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Objection Deadline: December 20, 2012 at 4:00 p.m. (Eastern)

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**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

-----X	:	
Michael A. Farr	:	
	:	Adv. Proc. 12-01899 (MG)
Plaintiff,	:	
	:	
v.	:	
	:	
GMAC Mortgage, LLC, <i>et al.</i> ,	:	
	:	
Defendants.	:	
-----X	:	
In re	:	
	:	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, <i>et al.</i> ,	:	
	:	Chapter 11
	:	
Debtors	:	Jointly Administered
-----X	:	

**DEBTORS' MOTION FOR DISMISSAL OF ADVERSARY PROCEEDING PURSUANT  
TO BANKRUPTCY RULE 7012(b) AND FRCP 12(b)(5), AND (6) OR, IN THE  
ALTERNATIVE, PERMISSIVE ABSTENTION PURSUANT TO 28 U.S.C. §1334(c)(1)**



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Defendant GMAC Mortgage, LLC (“GMACM”), a debtor and debtor in possession in the above-captioned chapter 11 cases (collectively with all affiliated debtors and debtors in possession, the “Debtors”), submits this motion (the “Motion”) to dismiss the above-referenced adversary proceeding (the “Adversary Proceeding”) commenced by plaintiff Michael A. Farr (“Plaintiff”) for insufficient service of process and failure to state a claim upon which relief can be granted or, in the alternative, requesting that the Court exercise its discretion to abstain from exercising jurisdiction over the Adversary Proceeding. In support of hereof, GMACM submits the Declaration of Jennifer Scoliard, dated December 10, 2012 (the “Scoliard Decl.”), attached hereto as Exhibit 1, and respectfully represents:

## **I. JURISDICTION AND VENUE**

1. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 (a) and 1334(b). Venue is proper under 28 U.S.C. § 1409. GMACM denies Plaintiff’s assertion that this is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (O). Nonetheless, pursuant to Local Bankruptcy Rule 7012-1, GMACM consents to entry of a final order or judgment by this Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution.

## **II. BACKGROUND**

### **A. General Bankruptcy Case Background**

2. On May 14, 2012 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in this Court.

3. The Debtors are a leading residential real estate finance company indirectly owned by Ally Financial Inc., which is not a Debtor. As of the Petition Date, the Debtors and

their non-debtor affiliates operated the fifth largest mortgage servicing business and the tenth largest mortgage origination business in the United States.

4. The Debtors are managing and operating their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. Their chapter 11 cases (collectively, the “Bankruptcy Case”) are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). No trustee has been appointed in the Bankruptcy Case.

5. On May 16, 2012, the United States Trustee for the Southern District of New York (the “U.S. Trustee”) appointed a nine member official committee of unsecured creditors.

6. On July 3, 2012, the U.S. Trustee appointed the Honorable Arthur T. Gonzalez, former Chief Judge of this Court, as examiner (the “Examiner”).

7. On July 13, 2012, the Court entered the *Final Supplemental Order Under Bankruptcy Code Sections 105(a), 362, 363, 502, 1107(a), and 1108 and Bankruptcy Rule 9019 (I) Authorizing the Debtors to Continue Implementing Loss Mitigation Programs; (II) Approving Procedures for Compromise and Settlement of Certain Claims, Litigations and Causes of Action; (III) Granting Limited Stay Relief to Permit Foreclosure and Eviction Proceedings, Borrower Bankruptcy Cases, and Title Disputes to Proceed; and (IV) Authorizing and Directing the Debtors to Pay Securitization Trustee Fees and Expenses* [Docket No. 774] (the “Supplemental Servicing Order”).

## **B. Events Giving Rise to the Adversary Proceeding**

### **1. The Foreclosure Action**

8. On January 3, 2006, Plaintiff executed a note in favor of New Century Mortgage Corporation (“New Century”) in the amount of \$999,000.00 (the “Note”). (Scoliard Decl., ¶ 5.) The Note was secured by real property located at 3950 Parian Ridge Road, Atlanta, Georgia

30327 (the “Property”) pursuant to a security deed (the “Security Deed”) executed contemporaneously with the Note. Id.

9. The Security Deed was subsequently assigned to U.S. Bank National Association as Trustee for RAMP 2006-NC3. (Scoliard Decl., ¶ 6.) The Note is endorsed to U.S. Bank National Association as Trustee (“U.S. Bank”). GMACM is the authorized servicer of Plaintiff’s Note and Security Deed for U.S. Bank.

10. Plaintiff defaulted on the Note by failing to make his monthly payments under the Note. (Scoliard Decl., ¶ 7.) As of the date of this Motion, Plaintiff remains due for the months of February 2012 forward. Id.

11. As a result of Plaintiff’s continuing default under the Loan, U.S. Bank, through its authorized servicer, GMACM, initiated a non-judicial foreclosure proceeding against Plaintiff, scheduling a foreclosure sale date of August 7, 2012. (Scoliard Decl., ¶ 8.) The foreclosure sale was then rescheduled for November 6, 2012. Id. Pursuant to stipulation and consent order with Plaintiff, which was entered by the Court in the Adversary Proceeding on November 20, 2012, GMACM agreed to postpone the foreclosure sale for 30 days, subject to further extensions. *See Stipulation And Order Between Michael A. Farr And GMAC Mortgage, LLC* (ECF #3).

## **2. The Adversary Proceeding**

12. On October 2, 2012, Plaintiff filed the instant complaint (the “Complaint”) initiating the Adversary Proceeding, and a summons and notice of pretrial conference (the “Summons”) was issued with respect to the Adversary Proceeding on October 3, 2012.

13. A review of the adversary docket as of the date hereof reflects that Plaintiff has not filed an affidavit of service of the Complaint and Summons. Also as of the date hereof, GMACM has no record of being served, either directly or through its counsel or registered agent. (Scoliard Decl., ¶ 11.) Notwithstanding such deficiencies in service, GMACM became aware of

the Adversary Proceeding as a result of its day-to-day monitoring of the Bankruptcy Case docket.

14. By the Complaint, Plaintiff asserts claims under Georgia state law seeking to quiet title with respect to the Property by obtaining an order canceling the Security Deed, assignments, and foreclosure deed related to the Property and declaring that the Security Deed is void and title is vested free and clear in Plaintiff. (Compl. at 5.) The sole support offered with respect to these claims is a “Securitization Analysis Report” prepared by The Mortgage Analysis Group, attached to the Complaint.

### **III. ARGUMENT**

#### **A. The Adversary Proceeding Should Be Dismissed Pursuant to Bankruptcy Rule 7012(b) and FRCP 12(b)(5) and (6)**

15. Bankruptcy Rule 7012 incorporates by reference Rule 12(b)-12(i) of the Federal Rules of Civil Procedure (“FRCP”). FRCP 12(b) provides that a party may assert specified defenses by motion, including lack of subject matter jurisdiction, insufficient service of process, and failure to state a claim upon which relief can be granted, and that a motion asserting any of these defenses may be made before pleading. The Adversary Proceeding should be dismissed pursuant to Bankruptcy Rule 7012(b) and FRCP 12(b)(5) because Plaintiff failed to provide sufficient service of process. The Adversary Proceeding should also be dismissed pursuant to Bankruptcy Rule 7012(b)(6) because Plaintiff has failed to state a claim upon which relief can be granted.

##### **1. Insufficient Service of Process**

16. Bankruptcy Rule 7004 incorporates by reference FRCP 4(c)(1), 4(h) and 4(l). FRCP 4(c)(1) in turn provides that the plaintiff is responsible for having the summons and complaint served within the time allowed, and FRCP 4(h) requires that a corporation must be



served in the manner prescribed by FRCP 4(e)(1) for serving an individual, or by delivering a copy of the summons and complaint to an authorized agent and by mailing a copy of each to the defendant. In addition, under Bankruptcy Rule 7004(b)(3), service may also be effectuated by mailing a copy of the summons and complaint to “an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process . . . .” Fed. R. Bankr. P. 7004(b)(3). Bankruptcy Rule 7004(e) further requires that service of the summons and complaint be delivered or deposited in the mail within 14 days after the summons is issued, and FRCP 4(l) requires that proof of service must be made to the court by the server’s affidavit. Rule 9078-1 of the Local Bankruptcy Rules provides that, unless the Court orders otherwise, “any party serving a pleading or other document shall file proof of service by the earlier of (i) three days following the date of service, and (ii) the hearing date.

