

THE STATE OF SOUTH CAROLINA  
In The Court of Appeal

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Appellate Case No. 2016-000292

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Branch Banking and Trust Company -----Respondent,

v.

Wilton H. Cain: Cassandra M. Cain-----Appellants

**Appellants Third Amended Record On Appeal**

**RECEIVED**

SEP 20 2017

SC Court of Appeals

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY

DOCKET NO. 2010-CP-08-03514

Branch Banking and Trust Company;

v.

Wilton H. Cain; Cassandra M. Durrah-Cain;  
Liberty Hall Residential Property Owners  
Association, Inc.;

ORDER

CLERK OF COURT  
BERKELEY COUNTY, SC

FILED  
DEC - 1 PM 4:05

Defendants.

(504335-02111 EL1)

This matter came before me on October 29, 2015, for a status conference relating to the Defendant Wilton H. Cain's Petition for Appraisal originally filed on September 29, 2011. This matter was remitted to this court from the South Carolina Court of Appeals on October 17, 2014.

Based upon the arguments of counsel for the Plaintiff and Mr. Cain, it is hereby ordered that:

1. Mr. Cain is entitled to pursue his rights to the appraisal process pursuant to § 29-3-710, South Carolina Code of Laws;
2. Plaintiff is ordered to obtain an appraisal of the property and submit to the court within 30 days of the date of this order;
3. The Parties may submit any additional information <sup>within 30 days of the hearing per</sup> to the Court for the use in determining the value of the property at the time of the foreclosure sale;
4. The Court shall render a decision regarding the deficiency judgment entered in this matter upon receipt of Plaintiff's appraisal.
5. Parties agreed to proceed with two (2) appraisers. <sup>DW</sup>

IT IS SO ORDERED.

The Honorable Dale Van Slambrook  
Master in Equity for Berkeley County

12/1, 2015

MSE



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
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[www.sccourts.org](http://www.sccourts.org)

October 17, 2014

The Honorable Mary P. Brown  
PO Box 219  
Moncks Corner SC 29461-0219

## REMITTITUR

Re: Branch Banking v. Cain, Wilton  
Lower Court Case No. 2010CP0803514  
Appellate Case No. 2011-205089

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jenny Abbott Kitchings".

CLERK

cc: Wilton Cain and Cassandra Cain  
Samuel C. Waters, Esquire  
Jason David Wyman, Esquire

not provide an explanation for its decision to rescind its earlier order granting the appraisal, we vacate and remand for an order containing specific factual findings and conclusions of law regarding whether Appellants are entitled to an appraisal. See *In re Treatment & Care of Luckabaugh*, 351 S.C. 122, 133, 568 S.E.2d 338, 343 (2002) ("[Appellate courts] do not require a lower court to set out findings on all the myriad factual questions arising in a particular case. But the findings must be sufficient to allow this [c]ourt, sitting in its appellate capacity, to ensure the law is faithfully executed below." (citation omitted)); *id.* at 133-34, 568 S.E.2d at 343-44 (vacating and remanding because the order on appeal provided no findings of fact to support the ultimate legal conclusion).

**VACATED AND REMANDED.<sup>1</sup>**

**FEW, C.J., and SHORT and GEATHERS, JJ., concur.**

---

<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

BRANCH BANKING AND TRUST  
COMPANY,

Plaintiff

-versus-

WILTON H. CAIN, ET AL.

Defendant(s).

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE NUMBER: 2010-CP-08-3514

ORDER REDUCING  
DEFICIENCY JUDGMENT

CLERK OF COURT  
BERKELEY COUNTY, S.C.

DEC - 17 - 2011 1:59

This matter came before me to determine a deficiency judgment amount, if any, following Defendants Wilton H. Cain and Cassandra M. Durrah-Cain exercise of their rights to the appraisal process pursuant to S.C. Code §29-3-710 (1976). This Court would make the following findings of fact and conclusions of law:

1. This Court issued a Judgment of Foreclosure in the amount of \$205,393.82 as of September 2, 2011. Judgment was entered on September 19, 2011.
2. Pursuant to proper notice following the Order of Foreclosure the subject property was sold to the Plaintiff for \$121,000.00. Such sale was final as of September 2, 2011 resulting in a Deficiency Judgment in the amount of \$83,893.82 dated September 16, 2011.
3. Defendants properly exercised their rights to the appraisal process pursuant to S.C. Code §29-3-710 (1976) and submitted an appraisal performed by a duly licensed South Carolina Appraiser asserting the indicated value by Sales Comparison Approach of the subject property as of September 2, 2011 was \$168,000.00. This appraisal included an assessment of the interior of the subject property.

4. Plaintiff also submitted an appraisal performed by a duly licensed South Carolina Appraiser asserting the indicated value by Sales Comparison Approach of the subject property was \$167,000.00. However, such appraisal was based upon an examination of the exterior of the subject property.
5. The parties waived the necessity of a third appraiser and agreed to allow this Court to determine the value based upon the two appraisals referenced above.
6. Based upon a thorough and careful review of the referenced appraisals this Court determines the value of the subject property as of September 2, 2011 was \$168,000.00.
7. Defendants deficiency is established as follows:

Final Judgment Amount	\$205,393.82
Less-Value	<u>\$168,000.00</u>
Deficiency Judgment as of 9/2/11 with interest thereon at the rate of 6.25% per annum	\$ 37,393.82

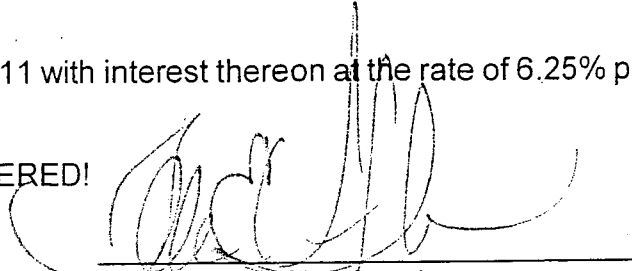
It is therefore Ordered, Adjudged and Decreed that the Deficiency Judgment rendered against Defendants Wilton H. Cain and Cassandra M. Durrah-Cain in the amount of \$83,893.82 entered on September 16, 2011 be reduced to \$37,393.82.

It is further Ordered, Adjudged and Decreed that the Plaintiff have judgment against Defendants Wilton H. Cain and Cassandra M. Durrah-Cain in the amount of

*DW*

\$37,393.82 as of September 2, 2011 with interest thereon at the rate of 6.25% per annum.

AND IT IS SO ORDERED!



---

Dale E. Van Stambrook  
Master-in-Equity, Berkeley County

2<sup>ND</sup> day of DECEMBER 2015  
Moncks Corner, South Carolina

*Dave*

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Branch Banking and Trust Company;

v.

Wilton H. Cain; Cassandra M. Durrah-Cain;  
Liberty Hall Residential Property Owners  
Association, Inc.;

Defendants.

(504335-02111 ELI)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2010-CP-08-03514

**ORDER CONFIRMING  
DEFICIENCY JUDGMENT AND  
DENYING DEFENDANTS  
MOTION TO ALTER, AMEND  
OR RECONSIDER**

FILED  
JAN 26 PM 3:49  
CLERK OF COURT  
BERKELEY COUNTY, S.C.

FILED

This matter came before me on January 14, 2016, for a status conference and hearing as to Defendants Wilton H. Cain and Cassandra M. Durrah-Cain's ("Defendants") Motion to Dismiss Deficiency Judgment filed on December 29, 2015. Pursuant to discussion at the hearing, the Court is treating Defendants motion as a Motion to Alter, Amend, or Reconsider the Order Reducing Deficiency Judgment filed on December 4, 2015, pursuant to Rule 59(e) of the *South Carolina Rules of Civil Procedure*.

**FACTS/ PROCEDURAL HISTORY**

1. Plaintiff filed its foreclosure action against Defendants on October 4, 2010, regarding a Mortgage on real property located in Berkeley County, South Carolina, more fully described as follows ("Subject Property"):

All that certain piece, parcel or lot of land, situate, lying and being in County of Berkeley, State of South Carolina, shown and designated as Lot 704, on a plat entitled "Subdivision Plat Showing Phase 10A, (39.298 AC), Mulberry Park, A Portion of Tract E1 of The Liberty Hall Tract, Property of Centex Homes, A Nevada General Partnership, located in the City of Goose Creek, Berkeley County, South Carolina" made by Trico Engineering Consultants, Inc., dated June 9, 2006, and recorded January 3, 2007, in Plat Cabinet R, Pages 243-A and 243-B, in the RMC Office for Berkeley County, South Carolina. Said lot having such size, shape, dimensions, buttings, boundings and location as will by reference to said plat more fully appear. Said property is subject to all applicable covenants, conditions, restrictions, limitations, obligations and easements of record. This being the same property conveyed to Wilton H. Cain and Cassandra M. Durrah-Cain by deed of Centex Homes dated September 19, 2007 and

MLG

KDC

WJ

KDC

recorded on September 20, 2007 in Book 6868 at Page 155 in the Office of the ROD for Berkeley County, South Carolina.

TMS # 244-03-04-016

Property Address: 259 Clayburne Drive  
Goose Creek, SC 29445

2. The Mortgage includes a provision regarding Mortgage Insurance which reads, in part:

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.

3. Defendants were served with the Lis Pendens, Summons, and Complaint, and an Order of Default was entered on December 8, 2010, holding the Defendants in default in the action<sup>1</sup>.

4. The matter was referred to the Master in Equity on the same date, December 8, 2010.

5. A hearing was set for March 22, 2011, and Defendant Wilton H. Cain appeared at the hearing. The hearing was continued by Judge Watson at that time on order to allow Plaintiff to produce a live witness for cross-examination.

6. Defendants then filed a late answer on March 28, 2011, although already in default.

7. A second hearing was held on June 16, 2011, and Plaintiff produced Richard Miller ("Mr. Miller") from BB&T as a witness. Mr. Miller testified as to the loan documents, the payment history, the default of the loan by the Defendants, and the debt amount. Mr. Miller also

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<sup>1</sup> An Amended Affidavit of Default and Non-Military Service was filed on December 29, 2010, to withdraw the order of default as to Liberty Hall Residential Property Owners Association, Inc. as that entity was inadvertently held in default after filing an answer.

DW

testified regarding the mortgage insurance policy between BB&T and the mortgage insurance carrier.<sup>2</sup>

8. A Judgment of Foreclosure and Sale was entered on June 30, 2011, with a judgment amount of \$201,660.89.

9. The judicial sale of the property was finalized on September 2, 2011, and the Subject Property sold to the Plaintiff for the sum of \$121,500.00.

10. Subsequently, a deficiency judgment was entered on September 19, 2011, in the amount of \$83,893.82, representing the difference between the judgment amount plus post-judgment interest and supplemental costs and the final sales price, pursuant to S.C. Code Ann. § 29-3-660.

11. Thereafter, Defendants filed a Petition and Proposed Order for Appraisal, and on September 28, 2011, The Honorable Kristi Lea Harrington signed the Order. It was filed the next day, September 29, 2011.

12. On October 21, 2011, Judge Harrington *sua sponte* issued a Form 4 Order rescinding her prior Order for Appraisal.

13. Defendants filed a Motion to Reconsider on November 1, 2011, which was denied by Judge Harrington on November 9, 2011, without hearing or participation from Plaintiff or its counsel.

14. Defendants filed a Notice of Appeal on December 8, 2011. Following a lengthy appeals process, the South Carolina Court of Appeals vacated the Order of Judge Harrington and remanded the case for an order containing the specific factual findings and conclusions of law as

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<sup>2</sup> While it is believed that the topic of mortgage insurance was discussed at the time of the hearing, the transcript of the hearing is no longer available from the court reporter and, thus, Plaintiff cannot accurately report the extent of the discussion at hearing.

to whether the Defendants were entitled to exercise their appraisal rights. The Order was entered on September 24, 2014. A Remittitur was issued on October 17, 2014.

15. On May 29, 2015, a Form 4 Order was entered, reinstating the September 28, 2011, Order for Appraisal.

16. On December 4, 2015, after the appraisal process was completed, this Court entered an Order Reducing Deficiency Judgment.

17. The Court determined the value of the Subject Property as of the date of the judicial sale to be \$168,000.00 and therefore reduced the deficiency judgment to \$37,393.82, which reflected the total after final judgment amount (including post-judgment interest and additional costs) less the newly determined value of the Subject Property.

18. Defendants objected to the entry of the deficiency judgment on the basis of alleged mortgage insurance and alleged payment of said insurance to Plaintiff. *Defendants did not object to this Court's valuation of the subject property.*

19. Defendants' Motion to Dismiss Deficiency Judgment was filed on December 29, 2015.

20. Defendants did not present any evidence or affidavits regarding his position prior to or at the hearing.

21. Plaintiff's Brief Regarding Deficiency Judgment was filed on January 7, 2016, containing the arguments and evidence presented by the Plaintiff.

### CONCLUSIONS OF LAW

1. I find that "[T]he general rule is that "if the mortgaged premises are sold under a foreclosure decree and fail to bring a sufficient amount to satisfy the debt, the mortgagee is entitled, absent any statutory limitation or waiver on his part, to a personal judgment for the

remaining deficiency.” *Am. Gen. Fin. Servs., Inc. v. Brown*, 376 S.C. 580, 583, 658 S.E.2d 99, 100 (2008), citing *Perpetual Bldg. and Loan Ass'n of Anderson v. Braun*, 270 S.C. 338, 340, 242 S.E.2d 407, 408 (1978).

2. The law regarding deficiency judgments and the appraisal process in South Carolina is governed by statute. *S.C. Code Ann.* § 29-3-660 states:

In actions to foreclose mortgages the court may adjudge and direct the payment by the mortgagor of any residue of the mortgage debt that may remain unsatisfied after a sale of the mortgaged premises in cases in which the mortgagor shall be personally liable for the debt secured by such mortgage ...

3. Further:

In any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked, whether he has theretofore appeared in the action or not, may within thirty days after the sale of the mortgaged property apply by verified petition to the clerk of court in which the decree or order of sale was taken for an order of appraisal.

*S.C. Code Ann.* § 29-3-680.

4. Once the appraisal process has been completed and the return of the appraisers made, the deficiency judgment is to be confirmed, altered, or extinguished based upon the Court's finding after review of the return:

If the value returned after deduction therefrom of the amount of the price at which the property was sold under direction of the court be equal to or exceed the amount of the deficiency remaining upon the judgment after application of the net proceeds of sale the judgment shall be thereupon extinguished and cancelled of record by the clerk and if such returned value, after deduction of the amount of the sale price, be less than the deficiency the latter shall be abated and deemed paid, pro tanto, and be thereafter enforceable for only the remainder, the amount of which will be determined by the clerk and stated in a proper order from which any party may appeal within ten days after notice of filing thereof to the court or any judge thereof in accord with the procedure prescribed in § 29-3-750.

*S.C. Code Ann.* § 29-3-740.

5. The statute does not contemplate any other considerations in the confirmation, reduction, or cancellation of a deficiency judgment entered, other than the value as returned by the appraisers.

6. I find that, pursuant to the law outlined above, the Plaintiff is entitled to a deficiency judgment unless it is waived. Plaintiff in this case specifically demanded deficiency from the filing of the complaint and has made no waiver of this right.

7. Further, the statute governing deficiency judgments and the appraisal rights of the borrower provides for specific considerations in the setting of the deficiency judgment entered against the borrower or the reduction of such a judgment following the appraisal process; third party insurance payments or other sources of recovery by the Plaintiff are not contemplated by the statute and, therefore, will not be considered by this Court in entering an award in favor of Plaintiff.

8. Additionally, I find that South Carolina also recognizes the "collateral source rule" as to an award of damages. While the collateral source rule is typically used in tort actions, the theory can be translated to the context of a deficiency judgment and payment of mortgage insurance by a third party insurance company.

9. The collateral source rule provides that compensation received by an injured party from a source wholly independent of the wrongdoer will not reduce the amount of damages owed by the wrongdoer. *Rattenni v. Grainger*, 298 S.C. 276, 379 S.E.2d 890 (1989); *Young v. Warr*, 252 S.C. 179, 165 S.E.2d 797 (1969); *Powers v. Temple*, 250 S.C. 149, 156 S.E.2d 759 (1967).

10. "A source is wholly independent of the wrongdoer when the wrongdoer has not contributed to it and when payments to the injured party were not made on behalf of the

wrongdoer.” *Mount v. Sea Pines Co.*, 337 S.C. 355, 357, 523 S.E.2d 464, 465 (Ct. App. 1999), citing *Citizens & S. Nat'l Bank v. Gregory*, 320 S.C. 90, 92, 463 S.E.2d 317, 318 (1995).

11. This rule has been liberally applied in South Carolina to preclude the reduction of damages. See *Otis Elevator v. Hardin Construction Co.*, 316 S.C. 292, 450 S.E.2d 41 (1994) (holding that a contractual right to indemnification is not defeated by fact that loss was actually paid by an insurance company).

12. A wrongdoer should not be able to take advantage of a contract between an injured party and a third person, no matter what the source of the funds received. *Johnston v. Aiken Auto Parts*, 311 S.C. 285, 287, 428 S.E.2d 737, 738 (Ct.App.1993).

13. “A benefit that is directed to the injured party should not be shifted to result in a windfall for the [wrongdoer]... It is the [wrongdoer]'s responsibility to compensate the injured party for all the harm that he causes, not the net loss the injured party receives.” *Dixon v. Besco Eng'g, Inc.*, 320 S.C. 174, 182, 463 S.E.2d 636, 640 (Ct. App. 1995), see also 22 *Am.Jur.2d Damages* § 566 (1988).

14. I find that, as a matter of equity, the tenets of the collateral source rule should be applied in this scenario, and that the rule as applied does not contemplate a reduction in the award to Plaintiff.

15. Defendants are responsible for the debt they incurred and the judgment entered against them. Payment of a third party insurance contract does not obviate their responsibility for the debt.

