

**Hearing Date and Time: November 17, 2016 at 11:00 a.m. (Prevailing Eastern Time)**  
**Response Deadline: October 21, 2016 (Prevailing Eastern Time)**

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 and the ResCap Borrower Claims Trust*

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

In re:	)	Case No. 12-12020 (MG)
	)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u> ,	)	Chapter 11
	)	
Debtors.	)	Jointly Administered
	)	
Gwendolyn B. Hawthorne	)	
	)	
Plaintiff,	)	
	)	Adv. No. 12-02050 (MG)
v.	)	
	)	
GMAC Mortgage, LLC, U.S. Bank	)	
National Association, GMFS LLC, Judy	)	
Faber, Vice President, Brenda Guidry,	)	
and Mortgage Electronic Registration	)	
System Inc., and Duane Thompson,	)	
Assistant Secretary Mortgage Electronic	)	
Registration Systems Inc., as Nominee	)	
for GMFS, LLC, Residential Funding	)	
Corporation	)	
	)	
Defendants.	)	

**NOTICE OF JOINT MOTION OF THE RESCAP LIQUIDATING TRUST AND THE RESCAP BORROWER CLAIMS TRUST FOR (I) DISMISSAL OF ADVERSARY PROCEEDING PURSUANT TO BANKRUPTCY RULE 7012(b) AND FRCP 12(b)(6), AND (II) DISALLOWANCE OF PROOFS OF CLAIM NOS. 6273 AND 6274 FILED BY PLAINTIFF**

**PLEASE TAKE NOTICE** that the undersigned have filed the attached *Joint Motion of the ResCap Liquidating Trust and the ResCap Borrower Claims Trust for (I) Dismissal of Adversary Proceeding Pursuant to bankruptcy Rule 7012(b) and FRCP 12(b)(6), and (II) Disallowance of Proofs of Claim Nos. 6273 and 6274 Filed by Plaintiff* (the “Motion”).

**PLEASE TAKE FURTHER NOTICE** that a hearing on the Motion will take place on **November 17, 2016 at 11:00 a.m. (Prevailing Eastern Time)** before the Honorable Martin Glenn, at the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408, Room 523 (the “Bankruptcy Court”).

**PLEASE TAKE FURTHER NOTICE** that objections, if any, to the Motion must be made in writing, conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, and the Notice, Case Management, and Administrative Procedures approved by the Bankruptcy Court [Docket No. 141], be filed electronically by registered users of the Bankruptcy Court’s electronic case filing system, and be served, so as to be received no later than **October 21, 2016**, upon (a) the Chambers of the Honorable Martin Glenn, United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408; (b) counsel to the ResCap Borrower Claims Trust and The ResCap Liquidating Trust, Morrison & Foerster LLP, 250 West 55th Street,

New York, NY 10019 (Attention: Norman S. Rosenbaum and Samantha Martin); (c) the Office of the United States Trustee for the Southern District of New York, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, NY 10014 (Attention: Linda A. Riffkin and Brian S. Masumoto); (d) The ResCap Liquidating Trust, Jill Horner (Jill.Horner@rescapestate.com) and Paul Grande, ResCap Liquidating Trust Chief Treasury Director (paul.grande@rescapestate.com); (e) The ResCap Borrower Claims Trust, Polsinelli PC, 900 Third Avenue, 21<sup>st</sup> Floor, New York, NY 10022 (Attention: Daniel J. Flanigan); and (f) Gwendolyn B. Hawthorne, 2377 Scott Oaks Trail SW, Marietta, GA 30008.

**PLEASE TAKE FURTHER NOTICE** that, if no objections to the Motion are timely filed, served and received in accordance with this Notice, the Court may enter the Motion without further notice or hearing.