17. Upon information and belief, GMACM has not been served with the Complaint and Summons by any means prescribed by Bankruptcy Rule 7004. (Scoliard Decl., ¶ 11.) Accordingly, GMACM requests that the Adversary Proceeding be dismissed for insufficient service of process pursuant to Bankruptcy Rule 7012(b) and FRCP 12(b)(5).

## **2. Failure to State a Claim Upon Which Relief Can Be Granted**

18. Plaintiff’s Complaint should also be dismissed on the ground that Plaintiff has failed to state a claim upon which relief can be granted, both as a matter of law and because Plaintiff has failed to plead sufficient facts to establish his claims against GMACM.

### **a. Legal Standard**

19. FRCP 12(b)(6) permits dismissal of an action for failure to state a claim upon which relief can be granted. For FRCP 12(b)(6) purposes, a court must accept the plaintiff’s factual allegations as true, drawing all reasonable inferences in the plaintiff’s favor. Bernheim v. Litt, 79 F.3d 318, 321 (2d Cir. 1996).

20. The Court's review on a motion to dismiss pursuant to FRCP 12(b)(6) is generally limited to "the facts as asserted within the four corners of the complaint, the documents attached to the complaint as exhibits, and any documents incorporated in the complaint by reference." McCarthy v. Dun & Bradstreet Corp., 482 F.3d 184, 191 (2d Cir. 2007). In addition, the Court may also consider "matters of which judicial notice may be taken" and "documents either in plaintiffs' possession or of which plaintiffs had knowledge and relied on in bringing suit." Brass v. Am. Film Techs., Inc., 987 F.2d 142, 150 (2d Cir. 1993).

21. To survive a motion to dismiss pursuant to FRCP 12(b)(6), a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). The sole issue raised by a motion to dismiss pursuant to FRCP 12(b)(6) is whether the facts pleaded, if established, would support a claim for relief. Neitzke v. Williams, 490 U.S. 319, 326-27 (1989). If as a matter of law "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations," a claim must be dismissed. Id. at 327 (citation omitted).

22. "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell Atlantic Corp., 550 U.S. at 555 (citations omitted). A plaintiff must allege a factual predicate concrete enough to warrant further proceedings. See, e.g., DM Research v. College of Am. Pathologists, 170 F.3d 53, 55-56 (1st Cir. 1999). See also Conley v. Gibson, 355 U.S. 41, 47 (U.S. 1957) (plaintiffs are required to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests").

23. Moreover, while facts must be accepted as alleged, this does not automatically extend to bald assertions, subjective characterizations, or legal conclusions, which are not entitled to the assumption of truth. Hirsch v. Arthur Andersen & Co., 72 F.3d 1085, 1088 (2d Cir. 1995) (collecting cases). A court considering a motion to dismiss can disregard conclusory allegations and judge the complaint only on well-pleaded factual allegations. Starr v. Sony BMG Music Entm't, 592 F.3d 314, 321 (2d Cir. 2010), cert. denied, Sony Music Entm't v. Starr, 131 S. Ct. 901 (2011). See also Papasan v. Allain, 478 U.S. 265, 286 (1986) (on a motion to dismiss, courts “are not bound to accept as true a legal conclusion couched as a factual allegation”).

**b. Counts One and Two – *Quia Timet* Claims For Judicial Decree Quieting Title In Plaintiff**

24. Plaintiff asserts that, pursuant to sections 23-3-40,<sup>1</sup> 23-3-60,<sup>2</sup> and 23-3-62<sup>3</sup> of the Official Code of Georgia Annotated (“O.C.G.A.”), he is entitled to a judicial decree and order

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<sup>1</sup> That provision states as follows:

The proceeding quia timet is sustained in equity for the purpose of causing to be delivered and canceled any instrument which has answered the object of its creation or any forged or other iniquitous deed or other writing which, though not enforced at the time, either casts a cloud over the complainant's title or otherwise subjects him to future liability or present annoyance, and the cancellation of which is necessary to his perfect protection.

O.C.G.A. § 23-3-40 (2012).

<sup>2</sup> That provision states as follows:

The purpose of this part is to create a procedure for removing any cloud upon the title to land, including the equity of redemption by owners of land sold at tax sales, and for readily and conclusively establishing that certain named persons are the owners of all the interests in land defined by a decree entered in such proceeding, so that there shall be no occasion for land in this state to be unmarketable because of any uncertainty as to the owner of every interest therein.

O.C.G.A. § 23-3-60 (2012).

<sup>3</sup> That provision states as follows:

(a) The proceeding in rem shall be instituted by filing a petition in the superior court of the county in which the land is situated.

(cont'd)

declaring him to be the title owner of record of the Property, and avoiding any liens or encumbrances upon the Property in favor of the defendants. (Compl. at 3-4.) O.C.G.A. § 23-3-62(a) expressly provides that such actions “shall be instituted by filing a petition in the superior court of the county in which the land is situated.” The Property is located in Georgia. (Compl. at 2.) Thus, Plaintiff cannot obtain the relief requested in Counts One and Two through this Adversary Proceeding. Accordingly, those Counts must be dismissed.

**c. Count Three - Claim For Judicial Decree Quieting Title  
In Plaintiff**

25. Plaintiff asserts that, pursuant to O.C.G.A. § 44-2-82,<sup>4</sup> Plaintiff is entitled to a judicial declaration quieting title in Plaintiff “as of the date on which the loan transaction was

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- (b) The petition shall be verified by the petitioner and shall contain a particular description of the land to be involved in the proceeding, a specification of the petitioner's interest in the land, a statement as to whether the interest is based upon a written instrument (whether same be a contract, deed, will, or otherwise) or adverse possession or both, a description of all adverse claims of which petitioner has actual or constructive notice, the names and addresses, so far as known to the petitioner, of any possible adverse claimant, and, if the proceeding is brought to remove a particular cloud or clouds, a statement as to the grounds upon which it is sought to remove the cloud or clouds.
- (c) With the petition there shall be filed (1) a plat of survey of the land, (2) a copy of the immediate instrument or instruments, if any, upon which the petitioner's interest is based, and (3) a copy of the immediate instrument or instruments of record or otherwise known to the petitioner, if any, upon which any person might base an interest in the land adverse to the petitioner.
- (d) Upon the filing of the petition, the petitioner shall contemporaneously file with the clerk of the court a notice for record in the lis pendens docket pursuant to Code Sections 44-14-610 through 44-14-613.

O.C.G.A. § 23-3-62 (2012).

<sup>4</sup> That provision states as follows:

After the record has been perfected and settled, the judge of the superior court shall proceed to decide the case; and if, upon consideration of such record, the title shall be found in the petitioner, the judge shall enter a decree to that effect ascertaining all limitations, liens, encumbrances, and the like and declaring the land entitled to registration according to his findings. Such decree shall be entered upon the minutes of the superior court and shall become a part of the records thereof. If, upon consideration of the record, the judge finds that the petitioner is not entitled to a decree

*(cont'd)*

consummated” and that title should be vested in Plaintiff “for violations of the law of the state of Georgia.” (Compl. at 4-5.) Plaintiff does not identify what Georgia laws the defendants are alleged to have violated, nor does he plead any facts supporting such allegations. Further, O.C.G.A. § 44-2-82, which relates to the recordation and registration of deeds and other instruments, provides: “After the record has been perfected and settled, *the judge of the superior court* shall proceed to decide the case . . . .”) (emphasis added). Moreover, O.C.G.A. § 44-2-60 provides, in relevant part: “For the purpose of enabling all persons owning real estate within this state to have the title thereto settled and registered as prescribed by this article, *the superior court of the county in which the land is located shall have exclusive original jurisdiction of all petitions and proceedings had thereupon.*” As Plaintiffs should not be able to obtain the relief requested in Count Three of this Adversary Proceeding and has not plead sufficient facts in support thereof, Count Three must be dismissed.

### **3. Count Four – Claim for Declaratory Judgment**

26. Plaintiff asserts that he is entitled to a declaratory judgment vesting title in the Property in Plaintiff free and clear because GMACM “cannot show valid ownership interest in a Security Deed or Note or proper transfers, assignments or allonge(s) and do not *[sic]* possess the actual instruments.” (Compl. at 5.)

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declaring the land entitled to registration, he shall enter judgment accordingly. If any person shall have filed a cross-action praying for the title to be found in him, the judge may enter a decree to that effect in like manner ascertaining and declaring all limitations, liens, and the like and declaring the land entitled to registration according to his findings. If separate parcels shall be involved, the court shall render a separate decree as to each parcel; and the same shall be done where the petitioner has divided a tract into separately described parcels and has accurately described each parcel for separate registration.