16. Defendants argue that they paid mortgage insurance premiums as part of their mortgage payments and therefore the insurance should be considered in a reduction of the award entered against them. However, in the mortgage contract, it is made clear that the Defendants are

not party to the insurance and are not the beneficiaries of such a policy. The payment of the mortgage insurance was a condition precedent to the Defendants obtaining the loan with the terms as outlined, but any payments made by the third party mortgage insurance company were not made on behalf of the Defendants.

17. Defendants further argued that if the award to Plaintiff was not reduced or extinguished, Defendants would be subject to an attempt at double recover from the Plaintiff and the mortgage insurance company due to the contract between the two entities. However, Plaintiff and the mortgage insurance company at issue have a subrogation agreement whereby the mortgage insurance company is subrogated to the recovery rights of the Plaintiff with regard to the deficiency judgment. Even if a claim is paid pursuant to the insurance policy, that payment does not absolve the Defendants of their responsibility for the debt as the Plaintiff or the mortgage insurance company can seek to collect on that deficiency judgment pursuant to the agreement.

18. A copy of the Mortgage Insurance Policy (without endorsements) is attached to this Order as Exhibit A, for reference.

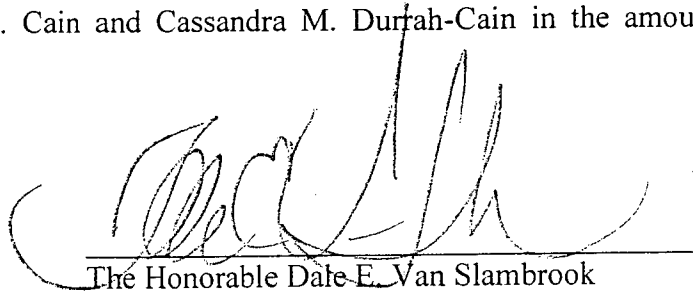
Based upon the foregoing and the arguments of counsel for the Plaintiff and Mr. Cain, it is hereby ordered that:

1. Defendants' Motion to Dismiss Deficiency Judgment filed on December 29, 2015, and treated as a Rule 59(e) Motion to Alter, Amend or Reconsider, is denied.
2. The Order Reducing Deficiency Judgment filed on December 4, 2015, is confirmed.

*{continued on next page}*

3. Subject to the Order Reducing Deficiency Judgment, Plaintiff is entitled to a personal judgment against Wilton H. Cain and Cassandra M. Durrhah-Cain in the amount of \$37,393.82.

**IT IS SO ORDERED.**



The Honorable Dale E. Van Slambrook  
Master in Equity for Berkeley County

1/25, 2016  
Moncks Corner, South Carolina



REPUBLIC MORTGAGE INSURANCE COMPANY  
REPUBLIC MORTGAGE INSURANCE COMPANY OF FLORIDA  
REPUBLIC MORTGAGE INSURANCE COMPANY OF NORTH CAROLINA

P.O. Box 2514 (27102)  
101 North Cherry Street  
Winston-Salem, North Carolina 27101  
Toll Free: (800) 999-7642

## MASTER POLICY

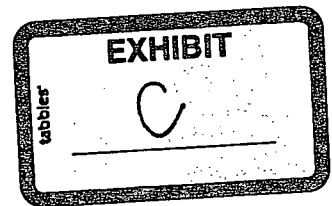
The Company, as indicated by both the applicable Commitment/Certificate and the Policy as either Republic Mortgage Insurance Company, Republic Mortgage Insurance Company of Florida, or Republic Mortgage Insurance Company of North Carolina, agrees to pay to the Insured identified below, in consideration of the premium or premiums to be paid as hereinafter specified and in reliance upon the Insured's representations and statements made in any Application for coverage under this Policy and in any documents and writings, including any data transferred by electronic media related thereto, any Loss due to the Default by a Borrower on a Loan, subject to the terms and conditions contained herein.

Insured's Name and Mailing Address

- CTX MORTGAGE COMPANY
- 1603 LBJ FWY, STE 500
- DALLAS, TX 75234
- 

Policy Number: 48025 (REVISED)

Effective Date of Policy: 02/08/1991



In Witness Whereof, the Company has caused its Corporate Seal to be hereto affixed and these presents to be signed by its duly authorized officers in facsimile to become effective as its original seal and signatures and binding on the Company.

*Christopher S. Harp*  
\_\_\_\_\_  
President

*Elizabeth C. Dixon*  
\_\_\_\_\_  
Secretary

*Quane L. Wall*  
\_\_\_\_\_  
Authorized Representative



## TERMS AND CONDITIONS

### 1. Definitions

- 1.1 **Application** means a request for coverage, including assumption of coverage, under this Policy for a Loan on a form or in a format provided by the Company, and all other statements, documents, or information furnished to the Company by the Insured or any other Person in connection with the insuring of the Loan. An Application will include information, if so furnished to the Company, contained in the Borrower's Loan application, appraisal, verifications of income and deposit, plans and specifications for the Property, and all other exhibits and documents, and will include all data and information so furnished by electronic means.
- 1.2 **Appropriate Proceedings** means any legal or administrative action by the Insured affecting either a Loan or title to a Property, including:
- a. Preserving a deficiency recovery by making a bid at the foreclosure sale and pursuing a deficiency judgment until the end of the Settlement Period, where appropriate and permissible and where directed by the Company; or
  - b. Enforcing the terms of the Loan as allowed by the law where the Property is located; or
  - c. Acquiring Borrower's Title or Good and Merchantable Title to the Property, as either may be required under this Policy, but excluding such title as may be acquired by a voluntary conveyance from the Borrower; or
  - d. Asserting the Insured's interest in the Property in a Borrower's bankruptcy.
- 1.3 **Borrower** means any Person legally obligated to repay the debt obligation created by a Loan, including any co-signer or guarantor of the Loan.
- 1.4 **Borrower's Title** means such title to a Property as was vested in the Borrower at the time of a conveyance to the Insured arising out of or pursuant to a foreclosure of the Loan; provided, however, if the Insured so elects, the redemption period need not have expired. Borrower's Title in the Insured may be, but need not be, the equivalent of Good and Merchantable Title, and the deed evidencing Borrower's Title need not be recorded unless required by applicable law.
- 1.5 **Certificate** means the document, which may be on the same form as the Commitment, issued by the Company pursuant to this Policy and extending the coverage indicated therein to a specified Loan.
- 1.6 **Certificate Effective Date** means, as specified in the Certificate, (a) the closing date of a Loan, or (b) the later date requested by the Insured and accepted by the Company.
- 1.7 **Claim** means the timely filed written request, made on a form or in a format provided or approved by the Company, to receive the benefits of this Policy.
- 1.8 **Claim Amount** means the amount calculated in accordance with Section 6.2 of this Policy.
- 1.9 **Commitment** means the document, which may be on the same form as the Certificate, issued by the Company evidencing the Company's offer to insure the Loan identified therein, subject to the terms and conditions therein and in this Policy.

- 1.10**      **Default** means the failure by a Borrower (a) to pay when due an amount equal to or greater than one (1) periodic monthly payment due under the terms of a Loan, or (b) to comply with any other term or condition of the Loan, if failure to comply is a basis for the acceleration of the principal balance of the Loan and the institution of Appropriate Proceedings.
- A Loan is deemed to be in Default for that month as of the close of business on the installment due date for which a scheduled monthly payment has not been made or as of the close of business on the date the Borrower fails to comply with any such other term or condition of the Loan. The Loan will be considered to remain in Default until filing of a Claim so long as such periodic payment has not been made or basis for acceleration and Appropriate Proceedings remains. For example, a Loan is "four (4) months in Default" if the monthly installments due on January 1 through April 1 remain unpaid as of the close of business on April 1 or if a basis for acceleration and Appropriate Proceedings exists.
- 1.11**      **Deficiency Expenses** means reasonable attorney's fees and necessary court costs incurred by the Insured for those Appropriate Proceedings necessary to pursue or establish a deficiency against the Borrower and which are in addition to those incurred in standard and customary foreclosure proceedings, plus additional interest accruing on the Loan, real estate taxes, casualty insurance premiums, and Property preservation expenses incurred during such Appropriate Proceedings and any additional related redemption period as necessitated by such deficiency pursuit.
- 1.12**      **Environmental Condition** means the presence, on or under a Property, of any "Hazardous Substance" as that term is defined by the federal Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sec. 9601 et seq., as amended from time to time) or as defined by any similar state law; or any "Hazardous Waste" or "Regulated Substance" as those terms are defined by the federal Resource Conservation and Recovery Act (42 U.S.C. sec. 6901, et seq., as amended from time to time) or as defined by any similar state law, but does not mean the presence of radon, lead paint, or asbestos.
- 1.13**      **Fair Market Value** means, with regard to the amount bid for any Property at a foreclosure sale, the Property's value at the approximate time of the foreclosure sale as determined by appraisal if available or in accordance with customary servicing practices (which may include reliance on information provided by a local real estate broker), subject to applicable law governing foreclosure.
- 1.14**      **Good and Merchantable Title** means title to a Property free and clear of all liens, encumbrances, covenants, conditions, restrictions, encroachments, impediments, easements and rights of redemption, and other rights and claims of a Borrower or third parties except for:
- a.      A lien of any public bond, assessment, or tax, when no installment, call, or payment of or under such bond, assessment, or tax is delinquent;
  - b.      Outstanding mineral, oil, or timber rights, rights of way, easements, rights of support, sewer rights, zoning ordinances, building restrictions or other restrictions, covenants, regulations of use, or applicable laws, provided the Property conforms to, and its intended and normal use and occupancy is not adversely affected by, such covenants, rights, restrictions, regulations, or ordinances; and
  - c.      Any conditions or defects which will not have a materially adverse effect on either the transferability of the Property or the sale thereof to a bona fide purchaser.

Good and Merchantable Title does not exist if convenient means of ingress and egress are not conveyed as well as freely alienable rights to the use and enjoyment of municipal or private sources of water and means of sewage disposal, whether such rights are by easement or covenant running with the Property are reflected in the public records relating to the Property.

In addition, Good and Merchantable Title does not exist if notice has been given of the commencement of proceedings that could result in the imposition of a lien upon the Property pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601, et seq., or any other statute, law, or regulation of any governmental authority providing for the imposition of a lien in connection with the cleanup of Environmental Conditions.

1.15

**Insured** means:

- a. The Person designated on the face of this Policy; or
- b. Any Person to whom coverage has been assigned resulting in a change in the Insured named on a Certificate in accordance with this Policy.

The Insured must be the Servicer of a Loan or, if there is no Servicer, the Owner of the Loan.

1.16

**Loan** means any note, bond, or other evidence of indebtedness secured by a mortgage, deed of trust, or other similar instrument, which constitutes or is equivalent to a first lien or charge on a Property and which the Company has approved for insurance and to which coverage under this Policy has been extended.

1.17

**Loss** means the liability of the Company with respect to a Loan for payment of a Perfected Claim which is calculated in accordance with Section 6.3. A loss will be deemed to have occurred when a Default on a Loan occurs, even though the amount of loss is not then either presently ascertainable or due and payable.

1.18

**Owner or Owner of the Loan** means the Person who owns a Loan and of whom the Company is notified in accordance with this Policy.

1.19

**Perfected Claim** means a Claim received by the Company which contains all information or proof required by the Company and for which all requirements of this Policy applicable to payment of a Claim are satisfied.

1.20

**Person** means any individual, corporation, partnership, association, or other entity.

1.21

**Physical Damage** means any tangible injury to a Property or any Environmental Condition, whether caused by accident, natural occurrence, or any other reason.

1.22

**Policy** means this contract of insurance and all Applications, Commitments, endorsements, schedules, and Certificates, which are incorporated in this Policy, related to Loans insured under this Policy.

1.23

**Possession of the Property** means, if the Company elects to acquire the Property, physical and undisputed occupancy and control of the Property at the time of acquisition.

1.24

**Property** means a Residential real property and all improvements thereon which secure a Loan, together with all easements and appurtenances, all rights of access, all rights to use common areas, recreational and other facilities, and all of their replacements or additions.

- 1.25 **Recovery Rights** means all rights of recovery against the Borrower and any other Person relating to the Loan or to the Property.
- 1.26 **Residential** means a type of building or a portion thereof which is designed for occupancy by not more than four (4) families, a single-family condominium, or a unit in a planned unit development.
- 1.27 **Servicer** means that Person acting on behalf of the Owner of a Loan (or on behalf of the Owner's designee, if any) to service the Loan and of whom the Company has been notified. The Servicer acts as a representative of the Owner of the Loan (and the Owner's designee, if any) and will bind the Owner and its designee for all purposes of this Policy, including providing information to the Company, receiving any notices, paying premiums, accepting Loss payments, and performing any other acts under this Policy. References in this Policy to a Servicer's obligations will not be construed as relieving the Owner or its designee of responsibility for the Servicer's performance.
- 1.28 **Settlement Period** means the sixty (60) day period as determined under Section 6.4, at the end of which a Loss is payable by the Company; provided that if the Company pays a Loss prior to expiration of such sixty (60) day period, the Settlement Period ends with such payment.
- 1.29 **Uninsured Loan Balance** means, at any time, with respect to a Loan, the estimated Claim Amount less the Loss as estimated pursuant to a percentage option settlement.
- 1.30 Any pronouns, when used in this Policy, will mean the singular or plural, masculine or feminine, as the case may be.

## 2. Obtaining Coverage and Payment of Premiums

- 2.1 **Application and Certificate** - In order to insure a Loan under this Policy, the Insured or a Person acting on behalf of the Insured must submit to the Company a properly completed Application. Approval of any Application will be at the discretion of the Company and will be in the form of a Commitment or a Certificate which offers to extend, or extends, coverage under the terms and conditions of both this Policy and the Commitment or Certificate, as the case may be.

In lieu of such an Application and supporting statements, documents, and information submitted to the Company in connection with insuring a Loan, the Company may accept an alternative form of Application, containing more limited information, including certifications by or on behalf of the Insured as to characteristics of a Loan in lieu of supporting statements, documents, and information. The Company shall be entitled to rely fully on such alternative Application as submitted. Use of an alternative form of Application shall not waive or change the other terms and conditions of this Policy under which a Loan is insured or the responsibility of the Insured for the accuracy of statements, documents, and information submitted by it or other Persons to the Company as provided in this Policy.

If the Company declines to insure a Loan, it will not issue a Commitment or Certificate, and it will notify the Insured in writing of such declination. If the Insured or the Person acting on its behalf subsequently denies the Loan application which it received from the applicant, the Insured or such Person will be responsible for notifying the applicant that the Company declined to insure the Loan. Such notification will be made in compliance with any applicable state or federal laws or regulations, including the Equal Credit Opportunity Act and any other similar law or regulation.

2.2

**Representations of the Insured** - The Insured represents that:

- a. All statements made and information provided to the Company in an Application or in any Commitment or Certificate (including any that is related to continuation of coverage upon assumption of a Loan), whether by it, the Borrower, or any other Person, have been made and presented for and on behalf of the Insured; and
- b. Such statements and information are not false or misleading in any material respect as of the date(s) on which they are made or provided and do not omit any fact necessary in order to make such statements and information not false or misleading in any material respects as of such date(s).

It is understood and agreed that such statements and information in the aggregate are, and in certain instances individually may be, material to the Company's decision to offer, provide, or so continue coverage of the related Loan; the Company issues the related Commitment and Certificate or continues coverage in reliance upon the accuracy and completeness of such statements and information and without any obligation to verify independently the statements and information submitted to it; and the Company's reliance upon the representations in Section 2.2(a) and (b) above survive the issuance of a Commitment and Certificate or such continuation of coverage.

Without otherwise limiting the scope of this Section 2.2, a breach of Section 4.8 relating to down payment will be deemed a material misrepresentation for purposes of this Section 2.2. The down payment representation shall be effective whether or not it is made by the Insured or other Person with the intent to deceive or mislead, or with the knowledge that it is not true and correct.

2.3

**Certificate Cancellation or Rescission by the Company for Misrepresentation** - Subject to Section 2.4, if any of the Insured's representations as described in Section 2.2 are materially false or misleading with respect to a Loan, the Company will have the right, at its option and to the extent permitted by applicable law, to cancel or rescind coverage under any Certificate retroactively to commencement of coverage (or if the misrepresentation occurs with respect to continuation of coverage upon assumption of a Loan, retroactively to the date of such continuation) and to return at that time all paid premiums retroactively to such applicable date.

2.4

**Incontestability for Certain Misrepresentations** - Notwithstanding Sections 2.2 and 2.3, no Claim for Loss will be denied or adjusted, nor will the Certificate's coverage be rescinded or canceled, by reason of any misrepresentations (whether by statements made or omitted) contained in an Application, provided that all of the following requirements, conditions, and circumstances, to the extent not waived in writing at the option of the Company, are satisfied:

- a. The misrepresentation must not have been knowingly made, or knowingly participated in, by:
  - 1. The Insured or any other Person which originated the Loan; or
  - 2. Any other of the following Persons:
    - i. Correspondent lender, mortgage loan broker, or other intermediary underwriting or processing the Loan on behalf of the Insured or any other Person which originated the Loan; or

ii. Escrow or closing agents, or any other agent of, or broker for, the Insured or any other Person which originated the Loan acting with respect to the Loan or the related Property transaction.

b. The Borrower must have made twelve (12) consecutive full installment payments of principal, interest, and impound or escrow amounts in the amounts as called for by the Loan, and all of those payments must have been made from the Borrower's own funds.

A payment will be considered to be "consecutive" only if it is made prior to the date the next scheduled installment becomes due. The "Borrower's own funds" will include any funds used by the Borrower for the purpose of making installment payments, but will not include funds provided directly or indirectly by any Person (other than the Borrower) who is or was a party to the Loan or to the related Property transaction, unless expressly set forth in the Application.

c. This Section 2.4 will not apply to a Certificate if within twelve (12) months before or after a material misrepresentation by a Borrower or other Person (other than those Persons identified in Section 2.4(a)), there are one or more material misrepresentations in an Application (i) with respect to three or more other mortgage loans insured at any time by the Company for the Insured or any other lender and (ii) which result from the direct or indirect acts or omissions of the same Borrower or same other Person (including any other Person acting directly or indirectly in concert).

d. The Company's payment of a Claim will not limit any rights which the Company has against the Borrower or any other Person (other than the Insured) for any misrepresentation.

