

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master-in-Equity

Case No. 2016-001764

RECEIVED

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SC Court of Appeals

Peach REO, LLC, a Delaware limited liability company, Respondent,

v.

Blalock Investments, LLC; Todd Smith; Debra Masuga; Subway Real Estate, LLC; and County of Spartanburg, a political subdivision of the State of South Carolina, Defendants,

Of Whom Blalock Investments, LLC; Todd Smith; and Debra Masuga are the Appellants.

And

Blalock Investments, LLC; Todd Smith; and Debra Masuga, Appellants,

v.

Capital Crossing Servicing Company, LLC, Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

Peach REO, LLC, a Delaware limited liability company,) Civil Action No. 2015-CP-42-4448
)
)

Plaintiff,)
)
)

vs.)
)
)

ORDER GRANTING
MOTION TO DISMISS
COUNTERCLAIMS AND
THIRD-PARTY COMPLAINT

Blalock Investments, LLC; Todd Smith;)
Debra Masuga; Subway Real Estate,)
LLC; and County of Spartanburg, a)
political subdivision of the State of)
South Carolina,)
)

Defendants.)
)
)

and)
)
)

Blalock Investments, LLC; Todd Smith;)
and Debra Masuga,)
)
)

Third Party Plaintiffs,)
)
)

vs.)
)
)

Capital Crossing Servicing Company,)
LLC,)
)
)

Third Party Defendant.)
)
)

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FILED

This matter came before the Court at 3:00 p.m. on Thursday, May 26, 2016, for the purpose of hearing the Motion to Dismiss the Counterclaims and Third-Party Complaint of Defendants/Third-Party Plaintiffs Blalock Investments, LLC, Todd Smith, and Debra Masuga (collectively, "Debtors") filed in this matter by Plaintiff Peach REO, LLC, a Delaware limited liability company ("Peach"), and Third-Party Defendant Capital Crossing Servicing Company, LLC ("Capital Crossing," and collectively with Peach, the "Lender"). After a review of the Motion before the Court and hearing



arguments from counsel for Peach, Capital Crossing, and Debtors, I hereby **GRANT** Lender's Motion:

FINDINGS OF FACT:

1. This is a foreclosure action based on a \$1.9M note and mortgage by Blalock Investments, LLC, which was guaranteed by Todd Smith and Debra Masuga.
2. Debtors admit they defaulted in the monthly payments on the loan in February 2013, failed to pay the loan in full upon its maturity in October 2013, and failed to pay the property taxes, which caused the property to be sold at a tax sale in November 2013.
3. Debtors asserted the following counterclaims against Peach and third-party claims against Capital Crossing:
 - a. Counterclaim for breach of the implied covenant of good faith and fair dealing;
 - b. Counterclaim and third-party claim for violation of South Carolina's Unfair Trade Practices Act;
 - c. Counterclaim and third-party claim for tortious interference with contract; and
 - d. Counterclaim and third-party claim for failure to act in a commercially reasonable manner.
4. Lender filed the instant Motion to Dismiss the counterclaims and third-party claims.

CONCLUSIONS OF LAW:

5. Debtors' claims are all generally based on their assertion that Lender should have allowed them to "mitigate its damages and reduce or eliminate the amount owed" by the

Debtors following their default. See generally Answer, Counterclaims, and Third-Party Complaint at ¶¶ 56, 59.

6. However, Lender was entitled to recover the full amount owed on the loan and had no duty to mitigate these damages in any way. Cisson Const., Inc. v. Reynolds & Associates, Inc., 311 S.C. 499, 503-04, 429 S.E.2d 847, 849-50 (Ct. App. 1993) (holding lenders have no duty to mitigate their damages where they have a right to recover the full amount sought upon borrowers' default) (citing 22 Am. Jur. 2d Damages § 506 (1988)); see also Wells Fargo Bank, N.A. v. C&S Carolina Ventures, LLC, et al., Order by Master-in-Equity Gordon Cooper Granting Plaintiff's Motion for Summary Judgment and Denying Defendants' Motion for Summary Judgment (June 22, 2012) (relying on Cisson to find that a lender had no duty to accept a short sale for less than the full balance due on the subject loan after the borrowers' default); Wells Fargo Bank, N.A. v. Coastal Consulting & Development Co., LLC, et al., Order by Master-in-Equity Mikell Scarborough Granting Plaintiff's Motion for Summary Judgment (August 27, 2012) (relying on Cisson to find that a lender had no duty to accept a short sale for less than the full balance due on the subject loan after the borrowers' default).
7. Moreover, the specific conduct on which each of Debtors' counterclaims and third-party claims are based fails to support any cause of action.
8. First, Debtors complain they were not given an extension or modification of the subject loan and have not been able to reach any settlement on the loan.
9. Debtors have not identified any contractual provision or other legal authority that requires Lender to give Debtors an extension or settlement of their loan.

10. To the contrary, Lender is not obligated to extend or modify the loan or accept any settlement for less than the full balance owed on the loan pursuant to the loan documents and South Carolina law. See Promissory Note attached to Amended Complaint as Exhibit A at p. 2 (“[Blalock Investments, LLC] agree[s] that [Lender] may at [Lender’s] option extend this note”) (emphasis added); Guarantees attached to Amended Complaint as Exhibit J at p. 2 (“Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of indebtedness”) (emphasis added); see also Cisson Const., Inc., 311 S.C. at 503-04, 429 S.E.2d at 849-50; Branch Banking and Trust Co. of South Carolina v. Carolina Crank & Core, Inc., 362 S.C. 647, 608 S.E.2d 896 (Ct. App. 2005) (recognizing a lender’s right to refuse renewal of a note and proceed with its right to enforce its remedies instead); S.C. Code Ann. § 37-10-107 (actions based on a lender’s failure to renew, modify, amend, or cancel a loan are barred unless the plaintiff has a writing signed by the lender containing the material terms and conditions).
11. In any event, Debtors allege they were offered a six-month extension if they brought the loan current and paid \$200,000.00 at the original maturity date, which they refused.
12. Therefore, Debtors’ complaint that Lender did not give them an extension, modification, or settlement of the subject loan fails to state any cause of action against Lender.
13. Next, Debtors alleged that Lender failed to immediately take action on Debtors’ liability after Debtors’ default on the loan.
14. Again, Debtors have not identified any contractual provision or other legal authority which would require Lender to take such immediate action.

15. To the contrary, Lender is not obligated to take any action immediately after Debtors' default pursuant to the loan documents. See Promissory Note attached to Amended Complaint as Exhibit A ("By waiving your right to declare an event to be a default, you do not waive your right to later consider the event as a default if it continues or happens again.").
16. Debtors do not dispute that the instant foreclosure action was filed within the statute of limitations.
17. Accordingly, Debtors' complaint that Lender did not immediately take action against them following their default fails to state any cause of action against Lender.
18. Next, Debtors complain that Lender did not consider or approve proposed leases or short sales of the subject property since their default.
19. Again, Debtors have not identified any contractual provision or other legal authority that obligates Lender to consider or approve such short sales or leases.
20. To the contrary, Lender was not obligated to approve any lease or sale of the subject property in lieu of being paid the full amount owed on the loan. Cisson Const., 311 S.C. at 503-04, 429 S.E.2d at 849-50; C&S Carolina Ventures, Order by Master-in-Equity Gordon Cooper Granting Plaintiff's Motion for Summary Judgment and Denying Defendants' Motion for Summary Judgment (June 22, 2012); Coastal Consulting, Order by Master-in-Equity Mikell Scarborough Granting Plaintiff's Motion for Summary Judgment (August 27, 2012).
21. Therefore, Debtors' complaint that Lender did not consider or approve proposed leases or short sales of the subject property following Debtors' default fails to state any cause of action against Lender.

22. Debtors additionally allege that Lender is seeking “more than what was owed on the loan at maturity”—specifically, interest, late fees, and unpaid property taxes that have accrued since Debtors failed to pay the loan in full once it matured—which Debtors attribute to Lender’s actions in refusing to approve sales or leases of the property or immediately pursuing its legal remedies.
23. As set forth above, Lender had no obligation to approve short sales or leases or to immediately pursue its legal remedies.
24. More importantly, Debtors ignore the fact that they could have avoided the accrual of these amounts by paying the loan and property taxes as they were required to do. See Mortgage at § 2, attached to Amended Complaint as Exhibit B (“Mortgagor shall pay all taxes, charges and assessments which may become a lien upon the premises . . .”).
25. Because each of the Debtors’ counterclaims and third-party claims is based on conduct which fails to state any cause of action against Lender, each of these claims is hereby dismissed.
26. Additionally, Debtors’ counterclaim for breach of the implied covenant of good faith and fair dealing is hereby dismissed because South Carolina courts do not recognize it as an independent cause of action. RoTec Services, Inc. v. Encompass Services, Inc., 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App. 2004) (concluding that “the implied covenant of good faith and fair dealing is not an independent cause of action . . .”); see also Regions Bank v. College Ave. Development, LLC, 2010 WL 973480, at * 3 (D.S.C. 2010) (concluding that breach of implied covenant of good faith and fair dealing is not an independent cause of action); In re Ducane Gas Grills, Inc., 320 B.R. 341, 354 (Bankr.

D.S.C. 2004) (holding that breach of implied covenant of good faith and fair dealing cause of action is not an independent cause of action).

27. Debtors have not asserted an independent claim for breach of contract nor have they identified any specific contractual provisions which Lender allegedly violated.

28. Moreover, Debtors have not even alleged the existence of a contract between them and Capital Crossing, the loan servicer.

29. Instead, as set forth in more detail above, each of the acts by Lender complained of by Debtors was within Lender's rights as set forth in the loan documents and South Carolina law.

30. Accordingly, Debtors' cause of action for breach of the implied covenant of good faith and fair dealing does not state an independent cause of action and is hereby dismissed for this additional reason.

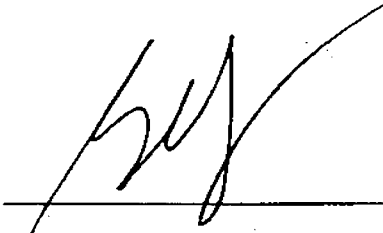
31. This Court has considered all other arguments in opposition to this Motion advanced by Debtors and found them to be without merit.

Based on these findings of facts and conclusions of law,

IT IS HEREBY ORDERED that the Motion to Dismiss Counterclaims and Third-Party Complaint is granted; and

IT IS FURTHER ORDERED that each of the counterclaims and third-party claims are hereby dismissed.

AND IT IS SO ORDERED.



The Honorable Gordon G. Cooper
Master-in-Equity for Spartanburg County

Columbia, South Carolina
June 8, 2016.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-42-4448

Peach REO, LLC - Plaintiff

Blablock Investments, LLC, et al.

Blablock Investments, LLC, et al, Third Party
Plaintiffs

Capital Crossing Servicing Co., Third
Party Defendant

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Tara C. Sullivan

Attorney for : ☒ Plaintiff ☐ Defendant
And Third Party Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends X does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

Circuit Court Judge

Judge Code

Date _____

This judgment was entered on the 1 day of Aug, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 2 day of Aug, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

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

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

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

Peach REO, LLC, a Delaware limited liability company,) Civil Action No. 2015-CP-42-4448
)

Plaintiff,)

ORDER DENYING
MOTION TO AMEND JUDGMENT

vs.)

Blalock Investments, LLC; Todd Smith;)
Debra Masuga; Subway Real Estate,)
LLC; and County of Spartanburg, a)
political subdivision of the State of)
South Carolina,)

Defendants.)

and)

Blalock Investments, LLC; Todd Smith;)
and Debra Masuga,)

Third Party Plaintiffs,)

vs.)

Capital Crossing Servicing Company,)
LLC,)

Third Party Defendant.)

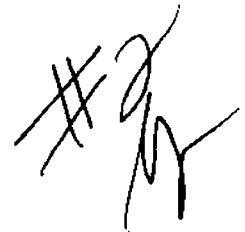
This matter came before the Court at 2:30 p.m. on Wednesday, July 13, 2016, for the purpose of hearing Defendants/Third-Party Plaintiffs Blalock Investments, LLC, Todd Smith, and Debra Masuga's (collectively, "Debtors") *Motion to Amend Judgment* ("Motion"). Plaintiff Peach REO, LLC, a Delaware limited liability company ("Peach") and Third-Party Defendant Capital Crossing Servicing Company, LLC's ("Capital Crossing," and collectively with Peach, the "Lender") filed an Opposition in response to the Motion ("Opposition").

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M. J. ...
/

After a review of the Motion and Opposition before the Court and hearing arguments from counsel for Peach, Capital Crossing, and Debtors, I hereby **DENY** Debtors' Motion in its entirety.

FINDINGS OF FACT:

1. This is a foreclosure action based on a \$1.9M note and mortgage by Blalock Investments, LLC, which was guaranteed by Todd Smith and Debra Masuga.
2. Debtors admit they defaulted in the monthly payments on the loan in February 2013, failed to pay the loan in full upon its maturity in October 2013, and failed to pay the property taxes, which caused the property to be sold at a tax sale in November 2013.
3. Debtors asserted the following counterclaims against Peach and third-party claims against Capital Crossing in their Answer, Counterclaims, and Third-Party Complaint (the "Answer and Counterclaim"):
 - a. Counterclaim for breach of the implied covenant of good faith and fair dealing;
 - b. Counterclaim and third-party claim for violation of South Carolina's Unfair Trade Practices Act;
 - c. Counterclaim and third-party claim for tortious interference with contract; and
 - d. Counterclaim and third-party claim for failure to act in a commercially reasonable manner.
4. On June 8, 2016, the Court entered its Order granting Lender's *Motion to Dismiss Counterclaims and Third-Party Complaint* ("Dismissal Order"), which is the order that the Debtors seek to alter or amend.

Handwritten signature and initials in the bottom right corner of the page.

CONCLUSIONS OF LAW:

I. Debtors' Request to Amend Their Answer and Counterclaim is Denied.

1. Debtors request in their Motion to amend the Answer and Counterclaim in order to apparently assert additional claims against Lender. The Court denies this request.
2. Debtors' request to amend is improper at this stage. South Carolina Rule of Civil Procedure Rule 59(e) ("Rule 59(e)"), which is the legal basis for the Debtors' Motion, is not the appropriate avenue for raising issues for the first time. See, e.g., Hickman v. Hickman, 301 S.C. 455, 456-57, 392 S.E.2d 481, 482 (Ct. App. 1990) (explaining that "Rule 59(e) motions are not vehicles for bringing before the court theories or arguments that were not advanced earlier") (internal citations omitted); Stevens & Wilkinson of S. Carolina, Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014) (noting that "a party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment, but did not").
3. Here, Debtors raised the request to amend for the first time after judgment. This cannot be done. The request is procedurally defective and barred.
4. Next, the request to amend is not even compliant with SCRCP 15. No motion to amend was made and no proposed amended complaint was offered. See SCRCP 15(a) (requiring a party to seek Court approval under Rule 15 in order to amend a pleading if all responsive pleadings have been served). Thus, in addition to coming too late, the request is defective.
5. Further, Debtors' request to amend is unduly delayed. Debtors filed their Answer and Counterclaim in January 2016, and, therefore, had approximately six (6) months to seek leave to amend. They have not offered any reasonable explanation for their tardiness.

See Holland ex rel. Knox v. Morbark, Inc., 407 S.C. 227, 235, 754 S.E.2d 714, 719 (Ct. App. 2014) (finding that the trial court properly denied a motion to amend where the moving party offered no explanation for its delay in bringing the amendment).

6. Finally, the Debtors' proposed amendments would be futile, as Debtors' Motion advances the same arguments that this Court has already considered and rejected. See Sullivan v. Hawker Beechcraft Corp., 397 S.C. 143, 153-54, 723 S.E.2d 835, 840-41 (Ct. App. 2012) (affirming denial of motion to amend where no new factual allegations were provided to support the new, proposed amended pleading). Specifically, Debtors allege in the Motion that Lender wrongfully refused to modify, settle, or accept less than the full balance owed on the subject loan, such as by potential leases or a sale of the subject property. This allegation forms the underlying basis for all of Debtors' counterclaims and third-party claims previously asserted and those that they apparently wish to assert via their proposed amendment. See Dismissal Order at ¶¶ 8, 12, 18, and 26. However, Lender is not obligated to consider or accept less than the full balance owed on the loan and has no duty to mitigate this amount in any way pursuant to the subject loan documents and South Carolina law. See Promissory Note attached to Amended Complaint as Exhibit A at p. 2 ("[Blalock Investments, LLC] agree[s] that [Lender] may *at [Lender's] option* extend this note . . .") (emphasis added); Guarantees attached to Amended Complaint as Exhibit J at p. 2 ("Lender *may, but shall not be obligated to*, enter into transactions resulting in the creation or continuance of indebtedness . . .") (emphasis added); see also Cisson Const., Inc. v. Reynolds & Associates, Inc., 311 S.C. 499, 503-04, 429 S.E.2d 847, 849-50 (Ct. App. 1993) (explaining that lenders are entitled to recover the full amount owed on the loan and have no duty to mitigate the amount

owed). Indeed, the facts of this case fit squarely within Cisson, as the complaining party in that case, like here, argued that the lender had a duty to mitigate the amounts owed on the subject debt. Id. at 501, 429 S.E.2d at 848. However, the court in Cisson specifically explained that the lender in that case was “permitted to enforce the note in its full amount against *any party to the note or guaranty*” and was not obligated to “*pursue or exhaust a particular remedy, or take any action before seeking full payment on the note.*” Id. at 504, 429 S.E.2d at 850 (emphasis added).

7. Therefore, Debtors’ allegation that Lender did not somehow - whether by leases, a sale, or otherwise - modify, mitigate or accept less than the full balance owed on the subject loan fails to support any cause of action, old or new, against Peach or Capital Crossing. Thus, Debtors’ request to amend to include additional claims based on this complained-of conduct is futile.

II. Debtors’ Request to Alter or Amend the Dismissal Order is Also Denied.

A. There is no legal basis to alter or amend the Dismissal Order.

8. Debtors’ Motion merely restates the same arguments and factual allegations previously asserted, which were rejected by this Court making the motion unwarranted. A Rule 59(e) motion is not designed to re-argue or rehash issues already rejected. See Concerned Citizens Comm. for Ashley River v. S. Carolina Coastal Council, 310 S.C. 267, 271 n.3, 423 S.E.2d 134, 137 n.3 (1992) (Finding that the circuit court “rul[ed] on the issue . . . [,therefore, a] Rule 59(e) motion was not necessary.”).¹
9. For the reasons set forth in the Dismissal Order, the Court correctly dismissed all of Debtors’ counterclaims and third-party claims (collectively hereafter, the

¹ South Carolina state courts can rely on federal law in interpreting and applying Rule 59(e). Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004) (analyzing and applying federal law regarding Rule 59(e) and stating “Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.”)

"Counterclaims") because the specific conduct on which each claim is based – that Lender wrongfully refused to modify, settle, or accept less than the full balance owed on the subject loan – fails to support any cause of action against either Peach or Capital Crossing.² As explained, Lender is entitled to the full amount owed on the loan and has no duty to mitigate this amount in any way. See Cisson, 311 S.C. at 503, 429 S.E.2d at 849.

10. Additionally, the Court correctly dismissed Debtors' counterclaim for breach of the implied covenant of good faith and fair dealing because South Carolina courts do not recognize it as an independent cause of action. RoTec Services, Inc. v. Encompass Services, Inc., 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App. 2004) (concluding that "the implied covenant of good faith and fair dealing is not an independent cause of action ..."). Debtors did not identify any contrary controlling precedent in their Motion.
11. Debtors apparently attempt to assert a breach of contract claim against Capital Crossing in their Motion, essentially alleging that Capital Crossing breached a contractual duty to exercise discretion in accepting less than the full balance owed on the loan in good faith. The Court need not address this purported claim because the Debtors' request to amend their Answer and Counterclaim is denied for the reasons set forth above. Further, Debtors' purported breach of contract claim fails because (1) Debtors have not alleged the existence of a contract between them and Capital Crossing, and (2) Capital Crossing was under no duty to accept anything less than the full balance owed on the loan as explained herein. Cisson, 311 S.C. at 503, 429 S.E.2d at 849.
12. Debtors also cannot rely on an alleged violation of the South Carolina Unfair Trade

² All "affirmative defenses" asserted by the Debtors in their Answer and Counterclaim, including their "affirmative defense of failure to mitigate," fail for the same reason.

Practices Act, S.C. Code § 39-5-10, *et seq.* ("SCUTPA"), as an underlying basis for their Counterclaims, which Debtors appear to do in their Motion. Conduct that affects only the parties to the transaction and not the public interest provides no basis for a SCUTPA claim. Haley Nursery Co. v. Forrest, 298 S.C. 520, 381 S.E.2d 906, 908 (1989). The facts as alleged by the Debtors apply only to the parties to this action and not to the public interest.

13. Debtors' independent SCUTPA claim also fails on the basis that no contract was breached, thus, no wrong occurred at all. In order to sustain an action under the SCUTPA, some underlying predicate act must have occurred. See Wright v. Craft, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006) (providing that to recover under SCUTPA, the moving party must demonstrate that some "unfair or deceptive" act occurred). Here, Debtors' allegations fail to show any wrongdoing or "unfair or deceptive" acts by Plaintiff for the reasons explained above, much less any acts that could cause any harm to the public.

B. Debtors fail to offer any reason justifying altering or amending the judgment under SCRCP 59(e).

14. Debtors have not shown that the Court misapprehended or overlooked the applicable law that applies here. See Elam, 361 S.C. at 22, 602 S.E.2d at 779 (recognizing that a Rule 59(e) Motion should be granted only when the court misapprehends or misapplies the law).

15. There is nothing new for the Court to consider. Debtors' Motion does not assert any proper new grounds whatsoever that this Court has not already considered and rejected.

16. For the reasons explained above, the Court correctly applied applicable South Carolina statutes, procedural rules, and case law. Debtors have simply requested that the Court

change its conclusions to rule in their favor, which is not a valid basis to grant their Motion.

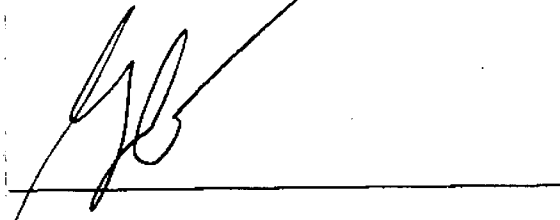
17. This Court properly found Debtors failed to adequately plead any cause of action against Peach or Capital Crossing.

Based on these findings of fact and conclusions of law,

IT IS HEREBY ORDERED that Debtors' request to amend their Answer and Counterclaim is denied; and

IT IS FURTHER ORDERED that Debtors' request to alter or amend the Dismissal Order is denied.

AND IT IS SO ORDERED.



The Honorable Gordon G. Cooper
Master-in-Equity for Spartanburg County

Columbia, South Carolina

July 29, 2016.

2016 JUL -1 PM 2:12
K. H. S. CLERK



STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

SEVENTH JUDICIAL CIRCUIT

2015-CP-42-4448

Peach REO, LLC, a Delaware limited
liability company,)

Plaintiff,)

vs.)

Blalock Investments, LLC; Todd Smith
and Debra Masuga,)

Defendants.)

Civil Action No. 2015-CP-42-

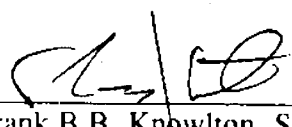
**SUMMONS
(Non-Jury)**

TO: THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Complaint upon the subscribers at 1320 Main Street, Post Office Box 11070, Columbia, South Carolina 29211, within thirty (30) days after service hereof except as to the United States of America, which shall have sixty (60) days, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTICE that pursuant to Rule 53(b), of the South Carolina Rules of Civil Procedure, as amended effective September 1, 2002, the Plaintiff will move for a general Order of Reference to the Master in Equity for Spartanburg County, which Order shall, pursuant to Rule 53(b) of the SCRPC, specifically provide that the said Master in Equity is authorized and empowered to enter a final judgment in this action.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Frank B.B. Knowlton, SC Bar No. 003588
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1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

ATTORNEYS FOR THE PLAINTIFF

Columbia, South Carolina

October 22, 2015

2015 OCT 23 11:12:59

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

Peach REO, LLC, a Delaware limited
liability company,

Plaintiff,

vs.

Blalock Investments, LLC; Todd Smith
and Debra Masuga,

Defendants.

Civil Action No. 2015-CP-42-

2015-CP-42-4448
COMPLAINT

**Foreclosure/Collection on Guaranty/
Receiver**

**Judgment Demanded Pursuant to
S.C. Code § 29-3-650
(Non-Jury)**

The Plaintiff above-named, complaining of the Defendants herein, would
respectfully show:

1. Plaintiff Peach REO, LLC, a Delaware limited liability company
("Plaintiff") is a limited liability company organized and existing under and pursuant to
the laws of the State of Delaware.

2. Upon information and belief, the Defendant Blalock Investments, LLC is a
limited liability company organized and existing under and pursuant to the laws of the
State of South Carolina.

3. Upon information and belief, the Defendant Todd Smith is a citizen and
resident of the County of Spartanburg County, State of South Carolina.

4. Upon information and belief, the Defendant Debra Masuga is a citizen and
resident of the County of Charleston, State of South Carolina.

5. Any defendant described herein as a judgment creditor has, by filing the
judgment, designated the attorney entering the judgment as its agent for service of

process pursuant to the provisions of Section 15-35-840 of the S.C. Code of Law (1976) as amended.

6. This Court has jurisdiction over this matter.

7. The real property which is the subject of the within mortgage foreclosure action is located in Spartanburg County, South Carolina.

8. Pursuant to the South Carolina Supreme Court's Administrative Order filed on May 22, 2009, the mortgage loan identified herein is a commercial loan which is not owned, securitized or guaranteed by Fannie Mae or Freddie Mac nor is any servicer of the loan participating in the Home Affordable Modification Program (HMP), as referenced in the above Administrative Order, and the Administrative Order is not applicable to the loan and mortgage identified herein.

9. Pursuant to South Carolina Supreme Court's Administrative Order filed on May 2, 2011, (2011-03-02-01) the real property involved herein is commercial property and is not an "owner-occupied dwelling" as defined in the Order. As such, the Administrative Order does not apply to this foreclosure.

FOR A FIRST CAUSE OF ACTION
(Foreclosure – Note)

10. Each and every allegation in the above-numbered paragraphs is repeated herein as if stated verbatim.

11. Heretofore, on or about October 1, 2008, the Defendant Blalock Investments, LLC for value received, executed and delivered to National Bank of South Carolina, a promissory note in the principal sum of One Million Nine Hundred Thousand and 00/100 (\$1,900,000.00) Dollars, with interest thereon the terms of which note are

more fully explained by reference thereto (the "Note"). A copy of said Note is attached hereto as **Exhibit A** and incorporated herein by reference.

12. Simultaneously with the execution of the above referred to Note, and in order to secure the payment thereof, the Defendant Blalock Investments, LLC executed and delivered to The National Bank of South Carolina, that certain Mortgage of Real Property (hereinafter "Mortgage") dated October 1, 2008, and recorded in the Office of the Register Of Deeds for Spartanburg County on October 3, 2008, in Mortgage Book 4142 at Page 231, wherein and whereby said Defendant mortgaged to Plaintiff the following real and personal property more fully described herein as follows:

Real Property:

PARCEL 1:

All that certain piece, parcel or tract of land, lying, situate and being in the State of South Carolina, County of Spartanburg, containing 2.02 acres, more or less, as shown on a plat prepared for Boiling Springs Luxury Apartments, LLC by Butler Associates Reg. Land Surveyor dated March 8, 2004 and recorded March 19, 2004 in Plat Book 155 at Page 750 in the Register of Deeds Office for Spartanburg County. Said property being described on said plat as "2.02 Ac Outparcel". For a more complete and particular description, reference is hereby made to the aforesaid plat.

PARCEL 2:

All that certain piece, parcel or tract of land, lying, situate and being in the State of South Carolina, County of Spartanburg, located at the northwestern corner of the intersection of South Carolina Highway No. 9 and Blalock Road, containing 0.949 acres, more or less, as shown on a plat prepared for Blalock Road, LLC by Tru-Line Surveying Co., Inc. dated May 2, 2005 and recorded in Plat Book 157 at Page 914 in the Register of Deeds Office for Spartanburg County. For a more complete and particular description, reference is hereby made to the aforesaid plat.

Also to include the following Personal Property:

All buildings, improvements, fixtures, or appurtenances now or hereafter erected thereon, including all apparatus, equipment, fixtures, or articles, whether in in single units or centrally controlled, used to supply heat, gas, air conditioning,

water, light, power, refrigeration, ventilation or other services, and also together with any screens, window shades, storm doors and windows, screen doors, awnings, stoves and water heaters (all of which are declared to be a part of said real estate whether physically attached thereto or not.

This being the same property conveyed to Blalock Investments, LLC by deed of Blalock Road, LLC, recorded in the Office of the Register of Deeds for Spartanburg County, on June 11, 2008 in Book 91-P at Page 213.

Together with all rights and easements benefitting the subject property, if any, set forth in that certain Non-exclusive Storm Water Drainage Easement and Access Easement Agreement dated March 19, 2004 and recorded in Deed Book 79-Y at Page 516, and in that certain deed of Boiling Springs Luxury Apartments, LLC to Blalock Road, LLC dated February 28, 2005 and recorded in Deed Book 82-L at Page 15, in the Register of Deeds Office for Spartanburg County.

TMS No.: 2-44-00-048.00

Property Address: 2634 Boiling Springs Road, Boiling Springs

Hereafter the Real Property and the Personal Property are collectively referred to as the "Property." A copy of said Mortgage is attached hereto as **Exhibit B** and incorporated herein by reference.

13. Simultaneously with the execution of the above referred to Note, and in order to further secure the payment thereof, the Defendant Blalock Investments, LLC executed and delivered to National Bank of South Carolina that certain Commercial Security Agreement dated October 1, 2008 ("Security Agreement"), wherein and whereby Blalock Investments, LLC granted a security interest in the Personal Property as described above. A copy of the Security Agreement is attached hereto as **Exhibit C** and is incorporated herein by reference.

14. On or about September 23, 2011, the Note was endorsed to Tandy Loanco, LLC, solely as trustee for Peach Loanco Grantor Trust I. The allonge is attached hereto as **Exhibit D** and incorporated herein by reference.

15. On or about September 23, 2011, the Mortgage was assigned to Tandy Loanco, LLC, solely as trustee for Peach Loanco Grantor Trust I by that Assignment of Mortgage and Collateral Documents, recorded in the Office of the Register of Deeds for Spartanburg County on November 3, 2011 in Book 4514 at Page 156 (the "Assignment"). The Assignment is attached hereto as **Exhibit E** and incorporated herein by reference.

16. On or about September 29, 2015, the Note was endorsed to Peach Loanco, LLC, a Delaware limited liability company. The allonge is attached hereto as **Exhibit F** and incorporated herein by reference.

17. On or about September 29, 2015, the Mortgage was assigned to Peach Loanco, LLC, a Delaware limited liability company by that certain Transfer and Assignment of Mortgage of Real Property, recorded in the Office of the Register of Deeds for Spartanburg County on October 7, 2015 in Book 5031 at Page 430 (the "Assignment"). The Assignment is attached hereto as **Exhibit G** and incorporated herein by reference.

18. On or about September 29, 2015, the Note was endorsed to Peach REO, LLC, a Delaware limited liability company. The allonge is attached hereto as **Exhibit H** and incorporated herein by reference.

19. On or about September 29, 2015, the Mortgage was assigned to Peach REO, LLC, a Delaware limited liability company by that certain Transfer and Assignment of Mortgage of Real Estate, recorded in the Office of the Register of Deeds for Spartanburg County on October 7, 2015 in Book 5031 at Page 433 (the "Assignment"). The Assignment is attached hereto as **Exhibit I** and incorporated herein by reference.

20. The Plaintiff is the owner and holder of the Note, Mortgage and Security Agreement.

21. The Defendant has defaulted in the payment of the Note and Mortgage given to Plaintiff by failing to pay Plaintiff, on demand, the principal and interest due under said documents, and all interest due thereon. Said Note and Mortgage are therefore in default and Plaintiff has declared the entire balance of principal and interest to be immediately due and payable.

22. The Mortgage is a valid first lien on the Property.

23. There is due and unpaid on the Note and Mortgage, as of October 16, 2015 the principal sum of One Million Seven Hundred Sixty-Nine Thousand Two Hundred Seventy-Three and 27/100 (\$1,769,273.27) Dollars, plus interest in the amount of Three Hundred Sixty-Three Thousand Eight Hundred Thirteen and 41/100 (\$363,813.41) Dollars, plus late charges in the amount of Eighteen Thousand Five Hundred Sixty-Nine and 50/100 (\$18,569.50) Dollars, plus advances for real estate taxes in the amount of One Hundred Thirty-Nine Thousand Nine Hundred Sixty-Three and 47/100 (\$139,963.47) Dollars, plus advances for insurance in the amount of Fourteen Thousand Eight Hundred Seventy-Two and 00/100 (\$14,872.00) Dollars. . Demand has been made upon the Defendant Blalock Investments, LLC to pay said amounts but said Defendant has refused to pay the same, or any part thereof, and said refusal is continuing, all to Plaintiff's injury and damage in the sum of Two Million Three Hundred Six Thousand Four Hundred Ninety-One and 65/100 (\$2,306,491.65) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action.

24. Plaintiff hereby expressly seeks a judgment against the Defendant Blalock Investments, LLC pursuant to S.C. Code Ann. § 29-3-650 for the full amount due under

the Note in the amount of Two Million Three Hundred Six Thousand Four Hundred Ninety-One and 65/100 (\$2,306,491.65) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action.

25. The Plaintiff also hereby expressly seeks the foreclosure and sale of the Property pursuant to S.C. Code Ann. § 29-3-650. The judgment entered against the parties shall be credited by the amount of the high bid entered at any subsequent foreclosure sale of the Property, as provided in the statute. Plaintiff reserves the right to any deficiency judgment against said Defendant after crediting the bid.

FOR A SECOND CAUSE OF ACTION
(Collection on Guaranty)

26. Each and every allegation in the above-numbered paragraphs is repeated herein as if stated verbatim.

27. In consideration of the above referenced Note, Defendants Todd Smith and Debra Masuga (collectively, the "Guarantors") each executed a Guaranty dated October 1, 2008 (collectively, the "Guaranty") whereby each individually, jointly and severally, absolutely and unconditionally guaranteed the payment of the Note and Mortgage to Plaintiff and all extensions and renewals thereof. A copy of the Guaranty is attached hereto as **Exhibit J** and is incorporated herein by reference.

28. As further consideration for the Note, Defendant Guarantors agreed to pay all costs of collection, including reasonable attorney's fees.

29. Plaintiff has declared the entire balance of the Note and Guaranty due and payable and hereby demands payment of the same, but said Defendant

Guarantors have refused to pay, and therefore is in default under the terms of the Guaranty.

30. There is due and unpaid on the Note and Guaranty, as of October 16, 2015 the principal sum of One Million Seven Hundred Sixty-Nine Thousand Two Hundred Seventy-Three and 27/100 (\$1,769,273.27) Dollars, plus interest in the amount of Three Hundred Sixty-Three Thousand Eight Hundred Thirteen and 41/100 (\$363,813.41) Dollars, plus late charges in the amount of Eighteen Thousand Five Hundred Sixty-Nine and 50/100 (\$18,569.50) Dollars, plus advances for real estate taxes in the amount of One Hundred Thirty-Nine Thousand Nine Hundred Sixty-Three and 47/100 (\$139,963.47) Dollars, plus advances for insurance in the amount of Fourteen Thousand Eight Hundred Seventy-Two and 00/100 (\$14,872.00) Dollars. Demand has been made upon the Defendant Guarantors to pay said amounts but said Defendants have refused to pay the same, or any part thereof, and said refusal is continuing, all to Plaintiff's injury and damage in the sum of Two Million Three Hundred Six Thousand Four Hundred Ninety-One and 65/100 (\$2,306,491.65) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action.

31. Plaintiff hereby expressly seeks a judgment against the Defendant Guarantors pursuant to S.C. Code Ann. § 29-3-650 for the full amount due under the Note in the amount of Two Million Three Hundred Six Thousand Four Hundred Ninety-One and 65/100 (\$2,306,491.65) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action. The judgment entered against Defendant Guarantors shall be credited by the amount of the high bid entered at any

subsequent foreclosure sale of the Property as provided in the statute. Plaintiff reserves the right to any deficiency judgment as to Defendants after crediting the bid.

FOR A THIRD CAUSE OF ACTION
(Receiver)

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

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

WHEREFORE, the Plaintiff prays as follows:

1. A Receiver be appointed for the Property.
2. As to the First Cause of Action, that the amount due Plaintiff on the above-referred to Note and Mortgage be ascertained and determined under the direction of this Court, together with attorney's fees and the costs of this action.
3. That Plaintiff recover judgment against the Defendants Blalock Investments, LLC, Todd Smith and Debra Masuga in the amount found to be due, together with attorney's fees and the costs of this action.
4. That the court ascertain which lien or liens, if any, are prior to that of Plaintiff.
5. That Plaintiff's Mortgage be declared to be a valid lien against the above referred to Property with the appropriate priority, and that the Plaintiff have judgment of foreclosure against the Defendants subject to the liens of any mortgages found to be prior

to the Mortgage held by Plaintiff, for the amount found to be due, together with attorney's fees and costs of this action.

6. That Plaintiff's Mortgage upon the above referred to Property be foreclosed, subject to the lien of any mortgages found to be superior to that of Plaintiff, the equity of redemption barred, and the property sold under the direction of this Court.

7. That the proceeds of the sale be applied as follows:

a. to the costs, disbursements, and expenses of this action, including a reasonable attorney's fee for the Plaintiff's attorney;

b. to the amount due Plaintiff; and

c. the surplus, if any, be held subject to the further order of this Court.

8. That the Plaintiff be granted judgment against the Defendants Blalock Investments, LLC, Todd Smith and Debra Masuga, for the full amount due under the Note, Mortgage and Guaranty at the hearing on the matter, with subsequent credit to be entered against said judgment after the foreclosure sale of the Property pursuant to S.C. Code Ann. § 29-3-350.

9. For such other and further relief as the Court may deem just and proper.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

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Columbia, SC 29201

(803) 799-2000

ATTORNEYS FOR THE PLAINTIFF

Columbia, South Carolina

OCTOBER 22, 2015

2015 OCT 28 PM 1:00
FBI - COLUMBIA

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Peach REO, LLC, a Delaware limited
liability company,)

Plaintiff,)

vs.)

Blalock Investments, LLC; Todd Smith
and Debra Masuga,)

Defendants.)

Civil Action No. 2015-CP-42-448

2015-CP-42-448

**CERTIFICATE OF EXEMPTION
FROM ADR**

I certify that this action is exempt from mediation because:

_____ this is a special proceeding or action seeking extraordinary relief such as
mandamus, habeas corpus, or prohibition;

_____ this action is appellate in nature;

_____ this is a post-conviction relief matter;

_____ this is a forfeiture proceeding brought by the State;

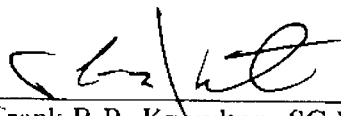
X this is a case involving a mortgage foreclosure;

_____ this is a contempt of court proceeding; or

_____ the parties submitted the case to voluntary mediation with a certified
mediator prior to the filing of this civil action.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Frank B.B. Knowlton, SC Bar No. 003588

E-Mail: frank.knowlton@nelsonmullins.com

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(803) 799-2000

ATTORNEYS FOR THE PLAINTIFF

Columbia, South Carolina

O'Connor, 2015

2015 OCT 13 1:12:59

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Peach REO, LLC, a Delaware limited
liability company,

Plaintiff,

vs.

Blalock Investments, LLC; Todd Smith
and Debra Masuga,

Defendants.

Civil Action No. 2015-CP-42-4448

**CERTIFICATION OF EXEMPTION
FROM ADMINISTRATIVE ORDER**

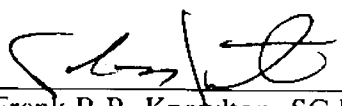
2011-05-02-01

(Non-Owner Occupied Dwelling)

The Plaintiff by and through it undersigned attorney does hereby certify as follows:

- 1) That this is an action for the foreclosure of real property located in Spartanburg County, South Carolina.
- 2) That the Administrative Order of the Supreme Court of South Carolina dated May 2nd, 2011 (2011-05-02-01) does not apply to this foreclosure, in that the real property that is the subject of this foreclosure is not an "Owner-Occupied dwelling" as defined in the Order.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

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E-Mail: frank.knowlton@nelsonmullins.com
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ATTORNEYS FOR THE PLAINTIFF

Columbia, South Carolina

October 22, 2015

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Peach REO, LLC

Plaintiff(s)

vs.

Blalock Investments, LLC, et. al.

Defendant(s)

(Please Print)

Submitted By: Frank B.B. Knowlton

Address: Nelson Mullins Riley & Scarborough, LLP

P.O. Box 11070

Columbia, SC 29211

SC Bar #: 3588

Telephone #: 803-799-2000

Fax #: 803-255-9644

Other:

E-mail: frank.knowlton@nelsonmullins.com

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

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 ____ -NI- ____
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (300)
☐ Condemnation (410)
☒ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript of Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement
Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers
Compensation Settlement
Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCIXOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission (990)
☐ Employment Security Commission (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Sexual Predator (510) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Foreign Subpoenas (650)
☐ Motion to Quash Subpoena
in Out-of-County Action
(660) | | |

Submitting Party Signature: 

Date: 10-22-15

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

SCCA / 234 (10/2014)

0034

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

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

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

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

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

COMMONWEALTH OF MASSACHUSETTS)
)
COUNTY OF SUFFOLK)

VERIFICATION

Re: Blalock Investments, LLC

PERSONALLY appeared before me the undersigned, who, being first duly sworn, deposes and says: That s/he is the authorized representative for Capital Crossing Servicing Company, LLC as Authorized Servicer of Peach REO, LLC, a Delaware limited liability company, and as such is authorized to verify the foregoing Complaint and the matters and things therein stated are accurate based on his or her review of the books and records maintained by the Plaintiff in the ordinary course of business.

Capital Crossing Servicing Company, LLC

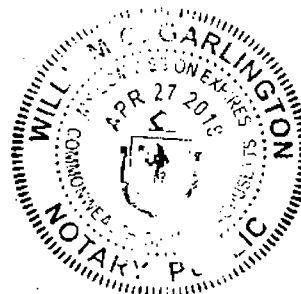
By: [Signature]
Name: Brian R. Doherty
Its: Vice President

2015 OCT 28 PM 1:00
RECEIVED
NOTARY PUBLIC

On this ___ day of October, 2015, before me, the undersigned notary public, personally appeared Brian R. Doherty, personally known to me to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

WITNESS my hand and official seal.

William C. Garlington
Notary Public



PL RECD OCT 08 2008

ORIGINAL

BLALOCK INVESTMENTS LLC 2153 E MAIN BLDG C-14 SUITE 355 DUNCAN, SC 29334-9298	National Bank of South Carolina 150 East Henry Street Spartanburg SC 29306	Loan Number _____ Date <u>October 01, 2008</u> Maturity Date <u>October 01, 2013</u> Loan Amount \$ <u>1,900,000.00</u> Renewal Of _____ Appl #: _____
BORROWER'S NAME AND ADDRESS "I" includes each borrower above, jointly and severally.	LENDER'S NAME AND ADDRESS "You" means the lender, its successors and assigns.	

For value received, I promise to pay to you, or your order, at your address listed above the **PRINCIPAL** sum of ONE MILLION NINE HUNDRED THOUSAND DOLLARS AND ZERO Dollars \$ 1,900,000.00

- ☐ **Single Advance:** I will receive all of this principal sum on _____ No additional advances are contemplated under this note.
- ☒ **Multiple Advance:** The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of \$ _____ and future principal advances are contemplated.
- Conditions: The conditions for future advances are _____

☐ **Open End Credit:** You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on _____

☒ **Closed End Credit:** You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 10/01/2008 at the rate of 7.500 % per year until Paid in Full

☐ **Variable Rate:** This rate may then change as stated below.

☐ **Index Rate:** The future rate will be _____ the following index rate: _____

☐ **No Index:** The future rate will not be subject to any internal or external index. It will be entirely in your control.

☐ **Frequency and Timing:** The rate on this note may change as often as _____ A change in the interest rate will take effect _____

☐ **Limitations:** During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ % The rate may not change more than _____ % each _____

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☐ The amount of each scheduled payment will change. ☐ The amount of the final payment will change.

ACCURAL METHOD: Interest will be calculated on a ACT/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to _____

☒ **LATE CHARGE:** If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5% OF PAST DUE AMOUNT WITH A MINIMUM OF \$100.00 AND A MAXIMUM OF \$1,000.00

☒ **ADDITIONAL CHARGES:** In addition to interest, I agree to pay the following charges which ☐ are ☒ are not included in the principal amount above: CHG ORIG \$9,000.00; FLOOR DBT \$14.00; APPR FEE \$4,500.00

PAYMENTS: I agree to pay this note as follows:

☒ **Interest:** I agree to pay accrued interest in 9 payment(s) MONTHLY STARTING November 01, 2008

☐ **Principal:** I agree to pay the principal _____

☒ **Installments:** I agree to pay this note in 51 payments. The first payment will be in the amount of \$ 14,616.00 and will be due August 01, 2009. A payment of \$ 14,616.00 will be due MONTHLY thereafter. The final payment of the entire

unpaid balance of principal and interest will be due October 01, 2013

ADDITIONAL TERMS:

PAYMENTS: Each payment I make on this note will be applied to past due interest, past due principal, current interest due, current principal due, and then to late fees and other charges. I may prepay a part of, or the entire balance of this loan without penalty, unless we specify to the contrary on this note. Any partial prepayment will not accrue or reduce any later scheduled payment until this note is paid in full (unless, when I make the prepayment, you and I agree in writing to the contrary).

☐ **SECURITY:** This note is separately secured by (describe separate document by type and date): _____

(This section is for your internal use. Failure to have appropriate security document does not mean the agreement will be unsecured by this note.)

Signature to Lender

WBT WILLIAM B TURNER III

PURPOSE: The purpose of this loan is PURCHASE CONST. OF RESTAURANT & RETAIL CENTER

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.

BLALOCK INVESTMENTS, LLC

TODD SMITH MEMBER

DEBRA MASUGA MEMBER

Attly in fact

PLAINTIFF'S EXHIBIT

A

DEFINITIONS: As used on page 1, "X" means the terms that apply to this loan. "I," "me" or "my" means each Borrower who signs this note and each other person or legal entity (including guarantors, endorors, and sureties) who agrees to pay this note (together referred to as "us"). "You" or "your" means the Lender and its successors and assigns.

APPLICABLE LAW: The law of the state of South Carolina will govern this note. Any term of this note which is contrary to applicable law will not be effective, unless the law permits you and me to agree to such a variation. If any provision of this agreement cannot be enforced according to its terms, this fact will not affect the enforceability of the remainder of this agreement. No modification of this agreement may be made without your express written consent. Time is of the essence in this agreement.

COMMISSIONS OR OTHER REMUNERATION: I understand and agree that any insurance premiums paid to insurance companies as part of this note will involve money retained by you or paid back to you as commissions or other remuneration.

In addition, I understand and agree that some other payments to third parties as part of this note may also involve money retained by you or paid back to you as commissions or other remuneration.