O.C.G.A. § 44-2-82 (2012).

27. First, one does not need to own a note and security deed in order to enforce them.

*See, e.g.,* O.C.G.A. § 11-3-301 (2012). Section 11-3-301 of the Official Code of Georgia

Annotated provides:

“Person entitled to enforce” an instrument means (i) the holder of the instrument; (ii) a nonholder in possession of the instrument who has the rights of a holder; or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Code Section 11-3-309 or subsection (d) of Code Section 11-3-418. *A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.*

Id. (emphasis added).

28. Second, under Georgia law an assignment is not required to transfer the Note and Security Deed. O.C.G.A. § 44-14-64(b) (2012).<sup>5</sup> See also Drake v. Citizens Bank (In re Corley), 447 B.R. 375, 383 (Bankr. S.D. Ga. 2011) (“Georgia law provides that upon a transfer of a deed to secure debt, the accompanying indebtedness is also transferred. (citing O.C.G.A. § 44-14-64(b).’)).

29. Third, Plaintiff appears to base his assertion on statements in the Securitization Analysis Report attached to the Complaint, which suggests that the Note and Security Deed were split, and, as a result, GMACM’s security interest in the Property was voided, thereby eliminating GMACM’s authority to foreclose. (Rpt. at 28-29.) These statements are not facts, but, rather, are legal conclusions, which are not entitled to a presumption of truth. Moreover,

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<sup>5</sup> That section provides:

(b) Transfers of deeds to secure debt may be endorsed upon the original deed or by a separate instrument identifying the transfer and shall be sufficient to transfer the property therein described and the indebtedness therein secured, whether the indebtedness is evidenced by a note or other instrument or is an indebtedness which arises out of the terms or operation of the deed, together with the powers granted without specific mention thereof.

O.C.G.A. § 44-14-64(b) (2012).

those legal conclusions are directly contrary to Georgia law. See, e.g., Morgan v. Ocwen Loan Servicing, LLC, 795 F. Supp. 2d 1370, 1375 (N.D. Ga. 2011) (dismissing plaintiff's claims for declaratory judgment, cancellation of the security deed, slander of title, and quiet title, all of which were based on assertion that the security deed was void because of the involvement of MERS):

Several of Plaintiff's claims rest on the argument that the security deed is void because of the fact that MERS was named as the grantee-as-nominee in the security deed rather than Guarantee Rate, the actual lender and payee on the note. This argument is unsupported by Georgia law. Separation of the note and security deed creates a question of what entity would have authority to foreclose, but does not render either instrument void.

#### **4. All Counts Are Supported By Insufficient Facts**

30. Plaintiff's Complaint should also be dismissed on the ground that Plaintiff has failed to plead sufficient facts to establish his claims against GMACM.

31. Plaintiff does not make any statements of fact in the body of his Complaint to support his claims. Instead, the Complaint incorporates by reference the Securitization Analysis Report as a statement of facts in support of the Complaint. (Compl., ¶ 3.) The Securitization Analysis Report should be disregarded in its entirety as it provides no documentation to support the alleged factual statements made therein, nor does it provide any proper legal authority for its conclusions. Rather, the Securitization Analysis Report is based entirely on assumptions and the documentation provided by Plaintiff (the identification and authenticity of which are unknown). Indeed, the authors of the Securitization Analysis Report state that their own report is not reliable and make no representations as to its accuracy:

This report was based exclusively on the documentation provided. It also required that we make reasonable assumptions respecting disclosures and certain loan terms that, if erroneous may result in material differences between our findings and the loan's actual compliance with applicable regulatory requirements. While we believe that our assumptions provide a reasonable basis for the review results, *we make no representations or warranties respecting the appropriateness*

*of our assumption, the completeness of the information considered, or the accuracy of the findings.*

Securitization Analysis Report, at 30-31 (emphasis added).

32. Given that the authors of the Securitization Analysis Report make no representations or warranties as to the accuracy of their own assumptions and the documentation upon which they rely, the entire report is of no evidentiary value, and thus cannot be used by Plaintiff to support his claims. As the only factual assertions to support Plaintiffs claims are contained the Securitization Analysis Report and as such report cannot be verified as accurate by its own authors, Plaintiff has provided no facts to support any of the allegations in his Complaint and therefore the Complaint should be dismissed.

33. For the reasons set forth above, the Adversary Proceeding should be dismissed in its entirety for failure to state a claim upon which relief can be granted pursuant to Bankruptcy Rule 7012(b) and FRCP 12(b)(6).

**B. The Court Should Abstain from Exercising Jurisdiction Over the Adversary Proceeding**

34. In the alternative, the Court should abstain from exercising jurisdiction pursuant to 28 U.S.C. § 1334(c)(1). Notwithstanding the presence of “related to” jurisdiction, a district court may abstain from exercising that jurisdiction on “any equitable ground,” including “the interest of justice, or in the interest of comity with State courts or respect for State law....”

28 U.S.C. § 1334(c)(1). Courts consider one or more—though not necessarily all—of the following factors when determining whether to exercise permissive abstention under § 1334(c):

(1) the effect or lack thereof on the efficient administration of the estate if a [c]ourt recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable state law, (4) the presence of a related proceeding commenced in state court or other non-bankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted “core”



proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of [the court's] docket, (10) the likelihood that the commencement of the proceeding in a bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of non-debtor parties.

Allstate Ins. Co. v. CitiMortgage, Inc., No. 11-cv-1927, 2012 U.S. Dist. LEXIS 39616, at \*17-18 (S.D.N.Y. Mar. 13, 2012) (citing Cody, Inc. v. Cnty. Of Orange (In re Cody, Inc.), 281 B.R. 182, 190-91 (S.D.N.Y. 2002) (citation and internal quotation marks omitted), aff'd in part, 338 F.3d 89 (2d Cir. 2009); Baker v. Simpson, 413 B.R. 38, 45 (E.D.N.Y. 2009)), aff'd, 613 F.3d 346 (2d Cir. 2010), cert. denied, 131 S. Ct. 928 (2011).

35. Almost all of those factors (to the extent applicable) weigh in favor of this Court's abstention from exercising jurisdiction over the Adversary Proceeding. Specifically, the Court's abstention from the Adversary Proceeding, which involves an action to quiet title with respect to property securing a single loan serviced by the Debtors, will have virtually no effect on the administration of the Debtors' estates. Conversely, however, exercising jurisdiction will likely encourage many other similarly-situated parties to initiate non-core adversary proceedings before this Court, potentially swamping the Court's docket and distracting both the Court and the Debtors' professionals from the critical issues affecting the Debtors' restructuring efforts.

36. Each of the claims asserted in the Complaint are purely questions of state law, and are wholly unrelated to the administration of the Debtors' bankruptcy cases in any material respect. Accordingly, they should be left to judges sitting in Georgia to decide.

37. To the extent Plaintiff wishes to further litigate issues related to the Property, the proper venue for their adjudication is Georgia, as there is no jurisdictional basis for Plaintiff to prosecute his claims in this District other than under 28 U.S.C. § 1334. Importantly, to the extent Plaintiff has valid claims and defenses to the foreclosure of the Property under applicable

Georgia law, relief from the automatic stay enjoining actions against GMACM has already been granted pursuant to the Supplemental Servicing Order previously entered by this Court.

38. Substantially all of the applicable factors weigh heavily in favor of this Court's abstention from asserting jurisdiction over the Adversary Proceeding. As such, GMACM respectfully requests that the Court decline to exercise jurisdiction and dismiss the Adversary Proceeding.

#### **IV. CONCLUSION**

Accordingly, for the reasons set forth herein GMACM respectfully requests that the Court dismiss the Adversary Proceeding with prejudice and grant such other and further relief as it deems just and proper.