**2.5 Initial Premium** - Within fifteen (15) days from the Certificate Effective Date, or such other date as the Company and the Insured may agree to in writing, the Insured must forward to the Company the appropriate initial premium. Tender of the initial premium will constitute a representation for purposes of Section 2.2 by the Insured that any special conditions included by the Company in the related Commitment have been satisfied and that no payment which is then due under the Loan is more than thirty (30) days past due. The Company will not rescind or cancel coverage, or deny or adjust a Claim for Loss, with respect to a Loan on the basis of a failure to satisfy a special condition (other than a special condition relating to completion of construction, rehabilitation, or repairs) if the Borrower has made twenty-four (24) consecutive full installment payments from the Borrower's own funds. The terms "installment payments," "consecutive," and "Borrower's own funds" shall have the meanings provided in Section 2.4(b).

**2.6 Renewal of Certificate and Termination for Nonpayment of Renewal Premium; Reinstatement of Terminated Coverage**

a. **Timing; Responsibility for Payment** - In order to continue coverage beyond the initial term, the Insured shall, at its option, pay renewal premiums to the Company for each Loan insured under this Policy, calculated at the rate specified in the related Certificate and in accordance with Section 2.6(c) below.

The Company shall give thirty (30) days notice of the renewal due date to the Servicer, if a Servicer is shown on the records of the Company, and otherwise to the Owner, and renewal premiums shall be due and payable on or before the last day of the period covered by the previous premium payment.

If a Default occurs prior to the date through which the applicable premium has been paid, and if such Default is not cured and results in a Claim being filed, such Default shall remain covered and no further premium shall be due in order to maintain coverage of such Default.

With respect to a Loan with renewal premiums due on an annual basis, if the annual renewal premium is not paid within a sixty (60) day grace period after the premium due date (but subject to the Owner's right to cure nonpayment as provided in Section 2.6(b)), the coverage of the Certificate and the Company's liability will terminate effective as of 12:01 a.m. on the first day following the date through which the applicable premium has been paid and as a result, any Default occurring after the date through which the applicable premium has been paid will not be covered.

With respect to a Loan with renewal premiums due on a monthly basis, if the monthly renewal premium is not paid within such sixty (60) day grace period (but subject to the Owner's right to cure nonpayment as provided in Section 2.6(b)), the coverage of the Certificate and Company's liability will terminate at the end of such sixty (60) day grace period. However, if a Default on the Loan occurs during such sixty (60) day grace period, the Insured shall not be required to pay renewal premiums while such Default exists. If such Default is cured, all monthly renewal premiums not paid during the period of Default shall be payable within sixty (60) days after notice from the Company. If such Default is not cured and results in a Claim, the unpaid monthly renewal premiums through the renewal month in which such Default occurred shall be paid as provided in Section 6.3 by deduction from the Loss.

- b. **Transfer or Seizure of Servicing** - Notwithstanding paragraph (a) above, in the event that the Owner establishes to the reasonable satisfaction of the Company that the failure to pay renewal premiums on or before the renewal premium due date, or during the applicable grace period, was due to an error or omission that occurred in connection with the transfer, surrender, or seizure of servicing rights associated with a group of Loans, the Company shall permit the Owner or its new Servicer to reinstate coverage of the Loans contained in the group that are insured under this Policy provided that the following conditions are met:
1. The Owner or its new Servicer shall reinstate coverage with respect to all Loans insured under this Policy affected by such transfer, surrender, or seizure;
  2. The renewal premiums are paid, in all events, on or before one hundred twenty (120) days after the applicable premium due date; and
  3. Interest is paid on the renewal premiums due from the renewal premium due date until the date that such renewal premiums are paid at the three month Treasury Bill rate established at the first Treasury auction occurring during the month in which the renewal premium becomes due as published in the *Wall Street Journal*, or if not so published, in any other comparable publication.
- c. **Calculation** - Renewal premiums due with respect to a Loan shall be payable in accordance with the method and at the rate specified on the related Certificate. Renewal premiums payable under the "outstanding unpaid principal balance" or "outstanding balance renewal" method shall be calculated by applying the applicable premium rate to the then unpaid principal balance of the Loan as of the date such premium is due and payable. Renewal premiums payable under the "level original insured principal balance" or "level renewal" method shall be calculated by applying the applicable premium rate to the original insured principal balance of the Loan.

2.7

**Special Procedures for Certificates of Coverage; Payment of Initial and Renewal Premiums**

- a. The Company may permit coverage of a Loan to be certified and become effective without the Insured's return of an executed Commitment or Certificate, but coverage will only become effective if, within fifteen (15) days after the Certificate Effective Date (or other date the Company and the Insured may agree to in writing), the Insured provides the Company with the Certificate Effective Date and other information required by the Company, and pays the required premium. If signature and return of an executed Commitment or Certificate is not required, the Insured will nevertheless be automatically deemed to have made all certifications, representations, and statements attributable to it in the form of the Commitment or Certificate, as though, and to the same extent as if, the Insured had executed and returned the Commitment or Certificate.
- b. The Insured acknowledges that the Company deposits initial and renewal premium checks immediately upon receipt and agrees that the receipt and deposit of premium checks by the Company after the time specified in this Policy for receipt, does not constitute a waiver of the requirements of this Policy for timely receipt or an acceptance of premium by the Company. The Company will have the right to return such late premium payment, but only within sixty (60) days after receipt, in which case coverage will be canceled retroactively to the Certificate Effective Date for a late initial premium, or to the last day of the period covered by the previous premium payment for a late renewal premium. Receipt, deposit, and retention of a premium check will not constitute a waiver of any defenses with respect to any other matters which the Company may have under this Policy.

2.8

**Cancellation by the Insured of a Certificate** - The Insured may obtain cancellation of a Certificate by returning the Certificate to the Company or by making a written request to the Company for cancellation. Upon receipt, the Company will refund, where applicable, a portion of the premium paid in accordance with the appropriate cancellation schedule which is either attached to this Policy or which will be provided by the Company to the Insured upon request. However, no refund on a Certificate will be paid if the Loan is in Default at the time the Company receives the request. Cancellation of a Certificate will not cancel this Policy.

2.9

**Cancellation of Policy** - Either the Insured or the Company may cancel their respective right or obligation to receive or issue new Commitments or Certificates under this Policy by providing thirty (30) days written notice of cancellation of this Policy. However, Commitments and Certificates issued prior to such cancellation of this Policy will continue in force so long as all premiums are paid and all other terms and conditions of this Policy for coverage are complied with by the Insured.

2.10

**Relationship Among the Company, the Owner of a Loan, and the Servicer of a Loan**

The Company will be entitled to assume that the Insured identified on this Policy and under a Certificate is the Owner of the Loan. If the Company receives written notice acceptable to it that there is an Owner of the Loan who is not the Insured, the Company shall identify that Owner in its internal records and for purposes of this Policy. The Company shall be required to identify only one Owner for a Loan at any one time.

The Company will provide the Owner of a loan so identified in its records with an opportunity to cure nonpayments of renewal premium, as provided under Section 2.6(b); will notify such Owner of the Loan of a non-approved Servicer and allow replacement with a new Servicer, as provided under Section 4.5; will allow the Owner (or its designee, if any) to replace a Servicer and allow the replacement Servicer to become the Insured under Section 1.15; and will allow the Owner to

become the Insured under Section 1.15 if the Owner services the Loan itself. Any Person becoming an Insured under this Policy shall be subject to all of the terms and conditions of this Policy, to the same extent as any previous Insured hereunder and without regard to the extent of the knowledge or responsibility of such Person, relating to matters occurring before such Person became an Insured.

**2.11 Refund of Premium for Denial of Claim in Full** - If, because of a provision in Sections 3 or 4 (other than Sections 4.3, 4.6, or 4.7), no Loss is payable to the Insured, the Company shall return to the Insured all paid premiums retroactively and pro rata to the date when the event or circumstance occurred which resulted in no Loss being payable.

**3. Changes in Various Loan Terms, Servicing; Coordination and Duplication of Insurance Benefits**

**3.1 Loan Modifications** - Unless advance written approval is provided by, or obtained from, the Company, the Insured may not make any change in the terms of a Loan, including the borrowed amount, interest rate, term, or amortization schedule of the Loan, except as permitted by terms of the Loan; nor make any change in the Property; nor release the Borrower from liability on a Loan.

**3.2 Open End Provisions** - The Insured may increase the principal balance of a Loan, provided that the written approval of the Company has been obtained. The Insured will pay the Company the additional premium due at the then prevailing premium rate.

**3.3 Assumptions** - If a Loan is assumed with the Insured's approval, the Company's liability for coverage under its Certificate will terminate as of the date of such assumption, unless the Company approves the assumption in writing. The Company will not unreasonably withhold approval of an assumption. It is understood that coverage will continue, and that the restriction of this Section 3.3 will not apply, if under the Loan or applicable law, the Insured cannot exercise a "due-on-sale" clause or is obligated to consent to such assumption under the Loan or applicable law. Notwithstanding anything to the contrary in this Section 3.3, the Company will be deemed to have approved the assumption of any Loan where no release is requested and, under Section 11-406.02 of the Federal National Mortgage Association's Servicing Guide or any successor provision approved by the Company thereof or any similar provision of the Federal Home Loan Mortgage Corporation's Sellers' & Servicers' Guide, the assumption is an "exempt transaction" that the Servicer is to approve without review of the terms of the transaction.

**3.4 Change of Servicing** - If the servicing rights for a Loan are sold, assigned, or transferred by the Insured or the Owner, coverage of the Loan hereunder will continue, provided that written notice of the new Servicer is given to the Company and the new Servicer is approved in writing by the Company.

**3.5 Change of Owner** - If a loan or a participation in a Loan is sold, assigned, or transferred by its Owner, coverage of the Loan will continue, subject to all of the terms and conditions contained in this Policy. The new Owner of the Loan will be identified in the Company's records from the date that the Company receives written notice thereof. In the case of the sale of a participation in a Loan, the Company shall be notified of only one new Owner. If there is a new Owner, the Loan must continue to be serviced by a Person approved by the Company as a Servicer.

- 3.6 **Coordination and Duplication of Insurance Benefits** - The Insured shall not carry duplicate mortgage guaranty insurance on any Loan, other than mortgage guaranty pool insurance or supplemental mortgage guaranty insurance, and if duplicate insurance is carried, coverage under this Policy shall be null and void.

4. **Exclusions From Coverage**

The Company will not be liable for, and this Policy will not apply to, extend to, or cover the following:

- 4.1 **Balloon Payment** - Any Claim arising out of or in connection with the failure of the Borrower to make any payment of principal and/or interest due under a Loan, (a) as a result of the Insured exercising its right to call the Loan (other than when the Loan is in Default) or because the term of the Loan is shorter than the amortization period, and (b) which is for an amount more than twice the regular periodic payments of principal and interest that are set forth in the Loan (commonly referred to as a "balloon payment"). This exclusion will not apply if the Insured, the Owner of the Loan, or other Person acting on either's behalf offers the Borrower, in writing, a renewal or extension of the Loan or a new loan which (i) constitutes a first lien, (ii) is at rates and terms generally prevailing in the marketplace (but otherwise subject to Section 3.1), (iii) is in an amount not less than the then outstanding principal balance, (iv) has no decrease in the amortization period, and (v) is offered regardless of whether the Borrower is then qualified under the Insured's or Owner's underwriting standards. This exclusion also will not apply if the Borrower is notified of the availability of such renewal or extension of the Loan or new loan and does not accept the renewal, extension, or new loan.
- 4.2 **Effective Date** - Any Claim resulting from a Default existing at the Certificate Effective Date or occurring after lapse or cancellation of a Certificate.
- 4.3 **Incomplete Construction** - Any Claim when, as of the date of such Claim, construction of a Property is not completed in accordance with the construction plans and specifications.
- 4.4 **Fraud, Misrepresentation, and Negligence** - Any Claim not otherwise within the scope of Section 2.3 where there was fraud, misrepresentation, or negligence by the Insured with respect to the Loan, and the fraud, misrepresentation, or negligence (a) materially contributed to the Default resulting in such Claim; or (b) increased the Loss, except that if the Company can reasonably determine the amount of such increase, such Claim will not be excluded, but the Loss will be reduced to the extent of such amount.
- 4.5 **Non-Approved Servicer** - Any Claim occurring when the Servicer, at time of Default or thereafter, is not approved in writing or in a list published by the Company; provided that this exclusion shall only apply if the Company notifies the Owner of the Loan in writing that a Servicer is no longer approved and if within ninety (90) days thereafter the Owner does not complete a transfer of servicing to a new Servicer approved by the Company.
- 4.6 **Physical Damage (Other Than Relating to Pre-Existing Environmental Conditions)** - Any Claim where, at any time after the Certificate Effective Date, Physical Damage occurs to a Property of a type other than as described in Section 4.7 and other than reasonable wear and tear, subject to the following provisions:
- a. This exclusion will not apply if the Company in good faith determines that the aggregate cost of restoring all such Physical Damage is less than fifteen hundred dollars (\$1,500), or such higher amount as the Company may provide from time to time.

- b. The exclusion will apply only if: (i) the Company elects to acquire the related Property in settlement of a Claim and the damage occurred prior to expiration of the Settlement Period; or (ii) the damage occurred prior to the Default and such damage was the most important cause of the Default and the Property was either uninsured for loss arising from such Physical Damage or was insured for an amount which, net of any applicable deductibles, was insufficient to restore the Property as provided in paragraph (c) below.
- c. The exclusion resulting from paragraph (b) will not apply if the Property is restored in a timely and diligent manner to its condition (except reasonable wear and tear) as of the Certificate Effective Date.

In lieu of requiring restoration of the Property, as required by this subsection, the Company may, at its option, reduce the Claim Amount by an amount equal to the cost of such restoration.

- d. For purposes of this Section 4.6, the Property subject to restoration will consist only of the land, improvements, or personal property deemed part of the real property under applicable law and chattel items affixed to the real property and identified in the appraisal of the Property at the time the Loan was made, whether or not they are deemed part of the real property.
- e. Cost estimates relied upon by the Company in connection with this Section 4.6 shall be provided in writing by an independent party selected by the Company. The Company will furnish the Insured with any such written cost estimates, if requested by the Insured.

**4.7**

**Pre-Existing Environmental Conditions** - Any Claim where there is an Environmental Condition which existed on the Property (whether or not known by the Person submitting an Application for coverage of the Loan) as of the Certificate Effective Date, subject to the following provisions:

- a. This exclusion will not apply if the existence of such Environmental Condition, or the suspected existence of such Environmental Condition, was specifically disclosed to the Company in the Application relating to the Property.
- b. This exclusion will apply only if such Environmental Condition (i) was a principal cause of the Default, and (ii) has made the principal Residential structure on the Property uninhabitable. A structure will be considered "uninhabitable" if generally recognized standards for Residential occupancy are violated or if, in the absence of such standards, a fully informed and reasonable person would conclude that such structure was not safe to live in without fear of injury to health or safety.
- c. This exclusion will not apply if the Environmental Condition is removed or remedied in a timely and diligent manner in accordance with applicable governmental standards for safe Residential occupancy.

**4.8**

**Down Payment** - Any Claim involving a Loan which is for the purchase of the Property, and for which the Borrower did not make a down payment as described in the Application.

**4.9**

**First Lien Status** - Any Claim, if the mortgage, deed of trust, or other similar instrument executed by the Borrower and Insured hereunder did not provide the Insured at origination with a first lien on the Property.

4.10

**Breach of Insured's Obligations or Failure to Comply with Terms** - Any Claim involving or arising out of any breach by the Insured of its obligations under, or its failure to comply with the terms of, this Policy or of its obligations as imposed by operation of law, if the breach or failure:

- a. Materially contributed to the Default resulting in such Claim; or
- b. Increased the Loss, except that if the Company can reasonably determine the amount of such increase, such Claim will not be excluded, but the related Loss will be reduced to the extent of such amount.

4.11

**Release of Borrower; Defenses of Borrower** - The Insured's execution of a release or waiver of the right to collect any portion of the unpaid principal balance of a Loan or other amounts due under the Loan will release the Company from its obligation under its Certificate to the extent and amount of said release. If, under applicable law, the Borrower successfully asserts defenses which have the effect of releasing, in whole or in part, the Borrower's obligation to repay the Loan, or if for any other reason the Borrower is released from such obligation, the Company will be released to the same extent and amount from its liability under this Policy, except as provided by Section 7.5.

5. **Conditions Precedent to Payment of Claim**

It is a condition precedent to the Company's obligation to pay a Loss that the Insured comply with all of the following requirements:

5.1

**Notice of Default** - The Insured must give the Company written notice:

- a. Within forty-five (45) days of the Default, if it occurs when the first payment is due under the Loan; or
- b. Within ten (10) days of either:
  - 1. The date when the Borrower becomes four (4) months in Default on the Loan; or
  - 2. The date when any Appropriate Proceedings which affect the Loan or the Property or the Insured's or Borrower's interest therein have been started;
 whichever occurs first.

5.2

**Monthly Reports** - Following a notice of Default on the Loan, the Insured must give the Company monthly reports on forms or in a format furnished or approved by the Company on the status of the loan and on the servicing efforts undertaken to remedy the Default. These monthly reports may be furnished less frequently if allowed in writing by the Company and must continue until the Borrower is no longer in Default, the Appropriate Proceedings terminate, or until the Insured has acquired the Property.

5.3

**Company's Option to Accelerate Filing of a Claim** - If the Company so directs, at any time after receiving the Insured's Notice of Default, the Insured must file a Claim within twenty (20) days after notice from the Company. The Company will then make a payment of Loss in accordance with the percentage guaranty option in Section 6.3(b). Thereafter, following the acquisition of Borrower's Title by the Insured, the Insured will be entitled to file a supplemental Claim at the time prescribed in Section 6.1 in an amount equal to the sum of its advances, less the deductions, all as

specified in Section 6.2, to the extent not included in the payment of the initial Claim. Such supplemental Claim must be paid by the Company in accordance with Section 6.3(b). If the Company exercises its option under this Section 5.3, the Company shall not have the right to direct or participate in a deficiency recovery under Section 7.2.

