchinson
Witness

Carol A. Goldberg
Carol A. Goldberg, formerly known as Carol A. Garfield

L. Tallulah Healy
Witness
(Can also be the Notary)

ACKNOWLEDGED before me this 31st day of August, 2005.

L. Tallulah Healy
Notary Public for South Carolina
My Commission Expires: 1-17-13

EXHIBIT "A"

ALL that lot, piece or parcel of land, with the buildings thereon, situate, lying and being in the County of Charleston, State of South Carolina, and known and designated as Lot No. 461, as shown on a plat of a portion of the subdivision known as South Windermere, made by J. O'Hear Sanders, Jr., Surveyor, dated February 1953, and recorded in the R.M.C. Office for Charleston County in Plat Book "J", Page 44; said lot having such size, shape and dimensions, more or less, as will by reference to said plat more fully appear, and being bounded as shown on said plat.

BEING the same property conveyed to Grantor Carol A. Garfield n/k/a Carol A. Goldberg by Deed of Distribution of the Estate of Louis Garfield (Charleston County Probate File No. 93-ES-10-00757) dated February 21, 1994, and recorded February 22, 1994 in Book F239, Page 434, in the RMC Office for Charleston County.

TMS NO. 421-09-00-003

Prepared by: CAROLE BROWNE

LOAN #: [redacted]

PAYMENT ADVANTAGE
FIXED/ADJUSTABLE RATE NOTE
(LIBOR One Year Index - Rate Caps)

THIS NOTE CONTAINS PROVISIONS THAT WILL CHANGE MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY. FOR A LIMITED TIME I WILL HAVE A PAYMENT OPTION THAT IS LESS THAN THE FULL AMOUNT OF INTEREST DUE. IF I CHOOSE THIS OPTION, THE PRINCIPAL AMOUNT TO REPAY COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED.

MAY 02, 2007	NORTH CHARLESTON	SOUTH CAROLINA
[Date]	[City]	[State]

34 TARLETON DR, CHARLESTON, SC 29407-7479
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. $ 172,000.00 ("Principal"), plus interest, to the order of Lender. The Principal may increase as provided under the terms of this Note but will not exceed 115 percent of the Principal amount I originally borrowed. This is called the "Maximum Negative Amortization Cap." If I default under this Note or the Security Instrument, then default charges may cause the Maximum Negative Amortization Cap to be exceeded. Lender is Countrywide Bank, FSB.

I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or its successors or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

(A) Fixed Interest Rate

Interest will be charged on unpaid Principal until the full amount has been paid. Interest will initially accrue at a yearly rate of 7.625 %. This is my initial fixed interest rate and is the rate for determining the interest I owe until it changes as provided below. Interest will be charged on the basis of a twelve-month year and a thirty-day month.

(B) Adjustable Interest Rate

The initial fixed interest rate I owe will change to an adjustable interest rate on the first day of MAY, 2012 and the adjustable interest rate will change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date.

(C) Index

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

23991

[redacted]0000001E6822

PLAINTIFF'S EXHIBIT 4 3-24-15

PEMGAD 800-631-6989

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

(D) Calculation of Adjustable Interest Rate Changes

Before each Interest Rate Change Date, the Note Holder will calculate my new adjustable interest rate by adding 2.250 % (this amount is the "Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). This rounded amount will be my new adjustable interest rate until the next Interest Rate Change Date. My adjustable interest rate will never be greater than 12.625 % or lower than the Margin.

(E) Limits on Interest Rate Changes

The interest rate in effect at the first Interest Rate Change Date will not be greater than 12.625 % or less than 2.250 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Interest Rate Change Date by more than 2 percentage points from the rate of interest in effect for the preceding 12 months.

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment every month.

I will make my monthly payments on the first day of each month beginning on JUNE 01, 2007. I will make these payments every month until I have paid all the Principal and Interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If I still owe amounts under this Note on MAY 01, 2037, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at P.O. Box 660694, Dallas, TX 75266-0694 or at a different place if required by the Note Holder.

(B) Minimum Payment

The "Minimum Payment" is the minimum amount Note Holder will accept for my monthly payment. The Minimum Payment is calculated three (3) different ways during the loan term:

(i) Until MAY 01, 2017 ("Recast Date") or until the Maximum Negative Amortization Cap is reached, whichever is earlier, the Minimum Payment will be calculated using the then-current interest rate (either fixed or adjustable as described in Section 2) minus 5.000 percentage points. The result of this calculation is called the "Minimum Payment Rate." The Minimum Payment Rate can never be lower than 1%. Since the Minimum Payment Rate is less than the interest rate applied to my unpaid Principal balance, the Minimum Payment will be insufficient to pay the interest portion of the monthly payment and no portion is applied to Principal. When I make a Minimum Payment, which is based on the Minimum Payment Rate that is less than the rate of interest due, the unpaid interest is added to the Principal amount. This is known as "deferred interest" or "negative amortization."

(ii) If the unpaid Principal balance reaches the Maximum Negative Amortization Cap prior to the Recast Date, my new Minimum Payment will be the amount that would pay only the interest portion of the monthly payment based upon the then-current interest rate, which changes in accordance with Section 2. This is the Minimum Payment in effect until the Recast Date.

(iii) After the Recast Date and for the remainder of the loan term, the Minimum Payment will be the monthly payment amount necessary to pay the loan off, in full, at the Maturity Date in substantially equal payments based on the then-current interest rate, which changes in accordance with Section 2.

(C) Initial Monthly Minimum Payment

Each of my initial monthly Minimum Payments until the first Interest Rate Change Date will be in the amount of U.S. $690.84.

(D) Monthly Payment Changes

Changes in my monthly payment will be the result of changes in the unpaid Principal balance of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Sections 2 and 3 of this Note.

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(E) Additions to My Unpaid Principal

For each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest due and will add the difference to my unpaid Principal. Interest will accrue on the amount of this difference at the interest rate required by Section 2. For each month that the monthly payment is greater than the interest due, the Note Holder will apply the payment as provided in Section 3(A).

(F) Payment Options

Until the Recast Date, the Note Holder may provide me with up to three (3) additional monthly payment options ("Payment Options") if they are greater than the Minimum Payment. The Payment Options are calculated using the interest rate in accordance with Section 2. The following Payment Options may be provided:

(i) Interest Only Payment: the amount that would pay only the interest portion of the monthly payment. The Principal balance will not be decreased by this Payment Option and it is only available if the interest portion exceeds the Minimum Payment.

(ii) Amortized Payment: the amount necessary to pay the loan off (Principal and interest) at the Maturity Date in substantially equal payments based on the then-current interest rate.

(iii) 15 Year Amortized Payment: the amount necessary to pay the loan off (Principal and interest) within a fifteen (15) year term from the first payment due date in substantially equal payments at the then-current interest rate.

These Payment Options are only available if they are greater than the Minimum Payment. If the Maximum Negative Amortization Cap is reached, then the Payment Options available will be the Amortized Payment and the 15 Year Amortized Payment. Upon the Recast Date I will no longer have Payment Options and I will be required to pay the Amortized Payment, which becomes the Minimum Payment as described in Section 3(B)(iii).

4. NOTICE OF CHANGES

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

5. BORROWER'S RIGHT TO PREPAY

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

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments. My partial Prepayment may reduce the amount of my monthly payments after the first Payment Change Date following my partial Prepayment. However, any reduction that could result from my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

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

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any Minimum Payment by the end of fifteen (15) calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of the Minimum Payment. I will pay this late charge promptly but only once on each late payment.

(B) Default

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

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(C) Notice of Default

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

(D) No Waiver By Note Holder

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

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

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. These expenses include, for example, reasonable attorneys' fees. If I default under this Note or the Security Instrument then default charges may cause the Maximum Negative Amortization Cap to be exceeded.

8. GIVING OF NOTICES

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

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

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

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

10. WAIVERS

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

11. DOCUMENT CORRECTION

In the event that Note Holder at any time discovers that this Note, Security Instrument, Addenda, Rider or any other document related to this loan is lost, misplaced, misstated, inaccurately reflects the true and correct terms and conditions of the loan, or otherwise contains an error, such as a clerical mistake, calculation error, computer error, printing error, electronic transmission error, or similar error, I agree, upon notice from Note Holder, to re-execute any documents that are necessary to replace or correct any such documents and return them within ten (10) days of receipt. I also agree that I will not hold Lender responsible for any damages which result from any such error.

12. SECURED NOTE

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

(A) Until my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 2 above, Paragraph 18 of the Security Instrument shall read as follows:

> Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests

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transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

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

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

(B) When my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 2 above, Paragraph 18 of the Security Instrument described in Section 12(A) above shall then cease to be in effect, and Paragraph 18 of the Security Instrument shall instead read as follows:

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

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender. To the extent permitted by Applicable Law, Lender may charge reasonable fees as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

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

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

CLIFFORD L. RYBA - Borrower

BEVERLY RYBA - Borrower

_____ - Borrower

_____ - Borrower

PAY TO THE ORDER OF
COUNTRYWIDE HOME LOANS, INC
WITHOUT RECOURSE
COUNTRYWIDE BANK, FSB
BY Laurie Meder
LAURIE MEDER
SENIOR VICE PRESIDENT

PAY TO THE ORDER OF
_____
WITHOUT RECOURSE
COUNTRYWIDE HOME LOANS, INC
BY Michele Sjolander
MICHELE SJOLANDER
EXECUTIVE VICE PRESIDENT

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After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423

BKE 625PG517

Prepared By:
CAROLE BROWNE

R07-15028 [Space Above This Line

610 [redacted] D2 001 001

MORTGAGE [redacted]

DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated MAY 02, 2007 , together with all Riders to this document.
(B) "Borrower" is
CLIFFORD L RYBA, AND BEVERLY RYBA

Borrower is the mortgagor under this Security Instrument.
(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.
(D) "Lender" is
Countrywide Bank, FSB.
Lender is a FED SVGS BANK
organized and existing under the laws of THE UNITED STATES
Lender's address is
1199 North Fairfax St. Ste.500, Alexandria, VA 22314
(E) "Note" means the promissory note signed by Borrower and dated MAY 02, 2007 . The Note states that Borrower owes Lender
ONE HUNDRED SEVENTY TWO THOUSAND and 00/100

Dollars (U.S. $ 172,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than MAY 01, 2037 .

23991

[redacted]0000020006A

PLAINTIFF'S EXHIBIT 5 3-24-15

DOC ID #: [redacted]

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

[X] Adjustable Rate Rider	[ ] Condominium Rider	[ ] Second Home Rider
[ ] Balloon Rider	[ ] Planned Unit Development Rider	[X] 1-4 Family Rider
[ ] VA Rider	[ ] Biweekly Payment Rider	[ ] Other(s) [specify]

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.
(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
(L) "Escrow Items" means those items that are described in Section 3.
(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.
(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
(O) "Periodic Payment" means the regularly scheduled amount due for (a) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.
(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.
(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

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

COUNTY of CHARLESTON :
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

SEE ATTACHED EXHIBIT "A"

Parcel ID Number: which currently has the address of

34 TARLETON DR, CHARLESTON ,
[Street/City]

South Carolina 29407-7479 ("Property Address"):
[Zip Code]

DOC ID #: [redacted]

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

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

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

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

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

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

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

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

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

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

Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all

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

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

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

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

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

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

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

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the

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notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

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

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

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

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

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

Signed, sealed and delivered in the presence of:

Karen E. Lasseter

CLIFFORD L. RYBA (Seal) -Borrower

Mary Hall

BEVERLY RYBA (Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

DOC ID #: [redacted]

STATE OF SOUTH CAROLINA, Charleston County ss:
I, R David Chard do hereby certify that

Clifford L. Rybe & Beverly Rybe

personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 3rd day of May 2007.

R David Chard
Notary Public for South Carolina

My Commission Expires: 1/3/17

EXHIBIT "A"

ALL THAT LOT, PIECE OR PARCEL OF LAND, WITH THE BUILDINGS AND IMPROVEMENTS THEREON, SITUATE, LYING AND BEING IN CHARLESTON COUNTY, SOUTH CAROLINA, KNOWN AND DESIGNATED AS LOT NO. 461 AS SHOWN ON A PLAT OF A PORTION OF SOUTH WINDERMERE SUBDIVISION, MADE BY J. O'HEAR SANDERS, JR., SURVEYOR, DATED FEBRUARY 1953 AND RECORDED IN PLAT BOOK J, PAGE 44 IN THE RMC OFFICE FOR CHARLESTON COUNTY; SAID LOT HAVING SUCH SIZE, SHAPE AND DIMENSIONS, MORE OR LESS, AS WILL BY REFERENCE TO SAID PLAT MORE FULLY APPEAR, AND BEING BOUNDED AS SHOWN ON SAID PLAT.

BEING THE SAME PROPERTY CONVEYED TO CLIFFORD RYBA AND BEVERLY RYBA BY DEED OF CAROL A. GOLDBERG, FORMERLY KNOWN AS CAROL A. GARFIELD, DATED AUGUST 31, 2005, AND RECORDED SEPTEMBER 1, 2005, IN THE CHARLESTON COUNTY RMC OFFICE IN BOOK Y551, AT PAGE 150; SUBSEQUENTLY, CLIFFORD RYBA CONVEYED HIS INTEREST TO BEVERLY RYBA BY DEED DATED SEPTEMBER 20, 2005 AND RECORDED IN THE CHARLESTON COUNTY RMC OFFICE IN BOOK P554, AT PAGE 434.

TMS# 421-09-00-003

PROPERTY ADDRESS:
34 TARLETON DRIVE
CHARLESTON, SC 29407

PAYMENT ADVANTAGE
FIXED/ADJUSTABLE RATE RIDER
(LIBOR One Year Index - Rate Caps)

[redacted]
[Doc ID #]

THIS FIXED/ADJUSTABLE RATE RIDER is made this SECOND day of MAY, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Payment Advantage Fixed/Adjustable Rate Note (the "Note") to

Countrywide Bank, FSB.

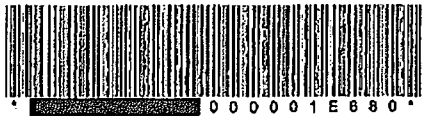
("Lender") of the same date and covering the property described in the Security Instrument and located at:

34 TARLETON DR
CHARLESTON, SC 29407-7479
[Property Address]

THE NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT THE ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME. FOR A LIMITED TIME THERE WILL BE A PAYMENT OPTION THAT IS LESS THAN THE FULL AMOUNT OF INTEREST DUE. IF THIS PAYMENT OPTION IS CHOSEN, THE PRINCIPAL AMOUNT TO REPAY COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED.

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

A. INTEREST AND PAYMENTS
The Note provides for changes in the interest rate and the monthly payments, as follows:



DOC ID #: [redacted]

2. INTEREST

(A) Fixed Interest Rate

Interest will be charged on unpaid Principal until the full amount has been paid. Interest will initially accrue at a yearly rate of 7.625 %. This is my initial fixed interest rate and is the rate for determining the interest I owe until it changes as provided below. Interest will be charged on the basis of a twelve-month year and a thirty-day month.

(B) Adjustable Interest Rate

The initial fixed interest rate I owe will change to an adjustable interest rate on the first day of MAY, 2012 and the adjustable interest rate will change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date.

(C) Index

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

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

(D) Calculation of Adjustable Interest Rate Changes

Before each Interest Rate Change Date, the Note Holder will calculate my new adjustable interest rate by adding 2.250 % (this amount is the "Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). This rounded amount will be my new adjustable interest rate until the next Interest Rate Change Date. My adjustable interest rate will never be greater than 12.625 % or lower than the Margin.

(E) Limits on Interest Rate Changes

The interest rate in effect at the first Interest Rate Change Date will not be greater than 12.625 % or less than 2.250 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Interest Rate Change Date by more than 2 percentage points from the rate of interest in effect for the preceding 12 months.

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment every month.

DOC ID #: [redacted]

I will make my monthly payments on the FIRST day of each month beginning on JUNE 01, 2007. I will make these payments every month until I have paid all the Principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If I still owe amounts under this Note on MAY 01, 2037, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at
P.O. Box 660694, Dallas, TX 75266-0694
or at a different place if required by the Note Holder.

(B) Minimum Payment

The "Minimum Payment" is the minimum amount Note Holder will accept for my monthly payment. The Minimum Payment is calculated three (3) different ways during the loan term:

(i) Until MAY 01, 2017 ("Recast Date") or until the Maximum Negative Amortization Cap is reached, whichever is earlier, the Minimum Payment will be calculated using the then-current interest rate (either fixed or adjustable as described in Section 2) minus 5.000 percentage points. The result of this calculation is called the "Minimum Payment Rate." The Minimum Payment Rate can never be lower than 1%. Since the Minimum Payment Rate is less than the interest rate applied to my unpaid Principal balance, the Minimum Payment will be insufficient to pay the interest portion of the monthly payment and no portion is applied to Principal. **When I make a Minimum Payment, which is based on the Minimum Payment Rate that is less than the rate of interest due, the unpaid interest is added to the Principal amount. This is known as "deferred interest" or "negative amortization."**

(ii) If the unpaid Principal balance reaches the Maximum Negative Amortization Cap prior to the Recast Date, my new Minimum Payment will be the amount that would pay only the interest portion of the monthly payment based upon the then-current interest rate, which changes in accordance with Section 2. This is the Minimum Payment in effect until the Recast Date.

(iii) After the Recast Date and for the remainder of the loan term, the Minimum Payment will be the monthly payment amount necessary to pay the loan off, in full, at the Maturity Date in substantially equal payments based on the then-current interest rate, which changes in accordance with Section 2.

(C) Initial Monthly Minimum Payment

Each of my initial monthly Minimum Payments until the first Interest Rate Change Date will be in the amount of U.S. $ 690.84.

(D) Monthly Payment Changes

Changes in my monthly payment will be the result of changes in the unpaid Principal balance of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Sections 2 and 3 of this Note.

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(E) Additions to My Unpaid Principal

For each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest due and will add the difference to my unpaid Principal. Interest will accrue on the amount of this difference at the interest rate required by Section 2. For each month that the monthly payment is greater than the interest due, the Note Holder will apply the payment as provided in Section 3(A).

(F) Payment Options

Until the Recast Date, the Note Holder may provide me with up to three (3) additional monthly payment options ("Payment Options") if they are greater than the Minimum Payment. The Payment Options are calculated using the interest rate in accordance with Section 2. The following Payment Options may be provided:

(i) **Interest Only Payment:** the amount that would pay only the interest portion of the monthly payment. The Principal balance will not be decreased by this Payment Option and it is only available if the interest portion exceeds the Minimum Payment.

(ii) **Amortized Payment:** the amount necessary to pay the loan off (Principal and interest) at the Maturity Date in substantially equal payments based on the then-current interest rate.

(iii) **15 Year Amortized Payment:** the amount necessary to pay the loan off (Principal and interest) within a fifteen (15) year term from the first payment due date in substantially equal payments at the then-current interest rate.

These Payment Options are only available if they are greater than the Minimum Payment. If the Maximum Negative Amortization Cap is reached, then the Payment Options available will be the Amortized Payment and the 15 Year Amortized Payment. Upon the Recast Date I will no longer have Payment Options and I will be required to pay the Amortized Payment, which becomes the Minimum Payment as described in Section 3(B)(iii).

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

Section 18 of the Security Instrument entitled "Transfer of the Property or a Beneficial Interest in Borrower" is amended to read as follows:

(A) Until my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 2 above, Paragraph 18 of the Security Instrument shall read as follows:

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

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by

this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

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

(B) When my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 2 above, Paragraph 18 of the Security Instrument described in Section 12(A) above shall then cease to be in effect, and Paragraph 18 of the Security Instrument shall instead read as follows:

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

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender. To the extent permitted by Applicable Law, Lender may charge reasonable fees as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this

DOC ID #: [redacted]

Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

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

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

CLIFFORD L. RYBA -Borrower

BEVERLY RYBA -Borrower

-Borrower

-Borrower

1-4 FAMILY RIDER
(Assignment of Rents)

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423

Prepared By:
CAROLE BROWNE

[redacted]
[Doc ID #]

THIS 1-4 FAMILY RIDER is made this SECOND day of MAY, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to
Countrywide Bank, FSB.

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:
34 TARLETON DR
CHARLESTON, SC 29407-7479
[Property Address]

1-4 FAMILY COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

DOC ID #: [redacted]

A. ADDITIONAL PROPERTY SUBJECT TO THE SECURITY INSTRUMENT. In addition to the Property described in the Security Instrument, the following items now or hereafter attached to the Property to the extent they are fixtures are added to the Property description, and shall also constitute the Property covered by the Security Instrument: building materials, appliances and goods of every nature whatsoever now or hereafter located in, on, or used, or intended to be used in connection with the Property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, attached mirrors, cabinets, paneling and attached floor coverings, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Property covered by the Security Instrument. All of the foregoing together with the Property described in the Security Instrument (or the leasehold estate if the Security Instrument is on a leasehold) are referred to in this 1-4 Family Rider and the Security Instrument as the "Property."

B. USE OF PROPERTY; COMPLIANCE WITH LAW. Borrower shall not seek, agree to or make a change in the use of the Property or its zoning classification, unless Lender has agreed in writing to the change. Borrower shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property.

C. SUBORDINATE LIENS. Except as permitted by federal law, Borrower shall not allow any lien inferior to the Security Instrument to be perfected against the Property without Lender's prior written permission.

D. RENT LOSS INSURANCE. Borrower shall maintain insurance against rent loss in addition to the other hazards for which insurance is required by Section 5.

E. "BORROWER'S RIGHT TO REINSTATE" DELETED. Section 19 is deleted.

F. BORROWER'S OCCUPANCY. Unless Lender and Borrower otherwise agree in writing, Section 6 concerning Borrower's occupancy of the Property is deleted.

G. ASSIGNMENT OF LEASES. Upon Lender's request after default, Borrower shall assign to Lender all leases of the Property and all security deposits made in connection with leases of the Property. Upon the assignment, Lender shall have the right to modify, extend or terminate the existing leases and to execute new leases, in Lender's sole discretion. As used in this paragraph G, the word "lease" shall mean "sublease" if the Security Instrument is on a leasehold.

H. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION. Borrower absolutely and unconditionally assigns and transfers to Lender all the rents and revenues ("Rents") of the Property, regardless of to whom the Rents of the Property are payable. Borrower authorizes Lender or Lender's agents to collect the Rents, and agrees that each tenant of the Property shall pay the Rents to Lender or Lender's agents. However, Borrower shall receive the Rents until: (i) Lender has given Borrower notice of default pursuant to Section 22 of the Security Instrument, and (ii) Lender has given notice to the tenant(s) that the Rents are to be paid to Lender or Lender's agent. This assignment of Rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of default to Borrower: (i) all Rents received by Borrower shall be held by Borrower as trustee for the benefit of Lender only, to be applied to the sums secured by the Security Instrument; (ii) Lender shall be entitled to collect and receive all of the Rents of the Property; (iii) Borrower agrees that each tenant of the Property shall pay all Rents due and unpaid to Lender or Lender's agents upon Lender's written demand to the tenant; (iv) unless applicable law provides otherwise, all Rents collected by Lender or Lender's agents shall be applied first to the costs of taking control of and managing the Property and collecting the Rents, including, but not limited to, attorneys' fees, receiver's fees, premiums on receiver's bonds, repair and

Initials: B. R.

DOC ID #: [redacted]

maintenance costs, insurance premiums, taxes, assessments and other charges on the Property, and then to the sums secured by the Security Instrument; (v) Lender, Lender's agents or any judicially appointed receiver shall be liable to account for only those Rents actually received; and (vi) Lender shall be entitled to have a receiver appointed to take possession of and manage the Property and collect the Rents and profits derived from the Property without any showing as to the inadequacy of the Property as security.

If the Rents of the Property are not sufficient to cover the costs of taking control of and managing the Property and of collecting the Rents any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by the Security Instrument pursuant to Section 9.

Borrower represents and warrants that Borrower has not executed any prior assignment of the Rents and has not performed, and will not perform, any act that would prevent Lender from exercising its rights under this paragraph.

Lender, or Lender's agents or a judicially appointed receiver, shall not be required to enter upon, take control of or maintain the Property before or after giving notice of default to Borrower. However, Lender, or Lender's agents or a judicially appointed receiver, may do so at any time when a default occurs. Any application of Rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of Rents of the Property shall terminate when all the sums secured by the Security Instrument are paid in full.

I. CROSS-DEFAULT PROVISION. Borrower's default or breach under any note or agreement in which Lender has an interest shall be a breach under the Security Instrument and Lender may invoke any of the remedies permitted by the Security Instrument.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this 1-4 Family Rider.

_____(Seal)
CLIFFORD L. RYBA - Borrower

_____(Seal)
BEVERLY RYBA - Borrower

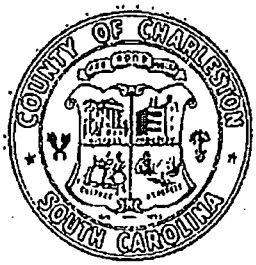
_____(Seal)
- Borrower

_____(Seal)
- Borrower

BKE 625PG538

RECORDER'S PAGE

NOTE: This page MUST remain with the original document



FILED

May 10, 2007
12:53:03 PM

BKE 625PG517

Charlie Lybrand, Register
Charleston County, SC

Filed By:

R. David Chard
2050 Spaulding Drive
Suite 2
North Charleston SC 29406

Number of Pages: 22

DESCRIPTION	AMOUNT
	$ 27.00
Postage	
TOTAL	$ 27.00

DRAWER: A - bmm

DO NOT STAMP BELOW THIS LINE

This Instrument Prepared By:
Regions Operations Center
Elaine Jackson
565 Marriott Drive
Nashville TN 37214
From information supplied by the Parties
Loan No. [redacted]

SUBORDINATION AGREEMENT

WHEREAS, REGIONS BANK, is the owner and holder of a Note secured by certain original Mortgage executed by Beverly Ryba, recorded in Book 582, Page 499, in the Recorder's Office for Charleston County, South Carolina, conveying certain property as described therein (the "Regions Mortgage"); and,

WHEREAS, REGIONS BANK, has agreed to subordinate the Regions Mortgage in accordance with the terms of this agreement.

NOW THEREFORE, In consideration of the premises, and other good and valuable considerations, the said REGIONS BANK, declares that it is the owner and holder of the Note secured by the Regions Mortgage, and agrees that the Regions Mortgage shall be subordinate to a certain Mortgage to _____Trustee, of record in Instrument Number _____ or Book _____ Page_____ Recorder's Office for Charleston County, State of South Carolina, (the "Superior Mortgage") executed by _____, dated _____ to secure a Note in the amount of One Hundred Seventy Two Thousand ($172,000.00) Dollars, payable to the order of Countrywide/America's Wholesale Lender, due as set out therein, conveying certain property in Charleston County, South Carolina, described as follows, to wit:

ALL THAT LOT, PIECE OR PARCEL OF LAND, WITH THE BUILDINGS AND IMPROVEMENTS THEREON, SITUATE, LYING AND BEING IN CHARLESTON COUNTY, SOUTH CAROLINA, KNOWN AND DESIGNATED AS LOT NO. 461 AS SHOWN ON A PLAT OF A PORTION OF SOUTH WINDERMERE SUBDIVISION, MADE BY J. O'HEAR SANDERS , JR., SURVEYOR, DATED FEBRUARY 1953 AND RECORDED IN PLAT BOOK J, PAGE 44 IN THE RMC OFFICE FOR CHARLESTON COUNTY; SAID LOT HAVING SUCH SIZE, SHAPE AND DIMENSIONS, MORE OR LESS, AS WILL BY REFERENCE TO SAID PLAT MORE FULLY APPEAR, AND BEING BOUNDED AS SHOWN ON SAID PLAT.

IT IS UNDERSTOOD AND AGREED that this Subordination Agreement covers only the property herein above described and shall be limited to the Superior Mortgage to secure the Note as described therein, or any renewals and extensions thereof, (but not increases in the amount secured thereby) and no further or otherwise. Further, it is expressly agreed that the holder of the Note described in the Superior Mortgage will give notice to REGIONS BANK, or its successors and assigns, at the address set forth below, of any default under the Superior Mortgage and of any sale or other foreclosure action at least 21 days prior to such sale or foreclosure action.

Regions Bank,
565 Marriott Drive
Nashville, TN 37214

IN WITNESS THEREOF, this instrument has been executed on this 24th day of April 2007.

REGIONS BANK

Alicia Harper
Witness

Suzanne M Woodley
Witness

By: _____
Tom Rey

Title: Vice President

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Personally appeared before me, the undersigned, a Notary Public in and for said County and State, Tom Rey, with whom I am personally acquainted, and who, upon oath, acknowledge himself to be Vice President of REGIONS BANK, the within bargainor, and that he as such Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Corporation by himself as Vice President.

PLAINTIFF'S EXHIBIT
C
3-24-15
PENGAD 800-631-6989

The foregoing instrument was acknowledged before me by its maker.

Witness my hand and official seal on this 24th day of April 2007.

Elaine Jackson
Notary Public

My Commission Expires: MY COMMISSION EXPIRES: JANUARY 3, 2011

ELAINE JACKSON
STATE OF TENNESSEE
NOTARY PUBLIC
DAVIDSON COUNTY

015262-50242

BP0210521

RMC BK 0210 Pg 521 : Pg 1 -

Recording Requested By:
Bank of America
When recorded mail to:
CoreLogic
450 E. Boundary St.
Attn: Release Dept.
Chapin, SC 29036

DocID# 559[redacted]39473

Tax ID: 421-09-00-003

Property Address:
34 Tarleton Dr
Charleston, SC 29407-7479

SC6-AM 11497559 9/12/2011

This space for Recorder's use

MIN #: [redacted] MERS Phone #: 888-679-6377

ASSIGNMENT OF MORTGAGE

For Value Received, the undersigned holder of a Mortgage (herein "Assignor") whose address is 3300 S.W. 34TH AVENUE, SUITE 101 OCALA, FL 34474 does hereby grant, sell, assign, transfer and convey unto BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP whose address is 400 NATIONAL WAY, SIMI VALLEY, CA 93065 all beneficial interest under that certain Mortgage described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Mortgage.