Dated: December 10, 2012  
New York, New York

/s/ Norman S. Rosenbaum

Norman S. Rosenbaum  
Stefan W. Engelhardt  
Erica J. Richards  
MORRISON & FOERSTER LLP  
1290 Avenue of the Americas  
New York, New York 10104  
Telephone: (212) 468-8000  
Facsimile: (212) 468-7900

*Counsel for the Debtors and  
Debtors in Possession*

**Exhibit 1 to Motion**

**Scoliard Declaration**

MORRISON & FOERSTER LLP  
1290 Avenue of the Americas  
New York, New York 10104  
Telephone: (212) 468-8000  
Facsimile: (212) 468-7900  
Norman S. Rosenbaum  
Stefan W. Engelhardt  
Erica J. Richards

*Counsel for the Debtors and  
Debtors in Possession*

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

-----X	:	
Michael A. Farr	:	
	:	Adv. Proc. 12-01899 (MG)
Plaintiff,	:	
	:	
v.	:	
	:	
GMAC Mortgage, LLC, <i>et al.</i> ,	:	
	:	
Defendants.	:	
-----X	:	
In re	:	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, <i>et al.</i> ,	:	
	:	Chapter 11
	:	
Debtors	:	Jointly Administered
-----X	:	

**DECLARATION OF JENNIFER SCOLIARD, IN-HOUSE SENIOR BANKRUPTCY  
COUNSEL AT RESIDENTIAL CAPITAL, LLC, IN SUPPORT OF DEBTORS' MOTION  
FOR DISMISSAL OF ADVERSARY PROCEEDING PURSUANT TO BANKRUPTCY  
RULE 7012(b) AND FRCP 12(b)(5), AND (6) OR, IN THE ALTERNATIVE,  
PERMISSIVE ABSTENTION PURSUANT TO 28 U.S.C. §1334(c)(1)**

I, Jennifer Scoliard, declare as follows:

**A. Background and Qualifications**

1. I serve as In-House Senior Bankruptcy Counsel in the legal department (the “Legal Department”) at Residential Capital, LLC (“ResCap”), a limited liability company organized under the laws of the state of Delaware and the parent of the other debtors and debtors in possession in the above-captioned Chapter 11 cases (collectively, the “Debtors”). I joined ResCap in January 2008 and have been ResCap’s In-House Bankruptcy counsel since September 2010.

2. In my role as In-House Senior Bankruptcy Counsel at ResCap, I am responsible for the management of all non-routine bankruptcy litigation nationwide, including contested bankruptcy matters.

3. I am authorized to submit this declaration (the “Declaration”) in support of the *Debtors’ Motion For Dismissal Of Adversary Proceeding Pursuant To Bankruptcy Rule 7012(b)(5) And (b)(6) Or, In The Alternative, Permissive Abstention Pursuant To 28 U.S.C. §1334(c)(1)*, dated December 10, 2012 (the “Motion”).<sup>1</sup>

4. In my capacity as In-House Senior Bankruptcy Counsel, I am generally familiar with the Debtors’ litigation matters, including the pending non-judicial foreclosure proceeding involving Plaintiff. Except as otherwise indicated, all statements in this Declaration are based upon my personal knowledge; information supplied or verified by personnel in departments within the Debtors’ various business units; my review of the Debtors’ litigation case files, books and records as well as other relevant documents; my discussions with other members of the Legal Department; information supplied by the Debtors’ consultants; or my opinion based

---

<sup>1</sup> Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Objection.

upon experience, expertise, and knowledge of the Debtors' litigation matters, financial condition and/or history. In making my statements based on my review of the Debtors' litigation case files, books and records, relevant documents, and other information prepared or collected by the Debtors' employees or consultants, I have relied upon these employees and consultants accurately recording, preparing, collecting, or verifying any such documentation and other information. If I were called to testify as a witness in this matter, I would testify competently to the facts set forth herein.

**B. Events Giving Rise to the Adversary Proceeding**

**1. Plaintiff's Loan**

5. On January 3, 2006, Plaintiff executed a note in favor of New Century Mortgage Corporation ("New Century") in the amount of \$999,000.00 (the "Note"). *See* Adjustable Rate Note, annexed hereto as **Exhibit A**. The Note was secured by real property located at 3950 Parian Ridge Road, Atlanta, Georgia 30327 (the "Property") pursuant to a security deed (the "Security Deed") executed contemporaneously with the Note. *See* Security Deed, annexed hereto as **Exhibit B**.

6. The Security Deed was subsequently assigned from New Century to Mortgage Electronic Registration Systems, Inc. ("MERS"), *see* Assignment of Mortgage, annexed hereto as **Exhibit C**, and thereafter from MERS to U.S. Bank National Association as Trustee for RAMP 2006-NC3, *see* Transfer and Assignment, annexed hereto as **Exhibit D**. The Note is endorsed to U.S. Bank National Association as Trustee ("U.S. Bank"). GMACM is the authorized servicer of Plaintiff's Note and Security Deed for U.S. Bank.

7. Plaintiff defaulted on the Note by failing to make his monthly payments under the Note. As of the date of the Motion, Plaintiff remains due for the months of February 2012 forward.

8. As a result of Plaintiff's continuing default under the Loan, U.S. Bank through its authorized servicer, GMACM, initiated a non-judicial foreclosure proceeding against Plaintiff, scheduling a foreclosure sale date of August 7, 2012. *See* Notice of Sale Under Power in Deed to Secure Debt dated August 1, 2012, annexed hereto as **Exhibit E**. The foreclosure sale was then rescheduled for November 6, 2012. *See* Notice of Sale Under Power in Deed to Secure Debt dated October 30, 2012, annexed hereto as **Exhibit F**. Pursuant to a stipulation and consent order with Plaintiff, which was entered by the Court in the Adversary Proceeding on November 20, 2012, GMACM agreed to postpone the foreclosure sale for 30 days, subject to further extensions. *See Stipulation And Order Between Michael A. Farr And GMAC Mortgage, LLC* (ECF #3).

**C. Insufficient Service of Process**

9. The Debtors receive complaints generally through their registered agents, investors and/or MERS. The Debtors also receive complaints through various departments, outside counsel and United States mail. Complaints received from the Debtors' registered agents, investors and/or MERS are routed to designated service of process handlers ("SOP") in the Debtors' Legal Department, who then send the complaints to the appropriate business area or in-house legal staff. Complaints received through various departments, outside counsel and United States mail are sent to the Legal Department directly or through SOP, where they are assigned to the appropriate in-house attorney.

10. I am the designated in-house attorney for bankruptcy litigation. All bankruptcy contested matters and adversary complaints the Debtors receive (with the exception of lien strips, cramdowns and general accounting disputes) are sent to me. Upon receipt of a contested matter or complaint, I review the pleading and decide whether the matter will remain

in the Legal Department and assigned to litigation counsel or be sent to the Debtors' Bankruptcy Department to be addressed by default counsel.

11. I have confirmed with SOP that GMACM did not receive service of the Complaint or Summons via a registered agent, investor or MERS, nor, to the best of my knowledge, were the Complaint or Summons sent directly to the Legal Department. Further, neither the Complaint nor the Summons was sent to me from any department, outside counsel or by United States mail. Accordingly, to the best of my knowledge and belief, GMACM was not served with a copy of the Complaint or Summons filed in the Adversary Proceeding.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 10, 2012

/s/ Jennifer Scoliard  
Jennifer Scoliard  
In-House Senior Bankruptcy Counsel for  
Residential Capital, LLC



**Exhibit A to Scoliard Declaration**

**ADJUSTABLE RATE NOTE**

(LIBOR Six Month Index (as Published in *The Wall Street Journal*) - Rate Caps)  
2 YEAR RATE LOCK, 5 YEAR INTEREST ONLY PERIOD

THIS NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE INTEREST RATE AND THE MONTHLY PAYMENT.

January 3, 2006  
(Date)

ATLANTA  
(City)

Georgia  
(State)

3950 PARIAN RIDGE RD NW, ATLANTA, GA 30327-

(Property Address)

**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$ 999,000.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is New Century Mortgage Corporation.

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

**2. INTEREST**

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of 7.650%. The interest rate I will pay will change in accordance with Section 4 of this Note. The interest rate required by this Section 2 and Section 4 is the rate I will pay both before and after any default described in Section 7(B) of this Note.

**3. PAYMENTS**

**(A) Time and Place of Payments**

I will pay interest by making a payment every month. Beginning on the Amortization Start Date, I will pay principal each month in addition to interest.

I will make my monthly payment on the first day of each month beginning on March 1, 2006.

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before principal. If, on 02/01/2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 18400 Von Karman, Suite 1000, Irvine, CA 92612 or at a different place if required by the Note Holder.

**(B) Amount of My Monthly Payments**

Each of my initial monthly payments will be in the amount of U.S. \$6,368.63. This amount may change.

**(C) Monthly Payment Changes**

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

**(D) Withholding**

If I am a non-resident alien, I understand that all payments due hereunder shall be paid without reduction for any taxes, deductions or withholding of any nature. If such tax, deduction or withholding is required by any law to be made from any payment to the Note Holder, I shall continue to pay this Note in accordance with the terms hereof, such that the Note Holder will receive such amount as it would have received had no such tax, deduction or withholding been required.