**5.4 Voluntary Conveyance** - The Insured may only accept a conveyance of the Property from the Borrower in lieu of foreclosure or other proceedings if the prior written approval of the Company has been obtained.

**5.5 Appropriate Proceedings** - The Insured must begin Appropriate Proceedings no later than when the Loan becomes six (6) months in Default unless the Company provides written instructions that some other action be taken. Such instructions may be general or applicable only to specific Loans. The Company reserves the right to direct the Insured to institute Appropriate Proceedings at any time after Default. When either defending against or bringing Appropriate Proceedings, the Insured must report its status to the Company as reasonably and expeditiously as possible.

In conducting Appropriate Proceedings, the Insured must:

- a. Diligently pursue the Appropriate Proceedings once they have begun;
- b. Apply for the appointment of a receiver and assignment of rents, if permitted by law and requested by the Company;
- c. Furnish the Company with copies of all notices and pleadings filed or required in the Appropriate Proceedings, except as the Company may waive such requirements in writing;
- d. Act and bid at the foreclosure sale in accordance with Section 5.11 so that its ability to preserve, transfer, and assign to the Company its rights against the Borrower are not impaired, and so that the rights of the Company under this Policy against the Borrower are fully protected. Such rights include any rights to obtain a deficiency judgment, subject to the Company's compliance with Sections 7.2 and 7.3 relating to establishing a deficiency; and
- e. When requested by the Company, furnish the Company with a written statement indicating the estimated potential Claim Amount (as computed under Section 6.2) at least fifteen (15) days before the foreclosure sale.

**5.6 Mitigation of Loss** - The Insured shall, or shall cause its Servicer to, actively cooperate with the Company to prevent and mitigate the Loss and to assist the Company in the Company's attempts to prevent and mitigate the Loss, including but not limited to, taking reasonable and good faith efforts to cure the Default and, if such attempts are unsuccessful, to effectuate the early disposition of the Property.

The Insured shall report to the Company any pre-foreclosure sale offers received by the Borrower and known to the Insured. If a pre-foreclosure sale is approved by both the Insured and the Company, but the sale does not close for any reason, the Company shall continue to administer the Policy as if no sale had been attempted.

The Company agrees to administer the Policy in good faith.

5.7

**Advances** - The Insured shall advance:

- a. Normal and customary hazard insurance premiums (in calculating the Claim Amount pursuant to Section 6.2, such premiums shall be prorated to the date that the Claim is paid);
- b. Real estate property taxes that become due and payable on or after the date of Default (but not including penalties or late fees);
- c. The costs of engaging in foreclosure and eviction proceedings (including court costs and moving costs where required by law to be paid by the evicting party), reasonable or customary attorney's fees not exceeding three percent (3%) of the sum of the outstanding principal balance and accumulated interest due under the Loan; and
- d. Reasonable expenses necessary for the protection and preservation of the Property as approved by the Company. Although advance approval is not required, the Company reserves the right to disallow advances reflecting such expenses upon payment of the Claim if, in the Company's reasonable judgment, such advances were not reasonable or necessary. Insureds are therefore encouraged to seek the Company's prior consent.

5.8

**Claim Information and Other Requirements** - The Insured must provide the Company with:

- a. All information reasonably requested by the Company;
- b. A completed form furnished by or acceptable to the Company for payment of a Claim;
- c. If the Property is not being acquired by the Company: a copy of an executed trustee's or sheriff's deed (which may be unrecorded) conveying Borrower's Title to this Property to the Insured (or satisfactory evidence that the foreclosure sale has been completed if the Borrower's right of redemption has not expired); or a deed from the Borrower (which may be unrecorded) if a voluntary conveyance has been approved by the Company, conveying to the Insured the title that was required by the Company in the approval of the conveyance.  
  
In the event the most important cause of Default was a circumstance, or event which would prevent the Insured from obtaining Good and Merchantable Title, the Insured shall instead provide the Company with evidence described in Section 5.8(d)(2) that it has acquired Good and Merchantable Title to the Property;
- d. If the Property is being acquired by the Company:
  - 1. A recordable deed in normal and customary form containing the customary warranties and covenants conveying to the Company or its designee Good and Merchantable Title to the Property;
  - 2. A title insurance policy acceptable to the Company or an attorney's opinion of title acceptable to the Company, confirming that the Insured has and can convey to the Company Good and Merchantable Title to the Property;
  - 3. Possession of the Property, but only if the Company has required such Possession in writing; and
- e. Access to the Property, if requested by the Company pursuant to Section 6.4(b).

5.9

**Acquisition of Borrower's Title Not Required** - The Insured will not be required to acquire Borrower's Title to a Property if (a) the Company approves a sale of the Property prior to a foreclosure sale and such sale is closed; (b) the Company requires an early Claim filing pursuant to section 5.3, except that such acquisition will be required as a condition to the Insured's filing of a supplemental Claim; or (c) the Property is acquired by someone other than the Insured at a foreclosure sale, as provided in Section 5.11, or thereafter pursuant to exercise of rights of redemption.

5.10

**Sale of a Property by the Insured Before End of Settlement Period**

- a. The Insured must submit to the Company any offer to purchase a Property which would mitigate the Company's Loss and which it receives after the Company has notified the Insured that it will acquire the Property and before the end of the Settlement Period. The Company must then promptly notify the Insured that it will either (i) not approve of such offer, in which case the Company's notice to acquire the Property will remain in effect, or (ii) approve such offer, in which case the Company's notice of acquisition will remain in effect, if the approved offer does not close as scheduled. The Insured shall promptly notify the Company if the approved offer does not close as scheduled.
- b. If the Company has not notified the Insured that it will acquire the Property, and if the Company's right to acquire the Property has not expired pursuant to Section 6.5 or has not been waived, the Insured must submit to the Company for approval any offer to purchase the Property which would be acceptable to the Insured and which would mitigate the Company's Loss. The Company shall then promptly either approve or not approve such offer. If an approved sale does not close, the Company may settle under either of the settlement options set forth in Section 6.3, provided that if the Settlement Period has expired, (i) interest as provided for in Section 6.5 shall be payable, and (ii) if the Company wishes to settle under Section 6.3(a), the Insured's obligations in connection with the transfer of the Property to the Company shall be as required by this Policy subject to the limitation that they shall not be more burdensome to the Insured than its obligations (including, but not limited to, its obligations as to the condition of the Property) as seller in the approved sale that failed to close.
- c. The following provisions shall apply to offers submitted to the Company under this Section 5.10:
  1. The Insured shall provide the Company with a good faith estimate of gross proceeds and expenses in sufficient detail for the Company to calculate the estimated net proceeds described below. The Company may not require any changes to the offer or direct the marketing of the Property or expenditures by the Insured for restoration of the Property as a condition to its approval.
  2. If the Company approves the offer submitted by the Insured, it must also advise the Insured of the estimated net proceeds which it has calculated. The estimated net proceeds calculated by the Company will be the estimated gross sales proceeds to be received by the Insured less all reasonable estimated expenses submitted by the Insured and approved by the Company in its approval of the offer which have been or are expected to be paid by the Insured in obtaining and closing the sale of the Property. If the estimated net proceeds as calculated by the Company is acceptable to the Insured, the Loss payable shall be computed as determined in Section 5.10(c)(3) below. If such estimated net proceeds is not acceptable to the Insured, the offer shall be deemed to have not been approved by the Company.

3. If the Company approves the offer, the Loss payable by the Company under this Section 5.10 will be the lesser of (i) the actual net amount as calculated below, or (ii) the percentage guaranty option under Section 6.3(b) calculated without regard to a sale of the Property. The actual net amount will be the Claim Amount calculated under Section 6.2, except that (a) delinquent interest will be computed through the closing date for sale of the Property and (b) the Claim Amount shall be reduced by the actual net proceeds realized by the Insured from sale of the Property. The actual net proceeds will be determined in the same manner as the estimated net proceeds, but on the basis of the actual sales proceeds and actual expenses, such expenses not to exceed the amounts approved by the Company either at the time the Company approved the offer or thereafter.
4. The Company shall not unreasonably withhold its approval of expenses submitted to it after its approval of an offer. Expenses paid to Persons employed or controlled by the Insured or the Owner of the Loan or their internal costs will not be allowed in calculation of either the estimated or actual net proceeds.
5. If requested by the Company, the Insured or the Owner shall advise the Company of the name of the real estate broker or other Person marketing the Property for the Insured or the Owner and authorize such broker or other Person to release marketing information about the Property to the Company.

#### 5.11

**Foreclosure Bidding Instructions** - Bid an amount at the foreclosure sale which is not less than the minimum amount nor more than the maximum amount set forth below, unless the Company notifies the Insured of other instructions or waives its right to give bidding instructions, in writing.

- a. If the Fair Market Value of a Property is less than the Uninsured Loan Balance, the Insured shall start bidding at not less than the Fair Market Value of the Property and may continue bidding up to a maximum of the Uninsured Loan Balance.
- b. If the Fair Market Value of a Property is greater than the Uninsured Loan Balance, the Insured shall start bidding at not less than the Uninsured Loan Balance up to a maximum amount equal to the Claim Amount.

If other bidding instructions are provided, those instructions will not specify a maximum bid that is less than the Uninsured Loan Balance, and, if the Property is subject to redemption for less than the outstanding amount of the Loan, then such other bidding instructions will not specify an opening bid of less than the Uninsured Loan Balance.

The Insured is not required to acquire Borrower's Title if it has bid in accordance with paragraphs (a) and (b), whether or not pursuant to directions from the Company.

#### 5.12

**Effect of Unexpired Redemption Period on Payment of a Claim** - If the Insured files a Claim prior to expiration of an applicable redemption period, the Loss payable shall only be computed through the date of filing of the Claim, and if the Company elects to acquire the Property, the Insured will remain responsible for management and control of the Property until the Company's acquisition thereof, which may be after expiration of the redemption period, but not later than as required by Section 6.4.

6. **Loss Payment Procedure**

6.1 **Filing of Claim** - The Insured shall file a Claim after, but no later than sixty (60) days following, the conveyance to the Insured of Borrower's Title to the Property. If the Insured is not required to have Borrower's Title to file a Claim for a reason described in Section 5.9, then the Claim must be filed (a) within sixty (60) days after the Property is conveyed in a pre-foreclosure sale, at the foreclosure sale, or by exercise of the rights of redemption, or (b) at the time specified by Section 5.3. If the Insured fails to file a Claim within the applicable time, the Insured will not be entitled to, and the Company will not be obligated for, any payment under this Policy for amounts, including additional interest and expenses, which would otherwise be claimable, but which accrue or are incurred after the sixty (60) day period for filing of a Claim.

If the Insured fails to file a Perfected Claim within one hundred eighty (180) days after the filing of the Claim (or within such longer period of time as the Company may allow in writing), the Insured will no longer be entitled to payment of a Loss and the Company will not be obligated to make any payment under this Policy.

6.2 **Calculation of Claim Amount** - Subject to Section 7.5, the Claim Amount will be an amount equal to the sum of:

- a. The amount of unpaid principal balance due under the Loan as of the date of Default without capitalization of delinquent interest, penalties, or advances;
- b. The amount of accrued and unpaid interest due on the Loan computed at the contract rate stated in the Loan through the date that the Claim is filed with the Company, but excluding applicable late charges, penalty interest, or other changes to the interest rate by reason of Default; and
- c. The amount of advances incurred by the Insured under Section 5.7 prior to filing of the Claim (except to Persons employed or controlled by the Insured or the Owner of the Loan or their other internal costs) provided that:
  1. Attorney's fees advanced for completion of Appropriate Proceedings and obtaining Possession of the Property will not be allowed to the extent they exceed three percent (3%) of the sum of the unpaid principal balance plus the accrued and accumulated interest due; and
  2. Such advances, other than attorney's fees, must have first become due and payable after the Default, and payment of such advances must be pro-rated through the date the Claim is filed with the Company;

less:

- i. The amount of all rents and other payments (excluding proceeds of a sale of the Property and the proceeds of fire and extended coverage insurance) collected or received by the Insured, which are derived from or in any way related to the Property;
- ii. The amount of cash remaining in any escrow account as of the last payment date;
- iii. The amount of cash to which the Insured has retained the right of possession as security for the Loan;

- iv. The amounts paid under applicable fire and extended coverage policies which are in excess of the cost of restoring and repairing the Property, if the Property is damaged, and which have not been paid to the Borrower or applied to the payment of the Loan as required by the terms of the Loan; and
- v. Any other amounts claimed by the Insured to the extent they are excluded by reason of Section 4.10.

### 6.3

**Payment of Loss; Company's Options** - Within the Settlement Period, but only if the Insured has satisfied all requirements for a payment of Loss and if the Company has received a Perfected Claim, the Company shall at its sole option exercise its:

- a. Property acquisition settlement option. Pay to the Insured as the Loss the Claim Amount calculated in accordance with Section 6.2 for the Company's acquisition of the Property; or
- b. Percentage guaranty option. Allow the Insured to retain all rights in and title to the Property, and pay to the Insured as the Loss the Claim Amount calculated in accordance with Section 6.2 of this Policy multiplied by the percentage of coverage or as otherwise calculated as specified in the Certificate; or
- c. Pre-Claim sale option. If the terms and conditions of Section 5.10 are met, pay to the Insured as the Loss the amount calculated in accordance with Section 5.10; and if the terms and conditions of Sections 5.9(c) and 5.11 are met, then the Company will pay the lesser of (i) the percentage guaranty option amount and (ii) the Claim Amount less the amount realized by the Insured at the foreclosure sale or from the redemption of the Property as required by law.

In addition to the sum due pursuant to the option described above which the Company selects, the loss payable by the Company will include the other amounts provided for under Sections 5.3, 6.5, or 7.2 when such Sections are applicable. The Company will deduct from its payment of Loss the aggregate amounts of any payments of Loss which it had previously made. In the event of a Loss on a loan with renewal premiums due monthly, which results from a Default covered under Section 2.6(a), the Company shall deduct from the payment of Loss an amount equal to any unpaid renewal premiums for the subject loan through the end of the monthly renewal period in which such Default occurred.

### 6.4

**Calculation of Settlement Period** - The Settlement Period will be a sixty (60) day period after the Company's receipt of a Claim, calculated as follows:

- a. No later than the twentieth (20) day after the filing of a Claim, the Company may notify the Insured of additional documents or information which it requires for processing the Claim. The sixty (60) day period will be suspended until the Company receives such additional documents and information. The Company may request additional documents and information after such twenty (20) day period, and the Insured must use reasonable efforts to satisfy such request.
- b. No later than the twentieth (20) day after filing of a Claim, the Company may notify the Insured that it will require access to the Property sufficient to inspect, appraise, and evaluate the Property. If the Company does not notify the Insured by that date, its right to such access will be deemed waived. If such notice is given, the Insured will use its best efforts to provide access to the Company and, if access is not then available, the sixty (60) day period will be suspended from the date such notice was given until the Company receives notice from the Insured that access is available to it. If access is in fact

not available when sought by the Company after such notice from the Insured; the Company will promptly notify the Insured of such unavailability, and the passage of the sixty (60) day period will remain suspended as if the Insured's notice of availability had not been given to the Company.

- c. If the Company has elected to acquire the Property in settlement of a Claim, the sixty (60) day period also will be suspended, if necessary, for there to be a period of ten (10) days after the date on which the Insured satisfies all conditions to acquisition, including any required restoration of the Property, the Insured's delivery of a recordable deed and title policy or opinion evidencing Good and Merchantable Title (not subject to any rights of redemption, unless the Company waives such requirement) and, if applicable, delivery of Possession of the Property.
- d. If the sixty (60) day period is suspended for more than one reason, the resulting suspended periods will only be cumulative if in fact they occur at different times; to the extent they occur simultaneously, they will not be cumulative.

**6.5 - Payment by the Company After the Settlement Period** - If the Company has not paid a Loss during the Settlement Period, then (a) the Company will include in its payment of Loss, if a Loss is ultimately payable, simple interest on the amount payable accruing after the Settlement Period to the date of payment of Loss at the applicable interest rate or rates which would have been payable on the loan during such period, and (b) the Company will no longer be entitled to acquire the Property as an option for payment of the Loss. The Company must either pay the amount of applicable Loss (including any additional applicable interest as computed above) or deny the Claim in its entirety within (a) one hundred twenty (120) days after expiration of the Settlement Period, or (b) if the Settlement Period has not expired, no later than one hundred eighty (180) days after filing of the Claim. If at a later date it is finally determined by agreement between the Insured and the Company (or by completion of legal or other proceedings to which the Insured and the Company are parties) that the Company was not entitled to deny all or a portion of the Claim, the Company will include in any resulting subsequent payment of loss interest as calculated above through the date of such payment on the amount of Loss which the Company was not entitled to deny.

**6.6 Discharge of Obligation** - payment by the Company of the full amount of Loss required to be paid in accordance with this Policy will be a full and final discharge of its obligation with respect to such Loss under this Policy.

## **7. Additional Conditions**

**7.1 Proceedings of Eminent Domain** - In the event that part or all of a Property is taken by eminent domain, condemnation, or by any other proceedings by federal, state or local governmental unit or agency, the Insured must require that the Borrower apply the maximum permissible amount of any compensation awarded in such proceedings to reduce the principal balance of the loan, in accordance with the law of the jurisdiction where the Property is located.

## **7.2 Pursuit of Deficiencies**

- a. To facilitate the independent decisions of both the Insured and the Company of whether to pursue or establish a deficiency against a Borrower, the Insured shall provide the Company with any information it may have relevant to collecting on a deficiency judgment for that case. The Company will discuss all such information it may have with the Insured so that the parties can decide whether any Appropriate Proceedings necessary to establishing or

pursuing a deficiency are to be pursued for the benefit of both parties or whether one of the parties will elect not to participate in any recovery.