Original Lender:	COUNTRYWIDE BANK, FSB.
Original Borrower(s):	CLIFFORD L RYBA, AND BEVERLY RYBA
Date of Mortgage:	5/2/2007
Original Loan Amount:	$172,000.00

Recorded in Charleston County, SC on: 5/10/2007, book E 625, page 517 and instrument number N/A

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Mortgage to be executed on
Dated: 9.15.2011

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

By: _____
Richard Paz, Assistant Secretary

Alice Rowe
Witness: Alice Rowe

_____
Witness: Chester Levings

State of California
County of Ventura

On SEP 15 2011 before me, Karen Krajci, Notary Public, personally appeared Richard Paz, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Karen Krajci
Notary Public: _____ (Seal)
My Commission Expires: _____

KAREN KRAJCI
COMMISSION # 1870544
Notary Public - California
LOS ANGELES COUNTY
My Comm. Expires Feb 7, 2015

610 [redacted] D8 002 001

PLAINTIFF'S EXHIBIT
8
3-24-15

Payment Histories

Account Number:

Borrower Information:

Transaction Date	Principal Amt	Interest Amt	Escrow Amt	Late Charge Amt	Unapplied Funds Amt	Transaction Amt	Transaction Type	Balance Principal	Paid Through Date	Transaction Code
02/09/2015	$0.00	$0.00	$2,742.91	$0.00	$0.00	$2,742.91	R90	187663.47	04/01/2010	
01/30/2015	$0.00	$0.00	$0.00	$0.00	$0.00	$1,333.50	FB	N/A	04/01/2010	040
01/06/2015	$0.00	$0.00	$0.00	$0.00	$0.00	$134.50	FB	N/A	04/01/2010	040
12/01/2014	$0.00	$0.00	($4,271.48)	$0.00	$0.00	($4,271.48)	E90	187663.47	04/01/2010	
11/17/2014	$0.00	$0.00	($1,689.00)	$0.00	$0.00	($1,689.00)	E11	187663.47	04/01/2010	
11/17/2014	$0.00	$0.00	($2,343.00)	$0.00	$0.00	($2,343.00)	E10	187663.47	04/01/2010	
10/29/2014	$0.00	$0.00	$0.00	$0.00	$0.00	$750.00	FB	N/A	04/01/2010	040
10/23/2014	$0.00	$0.00	$0.00	$0.00	$0.00	$3,704.75	FB	N/A	04/01/2010	040
10/23/2014	$0.00	$0.00	$0.00	$0.00	$0.00	$25.00	FB	N/A	04/01/2010	040
10/23/2014	$0.00	$0.00	$0.00	$0.00	$0.00	$374.20	FB	N/A	04/01/2010	040
08/29/2014	$0.00	$0.00	$0.00	$0.00	$0.00	$1,308.00	FB	N/A	04/01/2010	040
08/29/2014	$0.00	$0.00	$0.00	$0.00	$0.00	$25.00	FB	N/A	04/01/2010	040
07/08/2014	$0.00	$0.00	$0.00	$0.00	$0.00	$780.50	FB	N/A	04/01/2010	040
07/08/2014	$0.00	$0.00	$0.00	$0.00	$0.00	$25.00	FB	N/A	04/01/2010	040
06/03/2014	$0.00	$0.00	$0.00	$0.00	$0.00	$713.00	FB	N/A	04/01/2010	040
05/02/2014	$0.00	$0.00	$0.00	$0.00	$0.00	$115.00	FB	N/A	04/01/2010	036
04/30/2014	$0.00	$0.00	$0.00	$0.00	$0.00	$682.00	FB	N/A	04/01/2010	040
04/22/2014	$0.00	$0.00	$0.00	$0.00	$0.00	$374.00	FB	N/A	04/01/2010	040
04/22/2014	$0.00	$0.00	$0.00	$0.00	$0.00	($11.35)	FWV	N/A	04/01/2010	011
03/05/2014	$0.00	$0.00	$0.00	$0.00	$0.00	$11.35	FB	N/A	04/01/2010	011
02/25/2014	$0.00	$0.00	$0.00	$0.00	$0.00	($11.35)	FWV	N/A	04/01/2010	011
02/25/2014	$0.00	$0.00	$0.00	$0.00	$0.00	($11.35)	FWV	N/A	04/01/2010	011

[redacted]

CLIFFORD L RYBA

15 CASA BIANCA DR

CHARLESTON, SC 29407

Transaction Desc	User ID	Trans Batch #
	19077	#Error
EXPENSE ADVANCES	32551	#Error
EXPENSE ADVANCES	32551	#Error
	32687	#Error
	32022	#Error
	32022	#Error
EXPENSE ADVANCES	32551	#Error
EXPENSE ADVANCES	32551	#Error
EXPENSE ADVANCES	32551	#Error
EXPENSE ADVANCES	32551	#Error
EXPENSE ADVANCES	32551	#Error
EXPENSE ADVANCES	32551	#Error
EXPENSE ADVANCES	32551	#Error
EXPENSE ADVANCES	32551	#Error
EXPENSE ADVANCES	32551	#Error
CORP ADV 1 DEFAULT AD	01810	#Error
EXPENSE ADVANCES	32551	#Error
EXPENSE ADVANCES	32551	#Error
PROP INSPECTION FEE	04070	#Error
PROP INSPECTION FEE	32506	#Error
PROP INSPECTION FEE	04070	#Error
PROP INSPECTION FEE	04070	#Error

Transaction Date	Principal Amt	Interest Amt	Escrow Amt	Late Charge Amt	Unapplied Funds Amt	Transaction Amt	Transaction Type	Balance Principal	Paid Through Date	Transaction Code
02/21/2014	$0.00	$0.00	$0.00	$0.00	$0.00	$5.00	FB	N/A	04/01/2010	028
01/31/2014	$0.00	$0.00	$0.00	$0.00	$0.00	$11.35	FB	N/A	04/01/2010	011
01/29/2014	$0.00	$0.00	$0.00	$0.00	$0.00	$1,897.50	FB	N/A	04/01/2010	040
01/24/2014	$0.00	$0.00	$0.00	$0.00	$0.00	($11.35)	FWV	N/A	04/01/2010	011
01/03/2014	$0.00	$0.00	$0.00	$0.00	$0.00	$11.35	FB	N/A	04/01/2010	011
12/04/2013	$0.00	$0.00	$0.00	$0.00	$0.00	$11.35	FB	N/A	04/01/2010	011
12/01/2013	$0.00	$0.00	($34,429.80)	$0.00	$0.00	($34,429.80)	PT	187663.47	04/01/2010	
12/01/2013	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	ITR	187663.47	04/01/2010	000
12/01/2013	$0.00	$0.00	$34,429.80	$0.00	$0.00	$34,429.80	RT	187663.47	04/01/2010	
11/27/2013	$0.00	$0.00	($4,280.33)	$0.00	$0.00	($4,280.33)	E90	187663.47	04/01/2010	
11/13/2013	$0.00	$0.00	($1,689.00)	$0.00	$0.00	($1,689.00)	E11	187663.47	04/01/2010	
11/13/2013	$0.00	$0.00	($2,597.00)	$0.00	$0.00	($2,597.00)	E10	187663.47	04/01/2010	
11/13/2013	$0.00	$0.00	$0.00	$0.00	$0.00	($11.35)	FWV	N/A	04/01/2010	011
10/31/2013	$0.00	$0.00	$0.00	$0.00	$0.00	$11.35	FB	N/A	04/01/2010	011
10/18/2013	$0.00	$0.00	$0.00	$0.00	$0.00	($11.35)	FWV	N/A	04/01/2010	011
10/17/2013	$0.00	$0.00	$0.00	$0.00	$0.00	($11.35)	FWV	N/A	04/01/2010	011
10/02/2013	$0.00	$0.00	$0.00	$0.00	$0.00	$796.50	FB	N/A	04/01/2010	040
09/30/2013	$0.00	$0.00	$0.00	$0.00	$0.00	$11.35	FB	N/A	04/01/2010	011
08/30/2013	$0.00	$0.00	$0.00	$0.00	$0.00	$496.00	FB	N/A	04/01/2010	040
08/29/2013	$0.00	$0.00	$0.00	$0.00	$0.00	$11.35	FB	N/A	04/01/2010	011
08/29/2013	$0.00	$0.00	$0.00	$0.00	$0.00	($11.35)	FWV	N/A	04/01/2010	011
07/29/2013	$0.00	$0.00	$0.00	$0.00	$0.00	$11.35	FB	N/A	04/01/2010	011
06/27/2013	$0.00	$0.00	$0.00	$0.00	$0.00	$11.35	FB	N/A	04/01/2010	011
06/18/2013	$0.00	$0.00	$0.00	$0.00	$0.00	($25.00)	FWV	N/A	04/01/2010	036
06/18/2013	$0.00	$0.00	$0.00	$0.00	$0.00	($90.00)	FWV	N/A	04/01/2010	036
05/28/2013	$0.00	$0.00	$0.00	$0.00	$0.00	$11.35	FB	N/A	04/01/2010	011
04/29/2013	$0.00	$0.00	$0.00	$0.00	$0.00	$11.35	FB	N/A	04/01/2010	011
04/18/2013	$0.00	$0.00	$0.00	$0.00	$0.00	$115.00	FB	N/A	04/01/2010	036
04/11/2013	$0.00	$0.00	$0.00	$0.00	$0.00	$11.35	FB	N/A	04/01/2010	011

Transaction Desc	User ID	Trans Batch #
PAYOFF STATEMENT	11482	#Error
PROP INSPECTION FEE	32506	#Error
EXPENSE ADVANCES	32551	#Error
PROP INSPECTION FEE	04070	#Error
PROP INSPECTION FEE	32506	#Error
PROP INSPECTION FEE	32506	#Error
	17002	#Error
	17002	#Error
	17002	#Error
	32687	#Error
	32022	#Error
	32022	#Error
PROP INSPECTION FEE	04273	#Error
PROP INSPECTION FEE	32506	#Error
PROP INSPECTION FEE	04070	#Error
PROP INSPECTION FEE	04070	#Error
EXPENSE ADVANCES	32551	#Error
PROP INSPECTION FEE	32506	#Error
EXPENSE ADVANCES	32551	#Error
PROP INSPECTION FEE	32506	#Error
PROP INSPECTION FEE	04273	#Error
PROP INSPECTION FEE	32506	#Error
PROP INSPECTION FEE	32506	#Error
CORP ADV 1 DEFAULT AD	19023	#Error
CORP ADV 1 DEFAULT AD	19023	#Error
PROP INSPECTION FEE	32506	#Error
PROP INSPECTION FEE	32506	#Error
CORP ADV 1 DEFAULT AD	01833	#Error
PROP INSPECTION FEE	04273	#Error

Transaction Date	Principal Amt	Interest Amt	Escrow Amt	Late Charge Amt	Unapplied Funds Amt	Transaction Amt	Transaction Type	Balance Principal	Paid Through Date	Transaction Code
03/27/2013	$0.00	$0.00	$0.00	$0.00	$0.00	$11.35	FB	N/A	04/01/2010	011
03/21/2013	$0.00	$0.00	($1,689.00)	$0.00	$0.00	($1,689.00)	E11	187663.47	04/01/2010	
03/21/2013	$0.00	$0.00	($2,666.00)	$0.00	$0.00	($2,666.00)	E10	187663.47	04/01/2010	
02/22/2013	$0.00	$0.00	$0.00	$0.00	$0.00	$11.35	FB	N/A	04/01/2010	011
01/29/2013	$0.00	$0.00	$0.00	$0.00	$0.00	$11.35	FB	N/A	04/01/2010	011
12/21/2012	$0.00	$0.00	($3,095.99)	$0.00	$0.00	($3,095.99)	E90	187663.47	04/01/2010	
11/12/2012	$0.00	$0.00	$2,091.85	$0.00	$0.00	$2,091.85	SR	187663.47	04/01/2010	
11/12/2012	$0.00	$0.00	$2,310.56	$0.00	$0.00	$2,310.56	SR	187663.47	04/01/2010	
11/09/2012	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	AA	187663.47	04/01/2010	
11/09/2012	$0.00	$0.00	$0.00	$0.00	$0.00	$90.00	FB	N/A	04/01/2010	036
11/09/2012	$0.00	$0.00	($22,814.89)	$0.00	$0.00	($22,814.89)	SR0	187663.47	04/01/2010	

Transaction Desc	User ID	Trans Batch #
PROP INSPECTION FEE	04273	#Error
	32022	#Error
	32022	#Error
PROP INSPECTION FEE	04070	#Error
PROP INSPECTION FEE	04273	#Error
	32687	#Error
	19013	#Error
	19013	#Error
	01985	#Error
CORP ADV 1 DEFAULT AD	01833	#Error
	01810	#Error

SLS

JFIGS Good Through 03/24/15

Client:	SLS
Loan Number:	1006649916
Mortgagor Name:	CLIFFORD L RYBA
Current Interest Rate:	2.75000
Per Diem:	14.1390
Prepared:	02/17/15

Unpaid Principal Balance:				=	187663.47
Interest From:	04/01/10	to	03/24/15	=	46165.84
Escrow Advanced:				=	39990.37
Payoff Statement				=	5.00
Delinquent Insurance				=	0.00
Deferred Principal				=	0.00
Late Charges Good Through:	05/01/10			=	0.00
NSF Fee:				=	0.00
Property Inspection:				=	169.45
BPO Fees:				=	115.00
Attorney Fees & Costs:				=	13419.45
Property Preservation:				=	0.00
Suspense (Unapplied):				=	0.00
Subtotal Due:				=	**287,528.58**

Comments:
IF ANY OF THE ABOVE FEES ARE IN EXCESS OF THOSE ALLOWED BY THE LAWS OF YOUR JURISDICTION, PLEASE ADJUST TO THE ALLOWABLE LIMITS.

PLAINTIFF'S EXHIBIT 21 3-24-15

PERCAD 800-631-6989

8742 Lucent Blvd., Suite 300, Highlands Ranch, Colorado, 80129
Direct 720-241-7200

RESIDENTIAL RENTAL AGREEMENT

This form is not intended for use if "Option to Purchase" is in place.

State of South Carolina
County of CHARLESTON

This rental agreement made at 34 TARLETON DR, South Carolina, this 12 day of AUGUST, 2005 between CAROL GOLBERG Tenant(s) (hereinafter called "TENANT"), and ANN RYBA Owner (hereinafter called "LANDLORD"), shall provide as follows:

THE ☑ LANDLORD ☐ TENANT IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

1. LANDLORD TENANT ACT: This Rental Agreement is governed by the South Carolina Residential Landlord and Tenant Act.

2. LOCATION: The Landlord hereby rents to the Tenant and the Tenant hereby rents from the Landlord a parcel of property located in the county of CHARLESTON, State of South Carolina, which parcel of land with improvements will constitute the premises. Said parcel of land is more particularly described as follows: Lot 461 - 34 TARLETON DR - SOUTH TOWNE ESTATE CHARLESTON, SC 29407

3. TERMS: This Rental Agreement shall commence on the ____ day of AUGUST, 2005 and end on the ____ day of _____, _____. Tenant covenants that upon the termination of this Rental Agreement, or any extension thereof that Tenant will quietly and peaceably deliver up possession of the premises in good order and condition, reasonable wear and tear expected, free of Tenant's personal property, garbage and other waste, and return all keys to the Landlord.

4. LEAD-BASED PAINT DISCLOSURE FOR MOST RESIDENTIAL PROPERTIES BUILT BEFORE 1978: See Lead-Based Paint Disclosure Addendum attached (only applies to most rental properties built before 1978.)

5. RENTAL APPLICATION: The Tenant acknowledges that the Landlord has relied upon the rental application, a copy of which is attached hereto, as an inducement for entering into this agreement, and the Tenant warrants to the Landlord that the facts stated in the application are true to the best of Tenant's knowledge. If any facts stated in the rental application prove to be untrue, the Landlord shall have the right to terminate the residency immediately and to collect from the Tenant any damages including reasonable attorney fees resulting therefrom.

6. RENT: Tenant agrees to pay Landlord a rent of $ 850.00 per month, payable in advance, on or before the first day of every month during said term for a total rent of $ _____. The rent is payable to: ANN RYBA or as Tenant may be advised from time to time in writing.

NOTICE TO TENANT: IF TENANT DOES NOT PAY RENT WITHIN 10 FIVE DAYS OF THE DUE DATE, LANDLORD CAN START TO HAVE TENANT EVICTED AND MAY TERMINATE THE RENTAL AGREEMENT, AS THIS CONSTITUTES WRITTEN NOTICE IN CONSPICUOUS LANGUAGE IN THIS WRITTEN AGREEMENT OF LANDLORD'S INTENTION TO TERMINATE AND PROCEED WITH EVICTION. TENANT WILL RECEIVE NO OTHER WRITTEN NOTICE AS LONG AS TENANT REMAINS IN THIS RENTAL UNIT.

Tenant further agrees to pay a late fee of $ 25 per day if rent is paid after the 15 day of the month, and an additional fee of $ 50 after the 30 day of the month.

Where the term of the Rental Agreement commences or terminates on a day other than the first day of the month, Tenant shall pay rent unto the Landlord in the amount of $ 20 per day for each day of the month of commencement or termination of the Rental Agreement, payable prior to the Tenant taking possession upon commencement of the Rental Agreement, and payable on the first day of the final month of the Rental Agreement upon termination.

CG TENANT [ ] TENANT AND [2] LANDLORD HAVE READ THIS PAGE. Form 410
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EXHIBIT A

DEFENDANT'S EXHIBIT 2 3-24-15

7. **OCCUPANTS:** Only persons designated in the rental agreement or as further modified or agreed to in writing by Landlord shall reside in the rented premises. For purposes of this rental agreement the designated occupants are:
CAROL GOLDBERG
MEGAN GOLDBERG
In no event shall more than 2 persons be allowed to occupy said premises.

8. **RETURNED CHECKS:** Tenant agrees to pay $ 25 for each dishonored check for bookkeeping costs and handling charges, plus late charges if the check is not made good before the sixth day after the due date. All future rent and charges, if more than one check is returned, shall be paid in the form of cash, cashier's checks, certified check or money order. If any check for the security deposit or the first month's rent is returned for insufficient funds, Landlord may declare this rental agreement void and immediately terminated.

9. **RENEWAL TERMS:** With thirty (30) days written notice, as defined in Paragraph 18, either party may terminate this agreement at the end of the initial term, but if no notice is given, then the agreement will be extended on a month-to-month basis on the same terms and conditions contained in this agreement. Thirty (30) days written notice by either party is required prior to termination during such month-to-month term.

10. **SUBLEASE:** Tenant shall not assign or sublet said premises, or any part thereof without the written consent of Landlord. Tenant must have written permission from Landlord for guests to occupy the premises for more than 1 days.

11. **UTILITIES AND SERVICES:** Tenant agrees to pay for utilities and services except: N/A N/A which will be paid by Landlord. In the event of Tenant default on payment of utilities Landlord may pay and charge Tenant as additional rent together with any penalties, charges and interest. Tenant shall be liable for any inspections required by local authorities/utility companies due to Tenant's failure to obtain service at time of occupancy or to maintain said service during the term of this agreement. Tenant shall pay all costs of hook-ups and connection fees and security deposits in connection with providing utilities to premises during the term of the Lease.

12. **TENANT OBLIGATIONS:** Tenant agrees to keep the dwelling unit and all parts of the premises that he leases safe and clean. In the case of a single-family house or duplex, Tenant shall keep the yard mowed, watered and free of fire ants, keep the roof and gutters free of debris, the shrubs neatly trimmed, and landscaping maintained. Tenant agrees to be responsible for removal of Tenant's contagious and other hazardous materials. Tenant agrees to comply with the lease and rules and regulations the Landlord may adopt concerning the Tenants' use and occupancy of the premises;

Tenant, or any member of Tenant's family, guest or other person under the Tenant's control, shall conduct themselves in a manner that will not disturb other Tenants' and neighbors' peaceful enjoyment of the premises. Tenant, or any member of Tenant's family, guest or other person under the Tenant's control, shall not engage in or facilitate criminal or drug related activities. Any such violation constitutes a substantial violation of the Lease and a material noncompliance with the Lease and is grounds for termination of tenancy and eviction from the premises.

It is specifically understood that Tenant will, at Tenant's expense, keep sinks, lavatories, and commodes open, reporting any initial problem within five (5) days of occupancy, repair any and all damages caused by tenancy and replace any burned out light bulbs. Tenant agrees to report to Landlord any malfunction of or damage to electrical, plumbing, HVAC systems, smoke detectors, and any occurrence that may cause damage to the property. Tenant also agrees to pay for the cost of all repairs made necessary by negligence or careless use of the premises and pay for repairs/loss resulting from theft, malicious mischief or vandalism by Tenant and their guests. Tenant agrees to provide copies to Landlord of any inspection reports or repair estimates that Tenant may obtain.

Tenant agrees to be responsible for and to make at Tenant's expense all routine maintenance, including but not limited to, stoppage of sewer because of misuse or broken water pipes/fixtures due to neglect or carelessness of Tenant. No repairs, alterations or changes in or to said premises or the fixtures or appliances contained therein, shall be made except after written consent of Landlord, and shall be the responsibility of the Tenant for the cost of restoring said premises to their original condition if Tenant makes any such unauthorized modifications. **NO REPAIR COSTS SHALL BE DEDUCTED FROM RENT BY TENANT.** All improvements made by Tenant to the said premises shall become the property of the Landlord. Locks/Deadbolts shall not be changed without the expressed permission of the Landlord.

Tenant is directly responsible for any damage caused by Tenant's appliances and/or furniture. Tenant is responsible for changing HVAC filters, reporting any water leaks, lighting pilot lights, checking for tripped breakers, changing

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smoke detector batteries and minor housekeeping repairs. Tenants will be held liable for damage to HVAC systems caused by dirty or missing filters and damages resulting from unreported problems. Tenant acknowledges that Tenant has inspected the premises and agrees that the premises and any common areas are safe, fit and habitable condition. Tenant acknowledges receipt of instructions of smoke detector operation.

13. **MAINTENANCE OF PREMISES, PEST CONTROL:** Landlord agrees to make repairs and do what is necessary to keep the premises in a fit and habitable condition as specified in South Carolina Residential Landlord and Tenant Act. The Landlord further agrees to maintain in reasonably good and safe working condition, all electrical, gas, plumbing, sanitary, HVAC, smoke detectors and other facilities supplied by him. Landlord is not responsible for changing batteries in smoke detectors.

Tenant shall report any pest problem within three (3) days of possession. Tenant's failure to identify any pest infestation with said three (3) days shall constitute Tenant's agreement that premises has no infestation of any kind. Tenant is responsible for reporting any suspected or known termite infestation but is not responsible for termite control. Any future infestation of any kind, less termites, shall be the responsibility of ☐ Tenant ☐ Landlord.

14. **ESSENTIAL SERVICES AND APPLIANCES:** The Landlord is required to provide essential services; meaning sanitary plumbing or sewer services; electricity; gas, where it is used for heat, hot water, or cooking; running water, and reasonable amounts of hot water and heat, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the Tenant and supplied by a direct public utility connection. The following appliances present in the dwelling unit are specifically included by this rental agreement as being deemed to be supplied by the Landlord: ☐ stove, ☐ refrigerator, ☐ dishwasher, ☐ disposal, ☐ washer, ☐ dryer, ☐ microwave, ☐ trash compactor, ☐ other: _____

15. **INSURANCE:** Tenant shall be responsible for insuring his/her own possessions against fire and other catastrophes. Landlord and Tenant hereby release each other from liability for loss or damage occurring on or to the leased premises or the premises of which they are a part of the contents of either thereof, caused by fire or other hazards ordinarily covered by fire and extended coverage insurance policies and each waives all rights of recovery against the other for such loss or damage. Willful misconduct lawfully attributable to either party, whether in whole or in part a contributing cause of the casualty giving rise to the loss or damage, shall not be excused under the foregoing release and waiver.

16. **RIGHT TO ACCESS:** The Tenant shall not unreasonably withhold consent to the Landlord to enter into the dwelling unit in order to inspect the premises; make necessary or agreed repairs, decorations, alterations, or improvements; supply necessary or agreed services; or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

The Landlord or Landlord's agent may enter the dwelling unit without consent of the Tenant:
(a) At any time in case of emergency, including but not limited to prospective changes in weather conditions which pose a likelihood of danger to the property may be considered an emergency; and
(b) Between the hours of 9:00 a.m. and 8:00 p.m. for the purpose of providing regularly scheduled periodic services such as changing furnace and air-conditioning filters, providing termite, insect, or pest treatment, and the like, provided that the Landlord announces intent to enter to perform services; and
(c) Between the hours of 8:00 a.m. and 8:00 p.m. for the purpose of providing services requested by the Tenant and that prior to entering the Landlord announces intent to enter to perform services.

The Landlord shall not abuse the right of access or use it to harass the Tenant. Except for section 16(a), 16(b), and 16(c), the Landlord shall give the Tenant at least 24 hours notice of intent to enter and may enter only at reasonable times.

The Landlord has no other right of access except pursuant to court order, as permitted by the South Carolina Residential Landlord and Tenant Act when accompanied by a law enforcement officer at reasonable times for the purpose of service of process in ejectment proceedings, or unless the Tenant has abandoned or surrendered the premises.

17. **MILITARY CLAUSE:** If the Tenant is a member of the Armed Forces of the United States, stationed in the _____ area, and shall receive permanent change of station orders out of the _____ area, Tenant may, upon presentation of a copy of said orders of transfer

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to the Landlord, along with thirty (30) days written notice of intent to vacate and payment of all rent to the expiration date of such written notice, and any miscellaneous charges in arrears, terminate this Rental Agreement. Normal enlistment termination or other type discharge from Armed Forces, unless due to conditions beyond the service member's control, or acceptance of government quarters is not a permanent change of station and is not justification for lease termination. Withholding knowledge of pending transfer or discharge at time of entry into this Rental Agreement voids any consideration or protection offered by this section.

18. **DEFINITION OF "THIRTY (30) DAY NOTICE":** Any written notice given by either party to the other party in order to meet a thirty (30) day notice requirement will be deemed given, and the thirty (30) days deemed to commence on the first day of the calendar month following the date of receipt of said notice. Any termination permitted by other sections contingent upon a thirty (30) day notice will then be effective on the last day of the calendar month following receipt of said notice. If expiration date of lease is not on the last day of the calendar month, then thirty (30) days notice is required to conform to the expiration dates.

19. **DESTRUCTION OR DAMAGE TO PREMISES:** If the dwelling unit or premises are damaged or destroyed by fire or casualty to the extent that normal use and occupancy of the dwelling unit is substantially impaired, the Tenant may:

(a) immediately vacate the premises and notify the Landlord in writing within seven days thereafter of Tenant's intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

(b) if continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the Tenant's liability for rent is reduced in proportion to the diminution in the fair-market rental value of the dwelling unit.

Unless the fire or casualty was due to the tenant's negligence or otherwise caused by the tenant, if the rental agreement is terminated, the landlord shall return security deposit to the tenant with proper accounting as required by law. Accounting for rent in the event of termination or apportionment must be made as of the date of the fire or casualty. The Landlord shall withhold the tenant's security deposit if the fire or casualty was due to the tenant's negligence or otherwise caused by the tenant, with proper accounting as required by law.

20. **CONDEMNATION:** Tenant hereby waives any injury, loss or damage, or claim therefore against Landlord resulting from any exercise of a power of eminent domain of all or any part of the rented premises or surrounding grounds of which they are a part. All awards of the condemning authority for the taking of land, parking areas, or buildings shall belong exclusively to the Landlord. In the event substantially all of the rented premises shall be taken, this Rental Agreement shall terminate as of the date the right to possession vested in the condemning authority and rent shall be apportioned as of that date. In the event any part of the property and/or building or buildings of which the rented premises are a part (whether or not the rented premises shall be affected) shall be taken as a result of the exercise of a power of eminent domain, and the remainder shall not, in the opinion of the Landlord, constitute an economically feasible operating unit, Landlord may, by written notice to Tenant given within sixty (60) days after the date of taking, terminate this Rental Agreement as of a date set out in the notice not earlier than thirty (30) days after the date of the notice; rent shall be apportioned as of termination date.

21. **ABSENCE, NON-USE AND ABANDONMENT:** The unexplained absence of a Tenant from a dwelling unit for a period of 15 days after default in the payment of rent must be construed as abandonment of the dwelling unit. If the Tenant abandons the dwelling unit for a term beginning before the expiration of the rental agreement, it terminates as of the date of the new tenancy, subject to the other Landlord's remedies. If the Landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the Landlord accepts the abandonment as a surrender, the rental agreement is considered to be terminated by the Landlord as of the date the Landlord has notice of the abandonment. When a dwelling unit has been abandoned or the rental agreement has come to an end and the Tenant has removed a substantial portion of personal property or voluntarily and permanently terminated the utilities and has left personal property in the dwelling unit or on the premises with a fair-market value of $500 or less, the Landlord may enter the dwelling unit, using forcible entry if required, and dispose of the property.

22. **SECURITY DEPOSIT:** Tenant agrees to deposit with Landlord a security deposit of $ —0— to be held as security for the full and faithful performance by the Tenant of all terms and conditions herein, it being understood and agreed to that no part of this deposit is to be applied to any rent which may become due under this rental agreement.

Upon termination of the tenancy, property or money held by the Landlord as security may be applied to the payment of accrued rent and the amount of loss of rents or damages which the Landlord has suffered by reason of the Tenant's noncompliance with the South Carolina Residential Landlord and Tenant Act. Any deduction from the security deposit must be itemized by the Landlord in a written notice of the Tenant together with the amount due, if

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any, within 30 days after termination of the tenancy and delivery of possession and demand by the Tenant, whichever is later. The Tenant shall provide the Landlord in writing with a forwarding address or new address to which the written notice and amount due from the Landlord may be sent.

If the Tenant fails to provide the Landlord with the forwarding or new address and fails to return the following: ☐ pool tags, ☐ keys for mail box, ☐ keys to unit (including deadbolt, storage area), ☐ other _____, the Tenant is not entitled to damages under this subsection provided the Landlord (1) had no notice of the Tenant's whereabouts; and, (2) mailed the written notice and amount due, if any, to the Tenant's last known address. In the event the security deposit is not sufficient to pay all charges due, Tenant shall pay said charges within (5) business days after receiving notice from Landlord.

23. **NONCOMPLIANCE WITH RENTAL AGREEMENT OR FAILURE TO PAY RENT:** If there is a noncompliance by the Tenant with the rental agreement other than nonpayment of rent or a noncompliance with Paragraph 12 above, the Landlord may deliver a written notice to the Tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 14 days after receipt of the notice, if the breach is not remedied in 14 days.

The rental agreement shall terminate as provided in the notice except that: if the breach is remediable by repairs or otherwise and the Tenant adequately remedies the breach before the date specified in the notice, or if such remedy cannot be completed within 14 days, but is commenced within the 14-day period and is pursued in good faith to completion within a reasonable time, the rental agreement shall not terminate by reason of the breach.

If rent is unpaid when due and the Tenant fails to pay rent within five days from the date due, the Landlord may terminate the rental agreement provided the Landlord has given the Tenant written notice of nonpayment and Landlord's intention to terminate the rental agreement. If the rent is not paid within that period, said notice is contained herein Paragraph 5.

The Landlord may recover actual damages and obtain injunctive relief in magistrate's or circuit court without posting bond for any noncompliance by the Tenant with the rental agreement or Paragraph 12 above. If the Tenant's noncompliance is willful other than nonpayment of rent, the Landlord may recover reasonable attorney's fees. If the Tenant's nonpayment of rent is not in good faith, the Landlord is entitled to reasonable attorney's fees.