PAYMENTS: Each payment I make on this note will first reduce the amount I owe you for charges which are neither interest nor principal. The remainder of each payment will then reduce accrued unpaid interest, and then unpaid principal. If you and I agree to a different application of payments, we will describe our agreement on this note. I may prepay a part of, or the entire balance of this loan without penalty, unless we specify to the contrary on this note. Any partial prepayment will not excuse or reduce any later scheduled payment until this note is paid in full (unless, when I make the prepayment, you and I agree in writing to the contrary).

INTEREST: Interest accrues on the principal remaining unpaid from time to time, until paid in full. If I receive the principal in more than one advance, each advance will start to earn interest only when I receive the advance. The interest rate in effect on this note at any given time will apply to the entire principal advanced at that time. Notwithstanding anything to the contrary, I do not agree to pay and you do not intend to charge any rate of interest that is higher than the maximum rate of interest you could charge under applicable law for the extension of credit that is agreed to here (either before or after maturity). If any notice of interest accrual is sent and is in error, we mutually agree to correct it, and if you actually collect more interest than allowed by law and this agreement, you agree to refund it to me.

INDEX RATE: The index will serve only as a device for setting the rate on this note. You do not guarantee by selecting this index, or the margin, that the rate on this note will be the same rate you charge on any other loans or class of loans to me or other borrowers.

ACCRUAL METHOD: The amount of interest that I will pay on this loan will be calculated using the interest rate and accrual method stated on page 1 of this note. For the purpose of interest calculation, the accrual method will determine the number of days in a "year." If no accrual method is stated, then you may use any reasonable accrual method for calculating interest.

POST MATURITY RATE: For purposes of deciding when the "Post Maturity Rate" (shown on page 1) applies, the term "maturity" means the date of the last scheduled payment indicated on page 1 of this note or the date you accelerate payment on the note, whichever is earlier.

SINGLE ADVANCE LOANS: If this is a single advance loan, you and I expect that you will make only one advance of principal. However, you may add other amounts to the principal if you make any payments described in the "PAYMENTS BY LENDER" paragraph below.

MULTIPLE ADVANCE LOANS: If this is a multiple advance loan, you and I expect that you will make more than one advance of principal. If this is closed end credit, repaying a part of the principal will not entitle me to additional credit.

PAYMENTS BY LENDER: If you are authorized to pay, on my behalf, charges I am obligated to pay (such as property insurance premiums), then you may treat those payments made by you as advances and add them to the unpaid principal under this note, or you may demand immediate payment of the charges.

SET-OFF: I agree that you may set off any amount due and payable under this note against any right I have to receive money from you.

"Right to receive money from you" means:

- (1) any deposit account balance I have with you;
- (2) any money owed to me on an item presented to you or in your possession for collection or exchange; and
- (3) any repurchase agreement or other nondeposit obligation.

"Any amount due and payable under this note" means the total amount of which you are entitled to demand payment under the terms of this note at the time you set off. This total includes any balance the due date for which you properly accelerate under this note.

If my right to receive money from you is also owned by someone who has not agreed to pay this note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement. Your right of set-off does not apply to an account or other obligation where my rights are only as a representative. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set off this debt against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

REAL ESTATE OR RESIDENCE SECURITY: If this note is secured by real estate or a residence that is personal property, the existence of a default

and your remedies for such a default will be determined by applicable law, by the terms of any separate instrument creating the security interest and, to the extent not prohibited by law and not contrary to the terms of the separate security instrument, by the "Default" and "Remedies" paragraphs herein.

DEFAULT: I will be in default if any one or more of the following occur: (1) I fail to make a payment on time or in the amount due; (2) I fail to keep the property insured, if required; (3) I fail to pay, or keep any promise, on any debt or agreement I have with you; (4) any other creditor of mine attempts to collect any debt I owe him through court proceedings; (5) I die, am declared incompetent, make an assignment for the benefit of creditors, or become insolvent (either because my liabilities exceed my assets or I am unable to pay my debts as they become due); (6) I make any written statement or provide any financial information that is untrue or inaccurate at the time it was provided; (7) I do or fail to do something which causes you to believe that you will have difficulty collecting the amount I owe you; (8) any collateral securing this note is used in a manner or for a purpose which threatens confiscation by a legal authority; (9) I change my name or assume an additional name without first notifying you before making such a change; (10) I fail to plant, cultivate and harvest crops in due season if I am a producer of crops; (11) any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

REMEDIES: If I am in default on this note you have, but are not limited to, the following remedies:

- (1) You may demand immediate payment of all I owe you under this note (principal, accrued unpaid interest and other accrued charges);
- (2) You may set off this debt against any right I have to the payment of money from you, subject to the terms of the "SET-OFF" paragraph herein;
- (3) You may demand security, additional security, or additional parties to be obligated to pay this note as a condition for not using any other remedy;
- (4) You may refuse to make advances to me or allow purchases on credit by me;
- (5) You may use any remedy you have under state or federal law.

By selecting any one or more of these remedies you do not give up your right to later use any other remedy. By waiving your right to declare an event to be a default, you do not waive your right to later consider the event as a default if it continues or happens again.

COLLECTION COSTS AND ATTORNEY'S FEES: I agree to pay all costs of collection, replevin or any other or similar type of cost if I am in default. In addition, if you hire an attorney to collect this note, I also agree to pay any fee you incur with such attorney plus court costs (except where prohibited by law). To the extent permitted by the United States Bankruptcy Code, I also agree to pay the reasonable attorney's fees and costs you incur to collect this debt as awarded by any court exercising jurisdiction under the Bankruptcy Code.

WAIVER: I give up my rights to require you to do certain things. I will not require you to:

- (1) demand payment of amounts due (presentment);
- (2) obtain official certification of nonpayment (protest); or
- (3) give notice that amounts due have not been paid (notice of dishonor).

I waive any defenses I have based on suretyship or impairment of collateral.

OBLIGATIONS INDEPENDENT: I understand that I must pay this note even if someone else has also agreed to pay it (by, for example, signing this form or a separate guarantee or endorsement). You may sue me alone, or anyone else who is obligated on this note, or any number of us together, to collect this note. You may without notice release any party to this agreement without releasing any other party. If you give up any of your rights, with or without notice, it will not affect my duty to pay this note. Any extension of new credit to any of us, or renewal of this note by all or less than all of us will not release me from my duty to pay it. (Of course, you are entitled to only one payment in full.) I agree that you may at your option extend this note or the debt represented by this note, or any portion of the note or debt, from time to time without limit or notice and for any term without affecting my liability for payment of the note. I will not assign my obligation under this agreement without your prior written approval. You may, without notice, fail to perfect your security interest in, impair, or release any security and I will still be obligated to pay this loan.

FINANCIAL INFORMATION: I agree to provide you, upon request, any financial statement or information you may deem necessary. I warrant that the financial statements and information I provide to you are or will be accurate, correct and complete.

NOTICE: Unless otherwise required by law, any notice to me shall be given by delivering it or by mailing it by first class mail addressed to me at my last known address. My current address is on page 1. I agree to inform you in writing of any change in my address. I will give any notice to you by mailing it first class to your address stated on page 1 of this agreement, or to any other address that you have designated.

WAIVER OF HEARING PRIOR TO IMMEDIATE POSSESSION: If this loan is for a business purpose I agree to waive the right to five days' notice and a pre-seizure hearing prior to seizure of any personal property which may secure this loan.

DATE OF TRANSACTION	PRINCIPAL ADVANCE	BORROWER'S INITIALS (not required)	PRINCIPAL PAYMENTS	PRINCIPAL BALANCE	INTEREST RATE	INTEREST PAYMENTS	INTEREST PAID THROUGH
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
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	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	

State of South Carolina)
County of SPARTANBURG)

MORTGAGE OF REAL PROPERTY

THIS MORTGAGE, made this 01 day of OCTOBER, 2008

among BLALOCK INVESTMENTS LLC (hereinafter referred to as Mortgagor) and THE NATIONAL BANK OF SOUTH CAROLINA (hereinafter referred to as Mortgagee):

WITNESSETH THAT, WHEREAS, Mortgagor is indebted to Mortgagee for money loaned for which Mortgagor has executed and delivered to Mortgagee one or more applications, obligations or agreements (Note(s)) with the original Note being in the principal sum of ONE MILLION NINE HUNDRED THOUSAND DOLLARS AND ZERO CENTS Dollars (\$ 1,900,000.00)

AND, WHEREAS, to induce the making of said loan/Notes and in consideration of advances made and which may be made by Mortgagee to Mortgagor as evidenced by said various Notes of even date herewith or pursuant to Notes executed in the future, Mortgagor has agreed to secure said debt and interest thereon evidenced by said Notes and all renewals and extensions thereof, together with (in accordance with Section 29-3-50, Code of Laws of South Carolina, 1976, as may be amended) any future advances that may subsequently be made in connection with said Notes or by Mortgagee, and all renewals and extensions thereof, as well as all other indebtedness of Mortgagor or Mortgagee, now due or to become due or hereafter contracted, provided however that the total amount of existing indebtedness and future advances outstanding at any one time may not exceed 200% of the principal amount of the Note or ONE MILLION NINE HUNDRED THOUSAND DOLLARS AND ZERO CENTS Dollars (\$ 1,900,000.00)

whichever is greater, plus or together with interest thereon, attorneys' fees, and court costs and to secure the performance of the undertakings prescribed in the Notes and this Mortgage by the conveyance of the premises hereinafter described. Interest on said Notes will be deferred, accrued, or capitalized.

NOW, THEREFORE, in consideration of the aforesaid loan and the sum of Three Dollars (\$3.00) cash in hand paid to Mortgagor, the receipt of which is hereby acknowledged, Mortgagor hereby grants, sells, conveys, assigns and releases to Mortgagee, its successors and assigns, the following described premises located

in SPARTANBURG County, South Carolina:

SEE ATTACHED EXHIBIT A FOR DESCRIPTION OF PROPERTY

MTG-2008-47328
Recorded 5 Pages on 10/3/2008 10:36:05 AM
Recording Fee: \$11.00 Documentary Stamp: \$0.00
Office of Register of Deeds, Spartanburg, S.C.
Stephen Ford, Register



Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in anywise incident or appertaining. Including but not limited to all buildings, improvements, fixtures, or appurtenances now or hereafter erected thereon, including all apparatus, equipment, fixtures, or articles, whether in single units or centrally controlled, used to supply heat, gas, air conditioning, water, light, power, refrigeration, ventilation or other services, and also together with any screens, window shades, storm doors and windows, screen doors, awnings, stoves and water heaters (all of which are declared to be a part of said real estate whether physically attached thereto or not).

TO HAVE AND TO HOLD the same with all privileges and appurtenances thereto belonging to Mortgagee, its successors and assigns, forever, for the purpose hereinafter set out and Mortgagee covenants with Mortgage, its successors and assigns, that Mortgagee is seized of, and has the right to convey, the premises in fee simple; that the premises are free and clear of all encumbrances except as disclosed in writing to the Mortgagee at the time this Mortgage is given; and that Mortgagee will warrant and defend title to the premises against the lawful claims of persons whomsoever.

MORTGAGOR COVENANTS with Mortgagee, its heirs, successors and assigns as follows:

1. **NOTE PAYMENTS.** Mortgagee shall make timely payments of principal and interest on the above mentioned Note(s) in the amounts, in the manner and at the place set forth therein. This Mortgage secures payment of said Note(s) according to its terms, which are incorporated herein by reference.

2. **TAXES.** Mortgagee shall pay all taxes, charges and assessments which may become a lien upon the premises hereby conveyed before any penalty or interest accrues thereon and shall promptly deliver to Mortgagee (at its request) official receipts evidencing payment thereof. In the event of the passage after the date of this Mortgage of any law imposing a Federal, state, or local tax upon Mortgage or debts secured thereby, the whole principal sum (plus or together with interest) secured by this Mortgage shall, at the option of Mortgagee, its principal sum (plus or together with interest) secured by this Mortgage shall, at the option of Mortgagee, its successors and assigns, without notice become immediately due and payable.

3. **INSURANCE.** Mortgagee shall continually maintain hazard insurance of such types and amounts and in such companies as Mortgagee may from time to time reasonably require on the improvements now or hereafter located on the premises and shall promptly pay all premiums therefor when due. All insurance policies and renewals thereof shall be held by Mortgagee subject to the rights of the holder of the first mortgage lien, if any, and have attached thereto loss payable clauses in favor of and in a form acceptable to Mortgagee. In the event of loss, Mortgagee shall give immediate notice thereof by mail to Mortgagee, who may make proof of loss. Each insurance company is hereby directed to make payment for such loss directly to Mortgagee (instead of Mortgagee and Mortgagee jointly), and the insurance proceeds, or any part thereof, may be applied by Mortgagee, at its option, to the debt hereby secured or for the repair or restoration of the premises. If the insurance proceeds are applied to the debt, it may be applied upon the portion last falling due or in such other manner as Mortgagee may determine. In the event of foreclosure of this Mortgage or other transfer of title to the premises in extinguishment of the indebtedness secured hereby, all right, title and interest of Mortgagee, in any insurance policies then in force shall pass to the Mortgagee.

4. **REPAIRS.** Mortgagee will keep the premises in as good order and repair as they are now (reasonable wear and tear excepted) and will not commit or permit any waste or any other state of facts whereby the value of the premises might be impaired.

5. **COMPLIANCE WITH LAWS.** Mortgagee shall promptly comply with any applicable legal requirements of the State of South Carolina or other governmental entity, agency or instrumentality relating to the use or condition of the premises.

6. **CONDEMNATION AWARD.** Any award for the taking of, or damages to, all or any part of the premises or any interest therein upon the lawful exercise of power of eminent domain shall be payable to Mortgagee who may apply the sums so received to the portion of the debt hereby secured last falling due or in such other manner as Mortgagee may determine.

7. **PAYMENTS BY MORTGAGEE.** If Mortgagee shall be in default in the timely performance of any obligation under this Mortgage or the Note(s) hereby secured or in the timely performance of any obligation imposed by a prior mortgage, or the Note(s) thereby secured or otherwise, Mortgagee at its option may expend for the account of Mortgagee such sums as may be necessary to cure any such default. Further, Mortgagee may, at its option, expend for the account of Mortgagee such sums, expenses and fees as may become necessary or be incurred for the protection of the premises, for the protection of the lien of this Mortgage and for the maintenance and execution of this Mortgage. Any amounts so expended shall be deemed principal advances secured by this Mortgage, shall bear interest from the time expended at the rate prescribed in the Note(s) hereby secured and shall be due and payable on demand. However, Mortgagee shall be under no obligation to do any of the foregoing, and its failure to do so shall not be construed as a waiver of any default hereunder.

8. **TRANSFER OF THE PROPERTY ASSUMPTION.** If all or any part of the property or an interest therein is sold or transferred by Borrower without Mortgagee's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Mortgage, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant or (d) the grant of any leasehold interest of three years or less not containing an option to purchase, Mortgagee may, at Mortgagee's option for any reason, declare all sums secured by the Mortgage to be immediately due and payable.

9. **MORTGAGOR'S CONTINUING OBLIGATION.** It is understood and agreed that all advances heretofore, now and hereafter made by Mortgagee or Mortgagee, and all indebtedness now and hereafter owed by Mortgagee to Mortgagee, and any other present or future indebtedness or liability of Mortgagee to Mortgagee, whether as principal debtor, surety, guarantor, endorser or otherwise, will be secured by this instrument until it is satisfied of record. It is further understood and agreed that Mortgagee, at the written request of Mortgagee, will satisfy this mortgage whenever: (1) Mortgagee owes no indebtedness to Mortgagee, (2) Mortgagee has no liability to Mortgagee, (3) Mortgagee requests satisfaction in writing, and (4) Mortgagee has not agreed to make any further advance or advances to Mortgagee. The Mortgagee shall remain liable for full payment of the principal and interest on the Note(s) (or any advancement or obligation) secured hereby, notwithstanding any of the following: (a) The sale of all or a part of the premises, (b) the assumption by another party of the Mortgagee's obligation hereunder, (c) the forbearance or extension of time for payment or performance of any obligation hereunder, whether granted to Mortgagee or a subsequent owner of the property, and (d) the release of all or any part of the premises securing said obligations or the release of any party who assumes payment of the same. None of the foregoing shall in any way affect the full force and effect of the lien of this Mortgage or impair Mortgagee's right to a deficiency judgment (in the event of foreclosure) against Mortgagee or any party assuming the obligations hereunder.

10. **WAIVER OF HOMESTEAD, REDEMPTION AND APPRAISAL RIGHTS.** The Mortgagee does hereby expressly waive, release and discharge any and all homestead exemption, right of redemption or right of appraisal in the event of foreclosure, as allowed by the laws of the State of South Carolina, until the entire amount under all Notes secured hereby are paid in full.

WAIVER OF APPRAISAL RIGHTS, IF ALLOWED BY LAW. If in the event of foreclosure of this Mortgage a deficiency judgment is requested against Mortgagee, and if at the time of such foreclosure the laws of South Carolina allow and authorize an obligated party to knowingly waive statutory appraisal rights, Mortgagee agrees to and does hereby waive any and all rights of appraisal as to the property in connection with the foreclosure of the subject property and Mortgagee's right to seek a deficiency judgment against Mortgagee in the event the debt hereby secured is not satisfied from the net sales proceeds from the foreclosure sale.

11. **DEFAULT.** Failure to make any payments or perform any acts required by the note(s) or this instrument shall constitute default by the Mortgagee.

12. **ASSIGNMENT OF RENTS, LEASES AND PROFITS.** Mortgagee hereby sets over, assigns, transfers and grants a security interest in any and all rents, leases, and profits of the said premises herein described, provided, however, that so long as no

Default has occurred, Mortgagor shall be entitled to collect and retain all such rents, leases and profits. In the event of Default, all rents, leases and profits shall be payable and delivered to Mortgagee and Mortgagor hereby authorizes Mortgagee to notify any and all tenants of this assignment and that all payments of rents, leases and profits should be made directly to Mortgagee.

13. **APPOINTMENT OF RECEIVER.** Upon the event of a Default, Mortgagee shall be entitled to the appointment of a receiver of the rents, leases, and profits of the herein described property, with power to receive and recover the same, to dispossess tenants, to lease the premises, to operate and manage the premises, to pay the taxes and assessments thereon, to keep the same insured, and to make all necessary repairs thereon, and with such other powers as may be necessary. The receiver, after deducting all charges and expenses attending execution of such duties as receiver, shall apply the residue of said rents, leases and profits to the payment of all sums hereby secured or of any deficiency which may arise after applying the proceeds of the sale of the said premises to the amount due, including interest, costs, and expenses of such foreclosure and sale. Mortgagee and the receiver shall be entitled to review and have access to the books and records used in the operation and maintenance of the subject property.

14. **ENVIRONMENTAL MATTERS.** Mortgagor agrees to indemnify and hold Mortgagee harmless from and against, and to reimburse Mortgagee with respect to, any and all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including reasonable attorney's fees and court costs) of any and every kind or character, known or unknown, fixed or contingent, asserted against or incurred by Mortgagee at any time and from time to time by reason or arising out of any violation of any federal, state or local health, safety, or environmental laws, ordinances, and regulations, requiring the removal of, or otherwise regulating the maintenance, storage, transportation or disposal of any hazardous substance or any other toxic substances, asbestos, contaminants, petroleum products, or radioactive materials. The provisions of this paragraph shall survive the satisfaction or release of this Mortgage and the satisfaction of the Note(s) and shall continue thereafter in full force and effect.

The Mortgagor shall pay when due the cost of providing to Mortgagee, at Mortgagee's request from time to time, a then-current environmental site assessment, audit or survey of the property described in this Mortgage, which shall be prepared by an environmental person or company acceptable to Mortgagee, in Mortgagee's sole discretion; provided, however, that Mortgagee shall make such request no more frequently than once every year unless the note is being renewed, extended, modified, or accelerated, or unless Mortgagee is required by any law, regulation, order or other directive from any regulatory agency having jurisdiction over Mortgagee to obtain any such assessment more frequently than once a year. If Mortgagor fails to pay the cost of any assessment or the cost of any remediation to the subject property to correct deficiencies highlighting in an assessment, when due, Mortgagee may pay such cost on Mortgagor's behalf and the same shall constitute principal under the Note and be secured by the subject property, and shall be due and payable on demand. Mortgagor's failure to pay such amount (with all accrued interest) in full within ten (10) days of the date of such demand shall constitute an event of default entitling the Mortgagee to accelerate the maturity of the Note.

15. **APPRAISAL.** Mortgagor shall pay when due the cost of providing to Mortgagee, at its request, from time to time, a then-current appraisal of the market value of the property prepared by an appraiser acceptable to Mortgagee, in its sole discretion; provided, however, that Mortgagee shall make such request no more frequently than once every two (2) years, unless Mortgagee is required by any law, regulation, order or other directive from any regulatory agency having jurisdiction over Mortgagee to obtain any such appraisal more frequently than every two (2) years. If Mortgagor fails to pay such costs when due, Mortgagee may pay such costs on Mortgagor's behalf and the same shall constitute principal under the Note, shall bear interest at the applicable rate provided in the Note, and shall be due and payable on demand. Mortgagor's failure to pay such amount (with all accrued interest) in full within ten (10) days of the date of such demand shall constitute an event of default entitling the Mortgagee to accelerate the maturity of the Note.

16. **DEFINITIONS.** As used herein the terms "Mortgagor," "Mortgagee" and other terms shall refer to the singular, plural, neuter, masculine and feminine as the context may require and shall include, be binding upon and inure to the benefit of their respective heirs, successors, legal representatives and assigns.

AND IT IS AGREED by and between the parties that in the case of foreclosure of this Mortgage, by suit or otherwise, the Mortgagee shall recover of the Mortgagor a sum as attorney's fees as set out in said Note(s) which shall be secured by this Mortgage, and shall be included in judgment of foreclosure.

BUT THIS CONVEYANCE IS MADE UPON THIS SPECIAL CONDITION: If, however, there shall be a default in the performance of any of the covenants, terms and conditions of this Mortgage, or under the Note(s) or any advance secured hereby, all sums owing to Mortgagee hereunder or under said Note(s), regardless of maturity and without notice, shall immediately become due and payable at the option of Mortgagee, and Mortgagee may foreclose this Mortgage by Judicial Proceedings.

IN WITNESS WHEREOF, this Mortgage has been duly signed, sealed and delivered by Mortgagor the day and year first above written.

[Signature] _____ (SEAL)
[Signature] _____ (SEAL)
 _____ (SEAL)
 _____ (SEAL)

State of South Carolina)

County of SPARTANBURG)

PROBATE

PERSONALLY appeared before me *[Signature]* and made oath that (s)he saw the within-named BIALOCK INVESTMENTS LLC, sign, seal, and as Their act and deed, deliver the within-written Mortgage of Real Property; and, that (s)he with *[Signature]* witnessed the execution thereof.

SW. and before me this 1 day of October 2008

[Signature] (U.S.) *[Signature]*

Commission Expires: 12/15/15

EXHIBIT A

PARCEL 1:

All that certain piece, parcel or tract of land, lying, situate and being in the State of South Carolina, County of Spartanburg, containing 2.02 acres, more or less, as shown on a plat prepared for Boiling Springs Luxury Apartments, LLC by Butler Associates Reg. Land Surveyor dated March 8, 2004 and recorded March 19, 2004 in Plat Book 155 at Page 750 in the Register of Deeds Office for Spartanburg County. Said property being described on said plat as "2.02 Ac Outparcel". For a more complete and particular description, reference is hereby made to the aforesaid plat.

TMN: 2-44-00-049.01

PARCEL 2:

All that certain piece, parcel or tract of land, lying, situate and being in the State of South Carolina, County of Spartanburg, located at the northwestern corner of the intersection of South Carolina Highway No. 9 and Blalock Road, containing 0.949 acres, more or less, as shown on a plat prepared for Blalock Road, LLC by Tru-Line Surveying Co., Inc. dated May 2, 2005 and recorded in Plat Book 157 at Page 914 in the Register of Deeds Office for Spartanburg County. For a more complete and particular description, reference is hereby made to the aforesaid plat.

TMN: 2-44-00-048.00

This is the same property conveyed to Mortgagor herein by deed of Blalock Road, LLC recorded June 11, 2008 in Deed Book 91-P at page 213, Register of Deeds Office for Spartanburg County, South Carolina.

Forrest L. Lavelle

DEBTOR NAME AND ADDRESS	SECURED PARTY NAME AND ADDRESS
BLALOCK INVESTMENTS LLC 2153 E MAIN BLDG C-14 SUITE 355 DUNCAN SC 29334-9296	National Bank of South Carolina 150 East Henry Street Spartanburg SC 29306
ORIGINAL	
Type: ☐ individual ☐ partnership ☐ corporation ☒ LLC State of organization/registration (if applicable) <u>SOUTH CAROLINA</u> ☐ If checked, refer to addendum for additional Debtors and signatures.	
ACCOUNT NUMBER:	NOTE: 00003

COMMERCIAL SECURITY AGREEMENT

The date of this Commercial Security Agreement (Agreement) is October 01, 2008
 SECURED DEBTS. This Agreement will secure all sums advanced by Secured Party under the terms of this Agreement and the payment and performance of the following described Secured Debts that (check one) ☒ Debtor ☐ BLALOCK INVESTMENTS LLC

☒ Specific Debts. The following debts and all extensions, renewals, refinancings, modifications, and replacements (describe):

ACCOUNT NUMBER

NOTE NUMBER 00003

☐ All Debts. All present and future debts, even if this Agreement is not referenced, the debts are also secured by other collateral, or the future debt is unrelated to or of a different type than the current debt. Nothing in this Agreement is a commitment to make future loans or advances.
 SECURITY INTEREST. To secure the payment and performance of the Secured Debts, Debtor gives Secured Party a security interest in all of the Property described in this Agreement that Debtor owns or has sufficient rights in which to transfer an interest, now or in the future, wherever the Property is or will be located, and all proceeds and products of the Property. "Property" includes all parts, accessories, repairs, replacements, improvements, and accessions to the Property; any original evidence of title or ownership; and all obligations that support the payment or performance of the Property. "Proceeds" includes anything acquired upon the sale, lease, license, exchange, or other disposition of the Property; any rights and claims arising from the Property; and any collections and distributions on account of the Property. This Agreement remains in effect until terminated in writing, even if the Secured Debts are paid and Secured Party is no longer obligated to advance funds to Debtor or Borrower.

PROPERTY DESCRIPTION. The Property is described as follows:

- ☐ Accounts and Other Rights to Payment: All rights to payment, whether or not earned by performance, including, but not limited to, payment for property or services sold, leased, rented, licensed, or assigned. This includes any rights and interests (including all liens) which Debtor may have by law or agreement against any account debtor or obligor of Debtor.
- ☐ Inventory: All inventory held for ultimate sale or lease, or which has been or will be supplied under contracts of service, or which are raw materials, work in process, or materials used or consumed in Debtor's business.
- ☐ Equipment: All equipment including, but not limited to, machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and record keeping equipment, parts, and tools. The Property includes any equipment described in a list or schedule Debtor gives to Secured Party, but such a list is not necessary to create a valid security interest in all of Debtor's equipment.
- ☐ Instruments and Chattel Paper: All instruments, including negotiable instruments and promissory notes and any other writings or records that evidence the right to payment of a monetary obligation, and tangible and electronic chattel paper.
- ☐ General Intangibles: All general intangibles including, but not limited to, tax refunds, patents and applications for patents, copyrights, trademarks, trade secrets, goodwill, trade names, customer lists, permits and franchises, payment intangibles, computer programs and all supporting information provided in connection with a transaction relating to computer programs, and the right to use Debtor's name.
- ☐ Documents: All documents of title including, but not limited to, bills of lading, dock warrants and receipts, and warehouse receipts.
- ☐ Farm Products and Supplies: All farm products including, but not limited to, all poultry and livestock and their young, along with their produce, products, and replacements; all crops, annual or perennial, and all products of the crops; and all feed, seed, fertilizer, medicines, and other supplies used or produced in Debtor's farming operations.
- ☐ Government Payments and Programs: All payments, accounts, general intangibles, and benefits including, but not limited to, payments in kind, deficiency payments, letters of entitlement, warehouse receipts, storage payments, emergency assistance and diversion payments, production flexibility contracts, and conservation reserve payments under any preexisting, current, or future federal or state government program.
- ☐ Investment Property: All investment property including, but not limited to, certificated securities, uncertificated securities, securities entitlements, securities accounts, commodity contracts, commodity accounts, and financial assets.
- ☐ Deposit Accounts: All deposit accounts including, but not limited to, demand, time, savings, passbook, and similar accounts.
- ☒ Specific Property Description: The Property includes, but is not limited by, the following (if required, provide real estate description):

FIRST REAL ESTATE MORTGAGE ON BOILING SPRING RD AT BLALOCK RD, BOILING SPRINGS, SC 29316

USE OF PROPERTY. The Property will be used for ☐ personal ☒ business ☐ agricultural ☐ _____ purposes.

SIGNATURES. Debtor agrees to the terms on pages 1 and 2 of this Agreement and acknowledges receipt of a copy of this Agreement.

DEBTOR

Blalock Investments, LLC
Paul Lund, MANAGER

SECURED PARTY

[Signature]

GENERAL PROVISIONS. Each Debtor's obligations under this Agreement are independent of the obligations of any other Debtor. Secured Party may sue each Debtor individually or together with any other Debtor. Secured Party may release any part of the Property and Debtor will remain obligated under this Agreement. The duties and benefits of this Agreement will bind the successors and assigns of Debtor and Secured Party. No modification of this Agreement is effective unless made in writing and signed by Debtor and Secured Party. Whenever used, the plural includes the singular and the singular includes the plural. Time is of the essence.

APPLICABLE LAW. This Agreement is governed by the laws of the state in which Secured Party is located. In the event of a dispute, the exclusive forum, venue, and place of jurisdiction will be the state in which Secured Party is located, unless otherwise required by law. If any provision of this Agreement is unenforceable by law, the unenforceable provision will be severed and the remaining provisions will still be enforceable.

NAME AND LOCATION. Debtor's name indicated on page 1 is Debtor's exact legal name. If Debtor is an individual, Debtor's address is Debtor's principal residence. If Debtor is not an individual, Debtor's address is the location of Debtor's chief executive offices or sole place of business. If Debtor is an entity organized and registered under state law, Debtor has provided Debtor's state of registration on page 1. Debtor will provide verification of registration and location upon Secured Party's request. Debtor will provide Secured Party with at least 30 days notice prior to any change in Debtor's name, address, or state of organization or registration.

WARRANTIES AND REPRESENTATIONS. Debtor has the right, authority, and power to enter into this Agreement. The execution and delivery of this Agreement will not violate any agreement governing Debtor or Debtor's property, or to which Debtor is a party. Debtor makes the following warranties and representations which continue as long as this Agreement is in effect:

- (1) Debtor is duly organized and validly existing in all jurisdictions in which Debtor does business;
- (2) the execution and performance of the terms of this Agreement have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law or order;
- (3) other than previously disclosed to Secured Party, Debtor has not changed Debtor's name or principal place of business within the last 10 years and has not used any other trade or fictitious name; and
- (4) Debtor does not and will not use any other name without Secured Party's prior written consent.

Debtor owns all of the Property, and Secured Party's claim to the Property is ahead of the claims of any other creditor, except as otherwise agreed and disclosed to Secured Party prior to any advance on the Secured Debts. The Property has not been used for any purpose that would violate any laws or subject the Property to forfeiture or seizure.

DUTIES TOWARD PROPERTY. Debtor will protect the Property and Secured Party's interest against any competing claim. Except as otherwise agreed, Debtor will keep the Property in Debtor's possession at the address indicated on page 1 of this Agreement. Debtor will keep the Property in good repair and use the Property only for purposes specified on page 1. Debtor will not use the Property in violation of any law and will pay all taxes and assessments levied or assessed against the Property. Secured Party has the right of reasonable access to inspect the Property, including the right to require Debtor to assemble and make the Property available to Secured Party. Debtor will immediately notify Secured Party of any loss or damage to the Property. Debtor will prepare and keep books, records, and accounts about the Property and Debtor's business, to which Debtor will allow Secured Party reasonable access.

Debtor will not sell, offer to sell, license, lease, or otherwise transfer or encumber the Property without Secured Party's prior written consent. Any disposition of the Property will violate Secured Party's rights, unless the Property is inventory sold in the ordinary course of business at fair market value. If the Property includes chattel paper or instruments, either as original collateral or as proceeds of the Property, Debtor will record Secured Party's interest on the face of the chattel paper or instruments. If the Property includes accounts, Debtor will not settle any account for less than the full value, dispose of the accounts by assignment, or make any material change in the terms of any account without Secured Party's prior written consent. Debtor will collect all accounts in the ordinary course of business, unless otherwise required by Secured Party. Debtor will keep the proceeds of the accounts, and any goods returned to Debtor, in trust for Secured Party and will not commingle the proceeds or returned goods with any of Debtor's other property. Secured Party has the right to require Debtor to pay Secured Party the full price on any returned items. Secured Party may require account debtors to make payments under the accounts directly to Secured Party. Debtor will deliver the accounts to Secured Party at Secured Party's request. Debtor will give Secured Party all statements, reports, certificates, lists of account debtors (showing names, addresses, and amounts owing), invoices applicable to each account, and any other data pertaining to the accounts as Secured Party requests.

If the Property includes farm products, Debtor will provide Secured Party with a list of the buyers, commission merchants, and selling agents to or through whom Debtor may sell the farm products. Debtor authorizes Secured Party to notify any additional parties regarding Secured Party's interest in Debtor's farm products, unless prohibited by law. Debtor agrees to plant, cultivate, and harvest crops in due season. Debtor will not use any loan proceeds for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as explained by federal law.

If Debtor pledges the Property to Secured Party (delivers the Property into the possession or control of Secured Party or a designated third party), Debtor will, upon receipt, deliver any proceeds and products of the Property to Secured Party. Debtor will provide Secured Party with any notices, documents, financial statements, reports, and other information relating to the Property Debtor receives as the owner of the Property.

PERFECTION OF SECURITY INTEREST. Debtor authorizes Secured Party to file a financing statement covering the Property. Debtor will comply with, facilitate, and otherwise assist Secured Party in connection with obtaining possession or control over the Property for purposes of perfecting Secured Party's interest under the Uniform Commercial Code.

INSURANCE. Debtor agrees to keep the Property insured against the risks reasonably associated with the Property until the Property is released from this Agreement. Debtor will maintain this insurance in the amounts Secured Party requires. Debtor may choose the insurance company, subject to Secured Party's approval, which will not be unreasonably withheld. Debtor will have the insurance provider name Secured Party as loss payee on the insurance policy. Debtor will give Secured Party and the insurance provider immediate notice of any loss. Secured Party may apply the insurance proceeds toward the Secured Debts. Secured Party may require additional security as a condition of permitting any insurance proceeds to be used to repair or replace the Property. If Secured Party acquires the Property in damaged condition, Debtor's rights to any insurance policies and proceeds will pass to Secured Party to the extent of the Secured Debts. Debtor will immediately notify Secured Party of the cancellation or termination of insurance. If Debtor fails to keep the Property insured, or fails to provide Secured Party with proof of insurance, Secured Party may obtain insurance to protect Secured Party's interest in the Property. The insurance may include coverages not originally required of Debtor, may be written by a company other than one Debtor would choose, and may be written at a higher rate than Debtor could obtain if Debtor purchased the insurance.

AUTHORITY TO PERFORM. Debtor authorizes Secured Party to do anything Secured Party deems reasonably necessary to protect the Property and Secured Party's interest in the Property. If Debtor fails to perform any of Debtor's duties under this Agreement, Secured Party is authorized, without notice to Debtor, to perform the duties or cause them to be performed. These authorizations include, but are not limited to, permission to pay for the repair, maintenance, and preservation of the Property and take any action to realize the value of the Property. Secured Party's authority to perform for Debtor does not create an obligation to perform, and Secured Party's failure to perform will not preclude Secured Party from exercising any other rights under the law or this Agreement. If Secured Party performs for Debtor, Secured Party will use reasonable care. Reasonable care will not include any steps necessary to preserve rights against prior parties or any duty to take action in connection with the management of the Property.

If Secured Party comes into possession of the Property, Secured Party will preserve and protect the Property to the extent required by law. Secured Party's duty of care with respect to the Property will be satisfied if Secured Party exercises reasonable care in the safekeeping of the Property or in the selection of a third party in possession of the Property. Secured Party may enforce the obligations of an account debtor or other person obligated on the Property. Secured Party may exercise Debtor's rights with respect to the account debtor's or other person's obligations to make payment or otherwise render performance to Debtor, and enforce any security interest that secures such obligations.

PURCHASE MONEY SECURITY INTEREST. If the Property includes items purchased with the Secured Debts, the Property purchased with the Secured Debts will remain subject to Secured Party's security interest until the Secured Debts are paid in full. Payments on any non-purchase money loan also secured by this Agreement will not be applied to the purchase money loan. Payments on the purchase money loan will be applied first to the non-purchase money portion of the loan, if any, and then to the purchase money portion in the order in which the purchase money Property was acquired. If the purchase money Property was acquired at the same time, payments will be applied in the order Secured Party selects. No security interest will be terminated by application of this formula.

DEFAULT. Debtor will be in default if:

- (1) Debtor (or Borrower, if not the same) fails to make a payment in full when due;
- (2) Debtor fails to perform any condition or keep any covenant on this or any debt or agreement Debtor has with Secured Party;
- (3) a default occurs under the terms of any instrument or agreement evidencing or pertaining to the Secured Debts;
- (4) anything else happens that either causes Secured Party to reasonably believe that Secured Party will have difficulty in collecting the Secured Debts or significantly impairs the value of the Property.

WAIVER OF HEARING PRIOR TO IMMEDIATE POSSESSION. Secured Party may immediately seize the Property upon Debtor's default. Debtor agrees to waive the right to five days' notice and a prehearing hearing prior to seizure of the Property.

REMEDIES. After Debtor defaults, and after Secured Party gives any legally required notice and opportunity to cure the default, Secured Party may at Secured Party's option do any one or more of the following:

- (1) make all or any part of the Secured Debts immediately due and accrue interest at the highest post-maturity interest rate;
- (2) require Debtor to gather the Property and make it available to Secured Party in a reasonable fashion;
- (3) enter upon Debtor's premises and take possession of all or any part of Debtor's property for purposes of preserving the Property or its value and use and operate Debtor's property to protect Secured Party's interest, all without payment or compensation to Debtor;
- (4) use any remedy allowed by state or federal law, or provided in any agreement evidencing or pertaining to the Secured Debts.

If Secured Party repossesses the Property or enforces the obligations of an account debtor, Secured Party may keep or dispose of the Property as provided by law. Secured Party will apply the proceeds of any collection or disposition first to Secured Party's expenses of enforcement, which includes reasonable attorneys' fees and legal expenses to the extent not prohibited by law, and then to the Secured Debts. Debtor (or Borrower, if not the same) will be liable for the deficiency, if any.

By choosing any one or more of these remedies, Secured Party does not give up the right to use any other remedy. Secured Party does not waive a default by not using a remedy.

WAIVER. Debtor waives all claims for damages caused by Secured Party's acts or omissions where Secured Party acts in good faith.

NOTICE AND ADDITIONAL DOCUMENTS. Where notice is required, Debtor agrees that 10 days prior written notice will be reasonable notice to Debtor under the Uniform Commercial Code. Notice to one party is notice to all parties. Debtor agrees to sign, deliver, and file any additional documents and certifications Secured Party considers necessary to perfect, continue, or preserve Debtor's obligations under this Agreement and to confirm Secured Party's lien status on the Property.

ALLONGE

This Allonge is made to that certain Promissory Note dated October 1, 2008 in the original principal amount of ONE MILLION NINE HUNDRED THOUSAND AND NO/100^{THS} DOLLARS (\$1,900,000.00), and made by Blalock Investments, LLC, to the order of Synovus Bank, a Georgia bank, formerly known as Columbus Bank and Trust Company, as successor in interest through name change and by merger with The National Bank of South Carolina.

Pay to the order of TANDY LOANCO, LLC, not in its individual capacity, but solely as trustee for PEACH LOANCO GRANTOR TRUST I, without recourse, representation or warranty.

**[Remainder of Page Intentionally Left Blank;
Signature Page Follows]**

[Allonge - Blalock Investments, LLC]

Executed as of September 33, 2011.

SYNOVUS Bank, a Georgia bank

By: J.T. L. V.P.

Name: Joseph Sumner

Title: Vice President

[BANK SEAL]

[Allonge - Blalock Investments, LLC]

4514-156

Prepared by and Return to:
Chrystal D. LaRoche, Esq.
ROPES & GRAY LLP
1211 Avenue of the Americas
New York, NY 10036-8704
T +1 212 596 9458 | F +1 646 728 1509

MTG-2011-38877
Recorded 5 Pages on 11/3/2011 10:18:48 AM
Recording Fee: \$10.00 Documentary Stamps: \$0.00
Office of Register of Deeds, Spartanburg, S.C.
Dorothy Earle, Register



ASSIGNMENT OF MORTGAGE AND COLLATERAL DOCUMENTS

This Assignment ("Assignment") is made as of September 23, 2011, by Synovus Bank, a Georgia bank, formerly known as Columbus Bank and Trust Company, as successor in interest through name change and by merger with The National Bank of South Carolina ("Assignor"), located at 8025 Westside Parkway, Alpharetta, GA 30009, Attention: Joseph Sumner, and given to and agreed to by TANDY LOANCO, LLC, not in its individual capacity, but solely as trustee for PEACH LOANCO GRANTOR TRUST I ("Assignee"), located at 301 Commerce Street, Suite 3300, Fort Worth, Texas 76102, Attention: General Counsel. Capitalized terms used herein but not defined herein have the meanings ascribed to them in that certain Contract for Sale and Assignment of Notes and other Loan Documents dated September 19, 2011, between Assignor and Assignee (the "Agreement").

Witnesseth

For and in consideration of the sum of \$10.00 and other good and valuable consideration, to Assignor in hand paid, receipt thereof is hereby acknowledged, Assignor hereby sells, assigns, endorses, transfers, grants, conveys and quitclaims to Assignee, all of Assignor's right, title and interest in and to the mortgage and collateral documents executed and delivered by Blalock Investments, LLC ("Borrower") and listed on Schedule A, including the right to collect all sums secured thereby, attached hereto and incorporated herein by reference.

Except as otherwise specifically stated in that certain Assignment of Note and Other Loan Documents dated September 23, 2011, between Assignor and Assignee, or as set forth in the Agreement, Assignor specifically disclaims any warranty, guaranty or representation, oral or written, past, present or future with respect to the Loan Documents, including, without limitation, (i) the validity, existence, or priority of any lien or security interest securing the Loans; (ii) the existence or basis for any claim, counterclaim, defense or offset relating to the Loans; (iii) the financial condition of Borrower; (iv) the compliance of the Loans with any laws, ordinances or regulations of any government or other body; (v) the condition of any collateral securing the Loans; (vi) the general assignability of the Loan Documents, and (vii) the future performance of the Borrower, the collateral or any guarantor of the Loan Documents. Assignee acknowledges and represents to Assignor that having been given the opportunity to undertake its own investigation of the Loan Documents, Assignee is relying solely on its own investigation of the Notes and Security Deeds and not any information provided or to be provided by Assignor. The sale of the Loan Documents as provided for herein is made on an "AS IS", "WHERE IS" basis, with all faults, and Assignee, by acceptance of this Assignment, expressly acknowledges that

[Assignment - Blalock Investments, LLC]

0047

PLAINTIFF'S
EXHIBIT

E

4514 157

ASSIGNOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW RELATING TO THE LOAN DOCUMENTS, EXCEPT AS SPECIFICALLY SET FORTH HEREIN OR AS SET FORTH IN THE AGREEMENT. Notwithstanding anything to the contrary in the foregoing, Assignor represents and warrants to Assignee that Assignor is the holder of the Notes and Security Deeds and has the right to assign same to Assignee.

[Signatures appear on the following page]

[Assignment – Blalock Investments, LLC]

4514 158

IN WITNESS WHEREOF, the undersigned have executed this Assignment as of the date hereof.

Signed Sealed and Delivered in the Presence of: **ASSIGNOR:**

Will Lovell
Witness

Print Name: Will Lovell

Cheryle Betts
Witness

Print Name: Cheryle Betts

Synovus Bank, a Georgia bank

By: J. Sumner, V.P.
Name: Joseph Sumner
Title: Vice President

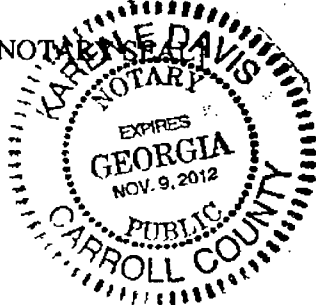
[Bank Seal]

STATE OF Georgia
COUNTY OF Fulton

The foregoing instrument was acknowledged before me this 23rd day of September, 2011, by Joseph Sumner, as Vice President of Synovus Bank, a Georgia bank, on behalf of the bank. He/She is either [x] personally known to me, or [] produced as identification.

My Commission Expires:

[AFFIX NOTARY SEAL]



Karen E. Davis
(Signature)

Karen E. Davis
(Printed Name)

Notary Public, State of Georgia

[Assignment - Blalock Investments, LLC]

Signed Sealed and Delivered in the Presence of:

ASSIGNEE:

Jennifer Epstein
Witness

TANDY LOANCO, LLC, not in its individual capacity, but solely as trustee for PEACH LOANCO GRANTOR TRUST I

Print Name: Jennifer Epstein

By: Ronald Cami
Name: Ronald Cami
Title: Vice President

[Signature]
Witness

Print Name: Teni Sarkissian

STATE OF California
COUNTY OF San Francisco

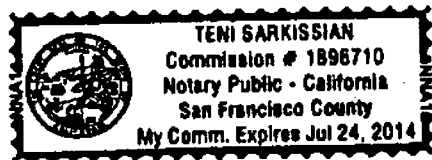
The foregoing instrument was acknowledged before me this 21st day of September, 2011, by Ronald Cami, as Vice President of Tandy Loanco, LLC, not individually but solely in its capacity as Trustee, on behalf of Peach Loanco Grantor Trust I. He is either [] personally known _____ to me, or [X] produced US Passport as identification.

My Commission Expires: 7/24/14

[Signature]
(Signature)

[AFFIX NOTARY SEAL]

Teni Sarkissian
(Printed Name)
Notary Public, State of CA



Schedule A

Mortgages and Collateral Documents

1. Mortgage of Real Property dated October 1, 2008, recorded at Deed Book 4142, Page 231 in the Spartanburg County, South Carolina records encumbering that certain property in Spartanburg County, South Carolina.

ALLONGE TO PROMISSORY NOTE

ALLONGE to that certain Promissory Note dated October 1, 2008, in the original principal amount of \$1,900,000.00 (the "Note") executed by Blalock Investments, LLC, a limited liability company, and payable to the order of National Bank of South Carolina, as endorsed by Allonge dated September 23, 2011, from Synovus Bank, a Georgia Bank (Synovus Bank is formerly known as Columbus Bank and Trust Company, and is successor in interest through name change and by merger with The National Bank of South Carolina), to Tandy Loanco, LLC, not in its individual capacity, but solely as trustee for Peach Loanco Grantor Trust I, ("Initial Assignor").

Assignor hereby distributes, assigns, transfers, sets over and conveys the Note unto Peach Loanco, LLC, a Delaware limited liability company ("Assignee").

Dated: Effective as of Sept 29, 2015.

