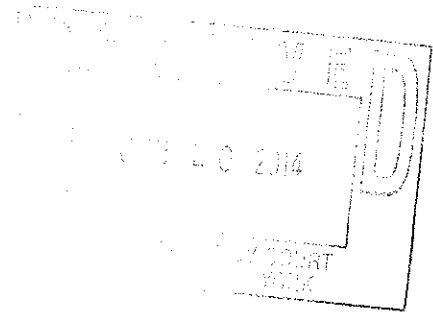


Jennifer L. Wilson  
4365 School House Commons, 500-251  
Harrisburg, NC 28075  
Tel: 704-773-1712  
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June 18, 2014


Clerk of Court  
United States Bankruptcy Court  
Southern District of New York  
One Bowling Green  
New York, NY 10004-1408

RE: NO. 12-12020 RESIDENTIAL CAPITAL, LLC  
ADV. CASE: 12-01936-mg

Dear Clerk:

Enclosed, please find the *PLAINTIFF'S OBJECTION TO DECLARATION OF LAUREN GRAHAM DELEHEY, CHIEF LITIGATION COUNSEL FOR THE RESCAP LIQUIDATING TRUST, IN SUPPORT OF DEBTORS' MOTION FOR DISMISSAL OF ADVERSARY PROCEEDING PURSUANT TO BANKRUPTCY RULE 7012(B) AND FRCP 12(B)(1) AND 12(B)(6) OR, IN THE ALTERNATIVE, PERMISSIVE ABSTENTION PURSUANT TO 28 U.S.C. §1334(C)(1) and PLAINTIFF'S REPLY IN OPPOSITION TO rescap liquidating TRust's Supplemental Brief in support of DEBTORS' MOTION FOR DISMISSAL OF ADVERSARY PROCEEDING PURSUANT TO BANKRUPTCY RULE 7012(b) AND FRCP 12(b)(1) AND 12(b)(6) OR, IN THE ALTERNATIVE, PERMISSIVE ABSTENTION PURSUANT TO 28 U.S.C. §1334(c)(1) to be filed in the above referenced matter.*

Thank you for your assistance.

Sincerely,  
  
Jennifer L. Wilson



Jennifer L. Wilson, *Sut Juris*  
4365 School House Commons, 500-251  
Harrisburg, NC 28075  
Ph.: 704-773-1712

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

Jennifer L. Wilson,

Plaintiff,

v.

Residential Capital, LLC, et al.

Defendants.

In re

RESIDENTIAL CAPITAL, LLC et al.,

Debtors,

ADV. CASE: 12-01936-MG

CASE NO: 12-12020

Chapter 11

Jointly Administered

[Concurrently filed: Plaintiff's Reply to Debtor's Supplemental Motion for Dismissal of Adversary Proceeding Pursuant to Bankruptcy Rule 7012(b) and FRCP 12(b)(1) and 12(b)(6) or, in the Alternative, Permissive Abstention Pursuant to 28 U.S.C. §1334(c)(1); and Memorandum in Support].

**PLAINTIFF'S OBJECTION TO DECLARATION OF LAUREN GRAHAM  
DELEHEY, CHIEF LITIGATION COUNSEL FOR THE RESCAP  
LIQUIDATING TRUST, IN SUPPORT OF DEBTORS' MOTION FOR  
DISMISSAL OF ADVERSARY PROCEEDING PURSUANT TO**

**BANKRUPTCY RULE 7012(B) AND FRCP 12(B)(1) AND 12(B)(6) OR, IN  
THE ALTERNATIVE, PERMISSIVE ABSTENTION PURSUANT TO 28  
U.S.C. §1334(C)(1)**

COME NOW Jennifer L. Wilson (hereinafter “Wilson”) respectfully requests this Court declare the “DECLARATION OF LAUREN GRAHAM DELEHEY, Chief Litigation Counsel for the ResCap Liquidating Trust, IN SUPPORT OF DEBTORS’ MOTION FOR DISMISSAL OF ADVERSARY PROCEEDING PURSUANT TO BANKRUPTCY RULE 7012(b) AND FRCP 12(b)(1) AND 12(b)(6) OR, IN THE ALTERNATIVE, PERMISSIVE ABSTENTION PURSUANT TO 28 U.S.C. §1334(c)(1)” (hereinafter “DELEHEY DECLARATION”) inadmissible on the grounds it is hearsay pursuant to F.R.E. Rules 801(c) and 802; and Exhibits “2” and “3” the “NOTE[s]” on the grounds they are unauthenticated and unrecorded copies pursuant to F.R.E. Rule 902(11).

**RELIEF REQUESTED**

WHEREFORE Jennifer L. Wilson respectfully requests the Court declare inadmissible the following:

- a. Exhibits 1, 3, and 4 are inadmissible for lack of authentication pursuant to Fed. R. Civil P. Rules 902(11);
- b. The “DECLARATION OF LAUREN GRAHAM DELEHEY, Chief Litigation Counsel for the ResCap Liquidating Trust, IN SUPPORT OF DEBTORS’ MOTION FOR DISMISSAL OF ADVERSARY PROCEEDING PURSUANT TO BANKRUPTCY RULE 7012(b) AND FRCP 12(b)(1) AND 12(b)(6) OR, IN THE ALTERNATIVE, PERMISSIVE ABSTENTION PURSUANT TO 28 U.S.C. §1334(c)(1)” for absence of personal knowledge and failing to demonstrate the requisite trustworthy component to be reasonably relied upon.

Date: June 18, 2014

Respectfully,

---

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

Jennifer L. Wilson,

Plaintiff,

v.

Residential Capital, LLC, et al.,

Defendants.

\_\_\_\_\_  
In re

RESIDENTIAL CAPITAL, LLC et al.,

Debtors.

ADV. CASE: 12-01936

CASE NO: 12-12020

Chapter 11

Jointly Administered

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
PLAINTIFF'S OBJECTION TO DECLARATION OF LAUREN GRAHAM  
DELEHEY, CHIEF LITIGATION COUNSEL FOR THE RESCAP  
LIQUIDATING TRUST, IN SUPPORT OF DEBTORS' MOTION FOR  
DISMISSAL OF ADVERSARY PROCEEDING PURSUANT TO  
BANKRUPTCY RULE 7012(B) AND FRCP 12(B)(1) AND 12(B)(6) OR, IN  
THE ALTERNATIVE, PERMISSIVE ABSTENTION PURSUANT TO 28  
U.S.C. §1334(C)(1)**

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## **POINTS AND AUTHORITIES**

### **BACKGROUND**

#### **A. RALI SERIES 2007-QS5 TRUST POOLING SERVICING AGREEMENT.**

01. Due to the size (one hundred fifty-one pages) of the Prospectus Supplement (“Prospectus”) dated December 6, 2007 to that Prospectus Supplement dated April 9, 2007, and the Rali Series 2007-QS5 Trust Pooling and Servicing Agreement (“TRUST”) dated December 1, 2006 (one hundred ninety pages) Plaintiff, Jennifer L. Wilson (“Wilson”), attaches true, and correct copies of relevant excerpts of the SEC Attestation of these documents found in the record of the United States District Court, Western District of North Carolina (Charlotte) Case No. 3:10-cv-00573 lodged as Docket nos. 20-1 through 5. The documents having been attested to by the Security and Exchange Commission (“SEC”) and being a matter of the record of the United States District Court of North Carolina, Wilson respectfully request this Court take Judicial Notice of the SEC Attestations lodged in the Western District of North Carolina (Charlotte) Case No. 3:10-cv-00573 Docket numbers 20-1 through 5 pursuant to Fed. R. Evid. Rules 201(b)(2) and (c)(2).

02. TRUST Section 2.02 “Acceptance by Trustee.” Mandates the Custodian (Wells Fargo Bank N.A.) within 45 days of the “Closing Date” (March 29, 2007) shall review each Custodial File delivered to it pursuant to Section 2.01(b) and ascertain that all required documents have been **executed** and received, and that such documents relate to the mortgage loan identified on the Mortgage Loan Schedule and deliver to the Trustee, Deutsche Bank Trust Company America (“DBTCA”) a certificate attesting to same, the “Interim Certification”. And if the Custodian, as the Trustee’s agent, finds any document to be **missing or defective** the Trustee shall notify the Master Servicer and



Residential Funding Company, LLC (“RFC”) shall, within 60 days, **correct or cure** such **omission or defect** or purchase the mortgage loan from the Trust. (See “Exhibit A”)

03. TRUST Section 3.02 “Subservicing Agreements Between Master Servicer (RFC) and Subservicers; Enforcement of Subservicers’ and Sellers’ Obligations.” Provides the Master Servicer may enter into agreements with “Subservicers” e.g. SunTrust Banks, Inc., SunTrust Bank, and SunTrust Mortgage, Inc. (See “Exhibit B”)

04. Prospectus specifically states, “The master servicer [RFC], an affiliate of the depositor, will be responsible for master servicing mortgage loans. Master servicing responsibilities include: ... oversight of all servicing activities, including subservicers; follow up with subservicers with respect to mortgage loans that are delinquent or for which servicing decisions may need to be made; ... The master servicer may, from time to time, outsource certain of its servicing functions, such as foreclosure management, although any such outsourcing will not relieve the master servicer of any of its responsibilities or liabilities under the pooling and servicing agreement.” (See “Exhibit C”)

05. The TRUST, in Section 1.01 “Definitions” defines “Compliance With Laws Representation:” to mean representation and warranty made by Residential Funding in Section 4 of the Assignment Agreement: “Each Mortgage Loan at the time it was made complied in all material respects with the applicable local, state, and federal laws, including, but not limited to, all applicable anti-predatory lending laws”. (See “Exhibit D”)

06. The TRUST, in Section 1.01 “Definitions” defines “Assignment Agreement” to be “The Assignment and Assumption Agreement Dated the Closing Date [March 29, 2007], between Residential Funding [Company, LLC]

and the Company [Residential Accredit Loans, Inc.] relating to the transfer and assignment of the Mortgage Loans. (See “Exhibit E”)

07. The “Assignment and Assumption Agreement” (hereinafter “Assign Agreement”) may be found on the SEC website at <http://www.sec.gov/Archives/edgar/data/1390318/000139031807000008/qs5aa.htm>. The Assign Agreement is attached hereto as Exhibit F and is incorporated herein by reference. This Court may take Judicial Notice of official documents posted on official federal and state government websites, therefore, Wilson respectfully request this Court take Judicial Notice of the “Assignment and Assumption Agreement” labeled Exhibit F and published on the SEC website<sup>1</sup> pursuant to Fed. R. Evid. Rules 201(b)(1), (2) and 201(c)(1).

08. Section 4 of the Assign Agreement in relevant part states, “RFC [Residential Funding Company, LLC] represents and warrants to the Company that on the date of execution hereof (or, if otherwise specified below, as of the date so specified): ... (d) Immediately prior to the assignment of the Mortgage Loans to the Company [Residential Accredited Loan, Inc.], RFC had good title to, and was the sole owner of, each Mortgage Loan free and clear of any pledge, lien, encumbrance or security interest ...; (r) The Assignor [Residential Funding Company, LLC] is the holder of all of the right, title and interest as owner of each Pledged Asset Loan in and to each of the Assigned Contracts delivered and sold to the Company hereunder, and the assignment hereof by RFC validly transfers such right, title and interest to the Company [Residential Accredited Loan, Inc.] free and clear of any pledge, lien, or security interest or other encumbrance of any Person; ... RFC shall provide written notice to GMAC Mortgage, LLC of the sale

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<sup>1</sup> *United States v Bari*, No. 09 1074-cr, 2010 WL 1006555 (2d Cir. Mar. 22, 2010) (“We also conclude that the District Court did not commit reversible error in conducting an Internet search to confirm his intuition regarding a matter of common knowledge.”); *Gucci America, Inc. v. Guess?, Inc.* 2010 WL 1416896, (S.D.N.Y. Memo Order, Apr. 8, 2010) (“Here, there can be little question that the Court can take judicial notice of the articles published ... on the Internet related to Gucci’s pending motion.”).

of each Pledged Asset Loan to the Company hereunder and by the Company to the Trustee under the Pooling and Servicing Agreement, and shall maintain the Schedule of Additional Owner Mortgage Loans (as defined in the Credit Support Pledge Agreement), showing the Trustee as the Additional Owner of each such Pledged Asset Loan, all in accordance with Section 7.1 of the Credit Support Pledge Agreement. Upon discovery by RFC or upon notice from the Company or the Trustee of a breach of the foregoing representations and warranties in respect of any Mortgage Loan which materially and adversely affects the interests of any holders of the Certificates or of the Company in such Mortgage Loan or upon the occurrence of a Repurchase Event (hereinafter defined), notice of which breach or occurrence shall be given to the Company by RFC, if it discovers the same, RFC shall, within 90 days after the earlier of its discovery or receipt of notice thereof, either cure such breach or Repurchase Event in all material respects or, either (i) purchase such Mortgage Loan from the Trustee or the Company, as the case may be, at a price equal to the Purchase Price for such Mortgage Loan or (ii) substitute a Qualified Substitute Mortgage Loan or Loans for such Mortgage Loan in the manner and subject to the limitations set forth in Section 2.04 of the Pooling and Servicing Agreement.” (See Exhibit F, pp. 4, 6, 7 and 8)

09. Covenant 2 of the Assign Agreement in relevant part states, “In connection with such assignment and at the Company's direction, RFC has in respect of each Mortgage Loan endorsed the related Mortgage Note ... to the order of the Trustee and delivered an assignment of mortgage or security instrument, as applicable, in recordable form to the Trustee or its agent.” (See “Exhibit F”

**B. CONSENT ORDERS.**

10. On April 13, 2011, the BOARD OF GOVERNORS OF THE  
FEDERAL RESERVE SYSTEM, WASHINGTON, D.C. (“Governors Board”);

and SunTrust Banks, Inc.; SunTrust Bank; and SunTrust Mortgage, Inc., entered into a “Consent Order” (see Exhibit G attached hereto and incorporated herein by reference). Some of the allegations in the “Consent Order” involved the Servicing Portfolio’s of SunTrust Mortgage wherein it is alleged SunTrust Mortgage “(a) Filed or caused to be filed in state courts and in connection with bankruptcy proceedings in federal courts numerous affidavits executed by employees of SunTrust Mortgage or employees of third-party providers making various assertions, such as the ownership of the mortgage note and mortgage, the amount of principal and interest due, and the fees and expenses chargeable to the borrower, in which the affiant represented that the assertions in the affidavit were made based on personal knowledge or based on a review by the affiant of the relevant books and records, when, in many cases, they were not based on such knowledge or review; (b) Filed or caused to be filed in courts in various states and in connection with bankruptcy proceedings in federal courts or in the local land record offices, numerous affidavits and other mortgage-related documents that were not properly notarized, including those not signed or affirmed in the presence of a notary; (c) Litigated foreclosure and bankruptcy proceedings and initiated non-judicial foreclosures without always confirming that documentation of ownership was in order at the appropriate time, including confirming that the promissory note and mortgage document were properly endorsed or assigned and, if necessary, in the possession of the appropriate party; ...” In connection with the “Consent Order” SunTrust Banks, Inc. and SunTrust Mortgage agreed to “retain one or more independent consultant(s) acceptable to the Reserve Bank to conduct an independent review of certain residential foreclosure actions ... for loans serviced by SunTrust Mortgage, whether brought in the name of the [SunTrust] Bank, SunTrust Mortgage, the investor, or any agent for the mortgage note holder (including MERS) that have been pending at any time from January 1, 2009 to

December 31, 2010, as well as residential foreclosure sales that occurred during this time period (“Foreclosure Review”).<sup>2</sup> (See “Consent Order” p. 9) The Foreclosure Review was to determine; (i) whether, at the time the foreclosure action was initiated or the pleading or affidavit filed ... the foreclosing party or agent of the party had properly documented ownership of the promissory note and mortgage (or deed of trust) under relevant state law, or was otherwise a proper party to the action as a result of agency or other similar status; (ii) whether the foreclosure was in accordance with applicable state and federal laws ... and the U.S. Bankruptcy Code. (See “Consent Order” pp. 9-10)

11. The “Consent Order”, post the Foreclosure Review, was to present the Federal Reserve Bank with an acceptable plan to make reimbursement and remediation payments and provide all credits required by such plan ...with a report detailing such payments and credits. (See “Consent Order p. 12, ¶ 3.(d) )

12. SunTrust Banks, Inc. engaged PricewaterhouseCoopers, LLP to conduct the Independent Foreclosure Review (“IFR”). (Source “Bloomberg News” April 11, 2013, <http://www.bloomberg.com/news/2013-04-10/occ-asks-for-enforcement-powers-against-outside-consultant-firms.html>). (See “Exhibit H”

13. On February 28, 2013 the Governors Board, SunTrust Banks, Inc. and its subsidiaries entered into an “AMENDMENT OF CONSENT ORDER”. The purpose of the “AMENDMENT OF CONSENT ORDER” was to scrap the IFR and make payments of no less than \$250.00 to borrowers for those files where IFR made a determination of “harm.” Further, the Independent Review was to cease. (See Exhibit I attached hereto and incorporated herein by reference) Wilson respectfully requests the Court take Judicial Notice of the

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<sup>2</sup> Order of the Clerk of the Court In the General Court of Justice North Carolina Cabarrus County to Proceed with Foreclosure was executed on January 10, 2010.

“AMENDMENT OF CONSENT ORDER” pursuant to Fed. R. Evid. Rules 201(b)(1), (2) and 201(c)(2).

14. On July 26, 2013, GMAC Mortgage, past parent of Residential Capital, LLC (“ResCap”), like SunTrust Banks, Inc. and its subsidiaries, joined in a payment agreement with the Federal Reserve Board to pay \$230 million in direct payments to eligible borrowers. (Source “Board of Governors of the Federal Reserve System, May 12, 2014 Consumer Information “Independent Foreclosure Review.” (<http://www.federalreserve.gov/consumerinfo/independent-foreclosure-review.htm>)

### C. MAY 1, 2014 HEARING

15. On May 1, 2014 the Court heard Debtor’s MOTION FOR DISMISSAL OF ADVERSARY PROCEEDING PURSUANT TO BANKRUPTCY RULE 7012(b) AND FRCP 12(b)(1) AND 12(b)(6) OR, IN THE ALTERNATIVE, PERMISSIVE ABSTENTION PURSUANT TO 28 U.S.C. §1334(c)(1) (“Dismiss Motion”).

16. The Court, concerned about the veracity of the DECLARATION OF JENNIFER SCOLIARD, IN-HOUSE SENIOR BANKRUPTCY COUNSEL AT RESIDENTIAL CAPITAL, LLC IN SUPPORT OF DEBTOR’S MOTION FOR DISMISSAL OF ADVERSARY PROCEEDING PURSUANT TO BANKRUPTCY RULE 7012(b) AND FRCP 12(b)(1) AND 12(b)(6) OR, IN THE ALTERNATIVE PERMISSIVE ABSTENTION PURSUANT TO 28 U.S.C. § 1334(c)(1) (“Scoliard Declaration”)<sup>3</sup>, and the NOTE indorsed in blank and attached thereto, Ordered ResCap to submit one or more declarations stating “when the note was endorsed in blank.”

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<sup>3</sup> “I am concerned that that declaration, in attaching a note endorsed in blank, makes a factual representation to the Court. And hence my question, **I want to know when the note was endorsed in blank. And I want one or more declarations filed specifically addressing the issue.** Because I’m concerned that I want to be sure that the representations made to the Court in a sworn declaration are true and not misleading.” (See *CT*. p. 24, ll. 4-11 attached as Exhibit B and incorporated herein by reference) (Emphasis added).

#### **D. DELEHEY DECLARATION**

17. In response to the Order of the Court, on May 29, 2014, ResCap filed the “DECLARATION OF LAUREN GRAHAM DELEHEY, Chief Litigation Counsel for the ResCap Liquidating Trust, IN SUPPORT OF DEBTORS’ MOTION FOR DISMISSAL OF ADVERSARY PROCEEDING PURSUANT TO BANKRUPTCY RULE 7012(b) AND FRCP 12(b)(1) AND 12(b)(6) OR, IN THE ALTERNATIVE, PERMISSIVE ABSTENTION PURSUANT TO 28 U.S.C. §1334(c)(1)” (“DELEHEY DECLARATION” or “DD”). (Dkt. # 55).

18. Accompanying the DELEHEY DECLARATION are three (3) unauthenticated NOTE copies, Wilson objects to the NOTE copies labeled Exhibit 3 and Exhibit 4 attached to the DELEHEY DECLARATION. The first being a copy of the NOTE Plaintiff, Jennifer L. Wilson (“Wilson”) attached to the Adversary Complaint (Wilson attaches hereto a certified to be true and correct copy by the General Court of Justice, North Carolina, Cabarrus County of that NOTE and labels same Exhibit K) (see DELEHEY DECLARATION Exhibit 2; the second is a copy of the NOTE, indorsed in blank, originally attached to the Scoliard Declaration (DELEHEY DECLARATION Exhibit 3); and the third is a copy of a NOTE, never before seen by Wilson or to Wilson’s knowledge filed in any court of record, attached to the DELEHEY DECLARATION evidencing a Special Indorsement from SunTrust Mortgage, Inc. d/b/a Sun America Mortgage to Residential Funding Company, LLC, and a second Special Indorsement from Residential Funding, LLC to Deutsche Bank Trust Company Americas as Trustee executed by Judy Faber in the capacity of “Vice President” Residential Funding Company, LLC (see DELEHEY DECLARATION Exhibit 4)

19. The DELEHEY DECLARATION states; 1) DELEHEY “as Chief Litigation Counsel at ResCap, I was responsible for the management of litigation for the Debtors, including residential mortgage-related litigation (see DELEHEY

DECLARATION (“DD”) ¶ 2); 2) “Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge of the Debtors’ and the Liquidating Trust’s operations, information learned from my review of relevant documents and information I have received through my discussions with other former members of the Debtors’ and the Liquidating Trust’s management or other former employees of the Debtors, the Debtors’ and the Liquidating Trust’s professionals and consultants, and/or the Consulted Parties (as defined below). If I were called upon to testify, I could and would testify competently to the facts set forth in this Declaration on that basis” (DD ¶ 4); 3) Immediately following the Hearing, I, and persons acting at my direction (including employees of the Liquidating Trust and the Liquidating Trust’s counsel) (collectively, the “Investigating Parties”), began investigating the facts underlying the loan documents ... The investigation lasted until the eve of the filing of this Declaration. In connection with these efforts, the Investigating Parties received information from representatives of Ocwen Loan Servicing, LLC, SunTrust Mortgage, Inc., and Wells Fargo Bank National Association (“Wells Fargo”) (the “Consulted Parties”). While we were unable to obtain precise answers on certain issues, we were able to confirm the timeline set forth below (DD ¶ 5); 4) On or about March 20, 2007, SunTrust Mortgage Inc. sold the Note and Deed of Trust (together, the “Loan”) to Residential Funding Company, LLC (“RFC”) (DD ¶ 9); 5) On or about March 28, 2007, RFC, as Master Servicer and Sponsor, placed the Loan into the RALI Series 2007-QS5 trust (the “Trust”) (DD ¶ 10); 6) SunTrust Mortgage, Inc. acted as the sub-servicer of Plaintiff’s mortgage loan. In connection with our investigation, I was furnished with a copy of a Limited Power of Attorney, dated on or about February 7, 2007, executed by SunTrust Mortgage Inc. appointing SunTrust Banks, Inc. as its attorney-in-fact for certain limited purposes. A copy of the Limited Power of Attorney is annexed hereto as



Exhibit 1 (DD ¶ 11); 7) SunTrust Mortgage, Inc. endorsed the Note in blank, and the Note in this form was delivered to RFC on or about March 20, 2007. ... Wells Fargo, in its capacity as Custodian for the Trust, completed the endorsement of the Note (i) from SunTrust Mortgage, Inc. d/b/a Sun America Mortgage to RFC, and (ii) from RFC to Deutsche Bank Trust Company Americas. Upon information and belief, each of these endorsements took place by May 9, 2007. (DD ¶ 12)

**E. INDORSEMENT OF JUDY FABER**

20. On November 18, 2008 Ms. Judy Faber gave deposition testimony in the case of U.S. Bank National Association as Trustee v. Wendy S. Cook a/k/a Wendy C. Cook, IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, Case No. 07-cv-01544 (Dkt. #64-13, pp. 1-53) (“Faber Deposition”). A true, correct, and complete copy of the deposition of Judy Faber is attached hereto as Exhibit L and is incorporated herein by reference. Wilson respectfully request this Court take Judicial Notice of the Faber Declaration pursuant to Fed. R. Evid. Rules 201(b)(2) and (c)(2). Ms. Faber testified she has been employed by Residential Funding for eleven (11) years and occupied the position of “Director of Records Management, the Minnesota site.” (See Exhibit L Faber Deposition p. 6)

**STANDARD OF REVIEW**

21. “Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. F.R.E. Rule 401.

22. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. F.R.E. Rule 403.

23. A “statement” is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion. See F.R.E. Rule 801. A “declarant” is a person who makes a statement. (*Id.*). “Hearsay” is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. (*Id.*).

24. Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court pursuant to statutory authority or by Act of Congress. F.R.E. Rule 802.

25. Records of regularly conducted activity.—A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11), Rule 902(12), or a statute permitting certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.

26. The term “business” as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit. F.R.E. Rule 803(6).

27. The standard governing admissibility is as follows: “The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” F.R.E. Rule 901(a).