If there is noncompliance by the Tenant with Paragraph 12 above, materially affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning and the Tenant fails to comply as promptly as conditions require in case of emergency, or within fourteen (14) days after written notice by the Landlord specifying the breach and requesting that the Tenant remedy it within that period of time, the Landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and shall in addition have the remedies available under the South Carolina Residential Landlord Tenant Act.

If there is noncompliance by the Tenant with Paragraph 12 above materially affecting health and safety other than as set forth in the preceding paragraph, and the Tenant fails to comply as promptly as conditions require in case of emergency, or within fourteen (14) days after written notice by the Landlord if it is not an emergency, specifying the breach and requesting that the Tenant remedy within that period of time, the Landlord may terminate the rental agreement. If the rental agreement is terminated, the Landlord has a right to possession and for rent and a separate claim for actual damages for breach of the rental agreement and reasonable attorney's fees. Any claim not satisfied by Tenant may be turned in to the credit bureau or collection agency.

24. **REMEDY AFTER TERMINATION:** If the rental agreement is terminated, the Landlord has a right to possession, for rent, and a separate claim for actual damages for breach of the rental agreement, reasonable attorney's fees, collection costs, and court costs.

25. **NOTICE:** A Landlord receives notice when it is delivered at the place of business of the Landlord through which the rental agreement was made or at any place held out by Landlord as the place of receipt of the communication.

26. **PROHIBITIVE EQUIPMENT/FURNITURE:** Tenant agrees not to place antennas, satellite dishes, waterbeds, and auxiliary heaters without written permission from Landlord.

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27. **INVENTORY:** Any furnishing and equipment to be furnished by Landlord shall be set out in a special inventory. The inventory shall be signed by both Tenant and Landlord concurrently with this Rental Agreement and shall be a part of this Agreement.

28. **PETS:** Tenant shall not keep domestic or other animals on or about the premises without the PRIOR WRITTEN CONSENT of the Landlord. Landlord, at Landlord's sole discretion, may consent if Tenant makes the following payments: (1) a non-refundable deposit of $ ____ and (2) rent for the pet(s) in the total amount of $ ____, for the term of this agreement. Tenant shall be responsible for the animal, its behavior, and any damage done by the animal. The Landlord shall have the right to withdraw consent and demand removal of any previously permitted animal upon the first complaint registered against such animal or upon evidence of injury or damage to person or property caused by the animal.

29. **WAIVER:** A Tenant is considered to have waived violation of a Landlord's duty to maintain the premises as set forth by the Rental Agreement or violation of the Landlord's duties under the South Carolina Residential Landlord and Tenant Act, as defense in an action for possession based upon nonpayment of rent, or in an action for rent concerning a period where Landlord has no notice of the violation of the duties, fourteen (14) days before rent is due for violations involving services other than essential services, or the Landlord has no notice before rent is due which provides a reasonable opportunity to make emergency repairs necessary for the provision of essential services. No modification, change, or cancellation hereof shall be valid unless in writing and executed by all parties hereto. No representation or promise has been made by either party hereto except as herein stated.

30. **PEACEFUL ENJOYMENT:** The Landlord covenants that the Tenant, on paying the rent and performing the covenants hereof, shall and may peaceably and quietly have, hold and enjoy the rented premises for the term mentioned without hindrance or interruption by the Landlord.

31. **PROVISIONS:** The provisions of this Rental Agreement shall be binding upon and inure to the benefit of the Landlord and the Tenant, and their respective successors, legal representatives, and assigns.

32. **SUBORDINATION:** Tenant's rights are subject to any bona fide mortgage which now covers said premises and which may hereafter be placed on said premises by Landlord. Tenant shall upon request by Landlord execute a subordination of its rights under this Rental Agreement to any mortgage given by Landlord hereunder, whether to secure construction or permanent or other financing. Resident shall upon request by Landlord promptly execute a certification of good standing certifying the terms of this Rental Agreement, its due execution, the rental provisions hereof, or the terms of amendments hereto, if any, and any other information reasonably requested.

33. **RENTAL RATE ADJUSTMENT:** On and after the expiration of the initial term of this lease, the Landlord, at Landlord's discretion, may alter the rental rate in effect provided only that written notice of such alteration is delivered as first class mail to the US Postal Service, postage prepaid at least fifteen (15) days prior to the effective date of alteration.

34. **TRUST ACCOUNT INTEREST: ACCORDING TO THE RULES AND REGULATIONS OF THE SOUTH CAROLINA REAL ESTATE COMMISSION AND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED, THE BROKER-IN-CHARGE OR PROPERTY MANAGER-IN-CHARGE HAS THE OPTION TO PLACE TENANT'S SECURITY DEPOSIT INTO AN INTEREST BEARING ACCOUNT AND TO RETAIN ALL INTEREST INCURRED IN SAID ACCOUNT. TENANT AGREES TO AND UNDERSTANDS THAT THE TENANT HAS BEEN INFORMED OF TENANT'S RIGHT TO OWNERSHIP OF THE INTEREST BUT RELINQUISHES TO THE BROKER-IN-CHARGE OR PROPERTY MANAGER-IN-CHARGE BY THIS WRITTEN AGREEMENT SAID RIGHT OF OWNERSHIP.**

35. **RULES AND REGULATIONS:** The common area facilities, if any such as swimming pool, laundry room, recreational, and other common area facilities, when open and operating, are subject to applicable rules and regulations posted by the Landlord. The Tenant agrees to observe faithfully all rules and regulations that the Landlord has now or may hereafter adopt for the use of the premises.

36. **JOINT RESPONSIBILITY:** If this Rental Agreement is executed by more than one (1) Tenant, the responsibility and liabilities herein imposed shall be considered and construed to be joint and several, and the use of the singular shall include the plural.

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37. **LANDLORD'S ADDRESS FOR COMMUNICATIONS:** All notices, requests, and demands unless otherwise stated herein, shall be addressed and sent to:

Mail: 16 FIELDFARE WAY
CHARLESTON, SC 29414

Phone: (Home) 843-556-7830 (Work) 452-9113

38. **CAPTIONS:** Any heading preceding the text of any paragraph hereof is inserted solely for convenience of reference and shall not constitute a part of this Rental Agreement, nor shall they affect its meaning, construction or affect.

39. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that this Agreement may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

40. **ADDITIONAL TERMS:** Landlord AGREES to Allow Tenant to Break minimum 1 yr & up to 3 yrs. After 3 yrs Written Notice will be Submitted

WHEREFORE, the parties have executed this Rental Agreement or caused the same to be executed by their authorized representative, the day and year first above written.

THIS RENTAL AGREEMENT supersedes all prior written or oral agreements and can be amended only through a written agreement signed by both parties. Provisions of this Rental Agreement shall bind and inure to the benefit of the Landlord and to the Tenant and their respective heirs, successors, and assigns. **TENANT AGREES TO RECEIVE COMMUNICATIONS FROM LANDLORD AND THEIR AGENTS AT THE EMAIL ADDRESS, PHONE AND FAX NUMBER LISTED BELOW.**

IN WITNESS WHEREOF, the parties hereto have subscribed their names and affixed their seals in duplicate the day and year above written.

Tenant _____ Witness to Tenant _____

Tenant's Email Address: carlagg@gmail.com

Phone: 571 7737 Fax: _____

Tenant _____ Witness to Tenant _____

Tenant's Email Address: _____

Phone: _____ Fax: _____

Landlord _____ Witness to Landlord _____

LANDLORD'S AGENT AND COMPANY _____

TENANT'S AGENT AND COMPANY _____

TENANT'S AGENT IS PRESENTING THIS AGREEMENT AS A ☐ TENANT'S AGENT OR ☐ SUBAGENT OF THE LANDLORD.

The foregoing form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. Expressly prohibited is the duplication or reproduction of such form or the use of the name "South Carolina Association of REALTORS®" in connection with any written form without the prior written consent of the South Carolina Association of REALTORS®. The foregoing form may not be edited, revised, or changed without the prior written consent of the South Carolina Association of REALTORS®.

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HUD-1 (Rev. 3/86)

L. SETTLEMENT CHARGES OMB No. 2502-0265

		PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
700.	TOTAL SALES / BROKER'S COMMISSION: BASED ON PRICE $ @ % =		
	DIVISION OF COMMISSION (LINE 700) AS FOLLOWS:		
701.	$ to no real estate agents retained		
702.	$ to		
703.	Commission paid at settlement		
704.			
800.	ITEMS PAYABLE IN CONNECTION WITH LOAN:		
801.	Loan origination fee %		
802.	Loan discount %		
803.	Appraisal fee to:		
804.	Credit report to: First Rate Mortgage		
805.	Lender's inspection fee	$0.00	$26.85
806.	Mortgage insurance application fee to:		
807.	Assumption fee		
808.	Processing fee to First Rate Mortgage	$0.00	$599.00
809.	Express mail fee to First Rate Mortgage	$0.00	$16.85
810.	Flood zone certification fee to America's Wholesale Lender	$0.00	$26.00
811.	Tax service fee paid to Countrywide Tax Services	$0.00	$60.00
900.	ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE:		
901.	Interest from 08/31/05 to 09/01/05 @ $ 6.16 /day	$0.00	$6.16
902.	Mortgage insurance premium for mos. to		
903.	Hazard insurance premium for 1 yrs. to State Farm	$0.00	$1,639.00
904.	Flood Insurance Premium for 1 year to State Farm	$0.00	$1,115.00
905.			
1000.	RESERVES DEPOSITED WITH LENDER:		
1001.	Hazard insurance months @ $ per month		
1002.	Mortgage insurance months @ $ per month		
1003.	City Property Taxes months @ $ per month		
1004.	County property taxes months @ $ per month		
1005.	Annual assessments months @ $ per month		
1006.	Flood Insurance months @ $ per month		
1007.	months @ $ per month		
1008.	Aggregate Accounting Adjustment		
1100.	TITLE CHARGES:		
1101.	Settlement or closing fee to		
1102.	Abstract or title search to Amy Johnson	$0.00	$179.00
1103.	Title examination to		
1104.	Title insurance binder to		
1105.	Document preparation to Roy Hutchinson (deed, affidavits, certifications, satisfaction)		$100.00
1106.	Notary fees to		
1107.	Attorney's fees to Roy Hutchinson	$242.44	$107.56
	(includes above items Number(s): 1101, 1103, 1105		
1108.	Title insurance to Investors Title Insurance Company	$387.00	
	(includes above items Numbers):		
1109.	Lenders coverage $ 163,500.00		
1110.	Owner's coverage $ 163,500.00	$50.00	
1111.			
1112.			
1113.			
1200.	GOVERNMENT RECORDING AND TRANSFER CHARGES:		
1201.	Recording fees: Deed $ $10.00 ; Mortgage $ $18.00 ; Releases $	$28.00	
1202.	City/county tax / stamps: Deed $ $758.50 ; Mortgage $		$758.50
1203.	State tax / stamps: Deed $; Mortgage $		
1204.			
1205.			
1300.	ADDITIONAL SETTLEMENT CHARGES:		
1301.	Survey to		
1302.	Pest inspection to		
1303.	Line 812. Commitment fee to America's Wholesale Lender	$525.00	
1304.	Line 813. Yield spread premium to First Rate Mortgage $2,043.75 POC AWL		
1305.			
1306.			
1307.			
1400.	TOTAL SETTLEMENT CHARGES (Enter on line 103, Section J and line 502, Section K) ▶	$1,232.44	$4,633.92

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Borrower: Clifford Ryba Date: August 31, 2005 Seller: Carol A. Goldberg Date: August 31, 2005

Borrower: Beverly Ryba Date: August 31, 2005 Seller: Carol Goldberg Date:

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

Settlement Agent: Roy Hutchinson Date: August 31, 2005

WARNING: It is a crime to knowingly make false statements to the United States on this or any similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

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503.736.1153

DEFENDANT'S EXHIBIT 5 3-24-15 ROA 0388
PENGAD 800-631-6989

SEP-03-2008 WED 11:25 AM FIRST RMK MTGE FAX No. 8435693050 P. 002

A. Settlement Statement

U.S. Department of Housing and Urban Development

OMB No. 2502-0265

B. Type of Loan

1. ☐ FHA 2. ☐ FmHA 3. ☒ Conv. Unins. 4. ☐ VA 5. ☐ Conv. Ins.

6. File Number	7. Loan Number	8. Mortgage Insurance Case Number
05RRP90A	112421445	

C. NOTE: *This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside of closing; they are shown here for informational purposes and are not included in the totals.*

D. NAME AND ADDRESS OF BORROWER: Clifford Ryba and Beverly Ryba

E. NAME AND ADDRESS OF SELLER: Carol A. Goldberg and
34 Tarleton Drive
Charleston, SC 29407

F. NAME AND ADDRESS OF LENDER: America's Wholesale Lender
P.O. Box 10212
Van Nuys, CA 91410
TIN:

G. PROPERTY LOCATION: 34 Tarleton Drive
Charleston, SC 29407

H. SETTLEMENT AGENT: Roy Hutchinson

PLACE OF SETTLEMENT: 147 Wappoo Creek Drive, Suite 202
Charleston, SC 29412
TIN:

I. SETTLEMENT DATE: August 31, 2005

J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER:		**400. GROSS AMOUNT DUE TO SELLER:**	
101. Contract Sales Price	$205,000.00	401. Contract sales price	$205,000.00
102. Personal Property		402. Personal property	
103. Settlement charges to borrower: *(from line 1400)*	$1,232.44	403.	
104.		404.	
105.		405.	
ADJUSTMENTS FOR ITEMS PAID BY SELLERS IN ADVANCE		**ADJUSTMENTS FOR ITEMS PAID BY SELLERS IN ADVANCE**	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412	
120. GROSS AMOUNT DUE FROM BORROWER: ▶	$206,232.44	**420. GROSS AMOUNT DUE TO SELLER:** ▶	$205,000.00
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		**500. REDUCTIONS IN AMOUNT DUE TO SELLER:**	
201. Deposit or earnest money		501. Excess deposit *(see instructions)*	
202. Principal amount of new loan(s)	$163,600.00	502. Settlement charges *(line 1400)*	$4,633.92
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204. Proceeds from second mortgage	$20,857.00	504. Payoff of first mortgage loan Carolina 1st	$199,689.75
205.		505. Payoff of second mortgage loan	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
ADJUSTMENTS FOR ITEMS UNPAID BY SELLERS		**ADJUSTMENTS FOR ITEMS UNPAID BY SELLERS**	
210. City/town taxes to		510. City/town taxes to	
211. County taxes 01/01/051 to 08/31/05	$676.33	511. County taxes 01/01/05 to 08/31/05	$676.33
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. TOTAL PAID BY/FOR BORROWER: ▶	$185,033.33	**520. TOTAL REDUCTIONS IN AMOUNT DUE SELLER:** ▶	$205,000.00
300. CASH AT SETTLEMENT FROM/TO BORROWER:		**600. CASH AT SETTLEMENT TO/FROM SELLER:**	
301. Gross amount due from borrower *(line 120)*	$206,232.44	601. Gross amount due to seller *(line 420)*	$205,000.00
302. Less amount paid by/for borrower *(line 220)*	($185,033.33)	602. Less total reductions in amount due seller *(line 520)*	($205,000.00)
303. CASH (☒ *FROM*) (☐ *TO*) BORROWER: ▶	$21,199.11	**603. CASH (☐ *FROM*) (☒ *TO*) SELLER:** ▶	$0.00

Previous Editions Obsolete

Amended 10/87 HUD-1 (3-86) - RESPA, HB 4305.2

SUBSTITUTE FORM 1099 SELLER STATEMENT: The information contained in Blocks E, G, H, and I and on line 401 (or, if line 401 is asterisked, lines 403 and 404) is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction will be imposed on you if this item is reported and the IRS determines that it has not been reported.

SELLER INSTRUCTIONS: If this real estate was your principal residence, file Form 2119, Sale or Exchange of Principal Residence, for any gain, with your income tax return; for other transactions, complete the applicable parts of Form 4797, Form 6252 and/or Schedule D (Form 1040).

You are required by law to provide the box H) with your correct taxpayer identification number. If you do not provide (see box H) with your correct taxpayer identification number, you may be subject to civil and criminal penalties imposed by law, and under penalty of perjury, I certify that the number shown on this statement is my correct taxpayer identification number.

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800.733.1129

Seller's Signature

ROA_0390

SEP-03-2008 WED 11:25 AM FIRST RATE MORTGAGE FAX No. 8435693050 P. 001

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423

BK 2551PG831

Prepared By:
MARTHA S. MOORE

[Space Above This Line For Recording Data]

00011242144508005
[Doc ID #]

MORTGAGE

MIN 1000157-0005750225-0

DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated AUGUST 31, 2005 , together with all Riders to this document.
(B) "Borrower" is
BEVERLY RYBA, AND CLIFFORD RYBA

Borrower is the mortgagor under this Security Instrument.
(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.
(D) "Lender" is
AMERICA'S WHOLESALE LENDER
Lender is a CORPORATION
organized and existing under the laws of NEW YORK
Lender's address is
P.O. Box 660694, Dallas, TX 75266-0694
(E) "Note" means the promissory note signed by Borrower and dated AUGUST 31, 2005 . The Note states that Borrower owes Lender
ONE HUNDRED SIXTY THREE THOUSAND FIVE HUNDRED and 00/100

Dollars (U.S. $ 163,500.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than SEPTEMBER 01, 2035 .

23991

1124214450000002006A

DEFENDANT'S EXHIBIT 6 3-24-15
PENGAD 800-631-6989

DOC ID #: 00011242144508005

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

[X] Adjustable Rate Rider	[ ] Condominium Rider	[ ] Second Home Rider
[ ] Balloon Rider	[ ] Planned Unit Development Rider	[X] 1-4 Family Rider
[ ] VA Rider	[ ] Biweekly Payment Rider	[ ] Other(s) [specify]

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.
(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
(L) "Escrow Items" means those items that are described in Section 3.
(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.
(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
(O) "Periodic Payment" means the regularly scheduled amount due for (a) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.
(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.
(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

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

COUNTY of CHARLESTON
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

SEE ATTACHED EXHIBIT "A"

Parcel ID Number: 421-09-00-003 which currently has the address of

34 TARLETON DR, CHARLESTON
[Street/City]

South Carolina 29407-7479 ("Property Address"):
[Zip Code]

Initials: C BR

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

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

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

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

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

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

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

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

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

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

Initials: _____ BR

Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

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

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

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

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

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

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

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

Initials: _____

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

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

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

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

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

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

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

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

Initials: _____ BR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Initials: BR.

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

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

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

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

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

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

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

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

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

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

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all

Initials: [illegible]

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

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

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

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

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

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

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

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the

notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

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

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

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

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

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

Signed, sealed and delivered in the presence of:

Mary Kirkland Christian

Beverly Ryba 8-31-05 (Seal)
BEVERLY RYBA -Borrower

Lucille Branch

8-31-05 (Seal)
CLIFFORD RYBA -Borrower

(Seal)
-Borrower

(Seal)
-Borrower

BK 2551PG841

DOC ID #: 00011242144508005

STATE OF SOUTH CAROLINA, Charleston County ss:

I, Lucille Browder do hereby certify that Beverly Ryba and Clifford Ryba

personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 31st day of August 2005

Lucille Browder

Notary Public for South Carolina

My Commission Expires: 2-5-07

C/BR.

Initials:

EXHIBIT "A" BK Z551PG642

ALL that lot, piece or parcel of land, with the buildings thereon, situate, lying and being in the County of Charleston, State of South Carolina, and known and designated as Lot No. 461, as shown on a plat of a portion of the subdivision known as South Windermere, made by J. O'Hear Sanders, Jr., Surveyor, dated February 1953, and recorded in the R.M.C. Office for Charleston County in Plat Book "J", Page 44; said lot having such size, shape and dimensions, more or less, as will by reference to said plat more fully appear, and being bounded as shown on said plat.

BEING the same property conveyed to the Mortgagors herein by deed of Carol A. Goldberg f/n/a Carol A. Garfield dated of even date herewith and recorded simultaneously herewith in the RMC Office for Charleston County.

TMS NO. 421-09-00-003

ADJUSTABLE RATE RIDER

(PayOption 11th District Cost of Funds Index - Payment Caps)

00011242144508005
[Doc ID #]

THIS ADJUSTABLE RATE RIDER is made this THIRTY-FIRST day of AUGUST, 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to AMERICA'S WHOLESALE LENDER

(the "Lender") of the same date and covering the property described in the Security Instrument and located at:

34 TARLETON DR
CHARLESTON, SC 29407-7479

[Property Address]

THE NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE INTEREST RATE AND THE MONTHLY PAYMENT. THERE MAY BE A LIMIT ON THE AMOUNT THAT THE MONTHLY PAYMENT CAN INCREASE OR DECREASE. THE PRINCIPAL AMOUNT TO REPAY COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED, BUT NOT MORE THAN THE MAXIMUM LIMIT STATED IN THE NOTE.

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

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for changes in the initial interest rate and the monthly payments, as follows:

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2. INTEREST

(A) Interest Rate

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 1.375 %. The interest rate I will pay may change.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 7(B) of the Note.

(B) Interest Rate Change Dates

The interest rate I will pay may change on the first day of OCTOBER, 2005, and on that day every month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date. The interest rate may change monthly, but the monthly payment is recalculated in accordance with Section 3.

(C) Index

Beginning with the first Interest Rate Change Date, my adjustable interest rate will be based on an Index. The "Index" is the monthly weighted average cost of savings, borrowings and advances of members of the Federal Home Loan Bank of San Francisco (the "Bank"), as made available by the Bank. The most recent Index figure available as of the date 15 days before each Interest Rate Change Date is Called the "Current Index".

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

(D) Calculation of Interest Rate Changes

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding THREE & FIVE-EIGHTHS percentage point(s) (3.625 %) ("Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). This rounded amount will be my new interest rate until the next Interest Rate Change Date. My interest will never be greater than 9.950 %. Beginning with Interest Rate Change Date, my interest rate will never be lower than the Margin.

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment every month.

I will make my monthly payments on the FIRST day of each month beginning on October, 2005. I will make these payments every month until I have paid all the Principal and interest and any other charges described below that I may owe under the Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on SEPTEMBER 01, 2035, I still owe amounts under the Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

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I will make my monthly payments at
P.O. Box 660694, Dallas, TX 75266-0694

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

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments until the first Payment Change Date will be in the amount of U.S. $ 554.52 , unless adjusted under Section 3 (F).

(C) Payment Change Dates

My monthly payment may change as required by Section 3(D) below beginning on the first day of OCTOBER, 2006 , and on that day every 12th month thereafter. Each of these dates is called a "Payment Change Date." My monthly payment also will change at any time Section 3(F) or 3(G) below requires me to pay a different monthly payment. The "Minimum Payment" is the minimum amount Note Holder will accept for my monthly payment which is determined at the last Payment Change Date or as provided in Section 3(F) or 3(G) below. If the Minimum Payment is not sufficient to cover the amount of the interest due then negative amortization will occur.

I will pay the amount of my new Minimum Payment each month beginning on each Payment Change Date or as provided in Section 3(F) or 3(G) below.

(D) Calculation of Monthly Payment Changes

At least 30 days before each Payment Change Date, the Note Holder will calculate the amount of the monthly payment that would be sufficient to repay the unpaid Principal that I am expected to owe at the Payment Change Date in full on the maturity date in substantially equal payments at the interest rate effective during the month preceding the Payment Change Date. The result of this calculation is called the "Full Payment." Unless Section 3(F) or 3(G) apply, the amount of my new monthly payment effective on a Payment Change Date, will not increase by more than 7.5% of my prior monthly payment. This 7.5% limitation is called the "Payment Cap." This Payment Cap applies only to the Principal and interest payment and does not apply to any escrow payments Lender may require under the Security Instrument. The Note Holder will apply the Payment Cap by taking the amount of my Minimum Payment due the month preceding the Payment Change Date and multiplying it by the number 1.075. The result of this calculation is called the "Limited Payment." Unless Section 3(F) or 3(G) below requires me to pay a different amount, my new Minimum Payment will be the lesser of the Limited Payment and the Full Payment. I also have the option to pay the Full Payment for my monthly payment.

(E) Additions to My Unpaid Principal

Since my monthly payment amount changes less frequently than the interest rate, and since the monthly payment is subject to the payment limitations described in Section 3(D), my Minimum Payment could be less than or greater than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid Principal I owe at the monthly payment date in full on the Maturity Date in substantially equal payments. For each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal, and interest will accrue on the amount of this difference at the interest rate required by Section 2. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the payment as provided in Section 3(A).

(F) Limit on My Unpaid Principal; Increased Monthly Payment

My unpaid Principal can never exceed the Maximum Limit equal to ONE HUNDRED FIFTEEN percent (115 %) of the Principal amount I originally borrowed. My unpaid Principal could exceed that Maximum Limit due to Minimum Payments and interest rate increases. In that event, on the date that my paying my monthly payment would cause me to exceed that limit, I will instead pay a new monthly payment. This means that my monthly payment may change more frequently than annually and such payment changes will not be limited by the 7.5% Payment Cap. The new Minimum Payment will be in an amount that would be sufficient to repay my then unpaid Principal in full on the Maturity Date in substantially equal payments at the current interest rate.

(G) Required Full Payment

On the fifth Payment Change Date and on each succeeding fifth Payment Change Date thereafter, I will begin paying the Full Payment as my Minimum Payment until my monthly payment changes again. I also will begin paying the Full Payment as my Minimum Payment on the final Payment Change Date.

(H) Payment Options

After the first Interest Rate Change Date, Lender may provide me with up to three (3) additional payment options that are **greater** than the Minimum Payment, which are called "Payment Options." I may be given the following Payment Options;

(i) **Interest Only Payment:** the amount that would pay the interest portion of the monthly payment at the current interest rate. The Principal balance will not be decreased by this Payment Option and it is only available if the interest portion exceeds the Minimum Payment.

(ii) **Fully Amortized Payment:** the amount necessary to pay the loan off (Principal and interest) at the Maturity Date in substantially equal payments.

(iii)**15 Year Amortized Payment:** the amount necessary to pay the loan off (Principal and interest) within a fifteen (15) year term from the first payment due date in substantially equal payments. This monthly payment amount is calculated on the assumption that the current rate will remain in effect for the remaining term.

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These Payment Options are only applicable if they are greater than the Minimum Payment.

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

Section 18 of the Security Instrument entitled "Transfer of the Property or a Beneficial Interest in Borrower" is amended to read as follows:

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

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

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

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this

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Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

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

Beverly Ryba 8-31-05
BEVERLY RYBA -Borrower

8-31-05
CLIFFORD RYBA -Borrower

_____
-Borrower

_____
-Borrower

1-4 FAMILY RIDER
(Assignment of Rents)

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423

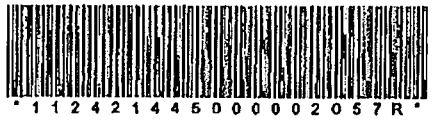
Prepared By:
MARTHA S. MOORE

00011242144508005
[Doc ID #]

THIS 1-4 FAMILY RIDER is made this THIRTY-FIRST day of AUGUST, 2005 and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to
AMERICA'S WHOLESALE LENDER

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:
34 TARLETON DR
CHARLESTON, SC 29407-7479
[Property Address]

1-4 FAMILY COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:



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A. ADDITIONAL PROPERTY SUBJECT TO THE SECURITY INSTRUMENT. In addition to the Property described in the Security Instrument, the following items now or hereafter attached to the Property to the extent they are fixtures are added to the Property description, and shall also constitute the Property covered by the Security Instrument: building materials, appliances and goods of every nature whatsoever now or hereafter located in, on, or used, or intended to be used in connection with the Property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, attached mirrors, cabinets, paneling and attached floor coverings, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Property covered by the Security Instrument. All of the foregoing together with the Property described in the Security Instrument (or the leasehold estate if the Security Instrument is on a leasehold) are referred to in this 1-4 Family Rider and the Security Instrument as the "Property."

B. USE OF PROPERTY; COMPLIANCE WITH LAW. Borrower shall not seek, agree to or make a change in the use of the Property or its zoning classification, unless Lender has agreed in writing to the change. Borrower shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property.

C. SUBORDINATE LIENS. Except as permitted by federal law, Borrower shall not allow any lien inferior to the Security Instrument to be perfected against the Property without Lender's prior written permission.

D. RENT LOSS INSURANCE. Borrower shall maintain insurance against rent loss in addition to the other hazards for which insurance is required by Section 5.

E. "BORROWER'S RIGHT TO REINSTATE" DELETED. Section 19 is deleted.

F. BORROWER'S OCCUPANCY. Unless Lender and Borrower otherwise agree in writing, Section 6 concerning Borrower's occupancy of the Property is deleted.

G. ASSIGNMENT OF LEASES. Upon Lender's request after default, Borrower shall assign to Lender all leases of the Property and all security deposits made in connection with leases of the Property. Upon the assignment, Lender shall have the right to modify, extend or terminate the existing leases and to execute new leases, in Lender's sole discretion. As used in this paragraph G, the word "lease" shall mean "sublease" if the Security Instrument is on a leasehold.

H. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION. Borrower absolutely and unconditionally assigns and transfers to Lender all the rents and revenues ("Rents") of the Property, regardless of to whom the Rents of the Property are payable. Borrower authorizes Lender or Lender's agents to collect the Rents, and agrees that each tenant of the Property shall pay the Rents to Lender or Lender's agents. However, Borrower shall receive the Rents until: (i) Lender has given Borrower notice of default pursuant to Section 22 of the Security Instrument, and (ii) Lender has given notice to the tenant(s) that the Rents are to be paid to Lender or Lender's agent. This assignment of Rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of default to Borrower: (i) all Rents received by Borrower shall be held by Borrower as trustee for the benefit of Lender only, to be applied to the sums secured by the Security Instrument; (ii) Lender shall be entitled to collect and receive all of the Rents of the Property; (iii) Borrower agrees that each tenant of the Property shall pay all Rents due and unpaid to Lender or Lender's agents upon Lender's written demand to the tenant; (iv) unless applicable law provides otherwise, all Rents collected by Lender or Lender's agents shall be applied first to the costs of taking control of and managing the Property and collecting the Rents, including, but not limited to, attorneys' fees, receiver's fees, premiums on receiver's bonds, repair and

Initials: _____

maintenance costs, insurance premiums, taxes, assessments and other charges on the Property, and then to the sums secured by the Security Instrument; (v) Lender, Lender's agents or any judicially appointed receiver shall be liable to account for only those Rents actually received; and (vi) Lender shall be entitled to have a receiver appointed to take possession of and manage the Property and collect the Rents and profits derived from the Property without any showing as to the inadequacy of the Property as security.

If the Rents of the Property are not sufficient to cover the costs of taking control of and managing the Property and of collecting the Rents any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by the Security Instrument pursuant to Section 9.

Borrower represents and warrants that Borrower has not executed any prior assignment of the Rents and has not performed, and will not perform, any act that would prevent Lender from exercising its rights under this paragraph.