**4. INTEREST RATE AND MONTHLY PAYMENT CHANGES**

**(A) Change Dates**

The interest rate I will pay may change on the first day of **February, 2008** and on the same day of every 6th month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date."

**(B) The Index**

Beginning with the first Interest Rate Change Date, my interest rate will be based on an Index plus a margin. The "Index" is the average of interbank offered rates for six-month dollar deposits in the London market ("LIBOR"), as published in *The Wall Street Journal* "Money Rates" Table. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Interest Rate Change Date occurs is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

**(C) Calculation of Changes**

On each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding Six And Five Hundredth(s) percentage points (6.050%) to the Current Index. The Note Holder will then round this figure to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Interest Rate Change Date.

**(i) Interest-Only Period.** The "Interest-Only Period" is the period from the date of this Note through **February 1, 2011**, called the "Amortization Start Date." During the Interest-Only Period, my monthly payments will only pay the interest I owe. During the Interest-Only Period, the Note Holder will calculate the amount of my monthly payment to be one-twelfth (1/12th) of one (1) year's interest at the then applicable interest rate. The result of this calculation will be the amount of my monthly payment until changed.

(ii) **Amortization Period.** Beginning on the Amortization Date my monthly payments will include principal. Starting on the Amortization Start Date and continuing until the Maturity Date, on each Interest Rate Change Date the Note Holder will calculate the amount of the monthly payment that would be sufficient to fully repay the remaining unpaid principal in equal monthly payments by the Maturity Date at the new interest rate, assuming, for purposes of each calculation, that the interest rate did not change again. The result of this calculation will be the new amount of my monthly payment until the next Interest Rate Change Date.

**(D) Limit on Interest Rate Changes**

The interest rate I am required to pay at the first Change Date will not be greater than 9.150 % or less than 7.650 %. Thereafter, my interest rate will never be increased or decreased on any single Interest Rate Change Date by more than one and one half percentage points (1.5%) from the rate of interest I have been paying for the preceding month. My interest rate will never be greater than 14.650 % or less than 7.650%.

**(E) Effective Date of Changes**

My new interest rate will become effective on each Interest Rate Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Interest Rate Change Date until the amount of my monthly payment changes again.

**(F) Notice of Changes**

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment at least 25 days before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any questions I may have regarding the notice.

**5. BORROWER'S RIGHT TO PREPAY**

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." When I make a prepayment, I will tell the Note Holder in writing that I am doing so.

I may make a full prepayment or partial prepayments without paying any prepayment charge. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note and to pay the interest then accruing at the Note rate as of the date my prepayments are applied. If I make a partial prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial prepayment may reduce the amount of my monthly payments after the first Change Date following my partial prepayment. However, any reduction due to my partial prepayment may be offset by an interest rate increase.

**6. LOAN CHARGES**

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

## 7. BORROWER'S FAILURE TO PAY AS REQUIRED

### (A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of fifteen calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000% or \$5.00, whichever is greater of my overdue monthly payment. I will pay this late charge promptly but only once on each late payment.

### (B) Default

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

### (C) Notice of Default

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

### (D) No Waiver by Note Holder

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

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

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

## 8. GIVING OF NOTICES

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

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

## 9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

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

## 10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor, and further waive all relief under any valuation and appraisal laws. "Presentment" means the right to

require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

#### 11. GOVERNING LAW - SECURED NOTE

This Note is governed by federal law and the law of the jurisdiction in which the property encumbered by the Security Instrument (as defined below) is located. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same date as this Note protects the Note Holder from possible losses which might result if I do not keep the promises which I make in the Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

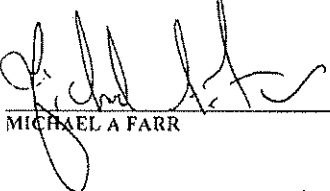
**Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

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

#### CAUTION

IT IS IMPORTANT THAT YOU THOROUGHLY READ THIS NOTE BEFORE YOU SIGN IT.

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

  
MICHAEL A FARR - Borrower

\_\_\_\_\_  
- Borrower

\_\_\_\_\_  
- Borrower

\_\_\_\_\_  
- Borrower

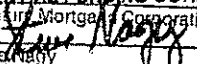
\_\_\_\_\_  
- Borrower

PAY TO THE ORDER OF  
U.S. Bank National Association as Trustee  
WITHOUT RECOURSE  
Residential Funding Corporation

\_\_\_\_\_  
- Borrower

BY:   
Judy Faber, Vice President - Borrower

(Sign Original Only)

Pay to the order of, without recourse  
**RESIDENTIAL FUNDING CORPORATION**  
New Century Mortgage Corporation  
By:   
Steve Nally  
V.P. Records Management

**CERTIFIED COPY**  
DEWRELL SACKS, LLP

**PREPAYMENT RIDER  
ADJUSTABLE RATE LOAN**

This Prepayment Rider is made this 3rd day of January, 2006, and is incorporated into and shall be deemed to amend and supplement the Promissory Note (the "Note") and Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure repayment of Borrower's Note to

New Century Mortgage Corporation (the "Lender").

To the extent that the provisions of this Prepayment Rider are inconsistent with the provisions of the Note and/or Security Instrument, the provisions of this rider shall prevail over and shall supersede any such inconsistent provisions of the Note and/or Security Instrument.

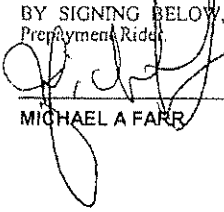
In addition to the covenants and agreements made in the Note and Security Instrument, the Borrower and Lender further covenant and agree as follows:

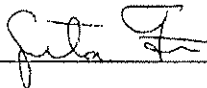
**5. BORROWERS RIGHT TO PREPAY**

I have the right to make prepayments of principal any time before they are due. A payment of principal only is known as a "prepayment". When I make a prepayment, I will tell the Note Holder in writing I am doing so. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no changes in the due dates of my monthly payments unless: the Note Holder agrees in writing to those changes. My partial prepayment may reduce the amount of my monthly payments after the first Change Date following my partial prepayment.

If within 2 year(s) from the date of execution of the Security Instrument, I make a full prepayment or, in certain cases a partial prepayment, and the total of such prepayment(s) in any 12-month period exceeds TWENTY PERCENT (20%) of the original principal amount of this loan, I will pay a prepayment charge in an amount equal to the payment of 6 months advance interest on the amount by which the total of my prepayment(s) within that 12-month period exceeds TWENTY PERCENT (20%) of the original principal amount of the loan.

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

  
\_\_\_\_\_  
MICHAEL A FARR

  
\_\_\_\_\_  
[Redacted]

**Exhibit B to Scoliard Declaration**



Return to:  
Dewrell Sacks, LLP  
100 Galleria Parkway, S.E.  
Suite 1850  
Atlanta, GA 30339

Deed Book 41790 Pg 217  
Filed and Recorded Jan-18-2006 08:30am  
2006-0019680  
Georgia Intangible Tax Paid \$2,997.00  
Juanita Hicks  
Clerk of Superior Court  
Fulton County, Georgia

Return To:

New Century Mortgage Corporation  
18400 Von Karman, Ste 1000  
Irvine, CA 92612

Prepared By:

New Century Mortgage Corporation  
18400 Von Karman, Ste 1000  
Irvine, CA 92612

0512A6581ATL [Space Above This Line For Recording Data]

## SECURITY DEED

### DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated January 3, 2006 together with all Riders to this document.

(B) "Borrower" is MICHAEL A FARR and CYNTHIA FARR

Borrower is the grantor under this Security Instrument.

(C) "Lender" is New Century Mortgage Corporation

Lender is a Corporation  
organized and existing under the laws of California

GEORGIA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

VMP-6(GA) (0005):02

Page 1 of 14

Initials: 

VMP MORTGAGE FORMS • (800)521-7291

Form 3011 1/01

Lender's address is 18400 Von Karman, Suite 1000, Irvine, CA 92612

Lender is the grantee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated January 3, 2006

The Note states that Borrower owes Lender NINE HUNDRED NINETY-NINE THOUSAND AND 00/100

Dollars

(U.S. \$999,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than 02/01/2036

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

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

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

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

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

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

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

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

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

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

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

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

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

#### TRANSFER OF RIGHTS IN THE PROPERTY

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

County of FULTON :

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

See Legal Description Attached Hereto and Made a Part Hereof

Parcel ID Number: 0017-0216-0000-113

which currently has the address of

3950 PARIAN RIDGE RD NW

[Street]

ATLANTA

[City] , Georgia 30327-

[Zip Code]

("Property Address"):

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

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

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

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

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

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

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

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

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

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

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

in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

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

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

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

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

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

lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

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

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with

the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

**6. Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

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

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

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

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

reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, making repairs, replacing doors and windows, draining water from pipes, and eliminating building or other code violations or dangerous conditions. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

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

**10. Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.



(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

**11. Assignment of Miscellaneous Proceeds; Forfeiture.** All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**20. Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA

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

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

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

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

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

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

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

If Lender invokes the power of sale, Lender shall give a copy of a notice of sale by public advertisement for the time and in the manner prescribed by Applicable Law. Lender, without further demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Lender determines. Lender or its designee may purchase the Property at any sale.