Tandy Loanco, LLC, not individually, but solely in its capacity as trustee for Peach Loanco Grantor Trust I

By: [Signature]
Name: Jennifer Mello
Title: Vice president

MTG-2015-43660



MTG BK 6031 PG 430-432

Recorded 3 Pages on 10/07/2015 08:44:37 AM

Recording Fee: \$8.00

Office of REGISTER OF DEEDS, SPARTANBURG, S.C.
Dorothy Earle, Register Of Deeds

After recording return to:
Nelson Mullins Riley & Scarborough, LLP
c/o Frank B.B. Knowlton
P.O. Box 11070
Columbia, SC 29211

Cross Reference:

Cross reference to Book 4142 at Page 231

TRANSFER AND ASSIGNMENT OF MORTGAGE OF REAL PROPERTY

For value received, Tandy Loanco, LLC, not in its individual capacity, but solely as trustee for Peach Loanco Grantor Trust I, whose mailing address is c/o Capital Crossing Servicing Company LLC, 99 High Street, Boston, Massachusetts 02110 ("Assignor"), hereby distributes, assigns, transfers, sets over and conveys unto its beneficiary, **Peach Loanco, LLC**, a Delaware limited liability company, its successors or assigns, whose mailing address is c/o Capital Crossing Servicing Company LLC, 99 High Street, Boston, Massachusetts 02110 ("Assignee"), all of Assignor's right, title and interest in, to and under that certain Mortgage of Real Property dated October 1, 2008 from Blalock Investments, LLC to National Bank of South Carolina recorded on October 3, 2008 in **Book 4142 at Page 231**, Spartanburg County, South Carolina records and the indebtedness secured thereby, the property described therein, and all its rights, privileges and powers under the terms thereof. The Mortgage of Real Estate was subsequently assigned to Tandy Loanco, LLC, not in its individual capacity, but solely as trustee for Peach Loanco Grantor Trust I by Assignment of Mortgage and Collateral Documents recorded on November 3, 2011 in Book 4514 at Page 156.

IN WITNESS WHEREOF, the undersigned has hereunto caused this instrument to be signed and sealed this 21 day of Sept 2015.

{signatures attached}

WITNESSES:

N. Miller
Witness #1 Victoria Miller

Michelle Dow
Witness #2/Notary Michelle Dow

ASSIGNOR:

Tandy Loanco, LLC, not in its individual capacity, but solely as trustee for Peach Loanco Grantor Trust I

By: Jennifer Mello

Name: Jennifer Mello

Title: vice president

ACKNOWLEDGMENT

STATE OF _____)
COUNTY OF _____)

I, _____, the undersigned, a Notary Public for the State of _____, do hereby certify that _____, as _____ of Tandy Loanco, LLC, not in its individual capacity, but solely as trustee for Peach Loanco Grantor Trust I, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

SWORN to and subscribed before me
this _____ day of _____, 2015.

see attached

Notary Public for the State of _____
My commission expires: _____

California Jurat Certificate

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Francisco

S.S.

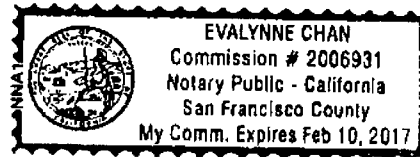
Subscribed and sworn to (or affirmed) before me on this 29 day of September

20 15, by Jennifer Mello and

_____, proved to me on the basis of

satisfactory evidence to be the person(s) who appeared before me.





OPTIONAL INFORMATION

Description of Attached Document

The certificate is attached to a document titled/for the purpose of

transfer & assignment of Mortgage of
Real Property

containing _____ pages, and dated _____

Method of Affiant Identification

Proved to me on the basis of satisfactory evidence:
☐ form(s) of identification ☐ credible witness(es)

Notarial event is detailed in notary journal on:

Page # _____ Entry # _____

Notary contact: _____

Other

☐ Affiant(s) Thumbprint(s) ☐ Describe: _____

ALLONGE TO PROMISSORY NOTE

ALLONGE to that certain Promissory Note dated October 1, 2008, in the original principal amount of \$1,900,000.00 (the "Note") executed by Blalock Investments, LLC, a limited liability company, and payable to the order of National Bank of South Carolina, as endorsed by Allonge dated September 23, 2011, from Synovus Bank, a Georgia Bank (Synovus Bank is formerly known as Columbus Bank and Trust Company, and is successor in interest through name change and by merger with The National Bank of South Carolina), to Tandy Loanco, LLC, a Delaware limited liability company, not in its individual capacity, but solely as trustee for Peach Loanco Grantor Trust I, and as further endorsed by Allonge dated _____, 2015 from Tandy Loanco, LLC, not in its individual capacity, but solely as trustee for Peach Loanco Grantor Trust I, to Peach Loanco, LLC, a Delaware limited liability company ("Assignor").

Assignor hereby sells, assigns, transfers, sets over and conveys the Note unto Peach REO, LLC, a Delaware limited liability company, its successors and/or assigns ("Assignee").

Dated: Effective as of Sept 29, 2015.

Peach Loanco, LLC, a Delaware limited liability company

By: [Signature]
Name: Jennifer Melto
Title: Vice president



After recording return to:
Nelson Mullins Riley & Scarborough, LLP
c/o Frank B.B. Knowlton
P.O. Box 11070
Columbia, SC 29211

Cross Reference:

Cross reference to Book 4142 at Page 231

TRANSFER AND ASSIGNMENT OF MORTGAGE OF REAL ESTATE

For value received, Peach Loanco, LLC, a Delaware limited liability company, whose mailing address is c/o Capital Crossing Servicing Company LLC, 99 High Street, Boston, Massachusetts 02110 ("Assignor"), hereby sells, assigns, transfers, sets over and conveys unto **Peach REO, LLC**, a Delaware limited liability company, its successors or assigns, whose mailing address is c/o Capital Crossing Servicing Company LLC, 99 High Street, Boston, Massachusetts 02110 ("Assignee"), all of Assignor's right, title and interest in, to and under that certain Mortgage of Real Property dated October 1, 2008 from Blalock Investments, LLC to National Bank of South Carolina recorded on October 3, 2008 in **Book 4142 at Page 231**, Spartanburg County, South Carolina records and the indebtedness secured thereby, the property described therein, and all its rights, privileges and powers under the terms thereof. The Mortgage of Real Estate was subsequently assigned to Tandy Loanco, LLC, not in its individual capacity, but solely as trustee for Peach Loanco Grantor Trust I by Assignment of Mortgage and Collateral Documents recorded on November 3, 2011 in Book 4514 at Page 156. The Mortgage of Real Estate was subsequently assigned to Peach Loanco Grantor Trust I by Transfer and Assignment of Mortgage of Real Estate recorded simultaneously herewith.

IN WITNESS WHEREOF, the undersigned has hereunto caused this instrument to be signed and sealed this 29 day of Sept 2015.

{signatures attached}

WITNESSES:

V. Miller
Witness #1 Victoria Miller

Michelle Dow
Witness #2/Notary Michelle Dow

ASSIGNOR:

Peach Loanco, LLC, a Delaware limited liability company,

By: J. Melto

Name: Jennifer Melto

Title: Vice president

ACKNOWLEDGMENT

STATE OF _____)
COUNTY OF _____)

I, _____, the undersigned, a Notary Public for the State of _____, do hereby certify that _____, as _____ of Peach Loanco, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

SWORN to and subscribed before me
this _____ day of _____, 2015.

see attached

Notary Public for the State of _____
My commission expires: _____

California Jurat Certificate

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Francisco

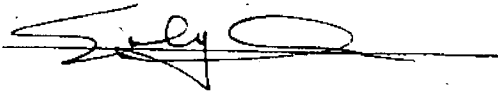
S.S.

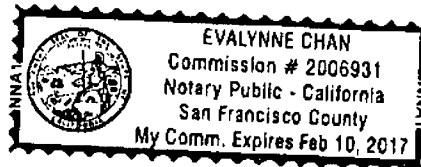
Subscribed and sworn to (or affirmed) before me on this 29 day of September

20 15, by Jennifer Melto and

_____, proved to me on the basis of

satisfactory evidence to be the person(s) who appeared before me.





OPTIONAL INFORMATION

Description of Attached Document

The certificate is attached to a document titled/for the purpose of

transfer + assignment of Mortgage
of Real Estate

containing _____ pages, and dated _____

Method of Affiant Identification

Proved to me on the basis of satisfactory evidence.
form(s) of identification _____; credible witness(es) _____

Notarial event is detailed in notary journal on:

Page # _____ Entry # _____

Notary contact: _____

Other _____

Affiant(s) Thumbprint(s) _____ Describe: _____

GUARANTY

10/01/2008

ORIGINAL

DUNCAN

(City)

SC

(State)

TODD SMITH

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce National Bank of South Carolina (herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of

BLALOCK INVESTMENTS LLC

(herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: ACCT#

NOTE# 00003

and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

B. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debt(s):

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all Indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to Indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all Indebtedness, whether due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all Indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ _____ (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated _____; ☐ secured by _____

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.

By TODD SMITH

By _____

By _____

"Undersigned" shall refer to all persons who sign this guaranty, severally and jointly.

PLAINTIFF'S
EXHIBIT

J

ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution thereof; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under §1111(b)(2) of the United States Bankruptcy Code.

7. The Undersigned waives any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to Indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the Undersigned will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any Indebtedness, or any setoff available against Lender to Borrower or any such other person, whether or not on account of a related transaction. The Undersigned expressly agrees that the Undersigned shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing Indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. The undersigned shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though the Borrower's obligations had not been discharged.

8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay Indebtedness even though any other person obligated to pay Indebtedness, including Borrower, has such obligation discharged in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy petition interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to Indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.

9. If any payment applied by Lender to Indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the Indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such Indebtedness as fully as if such application had never been made.

10. The Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay Indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.

11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. Lender shall not be required first to resort for payment of the Indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for Indebtedness, before enforcing this guaranty.

12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to Lender as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

13. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, shall be binding upon the Undersigned and the heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefit of Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and Lender. This guaranty shall be governed by the laws of the State in which it is executed. The Undersigned waives notice of Lender's acceptance hereof.

31840/01507
(3)

GUARANTY

10/01/2008

ORIGINAL

DUNCAN

(City)

SC

(State)

DEBRA MASUGA

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce National Bank of South Carolina

(herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of

BLALOCK INVESTMENTS LLC

(herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: ACCT#

NOTE# 00003

and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

B. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debt(s):

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all Indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to Indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all Indebtedness, whether due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all Indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ _____. (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated _____;
☐ secured by _____

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.

By Debra Masuga By full and sole Auth.

By _____

By _____

"Undersigned" shall refer to all persons who sign this guaranty, severally and jointly.

ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under §1111(b)(2) of the United States Bankruptcy Code.
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8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay Indebtedness even though any other person obligated to pay Indebtedness, including Borrower, has such obligation discharged in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy petition interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to Indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.
9. If any payment applied by Lender to Indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the Indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such Indebtedness as fully as if such application had never been made.
10. The Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay Indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.
11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. Lender shall not be required first to resort for payment of the Indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for Indebtedness, before enforcing this guaranty.
12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to Lender as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.
13. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, shall be binding upon the Undersigned and the heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefit of Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and Lender. This guaranty shall be governed by the laws of the State in which it is executed. The Undersigned waives notice of Lender's acceptance hereof.

Common Pleas
Clerk : M Hope Blackley
Spartanburg County
Spartanburg, SC 29304
(864) 596-2591

Received From: Knowlton, Francis B.B.
PO Box 11070
Columbia, SC 29211

Date: 10/28/2015
Receipt #: 92814
Clerk: c42pmoore

Paying for: Peach Reo Llc,

Transaction Type: Payment

Reference #: CK#801712

Payment Type: Check \$150.00

Comment:

Total Paid: \$150.00

Non-Refundable

Total Received: \$150.00

Change Due: \$0.00

Case #	Caption	Previous Balance	Amount Paid	Balance Due
2015CP4204448	Peach Reo Llc VS Blackstock Investments Llc	\$150.00	\$150.00	\$0.00

Total Cases: 1	\$150.00	\$150.00	\$0.00
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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

Peach REO, LLC, a Delaware limited liability company,) Civil Action No. 2015-CP-42-
)

Plaintiff,)

vs.)

Blalock Investments, LLC; Todd Smith)
and Debra Masuga,)

Defendants.)

2015-CP-42-919

LIS PENDENS
(Non-Jury)

2015-CP-42-4448

NOTICE IS HEREBY GIVEN that an action has been commenced and is pending in the above referred to Court upon the Complaint of the above-named Plaintiff against the above-named Defendant for the foreclosure of a certain mortgage of property given by Blalock Investments, LLC to National Bank of South Carolina, as assigned to the Plaintiff, recorded on October 3, 2008, in the Office of the Register of Deeds for Spartanburg County in Mortgage Book 4142 at Page 231, and encumbering the following described property:

Real Property:

PARCEL 1:

All that certain piece, parcel or tract of land, lying, situate and being in the State of South Carolina, County of Spartanburg, containing 2.02 acres, more or less, as shown on a plat prepared for Boiling Springs Luxury Apartments, LLC by Butler Associates Reg. Land Surveyor dated March 8, 2004 and recorded March 19, 2004 in Plat Book 155 at Page 750 in the Register of Deeds Office for Spartanburg County. Said property being described on said plat as "2.02 Ac Outparcel". For a more complete and particular description, reference is hereby made to the aforesaid plat.

PARCEL 2:

All that certain piece, parcel or tract of land, lying, situate and being in the State of South Carolina, County of Spartanburg, located at the northwestern corner of the intersection of

South Carolina Highway No. 9 and Blalock Road, containing 0.949 acres, more or less, as shown on a plat prepared for Blalock Road, LLC by Tru-Line Surveying Co., Inc. dated May 2, 2005 and recorded in Plat Book 157 at Page 914 in the Register of Deeds Office for Spartanburg County. For a more complete and particular description, reference is hereby made to the aforesaid plat.

Also to include the following Personal Property:

All buildings, improvements, fixtures, or appurtenances now or hereafter erected thereon, including all apparatus, equipment, fixtures, or articles, whether in in single units or centrally controlled, used to supply heat, gas, air conditioning, water, light, power, refrigeration, ventilation or other services, and also together with any screens, window shades, storm doors and windows, screen doors, awnings, stoves and water heaters (all of which are declared to be a part of said real estate whether physically attached thereto or not.

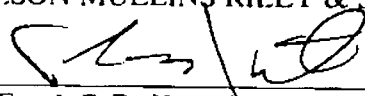
This being the same property conveyed to Blalock Investments, LLC by deed of Blalock Road, LLC, recorded in the Office of the Register of Deeds for Spartanburg County, on June 11, 2008 in Book 91-P at Page 213.

Together with all rights and easements benefitting the subject property, if any, set forth in that certain Non-exclusive Storm Water Drainage Easement and Access Easement Agreement dated March 19, 2004 and recorded in Deed Book 79-Y at Page 516, and in that certain deed of Boiling Springs Luxury Apartments, LLC to Blalock Road, LLC dated February 28, 2005 and recorded in Deed Book 82-L at Page 15, in the Register of Deeds Office for Spartanburg County.

TMS No.: 2-44-00-048.00

Property Address: 2634 Boiling Springs Road, Boiling Springs

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Frank B.B. Knowlton, SC Bar No. 003588
E-Mail: frank.knowlton@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

ATTORNEYS FOR THE PLAINTIFF

Columbia, South Carolina

OCTOBER 22, 2015

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Peach REO, LLC

Plaintiff(s)

vs.

Blalock Investments, LLC, et. al.

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015-CP-42-4448

(Please Print)

Submitted By: Frank B.B. Knowlton

Address: Nelson Mullins Riley & Scarborough, LLP

P.O. Box 11070

Columbia, SC 29211

SC Bar #: 3588

Telephone #: 803-799-2000

Fax #: 803-255-9644

Other:

E-mail: frank.knowlton@nelsonmullins.com

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|--|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☒ Foreclosure (420) |
| ☐ General (130) | Previous Notice of Intent Case # | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | 20____-____-____ | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | ☐ Notice/ File Med Mal (230) | ☐ Personal Injury (350) | ☐ Possession (450) |
| | ☐ Other (299) | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |
-
- | | | | |
|--|---|--|---|
| Inmate Petitions | Administrative Law/Relief | Judgments/Settlements | Appeals |
| ☐ PCR (500) | ☐ Reinstate Drv. License (800) | ☐ Death Settlement (700) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Judicial Review (810) | ☐ Foreign Judgment (710) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Relief (820) | ☐ Magistrate's Judgment (720) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Permanent Injunction (830) | ☐ Minor Settlement (730) | ☐ Municipal (930) |
| | ☐ Forfeiture-Petition (840) | ☐ Transcript of Judgment (740) | ☐ Probate Court (940) |
| | ☐ Forfeiture-Consent Order (850) | ☐ Lis Pendens (750) | ☐ SCIXOT (950) |
| | ☐ Other (899) | ☐ Transfer of Structured Settlement | ☐ Worker's Comp (960) |
| | | ☐ Payment Rights Application (760) | ☐ Zoning Board (970) |
| | | ☐ Confession of Judgment (770) | ☐ Public Service Commission (990) |
| | | ☐ Petition for Workers Compensation Settlement Approval (780) | ☐ Employment Security Commission (991) |
| | | ☐ Other (799) | ☐ Other (999) |
-
- | | |
|--|---|
| Special/Complex /Other | |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) |
| ☐ Medical (620) | ☐ Foreign Subpoenas (650) |
| ☐ Other (699) | ☐ Motion to Quash Subpoena in Out-of-County Action (660) |
| ☐ Sexual Predator (510) | |

Submitting Party Signature: 

Date: 10-22-15

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

SCCA / 234 (10/2014)

0067

Page 1 of 2

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

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

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

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

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

COPY

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Peach REO, LLC, a Delaware limited
liability company,

Plaintiff,

vs.

Blalock Investments, LLC; Todd Smith;
Debra Masuga; Subway Real Estate, LLC
and County of Spartanburg, a political
subdivision of the State of South
Carolina,

Defendants.

Civil Action No. 2015-CP-42-4448

AMENDED LIS PENDENS
(Non-Jury)

FILED
2015 NOV 17 AM 10:23
CLERK OF COURT
Spartanburg County

NOTICE IS HEREBY GIVEN that an action has been commenced and is pending in the above referred to Court upon the Complaint of the above-named Plaintiff against the above-named Defendant for the foreclosure of a certain mortgage of property given by Blalock Investments, LLC to National Bank of South Carolina, as assigned to the Plaintiff, recorded on October 3, 2008, in the Office of the Register of Deeds for Spartanburg County in Mortgage Book 4142 at Page 231, and encumbering the following described property:

Real Property:

PARCEL 1:

All that certain piece, parcel or tract of land, lying, situate and being in the State of South Carolina, County of Spartanburg, containing 2.02 acres, more or less, as shown on a plat prepared for Boiling Springs Luxury Apartments, LLC by Butler Associates Reg. Land Surveyor dated March 8, 2004 and recorded March 19, 2004 in Plat Book 155 at Page 750 in the Register of Deeds Office for Spartanburg County. Said property being described on said plat as "2.02 Ac Outparcel". For a more complete and particular description, reference is hereby made to the aforesaid plat.

PARCEL 2:

All that certain piece, parcel or tract of land, lying, situate and being in the State of South Carolina, County of Spartanburg, located at the northwestern corner of the intersection of South Carolina Highway No. 9 and Blalock Road, containing 0.949 acres, more or less, as shown on a plat prepared for Blalock Road, LLC by Tru-Line Surveying Co., Inc. dated May 2, 2005 and recorded in Plat Book 157 at Page 914 in the Register of Deeds Office for Spartanburg County. For a more complete and particular description, reference is hereby made to the aforesaid plat.

Also to include the following Personal Property:

All buildings, improvements, fixtures, or appurtenances now or hereafter erected thereon, including all apparatus, equipment, fixtures, or articles, whether in in single units or centrally controlled, used to supply heat, gas, air conditioning, water, light, power, refrigeration, ventilation or other services, and also together with any screens, window shades, storm doors and windows, screen doors, awnings, stoves and water heaters (all of which are declared to be a part of said real estate whether physically attached thereto or not.

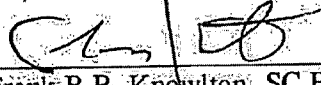
This being the same property conveyed to Blalock Investments, LLC by deed of Blalock Road, LLC, recorded in the Office of the Register of Deeds for Spartanburg County, on June 11, 2008 in Book 91-P at Page 213.

Together with all rights and easements benefitting the subject property, if any, set forth in that certain Non-exclusive Storm Water Drainage Easement and Access Easement Agreement dated March 19, 2004 and recorded in Deed Book 79-Y at Page 516, and in that certain deed of Boiling Springs Luxury Apartments, LLC to Blalock Road, LLC dated February 28, 2005 and recorded in Deed Book 82-L at Page 15, in the Register of Deeds Office for Spartanburg County.

TMS No.: 2-44-00-048.00

Property Address: 2634 Boiling Springs Road, Boiling Springs

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Frank B.B. Knowlton, SC Bar No. 003588
E-Mail: frank.knowlton@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

ATTORNEYS FOR THE PLAINTIFF

Columbia, South Carolina

November 12, 2015

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Peach REO, LLC

Plaintiff(s)

vs.

Blalock Investments, LLC, et. al.

Defendant(s)

(Please Print)

Submitted By: Frank B.B. Knowlton

Address: Nelson Mullins Riley & Scarborough, LLP

P.O. Box 11070

Columbia, SC 29211

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

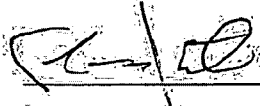
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|---|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -NI-
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☒ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
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☐ Death Settlement (700)
☐ Foreign Judgment (710)
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☐ Transfer of Structured Settlement
Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers
Compensation Settlement
Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission (990)
☐ Employment Security Commission (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Sexual Predator (510) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Foreign Subpoenas (650)
☐ Motion to Quash Subpoena
in Out-of-County Action (660) | | |

Submitting Party Signature: 

Date: 11-12-15

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

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

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

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

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

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

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

Peach REO, LLC, a Delaware limited) Civil Action No. 2015-CP-42-4448
liability company,)
)

Plaintiff,)

vs.)

**CERTIFICATE OF EXEMPTION
FROM ADR**

Blalock Investments, LLC; Todd Smith;)
Debra Masuga; Subway Real Estate,)
LLC and County of Spartanburg, a)
political subdivision of the State of)
South Carolina,)

Defendants.)
)

I certify that this action is exempt from mediation because:

_____ this is a special proceeding or action seeking extraordinary relief such as
mandamus, habeas corpus, or prohibition;

_____ this action is appellate in nature;

_____ this is a post-conviction relief matter;

_____ this is a forfeiture proceeding brought by the State;

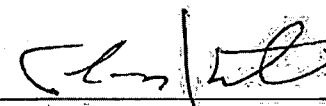
X this is a case involving a mortgage foreclosure;

_____ this is a contempt of court proceeding; or

_____ the parties submitted the case to voluntary mediation with a certified
mediator prior to the filing of this civil action.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Frank B.B. Knowlton, SC Bar No. 003588
E-Mail: frank.knowlton@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

ATTORNEYS FOR THE PLAINTIFF

Columbia, South Carolina

November 12, 2015

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

Peach REO, LLC, a Delaware limited liability company,) Civil Action No. 2015-CP-42-4448
)

Plaintiff,)

VS.)

**CERTIFICATION OF EXEMPTION
FROM ADMINISTRATIVE ORDER**

2011-05-02-01

(Non-Owner Occupied Dwelling)

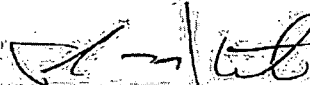
Blalock Investments, LLC; Todd Smith;
Debra Masuga; Subway Real Estate,
LLC and County of Spartanburg, a
political subdivision of the State of
South Carolina,)

Defendants.)

The Plaintiff by and through it undersigned attorney does hereby certify as follows:

- 1) That this is an action for the foreclosure of real property located in Spartanburg County, South Carolina.
- 2) That the Administrative Order of the Supreme Court of South Carolina dated May 2nd, 2011 (2011-05-02-01) does not apply to this foreclosure, in that the real property that is the subject of this foreclosure is not an "Owner-Occupied dwelling" as defined in the Order.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Frank B.B. Knowlton, SC Bar No. 003588
E-Mail: frank.knowlton@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

ATTORNEYS FOR THE PLAINTIFF

Columbia, South Carolina

November 12, 2015

RECEIVED
2015 NOV 17 AM 10:23
CLERK OF COURT
CLERK OF COURT

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

Peach REO, LLC, a Delaware limited liability company,) Civil Action No. 2015-CP-42-4448
)

Plaintiff,)

**AMENDED SUMMONS
(Non-Jury)**

vs.)

Blalock Investments, LLC; Todd Smith;)
Debra Masuga; Subway Real Estate,)
LLC and County of Spartanburg, a)
political subdivision of the State of)
South Carolina,)

Defendants.)

TO: THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Complaint upon the subscribers at 1320 Main Street, Post Office Box 11070, Columbia, South Carolina 29211, within thirty (30) days after service hereof except as to the United States of America, which shall have sixty (60) days, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTICE that pursuant to Rule 53(b), of the South Carolina Rules of Civil Procedure, as amended effective September 1, 2002, the Plaintiff will move for a general Order of Reference to the Master in Equity for Spartanburg County, which Order

shall, pursuant to Rule 53(b) of the SCRCF, specifically provide that the said Master in Equity is authorized and empowered to enter a final judgment in this action.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By:


Frank B.B. Knowlton, SC Bar No. 003588
E-Mail: frank.knowlton@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

ATTORNEYS FOR THE PLAINTIFF

Columbia, South Carolina

November 12, 2015

2015 NOV 17 AM 10:23
J.M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

Peach REO, LLC, a Delaware limited liability company,) Civil Action No. 2015-CP-42-4448
)

Plaintiff,)

AMENDED COMPLAINT

vs.)

**Foreclosure/Collection on Guaranty/
Receiver**

Blalock Investments, LLC; Todd Smith;
Debra Masuga; Subway Real Estate,
LLC and County of Spartanburg, a
political subdivision of the State of
South Carolina)

**Judgment Demanded Pursuant to
S.C. Code § 29-3-650
(Non-Jury)**

Defendants.)

The Plaintiff above-named, complaining of the Defendants herein, would respectfully show:

1. Plaintiff Peach REO, LLC, a Delaware limited liability company ("Plaintiff") is a limited liability company organized and existing under and pursuant to the laws of the State of Delaware.

2. Upon information and belief, the Defendant Blalock Investments, LLC is a limited liability company organized and existing under and pursuant to the laws of the State of South Carolina.

3. Upon information and belief, the Defendant Todd Smith is a citizen and resident of the County of Spartanburg County, State of South Carolina.

4. Upon information and belief, the Defendant Debra Masuga is a citizen and resident of the County of Charleston, State of South Carolina.

5. Upon information and belief, the Defendant Subway Real Estate, LLC is a limited liability company organized and existing under and pursuant to the laws of the State of Delaware, and doing business in the County of Spartanburg, State of South Carolina.

6. Upon information and belief, the Defendant County of Spartanburg, a political subdivision of the State of South Carolina.

7. Any defendant described herein as a judgment creditor has, by filing the judgment, designated the attorney entering the judgment as its agent for service of process pursuant to the provisions of Section 15-35-840 of the S.C. Code of Law (1976) as amended.

8. This Court has jurisdiction over this matter.

9. The real property which is the subject of the within mortgage foreclosure action is located in Spartanburg County, South Carolina.

10. Pursuant to the South Carolina Supreme Court's Administrative Order filed on May 22, 2009, the mortgage loan identified herein is a commercial loan which is not owned, securitized or guaranteed by Fannie Mae or Freddie Mac nor is any servicer of the loan participating in the Home Affordable Modification Program (HMP), as referenced in the above Administrative Order, and the Administrative Order is not applicable to the loan and mortgage identified herein.

11. Pursuant to South Carolina Supreme Court's Administrative Order filed on May 2, 2011, (2011-03-02-01) the real property involved herein is commercial property and is not an "owner-occupied dwelling" as defined in the Order. As such, the Administrative Order does not apply to this foreclosure.

FOR A FIRST CAUSE OF ACTION
(Foreclosure - Note)

12. Each and every allegation in the above-numbered paragraphs is repeated herein as if stated verbatim.

13. Heretofore, on or about October 1, 2008, the Defendant Blalock Investments, LLC for value received, executed and delivered to National Bank of South Carolina, a promissory note in the principal sum of One Million Nine Hundred Thousand and 00/100 (\$1,900,000.00) Dollars, with interest thereon the terms of which note are more fully explained by reference thereto (the "Note"). A copy of said Note is attached hereto as **Exhibit A** and incorporated herein by reference.

14. Simultaneously with the execution of the above referred to Note, and in order to secure the payment thereof, the Defendant Blalock Investments, LLC executed and delivered to The National Bank of South Carolina, that certain Mortgage of Real Property (hereinafter "Mortgage") dated October 1, 2008, and recorded in the Office of the Register Of Deeds for Spartanburg County on October 3, 2008, in Mortgage Book 4142 at Page 231, wherein and whereby said Defendant mortgaged to Plaintiff the following real and personal property more fully described herein as follows:

Real Property:

PARCEL 1:

All that certain piece, parcel or tract of land, lying, situate and being in the State of South Carolina, County of Spartanburg, containing 2.02 acres, more or less, as shown on a plat prepared for Boiling Springs Luxury Apartments, LLC by Butler Associates Reg. Land Surveyor dated March 8, 2004 and recorded March 19, 2004 in Plat Book 155 at Page 750 in the Register of Deeds Office for Spartanburg County. Said property being described on said plat as "2.02 Ac Outparcel". For a more complete and particular description, reference is hereby made to the aforesaid plat.

PARCEL 2:

All that certain piece, parcel or tract of land, lying, situate and being in the State of South Carolina, County of Spartanburg, located at the northwestern corner of the intersection of South Carolina Highway No. 9 and Blalock Road, containing 0.949 acres, more or less, as shown on a plat prepared for Blalock Road, LLC by Tru-Line Surveying Co., Inc. dated May 2, 2005 and recorded in Plat Book 157 at Page 914 in the Register of Deeds Office for Spartanburg County. For a more complete and particular description, reference is hereby made to the aforesaid plat.

Also to include the following Personal Property:

All buildings, improvements, fixtures, or appurtenances now or hereafter erected thereon, including all apparatus, equipment, fixtures, or articles, whether in in single units or centrally controlled, used to supply heat, gas, air conditioning, water, light, power, refrigeration, ventilation or other services, and also together with any screens, window shades, storm doors and windows, screen doors, awnings, stoves and water heaters (all of which are declared to be a part of said real estate whether physically attached thereto or not.

This being the same property conveyed to Blalock Investments, LLC by deed of Blalock Road, LLC, recorded in the Office of the Register of Deeds for Spartanburg County, on June 11, 2008 in Book 91-P at Page 213.

Together with all rights and easements benefitting the subject property, if any, set forth in that certain Non-exclusive Storm Water Drainage Easement and Access Easement Agreement dated March 19, 2004 and recorded in Deed Book 79-Y at Page 516, and in that certain deed of Boiling Springs Luxury Apartments, LLC to Blalock Road, LLC dated February 28, 2005 and recorded in Deed Book 82-L at Page 15, in the Register of Deeds Office for Spartanburg County.

TMS No.: 2-44-00-048.00

Property Address: 2634 Boiling Springs Road, Boiling Springs

Hereafter the Real Property and the Personal Property are collectively referred to as the "Property." A copy of said Mortgage is attached hereto as **Exhibit B** and incorporated herein by reference.

15. Simultaneously with the execution of the above referred to Note, and in order to further secure the payment thereof, the Defendant Blalock Investments, LLC executed and delivered to National Bank of South Carolina that certain Commercial

Security Agreement dated October 1, 2008 ("Security Agreement"), wherein and whereby Blalock Investments, LLC granted a security interest in the Personal Property as described above. A copy of the Security Agreement is attached hereto as **Exhibit C** and is incorporated herein by reference.

16. On or about September 23, 2011, the Note was endorsed to Tandy Loanco, LLC, solely as trustee for Peach Loanco Grantor Trust I. The allonge is attached hereto as **Exhibit D** and incorporated herein by reference.

17. On or about September 23, 2011, the Mortgage was assigned to Tandy Loanco, LLC, solely as trustee for Peach Loanco Grantor Trust I by that Assignment of Mortgage and Collateral Documents, recorded in the Office of the Register of Deeds for Spartanburg County on November 3, 2011 in Book 4514 at Page 156 (the "Assignment"). The Assignment is attached hereto as **Exhibit E** and incorporated herein by reference.

18. On or about September 29, 2015, the Note was endorsed to Peach Loanco, LLC, a Delaware limited liability company. The allonge is attached hereto as **Exhibit F** and incorporated herein by reference.

19. On or about September 29, 2015, the Mortgage was assigned to Peach Loanco, LLC, a Delaware limited liability company by that certain Transfer and Assignment of Mortgage of Real Property, recorded in the Office of the Register of Deeds for Spartanburg County on October 7, 2015 in Book 5031 at Page 430 (the "Assignment"). The Assignment is attached hereto as **Exhibit G** and incorporated herein by reference.

20. On or about September 29, 2015, the Note was endorsed to Peach REO, LLC, a Delaware limited liability company. The allonge is attached hereto as **Exhibit H** and incorporated herein by reference.

21. On or about September 29, 2015, the Mortgage was assigned to Peach REO, LLC, a Delaware limited liability company by that certain Transfer and Assignment of Mortgage of Real Estate, recorded in the Office of the Register of Deeds for Spartanburg County on October 7, 2015 in Book 5031 at Page 433 (the "Assignment"). The Assignment is attached hereto as **Exhibit I** and incorporated herein by reference.

22. The Plaintiff is the owner and holder of the Note, Mortgage and Security Agreement.

23. The Defendant has defaulted in the payment of the Note and Mortgage given to Plaintiff by failing to pay Plaintiff, on demand, the principal and interest due under said documents, and all interest due thereon. Said Note and Mortgage are therefore in default and Plaintiff has declared the entire balance of principal and interest to be immediately due and payable.

24. The Mortgage is a valid first lien on the Property.

25. There is due and unpaid on the Note and Mortgage, as of October 16, 2015 the principal sum of One Million Seven Hundred Sixty-Nine Thousand Two Hundred Seventy-Three and 27/100 (\$1,769,273.27) Dollars, plus interest in the amount of Three Hundred Sixty-Three Thousand Eight Hundred Thirteen and 41/100 (\$363,813.41) Dollars, plus late charges in the amount of Eighteen Thousand Five Hundred Sixty-Nine and 50/100 (\$18,569.50) Dollars, plus advances for real estate taxes in the amount of One Hundred Thirty-Nine Thousand Nine Hundred Sixty-Three and 47/100 (\$139,963.47) Dollars, plus advances for insurance in the amount of Fourteen Thousand Eight Hundred Seventy-Two and 00/100 (\$14,872.00) Dollars. Demand has been made upon the Defendant Blalock Investments, LLC to pay said amounts but said

Defendant has refused to pay the same, or any part thereof, and said refusal is continuing, all to Plaintiff's injury and damage in the sum of Two Million Three Hundred Six Thousand Four Hundred Ninety-One and 65/100 (\$2,306,491.65) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action.

26. The following named party may claim a lien on, or interest in the Property by virtue of instruments filed of record in the Office of the Register of Deeds for Spartanburg County or the Office of the Clerk of Court for the above-named County, but, if such lien exists, it is junior and subordinate to that of Plaintiff herein:

a. Subway Real Estate, LLC, by virtue of a Memorandum of Lease with Blalock Investments, LLC, recorded in the Office of the Register of Deeds for Spartanburg County on May 18, 2015 in Book 109A at Page 18.

b. County of Spartanburg, by virtue of a deed from Blalock Investments, LLC, recorded in the Office of the Register of Deeds for Spartanburg County on August 20, 2015 in Book 109-X at Page 100, conveying a certain portion of the Property to County of Spartanburg, as more fully described therein. The ownership interest of the County of Spartanburg is subordinate to the mortgage lien of the Plaintiff herein.

27. Plaintiff hereby expressly seeks a judgment against the Defendant Blalock Investments, LLC pursuant to S.C. Code Ann. § 29-3-650 for the full amount due under the Note in the amount of Two Million Three Hundred Six Thousand Four Hundred Ninety-One and 65/100 (\$2,306,491.65) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action.

28. The Plaintiff also hereby expressly seeks the foreclosure and sale of the Property pursuant to S.C. Code Ann. § 29-3-650. The judgment entered against the parties shall be credited by the amount of the high bid entered at any subsequent

foreclosure sale of the Property, as provided in the statute. Plaintiff reserves the right to any deficiency judgment against said Defendant after crediting the bid.

FOR A SECOND CAUSE OF ACTION
(Collection on Guaranty)

29. Each and every allegation in the above-numbered paragraphs is repeated herein as if stated verbatim.

30. In consideration of the above referenced Note, Defendants Todd Smith and Debra Masuga (collectively, the "Guarantors") each executed a Guaranty dated October 1, 2008 (collectively, the "Guaranty") whereby each individually, jointly and severally, absolutely and unconditionally guaranteed the payment of the Note and Mortgage to Plaintiff and all extensions and renewals thereof. A copy of the Guaranty is attached hereto as **Exhibit J** and is incorporated herein by reference.

31. As further consideration for the Note, Defendant Guarantors agreed to pay all costs of collection, including reasonable attorney's fees.

32. Plaintiff has declared the entire balance of the Note and Guaranty due and payable and hereby demands payment of the same, but said Defendant Guarantors have refused to pay, and therefore is in default under the terms of the Guaranty.

33. There is due and unpaid on the Note and Guaranty, as of October 16, 2015 the principal sum of One Million Seven Hundred Sixty-Nine Thousand Two Hundred Seventy-Three and 27/100 (\$1,769,273.27) Dollars, plus interest in the amount of Three Hundred Sixty-Three Thousand Eight Hundred Thirteen and 41/100 (\$363,813.41) Dollars, plus late charges in the amount of Eighteen Thousand Five

Hundred Sixty-Nine and 50/100 (\$18,569.50) Dollars, plus advances for real estate taxes in the amount of One Hundred Thirty-Nine Thousand Nine Hundred Sixty-Three and 47/100 (\$139,963.47) Dollars, plus advances for insurance in the amount of Fourteen Thousand Eight Hundred Seventy-Two and 00/100 (\$14,872.00) Dollars. Demand has been made upon the Defendant Guarantors to pay said amounts but said Defendants have refused to pay the same, or any part thereof, and said refusal is continuing, all to Plaintiff's injury and damage in the sum of Two Million Three Hundred Six Thousand Four Hundred Ninety-One and 65/100 (\$2,306,491.65) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action.

34. Plaintiff hereby expressly seeks a judgment against the Defendant Guarantors pursuant to S.C. Code Ann. § 29-3-650 for the full amount due under the Note in the amount of Two Million Three Hundred Six Thousand Four Hundred Ninety-One and 65/100 (\$2,306,491.65) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action. The judgment entered against Defendant Guarantors shall be credited by the amount of the high bid entered at any subsequent foreclosure sale of the Property as provided in the statute. Plaintiff reserves the right to any deficiency judgment as to Defendants after crediting the bid.

FOR A THIRD CAUSE OF ACTION
(Receiver)

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

36. By virtue of the default, Plaintiff seeks the appointment of a receiver to protect and preserve, the Property and to do all acts necessary or required in

connection with the administration and management of the Property, including but not limited to the processing and administering of proceeds as to the Property.

WHEREFORE, the Plaintiff prays as follows:

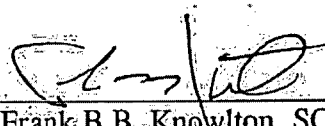
1. A Receiver be appointed for the Property.
2. As to the First Cause of Action, that the amount due Plaintiff on the above-referred to Note and Mortgage be ascertained and determined under the direction of this Court, together with attorney's fees and the costs of this action.
3. That Plaintiff recover judgment against the Defendants Blalock Investments, LLC, Todd Smith and Debra Masuga in the amount found to be due, together with attorney's fees and the costs of this action.
4. That the court ascertain which lien or liens, if any, are prior to that of Plaintiff.
5. That Plaintiff's Mortgage be declared to be a valid lien against the above referred to Property with the appropriate priority, and that the Plaintiff have judgment of foreclosure against the Defendants subject to the liens of any mortgages found to be prior to the Mortgage held by Plaintiff, for the amount found to be due, together with attorney's fees and costs of this action.
6. That Plaintiff's Mortgage upon the above referred to Property be foreclosed, subject to the lien of any mortgages found to be superior to that of Plaintiff, the equity of redemption barred, and the property sold under the direction of this Court.
7. That the proceeds of the sale be applied as follows:
 - a. to the costs, disbursements, and expenses of this action, including a reasonable attorney's fee for the Plaintiff's attorney;

b. to the amount due Plaintiff; and
c. the surplus, if any, be held subject to the further order of this Court.

8. That the Plaintiff be granted judgment against the Defendants Blalock Investments, LLC, Todd Smith and Debra Masuga, for the full amount due under the Note, Mortgage and Guaranty at the hearing on the matter, with subsequent credit to be entered against said judgment after the foreclosure sale of the Property pursuant to S.C. Code Ann. § 29-3-350.

9. For such other and further relief as the Court may deem just and proper.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Frank B.B. Knowlton, SC Bar No. 003588
E-Mail: frank.knowlton@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

ATTORNEYS FOR THE PLAINTIFF

Columbia, South Carolina

November 17, 2015

2015 NOV 17 AM 10:23
M. HOPE BLANCHLEY
CLERK OF COURT

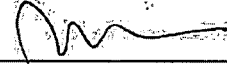
COMMONWEALTH OF MASSACHUSETTS)
)
COUNTY OF SUFFOLK)

VERIFICATION

Re: Blalock Investments, LLC

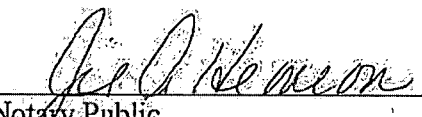
PERSONALLY appeared before me the undersigned, who, being first duly sworn, deposes and says: That he is the authorized representative for Capital Crossing Servicing Company, LLC as Authorized Servicer of Peach REO, LLC, a Delaware limited liability company, and as such is authorized to verify the foregoing Complaint and the matters and things therein stated are accurate based on his review of the books and records maintained by the Plaintiff in the ordinary course of business.

Capital Crossing Servicing Company, LLC

By: 
Name: Brian R. Doherty
Its: Vice President

On this 10th day of November, 2015, before me, the undersigned notary public, personally appeared Brian R. Doherty, personally known to me to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

WITNESS my hand and official seal.


Notary Public



JILA A. HEMEON
Notary Public
Commonwealth of Massachusetts
My Commission Expires
February 25, 2022

2015 NOV 17 AM 10:23
M. HOPE BLALOCKLEY

PL RECD OCT 08 2008

ORIGINAL

BIALOCK INVESTMENTS LLC 2153 E MAIN BLDG C-14 SUITE 355 DUNCAN, SC 29334-9296	National Bank of South Carolina 150 East Henry Street Spartanburg SC 29306	Loan Number _____ Date <u>October 01, 2008</u> Maturity Date <u>October 01, 2013</u> Loan Amount \$ <u>1,900,000.00</u> Renewal Of _____ Appl # _____
BORROWER'S NAME AND ADDRESS "I" includes each borrower above, jointly and severally.	LENDER'S NAME AND ADDRESS "You" means the lender, its successors and assigns.	

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of ONE MILLION NINE HUNDRED THOUSAND DOLLARS AND ZERO CENTS Dollars \$ 1,900,000.00

☐ Single Advance: I will receive all of this principal sum on _____ No additional advances are contemplated under this note.
☒ Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of \$ _____ and future principal advances are contemplated.
 Conditions: The conditions for future advances are _____

☐ Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on _____
☒ Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 10/01/2008 at the rate of 7.500 % per year until Paid in Full

☐ Variable Rate: This rate may then change as stated below.
☐ Index Rate: The future rate will be _____ the following index rate: _____

☐ No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.
☐ Frequency and Timing: The rate on this note may change as often as _____
 A change in the interest rate will take effect: _____

☐ Limitations: During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ % each _____
 Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☐ The amount of each scheduled payment will change. ☐ The amount of the final payment will change.
☐

ACCRUAL METHOD: Interest will be calculated on a ACT/360 basis.
 POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).
☐ at a rate equal to _____

☒ LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5% OF PAST DUE AMOUNT WITH A MINIMUM OF \$100.00 AND A MAXIMUM OF \$1,000.00

☒ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☒ are not included in the principal amount above: orig. fee \$9,000.00; FICOT FEE \$14.00; APPR FEE \$4,500.00

PAYMENTS: I agree to pay this note as follows:
☒ Interest: I agree to pay accrued interest in 9 payment(s) MONTHLY STARTING November 01, 2008

☐ Principal: I agree to pay the principal _____

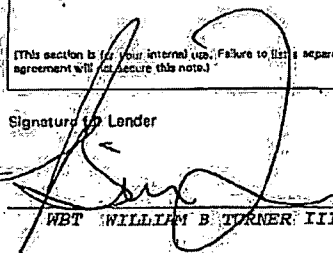
☒ Installments: I agree to pay this note in 51 payments. The first payment will be in the amount of \$ 14,616.00 and will be due August 01, 2009. A payment of \$ 14,616.00 will be due MONTHLY thereafter. The final payment of the entire

unpaid balance of principal and interest will be due October 01, 2013

ADDITIONAL TERMS:

PAYMENTS: Each payment I make on this note will be applied to past due interest, past due principal, current interest due, current principal due, and then to late fees and other charges. I may prepay a part of, or the entire balance of this loan without penalty, unless we specify to the contrary on this note. Any partial prepayment will not excuse or reduce any later scheduled payment until this note is paid in full (unless, when I make the prepayment, you and I agree in writing to the contrary).

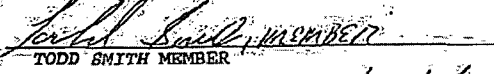
☐ SECURITY: This note is separately secured by (describe separate document by type and date): _____
 (This section is for your internal use. Failure to list a separate security document does not mean this agreement will not secure this note.)

Signature of Lender

 WBT WILLIAM B. TURNER III

PURPOSE: The purpose of this loan is PURCHASE CONST. OF RESTAURANT & RETAIL CENTER

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.


 BIALOCK INVESTMENTS, LLC
 TODD SMITH MEMBER


 DEBRA MASUGA MEMBER


 Plaintiff in Fact



D. (page 2 of 2)
J. S. Dine
B. J. S. P.

State of South Carolina)
County of SPARTANBURG)

MORTGAGE OF REAL PROPERTY

THIS MORTGAGE, made this 01 day of OCTOBER, 2008

among BIALOCK INVESTMENTS, L.L.C. (hereinafter referred to as Mortgagor) and THE NATIONAL BANK OF SOUTH CAROLINA (hereinafter referred to as Mortgagee):

WITNESSETH THAT WHEREAS, Mortgagor is indebted to Mortgagee for money loaned for which Mortgagor has executed and delivered to Mortgagee one or more applications, obligations or agreements (Note(s)) with the original Note being in the principal sum of ONE MILLION NINE HUNDRED THOUSAND DOLLARS AND ZERO CENTS Dollars (\$ 1,900,000.00)

AND, WHEREAS, to induce the making of said loan/Notes and in consideration of advances made and which may be made by Mortgagee to Mortgagor as evidenced by said various Notes of even date herewith or pursuant to Notes executed in the future, Mortgagor has agreed to secure said debt and interest thereon evidenced by said Notes and all renewals and extensions thereof, together with (in accordance with Section 29-3-50, Code of Laws of South Carolina, 1976, as may be amended) any future advances that may subsequently be made in connection with said Notes or by Mortgagee, and all renewals and extensions thereof, as well as all other indebtedness of Mortgagor or Mortgagee, now due or to become due or hereafter contracted, provided however that the total amount of existing indebtedness and future advances outstanding at any one time may not exceed 200% of the principal amount of the Note or

ONE MILLION NINE HUNDRED THOUSAND DOLLARS AND ZERO CENTS Dollars (\$ 1,900,000.00)

whichever is greater, plus or together with interest thereon, attorneys' fees, and court costs and to secure the performance of the undertakings prescribed in the Notes and this Mortgage by the conveyance of the premises hereinafter described. Interest on said Notes will be deferred, accrued, or capitalized.