Lender, or Lender's agents or a judicially appointed receiver, shall not be required to enter upon, take control of or maintain the Property before or after giving notice of default to Borrower. However, Lender, or Lender's agents or a judicially appointed receiver, may do so at any time when a default occurs. Any application of Rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of Rents of the Property shall terminate when all the sums secured by the Security Instrument are paid in full.

I. CROSS-DEFAULT PROVISION. Borrower's default or breach under any note or agreement in which Lender has an interest shall be a breach under the Security Instrument and Lender may invoke any of the remedies permitted by the Security Instrument.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this 1-4 Family Rider.

Beverly Ryba 8-31-05 (Seal)
BEVERLY RYBA - Borrower

(Seal)
CLIFFORD RYBA - Borrower

(Seal)
- Borrower

(Seal)
- Borrower

BK [illegible] Z551PG852

RECORDER'S PAGE

***NOTE*: This page MUST remain with the original document**

FILED
September 1, 2005
3:53:43 PM
BK [illegible] Z551PG831
Charlie Lybrand, Register
Charleston County, SC

Filed By:

Roy Hutchinson
147 Wappoo Creek Dr.
Suite 202
Charleston SC 29412

DESCRIPTION	AMOUNT
MTG	$ 27.00
Postage	
TOTAL	$ 27.00

DRAWER: B

DO NOT STAMP BELOW THIS LINE

Uniform Residential Loan Application

This application is designed to be completed by the a... with the Lender's assistance. Applicants should complete the form as "Borrower" or "Co-Borro..." as applicable. Co-Borrower information must also be provided (and the appropriate box checked) when [X] the income or assets of a person other than the Borrower (including the Borrower's spouse) will be used as a basis for loan qualification or [ ] the income or assets of the Borrower's spouse or other person who has community property rights pursuant to state law will not be used as a basis for loan qualification, but his or her liabilities must be considered because the spouse or other person has community property rights pursuant to applicable law and Borrower resides in a community property state, the security property is located in a community property state, or the Borrower is relying on other property located in a community property state as a basis for repayment of the loan.

...is an application for joint credit, Borrower and ...ly intend that we hold ... as joint ... by law.

Borrower

Beverly Ryba

Co-Borrower

I. TYPE OF MORTGAGE AND TERMS OF LOAN

Mortgage Applied for:				Agency Case Number	Lender Case Number
	[ ] VA [X] Conventional [ ] Other (explain):				166075024
	[ ] FHA [ ] USDA/Rural Housing Service				

Amount	Interest Rate	No. of Months	Amortization Type:		
$172,000.00	7.625 %	360	[ ] Fixed Rate	[ ] Other (explain):	
			[ ] GPM	[X] ARM (type):	NC ARM LBR 5/1 Pmt Adv EC 525

II. PROPERTY INFORMATION AND PURPOSE OF LOAN

Subject Property Address (street, city, state & ZIP): 34 TARLETON DR, CHARLESTON, SC 29407-7479 — No. of Units: 1

Legal Description of Subject Property (attach description if necessary) — Year Built: 1960

Purpose of Loan: [ ] Purchase [ ] Construction [ ] Other (explain): [X] Refinance [ ] Construction-Permanent

Property will be: [ ] Primary Residence [ ] Secondary Residence [X] Investment

Complete this line if construction or construction-permanent loan.

Year Lot Acquired	Original Cost	Amount Existing Liens	(a) Present Value of Lot	(b) Cost of Improvements	Total (a + b)
	$	$	$	$	$

Complete this line if this is a refinance loan.

Year Acquired	Original Cost	Amount Existing Liens	Purpose of Refinance	Describe Improvements	
	$210,000.00	$169,039.00	TERM AND RATE REDUCTION	[ ] made [ ] to be made	Cost $ 0.00

Title will be held in what Name(s): — Manner in which Title will be held: — Estate will be held in: [X] Fee Simple [ ] Leasehold (show expiration date)

Source of Down Payment, Settlement Charges, and/or Subordinate Financing (explain):

III. BORROWER INFORMATION

Borrower	Co-Borrower
Borrower's Name (include Jr. or Sr. if applicable): CLIFFORD L. RYBA	Co-Borrower's Name (include Jr. or Sr. if applicable): BEVERLY RYBA
Social Security Number: 251-19-6069	Social Security Number: 251-19-5329
Home Phone (incl. area code): (843)556-7830	Home Phone (incl. area code): (843)556-7830
DOB (mm/dd/yyyy): 04/13/1959	DOB (mm/dd/yyyy): 04/13/1955
Yrs. School:	Yrs. School:
[X] Married [ ] Unmarried (include single, divorced, widowed) [ ] Separated	[X] Married [ ] Unmarried (include single, divorced, widowed) [ ] Separated
Dependents (not listed by Co-Borrower): no. 0 ages	Dependents (not listed by Borrower): no. 0 ages
Present Address (street, city, state, ZIP): 15 CASA BIANCA DRIVE CHARLESTON, SC 29407 [X] Own [ ] Rent 00/08 No. Yrs.	Present Address (street, city, state, ZIP): 15 CASA BIANCA DRIVE CHARLESTON, SC 29407 [ ] Own [ ] Rent 00/08 No. Yrs.
Mailing Address, if different from Present Address:	Mailing Address, if different from Present Address:

If residing at present address for less than two years, complete the following:

Former Address (street, city, state, ZIP)	Former Address (street, city, state, ZIP)
[ ] Own [ ] Rent No. Yrs.	[ ] Own [ ] Rent 18/00 No. Yrs.
	16 FIELDFARE WAY CHARLESTON, SC 29414

IV. EMPLOYMENT INFORMATION

Borrower	Co-Borrower
Name & Address of Employer: FIRST RATE MTG 2179 C ASHLEY PHOSPHATE CHARLESTON, SC 29406 [ ] Self Employed	Name & Address of Employer: ADDLESTONE HEBREW ACADEMY WALLENBERGER DRIVE CHARLESTON, SC 29407 [ ] Self Employed
Yrs. on this job: 04Yrs 01Mos	Yrs. on this job: 04Yrs 01Mos
Yrs. employed in this line of work/profession: 5	Yrs. employed in this line of work/profession: 4
Position/Title/Type of Business: LOAN OFFICER	Position/Title/Type of Business: TEACHER
Business Phone (incl. area code): (843)569-3000	Business Phone (incl. area code): (843)571-1105

If employed in current position for less than two years or if currently employed in more than one position, complete the following:

Name & Address of Employer [ ] Self Employed	Dates (from - to)	Monthly Income	Position/Title/Type of Business	Business Phone (incl. area code)
		$		
Name & Address of Employer [ ] Self Employed	Dates (from - to)	Monthly Income	Position/Title/Type of Business	Business Phone (incl. area code)
		$		

23991

DEFENDANT'S EXHIBIT 14A 3-24-15 ROA_0413

160075024000002021N

V. MONTHLY INCOME AND COMBINED HOUSING EXPENSE INFORMATION

Gross Monthly Income	Borrower	Co-Borrower	Total	Combined Monthly Housing Expense	Present	Proposed
Base Empl. Income*	$ 11850.00	$ 1933.00	$ 13783.00	Rent	$ 0.00	
Overtime	0.00	0.00	0.00	First Mortgage (P&I)	1688.00	$ 690.84
Bonuses	0.00	0.00	0.00	Other Financing (P&I)	0.00	757.00
Commissions	0.00	0.00	0.00	Hazard Insurance	0.01	36.42
Dividends/Interest	0.00	0.00	0.00	Real Estate Taxes	0.01	250.00
Net Rental Income	0.00	0.00	0.00	Mortgage Insurance	0.00	0.00
Other (before completing, see the notice in "describe other income," below)	0.00	0.00	0.00	Homeowner Assn. Dues	0.00	0.00
				Other	0.00	0.00
Total	$ 11850.00	$ 1933.00	$ 13783.00	Total	$ 1688.02	$ 1734.26

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

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

B/C		Monthly Amount
		$

VI. ASSETS AND LIABILITIES

This Statement and any applicable supporting schedules may be completed jointly by both married and unmarried Co-Borrowers if their assets and liabilities are sufficiently joined so that the Statement can be meaningfully and fairly presented on a combined basis; otherwise, separate Statements and Schedules are required. If the Co-Borrower section was completed about a non-applicant spouse or other person, this Statement and supporting schedules must be completed about that spouse or other person also.

Completed [X] Jointly [ ] Not Jointly

ASSETS Description	Cash or Market Value
Cash deposit toward purchase held by:	$
	$
List checking and savings accounts below	
Name and address of Bank, S&L, or Credit Union	
Account Type: SAVINGS	
Acct. no.	$ 16000.00
Name and address of Bank, S&L, or Credit Union	
Acct. no.	$
Name and address of Bank, S&L, or Credit Union	
Acct. no.	$
Name and address of Bank, S&L, or Credit Union	
Acct. no.	$
Stocks & Bonds (Company name/number & description)	$
Life insurance net cash value	$
Face amount: $ 0.00	
Subtotal Liquid Assets	$ 16000.00
Real estate owned (enter market value from schedule of real estate owned)	$ 1206000
Vested interest in retirement fund	$ 0.00
Net worth of business(es) owned (attach financial statement)	$
Automobiles owned (make and year)	$
Other Assets (itemize)	$
Total Assets a.	$ 1222000.00

Liabilities and Pledged Assets. List the creditor's name, address and account number for all outstanding debts, including automobile loans, revolving charge accounts, real estate loans, alimony, child support, stock pledges, etc. Use continuation sheet, if necessary. Indicate by (*) those liabilities, which will be satisfied upon sale of real estate owned or upon refinancing of the subject property.

LIABILITIES	Monthly Payment & Months Left to Pay	Unpaid Balance
Name and address of Company: TOTAL MORTGAGE OBLIGATIONS FROM THE SCHEDULE OF REAL ESTATE OWNED	$ Payment/Months: 4314.00 PER MONTH	$ 930097.00
Acct. no. TAXES/INS/MAINT/ETC.	171.06	
Name and address of Company: CBNA	$ Payment/Months: 140 PMTS @ 779.00 PER MONTH	$ 109568.00
Acct no 1002-1215		
Name and address of Company: HAVERTYS FURNITURE CO	$ Payment/Months: 15 PMTS @ 206.00 PER MONTH	$ 3282.00
Acct no 1003-0916		
Name and address of Company: BANK OF AMERICA	$ Payment/Months: 101 PMTS @ 15.00 PER MONTH	$ 1518.00
Acct. no. 1004-1283		
Name and address of Company: DISCOVER FIN SVCS LLC	$ Payment/Months: 49 PMTS @ 20.00 PER MONTH	$ 999.00
Acct. no. 1005-3058		
Name and address of Company: DISCOVER FIN SVCS LLC	$ Payment/Months: 48 PMTS @ 19.00 PER MONTH	$ 916.00
Acct no 1006-8151		
Name and address of Company	$ Payment/Months	$
Acct no		
Alimony/Child Support/Separate Maintenance Payments Owed to	$	
Job-Related Expense (child care, union dues, etc.)	$	
Total Monthly Payments	$ 5524.06	
Net Worth (a minus b) ▶ $ 275620.00	**Total Liabilities b.**	$ 946380.00

Application 1 of 1

VI. ASSETS AND LIABILITIES (cont'd)

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

Property Address (enter S if sold, PS if pending sale or R if rental being held for income)	Type of Property	Present Market Value	Amount of Mortgages & Liens	Gross Rental Income	Mortgage Payments	Insurance, Maintenance, Taxes & Misc.	Net Rental Income
SEE ATTACHED REO SCHEDULE		$	$	$	$	$	$
	Totals	$ 120600	$ 030097	$ 3760	$ 4314	$ 371	$ 23

List any additional names under which credit has previously been received and indicate appropriate creditor name(s) and account number(s):

Alternate Name	Creditor Name	Account Number
BEVERLY A RYAN		

VII. DETAILS OF TRANSACTION

a.	Purchase price	$ 0.00
b.	Alterations, improvements, repairs	0.00
c.	Land (if acquired separately)	0.00
d.	Refinance (incl. debts to be paid off)	169,000.00
e.	Estimated prepaid items	-35.93
f.	Estimated closing costs	1,868.61
g.	PMI, MIP, Funding Fee	0.00
h.	Discount (if Borrower will pay)	0.00
i.	Total costs (add items a through h)	170,832.68
j.	Subordinate financing	115,017.00
k.	Borrower's closing costs paid by Seller	0.00
l.	Other Credits (explain) OTHER EQUITY	0.00
m.	Loan amount (exclude PMI, MIP, Funding Fee financed)	172,000.00
n.	PMI, MIP, Funding Fee financed	0.00
o.	Loan amount (add m & n)	172,000.00
p.	Cash from/to Borrower (subtract j, k, l & o from i)	-116,184.32

VIII. DECLARATIONS

If you answer "Yes" to any questions a through i, please use continuation sheet for explanation.

		Borrower Yes	Borrower No	Co-Borrower Yes	Co-Borrower No
a.	Are there any outstanding judgments against you?		X		X
b.	Have you been declared bankrupt within the past 7 years?		X		X
c.	Have you had property foreclosed upon or given title or deed in lieu thereof in the last 7 years?		X		X
d.	Are you a party to a lawsuit?		X		X
e.	Have you directly or indirectly been obligated on any loan which resulted in foreclosure, transfer of title in lieu of foreclosure, or judgment? (This would include such loans as home mortgage loans, SBA loans, home improvement loans, educational loans, manufactured (mobile) home loans, any mortgage, financial obligation, bond, or loan guarantee. If "Yes," provide details, including date, name, and address of Lender, FHA or VA case number, if any, and reasons for the action.)		X		X
f.	Are you presently delinquent or in default on any Federal debt or any other loan, mortgage, financial obligation, bond, or loan guarantee? If "Yes," give details as described in the preceding question.		X		X
g.	Are you obligated to pay alimony, child support, or separate maintenance?		X		X
h.	Is any part of the down payment borrowed?		X		X
i.	Are you a co-maker or endorser on a note?		X		X
j.	Are you a U.S. citizen?	X		X	
k.	Are you a permanent resident alien?		X		X
l.	**Do you intend to occupy the property as your primary residence?** If "Yes," complete question m below.		X		X
m.	Have you had an ownership interest in a property in the last three years?				
	(1) What type of property did you own - - principal residence (PR), second home (SH), or investment property (IP)?				
	(2) How did you hold title to the home - - solely by yourself (S), jointly with your spouse (SP), or jointly with another person (O)?				

IX. ACKNOWLEDGEMENT AND AGREEMENT

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

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

Borrower's Signature	Date	Co-Borrower's Signature	Date
X	5/2/07	X Beverly Ryan	5/2/07

X. INFORMATION FOR GOVERNMENT MONITORING PURPOSES

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

BORROWER		CO-BORROWER	
	☐ I do not wish to furnish this information		☐ I do not wish to furnish this information
Ethnicity:	☐ Hispanic or Latino ☒ Not Hispanic or Latino	Ethnicity:	☐ Hispanic or Latino ☒ Not Hispanic or Latino
Race:	☐ American Indian or Alaska Native ☐ Asian ☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander ☒ White	Race:	☐ American Indian or Alaska Native ☐ Asian ☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander ☒ White
Sex:	☐ Female ☒ Male	Sex:	☒ Female ☐ Male

To be Completed by Interviewer	Interviewer's Name (print or type)	Name and Address of Interviewer's Employer
This application was taken by:	NAME:	Countrywide Bank, FSB.
☒ Face-to-face interview 03/20/2007		
☐ Mail	Interviewer's Signature Date	
☐ Telephone		
☐ Internet	Interviewer's Phone Number (incl. area code)	4011 WESTCHASE BLVD.
	(919)755-3330	RALEIGH, NC 27607

CONTINUATION SHEET/RESIDENTIAL LOAN APPLICATION

Use this continuation sheet if you need more space to complete the Residential Loan Application. Mark **B** for Borrower or **C** for Co-Borrower.	Borrower: CLIFFORD L. RYBA	Agency Case Number:
	Co-Borrower: BEVERLY RYBA	Lender Case Number: 166076024

Borrower — III. Borrower Information Continued — Co-Borrower

Borrower's Primary E-Mail Address	Co-Borrower's Primary E-Mail Address
Borrower's Secondary E-Mail Address	Co-Borrower's Secondary E-Mail Address

---------- Additional Address Information From Page 1 Section III ----------

B/C R/O/L Address — Yrs/Mos

Address(0) Lives With Relatives

Address(1) Lives With Relatives

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

Borrower's Signature	Date	Co-Borrower's Signature	Date
X	5/2/07	X Beverly Ryba	5/2/07

OMB NO. 2502-0265

A. U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT **SETTLEMENT STATEMENT**	B. TYPE OF LOAN: 1. ☐ FHA 2. ☐ FmHA 3. ☒ CONV. UNINS. 4. ☐ VA 5. ☐ CONV. INS. 6. FILE NUMBER: R07-15028 7. LOAN NUMBER: 166075024 8. MORTGAGE INS CASE NUMBER:

C. NOTE: *This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(POC)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.*

1.0 3/98 (R07-15028.PFD/R07-15028/24)

D. NAME AND ADDRESS OF BORROWER:	E. NAME AND ADDRESS OF SELLER:	F. NAME AND ADDRESS OF LENDER:
CLIFFORD L. RYBA and BEVERLY RYBA 15 CASA BIANCA DRIVE CHARLESTON, SC 29407		COUNTRYWIDE BANK, FSB 4011 WESTCHASE BLVD RALEIGH, NC 27607

G. PROPERTY LOCATION:	H. SETTLEMENT AGENT: 57-0818986 R. David Chard, Attorney at Law PLACE OF SETTLEMENT 2050 Spaulding Drive, Suite 2 N Charleston, SC 29406	I. SETTLEMENT DATE:
34 TARLETON DRIVE CHARLESTON, SC 29407 CHARLESTON County, South Carolina TMS # 421-09-00-003		May 2, 2007

J. SUMMARY OF BORROWER'S TRANSACTION			K. SUMMARY OF SELLER'S TRANSACTION		
100. GROSS AMOUNT DUE FROM BORROWER:			400. GROSS AMOUNT DUE TO SELLER:		
101. Contract Sales Price			401. Contract Sales Price		
102. Personal Property			402. Personal Property		
103. Settlement Charges to Borrower (Line 1400)		1,776.68	403.		
104. PAYOFF LOAN # 112421445-1 to COUNTRYWIDE HON		171,445.01	404.		
105.			405.		
Adjustments For Items Paid By Seller in advance			*Adjustments For Items Paid By Seller in advance*		
106. City/Town Taxes	to		406. City/Town Taxes	to	
107. County Taxes	to		407. County Taxes	to	
108. Assessments	to		408. Assessments	to	
109.			409.		
110.			410.		
111.			411.		
112.			412.		
120. GROSS AMOUNT DUE FROM BORROWER		173,221.69	*420. GROSS AMOUNT DUE TO SELLER*		
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:			500. REDUCTIONS IN AMOUNT DUE TO SELLER:		
201. Deposit or earnest money			501. Excess Deposit (See Instructions)		
202. Principal Amount of New Loan(s)		172,000.00	502. Settlement Charges to Seller (Line 1400)		
203. Existing loan(s) taken subject to			503. Existing loan(s) taken subject to		
204.			504. Payoff of first Mortgage		
205.			505. Payoff of second Mortgage		
206.			506.		
207.			507.		
208.			508.		
209.			509.		
Adjustments For Items Unpaid By Seller			*Adjustments For Items Unpaid By Seller*		
210. City/Town Taxes	to		510. City/Town Taxes	to	
211. County Taxes	to		511. County Taxes	to	
212. Assessments	to		512. Assessments	to	
213.			513.		
214.			514.		
215.			515.		
216.			516.		
217.			517.		
218.			518.		
219.			519.		
220. TOTAL PAID BY/FOR BORROWER		172,000.00	*520. TOTAL REDUCTION AMOUNT DUE SELLER*		
300. CASH AT SETTLEMENT FROM/TO BORROWER:			600. CASH AT SETTLEMENT TO/FROM SELLER:		
301. Gross Amount Due From Borrower (Line 120)		173,221.69	601. Gross Amount Due To Seller (Line 420)		
302. Less Amount Paid By/For Borrower (Line 220)		(172,000.00)	602. Less Reductions Due Seller (Line 520)		( )
303. CASH (X FROM) (TO) BORROWER		1,221.69	*603. CASH (TO) (FROM) SELLER*		0.00

The undersigned hereby acknowledge receipt of a completed copy of pages 1&2 of this statement & any attachments referred to herein.

Borrower

CLIFFORD L. RYBA

BEVERLY RYBA

Seller

PENGAD 800-631-6989

DEFENDANT'S EXHIBIT 15 3-24-15

HUD-1 (3-86) RESPA, HB4305.2

EXHIBIT B

L. SETTLEMENT CHARGES

			PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
700. TOTAL COMMISSION Based on Price	$	@ 0.0000 %		
Division of Commission (line 700) as Follows:				
701. $	to			
702. $	to			
703. Commission Paid at Settlement				
704.	to			
800. ITEMS PAYABLE IN CONNECTION WITH LOAN				
801. Loan Origination Fee %	to			
802. Loan Discount %	to			
803. Appraisal Fee	to PS APPRAISAL SERVICE		200.00	
804. Credit Report	to LANDSAFE CREDIT		18.00	
805. Lender's Inspection Fee	to			
806. COMMITMENT	to COUNTRYWIDE BANK, FSB		525.00	
807. PREMIUM PAID BY LENDER	to FIRST RATE MORTGAGE	POC $215.00 L		
808. PROCESSING FEE	to FIRST RATE MORTGAGE		100.00	
809. EXPRESS MAIL	to FIRST RATE MORTGAGE		17.36	
810. TAX SERVICE FEE	to COUNTRYWIDE TAX SERVICE		60.00	
811. FLOOD CERTIFICATE	to LANDSAFE FLOOD		26.00	
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE				
901. Interest From 05/02/07 to 05/01/07	@ $ 35.930000/day	(-1 days %)	-35.93	
902. Mortgage Insurance Premium for	months to			
903. Hazard Insurance Premium for 1.0 years	to STATE FARM	POC:B1742.00		
904. FLOOD INSURANCE PREMIUM 1.0 years	to STATE FARM	POC:B1231.00		
905.				
1000. RESERVES DEPOSITED WITH LENDER				
1001. Hazard Insurance	months @ $	per month WAIVED		
1002. Mortgage Insurance	months @ $	per month		
1003. City/Town Taxes	months @ $	per month		
1004. County Taxes	months @ $	per month WAIVED		
1005. Assessments	months @ $	per month		
1006. FLOOD INSURANCE PREMIUM	months @ $	per month WAIVED		
1007.	months @ $	per month		
1008. AGGREGATE ACCOUNTING ADJ	months @ $	per month		
1100. TITLE CHARGES				
1101. Settlement or Closing Fee	to			
1102. Abstract or Title Search	to Charleston Abstract Company		216.25	
1103. Title Update	to Abstracting Co., LLC		40.00	
1104. Title Insurance Binder	to R. David Chard, Attorney at Law		40.00	
1105. Document Preparation	to R. David Chard, Attorney at Law			
1106. Notary Fees	to			
1107. Attorney's Fees	to R. David Chard, Attorney at Law	NO CHARGE		
(includes above item numbers:		)		
1108. Title Insurance	to United General Title Insurance Company		401.00	
(includes above item numbers:		)		
1109. Lender's Coverage	$ 172,000.00	401.00		
1110. Owner's Coverage	$			
1111.				
1112. PREPARE LOST MORTGAGE SAT	to R. David Chard, Attorney at Law		25.00	
1113.				
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES				
1201. Recording Fees: Deed $	; Mortgage $ 27.00;	Releases $ 5.00	32.00	
1202. City/County Tax/Stamps: Deed	; Mortgage			
1203. State Tax/Stamps: Revenue Stamps	; Mortgage			
1204. RECORD LOST MORTGAGE SAT	to CHARLESTON County Register of Deeds		5.00	
1205. RECORD SUBORDINATION	to CHARLESTON County Register of Deeds		7.00	
1300. ADDITIONAL SETTLEMENT CHARGES				
1301. Survey	to			
1302. Pest Inspection	to			
1303. COURIER/DELIVERY FEE	to R. David Chard, Attorney at Law		50.00	
1304. EMAIL DOC FEE	to R. David Chard, Attorney at Law		30.00	
1305.				
1400. TOTAL SETTLEMENT CHARGES (Enter on Lines 103, Section J and 502, Section K)			1,776.68	

By signing page 1 of this statement, the signatories acknowledge receipt of a completed copy of page 2 of this two page statement.

R David Chard

R. David Chard, Attorney at Law
Settlement Agent

Certified to be a true copy.

B

(R07-15020 / R07-15020 / 24)

Law Office of
R. David Chard
2050 Spaulding Drive, Suite 2
North Charleston, SC 29406

Telephone (843) 554-6984
Facsimile (843) 554-6996

May 3, 2007

COUNTRYWIDE HOME LOANS
7105 CORPORATE DRIVE
PLANO, TX 75024-4100

Attention: Mortgage Loan Payoff Department

RE: Mortgagor(s): CLIFFORD L. RYBA and BEVERLY RYBA
Address: 34 TARLETON DRIVE
CHARLESTON, SC 29407
Loan No.: 112421445-1

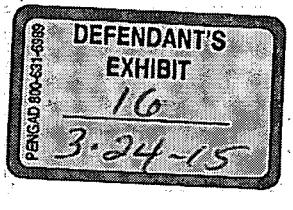
Dear Sir/Madam:

In connection with the above referenced loan, enclosed is our firm's trust account check dated May 2, 2007, in the amount of $171,445.01 as payment in full, along with a copy of the Loan Payoff Letter we received from you dated April 26, 2007.

As soon as possible after processing the enclosed check, please forward to us the original Note and Deed of Trust marked "Paid and Satisfied In Full" in order that we may have the same canceled of record.

Thank you for your assistance in this matter and, should you have any questions, please do not hesitate to contact me.

Sincerely,



R. DAVID CHARD, ATTORNEY AT LAW

MARY KRAHN

R07-15028

Enclosures

40834

**** REAL ESTA CLOSING ****

Buyer/Borrower: RYBA
Seller:
Lender: COUNTRYWIDE BANK, FSB 166076024
Property: 34 TARLETON DRIVE/CHARLESTON SC 29407 /
Settlement Date: May 2, 2007
Disbursement Date: May 2, 2007
Check Amount: $ 171,445.01
Pay To: COUNTRYWIDE HOME LOANS
For:
PAYOFF LOAN # 112421445-1

ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER WITH MICROPRINTED BORDER

40834

R. DAVID CHARD
ATTORNEY AT LAW
NORTH CHARLESTON TRUST ACCOUNT
2050 SPALDING DRIVE, SUITE 2
N. CHARLESTON, SC 29406

Bank of America

67-448/539

NUMBER R07-15028

PAYOFF LOAN # 112421445-1

--One Hundred Seventy One Thousand Four Hundred Forty Five and 01/100 ---------- Dollars

DATE	AMOUNT
May 2, 2007	$ ******171,445.01

PAY TO THE ORDER OF
COUNTRYWIDE HOME LOANS
7105 CORPORATE DRIVE
PLANO, TX 75024-4100

R. DAVID CHARD
NORTH CHARLESTON TRUST ACCOUNT

Barbara P. Chard

SAFEGUARD S.E.C.U.

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS HERE. RED IMAGE DISAPPEARS WITH HEAT.

⑈040834⑈ ⑆053904483⑆ 0007699694 08⑈

R. DAVID CHARD, NORTH CHARLESTON TRUST ACCOUNT

40834

Buyer/Borrower: RYBA
Seller:
Lender: COUNTRYWIDE BANK, FSB 166076024
Property: 34 TARLETON DRIVE/CHARLESTON SC 29407 /
Settlement Date: May 2, 2007
Disbursement Date: May 2, 2007
Check Amount: $ 171,445.01
Pay To: COUNTRYWIDE HOME LOANS
For:
PAYOFF LOAN # 112421445-1

Countrywide HOME LOANS

Payoff Department, Mail Stop PTX-B-348
7105 Corporate Drive
Plano, TX 75024-4100

PAYOFF DEMAND STATEMENT

Statement Void After May 4, 2007

Statement Date
April 26, 2007

Countrywide Home Loans
Loan No.: 112421445-1

FAX7159800L
Automated Payoff
Faxed Demand
XX
XX 99999

Name & Property Address:
Beverly & Clifford Rybe
34 Tarleton Dr
Charleston, SC 29407

Faxed to: 1-843-889-3050

(C-JMPAYOPT)

PAYOFF CALCULATION	Principal Balance as of 04/01/2007	$170,104.32
	Interest from 04/01/2007 to 05/04/2007	1,245.88
	County Recording Fee	5.00
	Uncollected Late Charges	29.81
	Total Amount Required to Release Lien (As of May 4, 2007)	$171,385.01
	Expedited Payoff Service Fee	60.00
	Total Amount Due	**$171,445.01**

For all full month payment periods, interest is calculated on a monthly basis. Accordingly, interest for all full months, including February, is calculated as 30/360 of annual interest, irrespective of the actual number of days in the month. For partial months, interest is calculated daily on the basis of a 365 day year.

AMENDED DEMAND STATEMENTS ARE SENT AUTOMATICALLY IF THE TOTAL AMOUNT DUE INCREASES BEFORE MAY 4, 2007.

PAYOFF INSTRUCTIONS

Payoff funds must be made payable to Countrywide Home Loans Servicing LP and will be accepted by WIRE or CERTIFIED FUNDS ONLY. They MUST reference the Countrywide loan number, property address and borrower's name in the OBI (Originator Beneficiary Information) field of the wire transfer or on the face of the check and must be sent per the instructions below. Failure to do so may cause delays resulting in additional interest due or the return of the funds to the remitter. Funds received after 3:00 p.m. Central Time may be posted the following business day.

Wire Funds to:
Beneficiary Bank: Bank of America
ABA Routing #: 0260-0959-3
Beneficiary Acct Name: MRC
MRC Account #12366-19173
Reference: Beverly & Clifford Rybe
Loan Number: 112421445-1

Mail CERTIFIED Funds to:
Countrywide Home Loans Servicing LP
Attention: Payoff Department, Mail Stop PTX-B-348
7105 Corporate Drive
Plano, TX 75024-4100

FAX7159800

BANK OF AMERICA WILL NOT PROCESS OR ACCEPT PAYMENTS OTHER THAN WIRE FUNDS WITH RESPECT TO THIS ACCOUNT.