Lender shall convey to the purchaser indefeasible title to the Property, and Borrower hereby appoints Lender Borrower's agent and attorney-in-fact to make such conveyance. The recitals in the Lender's deed shall be prima facie evidence of the truth of the statements made therein. Borrower covenants and agrees that Lender shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it. The power and agency granted are coupled with an interest, are irrevocable by death or otherwise and are cumulative to the remedies for collection of debt as provided by Applicable Law.

If the Property is sold pursuant to this Section 22, Borrower, or any person holding possession of the Property through Borrower, shall immediately surrender possession of the Property to the purchaser at the sale. If possession is not surrendered, Borrower or such person shall be a tenant holding over and may be dispossessed in accordance with Applicable Law.

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

24. **Waiver of Homestead.** Borrower waives all rights of homestead exemption in the Property.

25. **Assumption Not a Novation.** Lender's acceptance of an assumption of the obligations of this Security Instrument and the Note, and any release of Borrower in connection therewith, shall not constitute a novation.

26. **Security Deed.** This conveyance is to be construed under the existing laws of the State of Georgia as a deed passing title, and not as a mortgage, and is intended to secure the payment of all sums secured hereby.



BORROWER ACCEPTS AND AGREES to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

IN WITNESS WHEREOF, Borrower has signed and sealed this Security Instrument.

  
MICHAEL A FARR

(Seal)  
-Borrower

  
(Seal)  
-Borrower

(Seal)  
-Borrower

(Seal)  
-Borrower

(Seal)  
-Borrower

(Seal)  
-Borrower

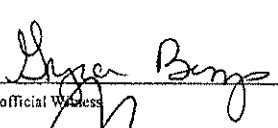
(Seal)  
-Borrower


(Seal)  
-Borrower

STATE OF GEORGIA,

Signed, sealed and delivered in the presence of:

Colmer County ss:

  
Unofficial Witness

  
Notary Public,  
State of Georgia

Colmer County



## ADJUSTABLE RATE RIDER

(LIBOR Six-Month Index (As Published in *The Wall Street Journal*)-Rate Caps)  
2 YEAR RATE LOCK, 5 YEAR INTEREST ONLY PERIOD

THIS ADJUSTABLE RATE RIDER is made this 3rd day of January, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to

**New Century Mortgage Corporation**

("Lender") of the same date and covering the property described in the Security Instrument and located at:

**3950 PARIAN RIDGE RD NW, ATLANTA, GA 30327-**  
(Property Address)

**THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE MAXIMUM RATE BORROWER MUST PAY.**

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

### A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of **7.650 %**. The Note provides for changes in the interest rate and monthly payments as follows:

### 4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

#### (A) Change Dates

The interest rate I will pay may change on the first day of **February, 2008**, and on the same day of every 6th month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date."

#### (B) The Index

Beginning with the first Interest Rate Change Date, my interest rate will be based on an Index plus a margin. The "Index" is the average of interbank offered rates for six-month dollar deposits in the London market ("LIBOR"), as published in *The Wall Street Journal* "Money Rates" Table. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Interest Rate Change Date occurs is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

**(C) Calculation of Changes**

On each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding **Six And Five Hundredth(s)** percentage points (**6.050** %) to the Current Index. The Note Holder will then round this figure to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this amount will be my new interest rate until the next Interest Rate Change Date.

(i) **Interest-Only Period.** The "Interest-only Period" is the period from the date of this Note through **February 1, 2011**, called the "Amortization Start Date." During the Interest-only Period, my monthly payments will only pay the interest I owe. During the Interest-only Period, the Note Holder will calculate the amount of my monthly payment to be one-twelfth (1/12th) of one (1) year's interest at the then applicable interest rate. The result of this calculation will be the amount of my monthly payment until changed.

(ii) **Amortization Period.** Beginning on the Amortization Date my monthly payments will include principal. Starting on the Amortization Start Date and continuing until the Maturity Date, on each Interest Rate Change Date the Note Holder will calculate the amount of the monthly payment that would be sufficient to fully repay the remaining unpaid principal in equal monthly payments by the Maturity Date at the new interest rate, assuming, for purposes of each calculation, that the interest rate did not change again. The result of this calculation will be the new amount of my monthly payment until the next Interest Rate Change Date.

**(D) Limit on Interest Rate Changes**

The interest rate I am required to pay at the first Change Date will not be greater than **9.150** % or less than **7.650** %. Thereafter, my interest rate will never be increased or decreased on any single Interest Rate Change Date by more than one and one half percentage points (1.5%) from the rate of interest I have been paying for the preceding month. My interest rate will never be greater than **14.650** % or less than **7.650** %.

**(E) Effective Date of Changes**

My new interest rate will become effective on each Interest Rate Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Interest Rate Change Date until the amount of my monthly payment changes again.

**(F) Notice of Changes**

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment at least 25 days before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any questions I may have regarding the notice.

**11. GOVERNING LAW - SECURED NOTE**

The Note is governed by federal law and the law of the jurisdiction in which the property encumbered by the Security Instrument (as defined below) is located. In addition to the protections given to the Note Holder under the Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same date as the Note protects the Note Holder from possible losses which might result if I do not keep the promises which I make in the Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under the Note. Some of those conditions are described as follows:





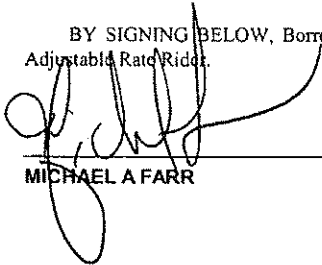
**B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER.**

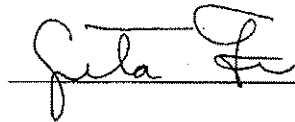
Uniform Covenant 18 of the Security Instrument is amended to read as follows:

**Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

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

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

  
\_\_\_\_\_  
MICHAEL A FARR -Borrower

  
\_\_\_\_\_  
-Borrower

\_\_\_\_\_  
-Borrower

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-Borrower

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-Borrower

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-Borrower

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-Borrower

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-Borrower

*(Sign Original Only)*



## PREPAYMENT RIDER ADJUSTABLE RATE LOAN

This Prepayment Rider is made this 3rd day of January 2006, and is incorporated into and shall be deemed to amend and supplement the Promissory Note (the "Note") and Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure repayment of Borrower's Note to

**New Century Mortgage Corporation** (the "Lender").

To the extent that the provisions of this Prepayment Rider are inconsistent with the provisions of the Note and/or Security Instrument, the provisions of this rider shall prevail over and shall supersede any such inconsistent provisions of the Note and/or Security Instrument.

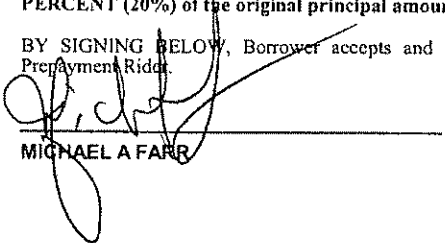
In addition to the covenants and agreements made in the Note and Security Instrument, the Borrower and Lender further covenant and agree as follows:

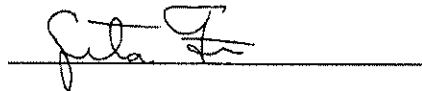
### 5. BORROWERS RIGHT TO PREPAY

I have the right to make prepayments of principal any time before they are due. A payment of principal only is known as a "prepayment". When I make a prepayment, I will tell the Note Holder in writing I am doing so. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no changes in the due dates of my monthly payments unless: the Note Holder agrees in writing to those changes. My partial prepayment may reduce the amount of my monthly payments after the first Change Date following my partial prepayment.