Dated: September 30, 2016  
New York, New York

/s/ Norman S. Rosenbaum

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GMAC Mortgage, LLC, U.S. Bank	)	
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**JOINT MOTION OF THE RESCAP LIQUIDATING TRUST AND THE RESCAP  
BORROWER CLAIMS TRUST FOR (I) DISMISSAL OF ADVERSARY PROCEEDING  
PURSUANT TO BANKRUPTCY RULE 7012(b) AND FRCP 12(b)(6), AND  
(II) DISALLOWANCE OF PROOFS OF CLAIM NOS. 6273 AND 6274  
FILED BY PLAINTIFF**

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The ResCap Liquidating Trust (the “Liquidating Trust”), as successor in interest to Defendants GMAC Mortgage, LLC (“GMACM”) and Residential Funding Corporation (“RFC”, and together with GMACM, the “Debtor Defendants”), each a debtor and debtor-in-possession in the above-captioned chapter 11 cases (collectively with all affiliated debtors and debtors-in-possession, the “Debtors”), and the ResCap Borrower Claims Trust, as successor in interest to GMACM and Homecomings (defined below) with respect to Borrower Claims (the “Borrower Trust” and, together with the Liquidating Trust, the “ResCap Trusts”) submit this joint motion (the “Motion”) to (i) dismiss the above-referenced adversary proceeding (the “Adversary Proceeding”) commenced by *pro se* plaintiff Gwendolyn B. Hawthorne (“Plaintiff”) for failure to state a claim upon which relief can be granted, and (ii) disallow and expunge the Proofs of Claim (defined below) filed by Plaintiff. In support hereof, the Debtor Defendants submit the Declaration of Sara Lathrop, Senior Claims Analyst for the Borrower Trust, dated September 30, 2016 (the “Lathrop Decl.”), annexed hereto as **Exhibit 1**, and respectfully represent:

### **PRELIMINARY STATEMENT**

1. Plaintiff’s claims in the Adversary Proceeding should be dismissed pursuant to FRCP 12(b)(6) for failure to state a claim upon which relief may be granted. As reflected in the Complaint and discussed on the record, Plaintiff filed the Complaint primarily for the purpose of seeking a loan modification. As of October 2015, Plaintiff has received a loan modification. Thus, there is no additional relief for this Court to grant. Further, the Complaint fails to state a claim under RICO or the FDCPA (each as defined below), as the Complaint does not sufficiently allege the requisite elements of such claims. Finally, Plaintiff has not preserved her rights to seek a recovery from the Debtors or the ResCap Trusts, as the Adversary



Proceeding was commenced after the General Bar Date (defined below) and the Proofs of Claim (defined below) were filed by Plaintiff after the General Bar Date.

2. In addition, the Proofs of Claim should be disallowed and expunged for several reasons. First, the Proofs of Claim were filed late—thirteen days after the General Bar Date.<sup>1</sup> Second, even if it is deemed timely filed, to the extent the Court dismisses the Adversary Proceeding, the Proofs of Claim, which appear to be based upon the same allegations, should be disallowed and expunged as well. And third, the Proofs of Claim should be disallowed and expunged because Plaintiff failed to attach any relevant supporting documentation to substantiate a legal or factual basis to assert any claim against the Debtors.

### **JURISDICTION AND VENUE**

3. The Court has jurisdiction over this Motion as a core proceeding pursuant to 28 U.S.C. §§ 157 (a) and 1334(b). Pursuant to Rule 7012-1 of the Local Rules of Bankruptcy Procedure, the ResCap Trusts consent to the entry of final orders or judgment by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution. Venue is proper under 28 U.S.C. § 1409. The statutory predicates for the relief sought herein are section 502(b) of the Bankruptcy Code and Bankruptcy Rules 3007 and 7012.