Please call 1-800-669-5933 for updated payoff information within 24 hours of submitting funds.
See following page for important information. 5310L1 0427 8/11/2006

File No. 07-04003

APPRAISAL OF

LOCATED AT:

34 Tarleton Drive
Charleston, SC 29407-7479

FOR:

First Rate Mortgage
2178-C Ashley Phosphate Rd. Charleston, SC 29406

BORROWER:

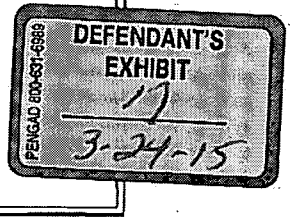
Beverly Ryba

AS OF:

April 12, 2007

BY:

Pamela S. Smith
SC State Certified Appraiser CR-3872



Form: 07-04003

First Rate Mortgage

First Rate Mortgage
2179-C Ashley Phosphate Rd. Charleston, SC 29406

File Number: 07-04003

In accordance with your request, I have appraised the real property at:

94 Tarleton Drive
Charleston, SC 29407-7479

The purpose of this appraisal is to develop an opinion of the market value of the subject property, as improved. The property rights appraised are the fee simple interest in the site and improvements.

In my opinion, the market value of the property as of April 12, 2007 is:

$375,000
Three Hundred Seventy-Five Thousand Dollars

The attached report contains the description, analysis and supportive data for the conclusions, final opinion of value, descriptive photographs, limiting conditions and appropriate certifications.

Pamela S. Smith
SC State Certified Appraiser CR-3872

COMPLETE APPRAISAL - SUMMARY REPORT

Uniform Residential Appraisal Report

File No. 07-04003

The purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property.

Property Address 34 Tarleton Drive | City Charleston | State SC | Zip Code 29407-7479

Borrower Beverly Ryba | Owner of Public Record Same as borrower | County Charleston

Legal Description Lot 481

Assessor's Parcel # 421-09-00-003 | Tax Year 2006 | R.E. Taxes $ 2,387.23

Neighborhood Name South Windermere | Map Reference See Parcel # | Census Tract 0030.00

Occupant [ ] Owner [X] Tenant [ ] Vacant | Special Assessments $ NA | [ ] PUD | HOA $ NA | [ ] per year [ ] per month

Property Rights Appraised [X] Fee Simple [ ] Leasehold [ ] Other (describe)

Assignment Type [ ] Purchase Transaction [X] Refinance Transaction [ ] Other (describe)

Lender/Client First Rate Mortgage | Address 2178-C Ashley Phosphate Rd. Charleston, SC 29406

Is the subject property currently offered for sale or has it been offered for sale in the twelve months prior to the effective date of this appraisal? [ ] Yes [X] No

Report data source(s) used, offering price(s), and date(s).

I [ ] did [ ] did not analyze the contract for sale for the subject purchase transaction. Explain the results of the analysis of the contract for sale or why the analysis was not performed.
NA

Contract Price $ NA | Date of Contract NA | Is the property seller the owner of public record? [X] Yes [ ] No | Data Source(s) Tax Records

Is there any financial assistance (loan charges, sale concessions, gift or downpayment assistance, etc.) to be paid by any party on behalf of the borrower? [ ] Yes [ ] No

If Yes, report the total dollar amount and describe the items to be paid. $ NA NA

Note: Race and the racial composition of the neighborhood are not appraisal factors.

Neighborhood Characteristics				One-Unit Housing Trends				One-Unit Housing		Present Land Use %	
Location	[ ] Urban	[X] Suburban	[ ] Rural	Property Values	[X] Increasing	[ ] Stable	[ ] Declining	PRICE	AGE	One-Unit	100 %
Built-Up	[X] Over 75%	[ ] 25-75%	[ ] Under 25%	Demand/Supply	[ ] Shortage	[X] In Balance	[ ] Over Supply	$(000)	(yrs)	2-4 Unit	%
Growth	[ ] Rapid	[X] Stable	[ ] Slow	Marketing Time	[X] Under 3 mths	[ ] 3-6 mths	[ ] Over 6 mths	170 Low	NEW	Multi-Family	%
Neighborhood Boundaries	The subject property is bounded roughly by Highway 17 (N); Folly Road (E); Wappoo Creek (S); and Byrnes Downs S/D (W). See attached location map.							575 High	65	Commercial	%
								365 Pred.	52	Other	%

Neighborhood Description See Attached Addendum

Market Conditions (including support for the above conclusions) See Attached Addendum

Dimensions See Tax Map | Area .22 Acres +/- | Shape Rectangular | View Residential

Specific Zoning Classification Single Family | Zoning Description Single Family

Zoning Compliance [X] Legal [ ] Legal Nonconforming (Grandfathered Use) [ ] No Zoning [ ] Illegal (describe)

Is the highest and best use of the subject property as improved (or as proposed per plans and specifications) the present use? [X] Yes [ ] No If No, describe.

Utilities	Public	Other (describe)		Public	Other (describe)	Off-site Improvements—Type	Public	Private
Electricity	[X]	[ ]	Water	[X]	[ ]	Street Asphalt	[X]	[ ]
Gas	[X]	[ ]	Sanitary Sewer	[X]	[ ]	Alley None	[ ]	[ ]

FEMA Special Flood Hazard Area [X] Yes [ ] No | FEMA Flood Zone AE | FEMA Map # 455412 0513J | FEMA Map Date 11/17/2004

Are the utilities and off-site improvements typical for the market area? [X] Yes [ ] No If No, describe.

Are there any adverse site conditions or external factors (easements, encroachments, environmental conditions, land uses, etc.)? [ ] Yes [X] No If Yes, describe.

GENERAL DESCRIPTION				FOUNDATION				EXTERIOR DESCRIPTION materials/condition		INTERIOR materials/condition	
Units	[X] One	[ ] One with Accessory Unit		[ ] Concrete Slab	[X] Crawl Space			Foundation Walls	Brick	Floors	Tile,Hdw,Cpt
# of Stories	1			[ ] Full Basement	[ ] Partial Basement			Exterior Walls	Brick	Walls	Drywall/Panel
Type	[X] Det.	[ ] Att.	[ ] S-Det./End Unit	Basement Area	0 sq. ft.			Roof Surface	Comp. Shingle	Trim/Finish	Wood Paint
[X] Existing	[ ] Proposed	[ ] Under Const.		Basement Finish	%			Gutters & Downspouts	Overhang	Bath Floor	Ceramic Tile
Design (Style)	1 Story			[ ] Outside Entry/Exit	[ ] Sump Pump			Window Type	Dbl Hng	Bath Wainscot	Ceramic Tile
Year Built	1955			Evidence of	[ ] Infestation			Storm Sash/Insulated	None	Car Storage	[X] None
Effective Age (Yrs)	6			[ ] Dampness	[ ] Settlement			Screens	Screens	[X] Driveway	# of Cars 2-3
Attic	[ ] None			Heating	[X] FWA	[ ] HWBB	[ ] Radiant	Amenities	[ ] WoodStove(s) #	Driveway Surface	Concrete
[X] Drop Stair	[ ] Stairs			[ ] Other	Fuel Electric			[X] Fireplace(s) # 1	[X] Fence	[ ] Garage	# of Cars
[ ] Floor	[ ] Scuttle			Cooling	[X] Central Air Conditioning			[X] Patio/Deck	[X] Porch	[ ] Carport	# of Cars
[ ] Finished	[ ] Heated			[ ] Individual	[ ] Other			[ ] Pool	[X] Other Side Bldg	[ ] Att.	[ ] Det. [ ] Built-in

Appliances [X] Refrigerator [X] Range/Oven [X] Dishwasher [ ] Disposal [X] Microwave [ ] Washer/Dryer [ ] Other (describe)

Finished area above grade contains: 7 Rooms | 4 Bedrooms | 1.5 Bath(s) | 1,605 Square Feet of Gross Living Area Above Grade

Additional features (special energy efficient items, etc.). hardwood floors; tile floor in kitchen; fireplace; wood deck; front porch; new double hung vinyl windows; fence yard; ceiling fans;

Describe the condition of the property (including needed repairs, deterioration, renovations, remodeling, etc.). The subject property was observed to be built with good quality building materials and to be in good condition with no functional or economical inadequacies noted at the time of inspection. Minimal depreciation exists from typical wear and tear. The design and room layout is typical for the neighborhood.

Are there any physical deficiencies or adverse conditions that affect the livability, soundness, or structural integrity of the property? [ ] Yes [X] No If Yes, describe.

Does the property generally conform to the neighborhood (functional utility, style, condition, use, construction, etc.)? [X] Yes [ ] No If No, describe.

COMPLETE APPRAISAL - SUMMARY REPORT

Uniform Residential Appraisal Report

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There are 12 comparable properties currently offered for sale in the subject neighborhood ranging in price from $ 359,000 to $ 674,900

There are 11 comparable sales in the subject neighborhood within the past twelve months ranging in sale price from $ 170,000 to $ 575,000

FEATURE	SUBJECT	COMPARABLE SALE NO. 1		COMPARABLE SALE NO. 2		COMPARABLE SALE NO. 3	
Address	34 Tarleton Drive Charleston	27 Fenwick Drive Charleston, SC 29407		39 Beverly Road Charleston, SC 29407		28 Sothel Avenue Charleston, SC 29407	
Proximity to Subject		0.64 miles ENE		0.41 miles NE		0.55 miles NW	
Sale Price	$ NA		$ 382,000		$ 423,500		$ 312,500
Sale Price/Gross Liv. Area	$ 0.00 sq. ft.	$ 241.33 sq. ft.		$ 250.00 sq. ft.		$ 284.09 sq. ft.	
Data Source(s)		Exterior Inspection		Exterior Inspection		Exterior Inspection	
Verification Source(s)		MLS #2701700/Tax Records		MLS #2630140/Tax Records		MLS #2627750/Tax Records	
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(-) $ Adjustment	DESCRIPTION	+(-) $ Adjustment	DESCRIPTION	+(-) $ Adjustment
Sale or Financing Concessions	NA	Conventional DOM 16		Conventional DOM 122		Conventional DOM 12	
Date of Sale/Time	NA	01/26/2007		01/30/2007		10/05/2006	
Location	S Windermere	S Windermere		S Windermere		Byrnes Down	
Leasehold/Fee Simple	Fee Simple	Fee Simple		Fee Simple		Fee Simple	
Site	.22 Acres +/-	.13 Acres +/-		.17 Acres +/-		.15 Acres +/-	
View	Residential	Residential		Residential		Residential	
Design (Style)	1 Story	1 Story		1 Story		1 Story	
Quality of Construction	Brick	Brick		Brick		Brick	
Actual Age	1955	1945		1940		1945	
Condition	Good	Good		Good		Good	
Above Grade Room Count (Total / Bdrms. / Baths)	7 / 4 / 1.5	6 / 3 / 2	-4,000	6 / 3 / 2	-4,000	5 / 2 / 1	4,000
Gross Living Area 90.00	1,605 sq. ft.	1,500 sq. ft.	9,450	1,694 sq. ft.		1,100 sq. ft.	45,450
Basement & Finished Rooms Below Grade	None None	None None		None None		None None	
Functional Utility	Typical	Typical		Typical		Typical	
Heating/Cooling	FWA/Central	FWA/Central		FWA/Central		FWA/Central	
Energy Efficient Items	Typical	Typical		Typical		Typical	
Garage/Carport	None	None		2 Car Garage	-12,000	None	
Porch/Patio/Deck	Deck,Porch	Deck	1,500	Porch,Patio	1,000	Porch	1,500
FIREPLACE	1 Fireplace	1 Fireplace		1 Fireplace		None	3,500
	Fence,Stge Bldg	Stge Bldg	1,500	Fence,Wkshop		Fence,Stge Bldg	
	Std. Kitch. Equip.	Std. Kitch. Equip.		Std. Kitch. Equip.		Std. Kitch. Equip.	
Net Adjustment (Total)		[X] + [ ] -	$ 8,450	[ ] + [X] -	$ 15,000	[X] + [ ] -	$ 54,450
Adjusted Sale Price of Comparables		Net Adj. 2.3% Gross Adj. 4.5%	$ 370,450	Net Adj. -3.5% Gross Adj. 4.0%	$ 408,500	Net Adj. 17.4% Gross Adj. 17.4%	$ 366,950

I [ ] did [ ] did not research the sale or transfer history of the subject property and comparable sales. If not, explain

My research [ ] did [ ] did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.

Data source(s)

My research [ ] did [ ] did not reveal any prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sale.

Data source(s)

Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).

ITEM	SUBJECT	COMPARABLE SALE NO. 1	COMPARABLE SALE NO. 2	COMPARABLE SALE NO. 3
Date of Prior Sale/Transfer	None Known	None Known	None Known	None Known
Price of Prior Sale/Transfer	Per MLS/Tax Records	Per MLS/Tax Records	Per MLS/Tax Records	Per MLS/Tax Records
Data Source(s)				
Effective Date of Data Source(s)	04/16/2007	04/16/2007	04/16/2007	04/16/2007

Analysis of prior sale or transfer history of the subject property and comparable sales The subject property has not sold, transfer or been listed for sale in the past 3 years. The comparables sale have not sold in the past year.

Summary of Sales Comparison Approach Due to limited sales in the past year similar to subject in bathroom, Comp 3 is located in a similar neighborhood, but inferior in square feet. Comp 4 is located in the same neighborhood as subject, but is over 1 year old, was utilized due to square feet and number of bathrooms. All comps are similar in condition and quality. All other adjustments were considered typical for the area. The sales submitted are believed to be the most recent and best available for comparison.

Indicated Value by Sales Comparison Approach $ 375,000

Indicated Value by: Sales Comparison Approach $ 375,000 Cost Approach (if developed) $ 377,200 Income Approach (if developed) $ NA

The Sales Comparison Approach was considered the best indicator of value due to the fact it reflects reactions of typical buyers and sellers in the marketplace. The Cost Approach supports the final opinion of value. The Income Approach was not utilized due to limited rental data and is not considered applicable. See Addendum, Certification and Limiting Conditions.

This appraisal is made [X] "as is," [ ] subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed, [ ] subject to the following repairs or alterations on the basis of a hypothetical condition that the repairs or alterations have been completed, or [ ] subject to the following required inspection based on the extraordinary assumption that the condition or deficiency does not require alteration or repair: See Attached Addendum

Based on a complete visual inspection of the interior and exterior areas of the subject property, defined scope of work, statement of assumptions and limiting conditions, and appraiser's certification, my (our) opinion of the market value, as defined, of the real property that is the subject of this report is $ 375,000 as of 04/12/2007, which is the date of inspection and the effective date of this appraisal.

PS Appraisal Services

COMPLETE APPRAISAL - SUMMARY REPORT

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COST APPROACH TO VALUE (not required by Fannie Mae)

Provide adequate information for the lender/client to replicate the below cost figures and calculations.

Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value) The subject is located in a older established neighborhood, with no vacant lot sales in the past year. The appraiser research the market area to arrive at value for lot.

ESTIMATED ☐ REPRODUCTION OR ☒ REPLACEMENT COST NEW	OPINION OF SITE VALUE ..... = $	175,000
Source of cost data Marshall & Swift	Dwelling 1,505 Sq. Ft. @ $ 123.00 ..... = $	197,415
Quality rating from cost service Good Effective date of cost data 2007	Sq. Ft. @ $ ..... = $	
Comments on Cost Approach (gross living area calculations, depreciation, etc.)	FP,Deck,Porch, Appli. Etc....	12,000
Cost estimates on Marshall & Swift Cost Guide are modified to local conditions. Depreciation was derived by the age/life method. The estimated economic life of the subject property is 70 years.	Garage/Carport 0 Sq. Ft. @ $ ..... = $	0
	Total Estimate of Cost-New ..... = $	209,415
	Less 70 Physical / Functional / External	
	Depreciation $17,258 = $ (	17,258)
	Depreciated Cost of Improvements ..... = $	192,157
	"As-is" Value of Site Improvements ..... = $	10,000
Estimated Remaining Economic Life (HUD and VA only) 64 Years	INDICATED VALUE BY COST APPROACH ..... = $	377,200

INCOME APPROACH TO VALUE (not required by Fannie Mae)

Estimated Monthly Market Rent $ NA X Gross Rent Multiplier NA = $ NA Indicated Value by Income Approach

Summary of Income Approach (including support for market rent and GRM) NA

PROJECT INFORMATION FOR PUDs (if applicable)

Is the developer/builder in control of the Homeowners' Association (HOA)? ☐ Yes ☒ No Unit type(s) ☐ Detached ☐ Attached

Provide the following information for PUDs ONLY if the developer/builder is in control of the HOA and the subject property is an attached dwelling unit.

Legal name of project

Total number of phases Total number of units Total number of units sold

Total number of units rented Total number of units for sale Data source(s)

Was the project created by the conversion of an existing building(s) into a PUD? ☐ Yes ☐ No If Yes, date of conversion.

Does the project contain any multi-dwelling units? ☐ Yes ☐ No Data source(s)

Are the units, common elements, and recreation facilities complete? ☐ Yes ☐ No If No, describe the status of completion.

Are the common elements leased to or by the Homeowners' Association? ☐ Yes ☐ No If Yes, describe the rental terms and options.

Describe common elements and recreational facilities. NA

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This report form is designed to report an appraisal of a one-unit property or a one-unit property with an accessory unit; including a unit in a planned unit development (PUD). This report form is not designed to report an appraisal of a manufactured home or a unit in a condominium or cooperative project.

This appraisal report is subject to the following scope of work, intended use, intended user, definition of market value, statement of assumptions and limiting conditions, and certifications. Modifications, additions, or deletions to the intended use, intended user, definition of market value, or assumptions and limiting conditions are not permitted. The appraiser may expand the scope of work to include any additional research or analysis necessary based on the complexity of this appraisal assignment. Modifications or deletions to the certifications are also not permitted. However, additional certifications that do not constitute material alterations to this appraisal report, such as those required by law or those related to the appraiser's continuing education or membership in an appraisal organization, are permitted.

SCOPE OF WORK: The scope of work for this appraisal is defined by the complexity of this appraisal assignment and the reporting requirements of this appraisal report form, including the following definition of market value, statement of assumptions and limiting conditions, and certifications. The appraiser must, at a minimum: (1) perform a complete visual inspection of the interior and exterior areas of the subject property, (2) inspect the neighborhood, (3) inspect each of the comparable sales from at least the street, (4) research, verify, and analyze data from reliable public and/or private sources, and (5) report his or her analysis, opinions, and conclusions in this appraisal report.

INTENDED USE: The intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction.

INTENDED USER: The intended user of this appraisal report is the lender/client.

DEFINITION OF MARKET VALUE: The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions* granted by anyone associated with the sale.

*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS: The appraiser's certification in this report is subject to the following assumptions and limiting conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it, except for information that he or she became aware of during the research involved in performing this appraisal. The appraiser assumes that the title is good and marketable and will not render any opinions about the title.

2. The appraiser has provided a sketch in this appraisal report to show the approximate dimensions of the improvements. The sketch is included only to assist the reader in visualizing the property and understanding the appraiser's determination of its size.

3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in this appraisal report whether any portion of the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.

4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand, or as otherwise required by law.

5. The appraiser has noted in this appraisal report any adverse conditions (such as needed repairs, deterioration, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the research involved in performing this appraisal. Unless otherwise stated in this appraisal report, the appraiser has no knowledge of any hidden or unapparent physical deficiencies or adverse conditions of the property (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) that would make the property less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, this appraisal report must not be considered as an environmental assessment of the property.

6. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that the completion, repairs, or alterations of the subject property will be performed in a professional manner.

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APPRAISER'S CERTIFICATION: The Appraiser certifies and agrees that:

1. I have, at a minimum, developed and reported this appraisal in accordance with the scope of work requirements stated in this appraisal report.

2. I performed a complete visual inspection of the interior and exterior areas of the subject property. I reported the condition of the improvements in factual, specific terms. I identified and reported the physical deficiencies that could affect the livability, soundness, or structural integrity of the property.

3. I performed this appraisal in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.

4. I developed my opinion of the market value of the real property that is the subject of this report based on the sales comparison approach to value. I have adequate comparable market data to develop a reliable sales comparison approach for this appraisal assignment. I further certify that I considered the cost and income approaches to value but did not develop them, unless otherwise indicated in this report.

5. I researched, verified, analyzed, and reported on any current agreement for sale for the subject property, any offering for sale of the subject property in the twelve months prior to the effective date of this appraisal, and the prior sales of the subject property for a minimum of three years prior to the effective date of this appraisal, unless otherwise indicated in this report.

6. I researched, verified, analyzed, and reported on the prior sales of the comparable sales for a minimum of one year prior to the date of sale of the comparable sale, unless otherwise indicated in this report.

7. I selected and used comparable sales that are locationally, physically, and functionally the most similar to the subject property.

8. I have not used comparable sales that were the result of combining a land sale with the contract purchase price of a home that has been built or will be built on the land.

9. I have reported adjustments to the comparable sales that reflect the market's reaction to the differences between the subject property and the comparable sales.

10. I verified, from a disinterested source, all information in this report that was provided by parties who have a financial interest in the sale or financing of the subject property.

11. I have knowledge and experience in appraising this type of property in this market area.

12. I am aware of, and have access to, the necessary and appropriate public and private data sources, such as multiple listing services, tax assessment records, public land records and other such data sources for the area in which the property is located.

13. I obtained the information, estimates, and opinions furnished by other parties and expressed in this appraisal report from reliable sources that I believe to be true and correct.

14. I have taken into consideration the factors that have an impact on value with respect to the subject neighborhood, subject property, and the proximity of the subject property to adverse influences in the development of my opinion of market value. I have noted in this appraisal report any adverse conditions (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) observed during the inspection of the subject property or that I became aware of during the research involved in performing this appraisal. I have considered these adverse conditions in my analysis of the property value, and have reported on the effect of the conditions on the value and marketability of the subject property.

15. I have not knowingly withheld any significant information from this appraisal report and, to the best of my knowledge, all statements and information in this appraisal report are true and correct.

16. I stated in this appraisal report my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the assumptions and limiting conditions in this appraisal report.

17. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or opinion of market value in this appraisal report on the race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law.

18. My employment and/or compensation for performing this appraisal or any future or anticipated appraisals was not conditioned on any agreement or understanding, written or otherwise, that I would report (or present analysis supporting) a predetermined specific value, a predetermined minimum value, a range or direction in value, a value that favors the cause of any party, or the attainment of a specific result or occurrence of a specific subsequent event (such as approval of a pending mortgage loan application).

19. I personally prepared all conclusions and opinions about the real estate that were set forth in this appraisal report. If I relied on significant real property appraisal assistance from any individual or individuals in the performance of this appraisal or the preparation of this appraisal report, I have named such individual(s) and disclosed the specific tasks performed in this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in this appraisal report; therefore, any change made to this appraisal is unauthorized and I will take no responsibility for it.

20. I identified the lender/client in this appraisal report who is the individual, organization, or agent for the organization that ordered and will receive this appraisal report.

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21. The lender/client may disclose or distribute this appraisal report to: the borrower; another lender at the request of the borrower; the mortgagee or its successors and assigns; mortgage insurers; government sponsored enterprises; other secondary market participants; data collection or reporting services; professional appraisal organizations; any department, agency, or instrumentality of the United States; and any state, the District of Columbia, or other jurisdictions; without having to obtain the appraiser's or supervisory appraiser's (if applicable) consent. Such consent must be obtained before this appraisal report may be disclosed or distributed to any other party (including, but not limited to, the public through advertising, public relations, news, sales, or other media).

22. I am aware that any disclosure or distribution of this appraisal report by me or the lender/client may be subject to certain laws and regulations. Further, I am also subject to the provisions of the Uniform Standards of Professional Appraisal Practice that pertain to disclosure or distribution by me.

23. The borrower, another lender at the request of the borrower, the mortgagee or its successors and assigns, mortgage insurers, government sponsored enterprises, and other secondary market participants may rely on this appraisal report as part of any mortgage finance transaction that involves any one or more of these parties.

24. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

25. Any intentional or negligent misrepresentation(s) contained in this appraisal report may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq., or similar state laws.

SUPERVISORY APPRAISER'S CERTIFICATION: The Supervisory Appraiser certifies and agrees that:

1. I directly supervised the appraiser for this appraisal assignment, have read the appraisal report, and agree with the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.

2. I accept full responsibility for the contents of this appraisal report including, but not limited to, the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.

3. The appraiser identified in this appraisal report is either a sub-contractor or an employee of the supervisory appraiser (or the appraisal firm), is qualified to perform this appraisal, and is acceptable to perform this appraisal under the applicable state law.

4. This appraisal report complies with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.

5. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

APPRAISER

Signature Pamela S. Smith
Name Pamela S. Smith
Company Name PS Appraisal Services
Company Address 4044 Herlestion Green Lane
Mount Pleasant, SC 29466
Telephone Number 843-856-6251
Email Address psmith24@bellsouth.net
Date of Signature and Report 04/18/2007
Effective Date of Appraisal 04/12/2007
State Certification # CR-3872
or State License # FHA
or Other (describe) _____ State # _____
State SC
Expiration Date of Certification or License 06/30/2007

SUPERVISORY APPRAISER (ONLY IF REQUIRED)

Signature _____
Name _____
Company Name _____
Company Address _____
_____
Telephone Number _____
Email Address _____
Date of Signature _____
State Certification # _____
or State License # _____
State _____
Expiration Date of Certification or License _____

ADDRESS OF PROPERTY APPRAISED

34 Tarleton Drive
Charleston, SC 29407-7479

APPRAISED VALUE OF SUBJECT PROPERTY $ 375,000

LENDER/CLIENT

Name _____
Company Name First Rate Mortgage
Company Address 2179-C Ashley Phosphate Rd. Charleston, S
_____
Email Address _____

SUBJECT PROPERTY

☐ Did not inspect subject property
☐ Did inspect exterior of subject property from street
Date of Inspection _____
☐ Did inspect interior and exterior of subject property
Date of Inspection _____

COMPARABLE SALES

☐ Did not inspect exterior of comparable sales from street
☐ Did inspect exterior of comparable sales from street
Date of Inspection _____

COMPLETE APPRAISAL - SUMMARY REPORT

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FEATURE	SUBJECT	COMPARABLE SALE NO. 4		COMPARABLE SALE NO. 5		COMPARABLE SALE NO. 6	
34 Tarleton Drive Address Charleston		1 Fenwick Drive Charleston, SC 29407					
Proximity to Subject		0.64 miles ENE					
Sale Price	$ NA		$ 345,000		$		$
Sale Price/Gross Liv. Area	$ 0.00 sq. ft.	$ 209.09 sq. ft.		$ sq. ft.		$ sq. ft.	
Data Source(s)		Exterior Inspection		Exterior Inspection		Exterior Inspection	
Verification Source(s)		MLS #2507725/Tax Records		MLS #/Tax Records		MLS #/Tax Records	
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(-) $ Adjustment	DESCRIPTION	+(-) $ Adjustment	DESCRIPTION	+(-) $ Adjustment
Sale or Financing Concessions	NA	Conventional DOM 51					
Date of Sale/Time	NA	06/01/2005	30,000				
Location	S Windermere	S Windermere					
Leasehold/Fee Simple	Fee Simple	Fee Simple					
Site	.22 Acres +/-	.20 Acres +/-					
View	Residential	Residential					
Design (Style)	1 Story	1 Story					
Quality of Construction	Brick	Brick					
Actual Age	1955	1927					
Condition	Good	Good					
Above Grade Room Count	Total 7 / Bdrms 4 / Baths 1.5	Total 6 / Bdrms 3 / Baths 1.5		Total / Bdrms / Baths		Total / Bdrms / Baths	
Gross Living Area 90.00	1,605 sq. ft.	1,650 sq. ft.		sq. ft.		sq. ft.	
Basement & Finished Rooms Below Grade	None None	None None					
Functional Utility	Typical	Typical					
Heating/Cooling	FWA/Central	FWA/Central					
Energy Efficient Items	Typical	Typical					
Garage/Carport	None	None					
Porch/Patio/Deck	Deck,Porch	Porch,Patio	1,000				
FIREPLACE	1 Fireplace	1 Fireplace					
	Fence,Stge Bldg	Fence,Stge Bldg					
	Std. Kitch. Equip.	Std. Kitch. Equip.					
Net Adjustment (Total)		[X] + [ ] -	$ 31,000	[ ] + [ ] -	$	[ ] + [ ] -	$
Adjusted Sale Price of Comparables		Net Adj. 9.0%		Net Adj. %		Net Adj. %	
		Gross Adj. 9.0%	$ 376,000	Gross Adj. %	$	Gross Adj. %	$

ITEM	SUBJECT	COMPARABLE SALE NO. 4	COMPARABLE SALE NO. 5	COMPARABLE SALE NO. 6
Date of Prior Sale/Transfer	None Known	None Known	None Known	None Known
Price of Prior Sale/Transfer	Per MLS/Tax Records	Per MLS/Tax Records	Per MLS/Tax Records	Per MLS/Tax Records
Data Source(s)				
Effective Date of Data Source(s)	04/19/2007	04/19/2007		

Summary of Sales Comparison Approach

ADDENDUM

Borrower: Beverly Ryba	File No.: 07-04003	
Property Address: 34 Tarleton Drive	Case No.:	
City: Charleston	State: SC	Zip: 29407-7479
Lender: First Rate Mortgage		

Neighborhood Description
The subject property is located in South Windemere, an older established single family residential neighborhood located in the West Ashley section of Charleston. South Windemere is a highly desirable area due to its central location and close proximity to Downtown Historic Charleston. Public beach access on Folly Beach is also within a minimal commute. Homes located on waterfront lots represent the upper range of value. The majority of homes are located on interior lots. The area has relatively easy access to Highway 17, I-26 and I-526. Residents are afforded convenient access to schools, shopping, places of worship, businesses and places of employment.

Neighborhood Market Conditions
The trend for the subject market area is stable with appreciation likely under normal economic conditions. The estimated marketing time for the subject property is less than three months. The appraiser notes a total of 11 sales in South Windermere within the past twelve months ranging from $170,000 to $575,000 with a median sales price of $365,000. The average days on market is 25 days. The statistical data provided herein was obtained via Charleston Trident MLS and considered accurate.

Conditions of Appraisal
Mechanical equipment is assumed to be in good working order and dwelling structurally sound and free of insect infestation w/appraised value contingent thereon. See attached addendum for additional comments.

ADDENDUM

Borrower: Beverly Ryba		File No.: 07-04003
Property Address: 34 Tarleton Drive		Case No.:
City: Charleston	State: SC	Zip: 29407-7479
Lender: First Rate Mortgage		

SCOPE OF WORK

The objective of this assignment is to develop an opinion of value. I view the subject property interior and exterior and took exterior measurements. I used all county records on subject property. I used Multiple Listing Service to compile sales data. I also searched county records and my own data files.
The Sales Comparison Approach was considered the best indicator of value due to the fact it reflects reactions of typical buyers and sellers in the marketplace. The Cost Approach supports the final opinion of value. The Income Approach was not utilized due to limited rental data and is not considered applicable.

COMPLETE APPRAISAL ASSIGNMENT - SUMMARY APPRAISAL REPORT

This is a Complete Appraisal Assignment according to Standards Rule 1 and Summary Appraisal Report which is intended to comply with the reporting requirements set forth under Standards Rule 2-2 (B) of the Uniform Standards of Professional Appraisal Practice for a Summary Appraisal Report.