If within 2 year(s) from the date of execution of the Security Instrument, I make a full prepayment or, in certain cases a partial prepayment, and the total of such prepayment(s) in any 12-month period exceeds TWENTY PERCENT (20%) of the original principal amount of this loan, I will pay a prepayment charge in an amount equal to the payment of 6 months advance interest on the amount by which the total of my prepayment(s) within that 12-month period exceeds TWENTY PERCENT (20%) of the original principal amount of the loan.

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

  
\_\_\_\_\_  
MICHAEL A FARR

  
\_\_\_\_\_

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

ALL THAT TRACT PARCEL OF LAND LYING AND BEING IN LAND LOT 216 OF THE 17TH DISTRICT OF FULTON COUNTY, GEORGIA, BEING LOT 17, PARIAN RIDGE ROAD SUBDIVISION, AS PER PLAT RECORDED IN PLAT BOOK 59, PAGE 127, FULTON COUNTY, GEORGIA RECORDS, WHICH SAID PLAT IS HEREBY INCORPORATED HEREIN AND MADE A PART HEREOF BY THIS REFERENCE; BEING IMPROVED PROPERTY.

GEORGIA -

GRANTOR: MICHAEL A FARR

LENDER: New Century Mortgage Corporation

DATE OF SECURITY DEED: January 3, 2006

Deed Book 41790 Pg 236  
Juanita Hicks  
Clerk of Superior Court  
Fulton County, Georgia

### WAIVER OF BORROWER'S RIGHTS

BY EXECUTION OF THIS PARAGRAPH, GRANTOR EXPRESSLY: (1) ACKNOWLEDGES THE RIGHT TO ACCELERATE THE DEBT AND THE POWER OF ATTORNEY GIVEN HEREN TO LENDER TO SELL THE PREMISES BY NONJUDICIAL FORECLOSURE UPON DEFAULT BY GRANTOR WITHOUT ANY JUDICIAL HEARING AND WITHOUT ANY NOTICE OTHER THAN SUCH NOTICE AS IS REQUIRED TO BE GIVEN UNDER THE PROVISIONS HEREOF; (2) WAIVES ANY AND ALL RIGHTS WHICH GRANTOR MAY HAVE UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES, THE VARIOUS PROVISIONS OF THE CONSTITUTION FOR THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW TO NOTICE AND TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY LENDER OF ANY RIGHT OR REMEDY HEREN PROVIDED TO LENDER, EXCEPT SUCH NOTICE AS IS SPECIFICALLY REQUIRED TO BE PROVIDED HEREOF; (3) ACKNOWLEDGES THAT GRANTOR HAS READ THIS DEED AND SPECIFICALLY THIS PARAGRAPH AND ANY AND ALL QUESTIONS REGARDING THE LEGAL EFFECT OF SAID DEED AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO GRANTOR AND GRANTOR HAS BEEN AFFORDED AN OPPORTUNITY TO CONSULT WITH COUNSEL OF GRANTOR'S CHOICE PRIOR TO EXECUTING THIS DEED; (4) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF GRANTOR HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY GRANTOR AS PART OF A BARGAINED FOR LOAN TRANSACTION; AND (5) AGREES THAT THE PROVISIONS HEREOF ARE INCORPORATED INTO AND MADE A PART OF THE SECURITY DEED.

READ AND AGREED BY GRANTOR:

Signed, Sealed and delivered in the presence of:

MICHAEL A FARR

(Seal)

-Grantor

(Seal)

-Grantor

(Seal)

-Grantor

(Seal)

-Grantor

### CLOSING ATTORNEY'S AFFIDAVIT

Before the undersigned attesting officer personally appeared the undersigned closing attorney, who, having been first duly sworn according to law, states under oath as follows:

In closing the above loan, but prior to the execution of the Deed to Secure Debt and "Waiver of the Borrower's Rights" by the Borrower(s), I reviewed with and explained to the Borrower(s) the terms and provisions of the Deed to Secure Debt and particularly the provisions thereof authorizing the Lender to sell the secured property by a nonjudicial foreclosure under a power of sale, together with the "Waiver of Borrower's Rights" and informed the Borrower(s) of Borrower's rights under the Constitution of the State of Georgia and the Constitution of the United States to notice and a judicial hearing prior to such foreclosure in the absence of a knowing, intentional and willing contractual waiver by Borrower(s) of Borrower's rights. After said review with and explanation to Borrower(s), Borrower(s) executed the Deed to Secure Debt and "Waiver of Borrower's Rights."

Based on said review with and explanation to the Borrower(s), it is my opinion that Borrower(s) knowingly, intentionally and willingly executed the waiver of Borrower's constitutional rights to notice and judicial hearing prior to any such nonjudicial foreclosure.

Sworn to and subscribed before me

on the date set forth above.

PAMELA CHASE  
NOTARY PUBLIC  
Paulding County  
State of Georgia  
My Comm. Expires Mar. 25, 2007

Closing Attorney

### FORECLOSURE CLOSING DISCLOSURE

O.C.G.A. Section 7-1-1014 (3) requires that we inform you that if you fail to meet any condition or term of the documents that you sign in connection with obtaining a mortgage loan you may lose the property that serves as collateral for the mortgage loan through foreclosure.

MICHAEL A FARR

**Exhibit C to Scoliard Declaration**

**CHRYSLER** Chrysler is a leading manufacturer of cars, trucks, and vans. The company is also a leading provider of financial services. Chrysler is a member of the United Automobile Workers (UAW) union.

Prepared by Pat Hansen, Residential Funding Company, LLC, One Meridian Crossings, Suite 100, Minneapolis, MN 55423, (952) 979-4000.

Deed Book 44326 Pg 207

Juanita Hicks

Clerk of Superior Court

Fulton County, Georgia

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA  
COUNTY OF ORANGE

On **January 2, 2007** before me **Erika Reyes**, A Notary Public in and for Orange County and the State of California, personally appeared **Alfred Vandermade, A.V.P./ Shipping Manager**, who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal



U36389780-01GM02

CORP ASGT MTG  
LOAN# 10424017  
US Recordings

Signature of Notary Public



Erika Reyes  
COMMISSION # 1455401  
COMMISSION EXPIRES:  
December 9, 2007

**Exhibit D to Scoliard Declaration**



Deed Book 51335 Pg 492  
Filed and Recorded Jun-22-2012 08:15am  
2012-0170718  
Cathelene Robinson  
Clerk of Superior Court  
Fulton County, Georgia

RETURN DOCUMENT TO:  
PENDERGAST & ASSOCIATES, P.C.  
SOUTH TERRACES STE 1000  
115 PERIMETER CENTER  
ATLANTA, GA 30346  
Our File No. 12-04274  
MIN #100269610104240171  
MERS PH#1-888-679-6377

STATE OF Pennsylvania  
COUNTY OF Montgomery

TRANSFER AND ASSIGNMENT

FOR VALUE RECEIVED, the undersigned does hereby sell, assign, transfer, set over and convey unto **U.S. Bank, National Association, as Trustee for RAMP 2006-NC3 ( Assignee )**, whose address is 1100 Virginia Drive, Ft. Washington, PA 19034, its heirs, successors or assigns, of that certain Security Deed by **Michael A. Farr and Cynthia Farr** to New Century Mortgage Corporation, dated January 3, 2006 in the original principal amount of \$999,000.00 and recorded in **Deed Book 41790, page 217, Fulton County, Georgia** records, together with the real property therein described; and also the indebtedness having this day been transferred and assigned to the said Assignee together with all of the undersigned's right, title and interest in and to the said deed, the property therein described and the indebtedness thereby secured.