NOW, THEREFORE, in consideration of the aforesaid loan and the sum of Three Dollars (\$3.00) cash in hand paid to Mortgagor, the receipt of which is hereby acknowledged, Mortgagor hereby grants, sells, conveys, assigns and releases to Mortgagee, its successors and assigns, the following described premises located in SPARTANBURG County, South Carolina:

SEE ATTACHED EXHIBIT A FOR DESCRIPTION OF PROPERTY.

MTG-2008-47329
Recorded 5 Pages on 10/3/2008 10:38:08 AM
Recording Fee: \$11.00 Documentary Stamps: \$0.00
Office of Register of Deeds, Spartanburg, S.C.
Stephen Ford, Register

Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in anywise incident or appertaining, including but not limited to all buildings, improvements, fixtures, or appurtenances now or hereafter erected thereon, including all apparatus, equipment, fixtures, or articles, whether in single units or centrally controlled, used to supply heat, gas, air conditioning, water, light, power, refrigeration, ventilation or other services, and also together with any screens, window shades, storm doors and windows, screen doors, awnings, stoves and water heaters (all of which are declared to be a part of said real estate whether physically attached thereto or not).



TO HAVE AND TO HOLD the same, with all privileges and appurtenances thereunto belonging to Mortgagee, its successors and assigns, forever, for the purpose hereinafter set out and Mortgagee covenants with Mortgagee, its successors and assigns, that Mortgagee is seized of, and has the right to convey, the premises in fee simple; that the premises are free and clear of all encumbrances except as disclosed in writing to the Mortgagee at the time this Mortgage is given, and that Mortgagee will warrant and defend title to the premises against the lawful claims of persons whomsoever.

MORTGAGOR COVENANTS with Mortgagee, its heirs, successors and assigns as follows:

1. **NOTE PAYMENTS.** Mortgagee shall make timely payments of principal and interest on the above mentioned Note(s) in the amounts, in the manner and at the place set forth therein. This Mortgage secures payment of said Note(s) according to its terms, which are incorporated herein by reference.

2. **TAXES.** Mortgagee shall pay all taxes, charges and assessments which may become a lien upon the premises hereby conveyed before any penalty or interest accrues thereon and shall promptly deliver to Mortgagee (at its request) official receipts evidencing payment thereof. In the event of the passage after the date of this Mortgage of any law imposing a federal, state, or local tax upon Mortgagee or debts secured thereby, the whole principal sum (plus or together with interest) secured by this Mortgage shall, at the option of Mortgagee, its principal sum (plus or together with interest) secured by this Mortgage shall, at the option of Mortgagee, its successors and assigns, without notice become immediately due and payable.

3. **INSURANCE.** Mortgagee shall continually maintain hazard insurance of such types and amounts and in such companies as Mortgagee may from time to time reasonably require on the improvements now or hereafter located on the premises and shall promptly pay all premiums therefor when due. All insurance policies and renewals thereof shall be held by Mortgagee subject to the rights of the holder of the first mortgage lien, if any, and have attached thereto loss payable clauses in favor of and in a form acceptable to Mortgagee. In the event of loss, Mortgagee shall give immediate notice thereof by mail to Mortgagee, who may make proof of loss. Each insurance company is hereby directed to make payment for such loss directly to Mortgagee (instead of Mortgagee and Mortgagee jointly), and the insurance proceeds, or any part thereof, may be applied by Mortgagee, at its option, to the debt hereby secured or for the repair or restoration of the premises. If the insurance proceeds are applied to the debt, it may be applied upon the portion last falling due or in such other manner as Mortgagee may determine. In the event of foreclosure of this Mortgage or other transfer of title to the premises in extinguishment of the indebtedness secured hereby, all right, title and interest of Mortgagee, in any insurance policies then in force shall pass to the Mortgagee.

4. **REPAIRS.** Mortgagee will keep the premises in as good order and repair as they are now (reasonable wear and tear excepted) and will not commit or permit any waste or any other state of facts whereby the value of the premises might be impaired.

5. **COMPLIANCE WITH LAWS.** Mortgagee shall promptly comply with any applicable legal requirements of the State of South Carolina or other governmental entity, agency or instrumentality relating to the use or condition of the premises.

6. **CONDEMNATION AWARD.** Any award for the taking of, or damages to, all or any part of the premises or any interest therein upon the lawful exercise of power of eminent domain shall be payable to Mortgagee who may apply the sums so received to the portion of the debt hereby secured last falling due or in such other manner as Mortgagee may determine.

7. **PAYMENTS BY MORTGAGEE.** If Mortgagee shall be in default in the timely performance of any obligation under this Mortgage or the Note(s) hereby secured or in the timely performance of any obligation imposed by a prior mortgage, or the Note(s) thereby secured or otherwise, Mortgagee at its option may expend for the account of Mortgagee such sums as may be necessary to cure any such default. Further, Mortgagee may, at its option, expend for the account of Mortgagee such sums, expenses and fees as may become necessary or be incurred for the protection of the premises, for the protection of the lien of this Mortgage and for the maintenance and execution of this Mortgage. Any amounts so expended shall be deemed principal advances secured by this Mortgage, shall bear interest from the time expended at the rate prescribed in the Note(s) hereby secured and shall be due and payable on demand. However, Mortgagee shall be under no obligation to do any of the foregoing, and its failure to do so shall not be construed as a waiver of any default hereunder.

8. **TRANSFER OF THE PROPERTY ASSUMPTION.** If all or any part of the property or an interest therein is sold or transferred by Borrower without Mortgagee's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Mortgage, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant or (d) the grant of any leasehold interest of three years or less not containing an option to purchase, Mortgagee may, at Mortgagee's option for any reason, declare all sums secured by the Mortgage to be immediately due and payable.

9. **MORTGAGOR'S CONTINUING OBLIGATION.** It is understood and agreed that all advances heretofore, now and hereafter made by Mortgagee or Mortgagee, and all indebtedness now and hereafter owed by Mortgagee to Mortgagee, and any other present or future indebtedness or liability of Mortgagee to Mortgagee, whether as principal debtor, surety, guarantor, endorser or otherwise, will be secured by this instrument until it is satisfied of record. It is further understood and agreed that Mortgagee, at the written request of Mortgagee, will satisfy this mortgage whenever: (1) Mortgagee owes no indebtedness to Mortgagee, (2) Mortgagee has no liability to Mortgagee, (3) Mortgagee requests satisfaction in writing, and (4) Mortgagee has not agreed to make any further advance or advances to Mortgagee. The Mortgagee shall remain liable for full payment of the principal and interest on the Note(s) (or any advancement or obligation) secured hereby, notwithstanding any of the following: (a) The sale of all or a part of the premises; (b) the assumption by another party of the Mortgagee's obligation hereunder; (c) the forbearance or extension of time for payment or performance of any obligation hereunder, whether granted to Mortgagee or a subsequent owner of the property, and (d) the release of all or any part of the premises securing said obligations or the release of any party who assumes payment of the same. None of the foregoing shall in any way affect the full force and effect of the lien of this Mortgage or impair Mortgagee's right to a deficiency judgment (in the event of foreclosure) against Mortgagee or any party assuming the obligations hereunder.

10. **WAIVER OF HOMESTEAD, REDEMPTION AND APPRAISAL RIGHTS.** The Mortgagee does hereby expressly waive, release and discharge any and all homestead exemption, right of redemption or right of appraisal in the event of foreclosure, as allowed by the laws of the State of South Carolina, until the entire amount under all Notes secured hereby are paid in full.

WAIVER OF APPRAISAL RIGHTS, IF ALLOWED BY LAW. If in the event of foreclosure of this Mortgage a deficiency judgment is requested against Mortgagee, and if at the time of such foreclosure the laws of South Carolina allow and authorize an obligated party to knowingly waive statutory appraisal rights, Mortgagee agrees to and does hereby waive any and rights of appraisal as to the property in connection with the foreclosure of the subject property and Mortgagee's right to seek a deficiency judgment against Mortgagee in the event the debt hereby secured is not satisfied from the net sales proceeds from the foreclosure sale.

11. **DEFAULT.** Failure to make any payments or perform any acts required by the note(s) or this instrument shall constitute default by the Mortgagee.

12. **ASSIGNMENT OF RENTS, LEASES AND PROFITS.** Mortgagee hereby sets over, assigns, transfers and grants a security interest in any and all rents, leases, and profits of the said premises herein described, provided, however, that so long as no

Default has occurred, Mortgagor shall be entitled to collect and retain all such rents, leases and profits. In the event of Default, all rents, leases and profits shall be payable and delivered to Mortgagee and Mortgagor hereby authorizes Mortgagee to notify any and all tenants of this assignment and that all payments of rents, leases and profits should be made directly to Mortgagee.

13. APPOINTMENT OF RECEIVER. Upon the event of a Default, Mortgagee shall be entitled to the appointment of a receiver of the rents, leases, and profits of the heretofore described property, with power to receive and recover the same, to dispossess tenants, to lease the premises, to operate and manage the premises, to pay the taxes and assessments thereon, to keep the same insured, and to make all necessary repairs thereon, and with such other powers as may be necessary. The receiver, after deducting all charges and expenses attending execution of such duties as receiver, shall apply the residue of said rents, leases and profits to the payment of all sums hereby secured or of any deficiency which may arise after applying the proceeds of the sale of the said premises to the amount due, including interest, costs, and expenses of such foreclosure and sale. Mortgagee and the receiver shall be entitled to review and have access to the books and records used in the operation and maintenance of the subject property.

14. ENVIRONMENTAL MATTERS. Mortgagor agrees to indemnify and hold Mortgagee harmless from and against, and to reimburse Mortgagee with respect to, any and all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including reasonable attorney's fees and court costs) of any and every kind or character, known or unknown, fixed or contingent, asserted against or incurred by Mortgagee at any time and from time to time by reason or acting out of any violation of any federal, state or local health, safety, or environmental laws, ordinances, and regulations, requiring the removal of, or otherwise regulating the maintenance, storage, transportation or disposal of any hazardous substance or any other toxic substances, asbestos, contaminants, petroleum products, or radioactive materials. The provisions of this paragraph shall survive the satisfaction or release of this Mortgage and the satisfaction of the Note(s) and shall continue thereafter in full force and effect.

The Mortgagor shall pay, when due the cost of providing to Mortgagee, at Mortgagee's request, from time to time, a then-current environmental site assessment, audit or survey of the property described in this Mortgage, which shall be prepared by an environmental person or company acceptable to Mortgagee, in Mortgagee's sole discretion; provided, however, that Mortgagee shall make such request no more frequently than once every year, unless the note is being renewed, extended, modified, or accelerated; or unless Mortgagee is required by any laws, regulation, order or other directive from any regulatory agency having jurisdiction over Mortgagee to obtain any such assessment more frequently than once a year. If Mortgagor fails to pay the cost of any assessment or the cost of any remediation to the subject property to correct deficiencies highlighted in an assessment, when due, Mortgagee may pay such cost on Mortgagor's behalf and the same shall constitute principal under the Note and be secured by the subject property, and shall be due and payable on demand. Mortgagor's failure to pay such amount (with all accrued interest) in full within ten (10) days of the date of such demand shall constitute an event of default entitling the Mortgagee to accelerate the maturity of the Note.

15. APPRAISAL. Mortgagor shall pay, when due the cost of providing to Mortgagee, at its request, from time to time, a then-current appraisal of the market value of the property prepared by an appraiser acceptable to Mortgagee, in its sole discretion; provided, however, that Mortgagee shall make such request no more frequently than once every two (2) years, unless Mortgagee is required by any law, regulation, order or other directive from any regulatory agency having jurisdiction over Mortgagee to obtain any such appraisal more frequently than every two (2) years. If Mortgagor fails to pay such costs when due, Mortgagee may pay such costs on Mortgagor's behalf and the same shall constitute principal under the Note, shall bear interest at the applicable rate provided in the Note, and shall be due and payable on demand. Mortgagor's failure to pay such amount (with all accrued interest) in full within ten (10) days of the date of such demand shall constitute an event of default entitling the Mortgagee to accelerate the maturity of the Note.

16. DEFINITIONS. As used herein the terms "Mortgagor," "Mortgagee" and other terms shall refer to the singular, plural, neuter, masculine and feminine as the context may require and shall include, be binding upon and inure to the benefit of their respective heirs, successors, legal representatives and assigns.

AND IT IS AGREED by and between the parties that in the case of foreclosure of this Mortgage, by suit or otherwise, the Mortgagee shall recover of the Mortgagor a sum as attorney's fees as set out in said Note(s) which shall be secured by this Mortgage, and shall be included in judgment of foreclosure.

BUT THIS CONVEYANCE IS MADE UPON THIS SPECIAL CONDITION: If, however, there shall be a default in the performance of any of the covenants, terms and conditions of this Mortgage, or under the Note(s) or any advance secured hereby, all sums owing to Mortgagee hereunder or under said Note(s), regardless of maturity and without notice, shall immediately become due and payable at the option of Mortgagee, and Mortgagee may foreclose this Mortgage by Judicial Proceedings.

IN WITNESS WHEREOF, this Mortgage has been duly signed, sealed and delivered by Mortgagor the day and year first above written.

[Signature] (SEAL)
[Signature] (SEAL)
 _____ (SEAL)
 _____ (SEAL)

State of South Carolina)

County of SPARTANBURG)

PROBATE

PERSONALLY appeared before me the undersigned and made oath that (s)he saw the within-named BLALOCK INVESTMENTS LLC, sign, seal, and as their act and deed, deliver the within-written Mortgage of Real Property; and, that (s)he with the other witnesses witnessed the execution thereof.

SW. at: before me this 1st day of October 2008.
[Signature] (U.S.) [Signature]

Commission Expires: 12/15/15

DEBTOR NAME AND ADDRESS	SECURED PARTY NAME AND ADDRESS
BLALOCK INVESTMENTS LLC 2153 E MAIN BLDG C-14 SUITE 355 DUNCAN SC 29334-9296	National Bank of South Carolina 150 East Henry Street Spartanburg SC 29306
ORIGINAL	
Type: ☐ individual ☐ partnership ☐ corporation ☒ LLC State of organization/registration (if applicable) <u>SOUTH CAROLINA</u> ☐ If checked, refer to addendum for additional Debtors and signatures.	
ACCOUNT NUMBER:	NOTE: 00003

COMMERCIAL SECURITY AGREEMENT

The date of this Commercial Security Agreement (Agreement) is October 01, 2008.
 SECURED DEBTS. This Agreement will secure all sums advanced by Secured Party under the terms of this Agreement and the payment and performance of the following described Secured Debts that (check one) ☒ Debtor ☐ BLALOCK INVESTMENTS LLC

(Borrower) owes to Secured Party:

- ☒ Specific Debts. The following debts and all extensions, renewals, refinancings, modifications, and replacements (describe):

ACCOUNT NUMBER

NOTE NUMBER 00003

- ☐ All Debts. All present and future debts, even if this Agreement is not referenced, the debts are also secured by other collateral, or the future debt is unrelated to or of a different type than the current debt. Nothing in this Agreement is a commitment to make future loans or advances.

SECURITY INTEREST. To secure the payment and performance of the Secured Debts, Debtor gives Secured Party a security interest in all of the Property described in this Agreement that Debtor owns or has sufficient rights in which to transfer an interest, now or in the future, wherever the Property is or will be located, and all proceeds and products of the Property. "Property" includes all parts, accessories, repairs, replacements, improvements, and accessions to the Property; any original evidence of title or ownership; and all obligations that support the payment or performance of the Property. "Proceeds" includes anything acquired upon the sale, lease, license, exchange, or other disposition of the Property; any rights and claims arising from the Property; and any collections and distributions on account of the Property. This Agreement remains in effect until terminated in writing, even if the Secured Debts are paid and Secured Party is no longer obligated to advance funds to Debtor or Borrower.

PROPERTY DESCRIPTION. The Property is described as follows:

- ☐ Accounts and Other Rights to Payment: All rights to payment, whether or not earned by performance, including, but not limited to, payment for property or services sold, leased, rented, licensed, or assigned. This includes any rights and interests (including all liens) which Debtor may have by law or agreement against any account debtor or obligor of Debtor.
- ☐ Inventory: All inventory held for ultimate sale or lease, or which has been or will be supplied under contracts of service, or which are raw materials, work in process, or materials used or consumed in Debtor's business.
- ☐ Equipment: All equipment including, but not limited to, machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and record keeping equipment, parts, and tools. The Property includes any equipment described in a list or schedule Debtor gives to Secured Party, but such a list is not necessary to create a valid security interest in all of Debtor's equipment.
- ☐ Instruments and Chattel Paper: All instruments, including negotiable instruments and promissory notes and any other writings or records that evidence the right to payment of a monetary obligation, and tangible and electronic chattel paper.
- ☐ General Intangibles: All general intangibles including, but not limited to, tax refunds, patents and applications for patents, copyrights, trademarks, trade secrets, goodwill, trade names, customer lists, permits and franchises, payment intangibles, computer programs and all supporting information provided in connection with a transaction relating to computer programs, and the right to use Debtor's name.
- ☐ Documents: All documents of title including, but not limited to, bills of lading, dock warrants and receipts, and warehouse receipts.
- ☐ Farm Products and Supplies: All farm products including, but not limited to, all poultry and livestock and their young, along with their produce, products, and replacements; all crops, annual or perennial, and all products of the crops; and all feed, seed, fertilizer, medicines, and other supplies used or produced in Debtor's farming operations.
- ☐ Government Payments and Programs: All payments, accounts, general intangibles, and benefits including, but not limited to, payments in kind, deficiency payments, letters of entitlement, warehouse receipts, storage payments, emergency assistance and diversion payments, production flexibility contracts, and conservation reserve payments under any preexisting, current, or future federal or state government program.
- ☐ Investment Property: All investment property including, but not limited to, certificated securities, uncertificated securities, securities entitlements, securities accounts, commodity contracts, commodity accounts, and financial assets.
- ☐ Deposit Accounts: All deposit accounts including, but not limited to, demand, time, savings, passbook, and similar accounts.
- ☒ Specific Property Description: The Property includes, but is not limited by, the following (if required, provide real estate description):

FIRST REAL ESTATE MORTGAGE ON BOILING SPRING RD AT BLALOCK RD, BOILING SPRINGS, SC 29316

USE OF PROPERTY. The Property will be used for ☐ personal ☒ business ☐ agricultural ☐ _____ purposes.

SIGNATURES. Debtor agrees to the terms on pages 1 and 2 of this Agreement and acknowledges receipt of a copy of this Agreement.	
DEBTOR <i>Blalock Investments, LLC</i> <i>Paul Blalock, Manager</i>	SECURED PARTY



GENERAL PROVISIONS: Each Debtor's obligations under this Agreement are independent of the obligations of any other Debtor. Secured Party may sue each Debtor individually or together with any other Debtor. Secured Party may release any part of the Property and Debtor will remain obligated under this Agreement. The duties and benefits of this Agreement will bind the successors and assigns of Debtor and Secured Party. No modification of this Agreement is effective unless made in writing and signed by Debtor and Secured Party. Whenever used, the plural includes the singular and the singular includes the plural. Time is of the essence.

APPLICABLE LAW: This Agreement is governed by the laws of the state in which Secured Party is located. In the event of a dispute, the exclusive forum, venue, and place of jurisdiction will be the state in which Secured Party is located, unless otherwise required by law. If any provision of this Agreement is unenforceable by law, the unenforceable provision will be severed and the remaining provisions will still be enforceable.

NAME AND LOCATION: Debtor's name indicated on page 1 is Debtor's exact legal name. If Debtor is an individual, Debtor's address is Debtor's principal residence. If Debtor is not an individual, Debtor's address is the location of Debtor's chief executive offices or sole place of business. If Debtor is an entity organized and registered under state law, Debtor has provided Debtor's state of registration on page 1. Debtor will provide verification of registration and location upon Secured Party's request. Debtor will provide Secured Party with at least 30 days notice prior to any change in Debtor's name, address, or state of organization or registration.

WARRANTIES AND REPRESENTATIONS: Debtor has the right, authority, and power to enter into this Agreement. The execution and delivery of this Agreement will not violate any agreement governing Debtor or Debtor's property, or to which Debtor is a party. Debtor makes the following warranties and representations which continue as long as this Agreement is in effect:

- (1) Debtor is duly organized and validly existing in all jurisdictions in which Debtor does business;
- (2) the execution and performance of the terms of this Agreement have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law or order;
- (3) other than previously disclosed to Secured Party, Debtor has not changed Debtor's name or principal place of business within the last 10 years and has not used any other trade or fictitious name; and
- (4) Debtor does not and will not use any other name without Secured Party's prior written consent.

Debtor owns all of the Property, and Secured Party's claim to the Property is ahead of the claims of any other creditor, except as otherwise agreed and disclosed to Secured Party prior to any advance on the Secured Debts. The Property has not been used for any purpose that would violate any laws or subject the Property to forfeiture or seizure.

DUTIES TOWARD PROPERTY: Debtor will protect the Property and Secured Party's interest against any competing claim. Except as otherwise agreed, Debtor will keep the Property in Debtor's possession at the address indicated on page 1 of this Agreement. Debtor will keep the Property in good repair and use the Property only for purposes specified on page 1. Debtor will not use the Property in violation of any law and will pay all taxes and assessments levied or assessed against the Property. Secured Party has the right of reasonable access to inspect the Property, including the right to require Debtor to assemble and make the Property available to Secured Party. Debtor will immediately notify Secured Party of any loss or damage to the Property. Debtor will prepare and keep books, records, and accounts about the Property and Debtor's business, to which Debtor will allow Secured Party reasonable access.

Debtor will not sell, offer to sell, license, lease, or otherwise transfer or encumber the Property without Secured Party's prior written consent. Any disposition of the Property will violate Secured Party's rights, unless the Property is inventory sold in the ordinary course of business at fair market value. If the Property includes chattel paper or instruments, either as original collateral or as proceeds of the Property, Debtor will record Secured Party's interest on the face of the chattel paper or instruments.

If the Property includes accounts, Debtor will not settle any account for less than the full value, dispose of the accounts by assignment, or make any material change in the terms of any account without Secured Party's prior written consent. Debtor will collect all accounts in the ordinary course of business, unless otherwise required by Secured Party. Debtor will keep the proceeds of the accounts, and any goods returned to Debtor, in trust for Secured Party and will not commingle the proceeds or returned goods with any of Debtor's other property. Secured Party has the right to require Debtor to pay Secured Party the full price on any returned items. Secured Party may require account debtors to make payments under the accounts directly to Secured Party. Debtor will deliver the accounts to Secured Party at Secured Party's request. Debtor will give Secured Party all statements, reports, certificates, lists of account debtors (showing names, addresses, and amounts owing), invoices applicable to each account, and any other data pertaining to the accounts as Secured Party requests.

If the Property includes farm products, Debtor will provide Secured Party with a list of the buyers, commission merchants, and selling agents to or through whom Debtor may sell the farm products. Debtor authorizes Secured Party to notify any additional parties regarding Secured Party's interest in Debtor's farm products, unless prohibited by law. Debtor agrees to plant, cultivate, and harvest crops in due season. Debtor will not use any loan proceeds for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as explained by federal law.

If Debtor pledges the Property to Secured Party (delivers the Property into the possession or control of Secured Party or a designated third party), Debtor will, upon receipt, deliver any proceeds and products of the Property to Secured Party. Debtor will provide Secured Party with any notices, documents, financial statements, reports, and other information relating to the Property Debtor receives as the owner of the Property.

PERFECTION OF SECURITY INTEREST: Debtor authorizes Secured Party to file a financing statement covering the Property. Debtor will comply with, facilitate, and otherwise assist Secured Party in connection with obtaining possession or control over the Property for purposes of perfecting Secured Party's interest under the Uniform Commercial Code.

INSURANCE: Debtor agrees to keep the Property insured against the risks reasonably associated with the Property until the Property is released from this Agreement. Debtor will maintain this insurance in the amounts Secured Party requires. Debtor may choose the insurance company, subject to Secured Party's approval, which will not be unreasonably withheld. Debtor will have the insurance provider name Secured Party as loss payee on the insurance policy. Debtor will give Secured Party and the insurance provider immediate notice of any loss. Secured Party may apply the insurance proceeds toward the Secured Debts. Secured Party may require additional security as a condition of permitting any insurance proceeds to be used to repair or replace the Property. If Secured Party acquires the Property in damaged condition, Debtor's rights to any insurance policies and proceeds will pass to Secured Party to the extent of the Secured Debts. Debtor will immediately notify Secured Party of the cancellation or termination of insurance. If Debtor fails to keep the Property insured, or fails to provide Secured Party with proof of insurance, Secured Party may obtain insurance to protect Secured Party's interest in the Property. The insurance may include coverages not originally required of Debtor, may be written by a company other than one Debtor would choose, and may be written at a higher rate than Debtor could obtain if Debtor purchased the insurance.

AUTHORITY TO PERFORM: Debtor authorizes Secured Party to do anything Secured Party deems reasonably necessary to protect the Property and Secured Party's interest in the Property. If Debtor fails to perform any of Debtor's duties under this Agreement, Secured Party is authorized, without notice to Debtor, to perform the duties or cause them to be performed. These authorizations include, but are not limited to, permission to pay for the repair, maintenance, and preservation of the Property and take any action to realize the value of the Property. Secured Party's authority to perform for Debtor does not create an obligation to perform, and Secured Party's failure to perform will not preclude Secured Party from exercising any other rights under the law or this Agreement. If Secured Party performs for Debtor, Secured Party will use reasonable care. Reasonable care will not include any steps necessary to preserve rights against prior parties or any duty to take action in connection with the management of the Property.

If Secured Party comes into possession of the Property, Secured Party will preserve and protect the Property to the extent required by law. Secured Party's duty of care with respect to the Property will be satisfied if Secured Party exercises reasonable care in the safekeeping of the Property or in the selection of a third party in possession of the Property.

Secured Party may enforce the obligations of an account debtor or other person obligated on the Property. Secured Party may exercise Debtor's rights with respect to the account debtor's or other person's obligations to make payment or otherwise render performance to Debtor, and enforce any security interest that secures such obligations.

PURCHASE MONEY SECURITY INTEREST: If the Property includes items purchased with the Secured Debts, the Property purchased with the Secured Debts will remain subject to Secured Party's security interest until the Secured Debts are paid in full. Payments on any non-purchase money loan also secured by this Agreement will not be applied to the purchase money loan. Payments on the purchase money loan will be applied first to the non-purchase money portion of the loan, if any, and then to the purchase money portion in the order in which the purchase money Property was acquired. If the purchase money Property was acquired at the same time, payments will be applied in the order Secured Party selects. No security interest will be terminated by application of this formula.

DEFAULT: Debtor will be in default if:

- (1) Debtor (or Borrower, if not the same) fails to make a payment in full when due;
- (2) Debtor fails to perform any condition or keep any covenant on this or any debt or agreement Debtor has with Secured Party;
- (3) a default occurs under the terms of any instrument or agreement evidencing or pertaining to the Secured Debts;
- (4) anything else happens that either causes Secured Party to reasonably believe that Secured Party will have difficulty in collecting the Secured Debts or significantly impairs the value of the Property.

WAIVER OF HEARING PRIOR TO IMMEDIATE POSSESSION: Secured Party may immediately seize the Property upon Debtor's default. Debtor agrees to waive the right to five days' notice and a pre-seizure hearing prior to seizure of the Property.

REMEDIES: After Debtor defaults, and after Secured Party gives any legally required notice and opportunity to cure the default, Secured Party may, at Secured Party's option do any one or more of the following:

- (1) make all or any part of the Secured Debts immediately due and accrue interest at the highest post-maturity interest rate;
- (2) require Debtor to gather the Property and make it available to Secured Party in a reasonable fashion;
- (3) enter upon Debtor's premises and take possession of all or any part of Debtor's property for purposes of preserving the Property or its value and use and operate Debtor's property to protect Secured Party's interest, all without payment or compensation to Debtor;
- (4) use any remedy allowed by state or federal law or provided in any agreement evidencing or pertaining to the Secured Debts.

If Secured Party repossesses the Property or enforces the obligations of an account debtor, Secured Party may keep or dispose of the Property as provided by law. Secured Party will apply the proceeds of any collection or disposition first to Secured Party's expenses of enforcement, which includes reasonable attorneys' fees and legal expenses to the extent not prohibited by law, and then to the Secured Debts. Debtor (or Borrower, if not the same) will be liable for the deficiency, if any.

By choosing any one or more of these remedies, Secured Party does not give up the right to use any other remedy. Secured Party does not waive a default by not using a remedy.

WAIVER: Debtor waives all claims for damages caused by Secured Party's acts or omissions where Secured Party acts in good faith.

NOTICE AND ADDITIONAL DOCUMENTS: Where notice is required, Debtor agrees that 10 days prior written notice will be reasonable notice to Debtor under the Uniform Commercial Code. Notice to one party is notice to all parties. Debtor agrees to sign, deliver, and file any additional documents and certifications Secured Party considers necessary to perfect, continue, or preserve Debtor's obligations under this Agreement and to confirm Secured Party's lien status on the Property.

ALLONGE

This Allonge is made to that certain Promissory Note dated October 1, 2008 in the original principal amount of ONE MILLION NINE HUNDRED THOUSAND AND NO/100^{THS} DOLLARS (\$1,900,000.00), and made by Blalock Investments, LLC, to the order of Synovus Bank, a Georgia bank, formerly known as Columbus Bank and Trust Company, as successor in interest through name change and by merger with The National Bank of South Carolina.

Pay to the order of TANDY LOANCO, LLC, not in its individual capacity, but solely as trustee for PEACH LOANCO GRANTOR TRUST I, without recourse, representation or warranty.

[Remainder of Page Intentionally Left Blank;
Signature Page Follows]

[Allonge - Blalock Investments, LLC]



Prepared by and Return to:
 Chrystal D. LaRoche, Esq.
 ROPES & GRAY LLP
 1211 Avenue of the Americas
 New York, NY 10036-8704
 T +1 212 596 9458 | F +1 646 728 1509

MTG-2011-38877
 Recorded 5 Pages on 11/3/2011 10:18:48 AM
 Recording Fee: \$10.00 Documentary Stamps: \$0.00
 Office of Register of Deeds, Spartanburg, S.C.
 Dorothy Earle, Register



ASSIGNMENT OF MORTGAGE AND COLLATERAL DOCUMENTS

This Assignment ("Assignment") is made as of September 23, 2011, by Synovus Bank, a Georgia bank, formerly known as Columbus Bank and Trust Company, as successor in interest through name change and by merger with The National Bank of South Carolina ("Assignor"), located at 8025 Westside Parkway, Alpharetta, GA 30009, Attention: Joseph Sumner, and given to and agreed to by TANDY LOANCO, LLC, not in its individual capacity, but solely as trustee for PEACH LOANCO GRANTOR TRUST I ("Assignee"), located at 301 Commerce Street, Suite 3300, Fort Worth, Texas 76102, Attention: General Counsel. Capitalized terms used herein but not defined herein have the meanings ascribed to them in that certain Contract for Sale and Assignment of Notes and other Loan Documents dated September 19, 2011, between Assignor and Assignee (the "Agreement").

Witnesseth

For and in consideration of the sum of \$10.00 and other good and valuable consideration, to Assignor in hand paid, receipt thereof is hereby acknowledged, Assignor hereby sells, assigns, endorses, transfers, grants, conveys and quitclaims to Assignee, all of Assignor's right, title and interest in and to the mortgage and collateral documents executed and delivered by Blalock Investments, LLC ("Borrower") and listed on Schedule A, including the right to collect all sums secured thereby, attached hereto and incorporated herein by reference.

Except as otherwise specifically stated in that certain Assignment of Note and Other Loan Documents dated September 23, 2011, between Assignor and Assignee, or as set forth in the Agreement, Assignor specifically disclaims any warranty, guaranty or representation, oral or written, past, present or future with respect to the Loan Documents, including, without limitation, (i) the validity, existence, or priority of any lien or security interest securing the Loans; (ii) the existence or basis for any claim, counterclaim, defense or offset relating to the Loans; (iii) the financial condition of Borrower; (iv) the compliance of the Loans with any laws, ordinances or regulations of any government or other body; (v) the condition of any collateral securing the Loans; (vi) the general assignability of the Loan Documents, and (vii) the future performance of the Borrower, the collateral or any guarantor of the Loan Documents. Assignee acknowledges and represents to Assignor that having been given the opportunity to undertake its own investigation of the Loan Documents, Assignee is relying solely on its own investigation of the Notes and Security Deeds and not any information provided or to be provided by Assignor. The sale of the Loan Documents as provided for herein is made on an "AS IS", "WHERE IS" basis, with all faults, and Assignee, by acceptance of this Assignment, expressly acknowledges that

[Assignment - Blalock Investments, LLC]

ASSIGNOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW RELATING TO THE LOAN DOCUMENTS, EXCEPT AS SPECIFICALLY SET FORTH HEREIN OR AS SET FORTH IN THE AGREEMENT. Notwithstanding anything to the contrary in the foregoing, Assignor represents and warrants to Assignee that Assignor is the holder of the Notes and Security Deeds and has the right to assign same to Assignee.

[Signatures appear on the following page]

[Assignment – Blalock Investments, LLC]

IN WITNESS WHEREOF, the undersigned have executed this Assignment as of the date hereof.

Signed Sealed and Delivered in the Presence of:

ASSIGNOR:

Will Lowell
Witness

Synovus Bank, a Georgia bank

Print Name: Will Lowell

By: J. L. Sumner, V.P.
Name: Joseph Sumner
Title: Vice President

Cheryl Bethis
Witness

[Bank Seal]

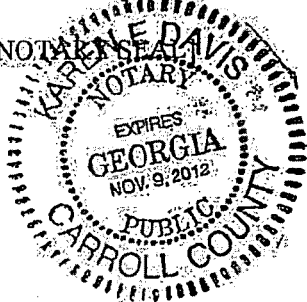
Print Name: Cheryl Bethis

STATE OF Georgia
COUNTY OF Fulton

The foregoing instrument was acknowledged before me this 23rd day of September, 2011, by Joseph Sumner, as Vice President of Synovus Bank, a Georgia bank, on behalf of the bank. He/She is either ☒ personally known _____ to me, or ☐ produced _____ as identification.

My Commission Expires:

[AFFIX NOTARY SEAL]



Karen E. Davis
(Signature)
Karen E. Davis
(Printed Name)
Notary Public, State of Georgia

[Assignment - Blalock Investments, LLC]

Signed Sealed and Delivered in the Presence of:

ASSIGNEE:

Jennifer Epstein
Witness

Print Name: Jennifer Epstein

Witness

Print Name: Teni Sarkissian

TANDY LOANCO, LLC, not in its individual capacity, but solely as trustee for PEACH LOANCO GRANTOR TRUST I

By: Ronald Cami
Name: Ronald Cami
Title: Vice President

STATE OF California
COUNTY OF San Francisco

The foregoing instrument was acknowledged before me this 21st day of September, 2011, by Ronald Cami, as Vice President of Tandy Loanco, LLC, not individually but solely in its capacity as Trustee, on behalf of Peach Loanco Grantor Trust I. He is either [] personally known _____ to me, or [x] produced VS Passport as identification.

My Commission Expires: 7/24/14

[AFFIX NOTARY SEAL]

Teni Sarkissian
(Signature)
Teni Sarkissian
(Printed Name)
Notary Public, State of CA



[Assignment - Blalock Investments, LLC]

Schedule A

Mortgages and Collateral Documents

1. Mortgage of Real Property dated October 1, 2008, recorded at Deed Book 4142, Page 231 in the Spartanburg County, South Carolina records encumbering that certain property in Spartanburg County, South Carolina.

[Assignment – Blalock Investments, LLC]

ALLONGE TO PROMISSORY NOTE

ALLONGE to that certain Promissory Note dated October 1, 2008, in the original principal amount of \$1,900,000.00 (the "Note") executed by Blalock Investments, LLC, a limited liability company, and payable to the order of National Bank of South Carolina, as endorsed by Allonge dated September 23, 2011, from Synovus Bank, a Georgia Bank (Synovus Bank is formerly known as Columbus Bank and Trust Company, and is successor in interest through name change and by merger with The National Bank of South Carolina), to Tandy Loanco, LLC, not in its individual capacity, but solely as trustee for Peach Loanco Grantor Trust I, ("Initial Assignor").

Assignor hereby distributes, assigns, transfers, sets over and conveys the Note unto Peach Loanco, LLC, a Delaware limited liability company ("Assignee").

Dated: Effective as of Sept 29, 2015.

Tandy Loanco, LLC, not individually, but solely in its capacity as trustee for Peach Loanco Grantor Trust I

By: [Signature]
Name: Jennifer Mello
Title: Vice president





After recording return to:
Nelson Mullins Riley & Scarborough, LLP
c/o Frank B.B. Knowlton
P.O. Box 11070
Columbia, SC 29211

Cross Reference:

Cross reference to Book 4142 at Page 231

TRANSFER AND ASSIGNMENT OF MORTGAGE OF REAL PROPERTY

For value received, Tandy Loanco, LLC, not in its individual capacity, but solely as trustee for Peach Loanco Grantor Trust I, whose mailing address is c/o Capital Crossing Servicing Company LLC, 99 High Street, Boston, Massachusetts 02110 ("Assignor"), hereby distributes, assigns, transfers, sets over and conveys unto its beneficiary, **Peach Loanco, LLC**, a Delaware limited liability company, its successors or assigns, whose mailing address is c/o Capital Crossing Servicing Company LLC, 99 High Street, Boston, Massachusetts 02110 ("Assignee"), all of Assignor's right, title and interest in, to and under that certain Mortgage of Real Property dated October 1, 2008 from Blalock Investments, LLC to National Bank of South Carolina recorded on October 3, 2008 in **Book 4142 at Page 231**, Spartanburg County, South Carolina records and the indebtedness secured thereby, the property described therein, and all its rights, privileges and powers under the terms thereof. The Mortgage of Real Estate was subsequently assigned to Tandy Loanco, LLC, not in its individual capacity, but solely as trustee for Peach Loanco Grantor Trust I by Assignment of Mortgage and Collateral Documents recorded on November 3, 2011 in Book 4514 at Page 156.

IN WITNESS WHEREOF, the undersigned has hereunto caused this instrument to be signed and sealed this 21 day of Sept 2015.

{signatures attached}



WITNESSES:

N. Miller
Witness #1 Victoria Miller

Michelle Dow
Witness #2/Notary Michelle Dow

ASSIGNOR:

Tandy Loanco, LLC, not in its individual capacity, but solely as trustee for Peach Loanco Grantor Trust I

By: Jennifer Mello

Name: Jennifer Mello

Title: vice president

ACKNOWLEDGMENT

STATE OF _____)

COUNTY OF _____)

I, _____, the undersigned, a Notary Public for the State of _____, do hereby certify that _____, as _____ of Tandy Loanco, LLC, not in its individual capacity, but solely as trustee for Peach Loanco Grantor Trust I, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

SWORN to and subscribed before me
this _____ day of _____, 2015.

see attached

Notary Public for the State of _____
My commission expires: _____

California Jurat Certificate

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

S.S.

County of San Francisco

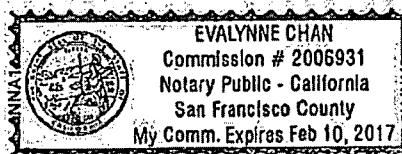
Subscribed and sworn to (or affirmed) before me on this 29 day of September

20 15, by Jennifer Mello and

_____, proved to me on the basis of

satisfactory evidence to be the person(s) who appeared before me.





OPTIONAL INFORMATION

Description of Attached Document

The certificate is attached to a document titled/for the purpose of

transfer + assignment of Mortgage of
Real Property

containing _____ pages, and dated _____

Method of Affiant Identification

Proved to me on the basis of satisfactory evidence:

☐ form(s) of identification ☐ credible witness(es)

Notarial event is detailed in notary journal on:

Page # _____ Entry # _____

Notary contact: _____

Other

☐ Affiant(s) Thumbprint(s) ☐ Describe: _____

ALLONGE TO PROMISSORY NOTE

ALLONGE to that certain Promissory Note dated October 1, 2008, in the original principal amount of \$1,900,000.00 (the "Note") executed by Blalock Investments, LLC, a limited liability company, and payable to the order of National Bank of South Carolina, as endorsed by Allonge dated September 23, 2011, from Synovus Bank, a Georgia Bank (Synovus Bank is formerly known as Columbus Bank and Trust Company, and is successor in interest through name change and by merger with The National Bank of South Carolina), to Tandy Loanco, LLC, a Delaware limited liability company, not in its individual capacity, but solely as trustee for Peach Loanco Grantor Trust I, and as further endorsed by Allonge dated _____, 2015 from Tandy Loanco, LLC, not in its individual capacity, but solely as trustee for Peach Loanco Grantor Trust I, to Peach Loanco, LLC, a Delaware limited liability company ("Assignor").

Assignor hereby sells, assigns, transfers, sets over and conveys the Note unto Peach REO, LLC, a Delaware limited liability company, its successors and/or assigns ("Assignee").

Dated: Effective as of Sept 29, 2015.

Peach Loanco, LLC, a Delaware limited liability company

By: [Signature]
Name: Jennifer Mallo
Title: Vice president





After recording return to:
Nelson Mullins Riley & Scarborough, LLP
c/o Frank B.B. Knowlton
P.O. Box 11070
Columbia, SC 29211

Cross Reference:

Cross reference to Book 4142 at Page 231

TRANSFER AND ASSIGNMENT OF MORTGAGE OF REAL ESTATE

For value received, Peach Loanco, LLC, a Delaware limited liability company, whose mailing address is c/o Capital Crossing Servicing Company LLC, 99 High Street, Boston, Massachusetts 02110 ("Assignor"), hereby sells, assigns, transfers, sets over and conveys unto Peach REO, LLC, a Delaware limited liability company, its successors or assigns, whose mailing address is c/o Capital Crossing Servicing Company LLC, 99 High Street, Boston, Massachusetts 02110 ("Assignee"), all of Assignor's right, title and interest in, to and under that certain Mortgage of Real Property dated October 1, 2008 from Blalock Investments, LLC to National Bank of South Carolina recorded on October 3, 2008 in Book 4142 at Page 231, Spartanburg County, South Carolina records and the indebtedness secured thereby, the property described therein, and all its rights, privileges and powers under the terms thereof. The Mortgage of Real Estate was subsequently assigned to Tandy Loanco, LLC, not in its individual capacity, but solely as trustee for Peach Loanco Grantor Trust I by Assignment of Mortgage and Collateral Documents recorded on November 3, 2011 in Book 4514 at Page 156. The Mortgage of Real Estate was subsequently assigned to Peach Loanco Grantor Trust I by Transfer and Assignment of Mortgage of Real Estate recorded simultaneously herewith.

IN WITNESS WHEREOF, the undersigned has hereunto caused this instrument to be signed and sealed this 29 day of Sept 2015.

{signatures attached}



WITNESSES:

Witness #1 Victoria Miller

Witness #2/Notary Michelle Dow

ASSIGNOR:

Peach Loanco, LLC, a Delaware limited liability company,

By: Jennifer Melto

Name: Jennifer Melto

Title: Vice president

ACKNOWLEDGMENT

STATE OF _____)
COUNTY OF _____)

I, _____, the undersigned, a Notary Public for the State of _____, do hereby certify that _____, as _____ of Peach Loanco, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

SWORN to and subscribed before me
this _____ day of _____, 2015. see attached

Notary Public for the State of _____
My commission expires: _____

California Jurat Certificate

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

S.S.

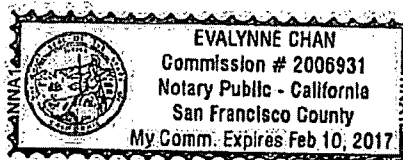
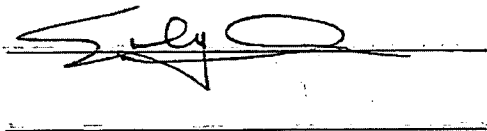
County of San Francisco

Subscribed and sworn to (or affirmed) before me on this 29 day of September,

20 15, by Jennifer Melto and

_____, proved to me on the basis of

satisfactory evidence to be the person(s) who appeared before me.



OPTIONAL INFORMATION

Description of Attached Document

The certificate is attached to a document titled/for the purpose of

transfer + Assignment of Mortgage
of Real Estate

containing _____ pages, and dated _____

Method of Affiant Identification

Proved to me on the basis of satisfactory evidence:

☐ form(s) of identification ☐ credible witness(es)

Notarial event is detailed in notary journal on:

Page # _____ Entry # _____

Notary contact: _____

Other

☐ Affiant(s) Thumbprint(s) ☐ Describe: _____

GUARANTY

10/01/2008

ORIGINAL

DUNCAN

(City)

SC

(State)

TODD SMITH

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce National Bank of South Carolina (herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of

BLALOCK INVESTMENTS LLC

(herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt. Liability or obligation of Borrower to Lender evidenced by or arising out of the following: ACCT# and any extensions,

NOTE# 00003

renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

B. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debt(s):

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all Indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to Indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all Indebtedness, whether due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all Indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated
☐ secured by

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.

By Todd Smith

By

By
"Undersigned" shall refer to all persons who sign this guaranty, severally and jointly.



ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under §111(b)(2) of the United States Bankruptcy Code.

7. The Undersigned waives any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to Indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the Undersigned will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any Indebtedness, or any setoff available against Lender to Borrower or any such other person, whether or not on account of a related transaction. The Undersigned expressly agrees that the Undersigned shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing Indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. The undersigned shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though the Borrower's obligations had not been discharged.

8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay Indebtedness even though any other person obligated to pay Indebtedness, including Borrower, has such obligation discharged in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy petition interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to Indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.

9. If any payment applied by Lender to Indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the Indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such Indebtedness as fully as if such application had never been made.

10. The Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay Indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.

11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. Lender shall not be required first to resort for payment of the Indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for Indebtedness, before enforcing this guaranty.

12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to Lender as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

13. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, shall be binding upon the Undersigned and the heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefit of Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and Lender. This guaranty shall be governed by the laws of the State in which it is executed. The Undersigned waives notice of Lender's acceptance hereof.

31840/01507

GUARANTY

10/01/2008

ORIGINAL

DUNCAN

(City)

SC

(State)

DRERA MASUGA

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce National Bank of South Carolina (herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of _____

RYATOCK INVESTMENTS LLC

(herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: ACCT# NOTRE 00003 and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

B. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debt(s): _____

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all Indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to Indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all Indebtedness, whether due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all Indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ _____ (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated _____
☐ secured by _____

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.