The Insured will be entitled to pursue Appropriate Proceedings, or shall, at the direction of the Company, pursue Appropriate Proceedings through the end of the Settlement Period, which may result in the Borrower becoming liable for a deficiency after completion of the Insured's acquisition of a Property. Such pursuit may not be directed by the Company unless the Company notifies the Insured at least thirty (30) days before the foreclosure sale that it will pursue a deficiency judgment, in whole or in part for its account. If the Company does not so notify the Insured, the deficiency judgment, if established by the Insured, will be solely for the account of the Insured, and the Company will not be subrogated to any rights to pursue the deficiency judgment.

The Insured will be deemed to be participating in Appropriate Proceedings solely at the request of the Company when such proceedings are not a condition precedent to obtaining Borrower's Title to or Possession of a Property and, after the parties have exchanged information on the Loan, the Insured has advised the Company in writing that the Insured does not wish to participate in such proceedings.

- b. Notwithstanding the provisions of Section 6 (Loss Payment Procedure) above, in the case where a deficiency against the Borrower is being pursued solely at the request of the Company, then any Deficiency Expenses shall be added to the amount of the Loss. If a deficiency against a Borrower is being pursued as part of Appropriate Proceedings for the benefit of both the Insured and the Company, then at the time such deficiency rights are established or a deficiency judgment is obtained, whichever shall occur first, the Deficiency Expenses plus any similar expenses incurred by the Company in connection with such deficiency shall be settled between the parties on the same pro rata basis set forth in Section 7.3 (Subrogation) for the settlement of deficiency recoveries. Expenses and costs arising after that point shall be treated as collection expenses to be netted against the deficiency recovery, if any (and, if none, to be shared between the parties on the same pro rata basis when it becomes clear that nothing will be recovered).

### 7.3

**Subrogation** - Subject to Section 7.2(a), and only to the extent that the Company is entitled under applicable law to pursue such deficiency rights, the Company shall be subrogated pro rata, to the full extent permitted by law, to all of the Insured's Recovery Rights with respect to a Loan, upon payment of a Claim hereunder. The Company's pro rata share of the net deficiency recovered (i.e., amounts recovered less reasonable costs and expenses) with respect to any Loan shall be the amount of the Loss divided by the amount of the deficiency judgment. Internal staff costs and overhead expenses shall not be deducted in determining the amount of a net deficiency recovery unless specifically agreed to in writing by the parties. The Insured hereby designates the Company as its exclusive agent (a) to pursue all of the Insured's Recovery Rights to which the Company has not become subrogated by payment of a Claim (i.e., the Insured's share of the Recovery Rights), (b) to file any action in the Company's name as assignee of the Insured, to collect on the Insured's Recovery Rights, and (c) to settle and compromise any such Recovery Rights on behalf of the Insured, it being understood and agreed that the Company shall have the exclusive rights to pursue and settle all Recovery Rights for any Loan on which a Claim payment is made hereunder, unless waived in writing by the Company. If the Company decides not to pursue Recovery Rights with respect to a Loan, then the Company shall issue a written waiver of its subrogation and management rights to the Insured. The Insured shall execute and deliver at the request of the Company such instruments and documents, and undertake such actions as may be necessary to transfer, assign, and secure such Recovery Rights to the Company. The Insured shall refrain from any action, either before or after payment of a Claim hereunder, that shall prejudice such Recovery Rights.

Notwithstanding any provision in the foregoing paragraph to the contrary, in the event the Insured has, in addition to Recovery Rights against a Borrower or any other Person, a claim or claims against such Borrower or other Person not related to the Recovery Rights, then the Insured shall have the right to pursue in its own name all the Recovery Rights in conjunction with the Insured's other claim or claims, and the Company will waive its right to manage the pursuit of the Recovery Rights (but not the Company's pro rata subrogation rights).

**7.4 Policy for Exclusive Benefit of the Insured and the Owner** - A Commitment and Certificate issued as the result of any Application submitted hereunder and the coverage provided under this Policy will be for the sole and exclusive benefit of the Insured and the Owner of the related Loan, and in no event will any Borrower or other Person be deemed a party to, or an intended beneficiary of, this Policy or any Commitment or Certificate.

**7.5 Effect of Borrower Insolvency or Bankruptcy on Principal Balance** - If under applicable insolvency or bankruptcy law, a Loan's principal balance secured by a Property is reduced (after all appeals of such reduction are final or the time for such appeals has lapsed without appeal), the portion of such principal balance of the Loan not secured by the Property, and related interest, will be includable in the Claim Amount, as provided in this Section 7.5.

If a Default occurs on the Loan, the Insured has acquired Borrower's Title or Good and Merchantable Title to the Property if required by this Policy, and all other requirements for filing of a Claim are complied with, the Insured will be entitled to include in the Claim Amount (a) the amount of the principal balance of the Loan which was deemed unsecured under applicable insolvency or bankruptcy law, less any collections or payments on such unsecured principal balance received by the Insured, and (b) interest thereon at the rate and as computed in Section 6.2, from the date of Default giving rise to the Claim (but for no prior period). In no event will any expenses or other amounts associated with the amount by which the principal balance of the Loan became unsecured be includable in the Claim Amount, directly or by an addition to the principal balance includable in the Claim Amount.

**7.6 Arbitration of Disputes; Suits and Actions Brought by the Insured**

- a. Unless prohibited by applicable law, the Insured, at its option, may elect to settle by arbitration a controversy, dispute, or other assertion of liability or rights which it initiates arising out of or relating to this Policy, including the breach, interpretation, or construction thereof. Such arbitration shall be conducted in accordance with the Title Insurance Arbitration Rules of the American Arbitration Association in effect on the date the demand for arbitration is made, or if such Rules are not then in effect, such other Rules of the American Arbitration Association as the Company may designate as its replacement.

The arbitrator(s) shall be neutral person(s) selected from the American Arbitration Association's National Panel of Arbitrators familiar with the mortgage lending or mortgage guaranty insurance business. Any proposed arbitrator may be disqualified during the selection process, at the option of either party, if such individual is, or during the previous two years has been, an employee, officer, or director of any mortgage guaranty insurer, or of any entity engaged in the origination, purchase, sale, or servicing of mortgage loans or mortgage-backed securities.

- b. No suit or action (including arbitration hereunder) brought by the Insured against the Company with respect to the Company's liability for a Claim under this Policy shall be sustained in any court of law or equity or by arbitration unless the Insured has substantially complied with the terms and conditions of this Policy, and unless the

suit or action is commenced within three (3) years (five (5) years in Florida or Kansas) after the Insured has acquired Borrower's Title to the Property or sale of the Property approved by the Company is completed, whichever is applicable to a Loan. No such suit or action with respect to a Claim may be brought by the Insured against the Company until sixty (60) days after such acquisition of Borrower's Title or sale, as applicable to a Loan.

- c. If a dispute arises concerning the Loan which involves either the Property or the Insured, the Company has the right to protect its interest by defending the suit, even if the allegations contained in such suit are groundless, false, or fraudulent. The Company is not required to defend any lawsuit involving the Insured, the Property, or the Loan.

## 7.7

### **Amendments; No Waiver; Rights and Remedies; Use of Term "Including"**

- a. The Company reserves the right to amend the terms and conditions of this Policy from time to time; provided, however, that any such amendment will be effective only after the Company has given the Insured written notice thereof by endorsement setting forth the amendment. Such amendment will only be applicable to those Certificates where the related Commitment was issued on or after the effective date of the amendment.
- b. No condition or requirement of this Policy will be deemed waived, modified, or otherwise compromised unless that waiver, modification, or compromise is stated in writing properly executed on behalf of the Company. Each of the conditions and requirements of this Policy is severable, and a waiver, modification, or compromise of one will not be construed as a waiver, modification, or compromise of any other.
- c. No right or remedy of the Company provided for by this Policy will be exclusive of, or limit, any other rights or remedies set forth in this Policy or otherwise available to the Company by law or equity.
- d. As used in this Policy, the term "include" or "including" will mean "include or including, without limitation."

## 7.8

**No Agency** - Neither the Insured, any Servicer, or Owner, nor any of their employees or agents, will be deemed for any reason to be agents of the Company. Neither the Company, nor any of its employees or agents, will be deemed for any reason to be agents of any Insured, Servicer, or Owner.

## 7.9

**Successors and Assigns** - This Policy will inure to the benefit of and shall be binding upon the Company and the Insured and their respective successors and permitted assigns.

## 7.10

**Applicable Law and Conformity to Law** - All matters under this Policy will be governed by and construed in accordance with the laws of the jurisdiction in which the office of the original Insured on a Certificate is located. Any provision of this Policy which is in conflict with any provision of the law of such jurisdiction is hereby amended to conform to the provisions required by that law.

## 7.11

**Notice** - Premium payments are to be paid as provided in Section 2 and sent to the Company at the address listed on the Commitment, or as otherwise instructed by the Company in writing. All other notices, Claims, tenders, reports, and other data required to be submitted to the Company

by the Insured shall be either (a) mailed postpaid, (b) sent by overnight courier, (c) transmitted electronically or via magnetic tape or other media in a manner approved by the Company, or (d) sent by telephonic facsimile transmission, to the Company's home office at the following address and facsimile number:

For Claim matters:

P.O. Box 2514  
Winston-Salem, NC 27102  
Attention: Claims Department  
Facsimile Number: (336) 661-9413

For Customer Service matters:

P.O. Box 2514  
Winston-Salem, NC 27102  
Attention: Policy Servicing Department  
Facsimile Number: (800) 849-7642

All notices given by the Company to the Insured or the Owner shall be either (a) mailed postpaid, (b) sent by overnight courier, (c) transmitted electronically or magnetically in a manner approved by the Insured, or (d) sent by telephonic facsimile transmission, at the address and facsimile number for that Person, as reflected in the records of the Company, except that for facsimile transmissions, the Company shall confirm telephonically or otherwise the accuracy of the facsimile number used. Nonpayment notices under Section 2.6 (Renewal of Certificate and Termination for Nonpayment of Renewal Premium) and notices required under Section 4.5 (Non-Approved Servicer) shall be sent to both the Insured and the Owner whenever the Company has been notified that the Insured is a Person other than the Owner.

Either party may notify the other of a change in address in the same manner as provided for giving notice. All notices, Claims, tenders, reports, and other data required to be submitted to the Company or to the Insured shall be deemed to have been given five (5) days after the same is deposited in the U.S. Mail, delivered to an overnight courier, or transmitted in a manner approved above, unless actually received earlier. If the Insured requests that notices be sent to a third party other than the Insured, the Company agrees to use its best efforts to give such notices, but the Company shall not incur any liability for failure to send any notice to any third parties.

**7.12 Reports and Examinations** - The Company may request, and the Insured must provide, such reports or information as the Company may deem necessary pertaining to any Loan, and the Company will be entitled to inspect the books and records of the Insured or any of its representatives pertaining to such Loan.

**7.13 Electronic Media** - The Company and the Insured may agree, from time to time, that information, documents, or other data may be transferred between the Insured and the Company by electronic media acceptable to the Insured and to the Company. In addition, the Company and the Insured may maintain information, documents, or other data on electronic media or other media generally accepted for business records, including microfiche. Such electronic or other media will be as equally acceptable for all purposes between the Insured and the Company as information, documents, or other data maintained in printed or written form.

699-138 9936

# NOTE

SEPTEMBER 19, 2007  
[Date]

NORTH CHARLESTON  
[City]

SOUTH CAROLINA  
[State]

259 CLAYBURNE DRIVE  
GOOSE CREEK, SC 29445  
[Property Address]

FredMac# 476596726

## 1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 174,988.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is

CTX MORTGAGE COMPANY, LLC

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

## 2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.250 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

## 3. PAYMENTS

### (A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on 11/01/2007. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on 10/01/2037, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at P.O. BOX 650269

DALLAS, TX 75265-0269 or at a different place if required by the Note Holder.

### (B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 1,077.44

## 4. BORROWER'S RIGHT TO PREPAY

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

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

MULTISTATE FIXED RATE NOTE - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

SN (0207)

Form 3200 1/01

VMP MORTGAGE FORMS - (800)521-7291

Page 1 of 3

Initials: *cmde*



P + 4 0 0 1 5 2 4 4 3 + C F 0 0 0 + 0 1 + 0 3 + 0 9 1 8 0 7 1 4 2 4

**5. LOAN CHARGES**

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

**6. BORROWER'S FAILURE TO PAY AS REQUIRED**

**(A) Late Charge for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.00 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

**(B) Default**

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

**(C) Notice of Default**

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

**(D) No Waiver By Note Holder**

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

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

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

**7. GIVING OF NOTICES**

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

Any notice that must be given to the Note Holder under this Note will be given by 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.

**8. OBLIGATIONS OF PERSONS UNDER THIS NOTE**

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

**9. WAIVERS**

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



**10. UNIFORM SECURED NOTE**

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

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.

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

Wilton H. Cain (Seal)  
WILTON H. CAIN -Borrower

Cassandra M. Durrah Cain (Seal)  
CASSANDRA M. DURRAH-CAIN -Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

Pay To The Order Of -  
Branch Banking & Trust Company  
Without Recourse

Amanda J. Williams  
CTX Mortgage Company  
Amanda J. Williams  
Division Vice President

[Sign Original Only]

Berkeley County  
Cynthia B Forte  
Register of Deeds  
Moncks Corner 294616120

00030619 Vol: 6868 Pg: 165



53 2007 00030619

Instrument Number 2007- 00030619

As  
Mortgage

Recorded On September 20, 2007

Parties CAIN WILTON H  
To  
CTX MORTGAGE COMPANY LLC

Billable Pages 16

Recorded By BUIST BYARS PEARCE & TAYLOR LLC

Num Of Pages 21

Comment

**\*\* Examined and Charged as Follows \*\***

Mortgage 26 00  
Recording Charge 26 00

**\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\***

I hereby certify that the within and foregoing was recorded in the Clerk's Office For Berkeley County, SC

**File Information**

**Record and Return To**

Document Number	2007- 00030619	BUIST BYARS PEARCE & TAYLOR LLC
Receipt Number	142383	884 ORLEANS ROAD
Recorded Date/Time	September 20, 2007 02 45 49P	SUITE 301
Book-Vol/Pg	Bk-R VI-6868 Pg-165	CHARLESTON SC 29407
Cashier / Station	J Pearson / Cash Station 3	



*Cynthia B. Forte*

Cynthia B Forte - Register of Deeds

BUIST, BYARS & TAYLOR, LLC  
2680 ELMS PLANTATION BLVD.  
BLDG 100, SUITE 101  
NORTH CHARLESTON, SC 29406  
2007080242

Return To:

CTX MORTGAGE COMPANY, LLC  
185 FAIRCHILD ST. SUITE 402, FINAL DOCS  
CHARLESTON, SC 29492

Doc # 00030619

Prepared By:

BRENNA RAY  
185 FAIRCHILD ST. SUITE 402  
CHARLESTON, SC 29492

00030619 Vol: 6868 Pg: 166

400152443

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MIN#100159969913899368

# MORTGAGE

## DEFINITIONS

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

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

9/19/2007

(B) "Borrower" is

WILTON H. CAIN AND  
CASSANDRA M. DURRAH-CAIN

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is

CTX MORTGAGE COMPANY, LLC  
Lender is a A LIMITED LIABILITY COMPANY  
organized and existing under the laws of THE STATE OF DELAWARE

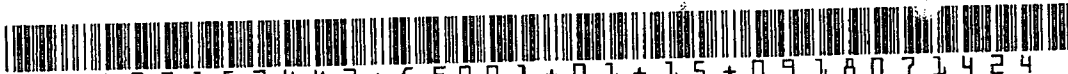
SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3041 1/01

CTX06(SC) (0409).01

Page 1 of 15

VMP Mortgage Solutions, Inc.



400152443

Lender's address is 2828 NORTH HARWOOD  
DALLAS, TX 75201-1516

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated 9/19/2007

The Note states that Borrower owes Lender

ONE HUNDRED SEVENTY FOUR THOUSAND NINE HUNDRED EIGHTY EIGHT & 00/100  
(U.S. \$ 174,988.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic  
Payments and to pay the debt in full not later than 10/01/2037

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

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

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

- |                                                |                                                                    |                                             |
|------------------------------------------------|--------------------------------------------------------------------|---------------------------------------------|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider                         | <input type="checkbox"/> Second Home Rider  |
| <input type="checkbox"/> Balloon Rider         | <input checked="" type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider   |
| <input type="checkbox"/> VA Rider              | <input type="checkbox"/> Biweekly Payment Rider                    | <input type="checkbox"/> Other(s) [specify] |

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

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

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

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

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

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

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

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



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

TRANSFER OF RIGHTS IN THE PROPERTY

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

COUNTY

of

BERKELEY

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

Parcel ID Number 2440304016 which currently has the address of  
259 CLAYBURNE DRIVE [Street]  
GOOSE CREEK [City] South Carolina 29445 [Zip Code]

("Property Address")

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

BORROWER COVENANTS that Borrower is lawfully 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



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**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



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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



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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.

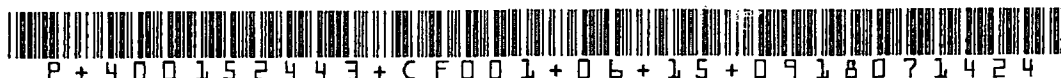
Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

**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



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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.

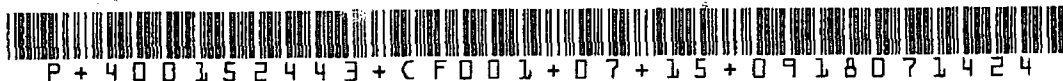
**6. Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless 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



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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.

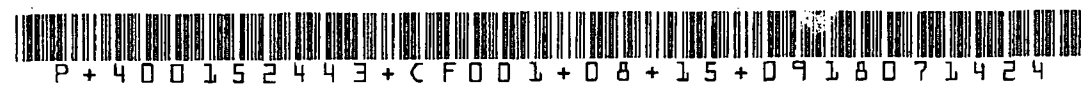
If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

**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:



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(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.



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

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

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

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

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

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

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



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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



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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).