Witness the hand and seal of the undersigned this 14<sup>th</sup> day of June, 2012

Signed, sealed and delivered

in the presence of:

Paul Dickinson  
Unofficial Witness

**Paul Dickinson**

Kelly T. Cunningham  
Notary Public **Kelly T. Cunningham**  
My Commission Expires:

[NOTARY SEAL]

COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
KELLY T. CUNNINGHAM, Notary Public  
City of Philadelphia, Phila. County  
My Commission Expires February 24, 2016

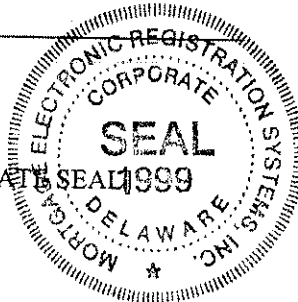
Mortgage Electronic Registration Systems, Inc., its  
successors and assigns

By: Duane Thompson **Duane Thompson**

Title: **Assistant Secretary**

Attest: \_\_\_\_\_

Title: \_\_\_\_\_



[CORPORATE SEAL 1999]

**Exhibit E to Scoliard Declaration**

Last Insertion: 08/01/12 Ad #: 1913323 Account #: 125658

STATE OF GEORGIA  
COUNTY OF FULTON

**NOTICE OF SALE UNDER POWER IN DEED TO SECURE DEBT** Under and by virtue of the power of sale contained in that certain Deed to Secure Debt from **Michael A. Farr and Cynthia Farr** to New Century Mortgage Corporation in the original principal amount of \$999,000.00 dated 01/03/2006, and recorded in Deed Book 41790, page 217, Fulton County records, said Security Deed being last transferred and assigned to U.S. Bank, National Association, as Trustee for RAMP 2006-NC3, the undersigned will sell at public outcry to the highest bidder for cash before the Courthouse door in said County, during the legal hours of sale, on **the first Tuesday of August, 2012** by U.S. Bank National Association as Trustee for RAMP 2006-NC3, as Attorney-in-Fact for Michael A. Farr and Cynthia Farr the following described property:

All that tract or parcel of land lying and being in Land Lot 216 of the 17th District of Fulton County, Georgia, being Lot 17, Parian Ridge Road Subdivision, as per plat recorded in Plat Book 59, Page 127, Fulton County, Georgia Records, which said plat is hereby incorporated herein and made a part hereof by this reference; being improved property.

Property known as: 3950 Parian Ridge Rd NW, Atlanta, GA 30327

The indebtedness secured by said Deed to Secure Debt having been declared due and payable because of default in the payment of the indebtedness secured thereby, this sale will be made for the purposes of paying the same and all expenses of sale, including attorney's fees, (notice having been given as provided by law).

The property will be sold as the property of The Aforesaid Grantors subject to the following:

(1) all prior restrictive covenants, easements, rights-of-way or encumbrances; (2) all valid zoning ordinances; (3) matters which would be disclosed by an accurate survey of the property; (4) the outstanding ad valorem taxes and assessments, if any; (5) unpaid water and sewage bills, that constitute liens against the property, whether due and payable or not yet due and payable; and (6) matters of record superior to the security deed first set out above.

Pursuant to O.C.G.A. Section 44-14-162.2 the name of the person or entity who has the full authority to negotiate, amend, or modify the terms of the aforementioned indebtedness is:

GMAC Mortgage, LLC  
1100 Virginia Avenue  
Ft. Washington, PA 19034  
PHONE: 800-850-4622

Nothing contained in this Notice of Sale shall obligate Lender to negotiate, amend or modify said indebtedness.

To the best of the undersigned's knowledge and belief, the party in possession is Michael A. Farr and Cynthia Farr.

U.S. Bank National Association as Trustee for RAMP 2006-NC3, as Attorney-in-fact for Michael A. Farr and Cynthia Farr. This law firm is acting as a debt collector attempting to collect a debt, any information obtained will be used for that purpose.

Pendergast & Associates, P.C.  
South Terraces, Suite 1000  
115 Perimeter Center Place  
Atlanta, GA 30346  
Phone - (770) 392-0398  
Toll Free - (866) 999-7088  
www.penderlaw.com  
Our File No. 12-04274  
#1913323-7/11-4sh

Last Insertion: 08/01/12 Ad #: 1913323 Customer #: 125658

PENDERGAST & ASSOCIATES  
SUITE 1000, SOUTH TERRACES  
115 PERIMETER CENTER PLACE  
ATLANTA, GA 30346

PUBLISHER'S AFFIDAVIT

STATE OF GEORGIA  
COUNTY OF FULTON  
Re: 1913323

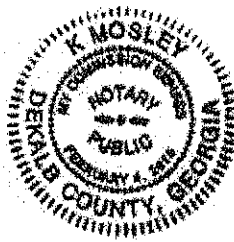
Before me, the undersigned, a Notary Public, this day personally  
came Patrice Grant who, being duly sworn, according to law, says  
she is an agent of ALM Media, LLC., publishers of the  
Daily Report, the official newspaper published in Atlanta, Ga,  
in said county and state, and that the publication, of which the  
annexed is a true copy, was published in said newspaper as  
provided by law on the following dates:

07/11/2012, 07/18/2012, 07/25/2012, 08/01/2012

*patrice grant*

Patrice Grant (Agent)

*K Mosley*



Kaweemah Mosley (Notary Public)

Subscribed and sworn to before me this 1st of August, 2012.

**Exhibit F to Scoliard Declaration**

Last Insertion: 10/30/12 Ad #: 1960762 Account #: 125658

STATE OF GEORGIA  
COUNTY OF FULTON

**NOTICE OF SALE UNDER POWER IN DEED TO SECURE DEBT** Under and by virtue of the power of sale contained in that certain Deed to Secure Debt from **Michael A. Farr and Cynthia Farr** to New Century Mortgage Corporation in the original principal amount of \$999,000.00 dated 01/03/2006, and recorded in Deed Book 41790, page 217, Fulton County records, said Security Deed being last transferred and assigned to U.S. Bank, National Association, as Trustee for RAMP 2006-NC3 in Deed Book 51335, Page 492, the undersigned will sell at public outcry to the highest bidder for cash before the Courthouse door in said County, during the legal hours of sale, **on the first Tuesday of November, 2012** by U.S. Bank National Association as Trustee for RAMP 2006-NC3, as Attorney-in-Fact for Michael A. Farr and Cynthia Farr the following described property:

All that tract or parcel of land lying and being in Land Lot 216 of the 17th District of Fulton County, Georgia, being Lot 17, Parian Ridge Road Subdivision; as per plat recorded in Plat Book 59, Page 127, Fulton County, Georgia Records, which said plat is hereby incorporated herein and made a part hereof by this reference; being improved property.

Property known as: **3950 Parian Ridge Rd NW, Atlanta, GA 30327**

The indebtedness secured by said Deed to Secure Debt having been declared due and payable because of default in the payment of the indebtedness secured thereby, this sale will be made for the purposes of paying the same and all expenses of sale, including attorney's fees, (notice having been given as provided by law).

The property will be sold as the property of The Aforesaid Grantors subject to the following:

(1) all prior restrictive covenants, easements, rights-of-way or encumbrances; (2) all valid zoning ordinances; (3) matters which would be disclosed by an accurate survey of the property; (4) the outstanding ad valorem taxes and assessments, if any; (5) unpaid water and sewage bills, that constitute liens against the property, whether due and payable or not yet due and payable; and (6) matters of record superior to the security deed first set out above.

Pursuant to O.C.G.A. Section 44-14-162.2 the name of the person or entity who has the full authority to negotiate, amend, or modify the terms of the aforementioned indebtedness is:

GMAC Mortgage, LLC  
1100 Virginia Avenue  
Ft. Washington, PA 19034  
PHONE: 800-850-4622

Pursuant to O.C.G.A. Section 44-14-162.2, nothing contained in this Notice of Sale shall obligate any entity to negotiate, amend, or modify said indebtedness.

To the best of the undersigned's knowledge and belief, the party in possession is Michael A. Farr and Cynthia Farr.

**U.S. Bank National Association as Trustee for RAMP 2006-NC3, as Attorney-in-fact for Michael A. Farr and Cynthia Farr.**

This law firm is acting as a debt collector attempting to collect a debt, any information obtained will be used for that purpose.

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Last Insertion: 10/30/12 Ad #: 1960762 Customer #: 125658

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SUITE 1000, SOUTH TERRACES  
115 PERIMETER CENTER PLACE  
ATLANTA, GA 30346

PUBLISHER'S AFFIDAVIT

STATE OF GEORGIA  
COUNTY OF FULTON  
Re: 1960762

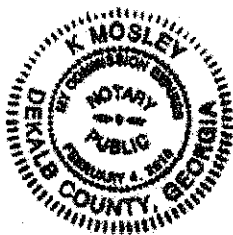
Before me, the undersigned, a Notary Public, this day personally came Patrice Grant who, being duly sworn, according to law, says she is an agent of ALM Media, LLC., publishers of the Daily Report, the official newspaper published in Atlanta, Ga, in said county and state, and that the publication, of which the annexed is a true copy, was published in said newspaper as provided by law on the following dates:

10/09/2012, 10/16/2012, 10/23/2012, 10/30/2012

*patrice grant*

Patrice Grant (Agent)

*K. Mosley*



Kaweemah Mosley (Notary Public)

Subscribed and sworn to before me this 10/09/2012, 10/16/2012, 10/23/2012, 10/30/2012 of October, 2012.