28. Certified domestic records of regularly conducted activity.—The original or a duplicate of a domestic record of regularly conducted activity that

would be admissible under Rule 803(6) if accompanied by a written declaration of its custodian or other qualified person, in a manner complying with any Act of Congress or rule prescribed by the Supreme Court pursuant to statutory authority, certifying that the record—(A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters; (B) was kept in the course of the regularly conducted activity; and (C) was made by the regularly conducted activity as a regular practice. A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.

### **ARGUMENT**

#### **DELEHEY DECLARATION**

29. At the outset paragraphs 6, 7, 8, 13, and 16 of the DELEHEY DECLARATION are irrelevant with respect to the May 1, 2014 Court Order.

30. An affidavit on “information and belief” is an affidavit which is not based on the personal knowledge of the affiant (the person who makes an affidavit). Rather, it is an affidavit made upon the good faith belief of the affiant that the information he/she is testifying to is true. An affidavit on information and belief must provide the source of the information and the grounds for the belief. If an affidavit is made without giving the source of the information or the grounds of belief it is considered as mere hearsay and therefore incompetent as evidence.

31. The DELEHEY DECLARATION fails to certify any of the two NOTE copies to be a true and correct copy of the original proffered by the Debtor and labeled Exhibit 3 and 4 respectively.

32. The DELEHEY DECLARATION is not based upon firsthand knowledge stating “Upon information and belief, each of these endorsements took place by May 9, 2007.”

33. The DELEHEY DECLARATION fails to build the foundational support required pursuant to Fed. R. Evid. Rule 803(6) failing to identify anyone having personal knowledge of the date at which the indorsements took place by. The DELEHEY DECLARATION lays a broad blanket, and is absent any specifics as to who, if anyone, provided what information and/or documents declarant relied upon that formed the basis of the declarant’s (Delehey’s) information and belief.

34. The DELEHEY DECLARATION asserts the investigation continued for a period of 29 days. (See DD ¶ 5).

35. The DELEHEY DECLARATION asserts it received information, in connection with the investigative efforts from representatives of Ocwen Loan Servicing , LLC SunTrust Mortgage, Inc., and Wells Fargo Bank National Association. First, Ocwen Loan Servicing, LLC is not a party in this matter, only being appointed servicer post the foreclosure sale. Second, both Wells Fargo Bank National Association, as “Custodian” of the Records for the RALI Series 2007-QS5 trust (the “Trust”), and SunTrust Mortgage Inc. knew, or should have known, an independent review of the Wilson loan was conducted by PricewaterhouseCoopers, LLP pursuant to the Board of Governors of the Federal Reserve “Consent Order.” However, the DELEHEY DECLARATION makes no mention of the independent review by PricewaterhouseCoopers, LLP.

36. The DELEHEY DECLARATION fails to mention any attempt to contact the indorser Judy Faber acting in the capacity of “Vice President” for Residential Funding LLC. (See DD Exhibit 4)

37. Judy Faber, in her deposition testimony on June 2, 2008, just eleven (11) months after “Upon information and belief, each of these endorsements took place by May 9, 2007” (see DD ¶ 12), states she worked for Residential Funding, LLC for eleven (11) years and that she is the “Director of Records Management, Minnesota site” and never asserts a position of “Vice President” of Residential Funding Company, LLC (See Exhibit L Faber Deposition p. 6)

38. DELEHEY DECLARATION lacks the personal knowledge relevant to the execution date of the three separately identified indorsements stating, “Upon information and belief, each of these endorsements took place by May 9, 2007.”

39. The DELEHEY DECLARATION states, “Wells Fargo, in its capacity as Custodian for the Trust, completed the endorsement for the NOTE (i) from SunTrust Mortgage, Inc. d/b/a Sun America Mortgage to RFC, and (ii) from RFC to Deutsche Bank Trust Company Americas.” (DD ¶ 12) While Wells Fargo may be acting in its capacity as Custodian for the Trust, pursuant to the TRUST Wells Fargo does not possess the authority to complete any indorsement on a Mortgage NOTE. Pursuant to the TRUST the Custodian is only to report such defects or omissions to the Trustee, and the Trustee is to notice RFC. Neither the TRUST or the Assign Agreement grant the Custodian with any authority to complete any indorsement. (See “Exhibit A”) (Also see ¶¶ 2, and 5 through 8 *supra*) Further, the DELEHEY DECLARATION fails to offer any foundation (covenant) within the TRUST documents that grants the Custodian such authority.

40. Facts must be proved through the testimony of the custodian of the records or other qualified witness, though not necessarily the declarant (Fed. R. Evid. Rule 803(6)).

41. The record will not be admissible ... if the source of information or the method or circumstances of preparation indicate a lack of trust-worthiness.

### **DELEHEY DECLARATION IS INADMISSIBLE**

42. First, the DELEHEY DECLARATION fails to comport to the May 1, 2104 Court Order as it is clear the indorsement date(s) alleged in the DELEHEY DECLARATION are only based upon information and belief. (See ¶ 15 and *Fn. 3 supra*, and DELEHEY DECLARATION ¶ 12).

43. Second, the NOTE copy labeled Exhibit 4 evidencing an indorsement by Judy Faber as Vice President for Residential Funding Company, LLC is controverted by the deposition testimony of Ms. Faber on June 8, 2008, wherein Ms. Faber testifies she is the “Director of Records Management, the Minnesota site.” (See Exhibit L, also ¶ 37 *supra*) Wilson objects to this indorsement and the NOTE copy pursuant to Fed. R. Evid. Rules 902(11), 1002 and 1003.

44. Third, the DELEHEY DECLARATION fails to identify; 1) the personnel making verifications, if any; 2) what, documents records/materials were verified, if any; 3) the verifier’s level of qualifications, if any; 4) which members of the Legal Department(s) or “Consulted Parties”, did discussions take place, if any.

45. Fourth, the DELEHEY DECLARATION fails to offer any explanation for the blank indorsement on the NOTE copy proffered with the Scoliard Declaration. (See DD Exhibits 3)

46. Fifth, no explanation is offered for the absence of the Special Indorsement on the NOTE proffered with the Scoliard Declaration that is now the product of the DELEHEY DECLARATION attached thereto and labeled Exhibit 4.

47. Sixth, there is no explanation in the DELEHEY DECLARATION how a NOTE copy in the Scoliard Declaration is missing a required indorsement as set forth in the Assign Agreement. (See ¶ 9 *supra*)

48. Seventh, the DELEHEY DECLARATION fails to offer any reasoning why PricewaterhouseCooper, LLC was not consulted having performed an independent audit of the Wilson mortgage loan file sometime before February 28, 2013 when SunTrust Mortgage, Inc., along with its parent SunTrust Banks, Inc. and SunTrust Bank, entered in to the “AMENDMENT OF CONSENT ORDER” (see ¶¶ 10-13 *supra*). In as much as the DELEHEY DECLARATION asserts SunTrust Mortgage, Inc. was one of the “Consulted Parties” (see DD ¶ 5) it would appear SunTrust Mortgage, Inc. and the Custodian of the TRUST, Wells Fargo Bank National Association, withheld this information from the Declarant.

49. Eighth, the DELEHEY DECLARATION fails to authenticate the “NOTE” attached as Exhibit “4”. Documents, such as that identified as Exhibit “4” in the DELEHEY DECLARATION are hearsay pursuant to F.R.E. Rules 802 and 803(6), unless supported or certificated by a competent declarant pursuant to F.R.E. Rule 902(11).

50. Ninth, the DELEHEY DECLARATION fails to meet the required essentials for admissibility; (1) made at or near the time by, or from information transmitted by, a person with knowledge; (2) made pursuant to a regular practice of the business activity; (3) kept in the course of regularly conducted business activity; and (4) the source, method, or circumstances of preparation must not indicate lack of trustworthiness.<sup>4</sup>

51. Tenth, the DELEHEY DECLARATION completely lacks the “trustworthiness” component and fails to succinctly state the source, method, or circumstances of preparation.

52. Eleventh, a Declarant’s statement, like that of the DELEHEY DECLARATION, is hearsay unless made while testifying at trial. See F.R.E. 801.

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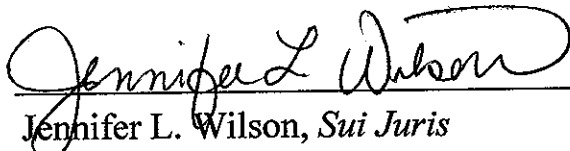
<sup>4</sup> In re: Vee Vinhnee, BAP No. CC-04-1284, Bk. No. LA 03-29549-SB, Adv. No. LA 03-02660-SB, pg. 9 (Dec. 16, 2005).

**CONCLUSION**

The “DECLARATION OF LAUREN GRAHAM DELEHEY, Chief Litigation Counsel for the ResCap Liquidating Trust, IN SUPPORT OF DEBTORS’ MOTION FOR DISMISSAL OF ADVERSARY PROCEEDING PURSUANT TO BANKRUPTCY RULE 7012(b) AND FRCP 12(b)(1) AND 12(b)(6) OR, IN THE ALTERNATIVE, PERMISSIVE ABSTENTION PURSUANT TO 28 U.S.C. §1334(c)(1)” fails to comport to the Federal Rules of Evidence, is strictly hearsay, and lacks the requisite trustworthiness element necessary for admissibility.

Date: June 18, 2014

Respectfully,

A handwritten signature in black ink, appearing to read "Jennifer L. Wilson", is written over a horizontal line.

Jennifer L. Wilson, *Sui Juris*  
4365 School House Commons, 500-251  
Harrisburg, NC 28075  
Ph.: 704-773-1712



**CERTIFICATE OF SERVICE**

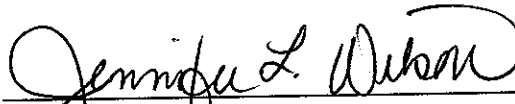
I, Jennifer L. Wilson, plaintiff in the above captioned action, certify:

That on 18<sup>th</sup> day of June 2014, I served a true copy of the “PLAINTIFF’S OBJECTION TO DECLARATION OF LAUREN GRAHAM DELEHEY, Chief Litigation Counsel for the ResCap Liquidating Trust, IN SUPPORT OF DEBTORS’ MOTION FOR DISMISSAL OF ADVERSARY PROCEEDING PURSUANT TO BANKRUPTCY RULE 7012(b) AND FRCP 12(b)(1) AND 12(b)(6) OR, IN THE ALTERNATIVE, PERMISSIVE ABSTENTION PURSUANT TO 28 U.S.C. §1334(c)(1)”; and “MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF’S OBJECTION TO DECLARATION OF LAUREN GRAHAM DELEHEY, Chief Litigation Counsel for the ResCap Liquidating Trust, IN SUPPORT OF DEBTORS’ MOTION FOR DISMISSAL OF ADVERSARY PROCEEDING PURSUANT TO BANKRUPTCY RULE 7012(b) AND FRCP 12(b)(1) AND 12(b)(6) OR, IN THE ALTERNATIVE, PERMISSIVE ABSTENTION PURSUANT TO 28 U.S.C. §1334(c)(1)”, and all attachments thereto.

By email on the following shown in Exhibit A attached hereto and incorporated herein by reference.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on June 18, 2013

  
Jennifer L. Wilson, *Sui Juris*  
4365 School House Commons, 500-251  
Harrisburg, NC 28075  
Ph.: 704-773-1712

# EXHIBIT A

Trustee's security interest in or lien on the Mortgage Loans and any Uncertificated REMIC Regular Interests, as evidenced by an Officers' Certificate of the Company, including without limitation (x) continuation statements, and (y) such other statements as may be occasioned by (1) any change of name of Residential Funding, the Company or the Trustee (such preparation and filing shall be at the expense of the Trustee, if occasioned by a change in the Trustee's name), (2) any change of type or jurisdiction of organization of Residential Funding or the Company, (3) any transfer of any interest of Residential Funding or the Company in any Mortgage Loan or (4) any transfer of any interest of Residential Funding or the Company in any Uncertificated REMIC Regular Interest.

(g) The Master Servicer hereby acknowledges the receipt by it of the Initial Monthly Payment Fund. The Master Servicer shall hold such Initial Monthly Payment Fund in the Custodial Account and shall include such Initial Monthly Payment Fund in the Available Distribution Amount for the Initial Distribution Date. Notwithstanding anything herein to the contrary, the Initial Monthly Payment Fund shall not be an asset of any REMIC. To the extent that the Initial Monthly Payment Fund constitutes a reserve fund for federal income tax purposes, (1) it shall be an outside reserve fund and not an asset of any REMIC, (2) it shall be owned by the Seller and (3) amounts transferred by any REMIC to the Initial Monthly Payment Fund shall be treated as transferred to the Seller or any successor, all within the meaning of Section 1.860G-2(h) of the Treasury Regulations.

(h) The Company agrees that the sale of each Pledged Asset Loan pursuant to this Agreement will also constitute the assignment, sale, setting-over, transfer and conveyance to the Trustee, without recourse (but subject to the Company's covenants, representations and warranties specifically provided herein), of all of the Company's obligations and all of the Company's right, title and interest in, to and under, whether now existing or hereafter acquired as owner of the Mortgage Loan with respect to any and all money, securities, security entitlements, accounts, general intangibles, payment intangibles, instruments, documents, deposit accounts, certificates of deposit, commodities contracts, and other investment property and other property of whatever kind or description consisting of, arising from or related to (i) the Assigned Contracts, (ii) all rights, powers and remedies of the Company as owner of such Mortgage Loan under or in connection with the Assigned Contracts, whether arising under the terms of such Assigned Contracts, by statute, at law or in equity, or otherwise arising out of any default by the Mortgagor under or in connection with the Assigned Contracts, including all rights to exercise any election or option or to make any decision or determination or to give or receive any notice, consent, approval or waiver thereunder, (iii) the Pledged Accounts and all money, securities, security entitlements, accounts, general intangibles, payment intangibles, instruments, documents, deposit accounts, certificates of deposit, commodities contracts, and other investment property and other property of whatever kind or description and all cash and non-cash proceeds of the sale, exchange, or redemption of, and all stock or conversion rights, rights to subscribe, liquidation dividends or preferences, stock dividends, rights to interest, dividends, earnings, income, rents, issues, profits, interest payments or other distributions of cash or other property that secures a Pledged Asset Loan, (iv) all documents, books and records concerning the foregoing (including all computer programs, tapes, disks and related items containing any such information) and (v) all insurance proceeds (including proceeds from the Federal Deposit Insurance Corporation or the Securities Investor Protection Corporation or any other insurance company) of any of the foregoing or replacements thereof or substitutions therefor, proceeds of proceeds and the conversion, voluntary or involuntary, of any thereof. The foregoing transfer, sale, assignment and conveyance does not constitute and is not intended to result in the creation, or an assumption by the Trustee, of any obligation of the Company, or any other person in connection with the Pledged Assets or under any agreement or instrument relating thereto, including any obligation to the Mortgagor, other than as owner of the Mortgage Loan.

#### Section 2.02. Acceptance by Trustee.

The Trustee acknowledges receipt (or, with respect to Mortgage Loans subject to a Custodial Agreement, and based solely upon a receipt or certification executed by the Custodian, receipt by the respective Custodian as the duly appointed agent of the Trustee) of the documents required to be delivered to the Trustee (or the Custodian on behalf of the Trustee) pursuant to Section 2.01(b) above (except that for purposes of such acknowledgement, only, a Mortgage Note may be endorsed in blank) and declares that it, or the Custodian as its agent, holds and will hold such documents and the other documents constituting a part of the Custodial Files delivered to it, or a Custodian as its agent, and the rights of Residential Funding with respect to any Pledged Assets, Additional Collateral and the Surety Bond assigned to the Trustee pursuant to Section 2.01, in trust for the use and benefit of all present and future Certificateholders. The Trustee or Custodian (the Custodian being so obligated under a Custodial Agreement) agrees, for the benefit of Certificateholders, to review each Custodial File delivered to it pursuant to Section 2.01(a) within 45 days after the Closing Date to ascertain that all required documents (specifically as set forth in Section 2.01(b)), have been executed and received, and that such documents relate to the Mortgage Loans identified on the Mortgage Loan Schedule, as supplemented, that have been conveyed to it, and to deliver to the Trustee a certificate (the "Interim Certification") to the effect that all documents required to be delivered pursuant to Section 2.01(a) above have been executed and received and that such documents relate to the Mortgage Loans identified on the Mortgage Loan Schedule, except for any exceptions listed on Schedule A attached to such Interim Certification. Upon delivery of the Custodial Files by the Company or the Master Servicer, the Trustee shall acknowledge receipt (or, with respect to Mortgage Loans subject to a Custodial Agreement, and based solely upon a receipt or certification executed by the Custodian, receipt by the respective Custodian as the duly appointed agent of the Trustee) of the documents referred to in Section 2.01(c) above.

If the Custodian, as the Trustee's agent, finds any document or documents constituting a part of a Custodial File to be missing or defective, the Trustee shall promptly so notify the Master Servicer and the Company. Pursuant to Section 2.3 of the Custodial Agreement, the Custodian will notify the Master Servicer, the Company and the Trustee of any such omission or

defect found by it in respect of any Custodial File held by it in respect of the items reviewed by it pursuant to the Custodial Agreement. If such omission or defect materially and adversely affects the interests of the Certificateholders, the Master Servicer shall promptly notify Residential Funding of such omission or defect and request Residential Funding to correct or cure such omission or defect within 90 days from the date the Master Servicer was notified of such omission or defect and, if Residential Funding does not correct or cure such omission or defect within such period, require Residential Funding to purchase such Mortgage Loan from the Trust Fund at its Purchase Price, within 90 days from the date the Master Servicer was notified of such omission or defect; provided that if the omission or defect would cause the Mortgage Loan to be other than a "qualified mortgage" as defined in Section 860G(a)(3) of the Code, any such cure or repurchase must occur within 90 days from the date such breach was discovered. The Purchase Price for any such Mortgage Loan shall be deposited by the Master Servicer in the Custodial Account maintained by it pursuant to Section 3.07 and, upon receipt by the Trustee of written notification of such deposit signed by a Servicing Officer, the Master Servicer, the Trustee or the Custodian, as the case may be, shall release the contents of any related Mortgage File in its possession to the owner of such Mortgage Loan (or such owner's designee) and the Trustee shall execute and deliver such instruments of transfer or assignment prepared by the Master Servicer, in each case without recourse, as shall be necessary to vest in Residential Funding or its designee any Mortgage Loan released pursuant hereto and thereafter such Mortgage Loan shall not be part of the Trust Fund. It is understood and agreed that the obligation of Residential Funding to cure or purchase any Mortgage Loan as to which a material and adverse defect in or omission of a constituent document exists shall constitute the sole remedy respecting such defect or omission available to Certificateholders or the Trustee on behalf of the Certificateholders.

Section 2.03. Representations, Warranties and Covenants of the Master Servicer and the Company.

- (a) The Master Servicer hereby represents and warrants to the Trustee for the benefit of the Certificateholders that as of the Closing Date:
- (i) The Master Servicer is a limited liability company duly organized, validly existing and in good standing under the laws governing its creation and existence and is or will be in compliance with the laws of each state in which any Mortgaged Property is located to the extent necessary to ensure the enforceability of each Mortgage Loan in accordance with the terms of this Agreement;
  - (ii) The execution and delivery of this Agreement by the Master Servicer and its performance and compliance with the terms of this Agreement will not violate the Master Servicer's Certificate of Formation or Limited Liability Company Agreement or constitute a material default (or an event which, with notice or lapse of time, or both, would constitute a material default) under, or result in the material breach of, any material contract, agreement or other instrument to which the Master Servicer is a party or which may be applicable to the Master Servicer or any of its assets;
  - (iii) This Agreement, assuming due authorization, execution and delivery by the Trustee and the Company, constitutes a valid, legal and binding obligation of the Master Servicer, enforceable against it in accordance with the terms hereof subject to applicable bankruptcy, insolvency, reorganization, moratorium and other laws affecting the enforcement of creditors' rights generally and to general principles of equity, regardless of whether such enforcement is considered in a proceeding in equity or at law;
  - (iv) The Master Servicer is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or governmental agency, which default might have consequences that would materially and adversely affect the condition (financial or other) or operations of the Master Servicer or its properties or might have consequences that would materially adversely affect its performance hereunder;
  - (v) No litigation is pending or, to the best of the Master Servicer's knowledge, threatened against the Master Servicer which would prohibit its entering into this Agreement or performing its obligations under this Agreement;
  - (vi) The Master Servicer will comply in all material respects in the performance of this Agreement with all reasonable rules and requirements of each insurer under each Required Insurance Policy;
  - (vii) No information, certificate of an officer, statement furnished in writing or report delivered to the Company, any Affiliate of the Company or the Trustee by the Master Servicer will, to the knowledge of the Master Servicer, contain any untrue statement of a material fact or omit a material fact necessary to make the information, certificate, statement or report not misleading;
  - (viii) The Master Servicer has examined each existing, and will examine each new, Subservicing Agreement and is or will be familiar with the terms thereof. The terms of each existing Subservicing Agreement and each designated Subservicer are acceptable to the Master Servicer and any new Subservicing Agreements will comply with the provisions of Section 3.02; and
  - (ix) The Master Servicer is a member of MERS in good standing, and will comply in all material respects with the rules and procedures of MERS in connection with the servicing of the Mortgage Loans that are registered with MERS.

It is understood and agreed that the representations and warranties set forth in this Section 2.03(a) shall survive delivery of the respective Custodial Files to the Trustee or the Custodian.

# EXHIBIT B

proposed conveyance, or of assignment of any Mortgage and Mortgage Note in connection with the repurchase of a Mortgage Loan and all other comparable instruments, or with respect to the modification or re-recording of a Mortgage for the purpose of correcting the Mortgage, the subordination of the lien of the Mortgage in favor of a public utility company or government agency or unit with powers of eminent domain, the taking of a deed in lieu of foreclosure, the commencement, prosecution or completion of judicial or non-judicial foreclosure, the conveyance of a Mortgaged Property to the related Insurer, the acquisition of any property acquired by foreclosure or deed in lieu of foreclosure, or the management, marketing and conveyance of any property acquired by foreclosure or deed in lieu of foreclosure with respect to the Mortgage Loans and with respect to the Mortgaged Properties. The Master Servicer further is authorized and empowered by the Trustee, on behalf of the Certificateholders and the Trustee, in its own name or in the name of the Subservicer, when the Master Servicer or the Subservicer, as the case may be, believes it appropriate in its best judgment to register any Mortgage Loan on the MERS(R)System, or cause the removal from the registration of any Mortgage Loan on the MERS(R)System, to execute and deliver, on behalf of the Trustee and the Certificateholders or any of them, any and all instruments of assignment and other comparable instruments with respect to such assignment or re-recording of a Mortgage in the name of MERS, solely as nominee for the Trustee and its successors and assigns. Any expenses incurred in connection with the actions described in the preceding sentence shall be borne by the Master Servicer in accordance with Section 3.16(c), with no right of reimbursement; provided, that if, as a result of MERS discontinuing or becoming unable to continue operations in connection with the MERS System, it becomes necessary to remove any Mortgage Loan from registration on the MERS System and to arrange for the assignment of the related Mortgages to the Trustee, then any related expenses shall be reimbursable to the Master Servicer. Notwithstanding the foregoing, subject to Section 3.07(a), the Master Servicer shall not permit any modification with respect to any Mortgage Loan that would both constitute a sale or exchange of such Mortgage Loan within the meaning of Section 1001 of the Code and any proposed, temporary or final regulations promulgated thereunder (other than in connection with a proposed conveyance or assumption of such Mortgage Loan that is treated as a Principal Prepayment in Full pursuant to Section 3.13(d) hereof) and cause any REMIC formed under the Series Supplement to fail to qualify as a REMIC under the Code. The Trustee shall furnish the Master Servicer with any powers of attorney and other documents necessary or appropriate to enable the Master Servicer to service and administer the Mortgage Loans. The Trustee shall not be liable for any action taken by the Master Servicer or any Subservicer pursuant to such powers of attorney. In servicing and administering any Nonsubserviced Mortgage Loan, the Master Servicer shall, to the extent not inconsistent with this Agreement, comply with the Program Guide as if it were the originator of such Mortgage Loan and had retained the servicing rights and obligations in respect thereof. In connection with servicing and administering the Mortgage Loans, the Master Servicer and any Affiliate of the Master Servicer (i) may perform services such as appraisals and brokerage services that are not customarily provided by servicers of mortgage loans, and shall be entitled to reasonable compensation therefor in accordance with Section 3.10 and (ii) may, at its own discretion and on behalf of the Trustee, obtain credit information in the form of a "credit score" from a credit repository.

(b) All costs incurred by the Master Servicer or by Subservicers in effecting the timely payment of taxes and assessments on the properties subject to the Mortgage Loans shall not, for the purpose of calculating monthly distributions to the Certificateholders, be added to the amount owing under the related Mortgage Loans, notwithstanding that the terms of such Mortgage Loan so permit, and such costs shall be recoverable to the extent permitted by Section 3.10(a)(iii).

(c) The Master Servicer may enter into one or more agreements in connection with the offering of pass-through certificates evidencing interests in one or more of the Certificates providing for the payment by the Master Servicer of amounts received by the Master Servicer as servicing compensation hereunder and required to cover certain Prepayment Interest Shortfalls on the Mortgage Loans, which payment obligation will thereafter be an obligation of the Master Servicer hereunder.

#### Section 3.02. Subservicing Agreements Between Master Servicer and Subservicers; Enforcement of Subservicers' and Sellers' Obligations.