By _____

By _____

"Undersigned" shall refer to all persons who sign this guaranty, severally and jointly.

ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under §1111(b)(2) of the United States Bankruptcy Code.

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8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay Indebtedness even though any other person obligated to pay Indebtedness, including Borrower, has such obligation discharged in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy petition interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to Indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.

9. If any payment applied by Lender to Indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the Indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such Indebtedness as fully as if such application had never been made.

10. The Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay Indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.

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STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Peach REO, LLC

Plaintiff,

VS.

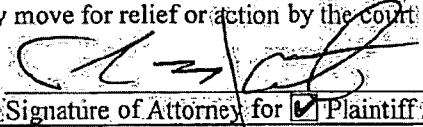
Blalock Investments, LLC, et. al.

Defendant.

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

CASE NO.: 2015 -CP-42-4448

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Frank B.B. Knowlton, Bar No. 3588 Address: P.O. Box 11070, Columbia SC 29211 Phone: 803-799-2000 Fax 803-255-9644 E-mail: frank.knowlton@nelsonmullins.com Other:		Defendant's Attorney: , Bar No. Address: Phone: Fax E-mail: Other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Motion to Appoint Receiver Estimated Time Needed: 15 min. Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiff / ☐ Defendant Date submitted: 2015 NOV 2			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ 25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE Date: , 20	
CLERK'S VERIFICATION Collected by: Date Filed: , 20 ☐ MOTION FEE COLLECTED: \$ ☐ CONTESTED - AMOUNT DUE: \$			

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

Peach REO, LLC, a Delaware limited liability company,) Civil Action No. 2015-CP-42-4448
)
)

Plaintiff,)

vs.)

Blalock Investments, LLC; Todd Smith
and Debra Masuga,)

Defendants.)
)

NOTICE OF MOTION AND MOTION
FOR APPOINTMENT
OF RECEIVER

NOTICE IS HEREBY GIVEN, that the undersigned attorney for the Plaintiff will move before the presiding judge of the Seventh Judicial Circuit for the appointment of a receiver, pursuant to the terms of the Loan Documents attached to the complaint filed in connection with this matter and pursuant to Section 15-65-10 *et seq.* and the Code of Laws of South Carolina, so as to protect, preserve and collect any applicable income from the property. The grounds for this Motion include, but are not limited to the following:

1. The collateral pledged by Defendant to Plaintiff includes real property in Spartanburg County (the "Property").
2. The "Loan Documents" include, but are not limited to, Note, Mortgage with an Assignment of Leases, Rents and Profits provision and Security Agreement, as will be more particularly described in the Memorandum of Law to be filed separately herein. These Loan Documents provide Plaintiff the right, among others, to seek the appointment of a receiver to manage and preserve the Property in the Event of Default, as defined under the various Loan Documents.

CLERK OF COURT
SPARTANBURG COUNTY
2015 NOV -2 AM 10:44
T. HOPE BLACKLEY

3. As more fully set forth in the Complaint, the Defendants are in default for the failure to pay real estate taxes and failure to maintain insurance on the Property. Further, the loan has matured and the Defendants have failed to make all loan payments in full.

4. The failure to make all payments when due constitutes an Event of Default under the applicable Loan Documents, as set forth in the Loan Documents attached to the Complaint and incorporated by reference herein, and as set forth in the Affidavit.

5. Additional grounds exist for the appointment of a receiver pursuant to S.C. Code Ann. § 15-65-10 because the profits are in danger of being lost or materially injured or impaired.

6. This Motion will be further based on the summons, complaint, lis pendens, and other matters to be filed with the Court including, but not limited to, affidavits or memorandum in support of motion, that may be filed with the Court prior to the hearing on this Motion, and the laws of the State of South Carolina and other matters as may be presented to the Court.

7. The fee schedule for the proposed receiver will be attached as an Exhibit to the Memorandum of Law to be filed separately herein.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Frank B. B. Knowlton, SC Bar No. 003588
E-Mail: frank.knowlton@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Peach REO, LLC, a Delaware limited liability company

Columbia, South Carolina

0000 27, 2015.

CLERK OF COURT
SPARTANBURG COUNTY
2015 NOV -2 AM 10:44
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Peach REO, LLC, a Delaware limited
liability company,)

Plaintiff,)

Vs.)

Blalock Investments, LLC; Todd Smith;
Debra Masuga; Subway Real Estate, LLC
and County of Spartanburg, a political
subdivision of the State of South Carolina,)

Defendants.)

and)

Blalock Investments, LLC; Todd Smith and
Debra Masuga,)

Third Party Plaintiffs)

v.)

Capital Crossing Servicing Company, LLC)

Third Party Defendant)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Civil Action NO. 2015-CP-42-4448

SUMMONS

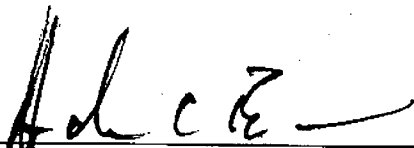
TO: CAPITAL CROSSING SERVICING COMPANY, LLC

YOU ARE HEREBY summoned and required to answer the third-party complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your answer to said third-party complaint on the subscribers at their offices, Eller Tonnsen Bach, LLC, 2201 Augusta Street, Suite 200, Greenville, SC 29605, within thirty (30) days after service hereof, exclusive of the day of service; and if you fail to answer the third-party complaint within this time, third-party plaintiffs will apply to the Court and judgment by default will be rendered for the relief demanded.

Signature on following page

2016 JUN -9 PM 2:33
CLERK OF COURT

SC



Adam C. Bach (S.C. Bar # 74885)
ELLER TONNSEN BACH, LLC
2201 Augusta St., Suite 200
Greenville, SC 29605
Telephone: (864) 236-5013
Facsimile: (864) 312-4191
Attorney for Blalock Investments, LLC

January 6, 2016
Greenville, SC

2016 JAN -8 PM 2:33
ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Peach REO, LLC, a Delaware limited
liability company,)

Plaintiff,)

Vs.)

Blalock Investments, LLC; Todd Smith;
Debra Masuga; Subway Real Estate, LLC
and County of Spartanburg, a political
subdivision of the State of South Carolina,)

Defendants.)

and)

Blalock Investments, LLC; Todd Smith and
Debra Masuga,)

Third Party Plaintiffs)

v.)

Capital Crossing Servicing Company, LLC)

Third Party Defendant)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Civil Action NO. 2015-CP-42-4448

**ANSWER, COUNTERCLAIM, AND
THIRD-PARTY COMPLAINT**

(JURY TRIAL DEMANDED)

The defendants, counterclaimants, and third-party plaintiffs, Blalock Investments, LLC,
Todd Smith, and Debra Masuga, by and through their undersigned attorneys, hereby answer,
counterclaim and bring third-party claims as follows:

FOR A FIRST DEFENSE

1. Blalock Investments, LLC, Todd Smith and Debra Masuga (collectively
"Defendants") admit, upon information and belief, the allegations contained in paragraph 1 of
the complaint.

2. They admit the allegations of paragraph 2.

3. They admit the allegations of paragraph 3.
4. They admit the allegations of paragraph 4.
5. They admit, upon information and belief, the allegations of paragraph 5.
6. They admit the allegations of paragraph 6.
7. Paragraph 7 states a legal conclusion to which no response is required.
8. They admit the allegations of paragraph 8.
9. They admit the allegations of paragraph 9.
10. They admit the allegations of paragraph 10.
11. They admit the allegations of paragraph 11.
12. In response to paragraph 12, they repeat the allegations contained in the previous paragraphs as if fully restated herein.
13. They admit the allegations of paragraph 13.
14. They admit the allegations of paragraph 14.
15. They admit the allegations of paragraph 15.
16. They are without sufficient information to form a belief as to the allegations of paragraph 16 and, therefore, deny the same.
17. They are without sufficient information to form a belief as to the allegations of paragraph 17 and, therefore, deny the same.
18. They are without sufficient information to form a belief as to the allegations of paragraph 18 and, therefore, deny the same.
19. They are without sufficient information to form a belief as to the allegations of paragraph 19 and, therefore, deny the same.

20. They are without sufficient information to form a belief as to the allegations of paragraph 20 and, therefore, deny the same.

21. They are without sufficient information to form a belief as to the allegations of paragraph 21 and, therefore, deny the same.

22. They admit, upon information and belief, the allegations of paragraph 22.

23. They admit so much of the allegations of paragraph 23 as allege that sums remain due and owing on the Note and Mortgage. They deny the remaining allegations of paragraph 23.

24. They admit the allegations of paragraph 24.

25. They admit so much of the allegations of paragraph 25 as allege that sums remain due and owing on the Note and Mortgage. They deny the remaining allegations of paragraph 25.

26. They admit, upon information and belief, the allegations of paragraph 26.

27. They deny the allegations of paragraph 27.

28. They deny the allegations of paragraph 28.

29. In response to paragraph 29, they repeat the allegations contained in the previous paragraphs as if fully restated herein.

30. They admit so much of paragraph 30 as alleges that Smith and Masuga executed Guaranties of the Note. In response to the remaining allegations, they refer to the subject document and deny any allegations inconsistent therewith.

31. In response to paragraph 31, they refer to the subject documents and deny any allegations inconsistent therewith.

32. They deny the allegations of paragraph 32.

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33. They admit so much of the allegations of paragraph 33 as allege that there is an outstanding balance owed on the Note and Guaranty. They deny the remaining allegations of paragraph 33.

34. They deny the allegations of paragraph 34.

35. In response to paragraph 35, they repeat the allegations contained in the previous paragraphs as if fully restated herein.

36. Paragraph 36 states the plaintiff's intent and, therefore, no response from the defendants is required. To to the extent a response is required, the defendants deny the allegations of paragraph 36.

37. Defendants deny each and every allegation of the complaint not specifically admitted, modified, or explained, hereinabove.

FOR A SECOND DEFENSE

38. Plaintiff has failed to mitigate its damages as required by law. Therefore, Plaintiff's claims are barred.

FOR A THIRD DEFENSE

39. The complaint fails to state facts sufficient to constitute a cause of action against Defendants and, therefore, it should be dismissed.

FOR A FOURTH DEFENSE

40. Plaintiff's recovery is barred by the equitable doctrines of waiver and estoppel, unclean hands, and/or laches.

FOR A FIFTH DEFENSE

41. Defendants plead the defense of payment and demands a strict accounting of all sums allegedly owed.

FOR A SIXTH DEFENSE

42. Defendants request an order of appraisal and specifically denies that the sale amount of the property represents an accurate valuation of the property.

FOR A SEVENTH DEFENSE

43. Plaintiff failed to act in a commercially reasonable manner with respect to satisfaction of any obligation owed by Defendant and, therefore, Defendant is not responsible for any deficiency pursuant to S.C. Code § 36-9-101, *et. seq.*

**FOR AN EIGHTH DEFENSE AND BY WAY
OF COUNTERCLAIM
(BREACH OF CONTRACT)**

44. Defendants repeat and re-allege the allegations contained in their previous defenses as if fully restated herein.

45. Upon information and belief, Capital Crossing Servicing Company, LLC ("Capital") is a limited liability company organized and existing under the laws of the State of Massachusetts.

46. On September 28, 2011, servicing of the Note, Mortgage and Commercial Security Agreement (collectively the "Loan") were placed in the hands of Capital. At all times relevant to the allegations contained in the complaint, counterclaim, and third-party complaint, Capital acted as Peach REO, LLC's ("Peach") agent and as agent for any prior holder of the Loan.

47. Beginning in 2012, Defendants began reaching out to Capital to restructure the Loan because the Loan's maturity date of October 1, 2013 was preventing Defendants from leasing the Property to potential tenants.

48. In February 2013, Capital requested certain documents in order to evaluate a restructuring of the Loan and those documents were provided.

49. From February 2013 through June 2013, Defendants contacted Capital repeatedly requesting an extension of the maturity date, loan modification, or forbearance and alerted Capital that they could not lease the Property due to the upcoming maturity of the Loan. Defendants also sought permission from Capital to enter into the lease agreements to generate revenue from the Property.

50. On April 17, 2013, Capital communicated to Defendants that the Loan was 45 days past due. Defendants replied that they could not generate sufficient revenue from leases to pay the rent because of the upcoming maturity and requested that Capital respond to their request for modification.

51. In May 2013, Capital ordered an appraisal of the Property, which was performed by Joel Norwood. Capital indicated that it would charge the cost of the appraisal to the Defendants as collection costs. One year later, Capital indicated that it could not locate the May 2013 appraisal, ordered a second appraisal, and indicated it would charge the costs of the second appraisal to Defendants as collection costs.

52. On May 6, 2013 Capital offered to extend the term of the Loan by six months if Defendants brought the Loan current and paid \$200,000.00 at the original maturity date. On May 9, 2013, Defendants replied that Capital's offer did not provide a sufficient extension to permit them to lease the Property and was not feasible.

53. On May 20, 2013, Defendants offered to deed the Property to Capital in lieu of foreclosure. Despite multiple follow-up communications, Capital never responded to this offer

other than to ask for documents that had already been provided or which Capital had previously been informed were not available.

54. On July 19, 2013, Defendants alerted Capital that property taxes in the amount of \$36,102.81 were due to Spartanburg County and that unless paid the property would be sold at a tax sale in November 2013.

55. On October 1, 2013, the Loan matured. Defendants did not pay the remaining principal and interest on the Loan as called for by the Note. Plaintiffs failed to take any action with respect to the Loan maturity and failed to pay the taxes due on the Property.

55. On November 18, 2013, the Property was sold at a tax sale to Cley Equities, LLC ("Cley"). Notice was sent by Cley that the Property could be redeemed before February 19, 2014 for \$62,633.39. The notice also stated that the price to redeem the property would rise to \$89,033.39 on March 18, 2014; to \$125,136.27 on May 19, 2014; and to \$139,963.47 on August 19, 2014. Despite the significantly higher cost of waiting, Capital waited until November 17, 2014 to redeem the Property, two days before redemption rights expired.

56. From February 2013 until present, Defendants have presented Capital with multiple proposals from third parties to purchase or lease all or part of the Property thereby allowing Capital to mitigate its damages and reduce or eliminate the amount owed by the defendants. After each offer, Capital failed to respond to these offers or proposals or responded by requesting documents already in its possession, refusing to consider the offer or negotiate until certain documents were provided, and/or stating that they would not consider offers or proposals until Defendants entered into a pre-negotiation agreement waiving certain defenses and rights.

57. Pursuant to the terms of the Mortgage conveyance of the Property, including certain leases, without Peach's prior written consent is forbidden and an event of default. Therefore, Defendants could not take action to sell or lease the Property to prevent further damages from accruing without cooperation from Peach.

58. The last payment on the Loan was made in February 2013 and the Loan matured on October 1, 2013. Peach and Capital failed to take any action on the Loan and Guaranties until November 2015, two months before the applicable statute of limitations would have barred an action seeking to collect. By waiting for thirty-four months to bring an action following the last payment on the Loan, and by failing to respond to offers to sell or lease the Property, Peach and Capital maximized their potential damages.

59. The Note, Mortgage, Guaranties, and Commercial Security Agreement formed a contract between Defendants and Peach that contained the implied covenant of good faith and fair dealing. Peach has breached the implied covenant of good faith and fair dealing in one or more of the following particulars:

- a. Waiting thirty-four months to initiate an action on the Loan and Guaranties, thereby deliberately increasing the interest and late charges allegedly due;
- b. Refusing to accept a deed in lieu of foreclosure;
- c. Refusing to respond to offers to purchase or lease the Property despite Defendants' contractual obligation to get approval before selling the Property or entering into certain leases;
- d. Refusing to permit Defendants to sell or lease the Property without their permission;

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e. Failing to pay the property taxes on the Property prior to a tax sale and then waiting until the maximum interest penalty had accrued on the Property before redeeming;

f. Failing to extend the maturity date on the Loan to enable Defendants to lease the Property;

g. Failing to timely communicate regarding offers to purchase or lease the Property;

h. Repeatedly requesting documentation from Defendants before responding to offers to purchase or lease the Property, even though the documents had already been provided and potential sales or leases were time-sensitive;

i. By intentionally and deliberately acting to prevent Defendants from selling the Property, leasing the Property, or otherwise taking action to limit their exposure following default; and

j. In such other ways as shall be discovered and proved at trial.

60. As a direct and proximate result of Peach's breach, Defendants have suffered damages in an amount to be determined by the trier of fact.

**FOR A NINTH DEFENSE AND BY WAY OF
COUNTERCLAIM AND THIRD-PARTY COMPLAINT
(UNFAIR TRADE PRACTICES)**

61. Defendants repeat and re-allege the allegations contained in their previous claims and defenses as if fully restated herein.

62. Peach and Capital engaged in unfair and deceptive acts within the meaning of the South Carolina Unfair Trade Practices Act, S.C. Code § 39-5010, *et. seq.* (the "Act").

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JUDICIAL DISTRICT OF CLAY COUNTY
SC

63. Peach and Capital's actions have an adverse impact on the public interest insofar as they have the potential for repetition.

64. As a direct and proximate result of Peach and Capital's violation of the Act, the defendants have suffered an ascertainable loss of money or property. Defendants are entitled to an award of three times their actual damages plus their attorneys' fees and costs, along with punitive damages an amount to be determined by the trier of fact.

**FOR A TENTH DEFENSE AND BY WAY
OF COUNTERCLAIM AND THIRD PARTY COMPLAINT
(TORTIOUS INTERFERENCES WITH A CONTRACT OR A PROSPECTIVE
CONTRACTUAL RELATIONSHIP)**

65. Defendants repeat and re-allege the allegations contained in their previous claims and defenses as if fully restated herein.

66. Contracts or potential contractual relationships existed between Defendants and third parties to sell or lease the Property.

67. Peach and Capital knew of these contracts or potential contracts between Defendants and third-parties.

68. Peach and Capital tortiously interfered with these contracts.

69. There was no lawful justification for their interference and their interference caused damages.

70. Defendants are entitled to judgment against Peach and Capital in the amount of their actual, compensatory and punitive damages, as may be determined by a jury.

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**FOR A ELEVENTH DEFENSE AND BY WAY
OF COUNTERCLAIM AND THIRD-PARTY COMPLAINT
(FAILURE TO ACT IN A COMMERCIALY REASONABLE MANNER)**

71. Defendants repeat and re-allege the allegations contained in their previous claims and defenses as if fully restated herein.

72. Peach and Capital have failed to act in a commercially reasonable manner as required by S.C. Code § 36-9-101, *et. seq.* and their failure has caused Defendants damages.

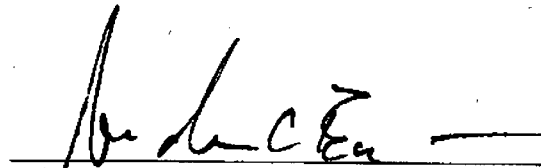
73. Defendants are entitled to an award of their damages as determined by the trier of fact and for an order restraining collection and disposition of the Property. Additionally, Defendants are entitled to an order limiting any deficiency judgment to the net proceeds from the disposition of the Property or, alternatively, to an order awarding them the amount of the proceeds that would have been realized had Peach and Capital acted in a commercially reasonable manner, along with their reasonable attorneys' fees.

WHEREFORE, having fully answered the complaint of the plaintiff, Defendants hereby pray for the following relief:

- a. For an order dismissing the plaintiff's complaint with prejudice;
- b. For an order that the Property be sold;
- c. For an order reducing the Defendants deficiency, if any, to the net proceeds of the sale; or, alternatively, awarding Defendants the amount of the proceeds that would have been obtained from a sale had the plaintiff acted in a commercially reasonable manner; or, alternatively, reducing any deficiency by the amount the trier of fact determines Defendants were damaged by the plaintiff's conduct;
- d. For actual, consequential, incidental special and general damages in an amount to be determined by the trier of fact;

- e. For an award of treble damages;
- f. For an award of their reasonable costs and attorneys' fees;
- g. For an award of punitive damages; and
- h. For such other and further relief as this Court deems just and proper.

Respectfully Submitted,



Adam C. Bach (S.C. Bar # 74885)
Patrick R. Martin (S.C. Bar # 100172)
ELLER TONNSEN BACH, LLC
2201 Augusta St., Suite 200
Greenville, SC 29605
Telephone: (864) 236-5013
Facsimile: (864) 312-4191

*Attorneys for Blalock Investments, LLC,
Todd Smith and Debra Masuga*

January 6, 2016
Greenville, SC



THE DEFENDANTS REQUEST A TRIAL BY JURY AS TO ALL ISSUES SO TRIABLE

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STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Peach REO, LLC, a Delaware limited
liability company,)

Plaintiff,)

Vs.)

Blalock Investments, LLC; Todd Smith;
Debra Masuga; Subway Real Estate, LLC
and County of Spartanburg, a political
subdivision of the State of South Carolina,)

Defendants.)

and)

Blalock Investments, LLC; Todd Smith and
Debra Masuga,)

Third Party Plaintiffs)

v.)

Capital Crossing Servicing Company, LLC)

Third Party Defendant)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Civil Action NO. 2015-CP-42-4448

CERTIFICATE OF SERVICE

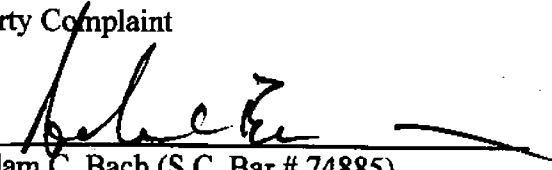
The undersigned certifies that he served, on the date set forth below, a copy of the below-listed document(s) in the above-entitled action to the following persons by depositing a copy of the same in the United States Mail, postage pre-paid, addressed as follows:

Mr. Frank B.B. Knowlton, Esq.
Nelson Mullins Riley & Scarborough, LLP
1320 Main Street/ 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201

2016 JAN -8 PM 2:34
M. HOPE SHERRELL

DOCUMENT(S):

- 1) Answer, Counterclaim and Third-Party Complaint


Adam C. Bach (S.C. Bar # 74885)
ELLER TONNSEN BACH, LLC

January 6, 2016
Greenville, SC

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ELLER TONNSEN BACH

Attorneys at Law

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J. Trey Odom
R. Patrick Martin*
Weston J. White
Donald L. Van Riper†

*Licensed in both NC and SC

† Of counsel

January 6, 2016

Ms. Hope Blackley
Spartanburg County Clerk of Court
Spartanburg County Courthouse
180 Magnolia Street, Suite 500
Spartanburg, SC 29306

Re: *Peach REO, LLC, a Delaware limited liability company vs. Blalock Investments, LLC; Todd Smith; Debra Masuga; Subway Real Estate, LLC and County of Spartanburg, a political subdivision of the State of South Carolina, C.A. No.: 2015-CP-42-4448*

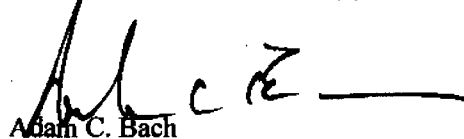
Dear Ms. Blackley:

Enclosed please find the original and one (1) copy of an answer, counterclaim, summons and third-party complaint, along with a certificate of service of the same in the above-referenced matter. We would appreciate your filing the original and returning the clocked copy to us in the envelope provided herewith. Please let us know if we may provide any additional information to you at this time.

Thank you for your attention to this matter.

Sincerely,

ELLER TONNSEN BACH, LLC



Adam C. Bach

ACB/cal
Enclosures

cc: Mr. Frank B.B. Knowlton, Esq.

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H. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

PEACH REO

Plaintiff,

vs.

BLALOCK INVESTMENTS, ET AL.

Defendant.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-42-4448

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Frank BB Knowlton, Bar No. 3588 Address: POBox 11070, Columbia, SC 29211 Phone: 803.255.9588 Fax _____ E-mail: frank.knowlton@nelsonmullins.com Other: _____		Defendant's Attorney: Adam C. Bach, Bar No. 74885 Address: 2201 Augusta St., S200, Greenville, SC 29605 Phone: 864.236.5013 Fax _____ E-mail: _____ Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Dismiss Counterclaims and Third Party Complaint Estimated Time Needed: 30 min. Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☒ Plaintiff / ☐ Defendant February 2, 2016 Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION Collected by:  Date Filed: _____ ☒ MOTION FEE COLLECTED: \$ 25 ☐ CONTESTED - AMOUNT DUE: \$ _____			

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

Peach REO, LLC, a Delaware limited liability company,) Civil Action No. 2015-CP-42-4448
)
)

Plaintiff,)

vs.)

MOTION TO DISMISS
COUNTERCLAIMS AND THIRD-
PARTY COMPLAINT

Blalock Investments, LLC; Todd Smith;)
 Debra Masuga; Subway Real Estate,)
 LLC; and County of Spartanburg, a)
 political subdivision of the State of)
 South Carolina,)

Defendants.)

and)

Blalock Investments, LLC; Todd Smith;)
 and Debra Masuga,)

Third Party Plaintiffs,)

vs.)

Capital Crossing Servicing Company,)
 LLC,)

Third Party Defendant.)

Plaintiff Peach REO, LLC, a Delaware limited liability company ("Peach") and Third Party Defendant Capital Crossing Servicing Company, LLC ("Capital Crossing," and collectively with Peach, "Lender"),¹ hereby move the Court for an Order dismissing the counterclaims and third-party complaint filed by Defendants/Third Party Plaintiffs Blalock Investments, LLC, Todd Smith, and Debra Masuga (collectively, "Debtors") in the above

¹ Capital Crossing services the subject loan on behalf of Peach.

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 SPARTANBURG, SC

action pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. The grounds for this motion are that the counterclaims and third-party claims fail to state facts sufficient to constitute any cause of action.

This is a foreclosure action based on a \$1.9M note and mortgage by Blalock Investments, LLC, which was guaranteed by Todd Smith and Debra Masuga. See generally Complaint. Debtors admit that they defaulted in the monthly payments on the loan in February 2013, failed to pay the loan in full upon its maturity in October 2013, and failed to pay the property taxes, which caused the property to be sold at a tax sale in November 2013. See generally Answer, Counterclaim, and Third-Party Complaint.

Despite their multiple defaults on the subject loan, Debtors asserted the following counterclaims against Peach and third-party claims against Capital Crossing: (1) counterclaim for breach of the implied covenant of good faith and fair dealing; (2) counterclaim and third-party claim for violation of South Carolina's Unfair Trade Practices Act; (3) counterclaim and third-party claim for tortious interference with contract; and (4) counterclaim and third-party claim for failure to act in a commercially reasonable manner. Id.

Debtors' claims are all generally based on their assertion that Lender should have taken some action to "limit [Debtors'] exposure following default" or, in other words, they failed to mitigate the amounts Debtors owe on the subject loan. Id. at ¶ 59(i). However, Lender was entitled to recover the full amount owed on the loan and had no duty to mitigate these damages in any way. Cisson Const., Inc. v. Reynolds & Associates, Inc., 311 S.C. 499, 503-04, 429 S.E.2d 847, 849-50 (Ct. App. 1993) (holding lenders have no duty to mitigate their damages where they have a right to recover the full amount sought upon borrowers' default) (citing 22 Am. Jur. 2d Damages § 506 (1988)); see also Wells Fargo Bank, N.A. v. C&S Carolina

Ventures, LLC, et al., Order by Master-in-Equity Gordon Cooper Granting Plaintiff's Motion for Summary Judgment and Denying Defendants' Motion for Summary Judgment (June 22, 2012) (relying on Cisson to find that a lender had no duty to accept a short sale for less than the full balance due on the subject loan after the borrowers' default), attached hereto as **Exhibit A** and incorporated herein by reference; Wells Fargo Bank, N.A. v. Coastal Consulting & Development Co., LLC, et al., Order by Master-in-Equity Mikell Scarborough Granting Plaintiff's Motion for Summary Judgment (August 27, 2012) (relying on Cisson to find that a lender had no duty to accept a short sale for less than the full balance due on the subject loan after the borrowers' default), attached hereto as **Exhibit B** and incorporated by reference. Accordingly, each of the counterclaims and third-party claims should be dismissed.

Moreover, the specific conduct on which Debtors' claims are based fails to support any cause of action. For example, Debtors complain they were not given an extension or modification of the subject loan and have not been able to reach any settlement on the loan. See generally Answer, Counterclaim, and Third-Party Complaint. Lender, however, is not obligated to extend or modify the loan or accept any settlement for less than the full balance owed on the loan. See Promissory Note attached to Amended Complaint as Exhibit A at p. 2 ("[Blalock Investments, LLC] agree[s] that [Lender] may *at [Lender's] option* extend this note . . . ") (emphasis added); Guarantees attached to Amended Complaint as Exhibit J at p. 2 ("Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of indebtedness . . . "); see also Cisson Const., Inc., 311 S.C. at 503-04, 429 S.E.2d at 849-50; Branch Banking and Trust Co. of South Carolina v. Carolina Crank & Gore, Inc., 362 S.C. 647, 608 S.E.2d 896 (Ct. App. 2005) (recognizing a lender's right to refuse renewal of a note and proceed with its right to enforce its remedies instead); S.C. Code Ann. §

37-10-107 (actions based on a lender's failure to renew, modify, amend, or cancel a loan are barred unless the plaintiff has a writing signed by the lender containing the material terms and conditions). In any event, Debtors admit they were offered a six-month extension, which they refused. See Answer, Counterclaim, and Third-Party Complaint at ¶ 52.

Debtors also complain that Lender did not approve of proposed leases or sales of the subject property since their default. See Answer, Counterclaim, and Third-Party Complaint at ¶ 56. Again, Lender was not obligated to approve any lease or sale of the subject property in lieu of being paid the full amount owed on the loan. Cisson Const., 311 S.C. at 503-04, 429 S.E.2d at 849-50; C&S Carolina Ventures, Order by Master-in-Equity Gordon Cooper Granting Plaintiff's Motion for Summary Judgment and Denying Defendants' Motion for Summary Judgment (June 22, 2012); Coastal Consulting, Order by Master-in-Equity Mikell Scarborough Granting Plaintiff's Motion for Summary Judgment (August 27, 2012).

Moreover, Debtors' counterclaim for breach of the implied covenant of good faith and fair dealing should be dismissed because South Carolina courts do not recognize it as an independent cause of action. RoTec Services, Inc. v. Encompass Services, Inc., 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App. 2004) (concluding that "the implied covenant of good faith and fair dealing is not an independent cause of action . . . "); see also Regions Bank v. College Ave. Development, LLC, 2010 WL 973480, at * 3 (D.S.C. 2010) (concluding that breach of implied covenant of good faith and fair dealing is not an independent cause of action); In re Ducane Gas Grills, Inc., 320 B.R. 341, 354 (Bankr. D.S.C. 2004) (holding that breach of implied covenant of good faith and fair dealing cause of action is not an independent cause of action).

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In conclusion, Debtors fail to state facts sufficient to constitute any cause of action against Peach or Capital Crossing, and the counterclaims and Third-Party Complaint should all be dismissed pursuant to Rule 12(b)(6). This Motion to Dismiss may be supported by pleadings, a supporting memorandum, and all other materials permitted by the Rules of Civil Procedure and/or the Court at the hearing of this matter.

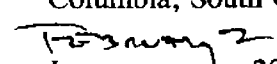
NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Frank B.B. Knowlton, SC Bar No. 003588
E-Mail: frank.knowlton@nelsonmullins.com
Erik T. Norton, SC Bar No. 73860
E-Mail: erik.norton@nelsonmullins.com
Tara C. Sullivan, SC Bar No. 79806
E-Mail: tara.sullivan@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Plaintiff Peach REO, LLC, a Delaware limited liability company, and Third Party Defendant Capital Crossing Servicing Company, LLC

Columbia, South Carolina


January ____, 2016.

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U.S. DISTRICT COURT
S.D. OF SOUTH CAROLINA

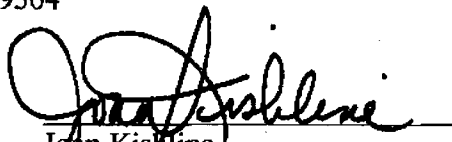
CERTIFICATE OF SERVICE

I the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for the Plaintiff do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Motion to Dismiss Counterclaims and Third-Party Complaint

Counsel Served: Adam C. Bach
Eller Tonnsen Bach, LLC
2201 Augusta St.
Suite 200
Greenville, SC 29605

John H. Harris
Sr. Deputy County Attorney
Spartanburg County Attorney's Office
P. O. Box 5666
Spartanburg, SC 29304


Joan Kishline
Administrative Assistant

Columbia, South Carolina

February 3, 2016

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N. MULLINS RILEY & S.C.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-42-6118

Wells Fargo Bank, N.A., successor in interest by merger to

C&S Carolina Ventures, LLC, Liberty Consulting &
Investment, Inc., Rodney A. Cobb, Michael C. Copps,

Wachovia Bank, N.A., successor in interest by merger to
South Trust Bank, N.A.

Victor C. Smith, and Herbert W. Smith, Jr.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Tara C. Sullivan

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

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

Plaintiff's Motion for Summary Judgment Granted and Defendants' Motion for Summary Judgment Denied

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount to be Enrolled (List amount(s) below)
Wells Fargo Bank, National Association	C&S Carolina Ventures, LLC, Liberty Consulting & Investment, Inc., Rodney A. Cobb, Michael C. Copps, Victor C. Smith, and Herbert W. Smith, Jr.	\$
		\$
		\$



If applicable, describe the property, including tax map information and address, referenced in the order: ALL THAT CERTAIN piece, parcel or lot of land, with all improvements thereon, situate, lying and being in the State of South Carolina, County of Spartanburg, in or near the town of Duncan, being known and designated as Tract A, containing 13.25 acres, and Tract B, containing 3.36 acres, comprising a total of 16.61 acres, all as shown on a plat of survey entitled "Survey for Robert J. Elliott and Donna C. Elliott" prepared by Landreth Surveying, dated April 29, 1994, and recorded in the RMC Office for Spartanburg County in Plat Book 125 at Page 278, and having, according to said plat, the following metes and bounds, to-wit:

BEGINNING at a 3/4" open top pipe lying within the right-of-way of Victor Woods Chapel Road at a joint corner with property now or formerly of Iris E. Bearden and property now or formerly of Donald G. Blackwell and Penny B. Blackwell, said pipe lying 4611 feet, more or less, in a northerly direction from the intersection of Victor-Woods Chapel Road with S.C. Highway 42-221, and running thence through the right-of-way of Victor-Woods Chapel Road S. 45-08-22 W., 33.67 feet to a nail and cap on the center line of the right-of-way of Victor-Woods Chapel Road; thence turning and running along the center line of the right-of-way of Victor-Woods Chapel Road N. 85-12-33 W., 728.05 feet to a nail and cap in the center line of the right-of-way of Victor-Woods Chapel Road; thence turning and running along a joint line with property now or formerly of Bertha W. Smith N. 04-48-09 E., 939.20 feet to a 3/8" rebar in the center line of the right-of-way of McClure Smith Road; thence turning and running along the center line of the right-of-way of McClure Smith Road, the following courses and distances: N. 54-28-05 E., 115.53 feet to a 3/8" rebar; thence N. 65-57-34 E., 112.74 feet to a 3/8" rebar; thence N. 55-40-40 E., 112.53 feet to a 3/8" rebar; thence N. 67-44-47 E., 97.45 feet to a 3/8" rebar; thence N. 74-23-38 E., 168.48 feet to a 3/8" rebar in the center line of McClure Smith Road at a joint corner with property now or formerly of Iris D. Bearden; thence turning and running along a joint line with property now or formerly of Iris D. Bearden S. 05-57-00 E., 1238.37 feet to a 3/4" open top pipe lying within the right-of-way of Victor-Woods Chapel Road, being the point of beginning.

LESS AND EXCEPTING:

All that certain piece, parcel or tract of land, containing 3.35 acres, more or less, situate, lying and being in the County of Spartanburg, State of South Carolina, being shown and designated as Tract B, on plat prepared by Site Design, Inc., dated April 21, 2011, and recorded in the Office of the Register of Deeds for Spartanburg County in Plat Book 165 at Page 963. Reference to is hereby made to said plat for a complete metes and bounds description of the property.

TOGETHER WITH a non-exclusive easement forty (40') feet in width, located on remaining property of C&S Carolina Ventures, LLC, running along the western boundary of the above described property for a distance of 569.54 feet and being shown as "Proposed 40.0' Ingress/Egress Easement" on the above referenced plat. Said easement shall be for the purpose of providing Grantee, its successors and assigns use of the road located within said easement for ingress to and egress from the above described property.

This is the same property conveyed to C&S Carolina Ventures, LLC by Robert J. Elliott and Donna C. Elliott by Deed dated October 11, 1995 recorded in Book 63J at Page 696 in the Office of the Register of Deeds for Spartanburg County, South Carolina.

TMS No.: 5-24-00-043.06

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

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the 22 day of June, 2012 and a copy mailed first class or

placed in the appropriate attorney's box on this 22 day of June, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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SPRINGFIELD COUNTY
2012 JUN 22 AM 9:40
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Wells Fargo Bank, National Association,)
successor in interest by merger to)
Wachovia Bank, National Association,)
successor in interest by merger to)
SouthTrust Bank, N.A.,)

Plaintiff,)

vs.)

C&S Carolina Ventures, LLC, Liberty)
Consulting & Investment, Inc., Rodney)
A. Cobb, Michael C. Copps, Victor C.)
Smith, and Herbert W. Smith, Jr.,)

Defendants.)

Civil Action No. 2010-CP-42-6118

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND DENYING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

This matter came before the Court at 3:30 p.m. on Tuesday, June 12, 2012, for the purpose of hearing the Motion for Summary Judgment filed by Plaintiff Wells Fargo Bank, National Association, successor in interest by merger to Wachovia Bank, National Association, successor in interest by merger to SouthTrust Bank, N.A. ("Plaintiff"). Defendants C&S Carolina Ventures, LLC, Liberty Consulting & Investment, Inc., Michael C. Copps, Victor C. Smith, and Herbert W. Smith, Jr. ("Defendants") filed a Motion for Summary Judgment based on Plaintiff's alleged unauthorized practice of law on June 12, 2012, and served this Motion on Plaintiff at the hearing. After a review of these matters and hearing arguments from counsel for Plaintiff and Defendants, Plaintiff's Motion for Summary Judgment is **GRANTED** and Defendants' Motion for Summary Judgment is **DENIED**:

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FINDINGS OF FACTS:

1. On January 15, 1999, Defendant C&S Carolina Ventures, LLC, ("C&S"), for value received, executed and delivered to Plaintiff a promissory note in the original principal amount of \$3,332,317.24, with interest thereon ("Note").

2. In consideration of the Note, C&S executed and delivered to Plaintiff a real estate mortgage and security agreement ("Mortgage") dated January 15, 1999, and recorded in the Office of the Register of Deeds for Spartanburg County on March 1, 1999, in Mortgage Book 2177 at Page 219, wherein and whereby C&S mortgaged to Plaintiff 16.61 acres of real property located in or near Duncan, South Carolina, and more fully described in the Mortgage ("Property").

3. The Note and Mortgage were extended and modified by a Forbearance Agreement dated April 7, 2009, which extended the maturity date of the loan to December 1, 2009 ("Forbearance Agreement").

4. In further consideration of the Note, C&S executed and delivered to Plaintiff an assignment of leases, rents and profits ("Assignment of Leases") dated January 15, 1999, and recorded in the Office of the Register of Deeds for Greenville County on March 1, 1999, in Book 69-M at Page 77.

5. In further consideration of the Note, the Defendants Liberty Consulting, Inc. ("Liberty Consulting"), Rodney A. Cobb ("Cobb"), Michael C. Copps ("Copps"), Victor C. Smith ("Victor Smith"), and Herbert W. Smith, Jr. ("Wayne Smith") each executed a guaranty dated January 15, 1999, whereby they individually, jointly and severally absolutely and unconditionally guaranteed the payment of the Note to Plaintiff, and all

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extensions and renewals thereof ("Guarantees," and collectively with the Note, Mortgage, Forbearance Agreement, and Assignment of Leases, the "Loan Documents").

6. The Defendants have defaulted under the Loan Documents.

7. On November 16, 2010, Plaintiff filed the within action seeking foreclosure of the Property and collection on the Guarantees.

8. Defendant Rodney A. Cobb has not responded to Plaintiff's Complaint, and an Affidavit of Default has been filed against him.

9. Defendants filed an Answer on January 7, 2011, asserting the affirmative defenses of failure to state a claim upon which relief can be granted, failure to mitigate damages, waiver, estoppel, laches, that Defendants acted reasonably and in good faith at all times, and that Plaintiff is required to produce the original notes and mortgage which are the subject of this action.

10. Defendants' Answer does not assert any affirmative defense based on unclean hands, unauthorized practice of law, or Matrix Fin. Servs. Corp. v. Frazer, 394 S.C. 134, 714 S.E.2d 532 (2011), and its related line of cases. Counsel for Defendants admitted that there was no defense in their Answer labeled as unclean hands, unauthorized practice of law, or the Matrix line of cases.

11. Defendants' written responses to Plaintiff's Interrogatories and their documents produced in response to Plaintiff's Requests for Production provide no indication of Defendants' intent to assert a defense based on unclean hands, unauthorized practice of law, or the Matrix line of cases. Counsel for Defendants admitted that the only documents related to such a defense are the Loan Documents.

12. Defendants' service of their Motion for Summary Judgment on Plaintiff at the hearing on Plaintiff's Motion for Summary Judgment was Defendants' first notice to Plaintiff that

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Defendants intended to assert a defense based on unclean hands, unauthorized practice of law, or the Matrix line of cases.

13. Defendants had not filed a Motion to Amend their Answer to assert a defense based on unclean hands, unauthorized practice of law, or the Matrix line of cases at the time of the hearing.

CONCLUSIONS OF LAW:

1. Plaintiff is entitled to summary judgment as to its claim for foreclosure and collection on the Guarantees in this matter because there is no genuine issue of material fact regarding Defendants' default and liability under the Loan Documents.

2. Defendants admitted execution of the Loan Documents.

3. Defendants admitted that they are in default.

4. Defendants admitted that the balance due and payable on the Note is \$2,604,028.14, which amount represents principal, interest, and late fees due as of September 30, 2010.

5. Furthermore, although Defendants asserted affirmative defenses, they failed to put forth sufficient evidence to support these defenses.

6. Defendants have no basis for their affirmative defense that Plaintiff failed to state a claim for which relief can be granted, and to the contrary, admit that Plaintiff has the right to the foreclosure relief which it seeks.

7. Defendants have no basis for their affirmative defense that Plaintiff somehow waived its right to foreclose.

8. Defendants have no basis for their affirmative defense that Plaintiff should be estopped from foreclosing on the Loan Documents. Defendants admit that they did not do

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anything differently in reliance on Plaintiff's actions, a requirement for an estoppel claim. See Langdale v. Carpets, 395 S.C. 194, 205, 717 S.E.2d 80, 85 (Ct. App. 2011) ("To successfully assert the doctrine of estoppel, a party must show a (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) reliance upon the conduct of the party estopped, and (3) prejudicial change in position." (citing S. Dev. Land & Golf Co. v. S.C. Pub. Serv. Auth., 311 S.C. 29, 33, 426 S.E.2d 748, 750 (1993))).

9. Defendants have no evidence for their affirmative defense of laches. Defendant Suit specifically testified that Defendants would have benefitted from Plaintiff waiting even longer to bring its foreclosure action because they would have had more opportunity to sell the Property had the bank not foreclosed as soon as it did. Defendant Wayne Smith also testified that it would have been better for the bank to wait longer to foreclose because the Property is more valuable than what Defendants owe Plaintiff and that once the economy is turned around the Property can be sold for that amount or more.

10. Defendants have no basis for their affirmative defense that Defendants acted reasonably and in good faith at all times. While Defendants may have acted reasonably and in good faith at all times, they admit that this does not prevent Plaintiff's foreclosure in any way because they have not paid the loan.

11. Defendants have no basis for their affirmative defense that Plaintiff is required to produce the original subject note and mortgage. There is no such requirement that Plaintiff produce the original subject note and mortgage. Plaintiff's Affidavit establishes that Plaintiff is the current owner and holder of the Loan Documents, and Defendants have not put forth any evidence to suggest otherwise.

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12. Defendants have no basis for their affirmative defense that Plaintiff failed to mitigate its damages.

13. Plaintiff had no duty to mitigate its damages in this matter. Once Defendants defaulted, Plaintiff was entitled to demand the full balance due on the subject loan and was not obligated to accept a lesser amount. See Cisson Const., Inc. v. Reynolds & Associates, Inc., 311 S.C. 499, 503-04, 429 S.E.2d 847, 849-50 (Ct. App. 1993) (citing 22 Am. Jur. 2d Damages § 506 (1988)).

14. In Cisson, the Court of Appeals found that a lender had no duty to mitigate its damages where it had a right under its loan documents to recover the full amount sought and upheld summary judgment in favor of the lender. Id.

15. Specifically, the Cisson court noted that the note and guaranty provided remedies to the lender upon default. Id. Under the note, the lender was "permitted to enforce the note in its full amount against any party to the note or guaranty." Id. Furthermore, the guaranty did not obligate the lender "to preserve the collateral given by [the borrower], to pursue or exhaust a particular remedy, or to take any action before seeking full payment of the note from [the guarantor]." Id.

16. Here, the Note similarly provides that Plaintiff may enforce the Note in its amount against any party to the Note or Guarantees upon default:

If I [defined in the Note as including each borrower and guarantor] am in default on this note you have, but are not limited to, the following remedies: (1) You may demand immediate payment of all I owe you under this note (principal, accrued unpaid interest and other accrued charges).

17. The Guarantees also provide that upon default Plaintiff is not obligated to preserve the collateral, to pursue or exhaust a particular remedy, or to take any action before seeking full payment of the Note from the Defendant guarantors:

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In the even Borrower at any time defaults in the payment or performance of any of the Guaranteed Obligations as and when the same becomes due, whether by acceleration of maturity of the debt or obligation or otherwise, Guarantor agrees to pay such debt or perform such obligation immediately. Upon failure of Guarantor to do so, Bank may, in its discretion, enforce the collection of such debt or the performance of such obligation against Guarantor by action in any court of competent jurisdiction, or in any other manner provided by law, the same as if such debt or obligation were the primary and individual debt or obligation of Guarantor, and without first seeking to enforce such debt or obligation by action or otherwise against Borrower, or Bank may, in its discretion, proceed in any manner provided by law or by contract for collection of debts against either or both Guarantor and Borrower, the same as if such debts and obligations were primarily and individually the debt of both Guarantor and Borrower, jointly and severally.

...

Guarantor hereby irrevocably . . . [c]onsents that Bank may, without discharging Guarantor or in any way affecting the obligations of Guarantor under this Guaranty: (i) exchange, release or surrender to Borrower or to any guarantor or any other person, or waive, release, subordinate, fail to perfect any lien or security interest in, or otherwise impair, any collateral now or hereafter held as security for any of the Guaranteed Obligations; (ii) waive or delay the exercise of any of its rights or remedies against Borrower or any other person or entity, including, without limitation, Guarantor; (iii) with or without consideration, release Borrower or any other person or entity, including, without limitation, any other guarantor of the Guaranteed Obligations . . .

...

All of Bank's rights and remedies under this Guaranty, under any other agreement, and under applicable law shall be cumulative, and any failure of the Bank to exercise any such right or remedy shall not be construed as a waiver of the right to exercise the same or any other right or remedy at any time, and from time to time, thereafter.

18. Therefore, the Loan Documents provide Plaintiff the vested right to recover full amount sought, and any refusal or failure by Plaintiff to accept a purchase contract for less than the full amount owed by Defendants cannot be used as a defense to the foreclosure.