### **BACKGROUND**

#### **A. Background on Plaintiff's Mortgage Loan**

4. Plaintiff is a borrower under a mortgage loan (the "Loan"), that was originated by GMFS, LLC on or about October 24, 2005. The Loan was evidenced by an

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<sup>1</sup> While it appears that Plaintiff executed the Proofs of Claim on October 29, 2012, each Proof of Claim is marked as being filed on November 29, 2012.

adjustable rate note in the amount of \$135,000.00 (the “Note”), which was secured by real property located at 2377 Scott Oaks Trail SW, Marietta GA 30008 (the “Property”) pursuant to a security deed (the “Security Deed”) that was executed contemporaneously with the Note. See Lathrop Declaration at ¶ 4.

5. GMACM serviced the Loan from July 2009 to February 15, 2013. See Lathrop Declaration at ¶ 5.

6. Plaintiff defaulted on the Loan. To the best of the knowledge of the ResCap Trusts, Plaintiff remains in possession of the Property. See Lathrop Declaration at ¶ 6.

7. Upon the closing of the sale of the Debtors’ mortgage loan servicing platform to Ocwen Loan Servicing, LLC (“Ocwen”), Ocwen began servicing the Loan as of February 16, 2013. See Lathrop Declaration at ¶ 7.

8. Ocwen and Plaintiff agreed to a loan modification, effective as of October 30, 2015. A redacted copy of Plaintiff’s loan modification agreement is annexed hereto as **Exhibit 2.**

## **B. General Bankruptcy Case Background**

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

10. On November 21, 2012, this Court entered an order approving the sale of the Debtors’ mortgage loan servicing platform to Ocwen.<sup>2</sup>

11. On February 15, 2013, the Ocwen sale closed.

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<sup>2</sup> See Order under 11 U.S.C. §§ 105, 363, and 365 and Fed. Bankr. P. 2002, 6004, 6006, and 9014 (I) Approving (A) Sale of Debtors’ Assets Pursuant to Asset Purchase Agreement with Ocwen Loan Servicing, LLC; (B) Sale of Purchased Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (C) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Thereto; (D) Related Agreements; and (II) Granting Related Relief [Docket No. 2246].

12. On December 11, 2013, the Court entered an *Order Confirming Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC et al. and the Official Committee of Unsecured Creditors* (the “Confirmation Order”) approving the terms of the Chapter 11 plan, as amended (the “Plan”), filed in these chapter 11 cases [Case No. 12-12020, Docket No. 6065]. On December 17, 2013, the Effective Date (as defined in the Plan) of the Plan occurred, and, among other things, the ResCap Trusts were established [Case No. 12-12020, Docket No. 6137].

13. The Plan provides for the creation and implementation of the Liquidating Trust, which, among other things, is “authorized to make distributions and other payments in accordance with the Plan and the Liquidating Trust Agreement” and is responsible for the wind down of the affairs of the Debtors’ estates. See Plan, Art. VI.A-D; see also Confirmation Order ¶ 22. Pursuant to the Confirmation Order and the Plan, the Liquidating Trust was vested with broad authority over the post-confirmation liquidation and distribution of the Debtors’ assets. See generally, Confirmation Order ¶¶ 26, 30, 48; Plan, Art. VI.

14. The Plan also provides for the creation and implementation of the Borrower Trust, which is established for the benefit of Borrowers who filed Borrower Claims (as such terms are defined in the Plan) to the extent such claims are ultimately allowed either through settlement or pursuant to an order of the Court. See Plan, Art. IV.F. The Borrower Trust was established to, among other things, “(i) direct the processing, liquidation and payment of the Allowed Borrower Claims in accordance with the Plan, and the distribution procedures established under the Borrower Claims Trust Agreement, and (ii) preserve, hold, and manage the assets of the Borrower Claims Trust for use in satisfying the Allowed Borrower Claims.” See id.

**C. Plaintiff's Proofs of Claim**

15. On May 16, 2012, the Court entered an order [Case No. 12-12020, Docket No. 96] appointing Kurtzman Carson Consultants LLC (“KCC”) as the notice and claims agent in these chapter 11 cases. Among other things, KCC is authorized to (a) receive, maintain, and record and otherwise administer the proofs of claim filed in these chapter 11 cases and (b) maintain the official claims register for the Debtors (the “Claims Register”).