(a) The Master Servicer may continue in effect Subservicing Agreements entered into by Residential Funding and Subservicers prior to the execution and delivery of this Agreement, and may enter into new Subservicing Agreements with Subservicers, for the servicing and administration of all or some of the Mortgage Loans. Each Subservicer of a Mortgage Loan shall be entitled to receive and retain, as provided in the related Subservicing Agreement and in Section 3.07, the related Subservicing Fee from payments of interest received on such Mortgage Loan after payment of all amounts required to be remitted to the Master Servicer in respect of such Mortgage Loan. For any Mortgage Loan that is a Nonsubserviced Mortgage Loan, the Master Servicer shall be entitled to receive and retain an amount equal to the Subservicing Fee from payments of interest. Unless the context otherwise requires, references in this Agreement to actions taken or to be taken by the Master Servicer in servicing the Mortgage Loans include actions taken or to be taken by a Subservicer on behalf of the Master Servicer. Each Subservicing Agreement will be upon such terms and conditions as are generally required or permitted by the Program Guide and are not inconsistent with this Agreement and as the Master Servicer and the Subservicer have agreed. A representative form of Subservicing Agreement is attached hereto as Exhibit E. With the approval of the Master Servicer, a Subservicer may delegate its servicing obligations to third-party servicers, but such Subservicer will remain obligated under the related Subservicing Agreement. The Master Servicer and a Subservicer may enter into amendments thereto or a different form of Subservicing Agreement, and the form referred to or included in the Program Guide is merely provided for information and shall not be deemed to limit in any respect the discretion of the Master Servicer to modify or enter into different Subservicing Agreements; provided, however, that any such amendments or different forms shall be consistent with and not violate the provisions of either this Agreement or the Program Guide in a manner which would materially and adversely affect the interests of the Certificateholders. The Program Guide and any other

Subservicing Agreement entered into between the Master Servicer and any Subservicer shall require the Subservicer to accurately and fully report its borrower credit files to each of the Credit Repositories in a timely manner.

(b) As part of its servicing activities hereunder, the Master Servicer, for the benefit of the Trustee and the Certificateholders, shall use its best reasonable efforts to enforce the obligations of each Subservicer under the related Subservicing Agreement and of each Seller under the related Seller's Agreement insofar as the Company's rights with respect to Seller's obligation has been assigned to the Trustee hereunder, to the extent that the non-performance of any such Seller's obligation would have a material and adverse effect on a Mortgage Loan, including, without limitation, the obligation to purchase a Mortgage Loan on account of defective documentation, as described in Section 2.02, or on account of a breach of a representation or warranty, as described in Section 2.04. Such enforcement, including, without limitation, the legal prosecution of claims, termination of Subservicing Agreements or Seller's Agreements, as appropriate, and the pursuit of other appropriate remedies, shall be in such form and carried out to such an extent and at such time as the Master Servicer would employ in its good faith business judgment and which are normal and usual in its general mortgage servicing activities. The Master Servicer shall pay the costs of such enforcement at its own expense, and shall be reimbursed therefor only (i) from a general recovery resulting from such enforcement to the extent, if any, that such recovery exceeds all amounts due in respect of the related Mortgage Loan or (ii) from a specific recovery of costs, expenses or attorneys fees against the party against whom such enforcement is directed. For purposes of clarification only, the parties agree that the foregoing is not intended to, and does not, limit the ability of the Master Servicer to be reimbursed for expenses that are incurred in connection with the enforcement of a Seller's obligations (insofar as the Company's rights with respect to such Seller's obligations have been assigned to the Trustee hereunder) and are reimbursable pursuant to Section 3.10(a)(viii).

#### Section 3.03. Successor Subservicers.

The Master Servicer shall be entitled to terminate any Subservicing Agreement that may exist in accordance with the terms and conditions of such Subservicing Agreement and without any limitation by virtue of this Agreement; provided, however, that in the event of termination of any Subservicing Agreement by the Master Servicer or the Subservicer, the Master Servicer shall either act as servicer of the related Mortgage Loan or enter into a Subservicing Agreement with a successor Subservicer which will be bound by the terms of the related Subservicing Agreement. If the Master Servicer or any Affiliate of Residential Funding acts as servicer, it will not assume liability for the representations and warranties of the Subservicer which it replaces. If the Master Servicer enters into a Subservicing Agreement with a successor Subservicer, the Master Servicer shall use reasonable efforts to have the successor Subservicer assume liability for the representations and warranties made by the terminated Subservicer in respect of the related Mortgage Loans and, in the event of any such assumption by the successor Subservicer, the Master Servicer may, in the exercise of its business judgment, release the terminated Subservicer from liability for such representations and warranties.

#### Section 3.04. Liability of the Master Servicer.

Notwithstanding any Subservicing Agreement, any of the provisions of this Agreement relating to agreements or arrangements between the Master Servicer or a Subservicer or reference to actions taken through a Subservicer or otherwise, the Master Servicer shall remain obligated and liable to the Trustee and the Certificateholders for the servicing and administering of the Mortgage Loans in accordance with the provisions of Section 3.01 without diminution of such obligation or liability by virtue of such Subservicing Agreements or arrangements or by virtue of indemnification from the Subservicer or the Company and to the same extent and under the same terms and conditions as if the Master Servicer alone were servicing and administering the Mortgage Loans. The Master Servicer shall be entitled to enter into any agreement with a Subservicer or Seller for indemnification of the Master Servicer and nothing contained in this Agreement shall be deemed to limit or modify such indemnification.

#### Section 3.05. No Contractual Relationship Between Subservicer and Trustee or Certificateholders.

Any Subservicing Agreement that may be entered into and any other transactions or services relating to the Mortgage Loans involving a Subservicer in its capacity as such and not as an originator shall be deemed to be between the Subservicer and the Master Servicer alone and the Trustee and the Certificateholders shall not be deemed parties thereto and shall have no claims, rights, obligations, duties or liabilities with respect to the Subservicer in its capacity as such except as set forth in Section 3.06. The foregoing provision shall not in any way limit a Subservicer's obligation to cure an omission or defect or to repurchase a Mortgage Loan as referred to in Section 2.02 hereof.

#### Section 3.06. Assumption or Termination of Subservicing Agreements by Trustee.

(a) If the Master Servicer shall for any reason no longer be the master servicer (including by reason of an Event of Default), the Trustee, its designee or its successor shall thereupon assume all of the rights and obligations of the Master Servicer under each Subservicing Agreement that may have been entered into. The Trustee, its designee or the successor servicer for the Trustee shall be deemed to have assumed all of the Master Servicer's interest therein and to have replaced the Master Servicer as a party to the Subservicing Agreement to the same extent as if the Subservicing Agreement had been assigned to the assuming party except that the Master Servicer shall not thereby be relieved of any liability or obligations under the Subservicing Agreement.

(b) The Master Servicer shall, upon request of the Trustee but at the expense of the

# EXHIBIT C



A-P Certificates and Class A-V Certificates, and thus do not reflect the return on any investment in the Class Certificates and Class A-V Certificates when any reinvestment rates other than the discount rates are considered.

Notwithstanding the assumed prepayment rates reflected in the preceding tables, it is highly unlikely that mortgage loans will be prepaid according to one particular pattern. For this reason, and because the timing of cash flows is critical to determining yields, the pre-tax yields to maturity on the Class A-P Certificates and Class Certificates are likely to differ from those shown in the tables, even if all of the mortgage loans prepay at constant percentages of PSA indicated in the tables above over any given time period or over the entire life of certificates.

A lower than anticipated rate of principal prepayments on the Discount Mortgage Loans will have a material adverse effect on the pre-tax yield to maturity of the Class A-P Certificates. The rate and timing of principal prepayments on the Discount Mortgage Loans may differ from the rate and timing of principal prepayments on the mortgage pool. In addition, because the Discount Mortgage Loans have Net Mortgage Rates that are lower than the Net Mortgage Rates of Non-Discount Mortgage Loans, and because mortgage loans with lower Net Mortgage Rates are likely to have lower mortgage rates, the Discount Mortgage Loans are likely to prepay under most circumstances at a lower rate than the Non-Discount Mortgage Loans. In addition, holders of the Class A-V Certificates in most cases have rights to relatively large portions of interest payments on mortgage loans with higher mortgage rates; thus, the yield on the Class A-V Certificates will be materially adversely affected to a greater extent than on the other certificates if the mortgage loans with higher mortgage rates prepay faster than the mortgage loans with lower mortgage rates. Because mortgage loans with higher pool strip rates usually have higher mortgage rates, these mortgage loans are more likely to be prepaid under circumstances than are mortgage loans having lower pool strip rates.

There can be no assurance that the mortgage loans will prepay at any particular rate or that the pre-tax yields on the Class A-P Certificates and Class A-V Certificates will conform to the yields described in this prospectus supplement. Moreover, the various remaining terms to maturity and mortgage rates of the mortgage loans could prepay slower or faster principal distributions than indicated in the preceding table at the various constant percentages of specified, even if the weighted average remaining term to maturity and weighted average mortgage rate of the mortgage loans are as assumed. Investors are urged to make their investment decisions based on their determinations as to anticipated rates of prepayment under a variety of scenarios. Investors in the Class A-V Certificates should fully consider the risk that a rapid rate of prepayments on the mortgage loans could result in the failure of those investors to fully recover their investments.

For additional considerations relating to the yields on the certificates, see "Yield Considerations" and "Maturity and Prepayment Considerations" in the prospectus.

#### Pooling and Servicing Agreement

##### General

The certificates were issued under a series supplement, dated as of March 1, 2007, to the standard terms of pool and servicing agreement, dated as of December 1, 2006, together referred to as the pooling and servicing agreement, as the depositor, the master servicer, and Deutsche Bank Trust Company Americas, as trustee. Reference is made to prospectus for important information in addition to that described herein regarding the terms and conditions of pooling and servicing agreement and the offered certificates. The trustee, or any of its affiliates, in its individual capacity or any other capacity, may become the owner or pledgee of the certificates with the same rights as it would have if it were not trustee.

The offered certificates are transferable and exchangeable at the corporate trust office of the trustee, which serves as certificate registrar and paying agent. The depositor will provide a prospective or actual certificateholder with charge, on written request, a copy, without exhibits, of the pooling and servicing agreement. Requests should be addressed to the President, Residential Accredited Loans, Inc., 8400 Normandale Lake Boulevard, Suite 250, Minneapolis, Minnesota 55437.

In addition to the circumstances described in the prospectus, the depositor may terminate the trustee for cause under specified circumstances. See "The Pooling and Servicing Agreement-The Trustee" in the prospectus.

##### Custodial Arrangements

The trustee has been directed to appoint Wells Fargo Bank, N.A., to serve as custodian of the mortgage loans. The custodian is not an affiliate of the depositor, the master servicer or the sponsor. No servicer will have custodial responsibility for the mortgage notes. Residential Funding was required to deliver only the notes to the custodian. Mortgage notes (and any contents of a mortgage loan file delivered to the custodian) may be maintained in vaults at the premises of the sponsor or an affiliate of the sponsor. If these documents are maintained at the premises of the sponsor or an affiliate, then only the custodian will have access to the vaults, and a shelving and filing system segregates files relating to the mortgage loans from other assets serviced by the sponsor.

Wells Fargo is acting as custodian of the mortgage loan files pursuant to the custodial agreement. In its capacity, Wells Fargo is responsible to hold and safeguard the mortgage notes and other contents of the mortgage files on behalf of the trustee and the certificateholders. Wells Fargo maintains each mortgage loan file in a separate file folder marked with a unique bar code to assure loan-level file integrity and to assist in inventory management. Files are segregated by transaction or investor. Wells Fargo has been engaged in the mortgage document custody business for more than 25 years. Wells Fargo maintains document custody facilities in its Minneapolis, Minnesota headquarters and three regional offices located in Richfield, Minnesota, Irvine, California, and Salt Lake City, Utah. As of June 30, 2007, Wells Fargo maintains mortgage custody vaults in each of those locations with an aggregate capacity of over eleven million files.

##### The Master Servicer and Subservicers

Master Servicer. The master servicer, an affiliate of the depositor, will be responsible for master servicing mortgage loans. Master servicing responsibilities include:

- o receiving funds from subservicers;
- o reconciling servicing activity with respect to the mortgage loans;
- o calculating remittance amounts to certificateholders;

- o sending remittances to the trustee for distributions to certificateholders;
- o investor and tax reporting;
- o coordinating loan repurchases;
- o oversight of all servicing activity, including subservicers;
- o following up with subservicers with respect to mortgage loans that are delinquent or for which service decisions may need to be made;
- o approval of loss mitigation strategies;
- o management and liquidation of mortgaged properties acquired by foreclosure or deed in lieu of foreclosure; and
- o providing certain notices and other responsibilities as detailed in the pooling and servicing agreement.

The master servicer may, from time to time, outsource certain of its servicing functions, such as foreclosure management, although any such outsourcing will not relieve the master servicer of any of its responsibilities or liabilities under the pooling and servicing agreement.

For a general description of the master servicer and its activities, see "Sponsor and Master Servicer" in the prospectus supplement. See "The Pooling and Servicing Agreement- Rights Upon Event of Default" and "Certain Other Matters Regarding Servicing" in the prospectus for a discussion of material removal, replacement, resignation and transfer provisions relating to the master servicer.

**Subservicer Responsibilities.** Subservicers are generally responsible for the following duties:

- o communicating with borrowers;
- o sending monthly remittance statements to borrowers;
- o collecting payments from borrowers;
- o recommending a loss mitigation strategy for borrowers who have defaulted on their loans (i.e. repayment plan, modification, foreclosure, etc.);
- o accurate and timely accounting, reporting and remittance of the principal and interest portions of monthly installment payments to the master servicer, together with any other sums paid by borrowers that are required to be remitted;
- o accurate and timely accounting and administration of escrow and impound accounts, if applicable;
- o accurate and timely reporting of negative amortization amounts, if any;
- o paying escrows for borrowers, if applicable;
- o calculating and reporting payoffs and liquidations;
- o maintaining an individual file for each loan; and
- o maintaining primary mortgage insurance commitments or certificates if required, and filing any primary mortgage insurance claims.

GMAC Mortgage, LLC. GMAC Mortgage, LLC ("GMACM") will subservice approximately 72.4% by aggregate principal balance of the mortgage loans as of the reference date. GMACM is a Delaware limited liability company and a wholly-owned subsidiary of GMAC Residential Holding Company, LLC, which is a wholly-owned subsidiary of Residential Capital, ("ResCap"). ResCap is a Delaware limited liability company and a wholly-owned subsidiary of GMAC Mortgage Group, LLC, which is a wholly-owned subsidiary of GMAC LLC. On August 24, 2007, Fitch Ratings reduced GMACM's residential primary subservicer rating and residential primary servicer rating for Alt-A product from RPS1 to RPS1- and placed the servicer ratings on Rating Watch Negative.

ResCap, which owns indirectly all of the equity of both Homecomings Financial, LLC ("Homecomings") and GMACM, restructured the operations of Homecomings and GMACM. As a result of such restructuring, on September 24, 2007, Homecomings transferred its servicing platform and certain employees responsible for the servicing function to its affiliate GMACM.

Subsequent to the transfer of the servicing platform and employees from Homecomings to GMACM, in addition to mortgage loans owned by the issuing entity which were previously serviced by GMACM, GMACM will subservice the mortgage loans owned by the issuing entity which were previously serviced by Homecomings, and Homecomings will no longer subservice any of the mortgage loans. In addition GMACM will be servicing all of the GMACM and Homecomings servicing portfolios, which will consist of the aggregate of the amounts set forth below under the headings "GMAC Mortgage, Primary Servicing Portfolio" and "Homecomings Financial, LLC Servicing Portfolio."

GMACM began acquiring, originating and servicing residential mortgage loans in 1985 through its acquisition of Colonial Mortgage Service Company, which was formed in 1926, and the loan administration, servicing operations portfolio of Norwest Mortgage, which entered the residential mortgage loan business in 1906. These businesses formed the original basis of what is now GMACM.

GMACM maintains its executive and principal offices at 1100 Virginia Drive, Fort Washington, Pennsylvania 19034. Telephone number is (215) 734-5000.

In addition, GMACM purchases mortgage loans originated by GMAC Bank, which is wholly-owned by IB Finance Hold Company, LLC, a subsidiary of ResCap and GMAC LLC, and which is an affiliate of GMACM. Formerly known as GMAC Automot Bank, GMAC Bank, a Utah industrial bank, was organized in 2001. As of November 22, 2006, GMAC Bank became the successor to substantially all of the assets and liabilities of GMAC Bank, a federal savings bank.

GMACM generally retains the servicing rights with respect to loans it sells or securitizes, and also occasionally purchases mortgage servicing rights from other servicers or acts as a subservicer of mortgage loans (and does not own the corresponding mortgage servicing right asset).

As of the six months ended June 30, 2007, GMACM acted as primary servicer and owned the corresponding servicing rights on approximately 2,271,474 of residential mortgage loans having an aggregate unpaid principal balance of approximately \$284 billion, and GMACM acted as subservicer (and did not own the corresponding servicing rights) on approximately 334,864 loans having an aggregate unpaid principal balance of over \$70.5 billion.

The following table sets forth the dollar amount of mortgage loans serviced by GMACM for the periods indicated, and the number of such loans for the same period. GMACM was the servicer of a residential mortgage loan portfolio of approximately \$150.4 billion, \$12.5 billion, \$21.2 billion and \$6.7 billion during the year ended December 31, 2006, 2005, 2004 and 2003, respectively. GMACM was the servicer of a residential mortgage loan portfolio of approximately \$211.5 billion, \$32.0 billion, \$18.2 billion and \$22.8 billion during the six months ended June 30, 2007, 2006, 2005 and 2004, respectively. GMACM was the servicer of a residential mortgage loan portfolio of approximately \$211.5 billion, \$32.0 billion, \$18.2 billion and \$22.8 billion during the six months ended June 30, 2007, 2006, 2005 and 2004, respectively. GMACM was the servicer of a residential mortgage loan portfolio of approximately \$211.5 billion, \$32.0 billion, \$18.2 billion and \$22.8 billion during the six months ended June 30, 2007, 2006, 2005 and 2004, respectively.

# EXHIBIT D

Amount and (b) the related Discount Fraction of the aggregate amount of unscheduled collections described in clauses (B) and (C) above over (i.i) the amount calculated pursuant to clause (F) above.

**Class A-V Certificate:** Any one of the Certificates designated as a Class A-V Certificate, including any Subclass thereof.

**Class B Certificate:** Any one of the Certificates designated as a Class B-1 Certificate, Class B-2 Certificate or Class B-3 Certificate.

**Class M Certificate:** Any one of the Certificates designated as a Class M-1 Certificate, Class M-2 Certificate or Class M-3 Certificate.

**Class P Certificate:** Any one of the Certificates designated as a Class P Certificate.

**Class SB Certificate:** Any one of the Certificates designated as a Class SB Certificate.

**Class X Certificate:** Any one of the Certificates designated as a Class X Certificate.

**Closing Date:** As defined in the Series Supplement.

**Code:** The Internal Revenue Code of 1956, as amended.

**Combined Collateral LLC:** Combined Collateral LLC, a Delaware limited liability company.

**Commission:** The Securities and Exchange Commission.

**Compensating Interest:** With respect to any Distribution Date, an amount equal to Prepayment Interest Shortfalls resulting from Principal Prepayments in Full during the related Prepayment Period and Curtailments during the prior calendar month and included in the Available Distribution Amount for such Distribution Date, but not more than the lesser of (a) one-twelfth of 0.125% of the Stated Principal Balance of the Mortgage Loans immediately preceding such Distribution Date and (b) the sum of the Servicing Fee and all income and gain on amounts held in the Custodial Account and the Certificate Account and payable to the Certificateholders with respect to such Distribution Date; provided that for purposes of this definition the amount of the Servicing Fee will not be reduced pursuant to Section 7.02(a) except as may be required pursuant to the last sentence of such Section.

**Compliance With Laws Representation:** The following representation and warranty (or any representation and warranty that is substantially similar) made by Residential Funding in Section 4 of Assignment Agreement: "Each Mortgage Loan at the time it was made complied in all material respects with applicable local, state, and federal laws, including, but not limited to, all applicable anti-predatory lending laws".

**Cooperative:** A private, cooperative housing corporation which owns or leases land and all or part of a building or buildings, including apartments, spaces used for commercial purposes and common areas therein and whose board of directors authorizes, among other things, the sale of Cooperative Stock.

**Cooperative Apartment:** A dwelling unit in a multi-dwelling building owned or leased by a Cooperative, which unit the Mortgagor has an exclusive right to occupy pursuant to the terms of a proprietary lease or occupancy agreement.

**Cooperative Lease:** With respect to a Cooperative Loan, the proprietary lease or occupancy agreement with respect to the Cooperative Apartment occupied by the Mortgagor and relating to the related Cooperative Stock, which lease or agreement confers an exclusive right to the holder of such Cooperative Stock to occupy such apartment.

**Cooperative Loans:** Any of the Mortgage Loans made in respect of a Cooperative Apartment, evidenced by a Mortgage Note and secured by (i) a Security Agreement, (ii) the related Cooperative Stock Certificate, (iii) an assignment of the Cooperative Lease, (iv) financing statements and (v) a stock power (or other similar instrument), and ancillary thereto, a recognition agreement between the Cooperative and the originator of the Cooperative Loan, each of which was transferred and assigned to the Trustee pursuant to Section 2.01 and are from time to time held as part of the Trust Fund.

**Cooperative Stock:** With respect to a Cooperative Loan, the single outstanding class of stock, partnership interest or other ownership instrument in the related Cooperative.

**Cooperative Stock Certificate:** With respect to a Cooperative Loan, the stock certificate or other instrument evidencing the related Cooperative Stock.

**Credit Repository:** Equifax, Transunion and Experian, or their successors in interest.

**Credit Support Depletion Date:** The first Distribution Date on which the Certificate Principal Balances of the Subordinate Certificates have been reduced to zero.

**Credit Support Pledge Agreement:** The Credit Support Pledge Agreement, dated as of November 24, 1998, among the Master Servicer, GMAC Mortgage, LLC, Combined Collateral LLC and The First National Bank of Chicago (now known as Bank One, National Association), as custodian.

**Cumulative Insurance Payments:** As defined in the Series Supplement.

# EXHIBIT E

and purchases of Mortgage Loans that the Master Servicer has deemed to have been received in the preceding month in accordance with Section 3.07(b); and Principal Prepayments in Full made after the related Prepayment Period, and (ii) payments which represent early receipt of scheduled payments of principal and interest due on a date or dates subsequent to the related Due Date.

**Appraised Value:** As to any Mortgaged Property, the lesser of (i) the appraised value of such Mortgaged Property based upon the appraisal made at the time of the origination of the related Mortgage Loan, and (ii) the sales price of the Mortgaged Property at such time of origination, except in the case of a Mortgaged Property securing a refinanced or modified Mortgage Loan as to which it is either the appraised value determined above or the appraised value determined in an appraisal at the time of refinancing or modification, as the case may be.

**Assigned Contracts:** With respect to any Pledged Asset Loan: the Credit Support Pledge Agreement; the Funding and Pledge Agreement, among GMAC Mortgage, LLC, National Financial Services Corporation and the Mortgagor or other person pledging the related Pledged Assets; the Additional Collateral Agreement, between GMAC Mortgage, LLC and the Mortgagor or other person pledging the related Pledged Assets; or such other contracts as may be set forth in the Series Supplement.

**Assignment:** An assignment of the Mortgage, notice of transfer or equivalent instrument, in recordable form, sufficient under the laws of the jurisdiction wherein the related Mortgaged Property is located to reflect of record the sale of the Mortgage Loan to the Trustee for the benefit of Certificateholders, which assignment, notice of transfer or equivalent instrument may be in the form of one or more blanket assignments covering Mortgages secured by Mortgaged Properties located in the same county, if permitted by law and accompanied by an Opinion of Counsel to that effect.

**Assignment Agreement:** The Assignment and Assumption Agreement, dated the Closing Date, between Residential Funding and the Company relating to the transfer and assignment of the Mortgage Loans.

**Assignment Agreement and Amendment of Security Instrument:** With respect to a Sharia Mortgage Loan, the agreement between the consumer and the co-owner pursuant to which all of the co-owner's interest as a beneficiary under the related Sharia Mortgage Loan Security Instrument and the co-owner's interest in the related Mortgaged Property is conveyed to a subsequent owner, which may take the form of an "Assignment Agreement" and an "Amendment of Security Instrument" or an "Assignment Agreement and Amendment of Security Instrument", as applicable.

**Assignment of Proprietary Lease:** With respect to a Cooperative Loan, the assignment of the related Cooperative Lease from the Mortgagor to the originator of the Cooperative Loan.