19. In support of their failure to mitigate defense, Defendants alleged that they think there was a previous offer for the property on which the bank did not make a decision causing

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the buyer to walk away from the deal. However, Defendants were unable to specify the identity of the buyer, the amount of the offer, whether there was actually a written purchase offer, which of the four buildings on the property the buyer was interested, whether the offer was for the building that was subsequently purchased and released from the mortgage, and whether there was an appraisal associated with the offer. Such vague allegations are simply insufficient to show that Plaintiff failed to mitigate its damages.

20. Furthermore, Defendants admit that this offer was made after C&S was in default on the subject loan, and therefore, Plaintiff was under no obligation to accept the offer. See Cisson, 311 at 503-04, 429 S.E.2d at 849-50.

21. Defendants also alleged that there was an offer to purchase a portion of the property by a company that wanted to place a cell phone tower there to which the bank did not respond. Defendants produced a "Letter of Intent" from Newton Realty dated November 15, 2010, conveying an offer by a Clear Talk affiliate to purchase 7,500 square feet of the subject property for \$25,000.00. The Letter of Intent indicated that the contemplated Purchase Agreement would be contingent upon the purchaser's obtaining all necessary local, state, and federal permits to construct the cell phone tower. It also provided that the purchaser would have 180 days to determine if the property would be suitable for their intended use and could terminate the Purchase Agreement if it determined the property was not suitable. This was hardly a firm, final purchase offer for the property that failed due to any lack of approval by Plaintiff.

22. Furthermore, Defendants admit that although they verbally discussed this offer with Plaintiff, they never sent a copy of this Letter of Intent to Plaintiff.

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23. Defendants also acknowledged that there was no deadline to respond conveyed to them by the prospective purchaser, that Defendants did not give Plaintiff a deadline to respond, and that Plaintiff was not aware that there was any deadline to respond.

24. Most importantly, the Letter of Intent was dated after Defendants' default and only one day before this foreclosure action was filed. At that time, Plaintiff was not obligated to accept any offer for the subject property for less than the full amount owed by Defendants. See Cisson, 311 at 503-04, 429 S.E.2d at 849-50.

25. Finally, Defendants' argument that Plaintiff failed to mitigate its damages by requiring Defendants to withdraw their affirmative defenses in exchange for Plaintiff's approval of any purchase contracts is without merit.

26. Plaintiff was within its rights to seek Defendants' withdrawal of their affirmative defenses as part of settlement negotiations to resolve this litigation, and such action is not admissible to prove Plaintiff's failure to mitigate. S.C. R. Ev. 408 ("Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible.")

27. In any event, Plaintiff was not obligated to accept any offer for the subject property for less than the full amount owed by Defendants, and therefore, Plaintiff's requirement that Defendants withdraw their affirmative defenses in exchange for Plaintiff's approval of any purchase contracts is irrelevant. See Cisson, 311 at 503-04, 429 S.E.2d at 849-50.

28. As such, Defendants failed to produce sufficient evidence supporting their affirmative defense that Plaintiff failed to mitigate its damages.

29. Because Defendants admitted their execution of the Loan Documents, subsequent default, and amount remaining due on the Loan Documents, and because they have failed to present sufficient evidence to support their affirmative defenses, summary judgment in favor of Plaintiff is granted. Plaintiff is entitled to foreclosure of the Property and collection on the Guarantees and dismissal of Defendants' affirmative defenses.

30. Defendants are not entitled to summary judgment based on their allegations of Plaintiff's unauthorized practice of law.

31. Defendants' Answer filed on January 7, 2011, does not assert any affirmative defense based on unclean hands, unauthorized practice of law, or Matrix Fin. Servs. Corp. v. Frazer, 394 S.C. 134, 714 S.E.2d 532 (2011), and its related line of cases.

32. Defendants' argument that its Answer includes defenses, such as waiver or estoppel, that encompass unclean hands, unauthorized practice of law, or the Matrix line of cases is without merit. The affirmative defenses asserted by Defendants are specific defenses, each with its own particular meaning, and are not broad enough to include unclean hands, unauthorized practice of law, or the Matrix line of cases.

33. Furthermore, Defendants have not put Plaintiff on notice of its intent to include unclean hands, unauthorized practice of law, or the Matrix line of cases during the nearly nineteen months this case has been pending by addressing it in their responses to Plaintiff's discovery requests or producing any documents related thereto.

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34. At the time of the hearing, Defendants had not filed a Motion to Amend their Answer to assert the defense of unclean hands, unauthorized practice of law, or the Matrix line of cases.

35. Defendants' first notice of its intent to assert unclean hands, unauthorized practice of law, or the Matrix line of cases came after completion of written discovery and the depositions of all Defendants and Defendants' depositions of an employee and a former employee of Plaintiff and took place at the hearing on Plaintiff's Motion for Summary Judgment when counsel for Defendants served Plaintiff with Defendants' Motion for Summary Judgment.

36. Rule 8(b) of the South Carolina Rules of Civil Procedure "requires that a defendant provide a statement 'in short and plain terms [of] the facts constituting his defenses to each cause of action asserted.' The Rule further mandates that a pleading contain 'ultimate facts' rather than 'evidentiary facts' to state a cause of action. 'Ultimate facts fall somewhere between the verbosity of evidentiary facts and the sparsity of 'legal conclusions.'"
RoTec Servs., Inc. v. Encompass Servs., Inc., 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App. 2004) (internal citations omitted).

37. In RoTec Servs., the Court of Appeals found no abuse of discretion where the trial court struck a privilege defense as insufficiently pled where the defendant's answer simply read that "Defendant pleads the affirmative defense of privilege" because such a statement is a legal conclusion and falls below the pleading standard of Rule 8. Id.; see also Turner Coleman, Inc. v. Ohio Const. & Engineering, Inc., 272 S.C. 289, 290-91, 251 S.E.2d 738, 739-40 (1979) (holding that a borrower did not plead the affirmative defense of mistake, and therefore, it was not properly before the trial court and would not preclude summary judgment in favor of lender).

38. Here, Defendants' Answer completely fails to assert even the legal conclusion that Defendants were pleading any defense based on unclean hands, unauthorized practice of law, or the Matrix line of cases.

39. Therefore, the defense of unclean hands, unauthorized practice of law, or the Matrix line of cases has not been adequately plead in accordance with Rule 8(b) of the South Carolina Rules of Civil Procedure.

40. Defendants' summary judgment motion is accordingly denied.

CONCLUSION

Based on the foregoing, Plaintiff is entitled to summary judgment as to its claims against the Defendants and as to the affirmative defenses asserted by Defendants, and Defendant is not entitled to summary judgment on its allegations regarding the unauthorized practice of law. Therefore, it is hereby

ORDERED that Plaintiff's Motion for Summary Judgment is granted; and it is further

ORDERED that Plaintiff is entitled to foreclosure of the Property and collection on the Guarantees; and it is further

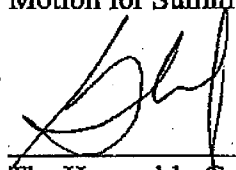
ORDERED that Defendants' affirmative defenses are hereby dismissed; and it is further

ORDERED that Defendants' Motion for Summary Judgment is denied.

AND IT IS SO ORDERED.

June 21, 2012

Spartanburg, South Carolina


The Honorable Gordon G. Cooper
Master-in-Equity for Spartanburg County

A CERTIFIED COPY


CLERK OF COURT
SPARTANBURG COUNTY
BY Pat DePauw D.C.
DATED 6/27/12

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M. HOPE BLACKLEY

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-10-9437

Wells Fargo Bank, N.A., successor in interest by merger to

Coastal Consulting & Development Co., LLC, Victor C.

Wachovia Bank, N.A.

Smith, and Michael R. Suit,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Tara C. Sullivan

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : Plaintiff's Motion for Summary Judgment Granted

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Wells Fargo Bank, National Association	Coastal Consulting & Development Co., LLC, Victor C. Smith, and Michael R. Suit	\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:
ALL that lot, tract or parcel of land, with improvements thereon, situate, lying and being in Charleston County, South Carolina, and being known and designated as Lot 3, Block A, Wando Industrial Park, Mt. Pleasant, S.C., on plat of Wando Industrial Park, that plat showing Blocks A, B, and C, said plat prepared by Davis & Floyd, Inc., dated June 1980, and recorded in the RMC Office of Charleston County, South Carolina, in Plat Book AT, Page 138, to which plat reference is hereby made for a more particular



description of said property.

SAVING AND EXCEPTING THE FOLLOWING DESCRIBED PROPERTY:

ALL those certain Condominium Units known and designated as UNIT I-A and UNIT II-A (shown as Building I and Building II in the Master Deed) in the Longpoint Commerce Center Horizontal Property Regime, a horizontal property regime established pursuant to the South Carolina Horizontal Property Regime Act (Section 27-31-10, et seq., S.C. Code Ann. (1976) as amended), by Master Deed of Longpoint Commerce Center Horizontal Property Regime dated February 24, 2006 and recorded in the RMC Office for Charleston County on February 24, 2006 at 3:14 P.M. in Book W-573, Page 267, which Units are shown on that certain plat entitled "PLAT OF LONGPOINT COMMERCE CENTER HORIZONTAL PROPERTY REGIME TMS NO. 539-00-00-003 LONGPOINT ROAD LOCATED IN THE TOWN OF MOUNT PLEASANT CHARLESTON COUNTY, SOUTH CAROLINA" by GPA Professional Land Surveyors, dated February 21, 2006 and recorded in the RMC Office for Charleston County as part of Exhibit "C" to said Master Deed of Longpoint Commerce Center Horizontal Property Regime. Said buildings having such, location, size, shape, dimensions, buttings and boundings as shown in said Master Deed which is incorporated herein by reference.

BEING a portion of the premises conveyed to Coastal Consulting & Development Co., LLC by Oakwood Metal Fabricating Company of South Carolina by deed dated January 4, 2006 and recorded in the RMC Office for Charleston County on January 11, 2006 in Book A-569, Page 601.

TMS No.: 537-00-00-003

Address: 547 Longpoint Rd. Unit 111A, Charleston, SC 29464

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

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

Wells Fargo Bank, National) Civil Action No. 2010-CP-10-9437
Association, successor in interest by)
merger to Wachovia Bank, National)
Association,)

Plaintiff,)

vs.)

Coastal Consulting & Development,)
Co., LLC, Victor C. Smith, and)
Michael R. Suit,)

Defendants.)

ORDER GRANTING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

FILED
2012 AUG 27 PM 3:09
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter came before the Court at 9:30 a.m. on Friday, August 10, 2012, for the purpose of hearing the Motion for Summary Judgment filed by Plaintiff Wells Fargo Bank, National Association, successor in interest by merger to Wachovia Bank, National Association, ("Plaintiff"). After a review of this matter and hearing arguments from counsel for Plaintiff and Defendants, Plaintiff's Motion for Summary Judgment is GRANTED:

FINDINGS OF FACTS:

1. On February 28, 2006, Defendant Coastal Consulting & Development Co., LLC, ("Coastal"), for value received, executed and delivered to Plaintiff a promissory note in the original principal amount of \$4,975,000.00, with interest thereon ("Note").

2. This was a construction loan, the proceeds of which were used to build two buildings with individual units of office/warehouse space on real property located on Long Point Road in Mount Pleasant, Charleston County, South Carolina ("Property").

3. In consideration of the Note, Coastal executed and delivered to Plaintiff a mortgage and assignment of rents ("Mortgage") dated February 28, 2006, and recorded in the Office of the Register of Deeds for Charleston County on March 2, 2006, in Mortgage Book R574 at Page 385, wherein and whereby Coastal mortgaged to Plaintiff the Property more fully described in the Mortgage.

4. In further consideration of the Note, the Defendants Victor C. Smith ("Smith") and Michael R. Suit ("Suit," collectively with Coastal and Smith, "Defendants") each executed a guaranty dated February 28, 2006, whereby they individually, jointly and severally, absolutely and unconditionally guaranteed the payment of the Note to Plaintiff, and all extensions and renewals thereof, and Smith executed a guaranty dated May 25, 2007, whereby he individually, jointly and severally, absolutely and unconditionally guaranteed the payment of the Note to Plaintiff, and all extensions and renewals thereof ("Guarantees").

5. The closing of the loan on February 28, 2006, was conducted by Richard James Brownyard, an attorney licensed to practice in South Carolina.

6. The Note provided that the construction loan would convert to a permanent amortizing loan at the earlier of (1) February 25, 2007, or (2) the completion of construction.

7. Due to construction delays, the parties entered into Modification Number One to the Promissory Note on February 23, 2007, which extended the conversion date to May 25, 2007 ("Modification Number One").

8. Due to construction delays, the parties entered into Modification Number Two to the Promissory Note on May 25, 2007, which extended the conversion date to May 25, 2008 ("Modification Number Two").

9. The parties entered into Modification Number Three to the Promissory Note on May 22, 2008, which converted the construction loan to a permanent amortizing loan with a maturity date of May 25, 2009 ("Modification Number Three").

10. Defendants defaulted in their payments under the Note so the parties entered into a Forbearance Agreement on April 30, 2009, which provided Defendants some payment relief and extended the maturity date to December 1, 2009 ("Forbearance Agreement," and collectively with the Note, Mortgage, Guarantees, and Modifications, the "Loan Documents").

11. Defendants subsequently defaulted on their payments and failed to pay the loan in full at its maturity on December 1, 2009.

12. The Defendants are in default under the Loan Documents.

CONCLUSIONS OF LAW:

13. Plaintiff is entitled to summary judgment as to its claim for foreclosure and collection on the Guarantees in this matter because there is no genuine issue of material fact regarding Defendants' default and liability under the Loan Documents.

14. Defendants admitted execution of the Loan Documents.

15. Defendants admitted that they are in default.

16. Defendants admitted that the balance due and payable on the Note is \$4,374,217.27, which amount represents principal, interest, and late fees due as of September 30, 2010.

17. Furthermore, although Defendants asserted affirmative defenses, their affirmative defenses fail as a matter of law.

18. Defendants have no basis for their affirmative defense that Plaintiff failed to state a claim for which relief can be granted, and to the contrary, admit that Plaintiff has the right to the foreclosure relief which it seeks.

19. Defendants have no basis for their affirmative defense that Plaintiff somehow waived its right to foreclose, and to the contrary, admit that Plaintiff has the right to the foreclosure relief which it seeks.

20. Defendants have no basis for their affirmative defense that Plaintiff should be estopped from foreclosing on the Loan Documents, and to the contrary, admit that Plaintiff has the right to the foreclosure relief which it seeks.

21. Defendants have no evidence for their affirmative defense of laches. Defendant Suit specifically testified that Defendants would have benefitted from Plaintiff waiting even longer to bring its foreclosure action because they would have had more opportunity to sell the Property had the bank not foreclosed as soon as it did. Furthermore, Defendants admit that Plaintiff is entitled to foreclosure of the Property.

22. Defendants have no basis for their affirmative defense that Defendants acted reasonably and in good faith at all times. While Defendants may have acted reasonably and in good faith at all times, they admit that this does not prevent Plaintiff's foreclosure in any way because they have not paid the loan.

23. Defendants have no basis for their affirmative defense that Plaintiff is required to produce the original subject note and mortgage. There is no such requirement that Plaintiff produce the original subject note and mortgage. Plaintiff's Affidavit establishes that Plaintiff is the current owner and holder of the Loan Documents, and Defendants have not put forth any

evidence to suggest otherwise. In any event, Plaintiff's counsel made the original note and mortgage available for Defendants' inspection at the hearing.

24. Defendants have no basis for their affirmative defense that Plaintiff failed to mitigate its damages.

25. In support of this affirmative defense, Defendants allege that they were told by Gary White, a former employee of Plaintiff, that Plaintiff would finance up to 90% of the purchase price for qualified prospective purchasers of the units in the Property. They further allege that after the loan matured on December 1, 2009, Plaintiff refused to finance a prospective purchaser of one of the units, causing the Defendants to lose that sale.

26. Once Defendants were in default for failing to pay the loan in full upon its maturity, Plaintiff was entitled to demand the full balance due on the subject loan and was not obligated to mitigate its damages. See Cisson Const., Inc. v. Reynolds & Associates, Inc., 311 S.C. 499, 503-04, 429 S.E.2d 847, 849-50 (Ct. App. 1993) (citing 22 Am. Jur. 2d Damages § 506 (1988)).

27. In Cisson, the Court of Appeals found that a lender had no duty to mitigate its damages where it had a right under its loan documents to recover the full amount sought and upheld summary judgment in favor of the lender. Id.

28. Specifically, the Cisson court noted that the note and guaranty provided remedies to the lender upon default. Id. Under the note, the lender was "permitted to enforce the note in its full amount against any party to the note or guaranty." Id. Furthermore, the guaranty did not obligate the lender "to preserve the collateral given by [the borrower], to pursue or exhaust a particular remedy, or to take any action before seeking full payment of the note from [the guarantor]." Id.

29. Here, the Note similarly provides that Plaintiff may enforce the Note in its full amount against any party to the Note or Guarantees upon default:

If a Default occurs under this Note or any Loan Documents, Bank may at any time thereafter, take the following actions: . . . Acceleration Upon Default. Accelerate the maturity of this Note and, at Bank's option, any or all other Obligations . . . whereupon this Note and the accelerated Obligations shall be immediately due and payable . . .

30. The Guarantees also provide that upon default Plaintiff is not obligated to preserve the collateral, to pursue or exhaust a particular remedy, or to take any action before seeking full payment of the Note from the Defendant guarantors:

WAIVERS AND ACKNOWLEDGEMENTS. Guarantor waives and releases the following rights, demands, and defenses . . . (b) any law or statute that requires that Bank . . . make demand upon, assert claims against, or collect from Borrower or other persons or entities, foreclose any security interest, sell collateral, exhaust any remedies, or take any other action against Borrower or other persons or entities prior to making demand upon, collecting from or taking action against Guarantor with respect to the Guaranteed Obligations . . . (d) that Bank or its affiliates preserve, insure or perfect any security interest in collateral or sell or dispose of collateral in a particular manner or at a particular time . . . (h) all defenses relating to invalidity, insufficiency, unenforceability, enforcement, release or impairment of Bank or its affiliates' lien on any collateral . . .

...
DEFAULT. . . . If a Default occurs, the Guaranteed Obligations shall be due immediately and payable without notice . . . and, Bank and its affiliates may exercise any rights and remedies as provided in this Guaranty and other Loan Documents, or as provided at law or equity.

31. The Loan Documents provide Plaintiff the vested right to recover the full amount of the loan upon Defendants' default. In any event, the loan matured on December 1, 2009, providing Plaintiff the vested right to recover the full amount of the loan at that time.

32. Therefore, any refusal by Plaintiff to provide financing for a purchase contract for less than the full amount owed by Defendants after Defendants' default and after the loan matured cannot be used as a defense to the foreclosure.

33. Furthermore, Defendants have failed to put forth any evidence of an agreement by Plaintiff to provide financing to qualified prospective purchasers or any evidence regarding the prospective purchaser, including his identity, whether he was qualified for financing with Wells Fargo, and whether he could have pursued financing with another lending institution. Most importantly, Defendants have not identified the amount of damages Plaintiff failed to mitigate. Therefore, Defendants have failed to put forth sufficient evidence to support this affirmative defense.

34. Next, Suit specifically testified that although the alleged representations regarding purchaser financing made them more comfortable with the subject loan, Defendants would have financed the purchase of the property regardless of such representations. Defendants cannot now rely on Plaintiff's alleged failure to comply with these representations while admitting that they would have borrowed the proceeds to purchase the Property without the alleged representations and admitting that they have defaulted on the Loan Documents.

35. Finally, Defendants' allegations are based solely on oral representations allegedly made by a representative of Plaintiff that it would provide financing to prospective purchasers of units in the Property with which Plaintiff subsequently failed to comply.

36. Such allegations are barred by the lender's statute of frauds found in S.C. Code Ann. § 37-10-107 (1976), which states:

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

...

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

S.C. Code Ann. § 37-10-107(1)(c) (1976).

37. Defendants have failed to put forth any evidence of such an agreement and admit that no such written agreement exists. Specifically, Suit testified that there was no written agreement between Plaintiff and Defendants regarding financing of the prospective sales of the units.

38. Because Defendants admit that there was not an agreement to provide financing to prospective unit purchasers in writing, their affirmative defense of failure to mitigate damages based entirely on the alleged failure to provide such financing is barred by Section 37-10-107.

39. Finally, Defendants' argument that Plaintiff wrongfully conditioned its acceptance of any leases or contracts for the sale of the Property on Defendants' withdrawal of their defenses in this action is without merit.

40. As Defendants admit, these negotiations occurred after Defendants were in default and this lawsuit had been commenced.

41. As previously explained, Plaintiff had no duty to accept less than the full amount owed once Defendants defaulted on their loan obligations. Cisson Const., Inc., 311 S.C. at 503-04, 429 S.E.2d at 849-50 (finding that a lender had no duty to mitigate its damages where

it had a right to recover the full amount sought and upholding summary judgment in favor of the lender) (citing 22 Am. Jur. 2d Damages § 506 (1988)).

42. Because Plaintiff was not obligated to accept any leases or sales of the Property for less than the full amount owed by Defendants, Plaintiff's requirement that Defendants withdraw their affirmative defenses in exchange for Plaintiff's approval of such leases or sales is irrelevant.

43. Furthermore, Plaintiff's actions were well within its rights to negotiate a resolution of this matter, and such action is not admissible to prove Plaintiff is not entitled to foreclosure relief. S.C. R. Ev. 408 ("Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible.").

44. To the extent Defendants may assert an unclean hands/unauthorized practice of law based on Matrix Fin. Servs. Corp. v. Frazer, 394 S.C. 134, 714 S.E.2d 532 (2011), and its related line of cases, such defense fails as a matter of law.

45. Although the Supreme Court stated in Matrix that a lender may not obtain equitable relief if it "failed to have attorney supervision during the loan process as required by our law," the Court applied this ruling only to "filing dates after the issuance of this opinion" on August 8, 2011. Id. at 140, 714 S.E.2d at 535.

46. The Supreme Court clarified that the "filing date" referenced in Matrix "is the date the document a party seeks to enforce was filed." BAC Home Loans Servicing, L.P. v. Debra Kinder, Slip Op. No. 27146 (S.C. Sup. Ct. July 25, 2012).

47. Here, all of the subject loan documents were executed prior to August 8, 2011. Specifically, the mortgage Plaintiff seeks to foreclose was filed March 2, 2006. Therefore, the Matrix decision does not apply to this case and the unclean hands/unauthorized practice of law defense is not available to Defendants as a matter of law.

48. As such, each of Defendants' affirmative defenses fail as matter of law.

49. Because Defendants admitted their execution of the Loan Documents, subsequent default, and amount remaining due on the Loan Documents, and because their affirmative defenses fail as a matter of law, summary judgment in favor of Plaintiff is granted. Plaintiff is entitled to foreclosure of the Property and collection on the Guarantees and dismissal of Defendants' affirmative defenses.

CONCLUSION

Based on the foregoing, Plaintiff is entitled to summary judgment as to its claims against the Defendants and as to the affirmative defenses asserted by Defendants. Therefore, it is hereby

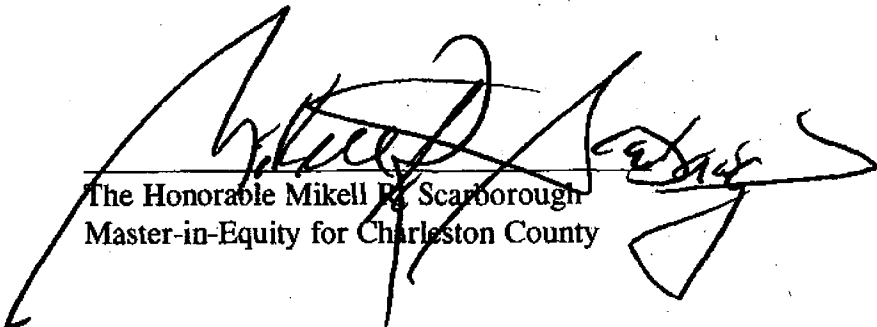
ORDERED that Plaintiff's Motion for Summary Judgment is granted; and it is further

ORDERED that Plaintiff is entitled to foreclosure of the Property and collection on the Guarantees; and it is further

ORDERED that Defendants' affirmative defenses are hereby dismissed; and it is further

ORDERED that Defendants have the right to cross-examine Plaintiff's witness at the final foreclosure hearing regarding the amount owed on the subject loan unless the parties can reach an agreement regarding this amount before that time.

AND IT IS SO ORDERED.



The Honorable Mikell R. Scarborough
Master-in-Equity for Charleston County

August 24, 2012

Charleston, South Carolina

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.256.7500
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Frank B. B. Knowlton
Tel: 803.255.9588
frank.knowlton@nelsonmullins.com

February 3, 2016

The Honorable Hope M. Blackley
Clerk of Court
Spartanburg County Courthouse
Post Office Box 3483
Spartanburg, SC 29304-3483

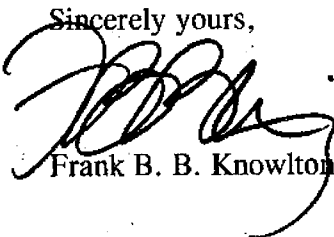
RE: Peach REO, LLC v. Blalock Investments LLC, et al.
Civil Action No. 2015-CP-42-4448
Our File No. 31840/01507

Dear Ms. Blackley,

Enclosed please find an original and one copy of Motion to Dismiss Counterclaims and Third-Party Complaint in regard to the above-referenced matter. Please file the original and return a clocked-in copy in the envelope provided. Additionally, enclosed is \$25.00 to cover the filing fee.

By copy of this letter, I am serving all counsel of record with a copy of this Motion.

Sincerely yours,



Frank B. B. Knowlton

FBK:jak

cc: Adam C. Bach
John H. Harris

2016 FEB 15 11:10:58
CLERK OF COURT

Common Pleas
Clerk : M Hope Blackley
Spartanburg County
Spartanburg, SC 29304
(864) 596-2591

Received From:	Knowlton, Francis B.B.	Date:	2/16/2016
	PO Box 11070	Receipt #:	95377
	Columbia, SC 29211	Clerk:	c42scousin
Paying for:	Peach Reo Llc a Delaware Limite		
Transaction Type:	Payment	Reference #:	809828
Payment Type:	Check	Comment:	Motion Fee - Dismiss
			Non-Refundable
Total Paid:	\$25.00		

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

<u>Case #</u>	<u>Caption</u>	<u>Previous Balance</u>	<u>Amount Paid</u>	<u>Balance Due</u>
2015CP4204448	Peach Reo Llc a Delaware Limited Liability Company VS Blalock Investments Llc , defendant, et al	\$25.00	\$25.00	\$0.00

Total Cases: 1	\$25.00	\$25.00	\$0.00
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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
Peach REO, LLC, a Delaware limited
liability company,

Plaintiff,

vs.

Blalock Investments, LLC; Todd Smith;
Debra Masuga; Subway Real Estate, LLC;
and County of Spartanburg, a political
subdivision of the State of South Carolina,

Defendants.

AND

Blalock Investments, LLC; Todd Smith;
and Debra Masuga,

Third Party Plaintiffs,

vs.

Capital Crossing Servicing Company,
LLC,

Third Party Defendant.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Civil Action NO. 2015-CP-42-4448

**MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION TO DISMISS
COUNTERCLAIMS AND THIRD-
PARTY COMPLAINT**

The defendants, counterclaimants, and third-party plaintiffs, Blalock Investments, LLC, Todd Smith, and Debra Masuga, by and through their undersigned attorneys, respectfully submit this memorandum in opposition to the plaintiff's and third-party defendant's motion to dismiss the counterclaims and third-party complaint.

BACKGROUND

The plaintiff's foreclosure action is based on a \$1.9M note (the "Note") and mortgage (the "Mortgage") entered into by Blalock Investments, LLC ("Blalock") and guaranteed by Todd Smith

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and Debra Masuga. The Note and Mortgage were originally entered into between Blalock and NBSC on October 1, 2008. The Note has a maturity date of October 1, 2013.

NBSC sold the Note and Mortgage to Peach REO, LLC and servicing of the Note, Mortgage and Commercial Security Agreement (collectively the "Loan") were placed in the hands of Capital on September 28, 2011. Capital acted as Peach REO, LLC's ("Peach") agent and as agent for any prior holder of the Loan.

Beginning in 2012, Defendants began reaching out to Capital to restructure the Loan because the Loan's maturity date of October 1, 2013 was preventing Defendants from leasing the property to potential tenants. In February 2013, Capital requested certain documents in order to evaluate a restructuring of the Loan and those documents were provided. From February 2013 through June 2013, Defendants contacted Capital repeatedly requesting an extension of the maturity date, loan modification, or forbearance and alerted Capital that they could not lease the property due to the upcoming maturity of the Loan. Defendants also sought permission from Capital to enter into lease agreements to generate revenue from the property.

On April 17, 2013, Capital communicated to Defendants that the Loan was 45 days past due. Defendants replied that they could not generate sufficient revenue from leases to pay the rent because of the upcoming maturity and requested that Capital respond to their request for modification. In May 2013, Capital ordered an appraisal of the property, which was performed by Joel Norwood. Capital indicated that it would charge the cost of the appraisal to the Defendants as collection costs. One year later, Capital indicated that it could not locate the May 2013 appraisal, ordered a second appraisal, and indicated it would charge the costs of the second appraisal to Defendants as collection costs.

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On May 6, 2013 Capital offered to extend the term of the Loan by six months if Defendants brought the Loan current and paid \$200,000.00 at the original maturity date. On May 9, 2013, Defendants replied that Capital's offer did not provide a sufficient extension to permit them to lease the property and was not feasible. On May 20, 2013, Defendants offered to deed the property to Capital in lieu of foreclosure. Despite multiple follow-up communications, Capital never responded to this offer other than to ask for documents that had already been provided or which Capital had previously been informed were not available.

On July 19, 2013, Defendants alerted Capital that property taxes in the amount of \$36,102.81 were due to Spartanburg County and that unless paid the property would be sold at a tax sale in November 2013. On October 1, 2013, the Loan matured. Plaintiff failed to take any action with respect to the Loan maturity and failed to pay the taxes due on the property.

On November 18, 2013, the property was sold at a tax sale to Cley Equities, LLC ("Cley"). Notice was sent by Cley that the property could be redeemed before February 19, 2014 for \$62,633.39. The notice also stated that the price to redeem the property would rise to \$89,033.39 on March 18, 2014; to \$125,136.27 on May 19, 2014; and to \$139,963.47 on August 19, 2014. Despite the significantly higher cost of waiting, Capital waited until November 17, 2014 to redeem the property, two days before redemption rights expired.

Pursuant to the terms of the Note and Mortgage, Defendants are prevented from transferring the Property or leasing the Property without Peach's consent. See Mortgage ¶ 8. From February 2013 until present, Defendants have presented Capital with multiple proposals from third parties to purchase or lease all or part of the property. Capital failed to respond to these offers responded by requesting information from Defendants but never providing a yes or no the offer themselves.

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M. HOE BLACKLEY

On October 1, 2013, the date of the Note's maturity, the total owed by Blalock to the plaintiff was \$1,756,168.73. Following maturity, the plaintiff did nothing for 25 months. During that time period, the plaintiff allowed real estate taxes to go unpaid, refused to respond to offers from third-parties to buy the property, and refused to respond to potential leases of the property, all in an effort to maximize damages in a forthcoming lawsuit.

STANDARD

"In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint." *Doe v. Marion*, 645 S.E.2d 245, 247-48 (S.C. 2007); *Spence v. Spence*, 628 S.E.2d 869, 874 (S.C. 2006). "If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper." *Doe*, 645 S.E.2d at 247-248. "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Gentry v. Yonce*, 522 S.E.2d 137, 139 (S.C. 1999).

ARGUMENT

I. The Note, Mortgage, Guaranties, and Commercial Security Agreement formed a contract between Defendants and Plaintiff, and Plaintiff breached the contract and implied covenant of good faith and fair dealing by failing to take actions on the Loan and Guaranties until November 2015.

Peach and Capital argue that Defendants' claims are "generally based on their assertion that Lender should have taken some action 'to limit [Debtors] exposure following default' or, in other words, they failed to mitigate the amounts the Debtors owe on the subject loan."

This is a misstatement of the Defendants' claims. Defendants filed claims based on Peach and Capital's misuse of the contract terms to achieve more than what they bargained for and affirmatively harm Defendants. "Every contract contains an implied covenant of good faith and

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fair dealing that neither party will do anything which will injure the right of the other to receive the benefits of the agreement.” Shiftlet v. Allstate Ins. Co., 451 F. Supp. 2d 763, 771 (D.S.C. 2006); see also Williams v. Riedman, 339 S.C. 251, 273, 529 S.E.2d 28, 39 (Ct. App. 2000) (parties must act in good faith and deal fairly with each other). While there is no independent cause of action for breach of the covenant of good faith and fair dealing, it is an implied term of the contract at issue and, therefore, is properly the subject of a breach of contract action. King v. Carolina First Bank, 26 F. Supp. 3d 510, 518 (D.S.C. 2014).

Here, Defendants allege that Peach and Capital used three contract terms in bad faith. First, Capital was informed by Defendants that the upcoming maturity date on the Note was preventing them from leasing the property and, if not extended, would result in default. Peach and Capital failed to take any action with respect to the maturity date, including options that would have allowed Defendants to continue paying on the Note.

Second, Defendants defaulted in February 2013 and the Note matured on October 1, 2013. At maturity, Defendants were required to pay the remaining balance. If they did not, Peach and Capital were entitled to demand immediate payment, demand security, refuse to make advances, take assignment of all income generated by the Property, seek appointment of a receiver, or take any remedy under state or federal law. Note ¶ Remedies; Mortgage ¶¶ 11, 12, 13. Peach and Capital did not take any of these actions in an effort to inflict maximum possible harm on Defendants prior to the expiration of the statute of limitations. Defendants did not bargain for continued liability beyond the maturity date and never expected or anticipated, nor could they have expected or anticipated, that Peach and Capital would fail to take any actions pursuant to the Note. Instead, they agreed to a certain maturity date and to certain remedies at maturity if they failed to pay. They did not agree to continued, unending liability.

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Third, the Note and Mortgage provide that the sale and certain leases of the property without Peach's prior written consent constitute default. Mortgage ¶ 8. When bargaining for this provision, neither party meant for this provision to be a restriction on alienation, which is evidenced by the provisions of Mortgage ¶ 9 dealing with Defendants' continuing obligations following a sale that nets less than the total amount owed. Instead of exercising that right in good faith, Peach and Capital Crossing misled Defendants into believing they were considering offers or leases forwarded to them by Defendants. Peach and Capital exercised their contractual rights in a manner to mislead and injure Defendants.

Peach and Capital Crossing argue that they are "entitled to recover the full amount owed on the loan." Peach and Capital are not seeking the amount owed on the loan – they are seeking nearly \$600,000.00 more than what was owed on the loan at maturity. They are seeking to recover for interest, late fees, unpaid property taxes, and other items that occurred during the twenty-five months they failed to act after the loan's maturity and the thirty-four months they failed to act after default. During that time, they handcuffed Defendants to the Property and the accruing damages by failing to act on proposals to sell or lease the Property. Defendants never bargained for indefinite continuing liability on the Note and Mortgage while being prevented from stopping the bleeding by the bad faith exercise of contractual rights by Peach and Capital.

Additionally, Peach and Capital did not just fail to respond, they affirmatively misled Defendants into believing that they were considering various sale and lease proposals. After nearly every proposal, Peach and Capital Crossing would contact Defendants and ask for information for the claimed purpose of evaluating the proposal – for example, personal financial statements, appraisals, similar sales, etc....Defendants trusted that Peach and Capital were requesting this information so they could review the offer. In each instance, Peach and Capital would stop

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responding after several weeks without explanation. Peach and Capital had no actual interest in evaluating the proposals and were, instead, misleading Defendants in an effort to maximize their potential recovery against Defendants. Had Peach and Capital been honest about their intentions, Defendants would have moved forward with leases and, potentially sales, or at a minimum, would have sought alternative avenues to stop further damages from accruing.

For that reason, Peach and Capital's citations to other orders are misplaced. In both orders cited, the holder of the note and mortgage acted on their remedies shortly after default and there was no allegation that they were taking affirmative actions to harm Defendants. See Coastal Consulting (the plaintiff entered into numerous modifications of the note to extend the note past maturity); C&S Carolina Venture (extending and modifying maturity date, agreeing to an assignment of leases, and foreclosing shortly after default).

II. Peach and Capital's actions violate the Unfair Trade Practices Act

"To recover in an action under the UTPA, the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." Wright v. Craft, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006). "An unfair trade practice has been defined as a practice which is offensive to public policy or which is immoral, unethical, or oppressive." Id.

Here, Defendants allege that Peach and Capital acted unfairly and deceptively by failing to exercise their remedies upon default or maturity and by affirmatively misleading them to believing that they were sincerely considering offers to sell or lease the property. As a result, Defendants have incurred nearly \$600,000.00 in monetary damage on the Note and Mortgage.

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SPARTANBURG COUNTY
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along with the loss of potential sales or leases of the Property. Peach and Capital actions are capable of repetition and Defendants' action for violation of the UTPA is proper.

III. Peach and Capital Crossing tortiously interfered with prospective contractual relationships

The elements of the cause of action are (1) the intentional interference with the plaintiff's potential contractual relations, (2) for an improper purpose or by improper methods, and (3) causing injury to the plaintiff. United Educ. Distributors, LLC v. Educ. Testing Serv., 350 S.C. 7, 14, 564 S.E.2d 324, 328 (Ct. App. 2002). "As an alternative to establishing an improper purpose, the plaintiff may prove the defendant's method of interference was improper under the circumstances." Id. For interference with a prospective contractual relationship, the "aggrieved party to have been unsuccessful in acquiring an expected contract due to a third party's intentional and wrongful actions." Id.

Here, Defendants have alleged that they lost numerous contracts with third-parties due to Peach and Capital misleading responses to proposals to buy or lease the property. Peach and Capital falsely communicated a desire to evaluate potential purchases or leases and repeatedly requested information either already in their possession or irrelevant to a valuation. Peach and Capital would then sit on the information for months before eventually just failing to respond at all. Eventually, prospective purchasers or lessors would lose interest and move on to other deals. Defendants were misled and did not understand that Peach and Capital were really uninterested in working with them on a sale or lease and, instead, planned to wait until the last few months before the statute of limitations ran to institute an action. Peach and Capital's actions were for an improper purpose and improper under the circumstances and resulted in the loss of identifiable prospective contracts to sell or lease the property.

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CONCLUSION

Entering into a Note and Mortgage does not entitle a lender to act or fail to act in a manner that deliberately harms the debtor; entering into a Note and Mortgage does not obligate a debtor to a indefinite, continuing, and unstoppable liability to the lender. Both parties are under and obligation to act in good faith with respect to their rights under a Note and Mortgage. Here, Peach and Capital failed to do so and their motion should be denied.



Adam C. Bach (S.C. Bar # 74885)
Weston White (S.C. Bar # 101270)
ELLER TONNSEN BACH, LLC
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Greenville, SC 29605
Telephone: (864) 236-5013
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May 23, 2016
Greenville, SC

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SPARTANBURG COUNTY
2016 MAY 26 PM 2:47
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Peach REO, LLC, a Delaware limited
liability company,)

Plaintiff,)

vs.)

Blalock Investments, LLC; Todd Smith;)
Debra Masuga; Subway Real Estate, LLC;)
and County of Spartanburg, a political)
subdivision of the State of South Carolina,)

Defendants.)

AND)

Blalock Investments, LLC; Todd Smith;)
and Debra Masuga,)

Third Party Plaintiffs,)

vs.)

Capital Crossing Servicing Company, LLC,)

Third Party Defendant.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT Civil
Action No. 2015-CP-42-4448

CERTIFICATE OF SERVICE

This is to certify that I, Amy M. Price, an employee of the law firm of Eller Tomnsen Bach, LLC have this day served a true and correct copy of the within and foregoing defendants, counterclaimants, and third-party plaintiffs, Blalock Investments, LLC, Todd Smith, and Debra Masuga's memorandum in opposition to plaintiff's motion to dismiss counterclaims and third-party complaint upon attorney of record for the plaintiff by depositing same in the United States mail with sufficient postage thereon to assure delivery as follows, to-wit:

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CLERK OF COURT
SPARTANBURG COUNTY
2016 MAY 26 PM 2:47
M. HOPKINS
BLACKLEY

Frank B. B. Knowlton
Nelson Mullins Riley & Scarborough, LLP
Meridian, 17th Floor
1320 Main Street
Columbia, SC 29201

This 23rd day of May, 2016.

By:



Amy M. Price, Paralegal
2201 Augusta Street, Suite 200
Greenville, SC 29605

FILED
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SPARTANBURG COUNTY
2016 MAY 26 PM 2:47
M. HOPE BLACKLEY



ELLER TONNSEN BACH
Attorneys at Law

Daniel B. Eller*
Eric R. TonnSEN
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*Licensed in both NC and SC

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Greenville, South Carolina 29605
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J. Trey Odom
R. Patrick Martin*
Weston J. White
Donald L. Van Ripert†
Frances G. Zachert†
† Of counsel

May 23, 2016

Ms. Hope Blackley
Spartanburg County Clerk of Court
180 Magnolia Street, Suite 500
Spartanburg, SC 29306

Re: *Peach REO, LLC, a Delaware limited liability company vs. Blalock Investments, LLC; Todd Smith; Debra Masuga; Subway Real Estate, LLC and County of Spartanburg, a political subdivision of the State of South Carolina, et al*
C.A. No.: 2015-CP-42-4448

Dear Ms. Blackley:

Enclosed please find an original and one (1) copy of defendants, counterclaimants, and third-party plaintiffs, Blalock Investments, LLC, Todd Smith, and Debra Masuga's memorandum in opposition to plaintiff's motion to dismiss counterclaims and third-party complaint on the above-referenced matter, along with a certificate of service of the same. We would appreciate your filing the original and returning the clocked copy to us in the envelope provided herewith.

Please let us know if we may provide any additional information to you at this time. Thank you for your attention to this matter.

Sincerely,

ELLER TONNSEN BACH, LLC

Adam C. Bach
abach@etblawfirm.com

ACB/amp
Enclosures

cc: Judge Gordon Cooper (Via Email swinstead@spartanburgcounty.org)
Mr. Frank B.B. Knowlton, Esq. (Via Email and US Mail)

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SPARTANBURG COUNTY
2016 MAY 26 PM 2:47
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

Peach REO, LLC, a Delaware limited liability company,) Civil Action No. 2015-CP-42-4448
)
)

Plaintiff,)

vs.)

Blalock Investments, LLC; Todd Smith;)
Debra Masuga; Subway Real Estate,)
LLC; and County of Spartanburg, a)
political subdivision of the State of South)
Carolina,)
)

Defendants.)

and)

Blalock Investments, LLC; Todd Smith;)
and Debra Masuga,)
)

Third Party Plaintiffs,)

vs.)

Capital Crossing Servicing Company,)
LLC,)
)

Third Party Defendant.)

REPLY MEMORANDUM
IN SUPPORT OF
MOTION TO DISMISS
COUNTERCLAIMS AND
THIRD-PARTY COMPLAINT

2016 MAY 31 PM 1:41
M. HOPE BLANCHETT

Plaintiff Peach REO, LLC, a Delaware limited liability company ("Peach"), and Third Party Defendant Capital Crossing Servicing Company, LLC ("Capital Crossing," and collectively with Peach, "Lender"),¹ hereby submit this Memorandum in support of their Motion to Dismiss the counterclaims and third-party complaint filed by Defendants/Third Party Plaintiffs Blalock Investments, LLC, Todd Smith, and Debra Masuga (collectively, "Debtors") and in

¹ Capital Crossing services the subject loan on behalf of Peach.

response to the Memorandum in Opposition to the Motion to Dismiss filed by Debtors. Lender hereby incorporates its Motion to Dismiss and the cases referenced therein.

I. Debtors' claim for breach of the implied covenant of good faith and fair dealing should be dismissed.

In Debtors' response to the Motion to Dismiss, they attempt to re-characterize their counterclaim and third-party claim for breach of the implied covenant of good faith and fair dealing as Lender's "misuse of the contract terms to achieve more than what they bargained for." Opposition at p. 4. However, every act taken by Lender about which Debtors now complain was within Lender's contractual rights as set forth in the subject loan documents. Furthermore, Lender has not achieved more than what was bargained for and, to the contrary, Debtors now owe exactly what they agreed to pay in the loan documents.

First, Debtors allege that Lender refused to extend the maturity date of the loan. Opposition at p. 5. Debtors have not (and cannot) identify any contractual provision that requires Lender to give Debtors an extension of their loan. To the contrary, the loan documents expressly provide that Lender is not obligated to extend the loan's maturity date. See Promissory Note attached to the Complaint as Exhibit A ("I agree that you may **at your option** extend this note or the debt represented by this note . . .") (emphasis added). Therefore, Lender's refusal to provide Debtors an extension on their loan is not a basis for a claim against Lender.

Next, Debtors allege that Lender failed to immediately take action on Debtors' liability after their default on the loan. Opposition at p. 5. However, Debtors have not (and cannot) identify any contractual provision which would require Lender to take such immediate action. The loan documents provide the opposite: Lender is not obligated to take any action immediately after Debtors' default. See Promissory Note attached to the Complaint as Exhibit A ("By

waiving your right to declare an event to be a default, you do not waive your right to later consider the event as a default if it continues or happens again.”). In fact, Debtors do not dispute that the instant foreclosure action was filed within the statute of limitations. See Opposition at p. 5. Again, Lender’s failure to immediately pursue its legal remedies after Debtors’ default does not constitute grounds for a cause of action against Lender.

Third, Debtors allege that Lender failed to consider or approve short sales or leases of the subject property. Opposition at p. 6. Again, Debtors have not (and cannot) identify any contractual provision that obligates Lender to consider or approve short sales or leases and, therefore, Lender’s failure to approve a sale or lease that would not have paid the subject loan in full is not a sufficient basis for a claim against Lender.

Debtors additionally allege that Lender is seeking “more than what was owed on the loan at maturity”—specifically, interest, late fees, and unpaid property taxes that have accrued since Debtors failed to pay the loan in full once it matured. Opposition at p. 6. Debtors attribute the accrual of these amounts to Lender’s actions in refusing to approve sales or leases of the property or immediately pursuing its legal remedies. Id. Again, Lender had no obligation to do so. More importantly, Debtors ignore the fact that they could have avoided the accrual of these amounts by paying the loan and property taxes as they were required to do. See Mortgage at § 2, attached to Complaint as Exhibit B (“Mortgagor shall pay all taxes, charges and assessments which may become a lien upon the premises . . . ”).

Debtors also rely on the case of King v. Carolina First Bank, 26 F. Supp. 3d 510, 518 (D.S.C. 2014), for the proposition that “[w]hile there is no independent cause of action for breach of the covenant of good faith and fair dealing, it is an implied term of the contract at issue and, therefore, is properly the subject of a breach of contract action.” Opposition at p. 5.

Debtors misunderstand the import of the holding in King. In King, deposit account holders brought a claim for breach of contract, among others, against Carolina First Bank based on the method by which the bank posted their debit transactions because it allegedly increased the overdraft fees charged to them. The bank moved to dismiss the account holders' claims. The King court recognized that a mere breach of the implied covenant of good faith and fair dealing alone is insufficient to state an independent cause of action. The King court then identified other contractual provisions which the account holders alleged the bank violated to find that the breach of contract claim should not be dismissed. For example, the account holders alleged that their contracts did not allow the assessment of overdraft fees and that the bank had assessed overdraft fees even "when there were enough available funds to cover the transaction." Because the bank had allegedly violated several specific contractual provisions, their claim for breach of contract was not dismissed.