16. On August 29, 2012, this Court entered an order approving the Debtors’ motion to establish procedures for filing proofs of claim in the chapter 11 cases [Case No. 12-12020, Docket No. 1309] (the “Bar Date Order”).

17. The Bar Date Order established, among other things, (i) November 9, 2012 at 5:00 p.m. (Prevailing Eastern Time) as the deadline to file proofs of claim by virtually all creditors against the Debtors (as extended, the “General Bar Date”) and prescribing the form and manner for filing proofs of claim; and (ii) November 30, 2012 at 5:00 p.m. (Prevailing Eastern Time) as the deadline for governmental units to file proofs of claim (the “Governmental Bar Date”). Bar Date Order ¶¶ 2, 3. On November 7, 2012, the Court entered an order extending the General Bar Date to November 16, 2012 at 5:00 p.m. (Prevailing Eastern Time) [Case No. 12-12020, Docket No. 2093]. The Governmental Bar Date was not extended.

18. On or about November 29, 2012, thirteen days after the General Bar Date, Plaintiff filed (i) proof of claim #6273 against U.S. National Bank Association, asserting a secured claim in the amount of \$145,821.97, and an unsecured claim in the amount of \$454,178.03, and (ii) proof of claim #6274 against GMACM, as servicer for U.S. Bank, asserting a secured claim in the amount of \$145,821.97, and an unsecured claim in the amount of \$454,178.03 (together, the “Proofs of Claim”), in each case, in connection with Plaintiff’s

mortgage loan with respect to the property located at 2377 Scott Oaks Trail SW, Marietta GA 30008. See Lathrop Declaration at ¶ 8.

19. On November 20, 2013, this Court entered an order reclassifying proof of claim #6273 as an unsecured claim in the aggregate amount of \$600,000 and re-designating proof of claim #6273 as a claim against Debtor Homecomings Financial, LLC (“Homecomings”). [Case No. 12-12020, Docket No. 5895]

**D. The Adversary Proceeding**

20. On November 29, 2012, Plaintiff filed a Complaint against the Debtor Defendants; U.S. Bank National Association; GMFS LLC; Judy Faber, Vice President; Brenda Guidry; Mortgage Electronic Registration System Inc.; Duane Thompson, Assistant Secretary; and Mortgage Electronic Registration Systems Inc. as nominee for GMFS LLC (collectively, “Defendants”).

21. The Complaint seeks to determine the nature and extent of the Debtor Defendants’ liens on Plaintiff’s principal residence pursuant to 11 U.S.C. 506(a) and appears to allege that the Debtor Defendants are unsecured creditors due to alleged fraudulent activities under the Racketeer Influenced and Corrupt Organizations Act (“RICO”) and alleged violations of the Fair Debt Collection Practices Act (“FDCPA”). (Complaint at ¶¶ 5, 15-16.) Specifically, Plaintiff seeks (i) for the Court to determine the nature and extent of the Debtor Defendants’ liens, (ii) for the Court to allow Plaintiff a loan modification upon the Court’s finding that the Debtors’ lien is not perfected and that Plaintiff has a superior right in the property, and (iii) reasonable costs and any other further relief warranted. (Complaint at ¶ 5.)

22. The Adversary Proceeding was subject to the procedures for management of adversary proceedings commenced by borrowers.<sup>3</sup> Pursuant to those procedures, the parties entered into discussions regarding the relief requested and a potential resolution. The matter was adjourned several times to allow Plaintiff an opportunity to discuss the terms of a potential loan modification with Ocwen. At the Court's direction, Morrison & Foerster LLP, counsel to the ResCap Trusts, facilitated discussions between Plaintiff and Ocwen to initiate the loan modification process and to ensure that the loan modification paperwork was submitted to the proper parties.

23. In early 2016, Morrison & Foerster LLP was informed that Plaintiff received a loan modification from Ocwen as of October 30, 2015.