**Available Distribution Amount:** As to any Distribution Date and, with respect to any Mortgage Pool comprised of two or more Loan Groups, each Loan Group, an amount equal to (a) the sum of (i) the amount relating to the Mortgage Loans on deposit in the Custodial Account as of the close of business on the immediately preceding Determination Date, including any Subsequent Recoveries, and amounts deposited in the Custodial Account in connection with the substitution of Qualified Substitute Mortgage Loans, (ii) the amount of any Advance Made on the immediately preceding Certificate Account Deposit Date, (iii) any amount deposited in the Certificate Account on the related Certificate Account Deposit Date pursuant to the second paragraph of Section 3.12(a), (iv) any amount deposited in the Certificate Account pursuant to Section 4.07 or Section 5.01, (v) any amount that the Master Servicer is not permitted to withdraw from the Custodial Account or the Certificate Account pursuant to Section 3.16(e), (vi) any amount received by the Trustee pursuant to the Surety Bond in respect of such Distribution Date and (vii) the proceeds of any Pledged Assets received by the Master Servicer, reduced by (b) the sum as of the close of business on the immediately preceding Determination Date of (w) aggregate Foreclosure Profits, (x) the Amount Held for Future Distribution, and (y) amounts permitted to be withdrawn by the Master Servicer from the Custodial Account in respect of the Mortgage Loans pursuant to clauses (ii)-(x), inclusive, of Section 3.10(a). Such amount shall be determined separately for each Loan Group. Additionally, with respect to any Mortgage Pool that is comprised of two or more Loan Groups, if on any Distribution Date Compensating Interest provided pursuant to this Section 3.16(e) is less than Prepayment Interest Shortfalls incurred on the Mortgage Loans in connection with Principal Prepayments in Full and Curtailments made in the prior calendar month, such Compensating Interest shall be allocated on such Distribution Date to the Available Distribution Amount for each Loan Group on a pro rata basis in accordance with the respective amounts of such Prepayment Interest Shortfalls incurred on the Mortgage Loans in such Loan Group in respect of such Distribution Date.

**Bankruptcy Code:** The Bankruptcy Code of 1978, as amended.

**Bankruptcy Loss:** With respect to any Mortgage Loan, a Deficient Valuation or Debt Service Reduction; provided, however, that neither a Deficient Valuation nor a Debt Service Reduction shall be deemed a Bankruptcy Loss hereunder so long as the Master Servicer has notified the Trustee in writing that the Master Servicer is diligently pursuing any remedies that may exist in connection with the representations and warranties made regarding the related Mortgage Loan and either (A) the related Mortgage Loan is not in default with regard to payments due thereunder or (B) delinquent payments of principal and interest under the related Mortgage Loan and any premiums on any applicable primary hazard insurance policy and any related escrow payments in respect of such Mortgage Loan are being advanced on a current basis by the Master Servicer or a Subservicer, in either case without giving effect to any Debt Service Reduction.

**Book-Entry Certificate:** Any Certificate registered in the name of the Depository or

# EXHIBIT F

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## ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT, dated March 29, 2007, between Residential Funding Company, LLC, a Delaware corporation ("RFC"), and Residential Accredit Loans, Inc., a Delaware corporation (the "Company").

## Recitals

A. RFC has entered into contracts ("Seller Contracts") with various seller/servicers, pursuant to which such seller/servicers sell to RFC mortgage loans.

B. The Company wishes to purchase from RFC certain Mortgage Loans (as hereinafter defined) sold to RFC pursuant to the Seller Contracts.

C. The Company, RFC, as master servicer, and Deutsche Bank Trust Company Americas, as trustee (the "Trustee"), are entering into a Series Supplement, dated as of March 1, 2007 (the "Series Supplement"), and the Standard Terms of Pooling and Servicing Agreement, dated as of December 1, 2006 (collectively, the "Pooling and Servicing Agreement"), pursuant to which the Company proposes to issue Mortgage Asset-Backed Pass-Through Certificates, Series 2007-QS5 (the "Certificates") consisting of nineteen classes designated as Class A-1, Class A-2, Class A-3, Class A-4, Class A-5, Class A-6, Class A-7, Class A-8, Class A-9, Class A-10, Class A-11, Class A-12, Class A-13, Class A-14, Class P, Class A-P, Class A-V, Class R-I and Class R-II Certificates; and six classes designated as Class M-1, Class M-2, Class M-3 (collectively the "Class M Certificates"), Class B-1, Class B-2 and Class B-3 Certificates (collectively the "Class B Certificates") representing beneficial ownership interests in a trust fund consisting primarily of a pool of Mortgage Loans identified in Exhibit One to the Series Supplement (the "Mortgage Loans").

D. In connection with the purchase of the Mortgage Loans, the Company will assign to RFC the Class P Certificates, Class A-P Certificates, Class A-V Certificates, Class M Certificates, Class B Certificates and a de minimis portion of each of the Class R-I and Class R-II Certificates.

E. In connection with the purchase of the Mortgage Loans and the issuance of the Certificates, RFC wishes to make certain representations and warranties to the Company.

F. The Company and RFC intend that the conveyance by RFC to the Company of all its right, title and interest in and to the Mortgage Loans pursuant to this Agreement shall constitute a purchase and sale and not a loan.

NOW THEREFORE, in consideration of the recitals and the mutual promises herein and other good and valuable consideration, the parties agree as follows:

1. All capitalized terms used but not defined herein shall have the meanings assigned thereto in the Pooling and Servicing Agreement.

2. Concurrently with the execution and delivery hereof, RFC hereby assigns to the Company without recourse all of its right, title and interest in and to the Mortgage Loans, including all interest and principal, and with respect to the Sharia Mortgage Loans, all amounts in respect of profit payments and acquisition payments, received on or with respect to the Mortgage Loans after March 1, 2006 (other than payments of principal and interest, and with respect to the Sharia Mortgage Loans, all amounts in respect of profit payments and acquisition payments due on the Mortgage Loans on or before March 31, 2007). In



consideration of such assignment, RFC or its agent will receive from the Company in immediately available funds an amount equal to \$406,269,062.52, the Class P Certificates, Class M Certificates, Class B Certificates, the Class A-P Certificates, the Class A-V Certificates and a de minimis portion of each of the Class R-I and Class R-II Certificates. In connection with such assignment and at the Company's direction, RFC has in respect of each Mortgage Loan endorsed the related Mortgage Note (other than any Destroyed Mortgage Note) to the order of the Trustee and delivered an assignment of mortgage or security instrument, as applicable, in recordable form to the Trustee or its agent.

RFC and the Company agree that the sale of each Pledged Asset Loan pursuant to this Agreement will also constitute the assignment, sale, setting-over, transfer and conveyance to the Company, without recourse (but subject to RFC's covenants, representations and warranties specifically provided herein), of all of RFC's obligations and all of RFC's right, title and interest in, to and under, whether now existing or hereafter acquired as owner of such Pledged Asset Loan with respect to any and all money, securities, security entitlements, accounts, general intangibles, payment intangibles, instruments, documents, deposit accounts, certificates of deposit, commodities contracts, and other investment property and other property of whatever kind or description consisting of, arising from or related, (i) the Credit Support Pledge Agreement, the Funding and Pledge Agreement among the Mortgagor or other Person pledging the related Pledged Assets (the "Customer"), Combined Collateral LLC and National Financial Services Corporation, and the Additional Collateral Agreement between GMAC Mortgage, LLC and the Customer (collectively, the "Assigned Contracts"), (ii) all rights, powers and remedies of RFC as owner of such Pledged Asset Loan under or in connection with the Assigned Contracts, whether arising under the terms of such Assigned Contracts, by statute, at law or in equity, or otherwise arising out of any default by the Mortgagor under or in connection with the Assigned Contracts, including all rights to exercise any election or option or to make any decision or determination or to give or receive any notice, consent, approval or waiver thereunder, (iii) the Pledged Amounts and all money, securities, security entitlements, accounts, general intangibles, payment intangibles, instruments, documents, deposit accounts, certificates of deposit, commodities contracts, and other investment property and other property of whatever kind or description and all cash and non-cash proceeds of the sale, exchange, or redemption of, and all stock or conversion rights, rights to subscribe, liquidation dividends or preferences, stock dividends, rights to interest, dividends, earnings, income, rents, issues, profits, interest payments or other distributions of cash or other property that secures a Pledged Asset Loan, (iv) all documents, books and records concerning the foregoing (including all computer programs, tapes, disks and related items containing any such information) and (v) all insurance proceeds (including proceeds from the Federal Deposit Insurance Corporation or the Securities Investor Protection Corporation or any other insurance company) of any of the foregoing or replacements thereof or substitutions therefor, proceeds of proceeds and the conversion, voluntary or involuntary, of any thereof. The foregoing transfer, sale, assignment and conveyance does not constitute and is not intended to result in the creation, or an assumption by the Company, of any obligation of RFC, or any other Person in connection with the Pledged Assets or under any agreement or instrument relating thereto, including any obligation to the Mortgagor, other than as owner of the Pledged Asset Loan.

The Company and RFC intend that the conveyance by RFC to the Company of all its right, title and interest in and to the Mortgage Loans pursuant to this Section 2 shall be, and be construed as, a sale of the Mortgage Loans by RFC to the Company. It is, further, not intended that such conveyance be

deemed to be a pledge of the Mortgage Loans by RFC to the Company to secure a debt or other obligation of RFC. Nonetheless, (a) this Agreement is intended to be and hereby is a security agreement within the meaning of Articles 8 and 9 of the Minnesota Uniform Commercial Code and the Uniform Commercial Code of any other applicable jurisdiction; (b) the conveyance provided for in this Section shall be deemed to be, and hereby is, a grant by RFC to the Company of a security interest in all of RFC's right, title and interest, whether now owned or hereafter acquired, in and to any and all general intangibles, payment intangibles, accounts, chattel paper, instruments, documents, money, deposit accounts, certificates of deposit, goods, letters of credit, advices of credit and investment property consisting of, arising from or relating to any of the following: (A) the Mortgage Loans, including (i) with respect to each Cooperative Loan, the related Mortgage Note, Security Agreement, Assignment of Proprietary Lease, Cooperative Stock Certificate, Cooperative Lease, any insurance policies and all other documents in the related Mortgage File, (ii) with respect to each Sharia Mortgage Loan, the related Sharia Mortgage Loan Security Instrument, Sharia Mortgage Loan Co-Ownership Agreement, Obligation to Pay, Assignment Agreement and Amendment of Security Instrument, any insurance policies and all other documents in the related Mortgage File and (iii) with respect to each Mortgage Loan other than a Cooperative Loan or a Sharia Mortgage Loan, the related Mortgage Note, the Mortgage, any insurance policies and all other documents in the related Mortgage File, (B) all monies due or to become due pursuant to the Mortgage Loans in accordance with the terms thereof and (C) all proceeds of the conversion, voluntary or involuntary, of the foregoing into cash, instruments, securities or other property, including without limitation all amounts from time to time held or invested in the Certificate Account or the Custodial Account, whether in the form of cash, instruments, securities or other property; (c) the possession by the Trustee, the Custodian or any other agent of the Trustee of Mortgage Notes or such other items of property as constitute instruments, money, payment intangibles, negotiable documents, goods, deposit accounts, letters of credit, advices of credit, investment property or chattel paper shall be deemed to be "possession by the secured party," or possession by a purchaser or a person designated by such secured party, for purposes of perfecting the security interest pursuant to the Minnesota Uniform Commercial Code and the Uniform Commercial Code of any other applicable jurisdiction (including, without limitation, Sections 8-106, 9-313 and 9-106 thereof); and (d) notifications to persons holding such property, and acknowledgments, receipts or confirmations from persons holding such property, shall be deemed notifications to, or acknowledgments, receipts or confirmations from, securities intermediaries, bailees or agents of, or persons holding for, (as applicable) the Trustee for the purpose of perfecting such security interest under applicable law. RFC shall, to the extent consistent with this Agreement, take such reasonable actions as may be necessary to ensure that, if this Agreement were determined to create a security interest in the Mortgage Loans and the other property described above, such security interest would be determined to be a perfected security interest of first priority under applicable law and will be maintained as such throughout the term of this Agreement. Without limiting the generality of the foregoing, RFC shall prepare and deliver to the Company not less than 15 days prior to any filing date, and the Company shall file, or shall cause to be filed, at the expense of RFC, all filings necessary to maintain the effectiveness of any original filings necessary under the Uniform Commercial Code as in effect in any jurisdiction to perfect the Company's security interest in or lien on the Mortgage Loans, including without limitation (x) continuation statements, and (y) such other statements as may be occasioned by (1) any change of name of RFC or the Company, (2) any change of

location of the state of formation, place of business or the chief executive office of RFC, or (3) any transfer of any interest of RFC in any Mortgage Loan.

Notwithstanding the foregoing, (i) the Master Servicer shall retain all servicing rights (including, without limitation, primary servicing and master servicing) relating to or arising out of the Mortgage Loans, and all rights to receive servicing fees, servicing income and other payments made as compensation for such servicing granted to it under the Pooling and Servicing Agreement pursuant to the terms and conditions set forth therein (collectively, the "Servicing Rights") and (ii) the Servicing Rights are not included in the collateral in which RFC grants a security interest pursuant to the immediately preceding paragraph.

3. Concurrently with the execution and delivery hereof, the Company hereby assigns to RFC without recourse all of its right, title and interest in and to the Class P Certificates, Class M Certificates, Class B Certificates, the Class A-P Certificates, the Class A-V Certificates and a de minimis portion of each of the Class R-I and Class R-II Certificates as part of the consideration payable to RFC by the Company pursuant to this Agreement.

4. RFC represents and warrants to the Company that on the date of execution hereof (or, if otherwise specified below, as of the date so specified):

(a) The information set forth in Exhibit One to the Series Supplement with respect to each Mortgage Loan or the Mortgage Loans, as the case may be, is true and correct in all material respects, at the date or dates respecting which such information is furnished;

(b) Each Mortgage Loan is required to be covered by a standard hazard insurance policy. Except in the case of approximately 0.1% of the aggregate principal balance of the Mortgage Loans, each Mortgage Loan with a Loan-to-Value Ratio at origination in excess of 80% will be insured by a Primary Insurance Policy covering at least 35% of the principal balance of the Mortgage Loan at origination if the Loan-to-Value Ratio is between 100.00% and 95.01%, at least 30% of the principal balance of the Mortgage Loan at origination if the Loan-to-Value Ratio is between 95.00% and 90.01%, at least 25% of the balance if the Loan-to-Value Ratio is between 90.00% and 85.01% and at least 12% of the balance if the Loan-to-Value Ratio is between 85.00% and 80.01%. To the best of the Company's knowledge, each such Primary Insurance Policy is in full force and effect and the Trustee is entitled to the benefits thereunder;

(c) Each Primary Insurance Policy insures the named insured and its successors and assigns, and the issuer of the Primary Insurance Policy is an insurance company whose claims-paying ability is currently acceptable to the Rating Agencies;

(d) Immediately prior to the assignment of the Mortgage Loans to the Company, RFC had good title to, and was the sole owner of, each Mortgage Loan free and clear of any pledge, lien, encumbrance or security interest (other than rights to servicing and related compensation and, with respect to certain Mortgage Loans, the monthly payment due on the first Due Date following the Cut-off Date), and no action has been taken or failed to be taken by RFC that would materially adversely affect the enforceability of any Mortgage Loan or the interests therein of any holder of the Certificates;

(e) No Mortgage Loan was 30 or more days delinquent in payment of principal and interest as of the Cut-off Date and no Mortgage Loan has been so delinquent more than once in the 12-month period prior to the Cut-off Date;

(f) Subject to clause (e) above as respects delinquencies, there is no

default, breach, violation or event of acceleration existing under any Mortgage Note or Mortgage and no event which, with notice and expiration of any grace or cure period, would constitute a default, breach, violation or event of acceleration, and no such default, breach, violation or event of acceleration has been waived by the Seller or by any other entity involved in originating or servicing a Mortgage Loan;

(g) There is no delinquent tax or assessment lien against any Mortgaged Property;

(h) No Mortgagor has any right of offset, defense or counterclaim as to the related Mortgage Note or Mortgage except as may be provided under the Servicemembers Civil Relief Act, formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, and except with respect to any buydown agreement for a Buydown Mortgage Loan;

(i) There are no mechanics' liens or claims for work, labor or material affecting any Mortgaged Property which are or may be a lien prior to, or equal with, the lien of the related Mortgage, except such liens that are insured or indemnified against by a title insurance policy described under clause (aa) below;

(j) Each Mortgaged Property is free of damage and in good repair and no notice of condemnation has been given with respect thereto and RFC knows of nothing involving any Mortgaged Property that could reasonably be expected to materially adversely affect the value or marketability of any Mortgaged Property;

(k) Each Mortgage Loan at the time it was made complied in all material respects with applicable local, state, and federal laws, including, but not limited to, all applicable anti-predatory lending laws;

(l) Each Mortgage contains customary and enforceable provisions which render the rights and remedies of the holder adequate to realize the benefits of the security against the Mortgaged Property, including (i) in the case of a Mortgage that is a deed of trust, by trustee's sale, (ii) by summary foreclosure, if available under applicable law, and (iii) otherwise by foreclosure, and there is no homestead or other exemption available to the Mortgagor that would interfere with such right to sell at a trustee's sale or right to foreclosure, subject in each case to applicable federal and state laws and judicial precedents with respect to bankruptcy and right of redemption;

(m) With respect to each Mortgage that is a deed of trust, a trustee duly qualified under applicable law to serve as such is properly named, designated and serving, and except in connection with a trustee's sale after default by a Mortgagor, no fees or expenses are payable by the Seller or RFC to the trustee under any Mortgage that is a deed of trust;

(n) The Mortgage Loans are conventional, fixed rate, fully-amortizing, first mortgage loans having terms to maturity of not more than 30 years from the date of origination or modification with monthly payments due, with respect to a majority of the Mortgage Loans, on the first day of each month;

(o) No Mortgage Loan provides for deferred interest or negative amortization;

(p) If any of the Mortgage Loans are secured by a leasehold interest, with respect to each leasehold interest: the use of leasehold estates for residential properties is an accepted practice in the area where the related Mortgaged Property is located; residential property in such area consisting of leasehold estates is readily marketable; the lease is recorded and no party is in any way in breach of any provision of such lease; the leasehold is in full force and effect and is not subject to any

prior lien or encumbrance by which the leasehold could be terminated or subject to any charge or penalty; and the remaining term of the lease does not terminate less than ten years after the maturity date of such Mortgage Loan;

(q) Each Assigned Contract relating to each Pledged Asset Loan is a valid, binding and legally enforceable obligation of the parties thereto, enforceable in accordance with their terms, except as limited by bankruptcy, insolvency or other similar laws affecting generally the enforcement of creditor's rights;

(r) The Assignor is the holder of all of the right, title and interest as owner of each Pledged Asset Loan in and to each of the Assigned Contracts delivered and sold to the Company hereunder, and the assignment hereof by RFC validly transfers such right, title and interest to the Company free and clear of any pledge, lien, or security interest or other encumbrance of any Person;

(s) The full amount of the Pledged Amount with respect to such Pledged Asset Loan has been deposited with the custodian under the Credit Support Pledge Agreement and is on deposit in the custodial account held thereunder as of the date hereof;

(t) RFC is a member of MERS, in good standing, and current in payment of all fees and assessments imposed by MERS, and has complied with all rules and procedures of MERS in connection with its assignment to the Trustee as assignee of the Depositor of the Mortgage relating to each Mortgage Loan that is registered with MERS, including, among other things, that RFC shall have confirmed the transfer to the Trustee, as assignee of the Depositor, of the Mortgage on the MERS(R)System;

(u) No instrument of release or waiver has been executed in connection with the Mortgage Loans, and no Mortgagor has been released, in whole or in part from its obligations in connection with a Mortgage Loan;

(v) With respect to each Mortgage Loan, either (i) the Mortgage Loan is assumable pursuant to the terms of the Mortgage Note, or (ii) the Mortgage Loan contains a customary provision for the acceleration of the payment of the unpaid principal balance of the Mortgage Loan in the event the related Mortgaged Property is sold without the prior consent of the mortgagee thereunder;

(w) The proceeds of the Mortgage Loan have been fully disbursed, there is no requirement for future advances thereunder and any and all requirements as to completion of any on-site or off-site improvements and as to disbursements of any escrow funds therefor (including any escrow funds held to make Monthly Payments pending completion of such improvements) have been complied with. All costs, fees and expenses incurred in making, closing or recording the Mortgage Loans were paid;

(x) Except with respect to approximately 4.6% of the Mortgage Loans, the appraisal was made by an appraiser who meets the minimum qualifications for appraisers as specified in the Program Guide;

(y) To the best of RFC's knowledge, any escrow arrangements established with respect to any Mortgage Loan are in compliance with all applicable local, state and federal laws and are in compliance with the terms of the related Mortgage Note;

(z) Each Mortgage Loan was originated (1) by a savings and loan association, savings bank, commercial bank, credit union, insurance company or similar institution that is supervised and examined by a federal or state authority, (2) by a mortgagee approved by the Secretary of HUD pursuant to Sections 203 and 211 of the National Housing Act, as amended, or (3) by a mortgage broker or correspondent lender in a manner

such that the Certificates would qualify as mortgage related securities" within the meaning of Section 3(a)(41) of the Securities Exchange Act of 1934, as amended;

(aa) All improvements which were considered in determining the Appraised Value of the Mortgaged Properties lie wholly within the boundaries and the building restriction lines of the Mortgaged Properties, or the policy of title insurance affirmatively insures against loss or damage by reason of any violation, variation, encroachment or adverse circumstance that either is disclosed or would have been disclosed by an accurate survey;

(bb) Each Mortgage Note and Mortgage constitutes a legal, valid and binding obligation of the borrower, or the consumer in the case of the Sharia Mortgage Loans, enforceable in accordance with its terms except as limited by bankruptcy, insolvency or other similar laws affecting generally the enforcement of creditor's rights;

(cc) None of the Mortgage Loans are subject to the Home Ownership and Equity Protection Act of 1994;

(dd) None of the Mortgage Loans are loans that, under applicable state or local law in effect at the time of origination of such loan, are referred to as (1) "high cost" or "covered" loans or (2) any other similar designation if the law imposes greater restrictions or additional legal liability for residential mortgage loans with high interest rates, points and/or fees;

(ee) None of the Mortgage Loans secured by a property located in the State of Georgia were originated on or after October 1, 2002 and before March 7, 2003;

(ff) No Mortgage Loan is a High Cost Loan or Covered Loan, as applicable (as such terms are defined in the then current Standard & Poor's LEVELS(R) Glossary which is now Version 5.7 Revised, Appendix E (attached hereto as Exhibit A)) [proviso relating to the State of Kansas and the State of West Virginia intentionally omitted];

(gg) With respect to each Sharia Mortgage Loan, mortgage pass-through certificates or notes representing interests in mortgage loans that are in all material respects of the same type as the Mortgage Loans, and which are structured to be permissible under Islamic law utilizing a declining balance co-ownership structure, have been, for a least one year prior to the date hereof, (a) held by investors other than employee benefit plans, and (b) rated at least BBB- or Baa3, as applicable, by a Rating Agency; and

(hh) No fraud or misrepresentation has taken place in connection with the origination of any Mortgage Loan.

RFC shall provide written notice to GMAC Mortgage, LLC of the sale of each Pledged Asset Loan to the Company hereunder and by the Company to the Trustee under the Pooling and Servicing Agreement, and shall maintain the Schedule of Additional Owner Mortgage Loans (as defined in the Credit Support Pledge Agreement), showing the Trustee as the Additional Owner of each such Pledged Asset Loan, all in accordance with Section 7.1 of the Credit Support Pledge Agreement.

Upon discovery by RFC or upon notice from the Company or the Trustee of a breach of the foregoing representations and warranties in respect of any Mortgage Loan which materially and adversely affects the interests of any holders of the Certificates or of the Company in such Mortgage Loan or upon the occurrence of a Repurchase Event (hereinafter defined), notice of which breach or occurrence shall be given to the Company by RFC, if it discovers the same, RFC shall, within 90 days after the earlier of its discovery or

receipt of notice thereof, either cure such defect or, either  
 (i) purchase such Mortgage Loan from the Trustee or the Company, as the case may be, at a price equal to the Purchase Price for such Mortgage Loan or (ii) substitute a Qualified Substitute Mortgage Loan or Loans for such Mortgage Loan in the manner and subject to the limitations set forth in Section 2.04 of the Pooling and Servicing Agreement. If the breach of representation and warranty that gave rise to the obligation to repurchase or substitute a Mortgage Loan pursuant to this Section 4 was the representation and warranty set forth in clause (k) or (hh) of this Section 4, then RFC shall pay to the Trust Fund, concurrently with and in addition to the remedies provided in the preceding sentence, an amount equal to any liability, penalty or expense that was actually incurred and paid out of or on behalf of the Trust Fund, and that directly resulted from such breach, or if incurred and paid by the Trust Fund thereafter, concurrently with such payment.

5. With respect to each Mortgage Loan, a first lien repurchase event ("Repurchase Event") shall have occurred if it is discovered that, as of the date thereof, the related Mortgage was not a valid first lien on the related Mortgaged Property subject only to (i) the lien of real property taxes and assessments not yet due and payable, (ii) covenants, conditions, and restrictions, rights of way, easements and other matters of public record as of the date of recording of such Mortgage and such permissible title exceptions as are listed in the Program Guide and (iii) other matters to which like properties are commonly subject which do not materially adversely affect the value, use, enjoyment or marketability of the Mortgaged Property. In addition, with respect to any Mortgage Loan as to which the Company delivers to the Trustee or the Custodian an affidavit certifying that the original Mortgage Note has been lost or destroyed, if such Mortgage Loan subsequently is in default and the enforcement thereof or of the related Mortgage is materially adversely affected by the absence of the original Mortgage Note, a Repurchase Event shall be deemed to have occurred and RFC will be obligated to repurchase or substitute for such Mortgage Loan in the manner set forth in Section 4 above.

6. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, and no other person shall have any right or obligation hereunder.

IN WITNESS WHEREOF, the parties have entered into this Assignment and Assumption Agreement on the date first written above.