To develop the opinion of value, the appraiser performed a complete appraisal process, as defined by the Uniform Standards of Professional Appraisal Practice (USPAP). No departures from Standards 1 were invoked.

APPRAISAL REPORTING PROCESS

The appraisal report presents only summary discussions of the data, reasoning, and analysis that were used in the appraisal process to develop the appraiser's opinion of value. Supporting documentation that is not provided within this report concerning data, reasoning, and analysis is retained in the appraiser's file. The depth of discussion contained in this report is specific to the needs of the client and for the intended use stated within the report. The appraiser is not responsible for unauthorized use of this report.

PURPOSE OF THE ASSIGNMENT

The purpose of this report is to provide an opinion of market value, as defined in the report, for the subject property. The opinion of value stated in this report is in terms of financial arrangements equivalent to cash.

DEFINITION OF MARKET VALUE

The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.

INTENDED USE/USER OF THE APPRAISAL REPORT

"The Intended User of this appraisal report is the Lender/Client. The Intended Use is to evaluate the property that is the subject of this appraisal for a mortgage finance transaction, subject to the stated Scope of Work, purpose of the appraisal, reporting requirements of this appraisal report form, and Definition of Market Value. No additional Intended Users are identified by the appraiser."

Without the written consent of the appraiser, this report may not be used for any purpose by any person other than the party to whom it is addressed. The appraiser has no liability, obligation or responsibility to any person and/or third parties other than the party to whom the report is addressed.

FHA COMMENTS

This appraisal is not a home inspection and the appraiser is not acting as a home inspector when preparing the report. The borrower has the right to have the home inspected by a professional home inspector.

When preparing the inspection of this property, the appraiser visually observed areas that were readily accessible. The appraiser is not required to disturb or move anything that obstructs access or visibility.

When completing the appraisal, a visual inspection was done in accordance with FHA Guidelines. The inspection is not technically exhaustive. The inspection does not offer warranties or guarantees of any kind.

ADDENDUM

Borrower: Beverly Ryba		File No.: 07-04003
Property Address: 34 Tarleton Drive		Case No.:
City: Charleston	State: SC	Zip: 29407-7479
Lender: First Rate Mortgage		

DATA COLLECTION AND INSPECTION COMMENTS

All data contained within this report was obtained and verified through county records including Tax and Map Data, Multiple Listing Service (MLS), inspection of the subject property and neighborhood, Professional Realtors and Real Estate Agents, and/or appropriate governing agencies.

This appraisal is not a home inspection and the appraiser is not acting as a home inspector when preparing the report. The borrower has the right to have the property inspected by a professional home inspector. It is assumed that all mechanical equipment and appliances are operable; that all electrical, plumbing and roof components are operable and/or satisfactory; and there are no structural defects hidden by floor or wall coverings or any other hidden or unapparent conditions of the subject property. The appraiser does not have the expertise to make appropriate inspections and therefore assumes no responsibility for these items.

TERMITE INFESTATION (EXISTING DWELLINGS)

Although there was no evidence of infestation, this does not rule out the possibility of termites. It is recommended that a licensed pest control operator inspect the subject property.

ESTIMATED SITE VALUE

In estimating the site value the appraiser has relied on personal knowledge of the local market. This knowledge is based on prior and/or current analysis of vacant land sales and/or abstraction of site values from sales of improved properties.

SITE SURVEY AND FEDERAL EMERGENCY MANAGEMENT AGENCY INFORMATION (FEMA)

The site dimensions, size, easements, encroachments and flood zone information are subject to a survey. The FEMA information utilized in this report was obtained from the most recent FEMA Maps available at the time of inspection. The surveyor is better able to make the final determination regarding flood zone data and their opinion should over rule that of the appraiser. A survey from a licensed professional is recommended to determine the exact location of the subject property.

ENVIRONMENTAL DISCLAIMER

The opinion of value is based on the assumption the property is not negatively affected by the existence of hazardous substances or detrimental environmental conditions unless otherwise stated in this report. The appraiser is not an expert in the identification of hazardous substances or detrimental environmental conditions. The appraiser's routine inspection of and inquiries about the subject property did not develop any information that indicated any apparent significant hazardous substances or detrimental environmental conditions which would affect the property negatively unless otherwise stated in this report. It is possible that test and inspections made by a qualified hazardous substance and environmental expert would reveal the existence of hazardous substances or detrimental environmental conditions on or in close proximity to the subject property that would negatively affect its market value.

DIGITAL PHOTOGRAPH AND SIGNATURE COMMENTS

The photographs provided in this report are digital images. There have been no alterations whatsoever made to these images. When utilized, signatures are digital and approved by the appraiser of the report.

FINAL RECONCILIATION

The Sales Comparison Approach was given the most credence due to the fact it reflects the activity of typical buyers and sellers in the marketplace. The Cost Approach also supports the final opinion of value. Unless otherwise noted in the report, the Income Approach was not utilized due to limited rental data and is not considered applicable. The final opinion of value does not include any personal property unless stated in the report. The final opinion of value is subject to a thorough title examination.

Borrower: Beverly Ryba	File No.: 07-04003	
Property Address: 34 Tarleton Drive	Case No.:	
City: Charleston	State: SC	Zip: 29407-7479
Lender: First Rate Mortgage		

APPRAISER BELIEVES THE COST APPROACH IS APPLICABLE

The cost approach has only been developed by the appraiser as an analysis to support their opinion of the property's market value. Use of this data, in the whole or part, for other purposes is not intended by the appraiser. Nothing set forth in the appraisal should be relied upon for the purpose of determining the amount or type of insurance coverage to be placed on the subject property. The appraiser assumes no liability for and does not guarantee that any insurable value estimated inferred from this report will result in the subject property being fully insured for any loss that may be sustained. Further, the cost approach may not be reliable indication of replacement or reproduction cost for any date other than the effective date of this appraisal due to changing in costs of labor and materials and due to changing building codes and governmental regulations and requirements.

COST APPROACH REQUIRED BY CLIENT BUT APPRAISER DOES NOT CONSIDER IT MEANINGFUL

At the request of the client, development of the cost approach has been attempted by the appraiser as an analysis to support their opinion of the property's market value. Because there is insufficient market evidence to credibly support the site value/derivation of total appreciation, the cost approach is not given any consideration in the appraiser's final analysis. Use of this data, in whole or in part, for other purposes is not intended by the appraiser. Nothing set forth in the appraisal should be relied upon for the purpose of determining the amount or type of insurance coverage to be placed on the subject property. The appraiser assumes no liability for and does not guarantee that any insurable value estimate inferred from this report will result in the subject property being fully insured for any loss that may sustained. The appraiser recommends that an insurance professional be consulted. Further, the cost approach may not be a reliable indication of replacement or reproduction cost for any date other than the effective date of this appraisal due to changing costs of labor and materials and due to changing building codes and governmental regulations and requirement.

VALUE OF SITE

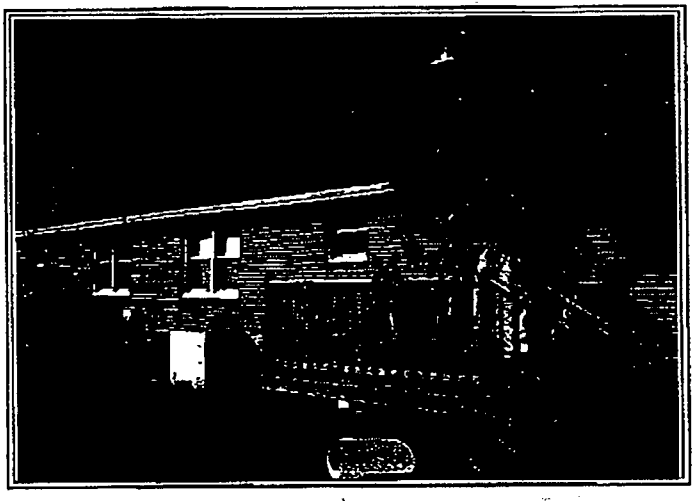
The appraiser research the market area to arrive at a opinion of value for lot. Some of the older established neighborhood have had no vacant land sales and the appraiser had to search the market area to arrive at the opinion of value for lot. The square foot price was taken from the RESIDENTIAL COST HANDBOOK FROM MARSHALL & SWIFT and in the appraiser opinion redeem liabable information.

SUBJECT PROPERTY PHOTO ADDENDUM

Borrower: Beverly Ryba		File No.: 07-04003
Property Address: 34 Tarleton Drive		Case No.:
City: Charleston	State: SC	Zip: 29407-7479
Lender: First Rate Mortgage		

FRONT VIEW OF
SUBJECT PROPERTY

Appraised Date: April 12, 2007
Appraised Value: $ 375,000

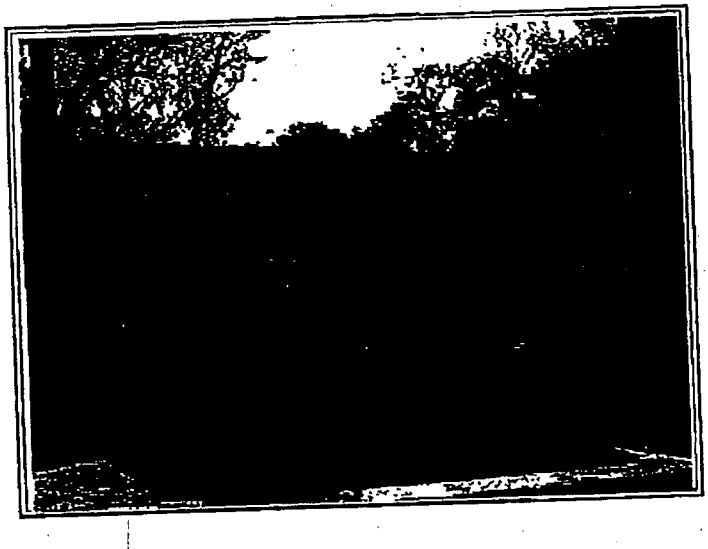


REAR VIEW OF
SUBJECT PROPERTY

STREET SCENE

COMPARABLE PROPERTY PHOTO ADDENDUM

Borrower: Beverly Ryba		File No.: 07-04003
Property Address: 34 Tarleton Drive		Case No.:
City: Charleston	State: SC	Zip: 29407-7479
Lender: First Rate Mortgage		



COMPARABLE SALE #1

27 Fenwick Drive
Charleston, SC 29407
Sale Date: 01/26/2007
Sale Price: $ 362,000

COMPARABLE SALE #2

39 Beverly Road
Charleston, SC 29407
Sale Date: 01/30/2007
Sale Price: $ 423,500

COMPARABLE SALE #3

28 Bothel Avenue
Charleston, SC 29407
Sale Date: 10/05/2006
Sale Price: $ 312,500

COMPARABLE PROPERTY PHOTO ADDENDUM

Borrower: Beverly Ryba		File No.: 07-04003
Property Address: 34 Tarleton Drive		Case No.:
City: Charleston	State: SC	Zip: 29407-7479
Lender: First Rate Mortgage		

COMPARABLE SALE #4

1 Fenwick Drive
Charleston, SC 29407
Sale Date: 06/01/2005
Sale Price: $ 345,000

COMPARABLE SALE #5

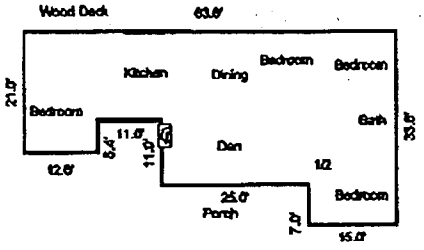
Sale Date:
Sale Price: $

COMPARABLE SALE #6

Sale Date:
Sale Price: $

FLOORPLAN

Borrower: Beverly Rybe | File No.: 07-04003
Property Address: 94 Tarleton Drive | Case No.:
City: Charleston | State: SC | Zip: 29407-7478
Lender: First Rate Mortgage



Sketch by Apex IV Windows™

AREA CALCULATIONS SUMMARY

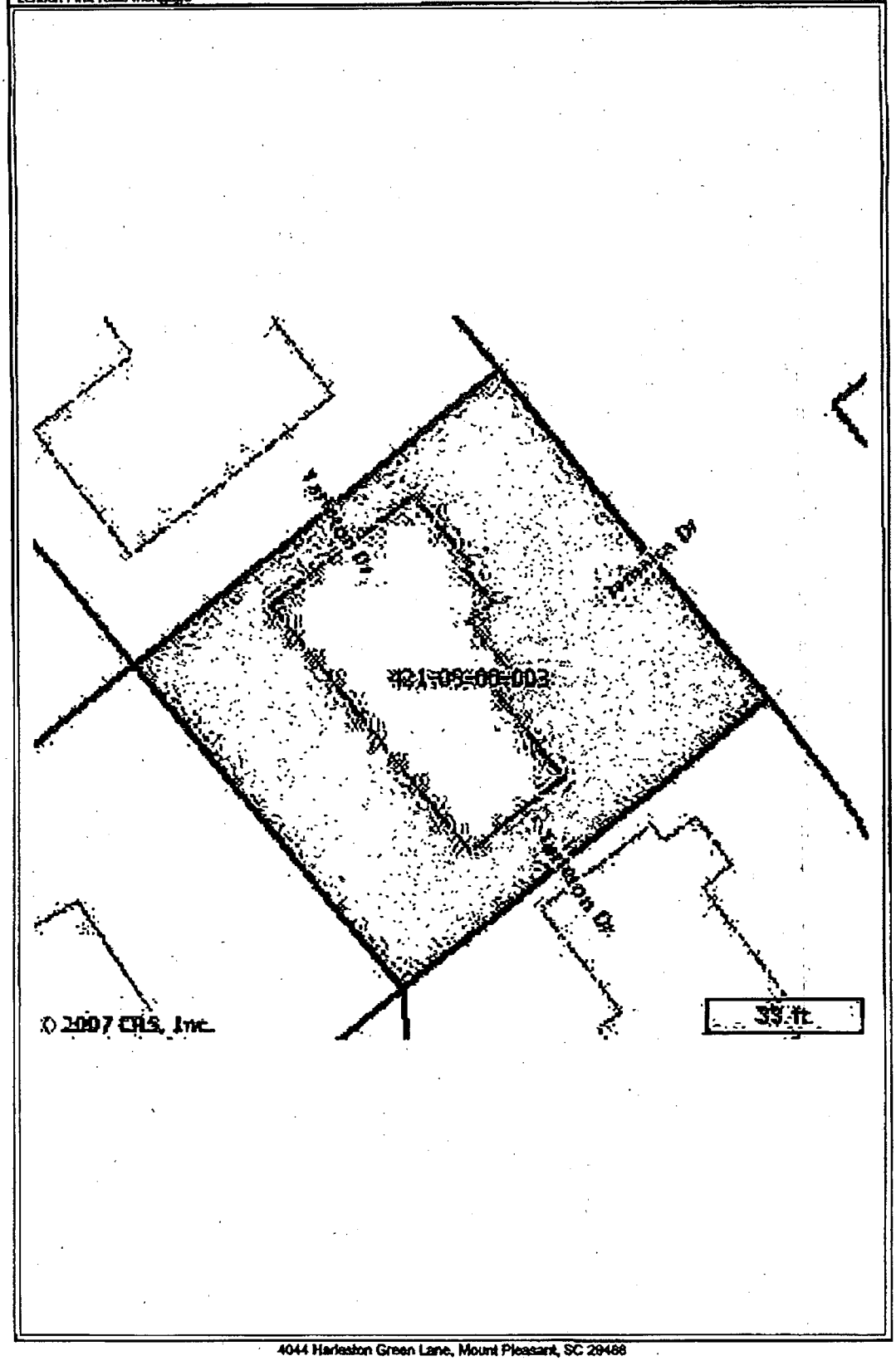
Code	Description	Size	Totals
GLA1	First Floor	1605.20	1605.20
	TOTAL LIVABLE (rounded)		1605

LIVING AREA BREAKDOWN

Breakdown			Subtotals
First Floor			
15.6	x	63.6	992.16
11.0	x	40.0	440.00
5.4	x	12.6	68.04
7.0	x	15.0	105.00
4 Areas Total (rounded)			1605

PLAT MAP

Borrower: Beverly Ryba		File No.: 07-04003
Property Address: 34 Tarleton Drive		Case No.:
City: Charleston	State: SC	Zip: 29407-7479
Lender: First Rate Mortgage		



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LOCATION MAP

Borrower: Beverly Ryba	File No.: 07-04003
Property Address: 34 Tarleton Drive	Case No.:
City: Charleston	State: SC Zip: 29407-7479
Lender: First Rate Mortgage	

4044 Harleston Green Lane, Mount Pleasant, SC 29466

FLOOD MAP

Borrower: Beverly Ryba		File No.: 07-04003
Property Address: 34 Tarleton Drive		Case No.:
City: Charleston	State: SC	Zip: 29407-7479
Lender: First Rate Mortgage		

FloodMap Legend

Flood Zones

- Areas inundated by 500-year flooding
- Areas outside of the 100- and 500-year floodplains
- Areas inundated by 100-year flooding
- Areas inundated by 100-year flooding with velocity hazard
- Floodway areas
- Floodway areas with velocity hazard
- Areas of undetermined but possible flood hazards
- Areas not mapped on any published FIRM

Flood Information

Community: 455412 - CHARLESTON, CITY OF
Property is in a FEMA special flood hazard area.
Map Number: 45412 0513 J — Map Date: 11/17/2004
Panel: 0513 J — FIPS: 45019
Zone: AE

Neither Transamerica Flood Hazard Certification (TFHC) nor ACI make any representations or warranties to any party concerning the content, accuracy or completeness of this flood report, including any warranty of merchantability or fitness for a particular purpose. Neither TFHC nor ACI nor the seller of this flood report shall have any liability to any third party for any use or misuse of this flood report.

4044 Harleston Green Lane, Mount Pleasant, SC 29466

SINGLE FAMILY COMPARABLE RENT SCHEDULE

This form is intended to provide the appraiser with a familiar format to estimate the market rent of the subject property. Adjustments should be made only for items of significant difference between the comparables and the subject property.

COMPLETE APPRAISAL - SUMMARY REPORT 07-04003

ITEM	SUBJECT	COMPARABLE NO. 1		COMPARABLE NO. 2		COMPARABLE NO. 3	
Address	34 Tarleton Drive Charleston	15 Lyttleton Charleston, SC 29407		19 Lyttleton Charleston, SC 29407		9 Arcadian Park Charleston, SC 29407	
Proximity to Subject		0.41 miles NNW		0.40 miles NNW		1.05 miles N	
Date Lease Begins	NA	NA		NA		NA	
Date Lease Expires	NA	NA		NA		NA	
Monthly Rental	If Currently Rented: $ 1,050	$	1,225	$	1,225	$	1,345
Less: Utilities	$	$		$		$	
Furniture	$	$		$		$	
Adjusted Monthly Rent	$ 1,050	$	1,225	$	1,225	$	1,345
Data Source	Owner	MLS #2612348		MLS #2614081		MLS #2709424	
RENT ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(-) $ Adjustment	DESCRIPTION	+(-) $ Adjustment	DESCRIPTION	+(-) $ Adjustment
Rent Concessions		None		None		None	
Location/View	Residential	Residential		Residential		Residential	
Design and Appeal	1 Story	1 Story		1 Story		1 Story	
Age/Condition	1955	1944		1944		1950	
Above Grade Room Count	Total 7 / Bdrms 4 / Baths 1.50	Total 6 / Bdrms 3 / Baths 1.00	100	Total 6 / Bdrms 3 / Baths 1.00	100	Total 7 / Bdrms 4 / Baths 2.00	-50
Gross Living Area	1,805 Sq.Ft.	1,156 Sq.Ft.	200	1,096 Sq.Ft.	200	1,700 Sq.Ft.	
Other (e.g., basement, etc.)	None	None		1 Car Garage	-50	2 Car Garage	-100
Other:	None	None		None			
Net Adj. (total)		[X] + [ ] - $	300	[X] + [ ] - $	250	[ ] + [X] - $	150
Indicated Monthly Market Rent		24.5 24.5 $	1,525	28.8 20.4 $	1,475	11.2 -11.2 $	1,195

Comments on market data, including the range of rents for single family properties, an estimate of vacancy for single family rental properties, the general trend of rents and vacancy, and support for the above adjustments. (Rent concessions should be adjusted to the market, not to the subject property.)
The rental comparable information was obtained from the Charleston Trident Multiple Listing Service and considered accurate. The lease agreements were not provided to the appraiser of this report.

Final Reconciliation of Market Rent: The final estimated market rent for the subject property was based on the rental comparables provided in this report and the appraiser's knowledge of rental properties in the area.

I (WE) ESTIMATE THE MONTHLY MARKET RENT OF THE SUBJECT AS OF 04/16/2007 TO BE $ 1,400

APPRAISER:
Signature Pamela S. Smith
Name Pamela S. Smith
Date Report Signed 04/16/2007
State Certification # CR-3872 State SC
Or State License # FHA State SC
SC State Certified Appraiser CR-3872

SUPERVISORY APPRAISER (ONLY IF REQUIRED):
Signature
Name
Date Report Signed
State Certification # State
Or State License # State

Freddie Mac Form 1000 (5/88) Fannie Mae Form 1007 (5/88)

PS Appraisal Services

SINGLE FAMILY COMPARABLE RENT SCHEDULE

This form is intended to provide the appraiser with a familiar format to estimate the market rent of the subject property. Adjustments should be made only for items of significant difference between the comparables and the subject property.

COMPLETE APPRAISAL - SUMMARY REPORT — 07-04003

ITEM	SUBJECT	COMPARABLE NO. 4		COMPARABLE NO. 5		COMPARABLE NO. 6	
Address	34 Tarleton Drive Charleston						
Proximity to Subject							
Date Lease Begins Date Lease Expires	NA NA						
Monthly Rental	If Currently Rented: $ 1,050	$		$		$	
Less: Utilities Furniture	$ $	$ $		$ $		$ $	
Adjusted Monthly Rent	$ 1,050	$		$		$	
Data Source	Owner						
RENT ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(-) $ Adjustment	DESCRIPTION	+(-) $ Adjustment	DESCRIPTION	+(-) $ Adjustment
Rent Concessions							
Location/View	Residential						
Design and Appeal	1 Story						
Age/Condition	1955						
Above Grade Room Count	Total: 7 Bdrms: 4 Baths: 1.50	Total: Bdrms: Baths:		Total: Bdrms: Baths:		Total: Bdrms: Baths:	
Gross Living Area	1,605 Sq. Ft.	Sq. Ft.		Sq. Ft.		Sq. Ft.	
Other (e.g., basement, etc.)	None						
Other:	None						
Net Adj. (total)		☐ + ☐ - $		☐ + ☐ - $		☐ + ☐ - $	
Indicated Monthly Market Rent		$		$		$	

Comments on market data, including the range of rents for single family properties, an estimate of vacancy for single family rental properties, the general trend of rents and vacancy, and support for the above adjustments. (Rent concessions should be adjusted to the market, not to the subject property.)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 08-CP-10-4970
CAROL GARFIELD GOLDBERG,	)	
	)	
Plaintiff,	)	SUMMONS
	)	CAUSES OF ACTION
vs.	)	ONE: SPECIFIC PERFORMANCE
	)	TWO: BREACH OF CONTRACT
CLIFFORD RYBA, BEVERLY	)	ACCOMPANIED BY A
RYBA AND FIRST RATE	)	FRAUDULENT ACT
MORTGAGE, LLC,	)	AND OTHERS
	)	
Defendants.	)	

FILED
2008 AUG 29 AM 8:42
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action and to serve a copy of your answer to the Complaint on the undersigned Benjamin Goldberg, Esq., at his address, One Carriage Lane, Building H, Charleston, SC 29407, within thirty (30) days after service hereof, exclusive of the day of such service, and, if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for a judgment by default for the relief demanded in this action.

Benjamin Goldberg, Esq.
One Carriage Lane
Building H
Charleston, SC 29407
(843)769-4595

Attorney for Plaintiff

August 29, 2008
Charleston, South Carolina

DEFENDANT'S EXHIBIT 18 3-24-15

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 08CP10-4970
CAROL GARFIELD GOLDBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	COMPLAINT
	)	JURY TRIAL DEMANDED
CLIFFORD RYBA, BEVERLY RYBA AND FIRST RATE MORTGAGE, LLC,	)	
	)	
Defendants.	)	

FILED
2008 AUG 29 AM 8:42
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Plaintiff for her Complaint alleges:

FIRST: The Defendants Clifford Ryba and Beverly Ryba (Clifford and Beverly) are residents of the County of Charleston.

SECOND: The Defendant First Rate Mortgage, LLC, (First Rate) was organized under the laws of the State of South Carolina and is doing business in the County of Charleston as a licensed mortgage broker.

THIRD: At the times hereafter set forth, Clifford was an employee of First Rate and a licensed loan originator.

FOURTH: Prior to August 31, 2005, the Plaintiff (Carol) was the owner of a home at 34 Tarleton Drive, TMS # 421-09-00-003, situate in the County of Charleston.

FIFTH: Carol, a single mother, and her young daughter had resided in her home for many years prior to August 31, 2005.

SIXTH: Carol had been a friend of Clifford and Beverly for years.

SEVENTH: Clifford, as a licensed loan originator and employee of First Rate Mortgage had experience in the mortgage brokerage business and the procurement of mortgages for clients.

EIGHTH: During the times hereafter set forth, Clifford was the agent, servant and employee of First Rate and held out to the public as such by First Rate.

NINTH: Before August 31, 2005, Carol experienced financial problems, but her efforts to obtain a mortgage loan were unsuccessful.

TENTH: She mentioned her financial distress to Clifford, who told her of his expertise in the mortgage brokerage business as a licensed loan originator and his employment with First Rate and said he could and would help her obtain a loan. Carol had no knowledge of the mortgage business.

ELEVENTH: Clifford thereafter advised Carol he could not obtain a loan in Carol's name, nor in the name of her stepfather.

TWELFTH: He told Carol that, in order to obtain a loan, the title to her home would have to be placed in Clifford's name.

THIRTEENTH: Clifford represented to Carol that, as her trusted friend and as a licensed loan originator, he would obtain a mortgage, pay the monthly payments, and maintain Carol's equity in her home.

FOURTEENTH: Carol would continue to occupy her home as a tenant and pay rent at $850.00 per month, which she was capable of paying based on her limited income, and the $850.00 per month would be applied to the payments on the mortgage to be obtained by Clifford.

FIFTEENTH: Clifford then presented to Carol a Contract of Sale for the conveyance of Carol's home to him, which Contract of Sale omitted any reference to the reconveyance or monthly rental.

SIXTEENTH: Upon request for written verification of the agreement, Clifford told Carol that no loan could be obtained with such a written agreement, and Carol agreed, relying upon Clifford as a trusted friend, licensed loan originator and agent of First Rate, the licensed mortgage broker.

SEVENTEENTH: On August 31, 2005, a closing was held, at which Carol conveyed her home to Clifford and his wife, Beverly, for a consideration of $205,000.00, by deed of the same date, recorded in the RMC Office of Charleston County on September 1, 2005, in Book Y-551, Page 150.

EIGHTEENTH: At the closing, First Rate received fees for its services in connection with the transaction.

NINTEENTH: Clifford and Beverly obtained two (2) mortgages on Carol's home: one in the amount of $163,500.00 to Countrywide Bank and the second in the amount of $20,870.00 to Regions Bank, both dated August 31, 2005 and recorded respectively in the RMC Office of Charleston County in Book Z-551, Page 831 and U-555, Page 654.

TWENTIETH: Clifford and Beverly also put up the sum of $21,199.11, which brought the total closing costs to $206, 232.44, it being understood that the $21,199.11 would be used for the maintenance of Carol's home, with the balance, if any, to be returned to Carol.

TWENTY-FIRST: Carol continued occupancy of her home and remains there to this day. She has paid the rent agreed upon of $850.00 per month, but thereafter upon repeated demands from Clifford, the rent was increased drastically without notice in various increased amounts to a high of $1,600.00 a month.

TWENTY-SECOND: Carol could ill afford to pay such drastically increased rents but was forced to do so, for she feared that she would lose her home due to threats from Clifford to either evict her or sell her home out from under her.

TWENTY-THIRD: In the meantime and without notice to Carol, Clifford conveyed his interest in Carol's home to Beverly by deed dated September 20, 2005, and recorded in the RMC Office of Charleston County on September 21, 2005, in Book P-555, Page 434.

TWENTY-FOURTH: Thereafter, again without notice to Carol, Beverly conveyed to Clifford his one-half interest in Carol's home by deed dated May 2, 2007, and recorded on May 10, 2007, in the RMC Office of Charleston County in Book D-625, Page 174.

TWENTY-FIFTH: On May 9, 2006, Beverly, without notice to Carol, mortgaged her home to Regions Bank in the amount of $115,000.00, which mortgage was recorded in the RMC Office of Charleston County in Book W-582, Page 499, on May 10, 2006.

TWENTY-SIXTH: On May 2, 2007, without notice to Carol, Clifford and Beverly mortgaged her home to Countrywide Bank for the amount of $172,000.00, which mortgage was recorded in the RMC Office of Charleston County on May 10, 2007, in Book E-625, Page 517.

TWENTY-SEVENTH: From the two mortgages above set forth of 2006 and 2007, the two original mortgages were satisfied, but there remained an overage of $80,767.56, which Clifford and Beverly converted to their own use and for their personal expenses and purposes, to the exclusion of Carol and without her knowledge.

TWENTY-EIGHTH: Clifford and Beverly refuse to convey Carol's home to her as agreed without payment by Carol to them of a grossly inflated figure, nor will they satisfy the mortgages which they improperly obtained, which are liens on Carol's home.

FOR A FIRST CAUSE OF ACTION
SPECIFIC PERFORMANCE

TWENTY-NINTH: She realleges Paragraphs ONE through TWENTY-EIGHTH as if here set forth.

THIRTIETEH: Carol is ready, willing and able to pay the correct amount due Clifford and Beverly, who refuse to accept but instead demand an inflated and unwarranted amount, refuse to pay off the mortgages which they improperly obtained that are liens on Carol's home and refuse to convey to Carol her home.

THIRTY-FIRST: Clifford and Beverly have also violated the warranty of good faith and fair dealing.

THIRTY-SECOND: In the alternative, should Clifford and Beverly continue their refusal to pay off the mortgages and fail to continue to make payments thereon, Carol's home may be foreclosed and she would be entitled to the value of her home, other costs and losses associated with her forced ejectment and move, prejudgment interest and attorney's fees.

FOR A SECOND CAUSE OF ACTION
BREACH OF CONTRACT WITH A FRAUDULENT ACT

THIRTY-THIRD: She realleges Paragraphs ONE through THIRTY-SECOND as if here set forth.

THIRTY-FOURTH: The breach of contract was infused with fraudulent intent related to the breach and accompanied by fraudulent acts, which were characterized by dishonesty, unfair dealing or unlawful appropriation of another's property by design, as above set forth.