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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

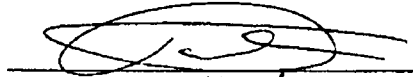
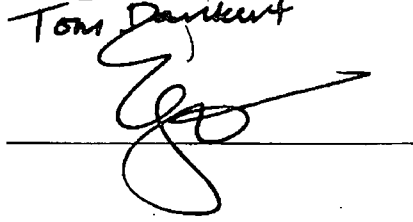


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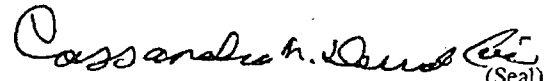
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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it

Signed, sealed and delivered in the presence of

  
 \_\_\_\_\_  
 Tom Durrah  
  
 \_\_\_\_\_

  
 \_\_\_\_\_ (Seal)  
 WILTON H CAIN -Borrower

  
 \_\_\_\_\_ (Seal)  
 CASSANDRA M DURRAH-CAIN -Borrower

\_\_\_\_\_  
 (Seal)  
 -Borrower

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 -Borrower



STATE OF SOUTH CAROLINA,

I,

*Ego*

*Ego*

400152443

Charleston County ss

do hereby certify that

Wilton H. Cain and Cassandra M. Durrah-Cain

personally appeared before me this day and acknowledged the due execution of the foregoing instrument

Witness my hand and official seal this

19 day of September 2007

*Ego*

Notary Public for South Carolina

My Commission Expires



ALL that certain piece, parcel or lot of land, situate, lying and being in County of Berkeley, State of South Carolina, shown and designated as Lot 704, on a plat entitled "SUBDIVISION PLAT SHOWING PHASE 10A, (39.298 AC), MULBERRY PARK, A PORTION OF TRACT E1 OF THE LIBERTY HALL TRACT, PROPERTY OF CENTEX HOMES, A NEVADA GENERAL PARTNERSHIP, LOCATED IN THE CITY OF GOOSE CREEK, BERKELEY COUNTY, SOUTH CAROLINA" made by Trico Engineering Consultants, Inc., dated June 9, 2006, and recorded January 3, 2007, in Plat Cabinet R, Pages 243-A and 243-B, in the RMC Office for Berkeley County, South Carolina. Said lot having such size, shape, dimensions, buttings, boundings and location as will by reference to said plat more fully appear.

Said property is subject to all applicable covenants, conditions, restrictions, limitations, obligations and easements of record.

This being the same property conveyed to the Mortgagor herein by deed of conveyance from Centex Homes, a Nevada general partnership dated September 19, 2007 and recorded simultaneously herewith.

Tax Map # 244-03-04-016

400152443  
MB-704

## PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 19<sup>th</sup> day of  
SEPTEMBER, 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  
CTX MORTGAGE COMPANY, LLC

(the "Lender") of the same date and covering the Property described in the Security  
Instrument and located at  
259 CLAYBURNE DRIVE  
GOOSE CREEK, SC 29445

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling,  
together with other such parcels and certain common areas and facilities, as described in  
RESTRICTIVE EASEMENTS, COVENANTS AND CONDITIONS OF RECORD

(the "Declaration") The Property is a part of a planned unit development known as  
MULBERRY PARK @ LIBERTY HALL

[Name of Planned Unit Development]

(the "PUD") The Property also includes Borrower's interest in the homeowners association or  
equivalent entity owning or managing the common areas and facilities of the PUD (the  
"Owners Association") and the uses, benefits and proceeds of Borrower's interest

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

**A PUD Obligations** Borrower shall perform all of Borrower's obligations under the PUD's  
Constituent Documents. The "Constituent Documents" are the (i) Declaration, (ii) articles of  
incorporation, trust instrument or any equivalent document which creates the Owners  
Association, and (iii) any by-laws or other rules or regulations of the Owners Association.  
Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the  
Constituent Documents.

**MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT  
Form 3150 1/01**

Page 1 of 4

CTX07R (0411)

VMP Mortgage Solutions, Inc (800)521-7291



P + 4 0 0 1 5 2 4 4 3 + Z Z 7 0 8 + 0 1 + 0 4 + 0 9 1 8 0 7 1 4 2 4

400152443

**B Property Insurance** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and 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, then (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property, and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy

What Lender requires as a condition of this waiver can change during the term of the loan

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower

**C Public Liability Insurance** Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender

**D Condemnation** The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11



400152443

**E Lender's Prior Consent** Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain, (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender, (iii) termination of professional management and assumption of self-management of the Owners Association, or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender

**F Remedies** If Borrower does not pay PUD dues and assessments when due, then Lender may pay them Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment



400152443

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this PUD Rider.

Wilton H. Cain (Seal)  
WILTON H. CAIN -Borrower

Cassandra M. Durrah Cain (Seal)  
CASSANDRA M. DURRAH-CAIN -Borrower

\_\_\_\_ (Seal)  
-Borrower

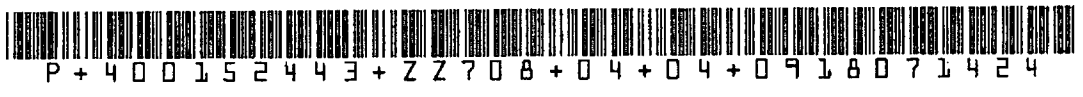
\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower



RECORD AND RETURN TO:  
CTX MORTGAGE COMPANY, LLC  
185 FAIRCHILD ST. SUITE 402  
CHARLESTON, SC 29492

400152443

### ASSIGNMENT OF MORTGAGE

FOR VALUABLE CONSIDERATION CTX MORTGAGE COMPANY, LLC

whose address is 2828 N. HARWOOD, DALLAS, TEXAS 75201

, the  
sole owner and holder of the mortgage dated the 19th day of SEPTEMBER 2007,  
from WILTON H. CAIN AND  
CASSANDRA M. DURRAH-CAIN  
\*

to CTX MORTGAGE COMPANY, LLC  
2828 NORTH HARWOOD, DALLAS, TX 75201-1516

securing a

loan in the amount of  
ONE HUNDRED SEVENTY FOUR THOUSAND NINE HUNDRED EIGHTY EIGHT & 00/100  
(\$ 174,988.00 ) Dollars, which mortgage was recorded in Book 6868 at Page 165  
of the records of the Office of

for BERKELEY County, South Carolina, does hereby transfer, assign and  
set over the same with the Note which it was given to secure unto

Mortgage Electronic Registration Systems, Inc.  
whose address is G4318 Miller Road  
Flint, MI 48507

its successors and assigns.

IN WITNESS WHEREOF, CTX MORTGAGE COMPANY, LLC  
DEBRA GUNNELLS, DOCUMENT SIGNER

by  
~~xxx~~

has caused its Corporate Seal to be hereunto affixed this

19th day of September, 2007

Witnesses:

Claudia Crawford  
Michelle Canode

By: CTX MORTGAGE COMPANY, LLC

By: Debra Gunnells  
DEBRA GUNNELLS 9/19/2007  
DOCUMENT SIGNER



State of South Carolina  
County of Dorchester

The foregoing instrument was acknowledged before me this  
by Debra Gunnells  
Document Signer of CTX Mortgage Company, LLC,  
a Delaware corporation, on behalf of the corporation.

S.Carolina Assignment of Mortgage 1/03  
CTX995(SC) (0101)  
VMP Mortgage Solutions(800)521-7291

BUIST, BYARS & TAYLOR, LLC  
2680 ELMS PLANTATION BLVD.  
BLDG 100, SUITE 101  
NORTH CHARLESTON, SC 29406

2007080242

Brenna Ray  
Brenna Ray  
South Carolina  
Dorchester County  
11/10/2009

MIN#100159969913899368  
MERS#888-679-6377

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Branch Banking and Trust Company,

Plaintiff,

v.

Wilton H. Cain; Cassandra M. Durrah-Cain;  
Liberty Hall Residential Property Owners  
Association, Inc.;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO.

10 CP-08 3514

COMPLAINT

(NON-JURY)

FORECLOSURE OF REAL ESTATE  
MORTGAGE  
Deficiency Judgment Demanded

2010 OCT -4 AM 11:02  
FILED  
CLERK OF COURT  
BERKELEY COUNTY, SC

(004335-02111)

Plaintiff alleges:

1. This is an action for the foreclosure of a mortgage upon certain real estate in Berkeley 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 HMP modification process has been completed without a modification.
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 September 19, 2007, Wilton H. Cain and Cassandra M.

Durrah-Cain made, executed and delivered a certain Fixed Rate Note ("Note") in the principal sum of \$174,988.00, payable in monthly installments.

8. In order to secure the payment of the Note according to the terms and conditions thereof, Wilton H. Cain and Cassandra M. Durrah-Cain made, executed and delivered unto CTX Mortgage Company, LLC 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 certain piece, parcel or lot of land, situate, lying and being in County of Berkeley, State of South Carolina, shown and designated as Lot 704, on a plat entitled "Subdivision Plat Showing Phase 10A, (39.298 AC), Mulberry Park, A Portion of Tract E1 of The Liberty Hall Tract, Property of Centex Homes, A Nevada General Partnership, located in the City of Goose Creek, Berkeley County, South Carolina" made by Trico Engineering Consultants, Inc., dated June 9, 2006, and recorded January 3, 2007, in Plat Cabinet R, Pages 243-A and 243-B, in the RMC Office for Berkeley County, South Carolina. Said lot having such size, shape, dimensions, buttings, boundings and location as will by reference to said plat more fully appear.

Said property is subject to all applicable covenants, conditions, restrictions, limitations, obligations and easements of record.

This being the same property conveyed to Wilton H. Cain and Cassandra M. Durrah-Cain by deed of Centex Homes dated September 19, 2007 and recorded on September 20, 2007 in Book 6868 at Page 155 in the Office of the ROD for Berkeley County, South Carolina.

Property Address: 259 Clayburne Drive  
Goose Creek, SC 29445

TMS# 244-03-04-016

9. The Mortgage was signed, witnessed and probated September 19, 2007; thereafter the Mortgage was recorded in the Office of the RMC/ROD for Berkeley County on September 20, 2007, in Mortgage Book 6868 at Page 165. This Mortgage was subsequently assigned to Mortgage Electronic Registration Systems, Inc., its successors and assigns (MIN# 100159969913899368) by assignment dated September 19, 2007 and recorded on September 20, 2007 in Book 6868 at Page 186.

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 purchase money first lien on the mortgaged premises.

11. Rogers Townsend & Thomas, PC sent a notice pursuant to 15 U.S.C. Section 1692(g) to the Notemaker(s), dated AUGUST 23, 2010, and a copy of the contents of the notice is attached hereto.

12. Any notice required by the terms of the Mortgage or by state or federal law has been given to the applicable Defendant(s) prior to the commencement of this action.

13. After all payments received by the Plaintiff have been credited to the subject loan, the loan is in default and due for November 1, 2009, 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 November 1, 2009, the principal sum of \$170,733.63, with interest from October 1, 2009, advances, late charges, and also for the costs and disbursements of this action, including attorney's fees.

14. Plaintiff's right to a personal or deficiency judgment pursuant to South Carolina Code Sections 29-3-650 and 29-3-660 is expressly demanded against Wilton H. Cain and Cassandra M. Durrah-Cain.

15. 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.

16. 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.

17. 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.

18. 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. Liberty Hall Residential Property Owners Association, Inc. by virtue of any lien enforceable assessments claimed as provided for in the Declaration of Covenants, Conditions, and Restrictions recorded herein, and any amendments thereto.

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 purchase money 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 Berkeley 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.

*Kevin T. Hardy*

Rogers Townsend & Thomas, PC

ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958) Cheryl H. Fisher (SC Bar #15213)  
Reginald P. Corley (SC Bar #69453) Jennifer W. Rubin (SC Bar #16727)  
Ellie C. Floyd (SC Bar # 68635) Michael P. Morris (SC Bar #73560)  
Eve Moredock Stacey (SC Bar # 5300) Mary R. Powers (SC Bar #16534)  
Robert P. Davis (SC Bar # 74030) William S. Koehler (SC Bar# 74935)  
Shawn R. Willis (SC Bar # 71155) Kevin T. Hardy (SC Bar #76015)  
Benjamin J. Powell (SC Bar #77205) John P. Fetner (SC Bar # 77460)  
Kelsey K. Brockbank (SC Bar # 77519)  
220 Executive Center Drive, Suite 109 Post Office Box 100200 (29202)  
Columbia, SC 29210 (803) 744-4444

Columbia, South Carolina  
October 1, 2010

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Branch Banking and Trust company,

Plaintiff,

V.

Wilton H. Cain, Cassandra M. Durrah-Cain

Defendant(s)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 10-CP-08-3514

ANSWER

JUDGMENT OF FORECLOSURE AND SALE

Deficiency Judgment Demanded

2011 MAR 28 AM 9:49  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

FILED

Defendant(s) ANSWER

A hearing was held March 22, 2011 at 9.30 AM. Before the Master of Equity, hearing was postponed.

Admit 1-6

Deny 7, Defendant(s) applied for loan modification under Home Affordable Modification Program in June 2009. In May and June 2010 Plaintiff offered a Loan Modification. The May offer was the same payment. The June offer increased the escrow payment by 10.00 dollars, and both offers added 10 years to note a total of 480 months. Adding an additional 120,000.00 Dollars cost for the home. Costing nearly 500,000.00 for 174,988.00. Offer had no reductions in monthly payments or interest rate. The June offer stated 5 percent but payment remained the same plus adding 10 years extension on note. See exhibits A and B. Modification was untimely and Defendant(s) believe Plaintiff did not meet the guide line as set forth in Home Affordable Modification Program, and failed to meet Chief Justice Jean H. Toal Administrative Order dated march 22,2009. NO HELP. If as Plaintiff stated loan was not eligible for modification under HAMP then Defendant(s) request proof be supplied.

Admit 10 BUT Defendant(s) also put 10,000.00 dollars down.

Admit 15 Offered foreclosure only.

Deny 16 The sum is unreasonable for Plaintiff counsel, Because Plaintiff unnecessarily chose to

proceed to foreclosure, from as early as June 2010 Defendant(s) requested Deed in lieu of foreclosure, short sale or any other method directly to Mortgagee and Counsel. On a number of occasion, see exhibit , Defendant(s) question reason, was it to protect PMI insurer. Defendant(s) request would have saved counsel work and time. Defendant(s) request denial of attorney fee as unreasonable any delay of was fault of Plaintiff and not Defendant(s).

Deny 17 But, (a) admit, (b) interest was paid through November 1, 2009 and property was under Mortgagee control and possession from July 1, 2010 until present, therefore no accruing of interest against the Defendant, © Mortgagee is requesting Defendant(s) pay full alleged debt, while their agent LPS FIELD SERVICE. INC had control of property with lockout box on door. Property was secure prior to LPS breaking into house. Plaintiff seized property without Court Order. Total Debt should be adjusted and not 195,693.48 which Defendant(s) disagree with anyway.

Defendant contend Mortgagee violated Defendant(s) ownership rights without Court authority by entering and seizing control of mortgage property therefore it is unreasonable to expect Defendant(s) to honor contract, under SOUTH CAROLINA CODE OF LAW ANN. 29-3-10 **NO MORTGAGEE SHALL BE ENTITLED TO MAINTAIN ANY POSSESSORY ACTION FOR REAL ESTATE MORTGAGED.** The Defendant(s) seek relief from Mortgagee possession.

RELIEF Waiver, and withdraw demand for Deficiency judgment.

Deny 18 Deficiency Judgment should be denied, In PERPTUAL BLDG. AND LOAN ASSOCIATION OF ANDERSON V. BRAUN 270 S.C.338, 340 DECLARES MORTGAGE REPRESENTS SECURITY FOR A OBLIGATION BUT NOT FULL PAYMENT.

Defendant request denial of Deficiency Judgment further, It came to Defendant(s) knowledge through Plaintiff foreclosure officer YOLANDA YOUNG on March 22, 2011 that Mortgagee and RMI Republic Mortgage Insurance the PMI insurer on Defendant(s) loan has an agreement, which adversely affects Defendant(s). That agreement being that the Mortgagee shall on every foreclosure which has PMI from (RMI) Republic Mortgage Insurance Co. Grant no waiver and demand a Deficiency Judgment. This agreement effectively removes all risk from RMI as an insurance agent. PROFIT NO RISK through demanded litigation.

FURTHER Defendant(s) are adversely affected by said agreement, therefore We request a copy of agreement.

FURTHER PRIVATE MORTGAGE INSURANCE IS FOR DEFAULT A RISK INSURANCE.SAID AGREEMENT WOULD PROTECT INSURER FROM ANY LOSS, AND GUARANTEE ALL PREMIUM WERE PROFIT.

FURTHER AGENT OF INSURANCE ARE PROHIBITED FOR MAKING AGREEMENT FOR PERSONAL GAIN. S.C. CODE OF LAW TITLE 38, 38-12-70

FURTHER Plaintiff chose to seek foreclosure rather than any other path to more specifically increase profit and protect RMI the insurer.

FURTHER Defendant(s) Request copy of notice to RMI the PMI insurer on the default with date time and amount.

FURTHER THE DEFENDANTS BELIEVE SAID AGREEMENT VIOLATE LEGISLATIVE INTENT OF THE LAW. ALL THAT APPLY.

FURTHER DEFENDANT(S) ARE GOOD STEWARDS OF PROPERTY AND INSTALLED HARDWOOD FLOORS, A PRIVACY FENCE, AND LANDSCAPE WHICH INCREASED VALUE OF PROPERTY.

DENY 20 THAT SOUTH CAROLINA SUPREME COURT ADMIM. ORDER DATED MARCH 22, 2009 WAS NOT COMPLIED WITH.

DENY 21 NOT PROPER.

REQUEST 22 PLAINTIFF WAIVE RIGHTS AND WITHDRAW DEMAND FOR DEFICIENCY JUDGMENT.

DENY 23, 24 ,25

DENY PERSONAL OR DEFICIENCY JUDGMENT 27.