RESIDENTIAL FUNDING COMPANY, LLC

By: /s/ Marguerite Steffes  
 Name: Marguerite Steffes  
 Title: Associate

RESIDENTIAL ACCREDIT LOANS, INC.

By: /s/ Heather Anderson  
 Name: Heather Anderson  
 Title: Vice President

## EXHIBIT A

APPENDIX E OF THE STANDARD & POOR'S GLOSSARY FOR  
FILE FORMAT FOR LEVELS(R) VERSION 5.7 REVISED  
REVISED October 20, 2006

## APPENDIX E - STANDARD &amp; POOR'S PREDATORY LENDING CATEGORIES

Standard & Poor's has categorized loans governed by anti-predatory lending laws in the jurisdictions listed below into three categories based upon a combination of factors that include (a) the risk exposure associated with the assignee liability and (b) the tests and thresholds set forth in those laws. Note that certain loans classified by the relevant statute as Covered are included in Standard & Poor's High Cost Loan Category because they included thresholds and tests that are typical of what is generally considered High Cost by the industry.

## STANDARD &amp; POOR'S HIGH COST LOAN CATEGORIZATION

State/Jurisdiction	Name of Anti-Predatory Lending Law/Effective Date	Category under Applicable Anti-Predatory Lending Law
Arkansas	Arkansas Home Loan Protection Act, Ark. Code Ann.ss.ss.23-53-101 et seq.  Effective July 16, 2003	High Cost Home Loan
Cleveland Heights, OH	Ordinance No. 72-2003 (PSH), Mun. Code ss.ss.757.01 et seq.  Effective June 2, 2003	Covered Loan
Colorado	Consumer Equity Protection, Colo. Stat. Ann.ss.ss.5-3.5-101 et seq.  Effective for covered loans offered or entered into on or after January 1, 2003. Other provisions of the Act took effect on June 7, 2002	Covered Loan
Connecticut	Connecticut Abusive Home Loan Lending Practices Act, Conn. Gen. Stat.ss.ss. 36a-746 et seq.  Effective October 1, 2001	High Cost Home Loan
District of Columbia	Home Loan Protection Act, D.C. Codess.ss. 26-1151.01 et seq.  Effective for loans closed on or after January 28, 2003	Covered Loan



Florida	Fair Lending Act, Fla. Stat. Ann.ss.ss. 494.0078 et seq.	High Cost Home Loan
	Effective October 2, 2002	
Georgia (Oct. 1, 2002 - Mar. 6, 2003)	Georgia Fair Lending Act, Ga. Code Ann.ss.ss.7-6A-1 et seq.	High Cost Home Loan
	Effective October 1, 2002 - March 6, 2003	
Georgia as amended (Mar. 7, 2003 - current)	Georgia Fair Lending Act, Ga. Code Ann.ss.ss.7-6A-1 et seq.	High Cost Home Loan
	Effective for loans closed on or after March 7, 2003	
HOEPA Section 32	Home Ownership and Equity Protection Act of 1994, 15 U.S.C.ss.1639, 12 C.F.R.ss.ss.226.32 and 226.34	High Cost Loan
	Effective October 1, 1995, amendments October 1, 2002	
Illinois	High Risk Home Loan Act, Ill. Comp. Stat. tit. 815,ss.ss.137/5 et seq.	High Risk Home Loan
	Effective January 1, 2004 (prior to this date, regulations under Residential Mortgage License Act effective from May 14, 2001)	
Indiana	Indiana Home Loan Practices Act, Ind. Code Ann.ss.ss.24-9-1-1 et seq.	High Cost Home Loans
	Effective January 1, 2005; amended by 2005 HB 1179, effective July 1, 2005	
Kansas	Consumer Credit Code, Kan. Stat. Ann. ss.ss.16a-1-101 et seq.	High Loan to Value Consumer Loan (id.ss. 16a-3-207) and;
	Sections 16a-1-301 and 16a-3-207 became effective April 14, 1999; Section 16a-3-308a became effective July 1, 1999	
		High APR Consumer Loan (id.ss.16a-3-308a)
Kentucky	2003 KY H.B. 287 - High Cost Home Loan Act, Ky. Rev. Stat.ss.ss.360.100 et seq.	High Cost Home Loan
	Effective June 24, 2003	
Maine	Truth in Lending, Me. Rev. Stat. tit. 9-A,ss.ss.8-101 et seq.	High Rate High Fee Mortgage
	Effective September 29, 1995 and as amended from time to time	
Massachusetts	Part 40 and Part 32, 209 C.M.R.ss.ss.	High Cost Home Loan

Effective March 22, 2001 and amended  
from time to time

Nevada

Assembly Bill No. 284, Nev. Rev. Stat.  
ss.ss.598D.010 et seq.

Home Loan

Effective October 1, 2003

New Jersey

New Jersey Home Ownership Security Act  
of 2002, N.J. Rev. Stat.ss.ss.46:10B-22  
et seq.

High Cost Home Loan

Effective for loans closed on or after  
November 27, 2003

New Mexico

Home Loan Protection Act, N.M. Rev.  
Stat.ss.ss.58-21A-1 et seq.

High Cost Home Loan

Effective as of January 1, 2004;  
Revised as of February 26, 2004

New York

N.Y. Banking Law Article 6-1

High Cost Home Loan

Effective for applications made on or  
after April 1, 2003

North Carolina

Restrictions and Limitations on High  
Cost Home Loans, N.C. Gen. Stat.ss.ss.  
24-1.1E et seq.

High Cost Home Loan

Effective July 1, 2000; amended  
October 1, 2003 (adding open-end lines  
of credit)

Ohio

H.B. 386 (codified in various sections  
of the Ohio Code), Ohio Rev. Code Ann.  
ss.ss.1349.25 et seq.

Covered Loan

Effective May 24, 2002

Rhode Island

Rhode Island Home Loan Protection Act,  
R.I. Gen. Lawsss.ss.34-25.2-1 et seq.  
Effective December 31, 2006

High Cost Home Loan

Oklahoma

Consumer Credit Code (codified in  
various sections of Title 14A)

Subsection 10 Mortgage

Effective July 1, 2000; amended  
effective January 1, 2004

South Carolina

South Carolina High Cost and Consumer  
Home Loans Act, S.C. Code Ann.ss.ss.  
37-23-10 et seq.

High Cost Home Loan

Effective for loans taken on or after  
January 1, 2004

Tennessee

Tennessee Home Loan Protection Act,

High Cost Home Loan

Tenn. Code Ann. §§ 51-1-101 et seq.  
Effective January 1, 2007

West Virginia	West Virginia Residential Mortgage Lender, Broker and Servicer Act, W. Va. Code Ann.ss.ss.31-17-1 et seq. Effective June 5, 2002	West Virginia Mortgage Loan Act Loan
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## STANDARD &amp; POOR'S COVERED LOAN CATEGORIZATION

State/Jurisdiction	Name of Anti-Predatory Lending Law/Effective Date	Category under Applicable Anti-Predatory Lending Law
Georgia (Oct. 1, 2002 - Mar. 6, 2003)	Georgia Fair Lending Act, Ga. Code Ann.ss.ss.7-6A-1 et seq. Effective October 1, 2002 - March 6, 2003	Covered Loan
New Jersey	New Jersey Home Ownership Security Act of 2002, N.J. Rev. Stat.ss.ss.46:10B-22 et seq. Effective November 27, 2003 - July 5, 2004	Covered Home Loan

## STANDARD &amp; POOR'S HOME LOAN CATEGORIZATION

State/Jurisdiction	Name of Anti-Predatory Lending Law/Effective Date	Category under Applicable Anti-Predatory Lending Law
Georgia (Oct. 1, 2002 - Mar. 6, 2003)	Georgia Fair Lending Act, Ga. Code Ann.ss.ss.7-6A-1 et seq. Effective October 1, 2002 - March 6, 2003	Home Loan
New Jersey	New Jersey Home Ownership Security Act of 2002, N.J. Rev. Stat.ss.ss.46:10B-22 et seq. Effective for loans closed on or after November 27, 2003	Home Loan
New Mexico	Home Loan Protection Act, N.M. Rev. Stat.ss.ss.58-21A-1 et seq. Effective as of January 1, 2004; Revised as of February 26, 2004	Home Loan
North Carolina	Restrictions and Limitations on High Cost Home Loans, N.C. Gen. Stat.ss.ss.24-1.1E et seq. Effective July 1, 2000; amended October 1, 2003 (adding open-end lines	Consumer Home Loan

South Carolina

South Carolina High Cost and Consumer  
Home Loans Act, S.C. Code Ann.ss.ss.  
37-23-10 et seq.

Consumer Home Loan

Effective for loans taken on or after  
January 1, 2004

# EXHIBIT G

UNITED STATES OF AMERICA  
BEFORE THE  
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM  
WASHINGTON, D.C.

In the Matter of

SUNTRUST BANKS, INC.  
Atlanta, Georgia

SUNTRUST BANK  
Atlanta, Georgia

and

SUNTRUST MORTGAGE, INC.  
Richmond, Virginia

Docket No. 11-021-B-HC  
11-021-B-SM  
11-021-B-DEO

**CONSENT ORDER**

WHEREAS, SunTrust Banks, Inc., Atlanta, Georgia ("SunTrust"), a registered bank holding company, owns and controls SunTrust Bank, Atlanta, Georgia (the "Bank"), a state-chartered bank that is a member of the Federal Reserve System, and the Bank owns SunTrust Mortgage, Inc., Richmond, Virginia ("SunTrust Mortgage");

WHEREAS, SunTrust Mortgage services residential mortgage loans that are held in the portfolios of (a) the Bank and SunTrust Mortgage; (b) the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Government National Mortgage Association (collectively, the "GSEs"); and (c) various investors, including securitization trusts pursuant to Pooling and Servicing Agreements and similar agreements (collectively, the "Servicing Portfolio"). SunTrust Mortgage has substantial responsibilities with respect to the Servicing Portfolio for the initiation and handling of foreclosure proceedings and

loss mitigation activities (“Loss Mitigation” or “Loss Mitigation Activities” include activities related to special forbearances, repayment plans, modifications, short refinances, short sales, cash-for-keys, and deeds-in-lieu of foreclosure);

WHEREAS, SunTrust Mortgage is the eighth largest servicer of residential mortgages in the United States and services a portfolio of more than 950,000 residential mortgage loans. During the recent financial crisis, a substantially larger number of residential mortgage loans became past due than in earlier years. Many of past due mortgages have resulted in foreclosure actions. From January 1, 2009 to December 31, 2010, SunTrust Mortgage initiated 41,543 foreclosure actions;

WHEREAS, in connection with the process leading to certain foreclosures involving the Servicing Portfolio, SunTrust Mortgage allegedly:

- (a) Filed or caused to be filed in state courts and in connection with bankruptcy proceedings in federal courts numerous affidavits executed by employees of SunTrust Mortgage or employees of third-party providers making various assertions, such as the ownership of the mortgage note and mortgage, the amount of principal and interest due, and the fees and expenses chargeable to the borrower, in which the affiant represented that the assertions in the affidavit were made based on personal knowledge or based on a review by the affiant of the relevant books and records, when, in many cases, they were not based on such knowledge or review;
- (b) Filed or caused to be filed in courts in various states and in connection with bankruptcy proceedings in federal courts or in the local land record offices, numerous affidavits and other mortgage-related documents that were not properly notarized, including those not signed or affirmed in the presence of a notary;

- (c) Litigated foreclosure and bankruptcy proceedings and initiated non-judicial foreclosures without always confirming that documentation of ownership was in order at the appropriate time, including confirming that the promissory note and mortgage document were properly endorsed or assigned and, if necessary, in the possession of the appropriate party;
- (d) Failed to respond in a sufficient and timely manner to the increased level of foreclosures by increasing financial, staffing, and managerial resources to ensure that SunTrust Mortgage adequately handled the foreclosure process, and failed to respond in a sufficient and timely manner to the increased level of Loss Mitigation Activities by increasing management and staffing levels to ensure timely, effective and efficient communication with borrowers with respect to Loss Mitigation Activities and foreclosure activities and full exploration of Loss Mitigation options or programs prior to completion of foreclosure activities; and
- (e) Failed to have adequate internal controls, policies and procedures, compliance risk management, internal audit, training, and oversight of the foreclosure process, including sufficient oversight of outside counsel and other third-party providers handling foreclosure-related services with respect to the Servicing Portfolio.

WHEREAS, the practices set forth above allegedly constitute unsafe or unsound banking practices;

WHEREAS, as part of a horizontal review of various major residential mortgage servicers conducted by the Board of Governors, the Federal Deposit Insurance Corporation (the "FDIC"), the Office of the Comptroller of the Currency, and the Office of Thrift Supervision,



examiners from the Federal Reserve Bank of Atlanta (the "Reserve Bank") have reviewed foreclosure-related processes at SunTrust Mortgage;

WHEREAS, it is the common goal of the Board of Governors, the Reserve Bank, SunTrust, the Bank, and SunTrust Mortgage to ensure that SunTrust Mortgage operates in a safe and sound manner and in compliance with the terms of mortgage loan documentation and related agreements with borrowers, all applicable state and federal laws (including the U.S. Bankruptcy Code and the Servicemembers Civil Relief Act), rules, regulations, and court orders, as well as the Membership Rules of MERSCORP, Inc. and MERS, Inc. (collectively, "MERS"), servicing guides with GSEs or investors, and other contractual obligations including those with the Federal Housing Administration and those required by the Home Affordable Modification Program ("HAMP"), and loss share agreements with the FDIC (collectively, "Legal Requirements");

WHEREAS, after the conduct set forth above became known, the Bank and SunTrust have been taking steps to remediate the filing of and reliance on inaccurate affidavits in foreclosure and bankruptcy proceedings;

WHEREAS, the boards of directors of SunTrust, the Bank, and SunTrust Mortgage, at duly constituted meetings, authorized and approved William H. Rogers, Jr., William H. Rogers, Jr., and Jerome T. Lienhard, II to enter into this Consent Order to Cease and Desist (the "Order") on behalf of SunTrust, the Bank, and SunTrust Mortgage, respectively, and consenting to compliance with each and every applicable provision of this Order by SunTrust, the Bank, and SunTrust Mortgage, and their institution-affiliated parties, as defined in sections 3(u) and 8(b)(3) of the Federal Deposit Insurance Act, as amended (the "FDI Act") (12 U.S.C. §§ 1813(u) and 1818(b)(3)), and waiving any and all rights that SunTrust, the Bank, and SunTrust Mortgage may have pursuant to section 8 of the FDI Act (12 U.S.C. § 1818), including, but not

limited to: (i) the issuance of a notice of charges; (ii) a hearing for the purpose of taking evidence on any matters set forth in this Order; (iii) judicial review of this Order; (iv) contest the issuance of this Order by the Board of Governors; and (v) challenge or contest, in any manner, the basis, issuance, validity, terms, effectiveness or enforceability of this Order or any provision hereof.

NOW, THEREFORE, before the filing of any notices, or taking of any testimony or adjudication of or finding on any issues of fact or law herein, and without this Order constituting an admission by SunTrust, the Bank, or SunTrust Mortgage or their subsidiaries of any allegation made or implied by the Board of Governors in connection with this matter, and solely for the purpose of settling this matter without a formal proceeding being filed and without the necessity for protracted or extended hearings or testimony, it is hereby ordered by the Board of Governors that, pursuant to sections 8(b)(1) and (3) of the FDI Act (12 U.S.C. §§1818(b)(1)) and 1818(b)(3)), SunTrust, the Bank, SunTrust Mortgage, and their institution-affiliated parties shall cease and desist and take affirmative action as follows:

#### **Source of Strength**

1. The board of directors of SunTrust shall take appropriate steps to fully utilize SunTrust's financial and managerial resources, pursuant to section 225.4(a) of Regulation Y of the Board of Governors (12 C.F.R. § 225.4(a)), to serve as a source of strength to the Bank, including, but not limited to, taking steps to ensure that the Bank complies with the applicable provisions of this Order.

#### **Board Oversight**

2. Within 60 days of this Order, the boards of directors of SunTrust, the Bank, and SunTrust Mortgage shall submit to the Reserve Bank an acceptable written plan to strengthen the

boards' oversight of SunTrust Mortgage, including the boards' oversight of risk management, internal audit, and compliance programs concerning residential mortgage loan servicing, Loss Mitigation, and foreclosure activities conducted by SunTrust Mortgage. The plan shall also describe the actions that the boards of directors will take to improve SunTrust Mortgage's residential mortgage loan servicing, Loss Mitigation, and foreclosure activities and operations, and a timeline for actions to be taken. The plan shall, at a minimum, address, consider, and include:

(a) Policies to be adopted by the board of directors of SunTrust that are designed to ensure that SunTrust's enterprise-wide risk management ("ERM") program provides proper risk management with respect to SunTrust Mortgage's residential mortgage loan servicing, Loss Mitigation, and foreclosure activities particularly with respect to compliance with the Legal Requirements, and supervisory standards and guidance of the Board of Governors as they develop;

(b) policies and procedures adopted by SunTrust to ensure that the ERM program provides proper risk management of independent contractors, consulting firms, law firms, or other third parties who are engaged to support residential mortgage loan servicing, Loss Mitigation, or foreclosure activities or operations, including their compliance with the Legal Requirements and SunTrust's, the Bank's, and SunTrust Mortgage's internal policies and procedures, consistent with supervisory guidance of the Board of Governors;

(c) steps to ensure that SunTrust's ERM, audit, and compliance programs have adequate levels and types of officers and staff dedicated to overseeing SunTrust Mortgage's residential mortgage loan servicing, Loss Mitigation, and foreclosure activities, and that these

programs have officers and staff with the requisite qualifications, skills, and ability to comply with the requirements of this Order;

(d) steps to improve the information and reports that will be regularly reviewed by the boards of directors of SunTrust and the Bank or authorized committees of the boards of directors regarding residential mortgage loan servicing, Loss Mitigation, and foreclosure activities and operations, including, compliance risk assessments, and the status and results of measures taken, or to be taken, to remediate deficiencies in residential mortgage loan servicing, Loss Mitigation, and foreclosure activities, and to comply with this Order;

(e) funding for personnel, systems, and other resources as are needed to carry out SunTrust Mortgage's residential mortgage loan servicing, Loss Mitigation, and foreclosure activities and operations in full compliance with the Legal Requirements and the requirements of this Order, taking into consideration the current and expected volume of past due loans;

(f) funding for personnel, systems, and other resources as are needed to operate risk management and compliance programs that are safe and sound and that are commensurate with the risk profile of SunTrust Mortgage;

(g) steps to ensure that SunTrust Mortgage has adequate levels and types of officers and staff to carry out residential mortgage loan servicing, Loss Mitigation, and foreclosure activities in compliance with Legal Requirements and the requirements of this Order, and taking into account the size and complexity of the Servicing Portfolio; that they have officers and staff with the requisite qualifications, skills, and ability to comply with the requirements of this Order; and a timetable for hiring any necessary additional officers and staff.

(h) periodic reviews of the adequacy of the levels and types of officers and staff to carry out residential mortgage servicing, Loss Mitigation, and foreclosure activities in

light of changes in the Servicing Portfolio or the Legal Requirements. To conduct this review, the plan shall establish metrics to measure and ensure the adequacy of staffing levels relative to existing and future Loss Mitigation and foreclosure activities, such as limits for the number of loans assigned to a Loss Mitigation employee, including the single point of contact as hereinafter defined, and deadlines to review loan modification documentation, make loan modification decisions, and provide responses to borrowers;

(i) steps to ensure that the risk management, audit, and compliance programs for SunTrust Mortgage have adequate levels and types of officers and staff and that they have officers and staff with the requisite qualifications, skills, and ability to comply with the requirements of this Order, and a timetable for hiring any necessary additional officers and staff;

(j) workload reviews of residential mortgage loan servicing, Loss Mitigation, and foreclosure personnel who are responsible for handling individual loan issues (including single point of contact personnel), including an initial review within 90 days of this Order, and then annual reviews thereafter. Such reviews, at a minimum, shall assess whether the workload levels are appropriate to ensure compliance with the requirements of paragraphs 2(g) and 6 of this Order. Promptly following completion of such reviews, SunTrust Mortgage shall adjust workload levels to ensure compliance with the requirements of paragraphs 2(g) and 6 of this Order;

(k) policies to ensure that the risk management, audit, and compliance programs have the requisite authorities and status within the organization to effectively operate the programs, and that there is adequate coordination with respect to these programs to ensure that any problems or deficiencies that are identified in SunTrust Mortgage's residential mortgage

servicing, Loss Mitigation, and foreclosure activities and operations are comprehensively reviewed and remedied; and

(l) steps to improve the information and reports that will be regularly reviewed by SunTrust's, the Bank's, and SunTrust Mortgage's boards of directors to assess the performance of mortgage servicing, Loss Mitigation, and foreclosure activities and operations, as well as the risk management and compliance programs and associated functions including, compliance risk assessments, and the status and results of measures taken, or to be taken, to remediate mortgage servicing, Loss Mitigation, and foreclosure deficiencies, and to comply with this Order.

#### **Foreclosure Review**

3. (a) Within 45 days of this Order, the Bank and SunTrust Mortgage shall retain one or more independent consultant(s) acceptable to the Reserve Bank to conduct an independent review of certain residential foreclosure actions (including judicial and non-judicial foreclosures and related bankruptcy proceedings, and other related litigation) regarding individual borrowers with respect to the Servicing Portfolio. The review shall include actions or proceedings (including foreclosures that were in process or completed) for loans serviced by SunTrust Mortgage, whether brought in the name of the Bank, SunTrust Mortgage, the investor, or any agent for the mortgage note holder (including MERS) that have been pending at any time from January 1, 2009 to December 31, 2010, as well as residential foreclosure sales that occurred during this time period ("Foreclosure Review"). The purpose of the Foreclosure Review shall be to determine, at a minimum:

(i) whether, at the time the foreclosure action was initiated or the pleading or affidavit filed (including in bankruptcy proceedings and in defending suits brought

by borrowers), the foreclosing party or agent of the party had properly documented ownership of the promissory note and mortgage (or deed of trust) under relevant state law, or was otherwise a proper party to the action as a result of agency or other similar status;

(ii) whether the foreclosure was in accordance with applicable state and federal laws, including but not limited to, the Servicemembers Civil Relief Act and the U.S. Bankruptcy Code;

(iii) whether, with respect to non-judicial foreclosures, the procedures followed with respect to the foreclosure sale (including the calculation of the default period, the amounts due, and compliance with notice periods) and post-sale confirmation were in accordance with the terms of the mortgage loan and state law requirements;

(iv) whether a foreclosure sale occurred when the borrower had requested a loan modification or other loss mitigation and the request was under consideration; when the loan was performing in accordance with a trial or permanent loan modification; or when the loan had not been in default for a sufficient period to authorize foreclosure pursuant to terms of the mortgage loan documentation and related agreements;

(v) whether any delinquent borrower's account was charged fees or penalties that were not permissible under the terms of the borrower's loan documents, state or federal law, or were otherwise unreasonable. For purposes of this Order, a fee or penalty is "otherwise unreasonable" if it was assessed: (i) for the purpose of protecting the secured party's interest in the mortgaged property, and the fee or penalty was assessed at a frequency or rate, was of a type or amount, or was for a purpose that was in fact not needed to protect the secured party's interest; (ii) for services performed and the fee charged was substantially in excess of the fair market value of the service; (iii) for services performed, and the services were not actually

performed; or (iv) at an amount or rate that exceeds what is customarily charged in the market for such a fee or penalty, and the mortgage instruments or other documents executed by the borrower did not disclose the amount or rate that the lender or servicer would charge for such a fee or penalty;

(vi) whether Loss Mitigation Activities with respect to foreclosed loans were handled in accordance with the requirements of HAMP, if applicable, and consistent with the policies and procedures applicable to SunTrust Mortgage's proprietary loan modifications or other Loss Mitigation programs, such that each borrower had an adequate opportunity to apply for a Loss Mitigation option or program, any such application was handled appropriately, and a final decision was made on a reasoned basis and was communicated to the borrower before the foreclosure sale; and

(vii) whether any errors, misrepresentations, or other deficiencies identified in the Foreclosure Review resulted in financial injury to the borrower or the owner of the mortgage loan.

(b) The independent consultant(s) shall prepare a written report detailing the findings of the Foreclosure Review (the "Foreclosure Report"). The Bank and SunTrust Mortgage shall provide to the Reserve Bank a copy of the Foreclosure Report at the same time that the report is provided to them.

(c) Within 45 days of receipt of the Foreclosure Report, the Bank and SunTrust Mortgage shall submit to the Reserve Bank an acceptable plan to:

(i) remediate, as appropriate, errors, misrepresentations, or other deficiencies in any foreclosure filing or other proceeding;



(ii) reimburse or otherwise provide appropriate remediation to the borrower for any impermissible or otherwise unreasonable penalties, fees or expenses, or for other financial injury identified in paragraph 3 of this Order;

(iii) make appropriate adjustments for the account of the Bank, the GSEs, or any investor; and

(iv) take appropriate steps to remediate any foreclosure sale where the foreclosure was not authorized as described in paragraph 3.

(d) Within 60 days after the Reserve Bank accepts the plan described in paragraph 3(c), SunTrust Mortgage shall make all reimbursement and remediation payments and provide all credits required by such plan, and provide the Reserve Bank with a report detailing such payments and credits.