THIRTY-FIFTH: As a result, Carol is entitled to actual and punitive damages, attorney's fees and costs.

FOR A THIRD CAUSE OF ACTION
FRAUD

THIRTY-SIXTH: She realleges Paragraphs ONE through THIRTY-FIFTH as if here set forth.

THIRTY-SEVENTH: Clifford made representations to Carol, which were false and made with knowledge of their falsity or made with reckless disregard of their truth or falsity.

THIRTY-EIGHTH: The representations were material and made with the intent that they would be acted upon.

THIRTY-NINTH: Carol was ignorant of the falsity of the representations and relied upon their truth, as she had a right to do, since Clifford was her trusted friend, a licensed loan originator and the agent, servant and employee of First Rate, a licensed mortgage broker.

FORTIETH: As a result, Carol has incurred actual and punitive damages, attorney's fees and costs.

FOR A FOURTH CAUSE OF ACTION
CONSTRUCTIVE FRAUD

FORTY-FIRST: She realleges Paragraphs ONE through FORTIETH as if here set forth.

FORTY-SECOND: Even if Clifford was not guilty of intent to deceive or actual dishonesty, which he is, he would nonetheless be guilty of constructive fraud and Carol would be entitled to actual and punitive damages, attorney's fees and costs.

FOR A FIFTH CAUSE OF ACTION
NEGATIVE REPRESENTATION

FORTY-THIRD: She realleges Paragraphs ONE through FORTY-SECOND as if here set forth.

FORTY-FOURTH: Clifford made false representations to Carol and had a pecuniary interest in making the representations, even though Clifford owed a duty of due care to Carol that he communicate truthful information to her.

FORTY-FIFTH: Clifford breached his duty of due care and Carol justifiably relied on the representations, which resulted in pecuniary loss, as a result of Carol's reliance on Clifford's representations.

FORTY-SIXTH: As a proximate result, Carol suffered actual and punitive damages, attorney's fees and costs.

FOR A SIXTH CAUSE OF ACTION
CONVERSION

FORTY-SEVENTH: She realleges Paragraphs ONE through FORTY-SIXTH as if here set forth.

FORTY-EIGHTH: Clifford and Beverly, without authorization, assumed control without authority and exercised the rights of ownership of the $80,767.56 belonging to Carol to her exclusion.

FORTY-NINTH: As a proximate result, Carol suffered actual damages including $80.767.56, punitive damages, attorney's fees and costs and is entitled to prejudgment interest.

FOR A SEVENTH CAUSE OF ACTION
UNJUST ENRICHMENT

FIFTIETH: She realleges Paragraphs ONE through FORTY-NINTH as if here set forth.

FIFTY-FIRST: Clifford and Beverly have been unjustly enriched at Carol's expense in that a benefit has been conferred upon them by Carol, for Clifford and Beverly obtained, to the exclusion of Carol, $80,767.56, among other things, which under circumstances that make it inequitable for them to retain this amount, which should be returned to Carol together with prejudgment interest and costs.

FOR AN EIGHTH CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY AGAINST CLIFFORD AND FIRST RATE

FIFTY-SECOND: She realleges Paragraphs ONE through FIFTY-FIRST as if here set forth.

FIFTY-THIRD: Clifford was a licensed originator and an employee, servant and agent of First Rate, which was a licensed mortgage broker and they owed a fiduciary duty to Carol.

FIFTY-FOURTH First Rate and Clifford actually induced and accepted Carol's confidence, which Carol had in them.

FIFTY-FIFTH: As a result, First Rate and Clifford, in equity and good conscience, were bound to act in good faith and with due regard to the interest of Carol and not to act on their own behalf.

FIFTY-SIXTH: First Rate and Clifford breached their fiduciary duties to Carol, and as a proximate result Carol sustained actual and punitive damages, attorney's fees and costs.

FOR A NINTH CAUSE OF ACTION VERSUS FIRST RATE AND CLIFFORD
UNFAIR TRADE PRACTICES, §39-5-10 ET SEQ CODE OF LAWS SC AS AMENDED

FIFTY-SEVENTH: She realleges Paragraphs ONE through FIFTY-SIXTH as if here set forth.

FIFTY-EIGHTH: First Rate and Clifford have committed unfair methods of competition and unfair or deceptive acts or practices in the conduct of their trade or commerce of licensed mortgage broker and licensed loan originator, which adversely affect the public interest because of their potential for repetition.

FIFTY-NINTH: Carol has suffered an ascertainable loss of money or property as a result of First Rate's and Clifford's use or employment of unfair or deceptive methods, acts or practices, which were a willful and knowing violation of the statute that First Rate and Clifford knew or should have known was a violation.

SIXTIETH: As a proximate result, Carol is entitled to actual damages, three (3) times actual damages sustained, reasonable attorney's fees and costs.

FOR A TENTH CAUSE OF ACTION VERSUS FIRST RATE
VIOLATION OF THE REGISTRATION OF LOAN BROKERS ACT
§ 40-58-10 ET SEQ CODE OF LAWS SC AS AMENDED

SIXT-FIRST: She realleges Paragraphs ONE through SIXTIETH as if here set forth.

SIXTY-SECOND: First Rate violated the terms of the act in the following particulars:

1 – In misrepresenting material facts or making false promises to influence, persuade or adduce an applicant for a mortgage or a mortgagor to take a mortgage.

2 – Engaging in recasting without following the requisites of the statute.

FOR A ELEVENTH CAUSE OF ACTION
REFORMATION

SIXTY-THIRD: She realleges Paragraphs ONE through SIXTY-SECOND as if here set forth.

SIXTY-FOURTH: A conveyance to Clifford and Beverly by Carol of her home was not within the contemplation of the parties.

SIXTY-FIFTH: Instead, it was Carol's intent to enter into a lease with an option to purchase with monthly rentals of $850.00, which were to be applied to the purchase price.

SIXTY-SIXTH: There was a mistake by Carol in executing the deed due to the inequitable conduct, deceit, concealment and imposition of fraud on the part of Clifford and Beverly. Clifford and Beverly have received from Carol the monthly payments of $850.00, as agreed, and have also received the drastically increased monthly payments under the threat of eviction or sale of the property and ouster of Carol from her home. In addition, they took $80,767.56, which belonged to Carol.

SIXTY-SEVENTH: The deed should be reformed to a lease with an option to purchase, and Carol is ready, willing and able to pay the correct price to purchase which the Defendants refuse to do, and they also refuse to satisfy the mortgages they placed on Carol's home.

FOR A TWELFTH CAUSE OF ACTION
DEED AS MORTGAGE

SIXTY-EIGHTH: She realleges Paragraphs ONE through SIXTY-SEVENTH as if here set forth.

SIXTY-NINTH: In the alternative, Carol would allege that her deed to Clifford and Beverly was in fact a mortgage.

SEVENTIETH: Carol never desired to sell her home, but was induced to do so by Clifford's fraud.

SEVENTY-FIRST: There was never any discussion as to the value of Carol's home and no appraisal was obtained.

SEVENTY-SECOND: The purchase price set forth in the deed from Carol to Clifford and Beverly is grossly inadequate as the value of Carol's home.

SEVENTY-THIRD: The Court should require an accounting directing the parties to disclose the correct amount due by Carol and, upon payment thereof, order Clifford and Beverly to convey Carol's home to her without encumbrances, which encumbrances should be satisfied by them.

FOR A THIRTEENTH CAUSE OF ACTION
EMOTIONAL DISTRESS

SEVENTY-FOURTH: She realleges Paragraphs ONE through SEVENTY-THIRD as if here set forth.

SEVENTY-FIFTH: Carol has suffered emotional distress by the extreme and outrageous acts intentionally inflicted upon her.

SEVENTY-SIXTH: For a period of approximately three (3) years, Clifford and Beverly have, without notice, increased the monthly payments, which Carol could ill afford to pay, but did so for she was afraid she would lose her home by the threats of eviction or the sale of her home by Clifford. In addition, Clifford and Beverly illegally converted the sum of $80,767.56, which belongs to Carol.

SEVENTY-SEVENTH: As a result of such abusive and egregious conduct, Carol has suffered and continues to suffer emotional distress, which distress will be overwhelming if she loses her home.

SEVENTY-EIGHTH: Carol, is therefore entitled to actual and punitive damages, attorney's fees and costs.

FOR A FOURTEENTH CAUSE OF ACTION
AGAINST FIRST RATE
NEGLIGENT SUPERVISION

SEVENTY-NINTH: She realleges Paragraphs ONE through SEVENTY-EIGHTH as if here set forth.

EIGHTIETH: First Rate owed a duty of due care to Carol, for the harm resulting to her as above set forth should have been reasonably anticipated by First Rate.

EIGHTY-FIRST: First Rate breached its duty to Carol by failing to use due care in supervising the actions of Clifford.

EIGHTY-SECOND: As a result of First Rate's negligence, Carol has sustained actual and punitive damages.

Wherefore Plaintiff requests the Court grant the following relief:

FIRST: As to the first cause of action, specific performance of the contract, or in the alternative, if the mortgages are foreclosed, for the value of her home, costs of her ejectment and relocation, prejudgment interest and attorney's fees.

SECOND: As to the second cause of action, actual and punitive damages, attorney's fees and costs.

THIRD: As to the third cause of action, actual damages, attorney's fees and costs.

FOURTH: As to the fourth cause of action, actual damages, attorney's fees and costs.

FIFTH: As to the fifth cause of action, actual damages, attorney's fees and costs.

SIXTH: As to the sixth cause of action, actual damages, including $80,767.56, with prejudgment interest, punitive damages, attorney's fees and costs.

SEVENTH: As to the seventh cause of action, $80,676.56, together with prejudgment interest, attorney's fees and costs.

EIGHTH: As to the eighth cause of action, actual and punitive damages, attorney's fees and costs.

NINTH: As to the ninth cause of action, actual damages, three (3) times actual damages sustained, reasonable attorney's fees and costs against First Rate and Clifford.

TENTH: As to the tenth cause of action, such damages by First Rate as the Court determines to be just.

ELEVENTH: As to the eleventh cause of action, the reformation of the deed to a lease with an option to purchase, a determination by the Court of the correct amount due by Carol and, upon payment thereof, order Clifford and Beverly to convey her home to Carol without encumbrances which should be satisfied by Clifford, Beverly and First Rate.

TWELFTH: As to the twelfth cause of action, declare that the deed is a mortgage, determine the correct amount due by Carol and, upon payment thereof, order Clifford and Beverly to convey her home to Carol without encumbrances which should be satisfied by Clifford, Beverly and First Rate.

THIRTEENTH: As to the thirteenth cause of action, actual and punitive damages, attorney's fees and costs.

FOURTEENTH: As to the fourteenth cause of action, actual and punitive damages.

And for such other and further relief as this Court deems appropriate.

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(843)769-4595

Coming B. Gibbs, Jr., Esq.
P.O. Box 938
Charleston 29402-0938
(843)722-0033

Attorneys for Plaintiff

August 29, 2008
Charleston, South Carolina

8-19-08

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

2008-LP-10-204

CAROL GARFIELD GOLDBERG)
)
Plaintiff,)
)
vs.) LIS PENDENS
)
CLIFFORD RYBA, a/k/a/)
CLIFFORD F. RYBA, BEVERLY)
RYBA, and FIRST RATE)
MORTGAGE, LLC,)
)
Defendants.)

FILED
2008 AUG 19 PM 4:15
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

08-12262

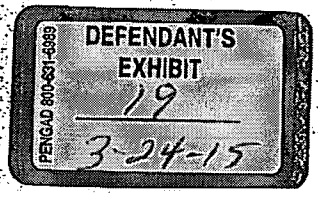
TO THE DEFENDANTS ABOVE NAMED:

Please take notice that an action will be commenced by the Plaintiff against the Defendants, which will affect the property described as follows:

ALL THAT LOT, PIECE OR PARCEL OF LAND, WITH THE BUILDINGS AND IMPROVEMENTS THEREON, SITUATE, LYING AND BEING IN CHARLESTON COUNTY, SOUTH CAROLINA, KNOWN AND DESIGNATED AS LOT NO. 461 AS SHOWN ON A PLAT OF A PORTION OF SOUTH WINDERMERE SUBDIVISION, MADE BY J.O'HEAR SANDERS, JR., SURVEYOR, DATED FEBRUARY 1953 AND RECORDED IN PLAT BOOK J. PAGE 44 IN THE RMC OFFICE FOR CHARLESTON COUNTY; SAID LOT HAVING SUCH SIZE, SHAPE AND DIMENSIONS, MORE OR LESS, AS WILL BY REFERENCE TO SAID PLAT MORE FULLY APPEAR, AND BEING BOUNDED AS SHOWN ON SAID PLAT.

BEING THE SAME PROPERTY CONVEYED TO CLIFFORD RYBA AND BEVERLY RYBA BY DEED OF CAROL A. GOLDBERG, FORMERLY KNOWN AS CAROL A. GARFIELD, DATED AUGUST 31, 2005, AND RECORDED SEPTEMBER 1, 2005, IN THE CHARLESTON COUNTY RMC OFFICE IN BOOK Y551, AT PAGE 150; SUBSEQUENTLY, CLIFFORD RYBA CONVEYED HIS INTEREST TO BEVERLY RYBA BY DEED DATED SEPTEMBER 20, 2005, AND RECORDED IN THE CHARLESTON COUNTY RMC OFFICE IN BOOK P554, AT PAGE 434; SUBSEQUENTLY BEVERLY RYBA CONVEYED A ½ UNDIVIDED INTEREST TO CLIFFORD F. RYBA BY DEED DATED MAY 2, 2007, AND RECORDED MAY 10, 2007 IN DEED BOOK D-625 AT PAGE 174.

TMS # 421-09-00-003



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Attorneys for Plaintiff

August 19, 2008
Charleston, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CIVIL ACTION NO: 2011-CP-10-7885
)	
Bank of America, N.A., successor)	
by merger to BAC Home Loans)	
Servicing LP, fka Countrywide)	
Home Loans Servicing, Inc.)	
)	
Plaintiff,)	
)	MOTION TO INTERVENE BY
vs.)	CAROL GARFIELD GOLDBERG
)	
Clifford L. Ryba; Beverly Ryba;)	
Regions Bank; First Federal Savings)	
and Loan Association of Charleston;)	
Citibank (South Dakota), N.A.,)	
)	
Defendants.)	
)	

TO: Andrew W. Montgomery, Esquire
Rogers Townsend & Thomas, PC
Post Office Box 100200
Columbia, South Carolina 29202
Attorneys for Plaintiff

PLEASE TAKE NOTICE the undersigned, at a time to be set by the Court, will move before a Judge of the Ninth Judicial Circuit pursuant to Rule 24(a) SCRCP for an Order authorizing Carol Garfield Goldberg to intervene because Mrs. Goldberg claims an interest in the property which is the subject of the action as set forth in the case of Carol Garfield Goldberg v. Clifford Ryba, et al., Case Number 2008-CP-10-4970, which was filed on August 29, 2008 together with a Lis Pendens and Mrs. Goldberg was not made a party despite the filing of the Lis Pendens long prior to this action.

PLEASE BE PRESENT IF SO MINDED.

Respectfully submitted,

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(843) 769-4595

J. Kevin Holmes, Esquire
The Steinberg Law Firm
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(843) 720-2800

Attorneys for Intervenor,
Carol Garfield Goldberg

January 31, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	Civil Action No.: 2011-CP-10-7885

Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP, fka Countrywide Home Loans Servicing LP.,	)	
Plaintiff,	)	**PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**
vs.	)	
Clifford L. Ryba, Beverly Ryba, Regions Bank, First Federal Savings and Loan Association of Charleston, Citibank (South Dakota) N.A., Carol Garfield Goldberg;	)	
Defendants.	)	

FILED
2011 MAY -5 PM 4:28
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Plaintiff Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP, fka Countrywide Home Loans Servicing LP., ("Bank of America" or "Plaintiff") hereby moves for an Order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting summary judgment as the below-described counterclaim asserted by Defendant Carol Garfield Goldberg ("Goldberg").

BACKGROUND FACTS

The following relevant facts are undisputed:

1. On August 31, 2005, Goldberg conveyed the property that is the subject of this action – 34 Tarleton Dr. Charleston, South Carolina 29407, TMS# 421-09-00-003 ("Subject Property") – to Clifford L. Ryba and Beverly Ryba (the "Rybas") by general warranty deed with no reservations of rights, reverters or other qualifications on title. *See Exhibit 1, Goldberg Deed.*

2. On or about May 2, 2007, the Rybas executed and delivered an Adjustable Rate Note in the principal sum of $172,000 to Plaintiff's predecessor in interest. *See Exhibit 2, Adjustable Rate Note.*

3. To secure payment of the Adjustable Rate Note, the Rybas executed and delivered a mortgage in favor of Plaintiff's predecessor in interest. The Mortgage was recorded in the Charleston County Register of Deeds Office on May 10, 2007 in Mortgage Book E625, Page 517. *See Exhibit 3, Mortgage.* The Mortgage was properly filed and indexed.

4. At the time the Mortgage was filed, the Rybas were the record owners of the Subject Property. There were no documents filed in the public record to indicate that Carol Goldberg ("Goldberg") claimed any interest in the Subject Property.

5. On August 19, 2008, more than one year after Plaintiff's predecessor recorded the Mortgage, Goldberg filed a Lis Pendens on the Subject Property. *See Exhibit 4, Lis Pendens.*

6. Also on August 29, 2008, Defendant Carol Goldberg filed a Summons and Complaint against, among others, the Rybas, in which Goldberg generally claimed that the Rybas defrauded her into to conveying the Subject Property to her. This action is captioned *Carol Garfield Goldberg v. Clifford Ryba et al.*, Case No. 08-CP-10-4970 (the "Goldberg Action"). In the Goldberg Action, Defendant Carol Goldberg also claimed that she continued to reside in the Subject Property and pay rent to the Rybas.

7. The Mortgage was assigned to the Plaintiff, and the Plaintiff recorded the assignment on October 4, 2011 in Book 0210, Page 521. *See Exhibit 5, Assignment.*

8. Neither Plaintiff nor its predecessor in interest was ever made a party to the Goldberg Action.

9. Prior to May 1, 2011, the Rybas defaulted on the Note, and the Plaintiff elected to declare the entire balance of the debt immediately due and payable.

10. The Plaintiff gave the Rybas all notices required by the loan documents and applicable law.

11. On October 27, 2011, the Plaintiff filed a Summons and Complaint in the present action, by which it seeks to collect on the Note and foreclose the Mortgage.

12. On January 24, 2012, Circuit Court Judge Thomas L. Hughston, Jr. entered an Order Authorizing Partial Payment of Rent to Foreclosing Mortgagee ("Partial Payment Order") in the Goldberg Action only. The Partial Payment Order authorizes Defendant Carol Goldberg to pay one-half of the rental amount she pays to the Rybas to the Plaintiff. *See Exhibit 6, Partial Payment Order at p. 5.* However, the Partial Payment Order does not require the Plaintiff to accept payments from Defendant Goldberg. Further, the Plaintiff is not a party to the Goldberg Action and is not bound by the Partial Payment Order.

13. On February 8, 2012, the Plaintiff filed its Second Amended Summons and Complaint in the present action, in which the Plaintiff added Defendant Carol Goldberg as a party. In the Second Amended Summons and Complaint, the Plaintiff alleges that the Mortgage is a first-priority lien on the Subject Property.

14. As part of the settlement of the Goldberg Action, the Rybas issued a quitclaim deed to Goldberg, and that deed was recorded in the Charleston County Register of Deeds Office on October 26, 2012 and enrolled at Book 0287, Page 081.

ARGUMENT

Goldberg asserts that the Goldberg Deed was induced by fraud and void, and therefore the Mortgage is invalid. The Court should grant summary judgment dismissing this counterclaim, for the reasons set forth below.

1. **Plaintiff is a subsequent lien creditor on real estate for valuable consideration without notice.**

S.C. Code Ann. § 30-7-10 provides:

> All deeds of conveyance of lands, tenements, or hereditaments, either in fee simple or for life, all deeds of trust or instruments in writing conveying estate, creating a trust in regard to the property, or charging or encumbering it, all mortgages or instruments in writing in the nature of a mortgage of any real property, all marriage settlements, or instruments in the nature of a settlement of a marriage, all leases or contracts in writing made between landlord and tenant for a longer period than twelve months, all statutory liens on buildings and lands for materials or labor furnished on them, all statutory liens on ships and vessels, all certificates of renunciation of dower, all contracts for the purchase and sale of real property, all assignments, satisfactions, releases, and contracts in the nature of subordinations, waivers, and extensions of landlords' liens, laborers' liens, sharecroppers' liens, or other liens on real property created by law or by agreement of the parties and generally all instruments in writing conveying an interest in real estate required by law to be recorded in the office of the register of deeds or clerk of court in those counties where the office of the register of deeds has been abolished or in the office of the Secretary of State delivered or executed after July 31, 1934, except as otherwise provided by statute, are valid so as to affect the rights of subsequent creditors (whether lien creditors or simple contract creditors), or purchasers for valuable consideration without notice, only from the day and hour when they are recorded in the office of the register of deeds or clerk of court of the county in which the real property affected is situated. In the case of a subsequent purchaser of real estate, or in the case of a subsequent lien creditor on real estate for valuable consideration without notice, the instrument evidencing the subsequent conveyance or subsequent lien must be filed for record in order for its holder to claim under this section as a subsequent creditor or purchaser for value without notice, and the priority is determined by the time of filing for record.

Id. The recording act is a race-notice act which will provide protection to a subsequent purchaser or creditor provided he records first. *Leasing Enterprises, Inc. v. Livingston*, 294 S.C. 204, 363 S.E.2d 410 (Ct. App. 1987). A party is placed on notice of a claim concerning property

when the *lis pendens* is filed. *Pipkin v. Fletcher*, 165 S.C. 98, 162 S.E. 774 (1932) (one may not rely upon purchase or encumbrance made after filing of a *lis pendens*).

In South Carolina, a purchaser may assert a plea in equity of a bona fide purchaser for value, without notice of defect in his title, by showing (1) he has actually paid in full the purchase money (giving security for the payment is not sufficient, nor is past indebtedness a sufficient consideration); (2) he purchased and acquired the legal title, or the best right to it; and (3) he purchased bona fide, *i.e.*, 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 (2006). The bona fide purchaser must show all three conditions - actual payment, acquiring of legal title, and bona fide purchase - occurred before he had notice of a title defect or other adverse claim, lien, or interest in the property. *S.C. Tax Commn. v. Belk*, 266 S.C. 539, 543, 225 S.E.2d 177, 179 (1976). This test also applies to a good-faith lender for value. 55 Am Jur 2d *Mortgages* § 281 (2013); *Household Finance Realty Corp. of New York v. Emanuel*, 2 A.D.3d 192, 769 N.Y.S.2d 511 (1st Dep't 2003) (a mortgage lost its priority to a subsequent mortgage because the subsequent mortgagee, a good-faith lender for value, recorded its security interest first without knowledge of prior loan).

In the present case, it is undisputed that the Mortgage was properly filed on May 23, 2007. It is also undisputed that neither the original mortgagee nor the Plaintiff had any notice of Ms. Goldberg's claims. It is further undisputed that neither the original mortgagee nor the Plaintiff had constructive notice of Ms. Goldberg's claim until she filed her *lis pendens* on August 29, 2008 – more than one year after the Mortgage was filed. Finally, it is undisputed that the original mortgagee provided a loan to the Rybas, as evidenced by the Note, contemporaneously with the filing of the Mortgage. Therefore, there is no genuine issue of

material fact that Plaintiff is a subsequent lien creditor on real estate for valuable consideration without notice, and the Mortgage is superior to any interest claimed by Goldberg.

2. The Goldberg Deed was, at best, voidable, and therefore the Goldberg Deed and Mortgage are valid and Plaintiff may foreclose on the Mortgage.

Ms. Goldberg claims that the Goldberg Deed was void, and therefore the Mortgage given by the Rybas is unenforceable. Under South Carolina law, a void deed is a nullity. However, a deed induced by fraud is merely *voidable* and is enforceable as to persons claiming through the grantee as bona fide purchasers or lenders for value. *See Manship v. Newsome*, 188 S.C. 6, 198 S.E. 428, 430 (1938) ("An exchange procured by fraud involving real or personal property is not void, but voidable at the election of the defrauded party."); *McCoy v. Love*, 382 So. 2d 647 (Fla. 1979) ("Fraud in the inducement renders a deed voidable rather than void, and though subject to be set aside by the grantors as against all persons participating in or benefiting from the fraud, it is valid and enforceable as to persons claiming through the grantee as innocent purchasers for value."); *Morris v. Wells Fargo Bank, N.A.*, 334 S.W.3d 838 (Tex. App. Dallas 2011) ("Even if notary committed fraud by slipping deed into pile of papers to fool landowner into signing it, deed was voidable rather than void, and thus mortgagee of property pursuant to mortgage, executed by subsequent purchaser, was bona fide lender and could take title to property pursuant to foreclosure action.").

Ms. Goldberg does not allege that the deed itself is fraudulent or void. Rather, she plainly claims that the Rybas induced her to deliver the deed. *Complaint at ¶ 14* ("The Lis Pendens placed Plaintiff on notice, to whom the mortgage was purportedly assigned on September 15, 2011, and all others subsequent to the filing that Mrs. Goldberg alleged Mr. and Mrs. Ryba ***fraudulently induced*** her to convey her property at 34 Tarleton Drive to the Rybas on August 30, 2005 upon the Rybas' agreement to reconvey the property to her."); *Id. at ¶ 26* ("The

deed from Mrs. Goldberg to the Rybas, ***being induced by fraud***, was void. The Rybas therefore did not have title to 34 Tarleton Drive when the mortgage was executed, so there could be no security interest."). While the deed from Goldberg to the Rybas was voidable, it may not be voided to cut off the rights of Plaintiff, a bona fide subsequent creditor for value without notice. *Smith v. Faust*, 107 S.C. 37, 39 (S.C. 1917) ("The deed from Ginn to Faust was voidable, but not against Smith if Smith was a bona fide subsequent creditor."). Therefore, Plaintiff's argument that the deed is void is unsupported by her own claims set forth in the Complaint. Because the merely voidable deed cannot be voided to extinguish Plaintiff's Mortgage, Ms. Goldberg's request to set aside the Mortgage must be denied as a matter of law.

CONCLUSION

For the reasons set forth above, this Court should grant summary judgment as to Defendant Carol Goldberg's counterclaim asserting that the Goldberg Deed is void, as well as the Mortgage.

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By: _____

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Attorneys for Plaintiff

Dated: April 29, 2014

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61 Broad Street
Charleston, SC 29401

Attorneys for Defendant Carol Garfield Goldberg

Carol Casey

Carol Casey, Paralegal

BK Y551PG150

STATE OF SOUTH CAROLINA)
) TITLE TO REAL ESTATE
COUNTY OF CHARLESTON)

KNOW ALL PERSONS BY THESE PRESENTS, THAT I, CAROL A. GOLDBERG, formerly known as CAROL A. GARFIELD, in the County and State aforesaid, in consideration of the sum of TWO HUNDRED FIVE THOUSAND AND NO/HUNDREDS DOLLARS ($205,000.00) to me in hand paid at and before the sealing of these presents by CLIFFORD RYBA and BEVERLY RYBA, the receipt and sufficiency of which are hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said CLIFFORD RYBA and BEVERLY RYBA, as Joint Tenants with Rights of Survivorship, and not as Tenants in Common, their Heirs and Assigns the following real property, to wit:

SEE EXHIBIT A ATTACHED HERETO FOR PROPERTY DESCRIPTION

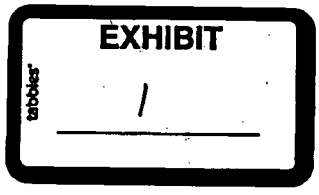
GRANTEES' ADDRESS: 16 Fieldfare Way
Charleston, SC 29414

TOGETHER with all and singular the Rights, Members, Heriditaments and Appurtenances to the said Premises belonging or in anywise incident or appertaining.

SUBJECT to zoning ordinances, restrictions, easements, rights-of-way and other matters affecting the property as previously recorded in the R.M.C. Office for Charleston County.

TO HAVE AND HOLD, all and singular, the said Premises before mentioned unto the said CLIFFORD RYBA and BEVERLY RYBA, as Joint Tenants with Rights of Survivorship, and not as Tenants in Common, their Heirs and Assigns in fee simple forever.

AND I do hereby bind myself, my Heirs, Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said CLIFFORD RYBA and BEVERLY RYBA, as Joint Tenants with Rights of Survivorship and not as Tenants in Common, their Heirs and Assigns, against me and my Heirs, and against every person whomsoever lawfully claiming, or to claim the same or any part thereof.



WITNESS my Hand and Seal, this 31st day of August, 2005, in the Two Hundred Thirtieth Year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

First Witness

Second Witness

Carol A. Goldberg (L.S.)
CAROL A. GOLDBERG, formerly known as CAROL A. GARFIELD
formerly known as Carol A. Garfield

STATE OF SOUTH CAROLINA)
) **PROBATE**
COUNTY OF CHARLESTON)

PERSONALLY appeared before me the undersigned witness who, being duly sworn, did depose and say that s/he saw the within named CAROL A. GOLDBERG, formerly known as CAROL A. GARFIELD sign, seal and, as her act and deed, deliver the within written Title to Real Estate, and that s/he with the other subscribing witness witnessed the execution thereof.

First Witness Signs Again

SWORN TO BEFORE ME
this 31st day of August, 2005.

Notary Public of South Carolina
My Commission Expires: 2-5-07

EXHIBIT "A"

ALL that lot, piece or parcel of land, with the buildings thereon, situate, lying and being in the County of Charleston, State of South Carolina, and known and designated as Lot No. 461, as shown on a plat of a portion of the subdivision known as South Windermere, made by J. O'Hear Sanders, Jr., Surveyor, dated February 1953, and recorded in the R.M.C. Office for Charleston County in Plat Book "J", Page 44; said lot having such size, shape and dimensions, more or less, as will by reference to said plat more fully appear, and being bounded as shown on said plat.

BEING the same property conveyed to Grantor Carol A. Garfield n/k/a Carol A. Goldberg by Deed of Distribution of the Estate of Louis Garfield (Charleston County Probate File No. 93-ES-10-00757) dated February 21, 1994, and recorded February 22, 1994 in Book F239, Page 434, in the RMC Office for Charleston County.

TMS NO. 421-09-00-003

BK: Y551 PG 153

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

AFFIDAVIT

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

1. I have read the information on this Affidavit and I understand such information.

2. The property is being transferred BY CAROL A. GOLDBERG fka CAROL A. GARFIELD TO CLIFFORD RYBA and BEVERLY RYBA ON AUGUST 31, 2005

3. Check one of the following: *The DEED is*
   (a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
   (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
   (c) _____ EXEMPT from the deed recording fee because (exemption#_____)
   (Explanation If required)_____
   (If exempt, please skip items 4-6, and go to item 7 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
   (a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $ 205,000.00
   (b) _____ The fee is computed on the fair market value of the realty which is $_____
   (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is $ _____

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

6. The DEED Recording Fee is computed as follows:
   (a) $205,000.00 the amount listed in item 4 above
   (b) 0.00 the amount listed in item 5 above (no amount place zero)
   (c) $205,000.00 Subtract Line 6(b) from Line 6(a) and place the result.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as : closing attorney/settlement agent

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

LeRoy P Hutchinson
Grantor, Grantee, or Legal Representative connected with this transaction

LeRoy P. Hutchinson
Print or Type Name here

SWORN TO BEFORE ME THIS 31st day of August, 2005.