PRAY PLAINTIFF WAIVE RIGHTS 28

29 THROUGH 38 AS COURT DEEMS DEFENDANTS ARE NOT WAVING APPRAISAL RIGHTS AFTER SALE, REQUEST WAIVER BEFORE SALE AND DENIAL OF DEFICIENCY JUDGMENT

FOR PROPERTY AT 259 CLAYBURNE DR. GOOSE CREEK SC 29445

DEFENDANT(s) Wilton H. Cain and Cassandra M. Durrah-Cain

*Wilton H Cain*  
*Cassandra M Durrah-Cain*

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Branch Banking and Trust Company,

Plaintiff,

v.

Wilton H. Cain; Cassandra M. Durrah-Cain;  
Liberty Hall Residential Property Owners  
Association, Inc.;

Defendants.

(504335-02111 HPW)

Harriet Pollitt Wallace, Esquire  
Attorney for the Plaintiff

Joseph E. DaPore, Esquire  
Attorney for Liberty Hall Residential Property Owners Association, Inc.

Wilton H. Cain  
Pro Se Defendant

Cassandra M. Durrah-Cain  
Pro Se Defendant

IN THE COURT OF COMMON PLEAS

DOCKET NO. 10-CP-08-3514

JUDGMENT OF FORECLOSURE AND SALE  
Deficiency Judgment Demanded against Wilton H.  
Cain and Cassandra M. Durrah-Cain

FILED  
2011 JUN 30 AM 9:53  
HARRY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

A hearing was held June 16, 2011 at 9:30 a.m. Evidence was presented, which is reported herewith, and from the evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on October 4, 2010.
2. The Summons and Complaint were filed on October 4, 2010.
3. Service was made upon all Defendants as shown by the proofs of service filed herein.
4. The Defendants Wilton H. Cain, Cassandra M. Durrah-Cain are in default as shown by affidavit filed herein.
5. The Defendants Wilton H. Cain and Cassandra M. Durrah-Cain are not in the

Military Service of the United States of America, as contemplated under The Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. seq. as shown by affidavit, certificate or order filed herein.

6. No Defendant raised any issues related to Plaintiff's standing to prosecute this action.

7. Pursuant to the South Carolina Supreme Court Administrative Order dated May 22, 2009, the Plaintiff set forth its belief in its Complaint or by Affidavit, which is already of record in this case, that the mortgage loan which is the subject of this foreclosure action is not eligible for modification pursuant to the terms of the Home Affordable Modification Program (HMP). Pursuant to the South Carolina Supreme Court Administrative Order dated May 22, 2009, Plaintiff's attorney has not received a counter affidavit from any Defendant.

8. Liberty Hall Residential Property Owners Association, Inc. filed an answer through its attorney, Joseph E. DaPore.

9. All Pro Se Defendants and all attorneys of record were notified of the time, date, and place of the hearing by letter and certificate of mailing of record herein.

10. Wilton H. Cain and Cassandra M. Durrah-Cain for value received, made, executed and delivered a Fixed Rate Note dated September 19, 2007, promising thereby to pay to Plaintiff's predecessor the sum of \$174,988.00 with interest at a fixed rate of 6.25% per annum. Other terms and conditions are stated in the Fixed Rate Note, of record herein.

11. To better secure the payment of the Fixed Rate Note described above, Wilton H. Cain and Cassandra M. Durrah-Cain made, executed, and delivered to CTX Mortgage Company, LLC a certain real estate Mortgage in writing, dated September 19, 2007 covering real property in Berkeley County, which is the same as that described in the Complaint. This Mortgage was filed on September 20, 2007, and is of record in the Office of RMC/ROD in Book 6868 at Page 165. This Mortgage was subsequently assigned to Mortgage Electronic Registration Systems, Inc., its successors and assigns (MIN# 100159969913899368) by assignment dated September 19, 2007 and recorded on September 20, 2007 in Book 6868 at Page 186. Subsequently, it was assigned to Branch Banking and Trust Company by assignment dated June 13, 2011 and subsequently recorded.

12. This Mortgage constitutes a purchase money first priority lien on the subject property, subject only to ad valorem taxes or other liens given priority by statute.

13. 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.

14. Any notice required by the terms of the Mortgage or by state or federal statutes was given to the applicable Defendants prior to the commencement of this action.

15. Payment due on the Fixed Rate Note was not made as provided for therein, and Plaintiff, as the holder or nominee for the holder thereof, elected to require immediate payment of the entire amount due thereon and placed the Fixed Rate Note and Mortgage in the hands of the attorney herein for remedy by foreclosure.

5629.00 REW

16. The sum of ~~\$6,929.00~~ is a reasonable fee to allow Plaintiff's counsel for services performed and anticipated to be performed until final adjudication of this action, under the terms of the Fixed Rate Note and Mortgage. This fee is likewise reasonable based on the time necessarily devoted to representation of Plaintiff during the several month course of these proceedings. The services of counsel performed for Plaintiff, which include the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case also support the fee awarded. The fee is also reasonable given the professional standing of Plaintiff's counsel and their experience in handling foreclosure matters. The fee awarded herein is also reasonable in light of the fees customarily awarded by this court for similar services in this locality. Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a prompt foreclosure of the Mortgage. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

17. According to Plaintiff's accounting, after all payments received by Plaintiff have been credited to the subject loan, the amount due and owing on the Fixed Rate Note, with interest at the rate provided in the Fixed Rate Note, advances made by Plaintiff, and other costs and expenses of the action, including a reasonable attorney fee, all secured by the Fixed Rate Note and Mortgage, is as follows:

- (a) Principal due November 1, 2009..... \$170,733.63
- (b) Interest from October 1, 2009 through  
June 16, 2011 at 6.25% per annum ..... \$18,223.33
- (c) Allowable Escrow Advances ..... \$3,348.18

Private Mortgage Insurance - \$1,856.30  
19 Payments of \$97.70

Property Tax - \$718.88  
11/13/09 - \$142.58  
11/01/10 - \$576.30

Hazard Insurance - \$773.00

(d)	Allowable Corporate Advances .....	\$3,327.00	
	Paid Attorney Fees - \$1,325.00		
	BPO/Photos - \$224.00		
	Property Preservation - \$1,778.00		
(e)	Costs of collection prior to hearing (service, filing, etc.).....	\$705.00	
	Service - \$405.00		
	Master Fee - \$125.00		
	Motion Fee - \$25.00		
	Filing Fee - \$150.00		
(f)	Abstract or Title Search .....	\$550.00	
	Title Search - \$425.00		
	Title Search - \$125.00		
(g)	Late Charges .....	\$269.35	
(h)	Private Mortgage Insurance Due but not yet advances .....	\$195.40	
(i)	Attorney fee (awarded herein, but unpaid, through 6-15-11) .....	\$4,304.00	
(j)	Anticipated attorney fee for hearing and post judgment work.....	<del>\$1,800.00</del>	REN
TOTAL debt secured by Fixed Rate Note and Mortgage, including interest to date shown.....		<del>\$202,960.89</del>	REN
		\$ 201,660.89	

Interest shall accrue to the above stated "Total Debt" after the date of judgment at the rate of 6.25% per annum (pursuant to the terms of the Fixed Rate Note and purchase money first Mortgage). Accrued interest shall be added to the "Total Debt" and shall comprise the amount of the Plaintiff's debt secured by the purchase money first Mortgage through the date to which such interest is computed.

18. Plaintiff is seeking the usual foreclosure of the purchase money first mortgage and has expressly demanded the right to a personal or deficiency judgment pursuant to S.C. Code Ann. §29-3-660 demanded against Wilton H. Cain and Cassandra M. Durrah-Cain. The Plaintiff may waive any of its rights, including its right to a personal or deficiency judgment, at any time prior to the foreclosure sale.

19. The following Defendants may claim a subordinate lien upon or subordinate legal interest in the subject property and in the event there is a surplus from the sale of the subject property, these Defendants may present through any such lien or legal interest a claim to the surplus at a hearing subsequent to the sale, in accordance with Rule 71(c) South Carolina Rules of Civil Procedure.

The said Defendants and such liens or legal interests are as follows:

a. Liberty Hall Residential Property Owners Association, Inc. by virtue of any lien enforceable assessments claimed as provided for in the Declaration of Covenants, Conditions, and Restrictions and any amendments thereto.

---

IT IS THEREFORE ORDERED:

20. Plaintiff has fully complied with The South Carolina Supreme Court Administrative Order dated May 22, 2009, and the foreclosure action may proceed.

21. The property is not owner-occupied, and therefore, does not qualify for Foreclosure Intervention pursuant to the South Carolina Supreme Court Administrative Order dated May 11, 2011. A Certificate of Non-Owner Occupancy has been filed herein.

22. There is due on the Fixed Rate Note and purchase money first Mortgage set forth in the Complaint the principal sum of \$170,733.63 as set out in the Findings of Fact *supra*, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof and other allowable advances.

23. Plaintiff shall have judgment demanded against Wilton H. Cain and Cassandra M. Durrah-Cain. The Plaintiff may waive any of its rights, including its right to a personal or deficiency judgment at any time prior to the foreclosure sale.

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

25. The amount of the judgment shall be subject to increase to permit Plaintiff to recover additional costs, commissions, and expenses not included in the minimum deposit previously made in compliance with S.C. Code Ann. §14-11-310 (1976). It may also increase to include supplemental compensation for attorneys' services not contemplated by the initial fee award. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs or supplemental compensation. Such additional costs, commissions and expenses may be established by affidavit and shall be adjudicated by the court without further hearing.

26. The Defendants liable for the aforesaid judgment debt of the Fixed Rate Note and Mortgage including interest at the rate of 6.25% per annum shall pay on or before the date of sale of the property hereinafter described, to Plaintiff or Plaintiff's attorney, the amount of Plaintiff's debt as aforesaid, including with the costs and disbursements of this action.

27. On default of payment at or before the time of the sale of the property, the mortgaged property described hereinafter shall be sold at public auction at the Berkeley County

Courthouse, in the City of Moncks Corner, and State of South Carolina on a sales day determined by the below signed Master in Equity or Special Referee, on the following terms:

a. For cash or its equivalent: An immediate deposit of 5% is required on the amount of the bid. The deposit will be applied to the purchase price when total compliance is made. In the event compliance is not made, the deposit shall be forfeited without further hearing and applied first to costs and expense of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse either to make the required deposit at time of bid or to comply with the other terms of the bid within 30 days, then the property may be re-sold on the same terms and conditions on the same or some subsequent sales day and at the risk of the defaulting bidder.

b. The sale shall be subject to taxes and assessments, existing easements and restrictions, and any other senior encumbrances.

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

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

e. Purchaser shall be entitled to possession of the premises only after Purchaser fully complies with the bid amount and a deed is issued by the Master in Equity or Special Referee.

28. Personal or deficiency judgment having been demanded, the sale will remain open for thirty (30) days pursuant to S.C. Code Ann. Sec. 15-39-720 (1976).

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

30. The Master in Equity will give notice of the time and place of the sale by advertisement according to law and the terms thereof by advertisement according to law and will execute to the Purchaser a deed to the property sold. Plaintiff or any other party to this action may become a purchaser at such sale. If, upon such sale being made, the Purchaser should fail to comply with the terms thereof within 30 days after date of sale, then the Master in Equity may advertise the said premises for sale on the next or some other subsequent sales day at the risk of the highest bidder and so from time to time thereafter until a full compliance shall be secured.

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

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

FIRST: To the payment of the amount of the costs and expenses of this sale and to any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court;

NEXT: To the payment to Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest (including a reasonable attorney fee) or so much thereof as the purchase money will pay on the same; After crediting the proceeds of sale, net of any commission on sale, an Order for Deficiency Judgment shall be entered without further notice or hearing.

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

33. In the event the successful bidder is someone other than the Defendants in possession of the subject property, the Sheriff of Berkeley County, upon receipt of a Writ of Assistance or other order of ejectment, is authorized and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in such peaceable possession.

34. In the event the successful bidder is other than the Defendants in possession of the subject property and the occupants have voluntarily vacated the property or have been ejected from the property leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage in said property, the Purchaser is authorized to remove from the property all furnishings, fixtures and items not subject to the lien of Plaintiff's Mortgage. The personal property, being deemed abandoned, shall be removed by the Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

35. The Defendants named herein, and all persons whosoever claiming under Defendants, is forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said mortgaged property so sold, or any part thereof.

36. In accordance with Rule 77(d), of the South Carolina Rules of Civil Procedure, the Clerk of Court shall serve a notice of entry of this Judgment of Foreclosure upon all parties not in default for failure to appear in this action.

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

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

39. The following is a description of the property herein ordered to be sold:

All that certain piece, parcel or lot of land, situate, lying and being in County of Berkeley, State of South Carolina, shown and designated as Lot 704, on a plat entitled "SUBDIVISION PLAT SHOWING PHASE 10A, (39.298 AC), MULBERRY PARK, A PORTION OF TRACT E1 OF THE LIBERTY HALL TRACT, PROPERTY OF CENTEX HOMES, A NEVADA GENERAL PARTNERSHIP, LOCATED IN THE CITY OF GOOSE CREEK, BERKELEY COUNTY, SOUTH CAROLINA" made by Trico Engineering Consultants, Inc., dated June 9, 2006, and recorded January 3, 2007, in Plat Cabinet R, Pages 243-A and 243-B, in the RMC Office for Berkeley County, South Carolina. Said lot having such size, shape, dimensions, buttings, boundings and location as will by reference to said plat more fully appear.

Said property is subject to all applicable covenants, conditions, restrictions, limitations, obligations and easements of record.

This being the same property conveyed to Wilton H. Cain and Cassandra M. Durrah-Cain by deed of Centex Homes dated September 19, 2007 and recorded on September 20, 2007 in Book 6868 at Page 155 in the Office of the ROD for Berkeley County, South Carolina.

Property Address: 259 Clayburne Drive  
Goose Creek, SC 29445

TMS# 244-03-04-016

Robert E. Watson

Robert E. Watson  
Master in Equity for Berkeley County

<sup>28</sup>  
6/28, 2011  
Moncks Corner, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2010-CP-08-3514

Branch Banking and Trust Company;

v.

Wilton H. Cain; Cassandra M. Durrah-Cain;  
Defendants.

Motion to Dismiss Deficiency Judgment

MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

2015 DEC 29 AM 11:25

FILED

**Motion to DISMISS DEFICIENCY JUDGMENT**

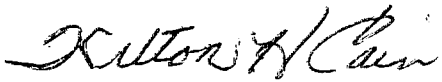
PLANTIFF UNDER THE CODE OF LAW HAS SUFFERED NO LOSS AND RECEIVED FULL EQUITABLE AND LEGAL RELIEF.

The Plaintiffs in this action of deficiency judgment against defendants are Federal Home Loan Mortgage Corp. (lender) with Branch Banking and Trust Company as service representative being represented by Roger Townsend Law firm and Liberty Hall HOA which has chosen not to appear. No other party has appeared or served any notice on Defendants in the over four years of this case that also include PMI insurer known as RMIC. Insurance (cert.#0726007538). The Loan originator and first party will be identified as BB&T.

Further neither Plaintiff nor any other party has ever notified Defendant or this Court that they have any contractual responsibility or obligation to represent any other party specifically Insurer of PMI in this action as of this date Dec 26, 2015 over four years. BB&T are not insurer of loan and insurer are not represented by BB&T.

Further Lender sold said home 10/03/12 for the sum of 15400.00 to the Bakers, which is 14000.00 below appraisal value under of Law. Thereby when 25% is added to sale price total comes to 197747 when deficit of 14000 is added total becomes 211747.00 again leaving an excess6353.18 an enrichment for Plaintiff over and above debt. Defendants note that Plaintiffs has yet to mention home was sold.

Defendant request Court order Deficiency Judgment paid in full to Lender and Dismiss Deficiency Judgment that Lender has suffered no loss received full equitable and legal relief. And is not third party with Equitable Subrogation right.



THANK YOU:

Wilton H. Cain and Cassandra M. Durrah-Cain  
Defendants

6476 North Highway 17  
Awendaw, SC  
29429

8439913198

*Dec 20, 2015*

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Branch Banking and Trust Company;

v.

Wilton H. Cain; Cassandra M. Durrah-Cain;  
Liberty Hall Residential Property Owners  
Association, Inc.;

Defendants.

(504335-02111 EL1)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2010-CP-08-03514

**PLAINTIFF'S BRIEF REGARDING  
DEFICIENCY JUDGMENT**

FILED  
2016 JAN 7 AM 11:07  
MAGISTRATE  
COURT  
BERKELEY COUNTY  
SOUTH CAROLINA

Plaintiff Branch Banking and Trust Company ("BB&T" or "Plaintiff") hereby submits this brief to the Court regarding Defendants Wilton H. Cain and Cassandra M. Durrah-Cain's ("Cains" or "Defendants") objection to the this Court's Order Reducing Deficiency Judgment of December 4, 2015:

**FACTS/ PROCEDURAL HISTORY**

Plaintiff filed its foreclosure action against Defendants on October 4, 2010, regarding a Mortgage on real property located in Berkeley County, South Carolina, more fully described as follows ("Subject Property"):

All that certain piece, parcel or lot of land, situate, lying and being in County of Berkeley, State of South Carolina, shown and designated as Lot 704, on a plat entitled "Subdivision Plat Showing Phase 10A, (39.298 AC), Mulberry Park, A Portion of Tract E1 of The Liberty Hall Tract, Property of Centex Homes, A Nevada General Partnership, located in the City of Goose Creek, Berkeley County, South Carolina" made by Trico Engineering Consultants, Inc., dated June 9, 2006, and recorded January 3, 2007, in Plat Cabinet R, Pages 243-A and 243-B, in the RMC Office for Berkeley County, South Carolina. Said lot having such size, shape, dimensions, buttings, boundings and location as will by reference to said plat more fully appear. Said property is subject to all applicable covenants, conditions, restrictions, limitations, obligations and easements of record.

This being the same property conveyed to Wilton, H. Cain and Cassandra M. Durrah-Cain by deed of Centex Homes dated September 19, 2007 and recorded on September 20, 2007 in Book 6868 at Page 155 in the Office of the ROD for Berkeley County, South Carolina.