4. Within 5 days of the engagement of the independent consultant(s) described in paragraph 3 of this Order, but prior to the commencement of the Foreclosure Review, the Bank, and SunTrust Mortgage shall submit to the Reserve Bank for approval an engagement letter that sets forth:

(a) The methodology for conducting the Foreclosure Review, including:

(i) a description of the information systems and documents to be reviewed, including the selection criteria for cases to be reviewed; (ii) the criteria for evaluating the reasonableness of fees and penalties under paragraph 3(a)(v); (iii) other procedures necessary to make the required determinations (such as through interviews of employees and third parties and a process for the receipt and review of borrower claims and complaints); and (iv) any proposed sampling techniques. In setting the scope and review methodology, the independent consultant may consider any work already done by SunTrust, the Bank, SunTrust Mortgage or other third-parties

on behalf of SunTrust, the Bank, or SunTrust Mortgage. With respect to sampling techniques, the engagement letter shall contain a full description of the statistical basis for the sampling methods chosen, as well as procedures to increase the size of the sample depending on the results of initial sampling;

- (b) the expertise and resources to be dedicated to the Foreclosure Review;
- (c) completion of the Foreclosure Review and the Foreclosure Report within 120 days of the start of the engagement; and

- (d) a written commitment that any workpapers associated with the Foreclosure Review will be made available to the Reserve Bank upon request.

5. Within 60 days of receipt of the Foreclosure Report, the Bank and SunTrust Mortgage shall submit to the Reserve Bank acceptable written policies and procedures for residential foreclosure actions. The policies and procedures shall, address, consider, and include:

- (a) Foreclosure procedures for portfolio loans and each category of serviced loans;

- (b) detailed procedural guidance on all required steps in the foreclosure process;

- (c) standardized desk procedures to ensure that employees involved in the foreclosure processes have sufficient information and personal knowledge to complete assignments of mortgages, affidavits, or other legal documents required for foreclosure proceedings; and

- (d) minimum qualifications for affidavit signers.

### **Single Point of Contact**

6. Within 60 days of this Order, the Bank and SunTrust Mortgage shall submit to the Reserve Bank an acceptable plan, along with a timeline for actions to be taken, for strengthening coordination of communications between SunTrust Mortgage and borrowers, both oral and written, related to Loss Mitigation and foreclosure activities to ensure: (i) that communications are timely and effective, and are designed to avoid confusion to borrowers; (ii) continuity in the handling of borrowers' loan files during the Loss Mitigation and foreclosure processes by personnel knowledgeable about the borrower's situation; and (iii) that decisions concerning Loss Mitigation options or programs continue to be made and communicated in a timely fashion. Prior to submitting the plan, SunTrust Mortgage shall conduct a review to determine: (i) whether processes involving past due mortgage loans or foreclosures overlap in such a way that they may impair or impede a borrower's efforts to effectively pursue a Loss Mitigation option or program, and (ii) that employee incentive compensation practices do not discourage Loss Mitigation. The plan shall, at a minimum, provide for:

(a) Measures to ensure that staff processing a borrower's Loss Mitigation request routinely communicates and coordinates with staff processing the foreclosure on the borrower's property;

(b) appropriate deadlines for responses to borrower communications and requests for consideration of Loss Mitigation, including deadlines for decisionmaking on Loss Mitigation Activities, with the metrics established not being less responsive than the timelines in HAMP;

(c) establishment of an accessible and reliable single point of contact for the borrower so that the borrower has access to an employee of SunTrust Mortgage to obtain information throughout the Loss Mitigation and foreclosure processes;

(d) a requirement that written communications with the borrower identify by name the primary single point of contact along with one or more direct means of communication with the primary single point of contact, together with information about secondary points of contact in the event that the primary single point of contact is unavailable;

(e) measures to ensure that the single point of contact has access to current information and personnel (in-house or third-party) sufficient to timely, accurately, and adequately inform the borrower of the current status of the Loss Mitigation and foreclosure activities;

(f) procedures and controls to ensure that a final decision regarding a borrower's Loss Mitigation request (whether on a trial or permanent basis) is made and communicated to the borrower in writing, including the reason(s) why the borrower did not qualify for the trial or permanent modification and, if applicable, the net present value calculations utilized by SunTrust Mortgage, and that involve the single point of contact within a reasonable time before any foreclosure sale occurs;

(g) procedures and controls to ensure that when the borrower's loan has been approved for modification on a trial or permanent basis, (i) no foreclosure or further legal action predicate to foreclosure occurs, unless the borrower is past due on two or more payments post-dating the trial or permanent modification; and (ii) the single point of contact remains available to the borrower and continues to be referenced on all written communications with the borrower;

(h) policies and procedures to enable borrowers to make complaints regarding the Loss Mitigation process, denial of Loss Mitigation requests, the foreclosure process, or foreclosure activities that prevent a borrower from pursuing Loss Mitigation options, and a process for making borrowers aware of the complaint procedures;

(i) procedures for the prompt review, escalation, and resolution of borrower complaints, including a process to communicate the results of the review to the borrower on a timely basis;

(j) policies and procedures to consider loan modification or other Loss Mitigation Activities with respect to junior lien owned by SunTrust, the Bank, or SunTrust Mortgage where SunTrust Mortgage services the associated first lien mortgage and becomes aware that such first lien mortgage is delinquent or has been modified;

(k) policies and procedures to ensure that timely information about Loss Mitigation options is sent to the borrower in the event of a delinquency or default, including plain language notices about the pendency of loan modification and foreclosure proceedings; and

(l) policies and procedures to ensure that foreclosure and related documents provided to borrowers and third parties are appropriately maintained and tracked, and that borrowers generally will not be required to resubmit the same documented information that has already been provided, and that borrowers are notified promptly of the need for additional information.

### **Third Party Management**

7. Within 60 days of this Order, the Bank and SunTrust Mortgage shall submit to the Reserve Bank acceptable policies and procedures for the outsourcing of any residential mortgage servicing, Loss Mitigation, or foreclosure functions, by SunTrust Mortgage to any independent

contractor, consulting firm, law firm, property manager, or other third party (including any subsidiary or affiliate of SunTrust) (collectively, "Third-Party Providers"). Third-Party Providers include local counsel in foreclosure or bankruptcy proceedings retained to represent the interests of owners of mortgages in the Servicing Portfolio ("Foreclosure Counsel"). The policies and procedures shall, at a minimum, address, consider, and include:

(a) Appropriate oversight of Third-Party Providers to ensure that they comply with the Legal Requirements, supervisory guidance of the Board of Governors, and the Bank's and SunTrust Mortgage's policies and procedures;

(b) processes to prepare contingency and business continuity plans that ensure the continuing availability of critical third-party services and business continuity of SunTrust Mortgage, consistent with supervisory guidance of the Board of Governors, both to address short-term and long-term service disruptions and to ensure an orderly transition to new service providers should that become necessary;

(c) measures to ensure that all original records transferred by SunTrust Mortgage to Third-Party Providers (including the originals of promissory notes and mortgage documents) remain within the custody and control of the Third-Party Provider (unless filed with the appropriate court or the loan is otherwise transferred to another party), and are returned to SunTrust Mortgage or designated custodians at the conclusion of the performed service, along with all other documents necessary for SunTrust Mortgage's files;

(d) measures to ensure the accuracy of all documents filed or otherwise utilized on behalf of SunTrust Mortgage or the owners of mortgages in the Servicing Portfolio in any judicial or non-judicial foreclosure proceeding, related bankruptcy proceeding, or in other

foreclosure-related litigation, including, but not limited to, documentation sufficient to establish ownership of the note and right to foreclose at the time the foreclosure action is commenced;

(e) processes to perform appropriate due diligence on potential and current Third-Party Provider qualifications, expertise, capacity, reputation, complaints, information security, document custody practices, business continuity, and financial viability; and measures to ensure the adequacy of Third-Party Provider staffing levels, training, work quality, and workload balance;

(f) processes to ensure that contracts provide for adequate oversight, including requiring Third-Party Provider adherence to SunTrust Mortgage foreclosure processing standards, measures to enforce Third-Party Provider contractual obligations, and processes to ensure timely action with respect to Third-Party Provider performance failures;

(g) processes to ensure periodic reviews of Third-Party Provider work for timeliness, competence, completeness, and compliance with all applicable Legal Requirements, and SunTrust Mortgage's contractual obligations to GSEs and investors, and to ensure that foreclosures are conducted in a safe and sound manner;

(h) processes to review customer complaints about Third-Party Provider services;

(i) a review of fee structures for Third-Party Providers to ensure that the method of compensation considers the accuracy, completeness, and legal compliance of foreclosure filings and is not based solely on increased foreclosure volume or meeting processing timelines; and

(j) a periodic certification process for law firms (and recertification of existing law firm providers) that provide residential mortgage foreclosure and bankruptcy

services for the Mortgage Servicing Companies as qualified to serve as Third-Party Providers to SunTrust Mortgage, including that attorneys are licensed to practice in the relevant jurisdiction and have the experience and competence necessary to perform the services requested.

### **Compliance Program**

8. Within 60 days of this Order, SunTrust shall submit to the Reserve Bank an acceptable written plan to enhance its enterprise-wide compliance program (“ECP”) with respect to its oversight of residential mortgage loan servicing, Loss Mitigation, and foreclosure activities and operations. The enhanced program shall be based on an evaluation of the effectiveness of SunTrust’s current ECP in the areas of residential mortgage loan servicing, Loss Mitigation, and foreclosure activities and operations, and recommendations to strengthen the ECP in these areas. The plan shall, at a minimum, be designed to:

- (a) Ensure that the fundamental elements of the ECP and any enhancements or revisions thereto, including a comprehensive annual risk assessment, encompass residential mortgage loan servicing, Loss Mitigation, and foreclosure activities;
- (b) ensure compliance with the Legal Requirements and supervisory guidance of the Board of Governors; and
- (c) ensure that policies, procedures, and processes are updated on an ongoing basis as necessary to incorporate new or changes to the Legal Requirements and supervisory guidance of the Board of Governors.

9. Within 60 days of this Order, the Bank and SunTrust Mortgage shall submit to the Reserve Bank an acceptable compliance program and timeline for implementation to ensure that the operations of SunTrust Mortgage, including, but not limited to, residential mortgage servicing, Loss Mitigation, and foreclosure, comply with the Legal Requirements, as well as



SunTrust Mortgage's internal policies, procedures, and processes and are conducted in a safe and sound manner. The program shall, at a minimum, address, consider, and include:

- (a) The duties and responsibilities of line of business staff, other staff, and Third-Party Providers regarding compliance;
- (b) policies for developing and communicating compliance-related roles and responsibilities across SunTrust Mortgage's organization and to Third-Party Providers;
- (c) policies, procedures, and processes to ensure that SunTrust Mortgage has the ability to locate and secure all documents, including original promissory notes, necessary to perform mortgage servicing, Loss Mitigation, and foreclosure functions and to comply with contractual obligations;
- (d) compliance with supervisory guidance of the Board of Governors, including, but not limited to the guidance entitled, "Compliance Risk Management Programs and Oversight at Large Banking Organizations with Complex Compliance Profiles," dated October 16, 2008 (SR 08-08/CA 08-11);
- (e) compliance with Legal Requirements, including:
  - (i) processes to ensure that all factual assertions made in pleadings, declarations, affidavits, or other sworn statements filed by or on behalf of SunTrust Mortgage are accurate, complete, and reliable; and that affidavits and declarations are based on personal knowledge or a review of SunTrust Mortgage's books and records when the affidavit or declaration so states;
  - (ii) processes to ensure that affidavits filed in foreclosure proceedings and other foreclosure-related documents are executed and notarized in accordance with applicable state legal requirements, including jurat requirements;

(iii) processes to ensure that SunTrust Mortgage has properly documented ownership of the promissory note and mortgage (or deed of trust) under applicable state law, or is otherwise a proper party to the action (as a result of agency or other similar status) at all stages of foreclosure and bankruptcy litigation; and

(iv) processes to ensure that a clear and auditable trail exists for all factual information contained in each affidavit or declaration, in support of each of the charges that are listed, including whether the amount is chargeable to the borrower or claimable by the investor;

(f) policies and procedures to ensure that payments are credited in a prompt and timely manner; that payments, including partial payments to the extent permissible under the terms of applicable legal instruments, are applied to scheduled principal, interest, and escrow before fees, and that any misapplication of borrower funds is corrected in a prompt and timely manner;

(g) compliance with contractual obligations to the owners of the mortgages in the Servicing Portfolio;

(h) compliance with the contractual limitations in the underlying mortgage note, mortgage, or other customer authorization with respect to the imposition of fees, charges and expenses, and compliance with Legal Requirements concerning the imposition of fees, charges, and expenses;

(i) processes to ensure that foreclosure sales (including the calculation of the default period, the amounts due, and compliance with notice requirements) and post-sale confirmation are in accordance with the terms of the mortgage loan and applicable state and federal law requirements;

(j) procedures to ensure compliance with bankruptcy law requirements, including a prohibition on collection of fees in violation of bankruptcy's automatic stay (11 U.S.C. § 362), the discharge injunction (11 U.S.C. § 524), or any applicable court order;

(k) the scope and frequency of independent testing for compliance with the Legal Requirements, supervisory guidance of the Board of Governors, and the requirements of SunTrust Mortgage's internal policies, procedures, and processes by qualified parties with requisite knowledge and ability (which may include internal audit) who are independent of SunTrust Mortgage's business lines and compliance function;

(l) measures to ensure that policies, procedures, and processes are updated on an ongoing basis as necessary to incorporate new or changes to Legal Requirements and supervisory guidance of the Board of Governors; and

(m) the findings and conclusions of the independent consultants that were engaged by SunTrust, the Bank, or SunTrust Mortgage under paragraph 3 to review SunTrust Mortgage's foreclosure processes.

#### **Mortgage Electronic Registration System**

10. Within 60 days of this Order, the Bank and SunTrust Mortgage shall submit an acceptable plan to ensure appropriate controls and oversight of SunTrust Mortgage's activities with respect to the Mortgage Electronic Registration System and compliance with MERS' membership rules, terms, and conditions ("MERS Requirements") ("MERS Plan"). The MERS Plan shall include, at a minimum:

(a) Processes to ensure that all mortgage assignments and endorsements with respect to mortgage loans serviced or owned by SunTrust Mortgage out of MERS' name are executed only by a certifying officer authorized by MERS and approved by SunTrust Mortgage;

(b) processes to ensure that all other actions that may be taken by MERS certifying officers (with respect to mortgage loans serviced or owned by SunTrust Mortgage) are executed by a certifying officer authorized by MERS and approved by SunTrust Mortgage;

(c) processes to ensure that SunTrust Mortgage maintain up-to-date corporate resolutions from MERS for all SunTrust Mortgage employees and third-parties who are certifying officers authorized by MERS, and up-to-date lists of MERS certifying officers;

(d) processes to ensure compliance with all MERS Requirements and with the requirements of the MERS Corporate Resolution Management System;

(e) processes to ensure the accuracy and reliability of data reported to MERS, including monthly system-to-system reconciliations for all MERS mandatory reporting fields, and daily capture of all rejects/warnings reports associated with registrations, transfers, and status updates on open-item aging reports. Unresolved items must be maintained on open-item aging reports and tracked until resolution. SunTrust Mortgage shall determine and report whether the foreclosures for loans serviced by SunTrust Mortgage that are currently pending in MERS' name are accurate and how many are listed in error, and describe how and by when the data on the MERS system will be corrected;

(f) an appropriate MERS quality assurance workplan, which clearly describes all tests, test frequency, sampling methods, responsible parties, and the expected process for open-item follow-up, and includes an annual independent test of the control structure of the system-to-system reconciliation process, the reject/warning error correction process, and adherence to the MERS Plan; and

(g) inclusion of MERS in SunTrust Mortgage's third-party vendor management process, which shall include a detailed analysis of potential vulnerabilities, including information security, business continuity, and vendor viability assessments.

### **Management Information Systems**

11. Within 60 days of this Order, the Bank and SunTrust Mortgage shall submit to the Reserve Bank an acceptable plan and timeline for the review and remediation, as necessary, of SunTrust Mortgage's management information systems ("MIS") for their residential mortgage loan servicing, Loss Mitigation, and foreclosure activities to ensure the timely delivery of complete and accurate information to permit effective decision-making. The plan shall, at a minimum, provide for:

- (a) A description of the various MIS used or to be used by SunTrust Mortgage;
- (b) a timetable for completion of the review;
- (c) a timetable for the remediation of any identified deficiencies; and
- (d) new systems or enhancements to the MIS to:
  - (i) monitor compliance with the Legal Requirements, supervisory guidance of the Board of Governors, and the requirements of this Order;
  - (ii) ensure the ongoing accuracy of records for all serviced mortgages, including, but not limited to, records necessary to establish ownership and the right to foreclose by the appropriate party for all serviced mortgages, outstanding balances, and fees assessed to the borrower;

(iii) ensure that the Loss Mitigation and foreclosure staffs have sufficient and timely access to information provided by the borrower regarding Loss Mitigation and foreclosure activities; and

(iv) ensure that the single point of contact has sufficient and timely access to information provided by the borrower regarding Loss Mitigation and foreclosure activities; and

(e) testing the integrity and accuracy of the new or enhanced MIS to ensure that reports generated by the system provide necessary information for adequate monitoring and quality controls.

### **Training**

12. Within 60 days of this Order, the Bank and SunTrust Mortgage shall submit to the Reserve Bank an acceptable written plan, and timeline for implementation, to improve the training of all appropriate officers and staff of SunTrust Mortgage regarding the Legal Requirements, supervisory guidance of the Board of Governors, and SunTrust Mortgage's internal policies and procedures regarding residential mortgage servicing, Loss Mitigation, and foreclosure, and the policies and procedures adopted regarding a single point of contact described in paragraph 6 of this Order. The plan shall also include:

(a) A requirement that training be conducted and documented no less frequently than annually; and

(b) procedures to timely inform appropriate officers and staff of any new or changes to the Legal Requirements and supervisory guidance of the Board of Governors related to residential mortgage loan servicing, Loss Mitigation, or foreclosure.

## **Risk Assessment**

13. Within 10 days of this Order, the Bank and SunTrust Mortgage shall retain an independent consultant acceptable to the Reserve Bank to conduct a comprehensive assessment of SunTrust Mortgage's risks, including, but not limited to, operational, compliance, transaction, legal, and reputational risks particularly in the areas of residential mortgage loan servicing, Loss Mitigation, and foreclosure. The independent consultant shall prepare a written risk assessment and provide it to SunTrust, the Bank, and SunTrust Mortgage within 90 days of this Order, and SunTrust, the Bank, and SunTrust Mortgage shall provide it to the Reserve Bank at the same time that it is provided to SunTrust, the Bank, and SunTrust Mortgage. The risk assessment shall, at a minimum, address, consider, and include:

- (a) The scope and complexity of SunTrust Mortgage's activities and operations regarding residential mortgage loan servicing, Loss Mitigation, and foreclosure, including functions outsourced to Third-Party Providers;
- (b) an evaluation of risk exposures, taking into account risks inherent in SunTrust Mortgage's business activities and in outsourcing to Third-Party Providers;
- (c) an assessment of the effectiveness of established controls designed to mitigate each type of risk and identify residual risks; and
- (d) recommendations for improving risk management.

14. Within 5 days of the engagement of the independent consultant described in paragraph 13 of this Order, but prior to the commencement of the comprehensive risk assessment, the Bank and SunTrust Mortgage shall submit to the Reserve Bank for approval an engagement letter that sets forth:

- (a) The scope and methodology for conducting the risk assessment, including a detailed description of the areas to be reviewed;
- (b) the expertise and resources to be dedicated to the risk assessment; and
- (c) a commitment that any or workpapers associated with the risk assessment will be made available to the Reserve Bank upon request.

### **Risk Management**

15. Within 60 days of submission of the comprehensive risk assessment conducted pursuant to paragraph 13 of this Order, SunTrust shall submit to the Reserve Bank an acceptable written plan to enhance its ERM program with respect to its oversight of residential mortgage loan servicing, Loss Mitigation, and foreclosure activities and operations. The enhanced program shall be based on an evaluation of the effectiveness of SunTrust's current ERM program in the areas of residential mortgage loan servicing, Loss Mitigation, and foreclosure activities and operations, and recommendations to strengthen the risk management program in these areas. The plan shall, at a minimum, be designed to:

- (a) Ensure that the fundamental elements of the risk management program and any enhancements or revisions thereto, including a comprehensive annual risk assessment, encompass residential mortgage loan servicing, Loss Mitigation, and foreclosure activities;
- (b) ensure that the risk management program complies with supervisory guidance of the Board of Governors, including, but not limited to, the Board of Governors' guidance entitled, "Compliance Risk Management Programs and Oversight at Large Banking Organizations with Complex Compliance Profiles," dated October 16, 2008 (SR 08-08/CA 08-11); and



(c) establish limits for compliance, legal, and reputational risks and provide for regular review of risk limits by appropriate senior management and the board of directors or an authorized committee of the board of directors.

16. Within 60 days of submission of the comprehensive risk assessment conducted pursuant to paragraph 13 of this Order, the Bank and SunTrust Mortgage shall submit to the Reserve Bank an acceptable, comprehensive risk management program for SunTrust Mortgage. The program shall provide for the oversight by the Bank's and SunTrust Mortgage's boards of directors and senior management, including the Bank's and SunTrust Mortgage's senior risk managers, of the development and implementation of formalized policies and mitigation processes for all identified risks to SunTrust Mortgage. The program shall, at a minimum, address, consider, and include:

- (a) The structure and composition of the Bank's and SunTrust Mortgage's board risk management committees and a determination of the optimum structure and composition needed to provide adequate oversight of SunTrust Mortgage's firm-wide risk management;
- (b) a detailed description of the responsibilities of the line-of-business staff, legal department, and internal audit department regarding risk assessment and management, including, but not limited to, compliance and legal risks;
- (c) written policies, procedures, and risk management standards;
- (d) processes to adequately identify risk levels and trends;
- (e) processes to adequately identify and control risks arising from incentive compensation programs;
- (f) processes to document, measure, assess, and report key risk indicators;

- (g) controls to mitigate risks;
- (h) procedures for the escalation of significant matters related to risks to appropriate senior officers and board committees;
- (i) the scope and frequency of comprehensive risk assessments;
- (j) a formal method to ensure effective communication of established risk management policies, procedures, and standards to all appropriate business line and other staff;
- (k) periodic testing of the effectiveness of the risk management program; and
- (l) the findings and recommendations of the independent consultant described in paragraph 13 of this Order regarding risk management.

#### **Audit**

17. Within 60 days of this Order, SunTrust shall submit to the Reserve Bank an acceptable written plan to enhance the internal audit program with respect to residential mortgage loan servicing, Loss Mitigation, and foreclosure activities and operations. The enhanced plan shall be based on an evaluation of the effectiveness of SunTrust's current internal audit program in the areas of residential mortgage loan servicing, Loss Mitigation, and foreclosure activities and operations, and shall include recommendations to strengthen the internal audit program in these areas. The plan shall, at a minimum, be designed to:

- (a) Ensure that the internal audit program encompasses residential mortgage loan servicing, Loss Mitigation, and foreclosure activities;
- (b) periodically review the effectiveness of the ECP and ERM with respect to residential mortgage loan servicing, Loss Mitigation, and foreclosure activities, and compliance with the Legal Requirements and supervisory guidance of the Board of Governors;

(c) ensure that adequate qualified staffing of the audit function is provided for residential mortgage loan servicing, Loss Mitigation, and foreclosure activities;

(d) ensure timely resolution of audit findings and follow-up reviews to ensure completion and effectiveness of corrective measures;

(e) ensure that comprehensive documentation, tracking, and reporting of the status and resolution of audit findings are submitted to the audit committee; and

(f) establish escalation procedures for resolving any differences of opinion between audit staff and management concerning audit exceptions and recommendations, with any disputes to be resolved by the audit committee.

18. Within 60 days of this Order, the Bank and SunTrust Mortgage shall submit to the Reserve Bank an acceptable enhanced written internal audit program to periodically review compliance with applicable Legal Requirements and supervisory guidance of the Board of Governors that shall, at a minimum, provide for:

(a) An annual written, risk-based audit plan approved by the boards of directors of the Bank and SunTrust Mortgage, or authorized committees of those boards, that encompasses all appropriate areas of audit coverage;

(b) the scope and frequency of audits;

(c) the independence of the internal auditor, audit staff, and audit committee;

(d) inclusion in the audit scope of reviews of internal controls, MIS, and compliance with SunTrust Mortgage's internal policies, procedures, and processes, including, but not limited to, the Loss Mitigation and foreclosure processes;

(e) adequate testing and review of MIS used in servicing, Loss Mitigation, and foreclosure activities to ensure compliance with the Legal Requirements;

- (f) controls to ensure that audits are completed on a timely basis in accordance with the approved audit plan;
- (g) adequate staffing of the audit function by qualified staff;
- (h) timely resolution of audit findings and follow-up reviews to ensure completion and effectiveness of corrective measures;
- (i) comprehensive documentation, tracking, and reporting of the status and resolution of audit findings to the audit committee, at least quarterly; and
- (j) establishment of escalation procedures for resolving any differences of opinion between audit staff and management concerning audit exceptions and recommendations, with any disputes to be resolved by the audit committee.