Notary Public for South Carolina
My commission expires: 2-5-07

BK B Y551 PG154

RECORDER'S PAGE

***NOTE*: This page MUST remain with the original document**

FILED
September 1, 2005
3:52:55 PM
BK B Y551 PG150
Charlie Lybrand, Register
Charleston County, SC

Filed By:

Roy Hutchinson
147 Wappoo Creek Dr.
Suite 202
Charleston SC 29412

mff
LTV

DESCRIPTION	AMOUNT
Recording Fee	$ 10.00
State Fee	$ 533.00
County Fee	$ 225.50
Postage	
TOTAL	$ 768.50

$ Amount (in thousands): 205

DRAWER: B

AUDITOR STAMP HERE
RECEIVED FROM RMC
OCT - 4 2005
PEGGY A. [illegible]EY
CHARLESTON COUNTY AUDITOR

PID VERIFIED BY ASSESSOR
REP
DATE 10/04/05

DO NOT STAMP BELOW THIS LINE

Prepared by: CAROLE BROWNE

[redacted]

PAYMENT ADVANTAGE
FIXED/ADJUSTABLE RATE NOTE
(LIBOR One Year Index - Rate Caps)

THIS NOTE CONTAINS PROVISIONS THAT WILL CHANGE MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY. FOR A LIMITED TIME I WILL HAVE A PAYMENT OPTION THAT IS LESS THAN THE FULL AMOUNT OF INTEREST DUE. IF I CHOOSE THIS OPTION, THE PRINCIPAL AMOUNT TO REPAY COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED.

MAY 02, 2007	NORTH CHARLESTON	SOUTH CAROLINA
[Date]	[City]	[State]

34 TARLETON DR, CHARLESTON, SC 29407-7479
[Property Address]

1. **BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. $ 172,000.00 ("Principal"), plus interest, to the order of Lender. The Principal may increase as provided under the terms of this Note but will not exceed 115 percent of the Principal amount I originally borrowed. This is called the "Maximum Negative Amortization Cap." If I default under this Note or the Security Instrument, then default charges may cause the Maximum Negative Amortization Cap to be exceeded. Lender is Countrywide Bank, FSB.

I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or its successors or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. **INTEREST**

(A) Fixed Interest Rate

Interest will be charged on unpaid Principal until the full amount has been paid. Interest will initially accrue at a yearly rate of 7.625 %. This is my initial fixed interest rate and is the rate for determining the interest I owe until it changes as provided below. Interest will be charged on the basis of a twelve-month year and a thirty-day month.

(B) Adjustable Interest Rate

The initial fixed interest rate I owe will change to an adjustable interest rate on the first day of MAY, 2012 and the adjustable interest rate will change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date.

(C) Index

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

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

(D) Calculation of Adjustable Interest Rate Changes

Before each Interest Rate Change Date, the Note Holder will calculate my new adjustable interest rate by adding 2.250 % (this amount is the "Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). This rounded amount will be my new adjustable interest rate until the next Interest Rate Change Date. My adjustable interest rate will never be greater than 12.625 % or lower than the Margin.

(E) Limits on Interest Rate Changes

The interest rate in effect at the first Interest Rate Change Date will not be greater than 12.625 % or less than 2.250 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Interest Rate Change Date by more than 2 percentage points from the rate of interest in effect for the preceding 12 months.

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment every month.

I will make my monthly payments on the first day of each month beginning on JUNE 01, 2007. I will make these payments every month until I have paid all the Principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If I still owe amounts under this Note on MAY 01, 2037, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at
P.O. Box 660694, Dallas, TX 75266-0694
or at a different place if required by the Note Holder.

(B) Minimum Payment

The "Minimum Payment" is the minimum amount Note Holder will accept for my monthly payment. The Minimum Payment is calculated three (3) different ways during the loan term:

(i) Until MAY 01, 2017 ("Recast Date") or until the Maximum Negative Amortization Cap is reached, whichever is earlier, the Minimum Payment will be calculated using the then-current interest rate (either fixed or adjustable as described in Section 2) minus 5.000 percentage points. The result of this calculation is called the "Minimum Payment Rate." The Minimum Payment Rate can never be lower than 1%. Since the Minimum Payment Rate is less than the interest rate applied to my unpaid Principal balance, the Minimum Payment will be insufficient to pay the interest portion of the monthly payment and no portion is applied to Principal. **When I make a Minimum Payment, which is based on the Minimum Payment Rate that is less than the rate of interest due, the unpaid interest is added to the Principal amount. This is known as "deferred interest" or "negative amortization."**

(ii) If the unpaid Principal balance reaches the Maximum Negative Amortization Cap prior to the Recast Date, my new Minimum Payment will be the amount that would pay only the interest portion of the monthly payment based upon the then-current interest rate, which changes in accordance with Section 2. This is the Minimum Payment in effect until the Recast Date.

(iii) After the Recast Date and for the remainder of the loan term, the Minimum Payment will be the monthly payment amount necessary to pay the loan off, in full, at the Maturity Date in substantially equal payments based on the then-current interest rate, which changes in accordance with Section 2.

(C) Initial Monthly Minimum Payment

Each of my initial monthly Minimum Payments until the first Interest Rate Change Date will be in the amount of U.S. $690.84

(D) Monthly Payment Changes

Changes in my monthly payment will be the result of changes in the unpaid Principal balance of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Sections 2 and 3 of this Note.

[redacted]

(E) Additions to My Unpaid Principal

For each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest due and will add the difference to my unpaid Principal. Interest will accrue on the amount of this difference at the interest rate required by Section 2. For each month that the monthly payment is greater than the interest due, the Note Holder will apply the payment as provided in Section 3(A).

(F) Payment Options

Until the Recast Date, the Note Holder may provide me with up to three (3) additional monthly payment options ("Payment Options") if they are greater than the Minimum Payment. The Payment Options are calculated using the interest rate in accordance with Section 2. The following Payment Options may be provided:

(i) **Interest Only Payment:** the amount that would pay only the interest portion of the monthly payment. The Principal balance will not be decreased by this Payment Option and it is only available if the interest portion exceeds the Minimum Payment.

(ii) **Amortized Payment:** the amount necessary to pay the loan off (Principal and interest) at the Maturity Date in substantially equal payments based on the then-current interest rate.

(iii) **15 Year Amortized Payment:** the amount necessary to pay the loan off (Principal and interest) within a fifteen (15) year term from the first payment due date in substantially equal payments at the then-current interest rate.

These Payment Options are only available if they are greater than the Minimum Payment. If the Maximum Negative Amortization Cap is reached, then the Payment Options available will be the Amortized Payment and the 15 Year Amortized Payment. Upon the Recast Date I will no longer have Payment Options and I will be required to pay the Amortized Payment, which becomes the Minimum Payment as described in Section 3(B)(iii).

4. NOTICE OF CHANGES

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

5. BORROWER'S RIGHT TO PREPAY

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

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments. My partial Prepayment may reduce the amount of my monthly payments after the first Payment Change Date following my partial Prepayment. However, any reduction that could result from my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

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

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any Minimum Payment by the end of fifteen (15) calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of the Minimum Payment. I will pay this late charge promptly but only once on each late payment.

(B) Default

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

(C) Notice of Default

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

(D) No Waiver By Note Holder

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

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

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. These expenses include, for example, reasonable attorneys' fees. If I default under this Note or the Security Instrument then default charges may cause the Maximum Negative Amortization Cap to be exceeded.

8. GIVING OF NOTICES

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

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

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

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

10. WAIVERS

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

11. DOCUMENT CORRECTION

In the event that Note Holder at any time discovers that this Note, Security Instrument, Addenda, Rider or any other document related to this loan is lost, misplaced, misstated, inaccurately reflects the true and correct terms and conditions of the loan, or otherwise contains an error, such as a clerical mistake, calculation error, computer error, printing error, electronic transmission error, or similar error, I agree, upon notice from Note Holder, to re-execute any documents that are necessary to replace or correct any such documents and return them within ten (10) days of receipt. I also agree that I will not hold Lender responsible for any damages which result from any such error.

12. SECURED NOTE

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

(A) Until my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 2 above, Paragraph 18 of the Security Instrument shall read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests

transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

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

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

(B) When my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 2 above, Paragraph 18 of the Security Instrument described in Section 12(A) above shall then cease to be in effect, and Paragraph 18 of the Security Instrument shall instead read as follows:

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

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender. To the extent permitted by Applicable Law, Lender may charge reasonable fees as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

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

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

CLIFFORD L. RYBA - Borrower

BEVERLY RYBA - Borrower

_____ - Borrower

_____ - Borrower

PAY TO THE ORDER OF
COUNTRYWIDE HOME LOANS, INC
WITHOUT RECOURSE
COUNTRYWIDE BANK, FSB
BY Laurie Meder
LAURIE MEDER
SENIOR VICE PRESIDENT

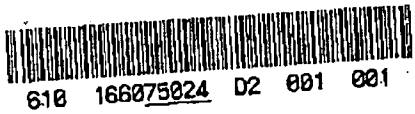
PAY TO THE ORDER OF
_____
WITHOUT RECOURSE
COUNTRYWIDE HOME LOANS, INC
BY Michele Sjolander
MICHELE SJOLANDER
EXECUTIVE VICE PRESIDENT

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423

BKE 625PG517

Prepared By:
CAROLE BROWNE

R07-15028 [Space Above This Lin



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MORTGAGE [redacted]

DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated MAY 02, 2007 , together with all Riders to this document.
(B) "Borrower" is
CLIFFORD L RYBA, AND BEVERLY RYBA

Borrower is the mortgagor under this Security Instrument.
(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.
(D) "Lender" is
Countrywide Bank, FSB.
Lender is a FED SVGS BANK
organized and existing under the laws of THE UNITED STATES
Lender's address is
1199 North Fairfax St. Ste.500, Alexandria, VA 22314
(E) "Note" means the promissory note signed by Borrower and dated MAY 02, 2007 . The Note states that Borrower owes Lender
ONE HUNDRED SEVENTY TWO THOUSAND and 00/100

Dollars (U.S. $ 172,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than MAY 01, 2037 .

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1660750240000020068A

EXHIBIT
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[redacted]

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

[X] Adjustable Rate Rider	[ ] Condominium Rider	[ ] Second Home Rider
[ ] Balloon Rider	[ ] Planned Unit Development Rider	[X] 1-4 Family Rider
[ ] VA Rider	[ ] Biweekly Payment Rider	[ ] Other(s) [specify]

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.
(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
(L) "Escrow Items" means those items that are described in Section 3.
(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.
(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
(O) "Periodic Payment" means the regularly scheduled amount due for (a) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.
(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.
(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

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

COUNTY of CHARLESTON :
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

SEE ATTACHED EXHIBIT "A"

Parcel ID Number: which currently has the address of

34 TARLETON DR, CHARLESTON
[Street/City]

South Carolina 29407-7479 ("Property Address"):
[Zip Code]

[redacted]

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

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

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

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

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

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

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

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

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

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

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Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all

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

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

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

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

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

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

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

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the

notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

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

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

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

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

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

Signed, sealed and delivered in the presence of:

Karen E. Lasseter

CLIFFORD L. RYBA (Seal) -Borrower

Mary Hall

BEVERLY RYBA (Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

BKE 625PG527

STATE OF SOUTH CAROLINA, Charleston County ss:

I, R David Chard do hereby certify that

Clifford L. Ryba & Beverly Ryba

personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 3rd day of May 2007.

R David Chard

Notary Public for South Carolina

My Commission Expires: 1/3/17

EXHIBIT "A"

ALL THAT LOT, PIECE OR PARCEL OF LAND, WITH THE BUILDINGS AND IMPROVEMENTS THEREON, SITUATE, LYING AND BEING IN CHARLESTON COUNTY, SOUTH CAROLINA, KNOWN AND DESIGNATED AS LOT NO. 461 AS SHOWN ON A PLAT OF A PORTION OF SOUTH WINDERMERE SUBDIVISION, MADE BY J. O'HEAR SANDERS, JR., SURVEYOR, DATED FEBRUARY 1953 AND RECORDED IN PLAT BOOK J, PAGE 44 IN THE RMC OFFICE FOR CHARLESTON COUNTY; SAID LOT HAVING SUCH SIZE, SHAPE AND DIMENSIONS, MORE OR LESS, AS WILL BY REFERENCE TO SAID PLAT MORE FULLY APPEAR, AND BEING BOUNDED AS SHOWN ON SAID PLAT.

BEING THE SAME PROPERTY CONVEYED TO CLIFFORD RYBA AND BEVERLY RYBA BY DEED OF CAROL A. GOLDBERG, FORMERLY KNOWN AS CAROL A. GARFIELD, DATED AUGUST 31, 2005, AND RECORDED SEPTEMBER 1, 2005, IN THE CHARLESTON COUNTY RMC OFFICE IN BOOK Y551, AT PAGE 150; SUBSEQUENTLY, CLIFFORD RYBA CONVEYED HIS INTEREST TO BEVERLY RYBA BY DEED DATED SEPTEMBER 20, 2005 AND RECORDED IN THE CHARLESTON COUNTY RMC OFFICE IN BOOK P554, AT PAGE 434.

TMS# 421-09-00-003

PROPERTY ADDRESS:
34 TARLETON DRIVE
CHARLESTON, SC 29407

8-19-08

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
		2008-LP-10-204
CAROL GARFIELD GOLDBERG	)	
	)	
Plaintiff,	)	
	)	
vs.	)	LIS PENDENS
	)	
CLIFFORD RYBA, a/k/a/ CLIFFORD F. RYBA, BEVERLY RYBA, and FIRST RATE MORTGAGE, LLC,	)	
	)	
Defendants.	)	

FILED
2008 AUG 19 PM 4:15
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

08-12262

TO THE DEFENDANTS ABOVE NAMED:

Please take notice that an action will be commenced by the Plaintiff against the Defendants, which will affect the property described as follows:

ALL THAT LOT, PIECE OR PARCEL OF LAND, WITH THE BUILDINGS AND IMPROVEMENTS THEREON, SITUATE, LYING AND BEING IN CHARLESTON COUNTY, SOUTH CAROLINA, KNOWN AND DESIGNATED AS LOT NO. 461 AS SHOWN ON A PLAT OF A PORTION OF SOUTH WINDERMERE SUBDIVISION, MADE BY J.O'HEAR SANDERS, JR., SURVEYOR, DATED FEBRUARY 1953 AND RECORDED IN PLAT BOOK J. PAGE 44 IN THE RMC OFFICE FOR CHARLESTON COUNTY; SAID LOT HAVING SUCH SIZE, SHAPE AND DIMENSIONS, MORE OR LESS, AS WILL BY REFERENCE TO SAID PLAT MORE FULLY APPEAR, AND BEING BOUNDED AS SHOWN ON SAID PLAT.

BEING THE SAME PROPERTY CONVEYED TO CLIFFORD RYBA AND BEVERLY RYBA BY DEED OF CAROL A. GOLDBERG, FORMERLY KNOWN AS CAROL A. GARFIELD, DATED AUGUST 31, 2005, AND RECORDED SEPTEMBER 1, 2005, IN THE CHARLESTON COUNTY RMC OFFICE IN BOOK Y551, AT PAGE 150; SUBSEQUENTLY, CLIFFORD RYBA CONVEYED HIS INTEREST TO BEVERLY RYBA BY DEED DATED SEPTEMBER 20, 2005, AND RECORDED IN THE CHARLESTON COUNTY RMC OFFICE IN BOOK P554, AT PAGE 434; SUBSEQUENTLY BEVERLY RYBA CONVEYED A ½ UNDIVIDED INTEREST TO CLIFFORD F. RYBA BY DEED DATED MAY 2, 2007, AND RECORDED MAY 10, 2007 IN DEED BOOK D-625 AT PAGE 174.

TMS # 421-09-00-003

EXHIBIT
4

Benjamin Goldberg, Esq.
One Carriage Lane, Bldg. H
Charleston, SC 29407
(843)769-4595

Coming B. Gibbs, Jr., Esq.
P.O. Box 938
Charleston 29402-0938
(843)722-0033

Attorneys for Plaintiff

August 19, 2008
Charleston, South Carolina

BP0210521

RMC Bk 0210 Pg 521 : pg 1 *

Recording Requested By:
Bank of America
When recorded mail to:
CoreLogic
450 E. Boundary St.
Attn: Release Dept.
Chapin, SC 29036

DocID# **55916607502439473**
Tax ID: **421-09-00-003**
Property Address:
34 Tarleton Dr
Charleston, SC 29407-7479
SC0-AM 14497536 9/12/2011

This space for Recorder's use

MIN #: 1001337-0002120597-9 MERS Phone #: 888-679-6377

ASSIGNMENT OF MORTGAGE

For Value Received, the undersigned holder of a Mortgage (herein "Assignor") whose address is **3300 S.W. 34TH AVENUE, SUITE 101 OCALA, FL 34474** does hereby grant, sell, assign, transfer and convey unto **BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP** whose address is **400 NATIONAL WAY, SIMI VALLEY, CA 93065** all beneficial interest under that certain Mortgage described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Mortgage.

Original Lender:	**COUNTRYWIDE BANK, FSB.**
Original Borrower(s):	**CLIFFORD L RYBA, AND BEVERLY RYBA**
Date of Mortgage:	**5/2/2007**
Original Loan Amount:	**$172,000.00**

Recorded in **Charleston County, SC** on: **5/10/2007**, book **E 625**, page **517** and instrument number **N/A**

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Mortgage to be executed on
Dated: 9.15.2011

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

By: _____
Richard Paz, Assistant Secretary

_____
Witness: Alice Rowe

_____
Witness: Chester Levings

State of **California**
County of **Ventura**

On SEP 15 2011 before me, **Karen Krajci**, Notary Public, personally appeared **Richard Paz**, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Notary Public: _____ **(Seal)**
My Commission Expires: _____

KAREN KRAJCI
COMMISSION # 1879544
Notary Public - California
LOS ANGELES COUNTY
My Comm. Expires Feb. 7, 2014

EXHIBIT
5

RECORDER'S PAGE

***NOTE*: This page MUST remain with the original document**

Filed By:

CORELOGIC
450 E BOUNDARY ST

CHAPIN SC 29036-9911

RECORDED

Date: October 4, 2011
Time: 2:00:04 PM

Book	Page	Doc Type
0210	521	Asgt

Charlie Lybrand, Register
Charleston County, SC

Maker:
MERS INC

Recipient:
BANK OF AMERICA

Original Book: E625

Original Page: 517

# of Pages: 2
# of Sats:
# of Refs:

Note:

Recording Fee	$ 6.00
Extra Reference Cost	$ -
Extra Pages	$ -
Postage	$ -
Chattel	$ -
TOTAL	$ 6.00

Drawer: Drawer 1
Clerk: KLH

0210 Book

521 Page

10/04/2011 Recorded Date

2 # Pgs

E625 Original Book

517 Original Page

M Doc Type

14:00:04 Recorded Time

RMC Bk 0210 Pg 521 : pg 2 *

RMC Bk 0254 Pg 536 : pg 1 *

BP0254536

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ASSIGNMENT OF MORTGAGE
Mortgage Book E625 at Page 517

MIN# 100133700021205 97-9 MERS Phone: 1-888-679-6377

FOR VALUE RECEIVED, we hereby set over, transfer and assign unto HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE HOLDERS OF THE DEUTSCHE ALT-A SECURITIES, INC. MORTGAGE LOAN TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2007-OA4, c/o Bank of America, Foreclosure Dept. 475 Cross Point Parkway, Getzville, NY 14068, its successors and assigns, all its rights, title and interest in and to a certain Mortgage, executed by Clifford L. Ryba and Beverly Ryba to Mortgage Electronic Registration Systems, Inc., as nominee for Countrywide Bank, FSB, its successors and assigns (MIN# 100133700021205 97-9) dated May 2, 2007, and duly recorded in the public records of Charleston County, State of South Carolina, on May 10, 2007, in Mortgage Book E625 at Page 517.

IN WITNESS WHEREOF, Bank of America, N.A., successor by merger to BAC Home Loans Servicing LP, fka Countrywide Home Loans Servicing LP has caused this instrument to be executed in its corporate name and behalf by Jacqueline Spears-Manning, as its Assistant Vice President, duly authorized, on this 21st day of May, 2012.

Bank of America, N.A., successor by merger to BAC Home Loans Servicing LP, fka Countrywide Home Loans Servicing LP

By: Jacqueline Spears-Manning
Jacqueline Spears-Manning
its: Assistant Vice President (AVP)

Witness No. 1 Emmanuel P. Tortumit

Witness No. 2 Lewis Wilson III

STATE OF Texas

COUNTY OF Dallas

ACKNOWLEDGMENT
S.C. Code § 30-5-30

I, the undersigned, Notary Public for the State of Texas, do hereby certify that Bank of America, N.A., successor by merger to BAC Home Loans Servicing LP, fka Countrywide Home Loans Servicing LP by Jacqueline Spears-Manning, its AVP, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand this 21 day of May, 2012.

ZELDA GATSON
NOTARY PUBLIC
State of Texas
Comm. Exp. 02/17/2015

NOTARY PUBLIC FOR Texas
My Commission Expires: February 17, 2015

RETURN TO:
Rogers, Townsend & Thomas, P.C
Post Office Box 100200
Columbia, South Carolina 29202
(015262-00242)

MIN# 100133700021205 97-9 MERS Phone: 1-888-679-6377

Ryba
34 Tarleton Dr
Charleston, SC 29407

RECORDER'S PAGE

***NOTE*: This page MUST remain with the original document**

Filed By:
ROGERS TOWNSEND & THOMAS
PO BOX 100200

COLUMBIA SC 29202-9250

RECORDED

Date: May 29, 2012
Time: 3:21:16 PM

Book	Page	DocType
0254	536	Asgt

Charlie Lybrand, Register
Charleston County, SC

MAKER:
BANK OF AMERICA AL

RECIPIENT:
HSBC BANK USA TR AL

Original Book: E625

Original Page: 517

# of Sats:

Note:

# of Pages: 2
# of References:

Recording Fee	$ 6.00
Extra Reference Cost	$ -
Extra Pages	$ -
Postage	$ -
Chattel	$ -
TOTAL	$ 6.00

DRAWER: Drawer 1
CLERK: KLH

0254 — Book
536 — Page
05/29/2012 — Recorded Date
2 — # Pgs
E625 — Original Book
517 — Original Page
M — Doc Type
15:21:16 — Recorded Time

RMC Bk 0254 Pg 536 : pg 2 *

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CIVIL ACTION NO: 2008-CP-10-4970
)	
CAROL G. GOLDBERG,)	
)	
Plaintiff,)	
)	ORDER TO AUTHORIZING PARTIAL
-vs.-)	PAYMENT OF RENT TO FORECLOSING
)	MORTGAGEE
CLIFFORD RYBA, et al.,)	
)	
Defendants.)	

FILED
2012 JAN 27 AM 9:29
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Date of Hearing:	January 24, 2012
Plaintiff's Attorneys:	Benjamin Goldberg, Esq. and J. Kevin Holmes, Esq.
Defendants' Attorneys:	Stephan V. Futeral, Esq.
Presiding Judge:	The Honorable Thomas L. Hughston, Jr.

THIS MATTER CAME BEFORE THE COURT on January 24, 2012 on the Plaintiff's motion to authorize her to make monthly rent payments to Bank of America, N.A., successor by merger to BAC Home Loans Servicing LP, f/k/a Countrywide Home Loans Servicing LP (hereafter "Bank of America") instead of to Mr. and Mrs. Ryba.

The Court has reviewed the file and given careful consideration to the motion, the parties' briefs and exhibits, the arguments of counsel, and the orders proposed by both parties.

The Court is aware of the Order of The Honorable R. Markley Dennis, Circuit Judge, dated December 8, 2011, wherein he ruled on Defendants' Motion for Summary Judgment.

In this Order, Judge Dennis granted summary judgment on all causes of action except the Plaintiff's causes of action for fraud, constructive fraud, and negligent misrepresentation against the Defendant Clifford Ryba. He granted summary judgment on all claims against the Defendant's wife.

#1
J.L.H.

EXHIBIT
6

The Court is aware that one circuit judge may not change or modify the order of another circuit judge. Carolina Baking Co. v. Geilfuss, 169 S.C. 348, 168 S.E. 849 (1933). The Court does not intend to and does not change or modify Judge Dennis' Order.

The Court is satisfied there was and is an agreement between the parties relative to the Plaintiff's home.

In May of 2005 the Plaintiff experienced financial difficulty and turned to the Defendant, a licensed mortgage broker who she considered a friend, for help refinancing her mortgage, which he agreed to do. He later told her he could not obtain a mortgage for either Plaintiff or her stepfather, who had volunteered to help.

The Defendant subsequently told the Plaintiff and her stepfather that the only way to save her home was to convey it to Mr. and Mrs. Ryba who would obtain refinancing and rent the home to the Plaintiff.

He also stated they would reconvey the home to her when she became financially able to pay the Rybas the amounts they had invested in the property, including mortgage payments, taxes, insurance, and maintenance, which the Rybas agreed to pay.

Mr. Ryba admitted the terms of the agreement in his affidavit dated December 11, 2009, which is a sufficient memorandum to avoid the Statute of Frauds.

The parties signed a contract of sale for $205,000.00 and a South Carolina Residential Landlord and Tenant Lease providing for rent of $850.00 per month, which were prepared by Mr. Ryba. Plaintiff had no attorney.

#2 T.L.H.

A closing was held on August 31, 2005 at which time the Plaintiff conveyed her home to the Defendant and his wife. Again, the Plaintiff had no attorney.

At the time of the conveyance the Defendant had an appraisal which showed the Plaintiff's home had a fair market value of $340,000.00.

At the time of the conveyance, the Defendant obtained two mortgages, from Countrywide, now Bank of America, in the amount of $165,500.00 and another in the amount of $20,870.00.

On May 9, 2006, nine months later, the Rybas refinanced and obtained a loan from Regions Bank in the amount of $115,000.00.

Mr. Ryba admits that a portion if not all of this amount was used for the Rybas' personal benefit.

On May 2, 2007, the Rybas obtained a loan from Countrywide, now Bank of America, in the amount of $172,000.00.

Mr. Ryba acknowledges that most of the mortgages obtained were reverse amortization mortgages.

Although the Plaintiff has continued to pay her rent which the Rybas have increased substantially from $850.00 per month to $1,350.00 per month, the Rybas stopped paying the mortgage payments to Bank of America.

As a result, on December 1, 2011, Bank of America filed a foreclosure action on its mortgage of $172,000.00 alleging the Rybas had made no mortgage payments since April of 2011. It alleged that $187,000.00 was due together with costs, interest and attorneys' fees. Regions Bank was made a party for its second mortgage in the original amount of $115,000.00.

#3
T.L.H

On August 31, 2005, the total indebtedness on the property was $186,357.00. As of today, the total encumbrance on the property is in excess of $302,000.00 effectively eliminating Plaintiff's equity in the home.

The Defendant's wife is the record owner of one half of the property. She is no longer a party to this action and this Court cannot take any action affecting her interest. The Defendant, Clifford Ryba, however, remains a party and owns the other one-half (1/2) interest in the Plaintiff's home.

In William E. Fields and Martha L. Fields, Respondent v. Yarborough Ford, Inc., Appellant, 307 S.C. 207, 414 S.E.2d 164 (S.C. 1992), the South Carolina Supreme Court said:

> "A plaintiff induced to enter a contract by fraud must elect between two remedies: he can elect to affirm the contract and bring an action to recover damages sustained by reason of the fraud or, alternatively, he may elect to rescind the contract and recover the consideration paid plus incidental damages which were foreseeable and were incurred in reliance on the fraudulent misrepresentation. . . .
>
> When a party elects to affirm the contract and seek damages based on a misrepresentation, the measure of general damages is the difference between the value the plaintiff would have received if the facts had been as represented and the value he actually received. [Citation omitted.] The plaintiff is also entitled to recover any special or consequential loss which is the natural and proximate result of the misrepresentation."

The Court is of the opinion and so finds that pursuant to the Fields statement, it has the ability to grant the Plaintiff relief for she has suffered and is therefore "entitled to recover any special or consequential loss which is the natural and proximate result of the misrepresentation" if she proves that the Defendant Ryba's fraudulent actions induced the execution of the agreement.

#4 T.L.A.

Unless the foreclosure can be forestalled, however, she will be left with a hollow victory and no likely source of recovery.

It would be grossly unfair and inequitable to allow the Rybas to continue to receive and use the rental payments for their purposes and fail to make the mortgage payments.

Having reached the conclusion that the Court has authority to act in this matter, it can only grant Plaintiff partial relief insofar as it applies to the Defendant Clifford Ryba to prevent a gross inequity and unjust enrichment during the pendency of this action.

It is therefore,

ORDERED, ADJUDGED AND DECREED that Mrs. Goldberg is hereby authorized to pay one-half (1/2) of the monthly rental due Mr. and Mrs. Ryba in the amount of $675.00 a month to Bank of America in the case of Bank of America, N.A., successor by merger to BAC Home Loans Servicing LP, fka Countrywide Home Loans Servicing LP v. Clifford L. Ryba; Beverly Ryba; Regions Bank; First Federal Savings and Loan Association of Charleston; Citibank (South Dakota) N.A., Civil Action Number 2011-CP-10-7885.

AND IT IS SO ORDERED!

This 27th day of JAN., 2012.

#5

T. L. Hughston, Jr.

[redacted] Thomas L. Hughston, Jr.
Judge, 9th Judicial Circuit, [redacted] PRESIDING

GAS., South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master In Equity

Appellate Case No. 2016-001054

RECEIVED
MAR 31 2017
SC Court of Appeals

HSBC Bank USA, National Association, as Trustee for the Holders of the Deutsche ALT-A Securities, Inc. Mortgage Loan Trust, Mortgage Pass-Through Certificates Series 2007-OA4, assignee of Bank of America N.A., successor by merger to BAC Home Loans Servicing L.P., f/k/a Countrywide Home Loans Servicing, Inc.,..... Appellant,

v.

Clifford L. Ryba; Beverly Ryba; Regions Bank; First Federal Savings and Loan Association of Charleston; Citibank (South Dakota) N.A., and Carol Garfield Goldberg, ... Defendants,

Of whom Carol Garfield Goldberg is the,..... Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

Michael J. Anzelmo
Phillips L. McWilliams
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, South Carolina 29201

(803) 799-2000

and

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