Here, Debtors have not asserted an independent claim for breach of contract nor have they identified any specific contractual provisions which Lender allegedly violated. Moreover, Debtors have not even alleged the existence of a contract between them and Capital Crossing, the loan servicer. Instead, as set forth in more detail above, each of the acts by Lender complained of by Debtors were within Lender's contractual rights as set forth in the loan documents. Accordingly, Debtors' cause of action for breach of the implied covenant of good faith and fair dealing does not state an independent cause of action and should be dismissed.

Finally, Debtors attempt to distinguish the opinion of Your Honor in C&S Carolina Ventures and the similar opinion of Master Scarborough in Coastal Consulting on the basis that the lenders in those cases acted "shortly after default" and the borrowers had not alleged the

lenders “were taking affirmative actions to harm” them. Opposition at p. 7. This is simply not the case.

There is no difference of any significance between the timing of the default and the lender’s action on the default in C&S and Coastal Consulting and the instant case. In C&S, the borrowers defaulted for failing to pay the loan in full upon its maturity on December 1, 2009, and the lender brought a foreclosure action approximately one year later on November 16, 2010. Likewise, in Coastal, the borrowers defaulted when they failed to pay the loan in full upon its maturity on December 1, 2009, and the lender did not bring a foreclosure action until a year later on November 15, 2010. Here, the borrowers defaulted on the monthly payments in February 2013, and the instant foreclosure action was filed October 28, 2015. Debtors’ argument is essentially that although it is permissible for a lender to wait approximately one year to bring a foreclosure action after a borrower’s default, waiting approximately two and a half years is somehow not permissible. This has no basis in South Carolina law and simply is not the case.

Debtors also mistakenly argue that the borrowers in C&S and Coastal Consulting did not allege any “affirmative actions” by the lender to harm them. This is not accurate. For example, in C&S, the borrowers alleged that the lender asked them to release their affirmative defenses in exchange for approval of a short sale contract. See C&S Order at ¶¶ 25-26. Likewise, in Coastal Consulting, the borrowers alleged that the lender represented it would finance qualified prospective purchasers for the real property collateral but ultimately refused to do so. See Coastal Consulting Order at ¶¶ 25-26. Debtors’ attempt to distinguish the instant case on this basis fails. As in C&S and Coastal Consulting, Debtors’ allegations fail to state any cause of

action against Lender and, therefore, their counterclaims and third-party claim for breach of the implied covenant of good faith and fair dealing should be dismissed.

II. Debtors' claim for violation of the Unfair Trade Practices Act should be dismissed.

Next, in support of their claim for violation of the Unfair Trade Practices Act, Debtors assert that Lender "acted unfairly and deceptively by failing to exercise their remedies upon default or maturity and by affirmatively misleading them into believing that they were sincerely considering offers to sell or lease the property." Opposition at p. 7. However, as set forth above, Lender had no obligation to immediately exercise its legal remedies upon Debtors' default or to consider or approve any sales or leases of the subject property.

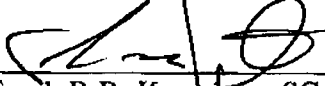
III. Debtors' claim for tortious interference with prospective contractual relationships should be dismissed.

Lastly, Debtors again assert that Lender's alleged failure to consider sales or leases of the subject property supports their claim for tortious interference with prospective contractual relationships. Opposition at p. 8. Again, Lender is not obligated under the loan documents or South Carolina law to accept less than the full amount owed by Debtors on the loan.

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H. HOPE BLANCHLEY

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 
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(803) 799-2000

Attorneys for Plaintiff Peach REO, LLC, a Delaware limited liability company, and Third Party Defendant Capital Crossing Servicing Company, LLC

Columbia, South Carolina

May 26, 2016.

2016 MAY 31 PM 1:41
M. HONE-BLAOCTLEY

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

Peach REO, LLC, a Delaware limited liability company,) Civil Action No. 2015-CP-42-4448
)

Plaintiff,)

vs.)

Blalock Investments, LLC; Todd Smith;)
Debra Masuga; Subway Real Estate,)
LLC; and County of Spartanburg, a)
political subdivision of the State of)
South Carolina,)

Defendants.)

and)

Blalock Investments, LLC; Todd Smith;)
and Debra Masuga,)

Third Party Plaintiffs,)

vs.)

Capital Crossing Servicing Company,)
LLC,)

Third Party Defendant.)

CERTIFICATE OF SERVICE

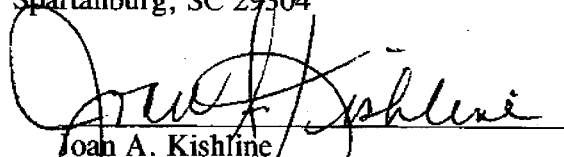
I, the undersigned administrative assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for the Plaintiff and Third Party Defendant Capital Crossing Servicing Company, LLC, do hereby certify that I have served all counsel and/or parties in this action with a copy of the pleading(s)

hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Reply Memorandum in Support of Motion to Dismiss
Counterclaims and Third-Party Complaint

Parties Served: Adam C. Bach, Esq.
ELLER TONNSEN BACH
2201 Augusta Street, Suite 200
Greenville, SC 29605

Virginia Dupont, Esq.
Deputy Attorney, County of Spartanburg
P.O. Box 5666
Spartanburg, SC 29304


Joan A. Kishline
Administrative Assistant

May 26, 2016

2016 MAY 31 PM 1:41
H. HOPE OLACHILLY

Nelson Mullins

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Linnea K. Hann
Senior Paralegal
Tel: 803.255.5594
linnea.hann@nelsonmullins.com

May 26, 2016

The Honorable M. Hope Blackley
Clerk of Court, Spartanburg County
Post Office Box 3483
Spartanburg, SC 29304-3483

RE: Peach REO, LLC v. Blalock Investments LLC, et al.
Civil Action No. 2015-CP-42-4448
Our File No. 31840/01507

Dear Ms. Blackley:

Enclosed is the original and one (1) copy of the Plaintiff's Reply Memorandum in Support of Motion to Dismiss Counterclaims and Third-Party Complaint in the above referenced matter. Please file same and return a clocked copy to me in the envelope provided. Thank you for your kind consideration in this matter.

By copy of this letter, I am serving opposing counsel with the Reply.

Very truly yours,



Linnea K. Hann
Senior Paralegal

LKH:lh
Enclosures

Cc: Adam C. Bach, Esq.
Virginia Dupont, Esq.

2016 MAY 31 PM 1:41
M. HOPE BLACKLEY

DTM

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG)

C. A. No. 2015-CP-42-4448

Peach REO, LLC, a Delaware limited liability company,

MOTION AND ORDER INFORMATION

Plaintiff(s)

FORM AND COVERSHEET

vs.

Blalock Investments, LLC, et al.,

Defendants.

Plaintiff's Attorney:

Frank BB Knowlton, Bar No. 3588

Address:

P. O. Box 11070, Columbia, SC 29211

Phone: 803-255-9588 Fax

E-mail: frank.knowlton@nelsonmullins.com

Defendants' Attorney:

Adam C. Bach, Bar No. 74885

Address:

1306 S. Church Street, Greenville, SC 29605

Phone: (864) 236-5013 Fax (864) 312-4191

E-mail: abach@etblawfirm.com Other:

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

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

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

SECTION I: Hearing Information

Nature of Motion: Notice of Motion and Motion to Amend Judgment

Estimated Time Needed: 15 minutes

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

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

Signature of Attorney for Plaintiff /XX Defendants

June 15, 2016

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

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

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

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

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

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

☒ MOTION FEE COLLECTED: \$ 25

☐ CONTESTED - AMOUNT DUE: \$ _____

Collected by: SC

Date Filed: 6-20-2016

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
Peach REO, LLC, a Delaware limited
liability company,

Plaintiff,

vs.

Blalock Investments, LLC; Todd Smith;
Debra Masuga; Subway Real Estate, LLC;
and County of Spartanburg, a political
subdivision of the State of South Carolina,

Defendants.

AND

Blalock Investments, LLC; Todd Smith;
and Debra Masuga,

Third Party Plaintiffs,

vs.

Capital Crossing Servicing Company,
LLC,

Third Party Defendant.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C. A. No. 2015-CP-42-4448

**NOTICE OF MOTION AND MOTION
TO AMEND JUDGMENT**

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CLERK OF COURT
SPARTANBURG COUNTY
2016 JUN 20 PM 1:16
M. HOPE BLANCHARD

YOU WILL PLEASE TAKE NOTICE that the defendants, counterclaimants, and third-party plaintiffs, Blalock Investments, LLC, Todd Smith, and Debra Masuga (collectively, "the defendants") by and through their undersigned attorneys, will move the Court at a date and time to be set by the Court for an order amending its judgment pursuant to Rules 52 and 59 of the South Carolina Rules of Civil Procedure and granting leave to amend their answer, counterclaim and third-party complaint pursuant to Rule 15, SCRCP.

1. The defendants move the Court to amend its order to permit them to file and serve an amended answer, counterclaim and third-party complaint

“When a complaint is dismissed under Rule 12(b)(6) for failure to state facts sufficient to constitute a cause of action...[t]he plaintiff in most cases should be given an opportunity to file and serve an amended complaint.” Spence v. Spence, 628 S.E.2d 869, 881 (S.C. 2006). The defendants ask the Court to amend its order to allow the defendants to file and serve an amended answer, counterclaim and third-party complaint to add additional allegations against the plaintiff and its servicing agent Capital. The defendants seek leave to amend to revise the allegations in their dismissed answer, counterclaim and third-party complaint and to add allegations related to the plaintiff and Capital’s actions in the following respects:

- a. That they failed to honestly communicate with the defendants about their intentions for the Loan following maturity;
- b. That they misled the defendants into believing that they were considering an offer to accept the property in lieu of foreclosure;
- c. That they misled the defendants into believing that they were considering various lease offers made by third-parties for space at the property;
- d. That they misled the defendants into believing they were considering various offers by third-parties to purchase the property;
- e. That they failed to communicate with the defendants about payment of the property taxes owed on the property and whether they would pay those taxes or look to the defendants to pay those taxes;
- f. That they repeatedly misled the defendants into believing that they were willing to approve sales or take other actions.

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SOUTH CAROLINA
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M. HOPE BLANKLEY

These actions by the plaintiff and Capital are sufficient to form causes of action for breach of contract – specifically violation of the plaintiff and Capital’s duties to deal in good faith as discussed below; unfair trade practices in that these are unfair or deceptive acts in commerce that are capable of repetition and, therefore, affect the public interest; and tortious interference with prospective contractual relationships in that they interfered with the defendants’ efforts to sell or lease the property to third parties using improper methods – specifically misrepresentations to the defendants, potential purchasers, and potential lessors. Further, these allegations are sufficient to support causes of action for fraud and/or negligent misrepresentation because the plaintiff and Capital consistently represented that they were taking action with respect to the Loan when they were not, which misled the defendants into failing to take actions to protect their rights and caused them money damage.

Therefore, the defendants ask the Court to permit them to file an amended answer, counterclaim and third-party complaint and conduct discovery into whether the plaintiff and Capital’s actions were undertaken in an intentional effort to mislead the defendants and cause them damage. See Rule 15, SCRCP (“leave [to amend] shall be freely given when justice so requires”); Spence, 628 S.E.2d at 881; Charleston Cty. Sch. Dist. v. Harrell, 713 S.E.2d 604, 607 (S.C. 2011) (A motion to dismiss “may not be sustained if the facts alleged in the complaint and the inferences drawn therefrom would entitle the plaintiff to relief under any theory [and] the Court must presume all well pled facts to be true so that substantial justice is done between the parties.”).

2. The defendants move the Court to amend its order dismissing their claims for breach of contract

The Court concluded that the defendants’ claims are based on the assertion that the plaintiff and Capital should have allowed them to mitigate. This is incorrect. The defendants’ claims are

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STATE OF SOUTH CAROLINA
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M. HOPE L. KELLEY
P. 11:00

based on the assertion that the plaintiff and Capital misused the contract terms to affirmatively harm the defendants and failed to communicate with them honestly and in good faith about their intentions with respect to the Loans. Under South Carolina law, the implied covenant of good faith and fair dealing “require[es] that the party exercises its discretion [under the contract] in good faith.” King v. Carolina First Bank, 26 F. Supp. 3d 510, 517 (D.S.C. 2014). Although it is not an independent cause of action, it “modifies, and becomes part of, the provisions of the contract itself.” RoTec Svcs, Inc. v. Encompass Svcs, Inc., 597 S.E.2d 881, 883-884 (S.C. Ct. App. 2004).

The defendants allege that the the plaintiff and Capital breached the covenant modifying the provisions of the contract giving the plaintiff and Capital the discretion to approve offers to lease or sell the property and their rights after maturity because they failed to exercise these terms in good faith. Id. This is properly phrased as a breach of contract, rather than an independent cause of action for breach of the covenant of good faith and fair dealing.

While the plaintiff and Capital claim that there is no cause of action for breach of the covenant of good faith and fair dealing, their argument leaves no avenue to vindicate this covenant. Said differently, if a claim for breach of the covenant cannot be made absent an actual breach of the contract provision at issue, then the covenant is redundant because suit for breach of contract could be brought anyways. This has not been the understanding of South Carolina courts with respect to the covenant and the defendants’ counterclaim for breach of contract is proper. U.S. for Use & Benefit of Williams Elec. Co. v. Metric Constructors, Inc., 480 S.E.2d 447, 449 (S.C. 1997) (“Clearly, fraud, misrepresentation and bad faith in performance of one’s contractual duties would give rise to a violation of the implied obligation of good faith and fair dealing.”); Tadlock Painting Co. v. Maryland Cas. Co., 473 S.E.2d 52, 55 (S.C. 1996) (“we decline to make breach of an express

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SPARTANBURG COUNTY
2016 JUN 28 PM 1:00
M. D. PHELPS-CLAY

contractual provision a prerequisite to bringing the action” for breach of the covenant of good faith implied in an insurance contract).

Additionally, while the defendants’ did not allege a specific contractual relationship between the defendants and Capital, they did allege that at all times Capital “acted as Peach REO, LLC’s agent.” See Answer, Counterclaim and Third-Party Complaint at ¶ 46. Prior to discovery, the relationship between Peach and Capital is unclear and the defendants’ allegation that Capital is Peach’s agent is sufficient to support its cause of action for breach of the covenant of good faith and fair dealing at the 12(b)(6) stage.

3. The defendants move the Court to amend its order regarding mitigation

Paragraph 6 of the order’s conclusion states that “Lender...had no duty to mitigate these damages in any way.” The defendants ask the Court to amend its order to make clear that it is not ruling on or addressing their affirmative defense of failure to mitigate. First, this statement is broader than necessary to rule on the plaintiff and Capital’s motion and may impact the defendants’ affirmative defense of failure to mitigate even though this affirmative defense was not the subject of the plaintiff or Capital’s motion to dismiss. The defendants ask that the order be amended to make clear that the Court is only addressing whether the defendants can bring affirmative claims for relief based on the plaintiff and Capital’s failure to mitigate and not addressing whether the defendants can defend against the plaintiff’s claims based on the affirmative defense of failure to mitigate.

Additionally, the order’s statement that “Lender...had no duty to mitigate these damages in any way” goes beyond the Court of Appeal’s holding in Cisson Const., Inc. v. Reynolds & Associates, Inc., 429 S.E.2d 847, 849 (S.C. Ct. App. 1993). As specifically stated by the Court of Appeals in Cisson, “[t]he duty to mitigate losses applies to contracts.” 429 S.E.2d at 849 (S.C. Ct.

App. 1993). "The reasonableness of a party's actions to mitigate damages is a question of fact which cannot be decided as a matter of law when there is conflicting evidence." *Id.* Rather than stating Lenders never have a duty to mitigate, the Cisson court rejected a claim that the lender failed to mitigate because it failed to seek compensation from sources other than the guarantor and failed to accept payments from the debtor because those payments may have resulted in waiver of the right to accelerate payments after default. *Id.* at 849-850. The unique circumstances of Cisson are not applicable here and do not bar a defense of failure to mitigate.

Further, the Court's order's citation to S.C. Code § 37-10-107 is also misplaced because that section only applies to consumer credit and specifically does not apply to promissory notes, personal guaranties, or real estate mortgages. See S.C. Code § 37-10-107(c).

4. The defendants move the Court to amend its order to address the reasons for its dismissal the defendants' counterclaims and third-party claims for unfair trade practices, tortious interference with a contract, and failure to act in a commercially reasonable manner or to amend to provide that these claims are not dismissed

The Court's order does not address the reasons why it dismissed the defendants' counterclaim and third-party claims for unfair trade practices, tortious interference with prospective contractual relationships, or failure to act in a commercially reasonable manner. The defendants allege that the plaintiff and Capital committed unfair and deceptive trade practices by misleading the defendants as to their intentions with the Loan and misrepresenting their consideration of proposals from third parties for property. To allege a cause of action for violation of the Unfair Trade Practices Act, S.C. Code § 39-5-10, et. seq., the defendants must plead that the plaintiff or Capital engaged in unfair or deceptive acts in the conduct of trade that affect the public interest. The defendants have alleged sufficient facts at this stage to support a cause of action.

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Similarly, the Court did not address the reasons why it dismissed the defendants' counterclaim and third-party claim for tortious interference with a contract. The defendants allege that by failing to take action on any of the proposed leases or offers to purchase from third-parties, the plaintiff and Capital interfered with their prospective contractual relations "for an improper purpose or by improper methods" that injured the defendants. United Educ. Dist., LLC v. Educ Testing Serv., 564 S.E.2d 324. At the pleadings stage, this is sufficient to allege a cause of action.

The Court's order also failed to address why it dismissed the defendants counterclaim and third-party claims for failure to act in a commercially reasonable manner with respect to the security agreement.

Therefore, the defendants ask the Court to amend its order to address why these causes of action were dismissed or, alternatively, to find that these causes of action are not dismissed.

CONCLUSION

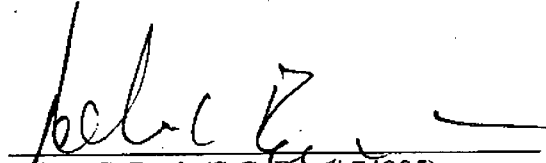
For the foregoing reasons, the defendants ask the Court to amend its order in the following respects:

1. Provide the defendants with thirty (30) days to file an amended answer, counterclaim and third-party complaint;
2. Find that the defendants have pled sufficient facts to constitute a cause of action for breach of contract;
3. Make clear the dismissal of the defendants' counterclaims and third-party complaint does not impact or effect the defendants' affirmative defense of failure to mitigate, which the defendants are still free to seek to prove at trial;
4. Address the reasons why the Court dismissed the defendants causes of action for tortious interference with prospective contractual relationships, unfair trade practices and failure

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to act in a commercially reasonable manner or, alternatively, to find that these actions are not dismissed.

Respectfully submitted,



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June 15, 2016

Greenville, SC

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
Peach REO, LLC, a Delaware limited)
liability company,)
Plaintiff,)
Vs.)
Blalock Investments, LLC; Todd Smith;)
Debra Masuga; Subway Real Estate, LLC)
and County of Spartanburg, a political)
subdivision of the State of South Carolina,)
Defendants.)
and)
Blalock Investments, LLC; Todd Smith and)
Debra Masuga,)
Third Party Plaintiffs)
v.)
Capital Crossing Servicing Company, LLC)
Third Party Defendant)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C. A. No. 2015-CP-42-4448

CERTIFICATE OF SERVICE

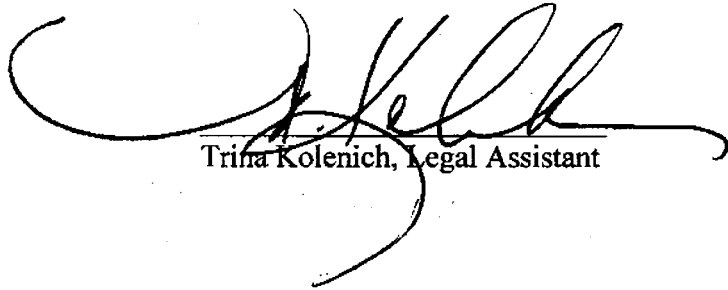
The undersigned employee of the firm of Eller Tonnsen Bach, LLC hereby certifies that a copy of the foregoing NOTICE OF MOTION AND MOTION TO AMEND JUDGMENT in the above-entitled action was served upon the following individuals this 15th day of June, 2016, by depositing the same in the United States Mail, sufficient postage affixed thereon, and addressed as follows:

Mr. Frank B.B. Knowlton
Nelson Mullins Riley & Scarborough, LLP
P. O. Box 11070
Columbia, SC 29211-1070

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The Honorable Gordon G. Cooper
P. O. Box 5666
Spartanburg, SC 29304-5666

The undersigned further certifies that a copy of the foregoing was emailed to counsel for the plaintiff on June 15, 2016, at frank.knowlton@nelsonmullins.com; and to Judge Gordon Cooper at swinstead@spartanburgcounty.org.



Trina Kolenich, Legal Assistant

Greenville, SC

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June 15, 2016

Ms. Hope Blackley
Spartanburg County Clerk of Court
180 Magnolia Street, Suite 500
Spartanburg, SC 29306

*Re: Peach REO, LLC, a Delaware limited liability company vs. Blalock Investments, LLC; Todd Smith; Debra Masuga; Subway Real Estate, LLC and County of Spartanburg, a political subdivision of the State of South Carolina, et al
C. A. No. 2015-CP-42-4448*

Dear Ms. Blackley:

Enclosed please find the original and one copy of notice of motion and motion to amend judgment on behalf of defendants, counterclaimants, and third-party plaintiffs, Blalock Investments, LLC, Todd Smith, and Debra Masuga in the above-referenced matter, along with certificate of service for the same. We would appreciate your filing the original and returning a clocked copy to us in the envelope provided. Our \$25.00 filing fee is also enclosed.

Thank you for your assistance in this matter.

Sincerely,

ELLER TONNSEN BACH, LLC


Adam C. Bach
abach@etblawfirm.com

ACB/tdk
Enclosures

cc: Judge Gordon Cooper (via email swinstead@spartanburgcounty.org)
Mr. Frank B.B. Knowlton (via email and US Mail)

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Peach REO, LLC, a Delaware limited liability company,
Plaintiff,

Civil Action No. 2015-CP-42-4448

vs.

Blalock Investments, LLC; Todd Smith;
Debra Masuga; Subway Real Estate, LLC; and County of Spartanburg, a political subdivision of the State of South Carolina,

Defendants.

and

Blalock Investments, LLC; Todd Smith;
and Debra Masuga,

Third Party Plaintiffs,

vs.

Capital Crossing Servicing Company, LLC,

Third Party Defendant.

**MEMORANDUM IN OPPOSITION
TO DEFENDANTS/THIRD PARTY
PLAINTIFFS BLALOCK
INVESTMENTS, LLC, TODD
SMITH, AND DEBRA MASUGA'S
MOTION TO AMEND JUDGMENT**

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Plaintiff Peach REO, LLC, a Delaware limited liability company ("Peach"), and Third-Party Defendant Capital Crossing Servicing Company, LLC ("Capital Crossing," and collectively with Peach, the "Plaintiff"), hereby submit this Memorandum in Opposition to Defendants/Third-Party Plaintiffs Blalock Investments, LLC, Todd Smith, and Debra Masuga's (collectively, "Defendants") *Motion to Amend Judgment* dated June 20, 2016 (the "Motion").

Defendants' Motion should be denied because the Court correctly dismissed all of

Defendants' counterclaims and third-party claims on the basis that such claims fail as a matter of law. Furthermore, Defendants have not and cannot meet the legal standard for altering or amending a judgment under South Carolina Rule of Civil Procedure ("SCRCP") 59(e). Additionally, Defendants' request to file an amended answer should also be denied because their requested amendments are futile and are untimely.

PROCEDURAL HISTORY

This is a foreclosure action based on a \$1.9 million note and mortgage by Blalock Investments, LLC, which was guaranteed by Todd Smith and Debra Masuga. See generally Complaint. Defendants filed their Answer, Counterclaim, and Third Party Complaint on January 6, 2016 (the "Answer"). In the Answer, Defendants admit that they defaulted in the monthly payments on the loan in February 2013, failed to pay the loan in full upon its maturity in October 2013, and failed to pay the property taxes, which caused the property to be sold at a tax sale in November 2013. See generally Answer.

Despite their multiple defaults on the subject loan, Defendants asserted the following counterclaims against Peach and third-party claims against Capital Crossing: (1) counterclaim for breach of the implied covenant of good faith and fair dealing; (2) counterclaim and third-party claim for violation of South Carolina's Unfair Trade Practices Act; (3) counterclaim and third-party claim for tortious interference with contract; and (4) counterclaim and third-party claim for failure to act in a commercially reasonable manner (collectively, "Counterclaims").

Plaintiff filed a Motion to Dismiss Counterclaims and Third Party Complaint on February 5, 2016 (the "Motion to Dismiss"). A hearing on the Motion to Dismiss was held approximately

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four (4) months later on May 26, 2016 (the "Hearing"). At no point prior to the Hearing did the Defendants seek leave to amend their Answer.

On June 8, 2016, the Court entered its *Order Granting Motion to Dismiss Counterclaims and Third-Party Complaint* (the "Order"), which dismissed each of the Counterclaims. Thereafter, on June 20, 2016, Defendants filed the instant Motion, requesting, in essence, that the Court (1) amend the Order to permit them to file an amended Answer, and (2) amend the Order to allow the Counterclaims to survive. The Motion and all requests contained therein should be denied for the following reasons:

ARGUMENT

I. Defendants Should Not be Permitted to File an Amended Answer and Counterclaims.

A. A Rule 59(e) Motion is Not the Proper Means to Request Amendment.

New issues cannot be raised via a Rule 59(e) Motion. See C.A.H. v. L.H., 315 S.C. 389, 392, 434 S.E.2d 268, 270 (1993) (holding that "a party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment, but did not."); see also Sullivan v. Hawker Beechcraft Corp., 397 S.C. 143, 153-54, 723 S.E.2d 835, 840-41 (Ct. App. 2012) (affirming denial of motion to amend where no new factual allegations were provided to support the new, proposed amended pleading). The law is clear that a motion to alter or amend is only to address issues overlooked by the court. Defendants' requested amendment has not been previously raised, and, therefore, is improper at this stage. The request is tardy and procedurally barred, and should therefore be denied.

B. The Proposed Amendments Would Be Futile.

Additionally, the request to amend should be denied because the proposed amendments

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would be futile. An amendment to a pleading is futile if the proposed amendment could not withstand a motion to dismiss or a motion for summary judgment. See, e.g., HealthSouth Rehab. Hosp. v. Am. Nat'l Red Cross, 101 F.3d 1005, 1011-12 (4th Cir. 1996) (noting that the proposed amendment was futile because allowing it would have "at most, delayed the inevitable dismissal" of plaintiff's claims).

Here, Defendants propose to amend their Answer and Counterclaims to assert the factual allegations listed on page two (2) of the Motion. However, these allegations are no different than what Defendants have previously asserted. Specifically, Defendants allege in the Motion that Plaintiff "misled" them into believing that Plaintiff was, in sum, "willing to approve sales or take other actions" in lieu of foreclosure and collection litigation. See Motion at pg. 2. Likewise, Defendants previously alleged that Plaintiff violated certain laws by "affirmatively *misleading* [Defendants] into believing that they were *sincerely considering offers to sell or lease the property*" (emphasis added).

Thus, because the Motion's proposed amendments are the same allegations as those already asserted by Defendants in their Answer and Counterclaims and other filings of record, the same legal analysis contained in the Order applies. The Court clearly explained that a lender (like Plaintiff) is not obligated to approve any lease or sale of the subject property in lieu of being paid the full amount owed on the loan. See Order at pg. 5, ¶ 20. Therefore, allowing the Defendants to amend their Answer and Counterclaims would be futile, as the proposed amendments would fail to support any cause of action as a matter of law as previously ruled by this Court.

Also, even if there was some distinction between the facts alleged in the Motion and those previously asserted by Defendants, Defendants still have not asserted any valid causes of action.

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against Plaintiff. Essentially, Defendants are alleging in the Motion that Plaintiff misled them about potential settlements of the subject loan in the form of a potential sale, or potential leases. Defendants then (apparently) attempt to assert additional counterclaims for misrepresentation and/or fraud based on this alleged conduct. However, Defendants have not alleged that any of their proposals would have paid their loan in full and cannot identify any contractual provision or other legal authority that requires Plaintiff to consider or accept less than the full balance owed on the loan. To the contrary, Plaintiff is not obligated to consider or accept less than the full balance owed on the loan pursuant to the loan documents and South Carolina law. See Promissory Note attached to Amended Complaint as Exhibit A at p. 2 (“[Blalock Investments, LLC] agree[s] that [Lender] may *at [Lender’s] option* extend this note . . .”) (emphasis added); Guarantees attached to Amended Complaint as Exhibit J at p. 2 (“Lender *may, but shall not be obligated to*, enter into transactions resulting in the creation or continuance of indebtedness . . .”) (emphasis added); see also *Cisson Const., Inc. v. Reynolds & Associates, Inc.*, 311 S.C. 499, 503-04, 429 S.E.2d 847, 849-50 (Ct. App. 1993) (explaining that lenders are entitled to recover the full amount owed on the loan and have no duty to mitigate their damages in any way); Branch Banking and Trust Co. of South Carolina v. Carolina Crank & Core, Inc., 362 S.C. 647, 608 S.E.2d 896 (Ct. App. 2005) (recognizing a lender’s right to refuse renewal of a note and proceed with its right to enforce its remedies instead).

Therefore, Defendants’ allegations that Plaintiff did not somehow - whether by leases, a sale, or otherwise - modify or settle the subject loan fail to support any cause of action, or new, against Peach or Capital Crossing. Thus, Defendants’ previously un-asserted counterclaims for fraud, misrepresentation, and breach of contract would fail as a matter of law and any amendment to include these counterclaims would be futile.

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C. Defendants' Request to Amend Their Answer and Counterclaims is Procedurally Improper and Unduly Delayed.

First, as explained above, Defendants' request to amend is procedurally improper, as a Rule 59(e) Motion is not the proper means to request amendment. Defendants have also failed to show that "justice so requires" the amendment, the required standard to amend a pleading at this stage per SCRCP 15(a). Defendants have not previously requested amendment or filed a proposed amended Answer and Counterclaims, despite having over six (6) months to do so, nor have they provided sufficient explanation why the amendment is warranted at this late juncture. Therefore, Defendants have not met and cannot meet the Rule 15(a) standard.

Moreover, Defendants' request to amend their Answer and Counterclaims to assert additional counterclaims and factual allegations should be denied due to their significant delay in making such a request. South Carolina law is clear that requests to amend a pleading after the conclusion of substantive hearing are highly disfavored, especially in cases where the requesting party was "well aware" of the potential amendment. Holland ex rel. Knox v. Morbark, Inc., 407 S.C. 227, 235, 754 S.E.2d 714, 719 (Ct. App. 2014) (finding that the trial court properly denied a motion to amend where the parties had already conducted discovery and there was no explanation for the plaintiff's delay in bringing the amendment); Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry, 403 S.C. 623, 632, 743 S.E.2d 808, 812-13 (2013) (denying leave to amend when there were "no significant factual developments" that warranted the untimely amendment); see also Dunbar v. Carlson, 341 S.C. 261, 270-71, 533 S.E.2d 913, 918 (Ct. App. 2000) (finding that the trial judge did not abuse his discretion in denying a motion to amend where the defendant did not move to amend his answer until after the plaintiff rested her case at trial).

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Here, Defendants filed their Answer and Counterclaims in January 2016, which did not assert a cause of action for misrepresentation, fraud, or breach of contract, even though the factual allegations that purportedly establish these claims are identical to those already asserted. Therefore, no reason exists that Defendants could not have pled these purported new claims originally. Defendants' own neglect cannot serve as a basis to permit them to file an amended Answer.

Defendants had approximately six (6) months to seek leave to amend their Answer before the Hearing was held. Defendants were also notified of the Hearing approximately one (1) month in advance. Still, Defendants took no action to amend their Answer until after the Counterclaims were dismissed by a final order. Such undue delay should not be rewarded, and the Defendants' request to amend their Answer and Counterclaims to assert additional factual allegations and counterclaims should be denied accordingly for any or all of these reasons.

II. There is No Legal Basis to Alter or Amend the Order.

As set forth in Section III below, Defendants have not (and cannot) meet the required legal standard for altering or amending a final judgment under SCRCP 59(e). However, because Defendants appear to re-argue their opposition to the Motion to Dismiss in their Motion, Plaintiff hereby reiterates why each Counterclaim fails as a matter of law and explains why the Court's Order is correct.

A. The Motion is Improper as it Only Restates Defendants' Prior Arguments, Which Were All Properly Rejected.

A Rule 59(e) Motion is not a basis to re-argue issues already rejected. *Hutchinson v. Stanton*, 994 F.2d 1076, 1082 (4th Cir. 1993) (explaining that mere disagreement with how a trial court applied a particular standard of law "does not support a

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Rule 59(e) motion"). Here, the Defendants have only restated the same arguments previously rejected. Therefore, the Motion is improper and should be denied.

B. The Court Correctly Dismissed Defendants' Claim for Breach of the Implied Covenant of Good Faith and Fair Dealing.

Defendants attempt to assert a breach of contract claim against Capital Crossing in order to (apparently) argue why their counterclaim for breach of the implied covenant of good faith and fair dealing (the "Implied Covenant") should survive. See Order at pg. 7, ¶ 27 (recognizing that Defendants did not assert "an independent claim for breach of contract" in their Answer). However, for the reasons set forth above, Defendants should be barred from amending their Answer to include any additional counterclaims against either Peach or Capital Crossing. In any event, any breach of contract claim asserted by Defendants against Capital Crossing would fail as a matter of law.

Defendants first (appear to) argue that Capital Crossing violated the Implied Covenant, an alleged contract term and, therefore, violated an alleged contract. Defendants have not even alleged the existence of a contract between them and Capital Crossing, and, therefore, there is no basis for a breach of contract claim. See Order at pg. 7, ¶ 28 (stating that Defendants "have not asserted an independent claim for breach of contract").

Further, Defendants cannot state an independent cause of action for breach of the Implied Covenant as a matter of law against either Peach or Capital Crossing. As explained in the Order, South Carolina courts do not recognize such a claim as an independent cause of action. See Order at pg. 6, ¶ 26; see also, RoTec Services, Inc. v. Encompass Services, Inc., 358 S.C. 67, 597 S.E.2d 881, 884 (Ct. App. 2004) (concluding that "the implied covenant of good faith and fair dealing is not an independent cause of action . . ."). Indeed, Defendants admit this fact

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in their Motion and have not otherwise cited to any contrary authority. See Motion at pg. 4 (recognizing that a breach of the Implied Covenant "is not an independent cause of action").¹

Defendants next appear to argue that the Implied Covenant modified the terms of a contract, such that Plaintiff was required to exercise discretion in accepting less than the full balance owed on the loan in good faith. See Motion at pg. 4. This argument is illogical and also legally fails to state any valid claim. First, as explained, Defendants have not previously alleged the existence of a contract between them and Capital Crossing, much less any written modifications of such a contract. Second, as also explained, Capital Crossing was under no duty to accept anything less than the full balance owed on the loan. Thus, Defendants' complaint that Capital Crossing did not consider or approve leases or sales of the property cannot state any valid cause of action against Capital Crossing.

Finally, even if Defendants had properly alleged a contract between them and Capital Crossing (which they did not), such a contract would have been made on behalf of Peach, the loan holder. Therefore, Capital Crossing, the loan servicer and Peach's agent, would not be responsible for any acts committed within scope of its agency. See Restatement (Third) Of Agency § 7.01 (2006) (explaining that an agent "who makes a contract on behalf of a disclosed principal does not become a party to the contract, and is not subject to liability on it, unless the agent and the third party so agree"). For all of these reasons, a breach of contract claim against Capital Crossing, even if properly and timely asserted (which it was not here), would fail as a

¹ Defendants inexplicably appear to take a contrary position two paragraphs later in the Motion, appearing to allege that South Carolina *does* recognize an independent cause of action for breach of the Implied Covenant, and citing the following two cases in support of this proposition: U.S. for Use & Benefit of Williams Elec. Constructors, Inc., 325 S.C. 129, 133, 480 S.E.2d 447, 449 (S.C.1997) and Tadlock Painting Co. v. Maryland Cas. Co., 322 S.C. 498, 500, 473 S.E. 2d 52, 55 (S.C. 1996). Neither of these cases apply to this matter as they merely stand for the proposition that the Implied Covenant is implied in every contract. Here, as explained above, Defendants have not alleged the existence of a contract between them and Capital Crossing. Thus, there is simply no Implied Covenant between the parties that could be breached.

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matter of law.

C. The Court Correctly Dismissed Defendants' "Failure to Mitigate" Counterclaim, and any Related Affirmative Defense Would Fail For the Same Reasons.

Defendants also request that the Court amend the Order to clarify that the Court did not rule on their "affirmative defense of failure to mitigate." See Motion at pg. 5. While Plaintiff concedes that its Motion to Dismiss was not aimed at Defendants' affirmative defenses, any "failure to mitigate" defense would be futile in any event. First, amounts owed on a loan are not damages, so any "failure to mitigate" defense is illogical. Also, South Carolina law is clear that lenders are entitled to recover the full amount owed on the loan and have no duty to mitigate this amount in any way. See Cisson, 311 S.C. at 503, 429 S.E.2d at 849. Defendants attempt to argue that Cisson only applies to the particular facts of that case and does not broadly negate a lender's alleged duty to mitigate. See Motion at pg. 6. However, Defendants are simply wrong on this point, as the court in Cisson specifically explained that the lender in that case was "permitted to enforce the note in its full amount against *any party to the note or guaranty*" and was not obligated to "*pursue or exhaust a particular remedy, or take any action before seeking full payment on the note.*" Id. at 504, 429 S.E.2d at 850 (emphasis added). These statements clearly show that the court in Cisson was applying the general law – lenders have no duty to mitigate – to the particular facts of that case. Also, there is nothing else in Cisson to suggest that its holding is limited to the exact factual scenario presented. Therefore, because a lender has no duty to mitigate in South Carolina, any affirmative defense (or counterclaim) based on a failure to mitigate fails as a matter of law. Thus, amending the Order to allow such a defense would be futile.

Furthermore, the Court recognized in the Order that all of Defendants' Counterclaims including their "failure to mitigate" claim, fail as a matter of law under S.C. Code Ann. § 37-371.

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10-107, which bars actions based on a lender's failure to renew, modify, amend, or cancel a loan, unless the complaining party has a writing signed by the lender containing material terms. Defendants attempt to argue around this conclusion by alleging that Section 37-10-107 (1) only applies to "consumer credit" and (2) does not apply to "promissory notes, personal guarantees, or real estate mortgages." See Motion at pg. 6. Defendants are wrong on both points. First, Section 37-10-107(3) by its own terms does not apply to consumer loans (or "consumer credit"), as it clearly states that the section does not apply to "a loan of money used primarily for personal, family, or household purposes." Second, Section 37-10-107 does indeed apply to promissory notes and mortgages. As explained by the South Carolina District Court, Section 37-10-107(3) protects "debtors from lenders not extending credit for the sole reason that a note or a mortgage is not signed by the lenders." Branch Bank and Trust Co. v. Technology Solutions, Inc., 2014 WL 691656, * 2 (D.S.C. Feb. 21, 2014) (also explaining that § 37-10-107(3) recognizes that "lenders do not typically sign the actual documents containing promissory notes and real estate mortgages"). Essentially, because lenders do not usually sign promissory notes, mortgages, and the other documents at issue here, Section 37-10-107(1), read literally, would prohibit a borrower from enforcing a promissory note or mortgage against a lender. Section 37-10-107(3) negates this absurd result. Thus, the claimed "exception" for notes and mortgages as advanced by the Defendants does not exist.

For all of these reasons, the Court correctly dismissed the Defendants' "failure to mitigate claim," and permitting the Defendants to re-characterize this claim as an affirmative defense would be futile.

D. The Court correctly dismissed Defendants' Remaining Counterclaims.

Defendants also argue that the Order should be amended because it did not address the

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reasons why the Court dismissed their remaining Counterclaims. See Motion at pg. 6. Once again, Defendants are simply wrong. The Order specifically states that the “specific conduct on which *each* of [Defendants’] counterclaims and third-party claims are based fails to support *any* cause of action.” See Order at pg. 3, ¶ 7 (emphasis added). In any event, the Court expressly stated that it indeed considered all of the Defendants’ other arguments, and found them to be without merit. See id. at pg. 7, ¶ 31.

Finally, Defendants cannot rely on an alleged violation of the South Carolina Unfair Trade Practices Act, S.C. Code § 39-5-10, *et seq.* (“SCUTPA”), as an underlying basis for their Counterclaims, which Defendants appear to do in their Motion. The SCUTPA only creates a cause of action for unfair or deceptive acts *that affect the public interest*. “Conduct that affects only the parties to the transaction and not the public interest provides no basis for a SCUTPA claim.” Bessinger v. Food Lion, Inc., 305 F. Supp. 2d 574, 581 (D.S.C. 2003). Here, Defendants have not alleged, nor can they allege, that the actions complained of affect the public interest. The facts as alleged by Defendants apply only to the parties to this action. Further, as explained above, Defendants’ allegations fail to establish any wrongdoing by Plaintiff. For these reasons, an alleged SCUTPA violation cannot serve as an underlying basis for Defendants’ remaining Counterclaims, nor can it survive as an independent cause of action as a matter of law.

III. Defendants Fail to Meet the Required Standard for Altering or Amending a Judgment Under SCRCP 59(e).

Finally, notwithstanding the fact that all of Defendants’ Counterclaims fail as a matter of law for the reasons discussed above, Defendants’ Motion should be denied because they have not and cannot meet the standard for altering or amending a judgment under South Carolina law.

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The South Carolina Supreme Court has stated that "Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical." Elam v. S.C. Dep't of Transp., 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004) (analyzing and applying federal law regarding Rule 59(e)). Therefore, South Carolina courts generally follow federal law in interpreting and applying Rule 59(e).

Under federal law, the Fourth Circuit Court of Appeals has set forth three limited circumstances under which a court may alter or amend a judgment pursuant to Rule 59(e): "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Bogart v. Chapell, 396 F.3d 548, 555 (4th Cir. 2005) (appeal from South Carolina federal district court) (internal quotations omitted). If the moving party does not effectively show at least one of these three circumstances justifying a change to the court's order, then the order should not be changed. "Mere disagreement" with how a trial court applied a particular standard of law "does not support a Rule 59(e) motion." Hutchinson, 994 F.2d at 1082. Similarly, reconsideration of a judgment under Rule 59(e) is unwarranted where "parties simply ask the court to change its mind." Pettyjohn v. Mission-St. Joseph's Health Sys., Inc., 202 F.R.D. 208, 209 (W.D.N.C. 2001). Also, the court should alter or amend a judgment only in extraordinary circumstances, because "reconsideration of a judgment after its entry is an extraordinary remedy." Ridgeway v. Stevenson, No. 3:10-490-RBH, 2011 WL 1466325, at *1 (D.S.C. 2011) (Harwell, J.) (denying Rule 59(e) motion to alter or amend an order granting summary judgment to the defendant) (internal quotations omitted).

As explained below, Defendants cannot establish any of the three circumstances under which a court may alter or amend a judgment under Rule 59(e), as they are merely asking the

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Court to “change its mind.” Defendants have also failed to set forth any valid reason why this “extraordinary remedy” should be granted. Therefore, the Motion must be denied.

A. There has been no intervening change in controlling law.

Defendants have not alleged any change in the controlling law for this case because there has been none. Thus, this factor cannot serve as a basis to grant Defendants’ Motion.

B. There is nothing new for the Court to consider.

While Rule 59(e) generally allows the court to alter or amend a judgment if new evidence has been discovered, this factor does not apply to an order granting a motion to dismiss, which is limited to the allegations alleged in the complaint. Nevertheless, as explained herein, the Defendants’ Motion does not assert any new allegations that the Court has not already considered. Hence, this factor cannot be a basis to grant the Motion.

C. There is no clear error of law or manifest injustice.

Finally, as mentioned above, Rule 59(e) allows the court to alter or amend a judgment if doing so is necessary to correct a clear error of law or prevent manifest injustice. Bogart, 396 F.3d at 555. A clear error of law has been defined as “wholesale disregard, misapplication, or failure to recognize controlling precedent,” Oto v. Metro. Life Ins. Co., 224 F.3d 601, 606 (7th Cir. 2000).

Defendants cannot establish any clear error of law in this case. Defendants have simply requested that the Court change its conclusions to rule in their favor. However, the Order was based on the Court’s valid interpretation of the applicable South Carolina statutes, procedural rules, and case law as explained above. There is no controlling precedent to the contrary, and Defendants have identified none.

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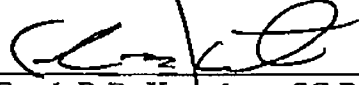
Defendants have also not alleged any manifest injustice anywhere in the Motion. Rather, Defendants only ask that the Court reach a different conclusion. Regardless, there is no manifest injustice in finding that Defendants failed to adequately plead any cause of action against Peach or Capital Crossing.

For all of these reasons, there is no basis to alter or amend the Order under Rule 59(e).

CONCLUSION

For the reasons set forth above, Plaintiff requests that the Court deny the Motion and for such other relief as may be just and proper.

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Columbia, South Carolina

July 11, 2016.

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1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF SPARTANBURG

3 PEACH REO, LLC, A DELAWARE LIMITED
4 LIABILITY COMPANY,

5 PLAINTIFF,

6 -VS-

TRANSCRIPT OF MOTION
HEARING

(2015CP42-04448)

7 BLALOCK INVESTMENTS, LLC, TODD
8 SMITH, DEBRA MASUGA, SUBWAY REAL
9 ESTATE, LLC; AND COUNTY OF
10 SPARTANBURG, A POLITICAL
11 SUBDIVISION OF THE STATE OF
12 SOUTH CAROLINA,

13 DEFENDANTS.

14 AND
15 BLALOCK INVESTMENTS, LLC; TODD
16 SMITH; AND DEBRA MASUGA,

17 THIRD PARTY PLAINTIFFS,

18 -VS-

19 CAPITAL CROSSING SERVICING
20 COMPANY, LLC,

21 THIRD PARTY DEFENDANT.

22 REFERENCE HELD:

MAY 26, 2016.

23 B E F O R E:

HONORABLE GORDON G. COOPER,
MASTER-IN-EQUITY FOR SPARTANBURG COUNTY.

24 NELSON, MULLINS, RILEY & SCARBOROUGH, LLP,
25 BY: FRANK B.B. KNOWLTON, ESQUIRE,
Attorneys for the Plaintiff.

ELLER, TONNSEN, BACH, LLC
BY: ADAM C. BACH, ESQUIRE
Attorneys for the Defendants/Appellant.

BY: VIRGINIA DUPONT, ESQUIRE
Attorneys for Spartanburg County.