#### **Approval, Implementation, and Progress Reports**

19. (a) SunTrust, the Bank, and SunTrust Mortgage, as applicable, shall submit written plans, programs, policies, procedures, and engagement letters that are acceptable to the Reserve Bank within the applicable time periods set forth in paragraphs 2, 3(c), 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, and 18 of this Order. Independent consultants acceptable to the Reserve Bank shall be retained by the Bank and SunTrust Mortgage within the applicable periods set forth in paragraphs 3(a) and 13 of this Order.

(b) Within 10 days of approval by the Reserve Bank, SunTrust, the Bank, and SunTrust Mortgage, as applicable, shall adopt the approved plans, programs, policies, and procedures. Upon adoption, SunTrust, the Bank, and SunTrust Mortgage, as applicable, shall implement the approved plans, programs, policies, and procedures, and thereafter fully comply with them.

(c) During the term of this Order, the approved plans, programs, policies, procedures, and engagement letters shall not be amended or rescinded without the prior written approval of the Reserve Bank.

(d) During the term of this Order, SunTrust, the Bank, and SunTrust Mortgage, as applicable, shall revise the approved plans, programs, policies, and procedures as necessary to incorporate new or changes to the Legal Requirements and supervisory guidance of the Board of Governors. The revised plans, programs, policies, and procedures shall be submitted to the Reserve Bank for approval at the same time as the progress reports described in paragraph 20 of this Order.

20. Within 30 days after the end of each calendar quarter following the date of this Order, SunTrust's, the Bank's, and SunTrust Mortgage's boards of directors shall jointly submit to the Reserve Bank written progress reports detailing the form and manner of all actions taken to secure compliance with the provisions of this Order and the results thereof. The Reserve Bank may, in writing, discontinue the requirement for progress reports or modify the reporting schedule.

21. Within 15 months after the date of this Order, SunTrust, the Bank, and SunTrust Mortgage shall submit a validation report prepared by an independent third-party consultant with respect to compliance with the Order during the first year after the Order becomes effective. The independent third-party consultant shall be acceptable to the Reserve Bank, and shall be engaged not more than nine months after the effective date of this Order. The engagement letter retaining the independent third-party consultant shall be subject to the Reserve Bank's approval. At a minimum the validation report shall include the results of a testing program acceptable to the

Reserve Bank that, among other things, will evaluate the effectiveness of the various programs, policies and procedures implemented as a result of this Order.

#### **Notices**

22. All communications regarding this Order shall be sent to:

- (a) Richard B. Gilbert  
Assistant Vice President  
Federal Reserve Bank of Atlanta  
1000 Peachtree Street, N.E.  
Atlanta, Georgia 30309-4470
- (b) James M. Wells III  
Chairman and Chief Executive Officer  
SunTrust Banks, Inc. and SunTrust Bank  
SunTrust Plaza  
303 Peachtree Street NE  
30th Floor; MC 0645  
Atlanta Georgia 30308
- (c) Jerome T. Lienhard, II  
President and Chief Executive Officer  
SunTrust Mortgage, Inc.  
901 Semmes Avenue  
Richmond, Virginia 23224

#### **Miscellaneous**

23. The provisions of this Order shall be binding on SunTrust, the Bank, and SunTrust Mortgage, and each of their institution-affiliated parties in their capacities as such, and their successors and assigns.

24. Each provision of this Order shall remain effective and enforceable until stayed, modified, terminated, or suspended in writing by the Reserve Bank.

25. Notwithstanding any provision of this Order, the Reserve Bank may, in its sole discretion, grant written extensions of time to SunTrust, the Bank, and SunTrust Mortgage to comply with any provision of this Order.

26. If SunTrust, the Bank, or SunTrust Mortgage believes that compliance with any provision of paragraphs 6, 7, 9, or 10 of this Order would not be legally permissible or would require it to breach any existing contractual obligation to an investor, SunTrust, the Bank, or SunTrust Mortgage, as applicable, may make a written submission to the Board of Governors and the Reserve Bank. The written submission shall include the following: (1) specific identification of the legal requirement or contractual obligation that would be breached, and the likely consequences of any such breach; (2) a complete description of all good faith efforts undertaken by it to secure a modification of the contractual obligation or a waiver of its applicability in order to avoid any conflict between the requirements of this Order and the contractual obligation; and (3) any alternative approaches to satisfying the intent of the provision of the Order involved that would not cause a breach of the legal requirement or contractual obligation. Any such submission shall include a detailed opinion of experienced counsel with respect to the asserted conflict between compliance with this Order and the legal requirement or contractual obligation, a copy of the contract involved, and such other information as is necessary to evaluate the submission. A submission pursuant to this paragraph shall be made no later than 30 days before the deadline for submitting an otherwise acceptable plan, policies and procedures, or program with respect to the applicable paragraph. Such a submission in no way relieves SunTrust, the Bank, and SunTrust Mortgage from fully complying with this Order, including the applicable paragraph. Following review of the submission, the Board of Governors, in its discretion, pursuant to authority delegated to the Director of the Division of Banking Supervision and Regulation, and the General Counsel, may modify this Order or may require that SunTrust, the Bank, or SunTrust Mortgage, as applicable, comply with this Order.

27. The provisions of this Order shall not bar, estop, or otherwise prevent the Board of Governors, the Reserve Bank, or any other federal or state agency from taking any further or other action affecting SunTrust, the Bank, SunTrust Mortgage, or any of their current or former institution-affiliated parties or their successors or assigns.

28. Nothing in this Order, express or implied, shall give to any person or entity, other than the parties hereto, and their successors hereunder, any benefit or any legal or equitable right, remedy, or claim under this Order.

By Order of the Board of Governors effective this 13<sup>th</sup> day of April, 2011.

SUNTRUST BANKS, INC.

BOARD OF GOVERNORS OF THE  
FEDERAL RESERVE SYSTEM

By: /s/ William H. Rogers, Jr.  
William H. Rogers, Jr.  
President and Chief Operating Officer

By: /s/ Jennifer J. Johnson  
Jennifer J. Johnson  
Secretary of the Board

SUNTRUST BANK

By: /s/ William H. Rogers, Jr.  
William H. Rogers, Jr.  
President and Chief Operating Officer

SUNTRUST MORTGAGE, INC.

By: /s/ Jerome T. Lienhard, II  
Jerome T. Lienhard, II  
President and Chief Executive Officer



# EXHIBIT H

# Bloomberg

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## OCC Asks for Enforcement Powers Against Banks' Consultants

By Jesse Hamilton and Cheyenne Hopkins - Apr 11, 2013

The U.S. regulator for national banks wants Congress to expand the agency's authority to sanction independent consulting firms for wrongdoing in their work for lenders.

"The OCC faces significant jurisdictional obstacles if it seeks to take an enforcement action directly against an independent contractor," Daniel P. Stipano, deputy chief counsel for the Office of the Comptroller of the Currency, said in testimony prepared for a Senate Banking subcommittee hearing in Washington today. "The OCC would welcome a legislative change in this area."

Senator Sherrod Brown, an Ohio Democrat, held the hearing amid scrutiny of consultants such as Promontory Financial Group LLC and Deloitte & Touche LLP over their roles in a failed review of banks' faulty U.S. foreclosures. He said the committee "should consider" the OCC's plea for heightened enforcement powers, and he said he hoped "to clarify the foggy relationship" between consultants and regulators.

In enforcement settlements, regulators often require banks to hire consultants to perform or review fixes. Stipano said it would be useful for regulators to have additional reach into that work, and also to have jurisdiction when banks outsource work to consultants.

Representative Maxine Waters of California, the top Democrat on the House Financial Services Committee, introduced a bill today that would require regulators' consent orders that call for consultant involvement be made public. She said in a statement that a conflict of interest in such consulting work "favors the companies which pay outside consultants over the consumers who have been wronged."

### 'Right Direction'

Waters said she was glad to see the OCC welcoming legislation and "the fact that it admits that there is a problem is a step in the right direction."

The OCC has inserted consulting requirements in almost a third of enforcement actions since the 2008 credit crisis, according to Brown. The Federal Reserve, which regulates bank holding companies, used them in almost 15 percent of enforcement actions in the last decade, Richard M. Ashton, deputy general counsel for the central bank, said in his prepared remarks.

“It can be an effective enforcement tool to require regulated organizations to retain a consultant to perform specific tasks,” Ashton said in his statement.

## **Borrowers Uncompensated**

When banking regulators faced the 2011 review of more than 4 million foreclosures to find people who were harmed by errors and wrongdoing from mortgage servicers, the OCC and Fed put the review in the hands of independent consultants. After about 18 months without the process producing compensation to harmed borrowers, regulators scrapped the initial approach in favor of a \$9.3 billion settlement, saying that too much money had been paid to consultants.

The Government Accountability Office released a report this month in which it accused regulators of poor planning and insufficient guidance for the Independent Foreclosure Review of files from loan servicers including JPMorgan Chase & Co. (JPM), Bank of America Corp. (BAC) and Citigroup Inc. (C)

“The IFR process was a totally different animal, and certainly the GAO report indicates that it wasn’t the best approach,” Comptroller of the Currency Thomas Curry said in an interview. Consultants shouldn’t be judged solely by that example, he said.

His deputy, Stipano, told lawmakers the review task was “inordinately complex, and we did not fully appreciate that.”

## **‘Grunt Work’**

Outside experts have a place in doing “some of the grunt work that needs to be done in a bank to correct deficiencies,” Curry said. “It’s probably better for us to have someone externally do it,” and it’s up to the regulators to make sure the firms are independent, he said.

“Promontory Financial Group’s business model requires us to bring a high level of independent judgment to all of our engagements, not just when we are formally designated as independent consultants,” Konrad Alt, a managing director for the Washington-based firm, said in prepared testimony. “If we merely told our clients what they want to hear, we would lose credibility when the regulators show up and tell them something different.”

Alt touted Promontory’s team of senior professionals, many of whom have decades of experience. Over the firm’s 12-year history, less than 5 percent of more than 1,400 engagements came from regulators, he said.

## **Files Inconsistent**

James Flanagan, a leader of the U.S. financial services practice at PricewaterhouseCoopers LLP, said borrowers’ files in the foreclosure reviews were varied and lacked documentation; legal obligations varied by states; and regulators added to the parts of the loan files needing review.

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# EXHIBIT I

UNITED STATES OF AMERICA  
BEFORE THE  
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM  
WASHINGTON, D.C.

In the Matter of

SUNTRUST BANKS, INC.,  
Atlanta, Georgia

SUNTRUST BANK  
Atlanta, Georgia

and

SUNTRUST MORTGAGE, INC.  
Richmond, Virginia

Docket No. 11-021-B-HC  
11-021-B-SM  
11-021-B-DEO

**AMENDMENT OF CONSENT ORDER**

WHEREAS, on April 13, 2011, SunTrust Banks, Inc., Atlanta, Georgia ("SunTrust"), SunTrust Bank, Atlanta, Georgia (the "Bank"), and SunTrust Mortgage, Inc., Richmond, Virginia ("SunTrust Mortgage") consented to the issuance of a Consent Order (the "2011 Consent Order"), in recognition of the common goal of the Board of Governors of the Federal Reserve System (the "Board of Governors"), the Federal Reserve Bank of Atlanta (the "Reserve Bank"), SunTrust and its direct and indirect subsidiaries that engaged in the business of servicing residential mortgage loans, including the Bank and its direct and indirect subsidiaries, including SunTrust Mortgage, to ensure that the consolidated organization operates in a safe and sound manner and in compliance with all applicable Legal Requirements (as defined in the 2011 Consent Order);

WHEREAS, paragraphs 3 and 4 of the 2011 Consent Order required the Bank and SunTrust Mortgage, among other things, to retain an independent consultant to conduct an independent review of certain residential mortgage loan foreclosure actions or proceedings for borrowers who had a pending or completed foreclosure on their primary residence any time from January 1, 2009 to December 31, 2010 for loans serviced by SunTrust Mortgage (the "In-Scope Borrower Population"), the purposes of which were set forth in paragraphs 3 and 4 of the 2011 Consent Order (the "Independent Foreclosure Review");

WHEREAS, the 2011 Consent Order required SunTrust to serve as a source of strength to the Bank, including, but not limited to, taking steps to ensure that the Bank complies with the applicable provisions of the 2011 Consent Order;

WHEREAS, SunTrust, the Bank, and SunTrust Mortgage have taken steps to comply with their obligations under paragraphs 1, 3, and 4 of the 2011 Consent Order;

WHEREAS, in the interest of providing the greatest benefit to borrowers potentially affected by the practices at SunTrust, the Bank, and SunTrust Mortgage addressed in the 2011 Consent Order in a more timely manner than would have occurred under the Independent Foreclosure Review, the Board of Governors and the Office of the Comptroller of the Currency (the "OCC"), within their respective jurisdictions, SunTrust, the Bank, SunTrust Mortgage, and several other financial institutions with mortgage loan servicing operations have agreed to amend their respective 2011 Consent Orders;

WHEREAS, SunTrust, the Bank, SunTrust Mortgage, and the Board of Governors intend the Bank's and SunTrust Mortgage's obligations under paragraphs 3 and 4 of the 2011 Consent Order to be replaced with the obligations specified in this amendment to the 2011 Consent Order (the "Amendment"), and ordered pursuant to section 8(b) of the Federal Deposit Insurance Act,

as amended (the "FDI Act") (12 U.S.C. § 1818(b)), which include (i) making a cash payment in the amount specified herein to a Qualified Settlement Fund for distribution to the In-Scope Borrower Population in accordance with a distribution plan developed by the Board of Governors and the OCC in their discretion and (ii) taking other loss mitigation or other foreclosure prevention actions in the amount specified herein;

WHEREAS, the amount of any payments to borrowers made pursuant to this Amendment to the 2011 Consent Order does not in any manner reflect specific financial injury or harm that may have been suffered by borrowers receiving payments, except as expressly provided for in this Amendment to the 2011 Consent Order, nor do the payments constitute either an admission or a denial by SunTrust, the Bank, or SunTrust Mortgage of wrongdoing or a civil money penalty under section 8(i) of the FDI Act (12 U.S.C. § 1818(i));

WHEREAS, the boards of directors of SunTrust, the Bank, and SunTrust Mortgage have authorized William H. Rogers, Jr. and Jerome T. Lienhard to enter into this Amendment to the 2011 Consent Order on behalf of SunTrust, the Bank, and SunTrust Mortgage, respectively, and to consent to compliance by SunTrust, the Bank, and SunTrust Mortgage, and their institution-affiliated parties, as defined in sections 3(u) and 8(b)(3) of the FDI Act (12 U.S.C. §§ 1813(u) and 1818(b)(3)), with each and every applicable provision of the 2011 Consent Order as amended by this Amendment.

NOW, THEREFORE, IT IS HEREBY ORDERED pursuant to section 8(b) of the FDI Act (12 U.S.C. § 1818(b)) that the 2011 Consent Order is amended as follows:

1. The recitations of the 2011 Consent Order are not amended.



2. Paragraph 1 of the 2011 Consent Order is amended in the last clause only to read as follows: "taking steps to ensure that the Bank complies with the applicable provisions of this Order, as amended on February 28, 2013."

3. Paragraph 2 of the 2011 Consent Order is not amended.4. Except as otherwise provided in this paragraph 4, any obligations of the Bank or SunTrust Mortgage under paragraphs 3 and 4 of the 2011 Consent Order are hereby terminated, and paragraphs 3 and 4, including their accompanying heading, are stricken and replaced with the following:

**"Payments to Borrowers**

3. (a) Within 15 days of the date of the amendment to this Order (the "Amendment"), SunTrust and the Bank (defined for purposes of paragraphs 3, 4, and 5 to include the Bank's direct and indirect subsidiaries, including SunTrust Mortgage) will make a cash payment that collectively totals \$62,555,947 into a Qualified Settlement Fund (the "Fund") from which payments will be made pursuant to a distribution plan developed by the Board of Governors and the Office of the Comptroller of the Currency (collectively, the "Regulators") in their discretion to borrowers whose residential mortgage loan on their primary residence was serviced by the Bank and who were subject to a foreclosure action or proceeding that was pending or completed any time from January 1, 2009 to December 31, 2010 (the "In-Scope Borrower Population");.

(b) Prior to SunTrust's and the Bank's cash payment into the Fund required under paragraph 3(a), SunTrust and the Bank, in coordination with the other financial institutions with mortgage loan servicing operations that also have agreed to amend their respective Orders (collectively the "Participating Servicers"), shall ensure that the Fund is established. The Fund shall be established and is intended to be treated at all times as a Qualified Settlement Fund

within the meaning of Treas. Reg. § 1.468B-1 (26 C.F.R. § 1.468B-1). Rust Consulting, Inc. (the “Paying Agent”) has been retained by the Participating Servicers for the purpose of distributing payments as directed by the Regulators from the Fund to the Participating Servicers’ In-Scope Borrower Population and shall serve as the “administrator” at the direction of the Regulators within the meaning of Treas. Reg. § 1.468B-2(k)(3) (26 C.F.R. § 1.468B-2(k)(3)). The agreements pursuant to which the Participating Servicers retain the Paying Agent shall be subject to the Regulators’ prior no objection, and the agreements shall not be amended or modified without obtaining a prior no objection from the Regulators. SunTrust and the Bank will be responsible for SunTrust’s and the Bank’s proportionate share, among the Participating Servicers, of all administrative costs related to the Fund and the Paying Agent. Neither SunTrust nor the Bank may use any funds from their payment into the Fund or interest accrued on amounts in the Fund for such costs.

(c) Except as provided in paragraphs 3(f) through (h), SunTrust and the Bank shall promptly place the In-Scope Borrower Population into categories based upon loan file characteristics as determined by the Regulators (the “Borrower Waterfall”).

(d) The Reserve Bank may direct that SunTrust’s and the Bank’s placement of the In-Scope Borrower Population into the Borrower Waterfall be reviewed independently by SunTrust’s and/or the Bank’s internal audit or compliance function. Upon verification by the Reserve Bank, the Reserve Bank will instruct SunTrust and the Bank to provide the Paying Agent with SunTrust’s and the Bank’s placement of the In-Scope Borrower Population within the Borrower Waterfall, and at that time SunTrust’s and the Bank’s placement of the In-Scope Borrower Population within the Borrower Waterfall shall be deemed final.

(e) The Regulators will determine the specific payment amounts applicable to each category of borrower within the Borrower Waterfall in their sole discretion (the “Distribution Plan”) and will direct the Paying Agent to distribute payments from the Fund to the In-Scope Borrower Population in accordance with the Distribution Plan established by the Regulators.

(f) Notwithstanding paragraphs 3(d) and (e), with respect to borrowers in the In-Scope Borrower Population who may have been entitled to protection under Section 521 or Section 533 of the Servicemembers’ Civil Relief Act, (the “SCRA”), 50 U.S.C. App. §§ 521 or 533, and borrowers who may not have been in default during the foreclosure process, SunTrust and the Bank shall either: (i) place the borrower into the applicable category within Borrower Waterfall, which will result in the borrower automatically receiving payments made from the Fund in accordance with the Distribution Plan for such category; or (ii) instruct the independent consultant (the “IC”) that SunTrust and the Bank retained to conduct an independent review of residential mortgage loan foreclosure actions or proceedings for the In-Scope Borrower Population (the “Independent Foreclosure Review”) to complete file reviews for such borrowers to determine financial injury related to Sections 521 or 533 or to not being in default. For files reviewed under (ii), the borrower will receive payments from the Fund in amounts specified in the June 21, 2012 Financial Remediation Framework where the IC makes a determination of “harm.” For files reviewed under (ii) where the IC makes a determination of “no harm,” SunTrust and the Bank will place the borrower into the next highest Borrower Waterfall category for which such borrower is eligible, which will result in the borrower receiving payment from the Fund in accordance with the Distribution Plan for such category.

(g) Notwithstanding paragraphs 3(d) and (e), with respect to borrowers in the In-Scope Borrower Population who may have been subject to interest rate protections under Section 527 of the SCRA, 50 U.S.C. App. § 527, as part of the Borrower Waterfall placement, SunTrust and the Bank shall either: (i) place the borrower into the highest category within the Borrower Waterfall for which the borrower is eligible, which will result in the borrower automatically receiving payments from the Fund in accordance with the Distribution Plan for such category; or (ii) instruct the IC to complete file reviews for such borrowers to determine financial injury related to Section 527. For files reviewed under (ii), the borrower will receive payments from the Fund for the actual amount in error, in an amount not less than \$250, where the IC makes a determination of "harm." For files reviewed under (ii) where the IC makes a determination of "no harm," SunTrust and the Bank will place the borrower into the next highest Borrower Waterfall category for which such borrower is eligible, which will result in the borrower receiving payment from the Fund in accordance with the Distribution Plan for such category.

(h) If SunTrust and the Bank elect to have the IC continue file review work as described in paragraphs 3(f) or (g), the IC review work for such files must be completed prior to the verification specified in paragraph 3(d). If the IC review work is not completed by such time, the Board of Governors may direct payments from the Fund to such borrowers in accordance with the Distribution Plan for the highest category for which such borrower is eligible.

(i) Within three days of the effective date of the Amendment to this Order, SunTrust and the Bank shall confirm that their IC has provided the Reserve Bank with the most recent data report(s) previously provided by the IC to SunTrust's and/or the Bank's board(s) or

appropriate board committee(s). Within three days of the effective date of the Amendment to this Order, SunTrust and the Bank shall confirm that their IC has completed and provided to the Board of Governors the additional reporting specified by the Board of Governors with information as of December 31, 2012. SunTrust and the Bank shall also take all reasonable steps to cause their IC to provide any existing information, as requested by the Reserve Bank, to assist the Reserve Bank and the Board of Governors in their analysis and public reporting of Independent Foreclosure Review related activities.

(j) Consistent with existing examination authority, the Reserve Bank maintains the right to obtain and access all existing material, information, records and/or files used or generated by SunTrust, the Bank, and/or their IC (including independent counsel to the IC) in connection with the Independent Foreclosure Review and implementation of the Amendment to this Order.

#### **Foreclosure Prevention**

4. (a) By no later than January 7, 2015, SunTrust and the Bank shall collectively provide loss mitigation or other foreclosure prevention actions ("Foreclosure Prevention") that collectively totals \$100,089,515.

(b) SunTrust's and the Bank's Foreclosure Prevention actions must be in addition to any future consumer relief obligations required of SunTrust in any agreement and/or settlement it enters into with Department of Justice ("DOJ")/Housing and Urban Development ("HUD") to address claims similar to those addressed in the DOJ/HUD National Mortgage Settlement (Consent Judgment entered April 4, 2012) (the "NMS").

(c) Well structured loss mitigation actions should focus on foreclosure prevention, which should typically result in benefitting the borrower. While SunTrust and the

Bank's actions may be affected by existing investor requirements, SunTrust and the Bank's foreclosure prevention actions should reflect the following guiding principles:

(i) preference should be given to activities designed to keep the borrower in the home;

(ii) foreclosure prevention actions should emphasize affordable, sustainable, and meaningful home preservation actions for qualified borrowers;

(iii) foreclosure prevention actions should otherwise provide significant and meaningful relief or assistance to qualified borrowers; and

(iv) foreclosure prevention actions should not disfavor a specific geography within or among states, nor disfavor low and moderate income borrowers, and not discriminate against any protected class of borrowers.

(d) SunTrust and the Bank shall receive credit using the types of creditable activity set forth in the NMS for the following Foreclosure Prevention actions set forth in the NMS:

(i) first lien modifications;

(ii) second lien modifications; and

(iii) short sales/deeds-in-lieu of foreclosure.

(e) For purposes of paragraph 4(d), crediting will be based on the unpaid principal balance of the loan and there are no maximum or minimum restrictions on the amount of any particular activity that is creditable.

(f) SunTrust and the Bank may also receive credit for other Foreclosure Prevention actions, subject to no objection from the Reserve Bank (including as to participation and conditions governing such participation), including:

- (i) interest rate modifications;
- (ii) deficiency waivers (measured by the amount of deficiency judgment credited at \$.10 for every dollar);
- (iii) other Foreclosure Prevention activities (measured by amounts incurred as owing to investors for such activities and including credit on SunTrust's, the Bank's, or their affiliates' loans held-for-investment calculated using the note rate methodology as used by the Government-Sponsored Enterprises);
- (iv) additional Foreclosure Prevention actions that are not expressly specified in this paragraph 4;
- (v) the provision of additional cash payments to the Fund (measured as \$7 to \$10 of credit for each \$1 cash commitment); and
- (vi) the provision of cash or other resource commitments to borrower counseling or education (measured as \$7 to \$10 of credit for each \$1 cash commitment).
- (g) To the extent practicable and without prejudice to overall portfolio management, SunTrust and the Bank will attempt to prioritize their Foreclosure Prevention actions for the benefit of the In-Scope Borrower Population. However, all Foreclosure Prevention actions benefiting borrowers in the portfolio of SunTrust or its subsidiaries or affiliates, whether or not in the In-Scope Borrower Population and whether held-for-investment or serviced-for-others, shall be eligible for credit towards SunTrust's and the Bank's Foreclosure Prevention actions; provided, the creditable activity occurs on or after January 7, 2013.
- (h) By May 15, 2013, SunTrust and the Bank shall submit to the Reserve Bank a report, in a form and manner acceptable to the Reserve Bank, that details the Foreclosure Prevention actions taken by SunTrust and the Bank through April 30, 2013 to fulfill their

obligations under this paragraph 4 and the amount of credit sought toward fulfilling those obligations. Thereafter, SunTrust and the Bank shall submit such report every 45 days. Nothing in this paragraph 4(h) shall require SunTrust and the Bank to report Foreclosure Prevention actions taken during a particular prior period for which SunTrust and the Bank may in the future seek credit or prohibit SunTrust and the Bank from seeking credit for the Foreclosure Prevention actions taken by SunTrust and the Bank during a later reporting period. Additionally, SunTrust and the Bank shall document their efforts to prioritize the In-Scope Borrower Population when considering creditable Foreclosure Prevention actions.”