TMS # 244-03-04-016

EBL

KDC

SEARCHED KDC

Property Address: 259 Clayburne Drive  
Goose Creek, SC 29445

The Mortgage includes a provision regarding Mortgage Insurance which reads, in part:

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.

A copy of the Mortgage is attached hereto as Exhibit A, for reference.

Defendants were served with the Lis Pendens, Summons, and Complaint, and an Order of Default was entered on December 8, 2010, holding the Defendants in default in the action<sup>1</sup>. The matter was referred to the Master in Equity on the same date, December 8, 2010. A hearing was set for March 22, 2011, and Defendant Wilton H. Cain appeared at the hearing. The hearing was continued by Judge Watson at that time on order to allow Plaintiff to produce a live witness for cross-examination. Defendants then filed a late answer on March 28, 2011, although already in default.

A second hearing was held on June 16, 2011, and Plaintiff produced Richard Miller ("Mr. Miller") from BB&T as a witness. Mr. Miller testified as to the loan documents, the payment history, the default of the loan by the Defendants, and the debt amount. Mr. Miller also testified regarding the mortgage insurance policy between BB&T and the mortgage insurance carrier.<sup>2</sup>

A Judgment of Foreclosure and Sale was entered on June 30, 2011, with a judgment amount of \$201,660.89. The judicial sale of the property was finalized on September 2, 2011, and the Subject Property sold to the Plaintiff for the sum of \$121,500.00. Subsequently, a deficiency judgment was entered on September 19, 2011, in the amount of \$83,893.82,

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<sup>1</sup> An Amended Affidavit of Default and Non-Military Service was filed on December 29, 2010, to withdraw the order of default as to Liberty Hall Residential Property Owners Association, Inc. as that entity was inadvertently held in default after filing an answer.

<sup>2</sup> While it is believed that the topic of mortgage insurance was discussed at the time of the hearing, the transcript of the hearing is no longer available from the court reporter and, thus, Plaintiff cannot accurately report the extent of the discussion at hearing.

representing the difference between the judgment amount plus post-judgment interest and supplemental costs and the final sales price, pursuant to S.C. Code Ann. § 29-3-660. A copy of the Order for Deficiency Judgment is attached hereto as Exhibit B, for reference.

Thereafter, Defendants filed a Petition and Proposed Order for Appraisal, and on September 28, 2011, The Honorable Kristi Lea Harrington signed the Order. It was filed the next day, September 29, 2011. On October 21, 2011, Judge Harrington *sua sponte* issued a Form 4 Order rescinding her prior Order for Appraisal. Defendants filed a Motion to Reconsider on November 1, 2011, which was denied by Judge Harrington on November 9, 2011, without hearing or participation from Plaintiff or its counsel.

Defendants filed a Notice of Appeal on December 8, 2011. Following a lengthy appeals process, the South Carolina Court of Appeals vacated the Order of Judge Harrington and remanded the case for an order containing the specific factual findings and conclusions of law as to whether the Defendants were entitled to exercise their appraisal rights. The Order was entered on September 24, 2014. A Remittitur was issued on October 17, 2014.

On May 29, 2015, a Form 4 Order was entered, reinstating the September 28, 2011, Order for Appraisal. On December 4, 2015, after the appraisal process was completed, this Court entered an Order Reducing Deficiency Judgment. The Court determined the value of the Subject Property as of the date of the judicial sale to be \$168,000.00 and therefore reduced the deficiency judgment to \$37,393.82, which reflected the total after final judgment amount (including post-judgment interest and additional costs) less the newly determined value of the Subject Property.

Defendants objected to the entry of the deficiency judgment on the basis of alleged mortgage insurance and alleged payment of said insurance to Plaintiff. A Motion to Dismiss Deficiency Judgment was filed on December 29, 2015.

## LAW AND ANALYSIS

### A. Deficiency Judgments and Appraisal Rights

“[T]he general rule is that “if the mortgaged premises are sold under a foreclosure decree and fail to bring a sufficient amount to satisfy the debt, the mortgagee is entitled, absent any statutory limitation or waiver on his part, to a personal judgment for the remaining deficiency.” *Am. Gen. Fin. Servs., Inc. v. Brown*, 376 S.C. 580, 583, 658 S.E.2d 99, 100 (2008), citing *Perpetual Bldg. and Loan Ass'n of Anderson v. Braun*, 270 S.C. 338, 340, 242 S.E.2d 407, 408 (1978). The law regarding deficiency judgments and the appraisal process in South Carolina is governed by statute. *S.C. Code Ann.* § 29-3-660 states:

In actions to foreclose mortgages the court may adjudge and direct the payment by the mortgagor of any residue of the mortgage debt that may remain unsatisfied after a sale of the mortgaged premises in cases in which the mortgagor shall be personally liable for the debt secured by such mortgage ...

Further:

In any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked, whether he has theretofore appeared in the action or not, may within thirty days after the sale of the mortgaged property apply by verified petition to the clerk of court in which the decree or order of sale was taken for an order of appraisal.

*S.C. Code Ann.* § 29-3-680. Finally, once the appraisal process has been completed and the return of the appraisers made, the deficiency judgment is to be confirmed, altered, or extinguished based upon the Court's finding after review of the return:

If the value returned after deduction therefrom of the amount of the price at which the property was sold under direction of the court be equal to or exceed the amount of the deficiency remaining upon the judgment after application of the net proceeds of sale the judgment shall be thereupon extinguished and cancelled of record by the clerk and if such returned value, after deduction of the amount of the sale price, be less than the deficiency the latter shall be abated and deemed paid, pro tanto, and be thereafter enforceable for only the remainder, the amount of which will be determined by the clerk and stated in a proper order from which

any party may appeal within ten days after notice of filing thereof to the court or any judge thereof in accord with the procedure prescribed in § 29-3-750.

*S.C. Code Ann. § 29-3-740.* The statute does not contemplate any other considerations in the confirmation, reduction, or cancellation of a deficiency judgment entered, other than the value as returned by the appraisers.

As outlined above, a mortgagee is entitled to a deficiency judgment unless it is waived. Plaintiff in this case specifically demanded deficiency from the filing of the complaint and has made no waiver of this right. Further, the statute governing deficiency judgments and the appraisal rights of the borrower provides for specific considerations in the setting of the deficiency judgment entered against the borrower or the reduction of such a judgment following the appraisal process; third party insurance payments or other sources of recovery by the Plaintiff are not contemplated by the statute and should not be considered by the court in entering an award in favor of Plaintiff.

Therefore, the entry of the deficiency judgment, as reduced by the Court's December 4, 2015, order should be confirmed and stand as an award in favor of Plaintiff against Defendants.

#### **B. Collateral Source Rule**

South Carolina also recognizes the "collateral source rule" as to an award of damages. While the collateral source rule is typically used in tort actions, the theory can be translated to the context of a deficiency judgment and payment of mortgage insurance by a third party insurance company.

The collateral source rule provides that compensation received by an injured party from a source wholly independent of the wrongdoer will not reduce the amount of damages owed by the wrongdoer. *Rattenni v. Grainger*, 298 S.C. 276, 379 S.E.2d 890 (1989); *Young v. Warr*, 252 S.C.

179, 165 S.E.2d 797 (1969); *Powers v. Temple*, 250 S.C. 149, 156 S.E.2d 759 (1967). “A source is wholly independent of the wrongdoer ‘when the wrongdoer has not contributed to it and when payments to the injured party were not made on behalf of the wrongdoer.’” *Mount v. Sea Pines Co.*, 337 S.C. 355, 357, 523 S.E.2d 464, 465 (Ct. App. 1999), citing *Citizens & S. Nat'l Bank v. Gregory*, 320 S.C. 90, 92, 463 S.E.2d 317, 318 (1995).

This rule has been liberally applied in South Carolina to preclude the reduction of damages. See *Otis Elevator v. Hardin Construction Co.*, 316 S.C. 292, 450 S.E.2d 41 (1994) (holding that a contractual right to indemnification is not defeated by fact that loss was actually paid by an insurance company). A wrongdoer should not be able to take advantage of a contract between an injured party and a third person, no matter what the source of the funds received. *Johnston v. Aiken Auto Parts*, 311 S.C. 285, 287, 428 S.E.2d 737, 738 (Ct.App.1993).

“A benefit that is directed to the injured party should not be shifted to result in a windfall for the [wrongdoer]... It is the [wrongdoer]'s responsibility to compensate the injured party for all the harm that he causes, not the net loss the injured party receives.” *Dixon v. Besco Eng'g, Inc.*, 320 S.C. 174, 182, 463 S.E.2d 636, 640 (Ct. App. 1995), see also 22 *Am.Jur.2d Damages* § 566 (1988).

The collateral source rule as applied in this scenario does not contemplate a reduction in the award to Plaintiff. Defendants are responsible for the debt they incurred and the judgment entered against them. Payment of a third party insurance contract does not obviate their responsibility for the debt. Defendants argue that they paid mortgage insurance premiums as part of their mortgage payments and therefore the insurance should be considered in a reduction of the award entered against them. However, in the mortgage contract, it is made clear that the Defendants are not party to the insurance and are not the beneficiaries of such a policy. The

payment of the mortgage insurance was a condition precedent to the Defendants obtaining the loan with the terms as outlined, but any payments made by the third party mortgage insurance company were not made on behalf of the Defendants.

Further, Plaintiff and the mortgage insurance company at issue have a subrogation agreement<sup>3</sup> whereby the mortgage insurance company is subrogated to the recovery rights of the Plaintiff with regard to the deficiency judgment. Even if a claim is paid pursuant to the insurance policy, that payment does not absolve the Defendants of their responsibility for the debt as the Plaintiff or the mortgage insurance company can seek to collect on that deficiency judgment pursuant to the agreement. A copy of the Mortgage Insurance Policy (without endorsements) is attached hereto as Exhibit C, for reference.

As such, the alleged payment of mortgage insurance to Plaintiff should not cause the reduction of a deficiency judgment personally owed by Defendants in this matter and the Court's December 4, 2015, order should stand.

Respectfully submitted,



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Erica G. Lybrand (SC Bar #79052)  
Rogers Townsend & Thomas, PC  
P.O. Box 100200  
Columbia, SC 29202  
(803) 744-5289

Erica.Lybrand@rtt-law.com

*Rogers Townsend & Thomas, PC and its staff are debt collectors*

January 4, 2015

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<sup>3</sup> Pursuant to section 7.3 of the policy.

State of South Carolina	)	
	)	
County of Berkeley	)	
	)	
Branch Banking and Trust	)	10-CP-08-03514
Company,	)	
	)	Transcript
Plaintiff,	)	
v.	)	of
	)	
Wilton H. Cain, et al,	)	Hearing
	)	
Defendants.	)	

Date: January 14, 2016

Time: 11:04 a.m.

Location: Berkeley County Courthouse, Courtroom B  
300-B California Avenue, Moncks Corner, South Carolina  
29461

Reported by  
Diane M. Hendricks

90

1 service company. That Freddie Mac done  
2 received what they lost. So they're not faced  
3 with a loss. BB&T has been fully paid. In  
4 fact, I think they've been paid more than what  
5 the foreclosure required. They indicated to  
6 Judge Watson that it was 25 percent insurance  
7 on that; that comes to \$43,000. If the  
8 deficiency judgment that is remaining, this  
9 \$37,000, that leaves an additional \$6,000.  
10 And, in all the cases I've read, if they  
11 received more than what the judgment was, those  
12 funds should be turned over to the Court for  
13 the Court's discretion. And my concern is, is  
14 that BB&T has been paid, then -- then they do  
15 not have a right to be a part of the deficiency  
16 judgment against them. It needs to be  
17 dismissed as far as them. If the insurance  
18 company wants to come back at me, fine. We'll  
19 deal with that if they do. That's what I'm --  
20 where I'm at.

21 THE COURT: Okay. All right. Thank you.

22 Yes, ma'am.

23 MS. LYBRAND: Your Honor, the insurance company has  
24 an agreement with BB&T, as the mortgage  
25 insurance company, by a subrogation agreement.

1 In order for the insurance company or BB&T to  
2 seek to collect the -- the debt owed by  
3 Mr. Cain, there would have to be a judgment in  
4 order to collect. And that's what we're trying  
5 to establish here, that there's a \$37,000  
6 judgment that is owed by Mr. Cain as a result  
7 of his default, as a result of the fact that  
8 the property was sold for less than the  
9 judgment amount, and that resulted after  
10 the -- the -- the appraisal process and the  
11 \$37,000 judgment. BB&T can seek to collect  
12 that judgment or it can assign its right to  
13 collection of that judgment to the mortgage  
14 insurance company based upon any payments that  
15 were made by the mortgage insurance company.  
16 But, in order for that to happen, a judgment  
17 has to exist. And that's what we're trying to  
18 establish for the record today, Your Honor, is,  
19 is that this judgment is owed by Mr. Cain; this  
20 amount, this \$37,000, is the result of his  
21 default on this mortgage loan. We went through  
22 the appraisal process, he was given his rights  
23 to the appraisal process, the appraisal process  
24 did result in a reduction of the deficiency  
25 judgment to the -- I think it was originally

1           like eighty -- \$83,000, and now it's \$37,000  
2           based upon that appraisal process. But, we  
3           have to establish that judgment amount in order  
4           for anyone to have the rights to come back and  
5           seek to collect that from Mr. Cain. In my  
6           brief, you'll see, and I don't know if you've  
7           had a chance to review it yet, that -- and  
8           there's two points on this matter: One is the  
9           statute itself, the appraisal statute, which  
10          doesn't provide for any reduction of the  
11          deficiency judgment other than by and through  
12          the appraisal process, the value of the -- of  
13          the property. It doesn't say that the -- the  
14          deficiency judgment can subsequently be -- be  
15          reduced by other considerations like mortgage  
16          insurance or other payments made by third  
17          parties. It strictly gives this process for a  
18          reduction of the deficiency judgment in the  
19          event that the appraisal comes back at an  
20          amount higher than what's bid in at the  
21          foreclosure sale.

22         Secondarily, I use the collateral source rule here  
23         in South Carolina as a means to illustrate the  
24         equitable position that plaintiff is taking in  
25         this matter. There's no point -- you know,

1 as part of .7.3 in that contract, which  
2 specifically says that the company shall be  
3 subrogated pro rata to the full extent  
4 permitted by law to all the insurance recovery  
5 rights with respect to a loan upon a payment of  
6 a claim.

7 So -- and this -- this contract requires the  
8 plaintiff, the mortgage -- the company  
9 to -- mortgage company to pursue its deficiency  
10 rights in the event that they can in order to  
11 obtain a judgment that can later be collected  
12 upon pursuant to the subrogation rights of the  
13 company. So I would just ask Your Honor that  
14 you confirm the entry of your order reducing  
15 the deficiency judgment to an amount of I  
16 believe it was \$37,393.82 pursuant to -- to  
17 that. And I could -- I could speak on the  
18 issues of the collateral source rule that he  
19 was mentioning, if you want. If -- if you want  
20 me to.

21 THE COURT: No. No. You ---

22 MR. CAIN: Okay.

23 THE COURT: You've argued sufficiently on that.

24 MS. LYBRAND: Okay.

25 THE COURT: Mr. Cain, in support of your position

1 and -- and -- and motion, did you have any  
2 affidavits, any documents, or testimony, other  
3 than ---

4 MR. CAIN: Well ---

5 THE COURT: --- the arguments that you presented in  
6 those documents?

7 MR. CAIN: Well, Your Honor, the only thing -- the  
8 only thing that I have with reference to  
9 Republic Mortgage is my personal conversation  
10 with Republic Mortgage, a representative. And,  
11 in September in 2010, the question came up  
12 about the mortgage insurance.

13 THE COURT: Uh-huh.

14 MR. CAIN: And BB&T's representative notified the  
15 Court that it was 25 percent, okay?

16 THE COURT: Okay. But, as far -- as far as today,  
17 did you have any documentation, letters,  
18 affidavits, paperwork that you want to submit  
19 as -- that would be evidence or testimony  
20 today, other than your -- than your argument?

21 MR. CAIN: Well, not -- not here. No. No, Your  
22 Honor. I would only ask that -- well, my  
23 question would be, is BB&T alleging that no  
24 default was paid, and ---

25 THE COURT: Well, my -- my question is do you have

1 Just so -- and if -- if -- if I request that,  
2 that's not an invitation to discuss or continue  
3 the argument, okay? I know that's the ---

4 MR. CAIN: (Nods head.)

5 THE COURT: The natural tendency to it. I

6 just -- I just want to clarify that because I  
7 don't want to get to the -- to the -- going  
8 back and forth on the -- on the email.

9 MR. CAIN: Yes, Your Honor.

10 THE COURT: Kind of, it started before. So, if I  
11 request that, then I'll --- we'll -- we'll do  
12 that. And then whatever or as a result of the  
13 issuance of any order, then y'all can take  
14 whatever steps you want to take. Okay?

15 MR. CAIN: Yes, Your Honor.

16 MS. LYBRAND: Thank you, Your Honor.

17 THERE BEING NOTHING FURTHER.

18 (WHEREUPON, the within hearing adjourned at 11:33 a.m.)

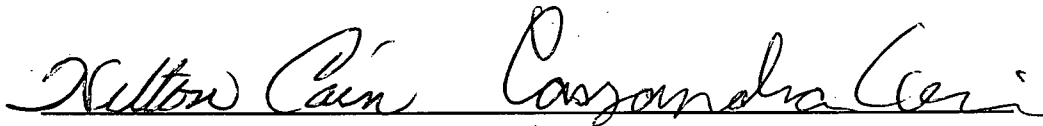
19 (\*This transcript may contain quoted material.

20 Such material is reproduced as read or quoted by the  
21 speaker.)

22 (\*\*Certificate accompanies sealed original only.)

**CERTIFICATE OF APPELLANTS**

**APPELLANTS HEREBY CERTIFY THAT THIS THIRD AMENDED  
RECORD ON APPEAL CONTAINS ALL OF THE MATERIAL PROPOSED  
TO BE INCLUDED BY ANY OTHER PARTIES; ALL THAT DEEM  
NEEDED AND NOT ANY OTHER MATERIAL**



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**SEPTEMBER 18, 2017**

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