1 THE COURT: We are here on Case Number 2015CP42-04448. Peach REO, LLC, a Delaware
2 Limited Liability Company, versus Blalock Investments, LLC, Todd Smith, Debra Masuga, -
3 Subway Real Estate, LLC, and County of Spartanburg, as Defendants. And then, Blalock
4 Investments, LLC; Todd Smith and Debra Masuga, as the Third Party Plaintiffs, versus Capital
5 Crossing Servicing Company, LLC. And we are here on a Motion filed by the Plaintiff to
6 dismiss the Counterclaims and Third-Party Complaint. Are you ready to proceed gentlemen and
7 Ms. Dupont?

8 MR. KNOWLTON: We are, Your Honor.

9 THE COURT: All right.

10 MR. KNOWLTON: Your Honor, Frank Knowlton for the Plaintiff. Your Honor, as an
11 administrative matter we submitted a Reply Memorandum this morning. I wanted to be sure that
12 the Court had received it.

13 THE COURT: I did not.

14 MR. KNOWLTON: All right. If I may, I will hand it up.

15 THE COURT: All right.

16 MR. KNOWLTON: Your Honor, this case involves a commercial loan made by the predecessor
17 in interest to the Plaintiff. The loan has changed hands several times. The current Plaintiff is
18 Peach REO and it is being serviced by an entity called Capital Crossing. The action is a
19 foreclosure action to foreclose a note and mortgage on property at 2634 Boiling Springs Road.
20 Mr. Todd Smith who is in the courtroom, ran the business listed here, and he is one of the
21 guarantors who is being sued under his personal guaranty as well along with Debra Masuga. We
22 are in this case, Your Honor, seeking a deficiency judgment. Your Honor, the amended
23 foreclosure Complaint was filed on November 17, 2015. They filed their Counterclaim against
24 us a couple of months later, January of 2016. And generally speaking, Your Honor, they bring
25 up a bunch of counterclaims. The breach of contract, tortious interference with contractual

1 relationships, breach of covenant of good faith and fair dealing and unfair trade practices. We
2 seek a dismissal, Your Honor for the reasons that are set forth in our memorandum and for the
3 reasons that are set forth in our Reply. In regards to the facts that they have asserted they have
4 not asserted facts that are sufficient to constitute the causes of action against either the lender or
5 the servicer in this case. The bulk of their claims deal with their complaints about the loan.
6 There are complaints about failure of the lender and the servicer to agree to short sales. To agree
7 to take a discount on their loan. Failure to approve leases. That sort of thing, Your Honor. And
8 as we pointed out in our brief, Your Honor, there is no basis in the law in South Carolina, in fact
9 the loan documents specifically provide for our rights to do exactly what we did in this case. We
10 are entitled to a full payoff on the loan. The system case supports that. Your Honor has
11 supported that in cases that I have had before Your Honor. It is turning the law for foreclosures
12 on its head to say that a lender can't select the remedies it wishes in the time frame that it wishes
13 to. There was a delay in proceeding in this case which I am sure frustrated the borrower but it is
14 within our rights to have proceeded the way we did. We did actually talk to them. We actually
15 did grant them or offer to them a six (6) month extension which they declined. They offered a
16 deed in lieu which we refused to accept. So negotiations did take place over a period of time,
17 Your Honor. But at the end of the day, we complied with our rights and obligations under the
18 contracts which they agreed to. And we have complied with what the law gives us and that is
19 the right to full payoff. What they are arguing here today is that we should have moved quicker.
20 We should have agreed to a short sale. We somehow should have been willing to compromise
21 our debt because they couldn't pay it off. Your Honor, in this case they breached the contract
22 three different ways. They failed to pay beginning in February 2013. They failed to pay the
23 loan when it matured in October of 2013. And they failed to pay property taxes when they were
24 due. All of these were obligations. They don't deny. They don't deny the validity of the loan.
25 They don't deny that they are in default. With respect to the good faith and fair dealing claim,

1 Your Honor, because the basis of their supposed contract claims are without merit. Their breach
2 of fiduciary good faith and fair dealing also fails because it has to have an underlying valid
3 breach of contract claim to go with it. They simply don't have that here. For the very same
4 reasons, Your Honor, the Unfair Trade Practices Act claim fails because there is no underlying
5 tort or contract claim which to base the Unfair Trade Practice on. Your Honor, for the reasons
6 stated and for the reasons in our Reply there is no basis set forth in their documents and their
7 Counterclaim that creates a cause of action against the Bank. Thank you.

8 THE COURT: All right. Counsel.

9 MR. BACH: Thank you, Your Honor. Adam Bach, on behalf of Todd Smith, Debra Masuga
10 and Blalock Investments. I think just from the outset I will say that Mr. Knowlton and I are
11 talking pass each other just a little bit on the breach of covenant of good faith and fair dealing.
12 The breach of covenant of good faith and fair dealing is just another way of saying somebody has
13 breached a contract and it doesn't entitled you to any additional damages. Our Supreme Court
14 has been very clear that you can't get punitive damages for breach of the covenant in good faith
15 and fair dealing. It is a covenant that is a contractual term that can be breached just like any
16 other contractual term and that was what we have alleged here. And what the covenant says is if
17 you are going to deal with the other side honestly, honesty in fact, you are not going to use
18 contractual terms to deliberately injury or deprive the other party to benefit their bargain. And
19 so, Your Honor, I think that it would be a mistake to say, well it would be redundant. If it is
20 breach of contract and a breach of the covenant in good faith and fair dealings it is the same
21 thing, because it doesn't entitled you to anything else. Our Supreme Court has been very clear
22 that a breach of the covenant of good faith and fair dealings entitled you to contractual damages,
23 and nothing else. It doesn't allow punitive. It doesn't allow any further damages on the cause.
24 So it would be a nullity to say well it doesn't do anything else. It doesn't have any application.
25 There is no way to vindicate it. But it exist in the law. There is a separate contractual provision

1 that can be breached by the exercise of your contractual rights in bad faith. And so when Mr.
2 Knowlton says well we didn't have to do anything. Well I think that is misleading a little bit
3 because we bargained for a maturity date of October 1, 2013, not plus three (3) years. And to
4 accept the Plaintiff's argument in this case would be to say that every note and mortgage is the
5 date plus three or the date plus five or the date plus whatever the statute of limitations is, well
6 twenty on a mortgage. So it can't be accurate to say that a lender can simply tie or handcuff a
7 borrower to a piece of property way beyond what the borrower bargained for. There is so much
8 more and I have sat in Mr. Knowlton's chair more than I have sit in this chair. As I certainly
9 represent a lot of banks and creditors and I understand that the law is tilted in their favor, but the
10 parties deserve the opportunity to know what they have bargained for. The lenders always come
11 in and say these are our rights, well what about the debtor. Mr. Smith and Ms. Masuga and
12 Blalock, they didn't bargain for a note that went on into 2016 without any changes in the terms.
13 They didn't bargain for a continuing liability. And then once the default had occurred I think it
14 was encumbered upon the Plaintiff to exercise its contractual rights in a way that it doesn't
15 mislead the Defendants into continually just being tied to the property. And what I mean by that
16 is, and we will say with the failure to approve the various purchases and lease, their response to
17 those proposals was not, no we are not interested. We plan to take this to the statute of
18 limitations and then sell it in foreclosure and get the best we can out of it. That was not their
19 response. Their response to us was send us this, send us that, you know we want to consider
20 this. Send us this information and we will respond. Send us that information and we will
21 respond. We need an appraisal. We lost our previous appraisal. Never once did they deal and
22 the watch word under breach of the covenant in good faith and fair dealings, with honesty in fact.
23 If that was their intent and they had informed us of it then my clients could have taken actions or
24 at least tried to go out and potentially -- they could go out and find another lender for the amount
25 of deficiency and a new sale of the property or do something? They could file a declaratory

1 judgment action. Instead, Peach REO and Capital have led my clients for three (3) years into
2 believing that no, no, we want to sell it. We want to approve the sale. Just get us the
3 information on the lease. Get us the information on the sale. And then nothing. No response
4 whatsoever. Our allegation is that was intentionally. They wanted to maximize and inflict the
5 maximum possible liability on the Defendants and had they dealt honestly with our clients and
6 had they actually just taken - - if they had begun any proceedings, there are remedies, and the
7 bargaining runs both ways. We agreed to a maturity date but we also agreed to certain remedies
8 for the lender. That was the bargain that we made. And so the debtors have a right to look at
9 their note and their mortgage and say if we default here is as far out as we are going to go. Here
10 is what the lender can do. We can't sell the property without their permission and if we get in
11 touch with them and they say they want to consider this and they want more information we have
12 the right to allow them that. And I think that again the reason that the covenant of good faith and
13 fair dealings, as I understand the doctrine, is that it is its own contract term that puts an obligation
14 on the parties to deal honestly and fairly with one another and not to deprive each other of the
15 benefit of the bargain. So Your Honor, I will say that there is not much case law on these types
16 of counterclaims. I was able to find a case out of the Middle District of Florida, this is 744 F.
17 Supp 1118, where a lender, this is East Bay Limited Partnership v. American General Life &
18 Accident Insurance Company. And we will be perfectly frank with the Court that in that case
19 there was a similar type of breach of the covenant in good faith and fair dealing for failure to
20 approve sales on the property but the District Court ended up granting summary judgment to the
21 lender but it went through the analysis. It looked at the facts. It said was there a good faith
22 reason for their denial. Was there a good faith reason for their delay. Was there a legitimate
23 business reason or was this purely on the Defendants. Ultimately, the Court came down against
24 the debtors but it went through the analysis. It actually went through the analysis on dealing and
25 enforcing a contract claim, too. It also allowed evidence to be presented about whether or not

1 this was a tort. As per our cause of action for that, Your Honor, they really don't cite much with
2 regards to our cause of action on that as a basis for a dismissal. Our courts have said that the tort
3 interference with respect to business relationship requires to be identified. Prospective business
4 relationship or contract - - I mean I have one sitting here, right here today from Spencer Hines
5 for an offer to buy for one point five (1.5) million dollars. The question is, did they
6 intentionally deal with it for an improper purpose or by improper methods. Your Honor we
7 would say that they did so in two (2) ways. Number 1, the improper purpose was to continue to
8 inflict maximum harm upon us and the improper method was just leading us into believing that
9 they were considering these offers. We could have teamed up with Spencer Hines. We could
10 have gone to them a year ago and said look, there has got to be a deficiency here. We need to
11 figure that out. Would you give us a loan on the side so that we can take them out of their
12 mortgage completely. But we were never given the information that they weren't serious about
13 these offers. And so we acted based on what they were telling us under the contract. As to
14 unfair trade practices, I would just say, Your Honor, we have to show an unfair deceptive act that
15 can affect the public interest. In every single mortgage, in every single note issued by every
16 single lending institution whether residential or commercial this exact same thing could happen.
17 You just allow it to go, wait past maturity on the loan, the mortgages are in default, and we will
18 just let - - I mean I believe the action to foreclose on a mortgage, I think it is a twenty (20) year
19 statute. Can we sit here for twenty (20) years while the borrower begs you, take the property, let
20 me sell it, let me lease it. Let me do something with it. I don't think that a lender can chain a
21 debtor to a property and then say we will just let it run for as long as possible. Both sides are
22 entitled to what they have negotiated. Here Blalock negotiated a maturity in 2013. And it
23 wasn't 2013 plus three. So, Your Honor, for those reasons especially at the end this is the
24 Motion to dismiss the case. We would like to go forward and do the discovery on Peach REO
25 communications. We would like to learn what they were talking about internally. We would

1 like to learn whether or not they actually did consider any of the information that we sent.
2 Whether they actually did consider the offers that we sent. Whether or not the things that they
3 were telling us were actually true or were these all just misrepresentations to us to keep us from
4 taking other action to try to get out of this deal. So Your Honor, we believe certainly with the
5 Court pursuing the facts as we pled them to be true, we think that we have pled more than
6 enough to get a court order on our causes of action and discovery. If the Court wants to take this
7 matter up again in summary judgment and there is no evidence that Peach REO was doing
8 anything other than just trying to find the best deal for itself, then judgment would probably be
9 proper at that time but not at this time. Thank you, Your Honor.

10 THE COURT: All right.

11 MR. KNOWLTON: Actually, Your Honor, it is appropriate at this time. It is appropriate at
12 this time for a number of reasons. Your Honor, there is no independent cause of action in South
13 Carolina for the so called breach of the covenant of good faith and fair dealing. It is just simply
14 not the law in this state. There is not one case in South Carolina that provides what he wishes
15 you to rule on here, Your Honor. There is some cause of action for failing to accept short sales.
16 There are some causes of action against the lender for failing to negotiate a lease or reduction in
17 the debt. The simple fact of the matter, when they describe this as being a change of the
18 property. Your Honor, they are the ones that borrowed the money. They signed up to pay that
19 money. And they gave us a mortgage on their property which they failed to pay. They could
20 have refinanced it. They could have borrowed money at any step of the way. We didn't stop
21 them from doing that. At any step along the way they could have gotten another lender to lend
22 them money to take this property out from under this loan. They knew that they were going to
23 be upside down on it. They never offered us the full payoff. And so Your Honor the case law is
24 very clear. We don't have to accept a short sale. We don't have to accept less than what we are
25 owed. And there is no case law in South Carolina that says - - well we did negotiate over a

1 period of years, but we didn't ever reach a deal. We didn't have to. We had no obligation to.
2 And there was nothing stopping them from getting it refinanced. There is simply no cause of
3 action stated Your Honor for breach of contract. In fact, this is a contract binding against them
4 that defines between the lenders and the servicer. So that along is grounds for the dismissal of
5 the claims against the servicer. But the contract between the lender is clear. They can exercise
6 whatever remedy at any time that they want. The Statute of Limitations would say, Your Honor,
7 we don't have to accept a short sale. We don't have to accept anything. Your Honor, there are
8 you know, and if Mr. Bach is on my side of the wall so now he knows. This is what lenders do.
9 This is why they lend money the way that they do. Your Honor, sees that all the time. It is very
10 similar Your Honor to the case I had before your Court, the *C&S* case. Very similar. The
11 companion case was with Judge Scarborough. The *Coastal Carolina* case, Your Honor, which
12 we prevailed as the Court may recall. The simple fact of the matter they could pay the loan off.
13 If they don't want the clock to keep ticking they could have paid the loan off. They complained
14 about late fees. I know Mr. Bach knows late fees don't accrue until after maturity. So any late
15 fees they would be charged would have been up to the day of maturity. And Your Honor and
16 Mr. Bach also knows that the clock keeps ticking on post default interest and that doesn't stop
17 until its get paid. They knew this every step of the way. They could have gotten alternative
18 lending and they didn't. They knew that they were facing a situation where they couldn't get
19 enough money to pay off the loan so they were without you know they were stuck. Him saying
20 our failure to approve is somehow grounds for a tortious interference claim, Your Honor, is
21 ludicrous. And the law states we don't have to accept a short sale. We don't have to accept a
22 lease. And then to turn that around and say that is tortious interference, Your Honor. We didn't
23 get in the way of the loan situation. What he is saying is - - what he is really arguing is we don't
24 accept a short sale. How can that be? If you were to say that was grounds for tortious
25 interference undermines the case law in South Carolina. That the lender does not have to agree

1 to a short sale. It undermines the private contract between these two parties that allows the
2 lender not be obligated to accept less than what the lender was owed under the contract, Your
3 Honor. So for those reasons the counterclaims should be dismissed.

4 THE COURT: Wait just one minute counsel. Ms. Dupont do you have any input?

5 MS. DUPONT: No, Your Honor.

6 THE COURT: All right. Mr. Bach.

7 MR. BACH: The only thing that I would say is again, you don't have to accept a short sale.
8 Fine. But you can't lie to the debtor about it. You can't mislead him about it. You can't
9 communicate this representations to him. Their communications to my clients were not, we
10 don't want to accept the short sale. They were not we don't want the properties. They were not
11 we don't want the property leased. They were not, we have other intentions for this property.
12 They were continually yes, send us information. Send us the purchase information. Send us the
13 leases so that we can evaluate them. Time and time again my clients would send the
14 information. They would send everything that was supposed to be requested. And then
15 eventually they would stop communicating. The deal would be lost. So Your Honor, it
16 prejudiced them and it was in bad faith exercising their contractual rights to approve the sale
17 because my clients did not take any other - -you know, they did not go get a loan to get them out
18 of it. Well we thought that we were going to be able to work with them based on their
19 representations. So honesty in fact is the watch word and that is what we expected.

20 MR. KNOWLTON: Your Honor, to that there is no claim of fraud in this case. There is no
21 claim of negligence misrepresentation. There is no claim of misrepresentation at all. They are
22 analyzing that we did things that we were entitled to do under our contracts. And they are
23 somehow trying to claim - - and so there is no breach of contract claim which fails as a matter of
24 law. This simple good faith argument that he keeps raising is not an independent cause of action
25 in South Carolina. So it too fails. So any allegations that we somehow misled them fails also

1 because everything that we did was within our rights under these agreements, Your Honor.

2 THE COURT: Counsel anything further?

3 MR. BACH: I guess the only other thing that I would say is Your Honor to the extent the Court

4 is inclined to grant it, we have no problem with amending this case, it is fairly early on to add a

5 cause of action for fraud and negligence misrepresentation. We certainly hope to go forward

6 with discovery on some of these claims. And determine what was going on at Peach and Capital,

7 you know, and to come to the Court at that time. But we don't believe that any of the claims

8 should be dismissed. But we are happy to amend to add fraud and negligence misrepresentation.

9 MR. KNOWLTON: Well Your Honor, it is too late for that. The pleadings stand on their

10 own. And it fails to state causes of action against either the servicer or the lender. And for that

11 reason the Motion to Dismiss should be granted.

12 MR. BACH: I am sorry to keep jumping up but I mean I think that there is plenty of case law

13 out there that says when a Court is considering a Motion to Dismiss that dismissal without

14 prejudice prior to any discovery being done and permitting any party to amend is certainly

15 proper.

16 THE COURT: All right. Based on the pleadings and the motions filed and the memorandums,

17 I am going to grant the Plaintiff's motion. Findings that the Defendant debtors have failed to

18 state facts that constitute any cause of action against the Plaintiff Peach or Capital Crossing and

19 dismiss those complaints and the Third Party Complaint. Mr. Knowlton if you will prepare the

20 Order.

21 MR. KNOWLTON: I will, Your Honor.

22 THE COURT: And provide that to Counsel including Ms. DuPont for their review before you

23 submit it to me.

24 MR. KNOWLTON: I will, Yes sir.

25 THE COURT: All right.

1 MS. DUPONT: Thank you, Your Honor.

2 MR. KNOWLTON: Thank you.

3 ----- END OF MOTIONS -----

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1 STATE OF SOUTH CAROLINA

2 COURT OF COMMON PLEAS

3 COUNTY OF SPARTANBURG

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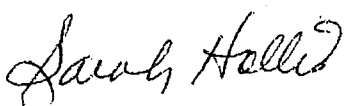
5 CERTIFICATE

6

7 I, the undersigned Sarah Hollis, Court Reporter for the Master-In-Equity for the County
8 of Spartanburg, State of South Carolina, do hereby certify that the foregoing is a true and
9 accurate Transcript of Motions of the proceedings had at the motion hearing of the captioned
10 case, before the Honorable Gordon G. Cooper, Master-In-Equity for Spartanburg County, South
11 Carolina, on the 26th day of May, 2016.

12 I do further certify that I am neither of kin, counsel nor interest to any party hereto.

13

14 

15

Sarah Hollis

16

Court Reporter

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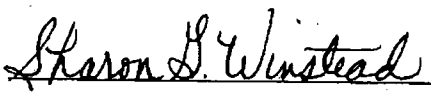
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19 SWORN to before me this

20 22nd day of September, 2016.

21 Spartanburg, South Carolina.

22

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24 Notary Public for South Carolina

25 My Commission Expires: 9-13-2026

1 STATE OF SOUTH CAROLINA)
2) COURT OF COMMON PLEAS
3 COUNTY OF SPARTANBURG) C. A. No. : 2015-CP-42-04448

4 Peach REO, LLC, a Delaware
5 limited liability company,)

6)
7 Plaintiff,)

8 vs.)

9 Blalock Investments, LLC; Todd
10 Smith; Debra Masuga; Subway
11 Real Estate, LLC; et al.,)

12)
13 Defendants.)

14 and)

TRANSCRIPT OF TESTIMONY

15)

16 Blalock Investments, LLC, Todd
17 Smith and Debra Masuga,)

18)

19 Third Party Plaintiffs,)

20 vs.)

21)

22 Capital Crossing Servicing)

23 Company, LLC,)

24)

25 Third Party Defendant.)

July 13, 2016

Spartanburg, South Carolina

1 B E F O R E:

2 HONORABLE GORDON G. COOPER, Master-in-Equity

3 A P P E A R A N C E S:

4 Frank B. B. Knowlton, Esquire

5 Attorney for Plaintiff, Peach REO, LLC, a Delaware Limited
6 Liability Company; and Third-Party Defendant, Capital
7 Crossing Servicing Company, LLC

8

9 Adam C. Bach, Esquire

10 Attorney for Defendants and Third-Party Plaintiffs,
11 Blalock Investments, LLC, Todd Smith and Debra Masuga

12

13 Virginia Dupont, Esquire

14 Attorney for Defendant, County of Spartanburg, a political
15 subdivision of the State of South Carolina

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DOROTHY HUNTSINGER

COURT REPORTER

1 THE COURT: This is case number 2015-4448, Peach REO, LLC
2 versus Bialock Investments, LLC, et. al. and we are here on the
3 motion filed by the attorney for the defendants and the motion is
4 to alter or to amend the judgment and I have both the Motion and
5 the Memorandum in Opposition in front of me. Alright, Counsel,
6 are you ready to proceed?

7 MR. BACH: Yes, sir, Your Honor. Thank you.

8 THE COURT: Alright.

9 MR. BACH: And I'll just sort of tick through this. First,
10 we ask the Court to give us an opportunity to amend our Complaint
11 to allege additional facts and causes of action. We base that
12 request on Spence versus Spence, 380 S.C. 106 which we cite in
13 our Memo. It's a Court of Appeals case. I'm sorry, a Supreme
14 Court case from '06 talking about, you know, I think reiterating
15 the fact that when there is a dismissal on 12(b)(6), we're
16 talking about the sufficiency of the pleadings. We're not
17 talking about the merits. We're not talking about the evidence
18 because we haven't gotten into that yet. And so, you know, what
19 the Court said there was that when a Complaint is dismissed under
20 Rule 12(b)(6) for failure to state facts sufficient to constitute
21 a cause of action, the dismissal is without prejudice and the
22 Plaintiff in those cases should be given an opportunity to file
23 and serve an Amended Complaint. There was some question raised
24 by Mr. Knowlton about whether or not we could ask to amend in a
25 Rule 59 motion. First, let me just say I don't--- In our

1 initial motion, I think we moved under both Rule 15 and Rule 59,
2 but for the--- I mean--- For the benefit of the Court, Spence
3 versus Spence actually came up on a request made pursuant to Rule
4 59(e) to grant leave to amend fifteen days since filing and
5 serving the Amended Complaint, so that is how the request was
6 presented in Spence as part of a motion to alter or amend
7 judgment, a Rule 59(e) motion which is exactly what we've done
8 here. It was framed the same way. It was a similar procedural
9 posture. It was a dismissal without prejudice. It was a
10 dismissal with prejudice in that case. We did cite Rule 15 in
11 our initial motion as well, so we think the motion is proper. We
12 would like to add additional allegations to--- First, we would
13 like to add a cause of action for misrepresentation and fraud and
14 then we would also like to amend our allegations to add
15 additional allegations that address what we are -- what we are
16 alleging. Maybe we didn't do it sufficiently in our initial
17 Complaint, but we are alleging that they misrepresented and lied
18 to us during the servicing of this loan and that that was an
19 intentional thing, that they were deliberately misleading us
20 about their intentions with the loan. And so, you know, I
21 understand Mr. Knowlton's response over and over again as we are
22 entitled to the full balance of the loan, we're entitled to the
23 full balance of the loan. That's not addressed by our
24 allegations. There is--- You know, the congress in our state
25 has done a lot in the consumer arena to make sure the lenders are

1 communicating honestly with debtors and that information is
2 accurate. And it's hard for us to believe that in the commercial
3 context a lender can just say or do whatever they want in the
4 course of servicing a loan and there is no repercussions. So,
5 you know, we believe that we can successfully plead. You know,
6 we've got this issue about the duty of good faith and fair
7 dealings and, you know, we argue this a little bit in our Brief,
8 so I'll just mention it here. The covenant of good faith and
9 fair dealing, our argument is it attaches to the provisions and
10 it's the use of those provisions in bad faith that represents a
11 breach of the covenant. Otherwise, there is no way to vindicate
12 it because our Supreme Court has said that breach of the covenant
13 of good faith and fair dealings does not entitle you to any
14 punitive damages. It does not entitle you to any other damages.
15 So, if there's an actual already breach of the language of the
16 contract anyway, all you have is a breach of contract action.
17 So, there has to be some way to vindicate it and our court said
18 in Use & Benefit of Williams Electric versus Metric Constructors,
19 Inc., 480 S.E. 2d, that fraud and misrepresentation and bad faith
20 in performance of one's contractual duties would give rise to a
21 violation of the implied obligation of good faith and fair
22 dealing. It is possible to use your rights under contracts in
23 such a way as to violate your duty to deal in good faith and that
24 is what we have alleged here. The second cause of action that we
25 would like to allege is -- or to plead additional facts related

1 to, is the tortious interference with a contract claim. If they
2 were lying to us in order to sync leases and contracts with third
3 parties, we have both a tort and interference with our potential
4 prospective contract with a third party. And we believe that we
5 have pled enough, but assume we are given opportunity to amend,
6 we would certainly plead additional facts in support of that
7 cause of action. We also believe that they've--- You know, I
8 don't need to recite the elements of misrepresentation and fraud,
9 but to the extent that they had knowledge that they intended for
10 us to rely upon, we did rely upon it. They knew that knowledge
11 was false and it caused us damages. We believe that we have a
12 cause of action for misrepresentation. We would also like to---
13 Or fraud. We believe that we've successfully pled or should be
14 allowed to amend to plead additional facts in support of a cause
15 of action for violation of the unfair trade practices act. We
16 have to show that it was a deceptive act in commerce that caused
17 us damages and is capable of repetition. Our Supreme Court has
18 applied a very general standard to be capable of repetition and
19 -- or I'm sorry. The effects of public interest which can be
20 shown by it as capable of repetition. Certainly we believe we
21 are at least entitled to proceed into discovery on whether or not
22 this is their M.O., that they have a loan, they mislead people
23 into thinking that they are going to work with them on a workout
24 or they're going to work with them on a lease or a sale in order
25 to damage them. And so, we've believe that we've pled a cause of

1 action there, and--- But regardless, we would like the
2 opportunity to amend and plead additional facts in support of
3 these causes of action. I won't address the breach of the
4 covenant in good faith and fair dealings again. I'm not going to
5 go through all that. As well, I think that has been proved and
6 argued. In the Cisson case, the Court's order states that lender
7 had no duty to mitigate damages in any way. The Cisson
8 Construction case 429 S.E.2d 847 concerns a contract about a
9 loan. It is a lending contract. And the Court said this---
10 And if you look at the sections of it and how it reads, the Court
11 introduces its discussion of mitigation with a statement of the
12 law in it and the statement of the law is the duty to mitigate
13 losses applies to contracts. If the rule was that there was no
14 duty for a lender to mitigate, then what this should have said
15 was the duty to mitigate losses applies to contracts except in
16 the context of lending. But that's not what it says. Instead,
17 the Court of Appeals says the duty to mitigate applies to
18 contracts and in that case it was specifically addressing a
19 lending contract. It then goes on to state, and this is the
20 Court's statement of the law, not the statement of the facts or
21 the discussion of the facts of dicta, this is an IRAC issue and
22 then rule. It goes on to state the reasonableness of a parties
23 actions to mitigate is a question of fact which cannot be decided
24 as a matter of law when there is conflicting evidence. That
25 recitation of that rule would be completely unnecessary if

1 lenders had no duty to mitigate. There would be no reason to
2 first say that every contract carries with it a duty to mitigate,
3 nor would there be any necessity in saying that a reasonableness
4 of a parties duty to mitigate is a question of fact for the jury.
5 If lenders never have a duty to mitigate then that is -- that is
6 incorrect as a matter of law and they wouldn't have put it in the
7 brief at the beginning of the citation of the rule. The Court
8 then goes on to its analysis and it cites those two propositions
9 to the rule and then it analyzes the specific facts of the Cisson
10 case. It says, you know, you didn't have to proceed against
11 other guarantors, you didn't have to do this, you didn't have to
12 do that. So, he then goes to discuss the facts and says that
13 there is no factual issue here, that they did not fail to
14 mitigate -- they failed to mitigate and so we believe that they
15 were at least entitled to proceed to discovery on Cisson's
16 actions and at the conclusion of the case, the fact finder
17 determined that they didn't have to do anything or that they
18 could just sit there for three years and not do anything, then I
19 believe that would be the proper time to resolve that. But, to
20 strike an affirmative defense or to at least have us proceed
21 under an order where it appears that we are not going to be able
22 to present an affirmative defense of failure to mitigate, we
23 believe it's not proper at the pleadings stage. We assert we are
24 entitled to proceed and that mitigation is a requirement in
25 lending contracts which is really all that the Court needs to

1 address at this stage. We also think that 37-10-107 does not
2 apply. It specifically says it doesn't apply to promissory notes,
3 personal guaranties or real estate mortgages. It also certainly
4 wouldn't apply--- It specifies the causes of action it applies
5 to. It doesn't say anything about tortuous interference. It
6 doesn't say anything again against failure to mitigate. It
7 doesn't say anything about unfair trade practices, so we don't
8 think they would apply to those causes of action even if they did
9 apply in this situation. You know, we also, Your Honor, as this
10 Court knows, Mr. Knowlton cites to the Federal Standard for Rule
11 59(e). South Carolina is a very unique state. It's unlike North
12 Carolina, where I also practice. It's unlike any other state.
13 It's unlike Federal Court in that our Supreme Court has said over
14 and over again that you have to file a Rule 59(e) motion when a
15 case goes against you or you risk waiving. I mean, unlike the
16 Federal standard, South Carolina, in Elam versus South Carolina
17 Department of Transportation 361 S.C. 9, a Supreme Court case
18 from 2004, it is proper to view a Rule 59(e) motion not only as
19 a vehicle to request the trial court alter or amend the judgment,
20 but also as a vehicle to seek reconsideration of issues and
21 arguments. The wisdom of giving the trial courts the opportunity
22 to correct their own alleged errors is all the justification that
23 is needed for the practice of freely allowing a motion for
24 reconsideration. There is nothing inherently unfair in allowing
25 a party one chance -- one final chance to call the Court's

1 attention to a possible misapprehension of an earlier argument
2 but also to revisit a previously raised argument. It is
3 inherently unfair to disallow such an opportunity. And the Court
4 goes on to say, a great number of reported cases in South
5 Carolina for at least four generations emphasized the importance
6 and absolute necessity of ensuring that all issues and arguments
7 presented to the lower court for its consideration issues and
8 arguments are preserved for appellate review only when they are
9 raised and ruled upon. And so, the Honorable Justice Sanders in
10 his trial handbook for South Carolina lawyers basically says with
11 the way the appellate law reads today, you have to file a Rule
12 59(e) motion in order to successfully bring an appeal or you run
13 a serious risk of having to waive issues. We believe the Court,
14 while it certainly spent a good bit of time addressing good faith
15 and fair dealing cause of action, it did not give a lot of
16 guidance as to why with the torturous interference, unfair trade
17 practices and failure to act in a commercially reasonable manner,
18 counterclaims are being dismissed. You know, I would just say
19 that if--- I don't know that the torturous interference in
20 particular is even necessarily a compulsory counterclaim. I
21 think it is certainly conceivable that we could bring that case
22 separately and I believe that with the allegations that we are
23 alleging that they misled us in order to cost us prospective
24 contracts, we've alleged enough to at least proceed into
25 discovery. Mr. Knowlton also mentions that the motion to amend

1 should be denied because we waited for six months. In Parker
2 versus Spartanburg Sanitary Sewer District, 362 S.C. 276, our
3 Supreme Court said that leave to amend the pleadings shall be
4 freely and liberally given when justice requires and does not
5 prejudice any other party. The prejudice Rule 15 envisions is a
6 lack of notice that the new issue is going to be tried and a lack
7 of opportunity to refute it. The party opposing the amendment
8 has the burden of establishing prejudice and the Rule strongly
9 favors amendments and the Court is encouraged to freely grant
10 leave to amend. There is absolutely no lack of opportunity to
11 refute it. And then lack of notice. In fact Mr. Knowlton says
12 this is just a rehash of previous claims, but certainly we had
13 just begun exchanging written discovery. I think we provided
14 ours to Mr. Knowlton last month. We've served some that we
15 haven't received responses to yet. I mean, this case is in its
16 infancy. Not a single deposition has been taken. There is no
17 discovery order, no discovery deadline, no trial date set, no
18 foreclosure sale set. So, there is plenty of opportunity for Mr.
19 Knowlton to do whatever he would like to do to refute our
20 additional allegations. He cites the three cases. First,
21 Holland versus Morbark. In that case, Holland waited for over
22 two years before moving to amend on the eve of trial and the
23 Court said that the parties had already conducted extensive
24 discovery prior to the amendment, that the amendment would have
25 required the hiring of rebuttal experts and taking of additional

1 depositions on the eve of trial. It would have resulted in a
2 delay of the trial even though the trial had been set for some
3 time and it did not occur until after two years after the
4 Complaint was filed. So, Your Honor, that is certainly not the
5 situation we have here. Also cites Health Promotion Specialists
6 versus South Carolina Board of Dentistry. In that case the party
7 waited seven years after the filing of the initial Complaint.
8 The Court of Appeals said, yes, that's too long, you've waited
9 too long to file a motion to amend. And then Dunbar versus
10 Carlson. In Dunbar versus Carlson the Plaintiff rested his case
11 and then the Defendant moved to amend to add a statute of
12 limitations and then immediately moved for directed verdict based
13 on the statute of limitations, which was granted. So, the
14 Plaintiff didn't put up any evidence about the statute. It
15 didn't put up any evidence about the dates involved and was not
16 given any opportunity whatsoever to refute it. Motion to amend
17 granted; motion for directed verdict granted back to back at the
18 conclusion of Plaintiff's evidence. So, in that case the
19 Plaintiff had no opportunity to refute. That is not the case
20 here. I have, just from personal experience, never seen a motion
21 or heard of a party saying that a motion to amend was too late
22 when you haven't even stated discovery. We haven't taken any
23 depositions. We haven't received the Plaintiff's discovery
24 responses. I'd also just point out that there is Federal law
25 that -- or Federal decision on law that gets cited a lot in South

1 Carolina that when a party files a motion to dismiss, it should
2 stay discovery. I've certainly had lawyers from Nelson Mullins
3 cite it against me. I've cited it. Had we proceeded with
4 discovery on our counterclaims, I have no doubt Mr. Knowlton
5 would have come to court and said, wait a minute. You can't
6 conduct discovery into these issues. We needed a clarification
7 of what causes of action we had, what we were litigating before
8 we began serving written discovery about issues that may or may
9 not be a part of the case. So, Your Honor, we certainly think
10 that -- at least at the pleadings stage we should be entitled to
11 conduct discovery. And Peach REO's actions and Capital
12 Crossing's actions, we believe that they affirmatively misled us
13 and lied to us during the servicing of the loan and that that is
14 actionable in South Carolina. And for those reasons, Your Honor,
15 we'd asked first that we be given an opportunity to amend and re-
16 plead and if not, that the Court would clarify its ruling and
17 allow us to proceed with our counterclaims. I'd be happy to
18 answer any questions the Court has.

19 THE COURT: Alright. Counsel?

20 MR. KNOWLTON: May it please the Court? Your Honor, I'll
21 just try to start at the beginning. Your Honor, the borrowers
22 filed their Answer and Counterclaims back in January. They had
23 over six months to amend or seek leave to amend their Amended
24 Answer and Counterclaims. Your Order, Your Honor, resolving
25 these claims was entered in June. It wasn't until June 21st, the

1 day after your Order was issued, that they filed their June 21
2 discovery on -- or served their discovery on us. They don't
3 allege any new facts. They don't allege any new claims other
4 than they didn't frame them as causes of action. The factual
5 basis for their claims hasn't really changed. Mr. Bach argued
6 the same factual premises for their claims at the last hearing.
7 They raised the same factual allegations in their Answer and
8 Counterclaim. They just didn't assert that these claims were
9 actual counterclaims they wanted to assert. They just claimed
10 that we misled them. They claimed that we lied to them. A
11 motion to amend is standard, Your Honor. It would be futile to
12 allow the amendments because this Court has already held that the
13 lender's conduct in this case was proper under the contracts.
14 They exercised their contract rights and had no duty to accept
15 anything less than a full loan payoff. I'll tick through a few
16 of the items that Mr. Bach spoke about. He talks about
17 misrepresentation and fraud claims in the servicing of the loan
18 and distinguishes consumer versus commercial loan relationships.
19 Your Honor, they are very different and I've practiced in both
20 areas, both consumer and commercial loan work and they do get
21 judged under very different standards. Consumer loans are very
22 tightly controlled at the Federal level and at the State level,
23 unlike commercial loans. The Cisson case that Mr. Bach spent a
24 good bit of time on. The Cisson case does stand for the state
25 law that has been upheld in this court and others that there is

1 no duty to mitigate. One of the things they do -- Mr. Bach
2 doesn't mention this in his argument today -- is gets into the
3 language of the loan documents that is the source of the rights
4 -- for the lender's right to accept nothing less than the full
5 balance of the loan. In most loan documents that I've ever
6 worked with, they all have similar language with respect to the
7 lender's right to, you know, negotiate with whoever they want to,
8 to within their discretion accept or not, amendments to the loan,
9 extend or not, at their discretion the maturity of a loan, to
10 pursue whoever they want to pursue, or no one at all. And none
11 of their exercise or failure to exercise compromises their
12 ability to accept less than full payoff. That language is found
13 on the second page of the note in this case, Your Honor. And
14 that is where Cisson -- the Cisson Court goes into great detail
15 about the loan document issue there and we have the same language
16 in our loan documents here, virtually to the same effect, the
17 language that they dealt with in Cisson. The covenant of good
18 faith and fair dealing, which is a creative argument that he
19 raises, but the fact is, the law in South Carolina is very clear.
20 There is no independent duty of good faith and fair dealing. He
21 even goes on to cite the Tadlock case. The Tadlock case was an
22 insurance bad faith case. It doesn't apply here. What the
23 Courts have routinely said in the State of South Carolina is that
24 the duty of good faith is implied in every contract, but if
25 there's no underlying breach of contract and the Court has found

1 that there were none here, they didn't even actually allege that
2 there was a breach of contract. They just alleged that there was
3 a breach of the duty of good faith. You can't have a breach of
4 implied duty in a contract where you haven't alleged an actual
5 breach of that contract. That's what the Courts have routinely
6 held in this State. Going on into their other claims like the
7 unfair trade practices act. They haven't alleged any factual
8 basis for anything other than this being a private loan
9 relationship between the borrower and the lender. Moreover, if
10 there is no underlying breach of the loan agreements, there is no
11 ability to bring an unfair trade practices act because there is
12 no wrong that has been committed. The Court has found in this
13 case and in similar cases that it was within its discretion and
14 exercising its rights under the loan documents. With respect to
15 the lender statute of frauds, it, by its terms, applies only in
16 commercial contracts and representations about promises to make
17 loans or forebear or amend, the loan relationship has to be in
18 writing. So all of these allegations that we've, you know, lied
19 or weren't serious about amending the loan or should have given
20 them this or that, none of that was in writing and Title 37
21 applies by its own terms. He misunderstands and misapprehends
22 the language of the Statute where it says it does not apply to
23 the note and the mortgage. The reason it says that is because
24 those typically are not signed by the lender and the Statute's
25 purpose in making it clear that the lender didn't have to sign

1 that for it to be affective, but it applies to the commercial
2 loan context and it applies to notes and mortgages. That is the
3 whole purpose of the Statute. And going on into their arguments
4 about delay, Your Honor, at the time, again they only raised the
5 motion to amend at the last hearing when it became clear that the
6 Court was going to rule against them. And it is our position
7 that anything -- everything they've talked about in their briefs,
8 the motions to amend and their arguments today, are simply
9 rehashing what they have already said. There are no new facts.
10 There is no change in the controlling law. They have only sort
11 of reorganized their facts. There's no new facts here. They
12 know what their claims are. They just didn't claim them and even
13 if they did, it would be futile to allow them now because the
14 Courts said and held in this case and others like it that the
15 lender was within its rights under the contract to not accept any
16 of their offers and to come and collect the full amount due on
17 the notes, just like we've done in this action. So, Your Honor,
18 for these reasons we believe that the motions should be denied.

19 THE COURT: Alright. Anything from the County? Ms. Dupont?

20 MS. DUPONT: Your Honor, I don't believe the County received
21 notice of today's hearing apart from an e-mail from Mr. Knowlton
22 where he included his opposition Memo, but that aside, I don't
23 believe any of these issues impact the County, so I don't think
24 we have anything.

25 THE COURT: Alright. Counsel, response?

1 MR. BACH: Very quickly. The allegation that there is no
2 writing, let me just point out that that is not accurate. I
3 mean, the Statute of Frauds can be satisfied a number of ways and
4 what we primarily have between Capital and the Defendants is e-
5 mails. So, Your Honor, I mean certainly we feel like we have
6 enough with the e-mails to at least put together assurances that
7 were given, promises that may have been made, and that would be
8 the first thing. The second thing is that here we are again.
9 You know, we are at the motion to dismiss phase. I mean, this is
10 the very beginning of the case. It's an attack on the pleadings
11 and the question isn't whether or not today we have enough
12 evidence. The question is whether or not we are entitled to go
13 forward and obtain and do discovery into whether or not there is
14 evidence out there, so we feel like we have certainly pled enough
15 with regard to the communications between Peach and the
16 Defendants. Our Court of Appeals and Supreme Court have been
17 very clear. You are not to plead evidence. We are a no-plead
18 state and you are not to plead evidence. You are not to sit
19 there and tick through all the e-mails. You are not to cite
20 quotation marks. And so--- But, Your Honor, there are writings
21 out there. There are communications out there and, you know, the
22 fact we didn't include them in the Complaint doesn't mean that
23 dismissal is proper at this phase. The only thing I'd say about
24 failure to mitigate is what Mr. Knowlton said is true of every
25 cause of action, whether it's a tort or any other. A tort

1 Plaintiff is entitled to recover the full amount of their
2 damages. They are also required to mitigate. The fact that a
3 Plaintiff is required -- is entitled to recover the full amount
4 of their damages is just a recitation of the law in every area of
5 the law. But every Plaintiff in every area of the law
6 consistently makes that clear -- it's true in contracts as well
7 -- has a duty to mitigate their damages. So, you can say the
8 same thing about a tort Plaintiff. I mean, he doesn't have to
9 mitigate since he is entitled to everything he has pled and all
10 his damages as well. That's not the case. You are required to
11 mitigate whether you are the Plaintiff in a contract or the
12 Plaintiff in a tort suit. So, Your Honor, for those reasons we
13 would just ask that our motion be granted. Thank you.

14 THE COURT: Alright. Anything further?

15 MR. KNOWLTON: Your Honor, again with respect to the duty to
16 mitigate, I think the Cisson case is the standard in South
17 Carolina. The lender does have no duty to mitigate. And these
18 loan contracts which were part of our -- part of our pleading,
19 say just like they did in Cisson, that we can amend, modify at
20 our discretion. That it's--- And to say that you can't
21 exercise your rights and that that's now actionable for our
22 exercising the rights that they freely granted to us in the loan
23 documents, turns the whole law of commercial loans on its head.
24 So, for these reasons, Your Honor, the motion to amend should be
25 denied.

1 THE COURT: Gentlemen, I don't see anything that is any
2 different in the pleadings or the motion to amend judgment to
3 allow the amendment that's any different than it was when I ruled
4 on the matter before. And based on that review of the motion and
5 review of the prior Order and review of the original Answer, the
6 motion is denied. Mr. Knowlton, if you will prepare the
7 appropriate Order and provide a copy to all the attorneys of
8 record.

9 MR. KNOWLTON: I will, Your Honor. Thank you.

10 THE COURT: Alright.

11 --- -- -- END OF RECORD -- -- --

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master-in-Equity

Case No: 2015-CP-42-04448

RECEIVED

AUG 26 2016

SC Court of Appeals

Blalock Investments, LLC; Todd Smith; Debra Masuga; Subway Real Estate, LLC; and County
of Spartanburg, a political subdivision of the State of South Carolina, Defendants,

Of Whom Blalock Investments, LLC; Todd Smith, and Debra Masuga are Appellants,

v.

Peach REO, LLC, a Delaware limited liability company, Respondent,

and

Blalock Investments, LLC, Todd Smith, and Debra Masuga, Appellants,

v.

Capital Crossing Servicing Company, LLC, Respondent.

NOTICE OF APPEAL

Appellants Blalock Investments, LLC, Todd Smith, and Debra Masuga, appeal the order of the Honorable Gordon G. Cooper dated June 8, 2016. Appellants timely filed a motion to alter or amend judgment on June 15, 2016. Appellants received written notice of entry of the order denying the motion to alter or amend on August 1, 2016.

August 23, 2016

s/Adam C. Bach

Adam C. Bach (SC Bar # 74885)

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master-in-Equity

Case No. 2015-CP-42-04448

RECEIVED
AUG 26 2016
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Of Whom Blalock Investments, LLC, Todd Smith, and Debra Masuga are Appellants,

v.

Peach REO, LLC, a Delaware limited liability company, Respondent,

and

Blalock Investments, LLC, Todd Smith, and Debra Masuga, Appellants,

v.

Capital Crossing Servicing Company, LLC, Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondents, Peach REO, LLC and
Capital Crossing Servicing Company, LLC, by depositing a copy of same in the United States
Mail, postage prepaid, on August 23, 2016, addressed to their attorneys of record as follows:

Frank B. B. Knowlton
Nelson Mullins Riley & Scarborough
LLP
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P.O. Box 11070 (29211-1070)
Columbia, SC 29201

August 23, 2016

s/Adam C. Bach

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Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master-in-Equity

Case No. 2016-001764

Peach REO, LLC, a Delaware limited liability company, Respondent,

v.

Blalock Investments, LLC; Todd Smith; Debra Masuga; Subway Real Estate, LLC; and County of Spartanburg, a political subdivision of the State of South Carolina, Defendants,

Of Whom Blalock Investments, LLC; Todd Smith; and Debra Masuga are the Appellants.

And

Blalock Investments, LLC; Todd Smith; and Debra Masuga, Appellants,

v.

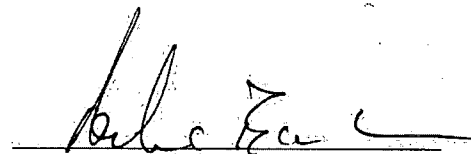
Capital Crossing Servicing Company, LLC, Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that the record on appeal contains all materials proposed to be included by any of the parties and not any other material.

[Signature Page Follows]

March 16, 2017

A handwritten signature in black ink, appearing to read 'Adam C. Bach', is written over a horizontal line.

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RECEIVED

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SC Court of Appeals

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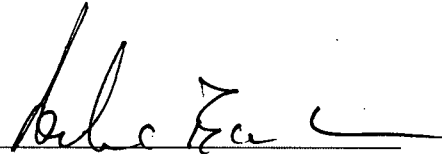
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