5. Paragraph 5 of the 2011 Consent Order is amended in the first clause of the first sentence only to read as follows: “Within 60 days of the date of the Amendment to this Order.”.

6. Paragraphs 6 through 18 of the order are not amended.

7. Paragraph 19(a) of the 2011 Consent Order is stricken and replaced with the following:

“19. (a) SunTrust, the Bank, and SunTrust Mortgage, as applicable, shall submit written plans that are acceptable to the Reserve Bank and reports to the Reserve Bank within the applicable time periods set forth in paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, and 18 of this Order. An independent consultant acceptable to the Reserve Bank shall be retained by the Bank and SunTrust Mortgage within the applicable period set forth in paragraph 13 of this Order.”

8. Paragraph 19(b) through 26 of the 2011 Consent Order are not amended.

9. Paragraph 27 of the 2011 Consent Order is stricken and replaced with the following:



“27. Except as otherwise provided in this paragraph 27, the Board of Governors hereby agrees to not initiate any further enforcement actions, including for civil money penalties, against SunTrust, the Bank, SunTrust Mortgage, and their affiliates, successors and assigns, with respect to (a) the conduct described in the WHEREAS clauses of this Order, (b) the matters addressed in paragraphs 3 through 4 of this Order, including matters relating to the work or findings of the IC or independent legal counsel to the IC, and (c) any other past mortgage servicing and foreclosure-related practices that are addressed by this Order. The preceding release and discharge in paragraph 27(c) applies only with respect to borrowers in the In-Scope Borrower Population. The foregoing release and discharge shall not preclude or affect (i) any right of the Board of Governors (A) to assess a civil money penalty against SunTrust, the Bank, and SunTrust Mortgage for the conduct addressed in the Order and to determine and ensure compliance with any such penalty action or (B) to determine and ensure compliance with this Order, as amended herein, or (ii) any proceedings brought by the Board of Governors to enforce the terms of the Order, as amended herein.”

10. Paragraph 28 of the 2011 Consent Order is renumbered paragraph 29 and is otherwise not amended.

11. The following is inserted before paragraph 29 of the 2011 Consent Order as paragraph 29 of the 2011 Consent Order:

“28. In no event shall SunTrust, the Bank, or SunTrust Mortgage request or require any borrower to execute a waiver of any claims against SunTrust, the Bank, or SunTrust Mortgage (including any agent of SunTrust, the Bank, or SunTrust Mortgage) in connection with any payment or Foreclosure Prevention assistance provided pursuant to paragraphs 3 or 4 of this Order. However, nothing herein shall operate to bar SunTrust, the Bank, or SunTrust Mortgage

from asserting in the future in any separate litigation, or as part of a settlement related to SunTrust's, the Bank's, or SunTrust Mortgage's foreclosure and servicing practices, any right that may exist under applicable law to offset the amounts received by a borrower through the distribution process set forth above. Nothing herein shall operate to amend or modify in any respect any preexisting settlement between SunTrust, the Bank, SunTrust Mortgage, or any of their affiliates and a borrower in the In-Scope Borrower Population."

By Order of the Board of Governors effective this 28th day of February, 2013.

SUNTRUST BANKS INC.

BOARD OF GOVERNORS OF THE  
FEDERAL RESERVE SYSTEM

By: /s/ William H. Rogers, Jr.  
William H. Rogers, Jr.  
Chairman and Chief Executive Officer

By: /s/ Robert deV. Frierson  
Robert deV. Frierson  
Secretary of the Board

SUNTRUST BANK

By: /s/ William H. Rogers, Jr.  
William H. Rogers, Jr.  
Chairman and Chief Executive Officer

SUNTRUST MORTGAGE, INC.

By: /s/ Jerome T. Lienhard  
Jerome T. Lienhard  
President

# EXHIBIT K

# **EXHIBIT 4**

FILED

NOTE 2007 JAN 25 P 4: 12

January 18, 2007

[Date]

Atlanta

[City]

GEORGIA COUNTY C.S.C.

Georgia

[State]

7801 PINECROFT COURT

HARRISBURG, NC 28075

[Property Address]

### 1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 296,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is SunTrust Mortgage, Inc. d/b/a Sun America Mortgage, a Virginia Corporation.

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

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

### 2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.7500 %.

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

### 3. PAYMENTS

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

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

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

I will make my monthly payments at SunTrust Mortgage, Inc., P.O. Box 79041, Baltimore, MD 21279-0041 or at a different place if required by the Note Holder.

#### (B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 1,919.85

### 4. BORROWER'S RIGHT TO PREPAY

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

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

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

Wolters Kluwer Financial Services  
VMP®-5N (0207).01  
Page 1 of 3

Form 3200 1/01

Initial: *JW*

A TRUE COPY  
CLERK OF SUPERIOR COURT  
CABARRUS COUNTY

*Ashley L. Liles*  
Clerk Superior Court



AP# [REDACTED]

**5. LOAN CHARGES**

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

**6. BORROWER'S FAILURE TO PAY AS REQUIRED****(A) Late Charge for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 4.00 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

**(B) Default**

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

**(C) Notice of Default**

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

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

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

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

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

**7. GIVING OF NOTICES**

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

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

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

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

**9. WAIVERS**

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

**A TRUE COPY**  
CLERK OF SUPERIOR COURT  
CABARRUS COUNTY

Form 3200 1/01  
Initials: [Signature]

**10. UNIFORM SECURED NOTE**

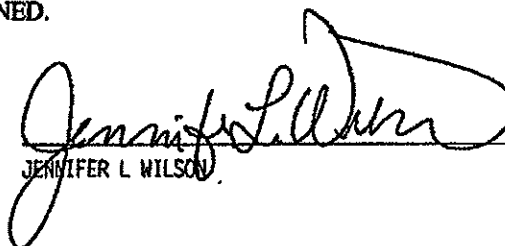
This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses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

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

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

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

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

  
(Seal)  
JENNIFER L. WILSON  
-Borrower

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

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

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(Seal)  
-Borrower

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(Seal)  
-Borrower

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(Seal)  
-Borrower

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

[Sign Original Only]

**A TRUE COPY**  
CLERK OF SUPERIOR COURT  
CABARRUS COUNTY

BY   
Assistant Deputy Clerk Superior Court

# EXHIBIT L



1 IN THE UNITED STATES DISTRICT COURT FOR THE  
2 NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

3

4

5 -----

U. S. Bank National  
Association as Trustee,

6

Plaintiff,

7

vs. File No. 07 C 1544

8

Wendy S. Cook, a/k/a  
9 Wendy C. Cook,

10

Defendant.

11 -----

12

13

14 -----

DEPOSITION OF

15

JUDY FABER

16

17 -----

18

19

20

21

**EXHIBIT K**

22

23

24

25 Taken June 2, 2008 By Paula K. Richter

1 APPEARANCES VIA TELEPHONE:

2

POTRATZ & HOLLANDER, P.C.  
3 30 North LaSalle Street, Suite 3900  
Chicago, IL 60602  
4 Phone: 312-364-9100  
Fax: 312-364-0289  
5 By: Gary Hollander  
For Defendant

6

7 KROPIK, PAPUGA & SHAW  
120 South LaSalle Street  
8 Chicago, IL 60603  
Phone: 312-236-6405  
9 Fax: 312-236-8060  
Email: kropik@kropik.net  
10 By: Kenneth K. Shaw, Jr.  
For Plaintiff

11

12 SCHWARTZ COOPER CHARTERED  
180 North LaSalle, Suite 2700  
13 Chicago, IL 60601  
Phone: 312-264-2442  
14 Email: bcreel@scgk.com  
By: B. Wayne Creel  
15 For Plaintiff

16

17

APPEARANCE IN PERSON:

18

19 GMAC  
One Meridian Crossing  
20 Richfield, MN 55423  
Phone: 952-857-7000

21 By: David Hagens  
For GMAC

22

23

24

25

1 INDEX

2  
3 Examination by Mr. Hollander, page 4

4

5

6 OBJECTIONS BY:

7 Mr. Shaw .....7, 12, 15, 16, 18, 19

8

9

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11 NO EXHIBITS WERE MARKED FOR IDENTIFICATION

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1 THE DEPOSITION OF JUDY FABER is taken on this 2nd  
2 day of June, 2008, at the offices of GMAC, One  
3 Meridian Crossing, Richfield, MN 55423, commencing  
4 at approximately 2:20 p.m. pursuant to notice.

5

6 JUDY FABER,  
7 a witness in the above-entitled  
8 action, after having been first  
9 duly sworn, deposes and says as  
10 follows:

11

12 EXAMINATION

13

14 BY MR. HOLLANDER:

15 Q. Please state your full name.

16 A. Judy Faber.

17 Q. F-A-B-E-R?

18 A. F-A-B-E-R, yes.

19 Q. For the record, this is the deposition of

20 Judy Faber, taken pursuant to notice set for

21 today's date by agreement of the parties.

22 Counsel, can I just ask -- I want to confirm

23 there's no new documents being produced for

24 this deposition.

25 MR. SHAW: No. We brought the



1 documents you asked us to have for this

2 deposition. That's it.

3 MR. HOLLANDER: Thank you.

4 BY MR. HOLLANDER:

5 Q. Ms. Faber, have you given a deposition

6 before?

7 A. Yes.

8 Q. Okay. I'll be very brief then. As you know,

9 this is a process by which I'm asking

10 questions regarding a pending lawsuit here in

11 Chicago called U.S. Bank National Association

12 versus Wendy S. Cook.

13 If you don't understand any

14 question that I ask you, please let me know

15 that and I'll be happy to try and rephrase

16 the question. Please answer the questions

17 yes or no so that we're clear on what your

18 answer is. And if you have any questions or

19 want to take a break or anything like that,

20 just speak right up and I'll be happy to

21 accommodate you?

22 A. Okay.

23 Q. Fair enough?

24 A. Sure.

25 Q. By whom are you employed?

1 A. Residential Funding Company, LLC.

2 Q. For how long have you been employed there?

3 A. Eleven years.

4 Q. And what's your position there?

5 A. Director of Records Management, the Minnesota

6 site.

7 Q. For how long have you held that position?

8 A. Eleven years.

9 Q. What are your duties and responsibilities in

10 that position?

11 A. I manage the records for the Residential

12 Funding Corporation. Basically, the physical

13 paper and the images that are created from

14 the physical paper, fulfilling requests for

15 those and then managing the physical

16 documents.

17 Q. Now, when you said you're the Director of

18 Records Management for the Minnesota office?

19 A. Uh-huh.

20 Q. Are there other offices of Residential

- 21 Funding that maintain records that you are
- 22 not responsible for?
- 23 A. There are records services sites in Iowa and
- 24 in Pennsylvania. Those deal mostly with the
- 25 GMAC mortgage assets.

1 Q. GMAC?

2 A. Right.

3 Q. Okay. And do you have any responsibility for

4 maintaining those records?

5 A. No.

6 Q. The records that relate to the loan at issue

7 in this case, that being the loan to a

8 gentleman named Peter Cook, are those records

9 that are maintained at the Minnesota office?

10 A. Yes.

11 Q. And what, if anything, is your responsibility

12 with regard to those records?

13 A. To track the physical paper for those

14 assets -- or that asset.

15 Q. Are you what you consider to be the keeper of

16 the records for those documents?

17 A. Sure, yep.

18 MR. SHAW: I object to the extent

19 he's asking for a legal conclusion.

20 BY MR. HOLLANDER:

21 Q. So in the chain of command at Resident -- I'm

22 sorry, the name of the company is Residential

23 Funding?

24 A. Residential Funding Company.

25 Q. I'm going to call it Residential Funding?

1 A. Or you can say --

2 Q. In the chain of command at Residential

3 Funding, who is your immediate superior?

4 A. Rachel Switzer.

5 Q. How do you spell the last name?

6 A. S-W-I-T-Z-E-R.

7 Q. Thank you. What's Ms. Switzer's title?

8 A. I -- I hesitate because we -- we're not hung

9 up on titles, I guess. She's my manager.

10 Q. So she does not have a title as far as you

11 know?

12 A. I -- I don't know.

13 Q. Okay. On a day-to-day basis, what job

14 responsibilities do you have at the company?

15 A. Day-to-day?

16 Q. Yeah.

17 A. Probably more project type management as we

18 look at different systems, look at different

19 processes. Are we doing what we should be

20 doing? Looking at key metrics. What does it

21 cost us to do what we do? How many widgets

22 can we produce in a given day -- or given --

23 one person.

24 Q. When you say project management, are you

25 talking about projects regarding how the



1 company manages its records?

2 A. Some. Probably more -- right now probably

3 more system related as to how do we track our

4 records.

5 Q. Okay. And then when somebody wants to view

6 specific records from your system, is that

7 something that you're responsible for

8 obtaining as part of your day-to-day

9 responsibilities?

10 A. The people that report to me, yes, or the

11 vendor that -- that we have retained to do

12 those functions, yes. I don't do that

13 myself.

14 Q. Who's the vendor that you retain to do that?

15 A. A company called ACS.

16 Q. ACS?

17 A. Yep.

18 Q. And what does ACS do with regard to the

19 records?

20 A. They fulfill the request. So if somebody

- 21 needs a credit folder or a legal folder, they
- 22 research where those documents are, obtain
- 23 the documents and then provide that requestor
- 24 with either the paper documents or images.
- 25 Q. And ACS is an independent company?

1 A. Yes.

2 Q. As part of your day-to-day responsibilities,

3 do you give direction to employees of ACS?

4 A. Yes.

5 Q. And what types of matters do you supervise or

6 direct the ACS employees on?

7 A. Basically, the fulfillment services. So how

8 do you fulfill a request for a document or a

9 folder.

10 Q. Now, in this case, did somebody request that

11 you obtain documents from your system?

12 A. Can you clarify?

13 Q. Yes. Let's put it this way: When was the

14 first time you were even aware that the

15 lawsuit of U.S. Bank versus Cook was pending?

16 A. I -- I couldn't really tell you.

17 Q. Within the last month?

18 A. I believe it was before that. I believe I --

19 if this -- I believe I received some type of

20 notification, which I handed over to the

21 legal department here.

22 Q. By notification, what do you mean?

23 A. I think a notice of the -- of the lawsuit or

24 the deposition. I apologize. I -- I

25 honestly don't remember. But it was --

1 Q. Don't apologize. Whatever you know is all  
2 we're asking.

3 A. Yeah. It was probably within the last couple  
4 months.

5 Q. And the first -- your first knowledge of the  
6 lawsuit was when you got some kind of notice  
7 that you would be giving a deposition?

8 A. I think so, yeah.

9 Q. Okay. After you received -- well, prior to  
10 you receiving that notice, you had nothing to  
11 do with this case or any of the documents in  
12 the case. Would that be correct?

13 A. Correct, yep.

14 Q. After you received the notice of the  
15 deposition, did you ever obtain documents  
16 from your computer system or direct anybody  
17 else to obtain documents from the computer  
18 system?

19 A. I -- I did not, no.

20 Q. And you didn't direct anybody else to,

21 correct?

22 A. No.

23 Q. Not correct or it is correct?

24 A. Oh. That is correct. Sorry.

25 Q. It's okay.

1 MR. SHAW: I want to object.  
2 Would you clarify that line of questioning  
3 because now I'm very confused as to what the  
4 answer was to which question.

5 MR. HOLLANDER: I think you're  
6 going to have the opportunity, but I  
7 understand it. I'm just going to move along  
8 here. If you think you need clarification,  
9 by all means, when I'm done go ahead.

10 BY MR. HOLLANDER:

11 Q. Ms. Faber, you have some documents in front  
12 of you that on their face purport to relate  
13 to the loan to Peter Cook; is that correct?

14 A. If you could clarify which documents you're  
15 referring to.

16 Q. I'm just referring -- you have a group of  
17 documents that relate to this loan, correct?

18 A. In regards to the -- the letter that was  
19 sent?

20 Q. Do you have documents with you now?

21 MR. HAGENS: Let me just clarify.

22 David Hagens here. She has in front of her

23 the package of documents that I think came

24 from your office, and she also has a copy --

25 or she doesn't have a copy -- she has the



20 our off-site vendor.

21 Q. There's a file folder that shows it came from

22 the outside vendor?

23 A. Yes. Their sticker is affixed to the front

24 of the folder, so I know it came from them.

25 Q. Okay. And then is there anything on the

1 documents themselves that show where they

2 came from?

3 A. No.

4 Q. And by the outside vendor, do you mean ACS?

5 A. No. Actually, the vendor that stores the

6 actual folder is Iron Mountain.

7 Q. So there's a sticker on that file that shows

8 it came from Iron Mountain?

9 A. Correct, yes.

10 Q. Does Iron Mountain maintain your system or do

11 they just maintain hard copies of documents?

12 A. They maintain the hard copies of the

13 documents.

14 Q. Not any records on your computer system,

15 correct?

16 A. No.

17 Q. Is that correct?

18 A. Correct.

19 Q. Okay. So the file you have in front of you,

20 based on the sticker, indicates to you that

21 that came from Iron Mountain?

22 A. Right. And that's also validated by our

23 tracking system that shows that it came from

24 Iron Mountain.

25 Q. What tracking system is that?

1 A. RMS.

2 Q. What does RMS stand for?

3 A. Records Management System.

4 Q. Is that the name of a company or your actual

5 system?

6 A. That's our system. It's a homegrown system.

7 Q. Do you have a document with you from RMS that

8 shows what you just mentioned to me?

9 A. No, I don't.

10 Q. So how do you know that RMS shows where the

11 records came from?

12 A. When Skyler gave me the file, I had to go

13 into RMS and change the location from Skyler

14 to myself.

15 Q. Okay.

16 A. And at that point, I could see the history of

17 the movement of the file.

18 Q. And then did you add to that history?

19 A. Yes.

20 Q. And those are documents that have not been

21     produced to me, correct?

22     A. I don't know.

23             MR. SHAW: I object. She does not

24     know what's been produced to you.

25     BY MR. HOLLANDER:

1 Q. Ms. Faber, the documents you have in front of  
2 you at this time, are the RMS records showing  
3 the tracking of these documents included  
4 within what's in front of you?

5 A. No.

6 MR. SHAW: I object. I think  
7 she's answered what's in front of her at this  
8 time.

9 BY MR. HOLLANDER:

10 Q. You can answer.

11 A. No.

12 Q. When you looked at the tracking system, it  
13 shows the movement of documents. Does it  
14 show specific documents?

15 A. No. It shows the movement of the folder.

16 Q. The folder containing the hard copies?

17 A. Right.

18 Q. Okay. Other than the fact that these  
19 documents came from storage at Iron Mountain,  
20 do you have any other personal knowledge of

21 where these documents came from?

22 A. No.

23 Q. Have you ever done a search of the system at

24 Residential Funding to determine what

25 documents are kept on that computer system?



1 A. I'm sorry. Can you restate that? I'm not  
2 sure what you're asking.

3 Q. Sure. Does the computer system maintained by  
4 Residential Funding contain within it images  
5 of documents that relate to the Peter Cook  
6 loan?

7 A. Yes.

8 Q. Have you looked at any of those documents?

9 A. No.

10 Q. Do you have any personal knowledge of whether  
11 Wendy Cook has signed any of the documents  
12 that relate to the loan involved in the U.S.  
13 Bank versus Cook lawsuit?

14 A. No.

15 Q. Would you have any way to recognize Wendy  
16 Cook's signature?

17 A. No.

18 Q. What's the relationship between Residential  
19 Funding Company, LLC and U.S. Bank National  
20 Association?

- 21 A. In -- in this instance, U.S. Bank is the
- 22 trustee on the security that this loan is in.
- 23 And RFC was the issuer of the security that
- 24 was created.
- 25 Q. Who was the issuer of the security?

1 A. RFC was the issuer of the security.

2 Q. Oh, RFC is what you call Residential Funding

3 Company?

4 A. Yes.

5 Q. So RFC issued the security?

6 A. Right.

7 Q. Can you explain to me what that means?

8 A. No, I can't.

9 Q. Okay. How do you know RFC issued the

10 security?

11 A. It's the normal course of business as to how

12 our -- our business works. RFC is in the

13 business of acquiring assets and putting them

14 together into securities to sell in the -- in

15 the market.

16 MR. SHAW: I would like to

17 register a general objection to this line of

18 questioning. There's not been a foundation

19 laid for Judy Faber being competent to reach

20 some of these conclusions that are being

21     stated on the record.

22 BY MR. HOLLANDER:

23 Q. So in this particular instance, do you have

24 any personal knowledge of the relationship

25      between RFC and U.S. Bank National

1 Association as trustee?

2 A. No.

3 Q. For whom is U.S. Bank National Association

4 acting as the trustee?

5 A. I believe it would be for the investors of

6 the -- that have bought the securities.

7 Q. I'm sorry. Something happened with the phone

8 and I didn't hear your answer. I'm sorry.

9 A. I believe it would be for the different

10 investors who have bought pieces of that

11 security that was issued.

12 Q. Are there different investors that have

13 purchased the Peter Cook note?

14 A. I don't think I'm qualified to answer that.

15 You know, I can tell you from what my basic

16 understanding is from the process, but I'm

17 not an expert.

18 MR. SHAW: Once again, I'd like to

19 raise a continuing general objection that she

20 being -- testifying with respect to what her

21 job is, and I believe you're getting into  
22 areas that is other than what her job is and  
23 you're asking for possibly even legal  
24 conclusions here. So I would like to raise  
25 that objection again.

1 BY MR. HOLLANDER:

2 Q. Are you aware of any investors who have  
3 purchased or have an interest in the mortgage  
4 purportedly signed by Wendy Cook?

5 A. No.

6 Q. You haven't seen any records that would tell  
7 you who the trustee is; is that correct?

8 A. I know who the trustee is, but I don't know  
9 who any -- who any of the investors would be.

10 Q. I'm sorry. I apologize. That was a poor  
11 question. Is it correct that you have not  
12 seen any records that indicate who the  
13 investors or owners are of the Peter Cook  
14 note or the mortgage allegedly signed by  
15 Peter and Wendy Cook?

16 A. That is correct.

17 Q. If you could please look at -- I just want to  
18 go through a few of the exhibits in front of  
19 you.

20 A. Okay.

- 21 Q. The one I want to start with should be
- 22 Exhibit 3. That says Corporation Assignment
- 23 of Mortgage.
- 24 A. Okay.
- 25 Q. Other than the fact that this document was in



1 the file you received from Iron Mountain, do  
2 you have any other knowledge of the creation  
3 or maintenance of this document?

4 A. No.

5 Q. Have you seen an assignment that relates to  
6 the mortgage or loan involved in this lawsuit  
7 other than Exhibit 3?

8 A. No.

9 Q. If you could please look at Exhibit 2.

10 A. Okay.

11 Q. Could you tell me what that document is?

12 A. To me, it appears to be a pay history.

13 Q. Do you have personal knowledge of whether  
14 this is a document that is maintained in the  
15 normal course of business by RFC?

16 A. Not spes -- no.

17 Q. And there's some entries on this document.

18 Do you understand what those entries mean?

19 A. No.

20 Q. Those are the only questions I have,

21 Ms. Faber. Thank you very much for taking  
22 the time to answer these questions.

23 THE WITNESS: Okay.

24 MR. SHAW: If we could have a  
25 moment, I would like to discuss something

1 with Wayne Creel. I will leave the room for  
2 a second.

3 MR. HOLLANDER: If you want, I can  
4 get off the phone and call back in, or you  
5 can give me a call and let me know when  
6 you're ready for me to rejoin the --

7 MR. SHAW: Yeah. Let's just do  
8 that.

9 MR. HOLLANDER: I'll get off now  
10 and then I'll just wait for you to call me  
11 back.

12 MR. SHAW: At what number should I  
13 call back?

14 MR. HOLLANDER: 312-364-9100.

15 MR. SHAW: Okay. I'll call you  
16 back.

17 MR. HOLLANDER: Thank you.

18 (Off the record from 2:45 until  
19 2:57 p.m.)

20 MR. SHAW: We have no further

21 questions.

22 MR. HOLLANDER: Okay. What do you

23 want to do with signature?

24 MR. SHAW: Reserve it.

25 MR. HOLLANDER: Okay. Everybody



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1 DEPOSITION CORRECTION SHEET

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3 PAGE / LINE REASON

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1 I, JUDY FABER, have read this deposition transcript  
2 and acknowledge herein its accuracy except as noted:

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Signature

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Notary Public

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Paula K. Richter  
Registered Professional Reporter

25

Notary Public



*Certificate of Service  
Exhibit A pg. 1*

NAME	NAME NOTICED	EMAIL	DESCRIPTION
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pg. 2.

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Milbank, Tweed, Hadley & McCloy LLP Securities & Exchange Commission	James S Carr Eric R Wilson Gerard Uzzi Secretary of the Treasury	<a href="mailto:kdwbankruptcydepartment@kelleydrye.com">kdwbankruptcydepartment@kelleydrye.com</a> <a href="mailto:guzzi@milbank.com">guzzi@milbank.com</a> <a href="mailto:secbankruptcy@sec.gov">secbankruptcy@sec.gov</a>	Co-Counsel to Ad Hoc Group of Junior Secured Noteholders Securities and Exchange Commission - Headquarters