24. On September 27, 2016, this Court entered the Scheduling Order [Case No. 12- 02050, Docket. No. 36] with respect to this Motion.

### **ARGUMENT**

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

25. Bankruptcy Rule 7012 incorporates by reference Rule 12(b)-12(i) of the Federal Rules of Civil Procedure ("FRCP"). FRCP 12(b) provides that a party may assert specified defenses by motion, including failure to state a claim upon which relief can be granted, and that a motion asserting any of these defenses may be made before pleading. The Adversary Proceeding should be dismissed pursuant to Bankruptcy Rule 7012(b)(6) because Plaintiff has failed to state a claim upon which relief can be granted.

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<sup>3</sup> See Amended Order Approving Debtors' Motion Pursuant to 11 U.S.C §§ 105(a) and (d), Bankruptcy Rules 1015(c), 2002(m), 7016, and 9007 and Local Bankruptcy Rule 2002-2 for Entry of an Order Approving (A) Supplement to Case Management Order Establishing Mandatory Procedures for Management of Adversary Proceedings Commenced by Borrowers and Former Borrowers and (B) Related Relief [Docket No. 3490].

(i) **Legal Standard**

26. FRCP 12(b)(6) permits dismissal of an action for failure to state a claim upon which relief can be granted. For FRCP 12(b)(6) purposes, a court must accept the plaintiff's factual allegations as true, drawing all reasonable inferences in the plaintiff's favor. Bernheim v. Litt, 79 F.3d 318, 321 (2d Cir. 1996). The sole issue raised by a motion to dismiss pursuant to FRCP 12(b)(6) is whether the facts pleaded, if established, would support a claim for relief. Neitzke v. Williams, 490 U.S. 319, 326-27 (1989). If as a matter of law "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations," a claim must be dismissed. Id. at 327 (citation omitted).

27. The Court's review on a motion to dismiss pursuant to FRCP 12(b)(6) is generally limited to "the facts as asserted within the four corners of the complaint, the documents attached to the complaint as exhibits, and any documents incorporated in the complaint by reference." McCarthy v. Dun & Bradstreet Corp., 482 F.3d 184, 191 (2d Cir. 2007). See also Fed. R. Evid. 201(b), (c) ("(b) The court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. . . . (c) The court: (1) may take judicial notice on its own; or (2) must take judicial notice if a party requests it and the court is supplied with the necessary information.").

28. Moreover, while facts must be accepted as alleged, this does not automatically extend to bald assertions or legal conclusions. EGP Fuels Co. v. Port of Houston Auth. (In re Enron Corp.), Adv. Proc. No. 03-92511, 2006 Bankr. LEXIS 4658, at \*5-6 (Bankr. S.D.N.Y. June 2, 2006). A court considering a motion to dismiss can disregard conclusory allegations and judge the complaint only on well-pleaded factual allegations. Starr v. Sony BMG Music Entm't, 592 F.3d 314, 321 (2d Cir. 2010). See also Papasan v. Allain, 478 U.S. 265, 286 (1986)

(stating that, on a motion to dismiss, courts are not bound to accept as true a legal conclusion couched as a factual allegation).

29. In addition, allegations involving fraud must satisfy the requirements of Rule 9(b), which provides that “a party must state with particularity the circumstances constituting fraud or mistake.” Fed. R. Civ. P. 9(b).

30. Although complaints drafted by *pro se* plaintiffs are to be “construed liberally,” claims asserted by *pro se* plaintiffs must nonetheless be supported by specific and detailed factual allegations sufficient to provide the court and the defendant with “a fair understanding of what the plaintiff is complaining about and . . . whether there is a legal basis for recovery.” Iwachiw v. N.Y.C. Bd. of Elections, 126 Fed. Appx. 27, 29 (2d Cir. 2005) (citation omitted) (alteration in original).

**(ii) Plaintiff Has Already Achieved the Relief Requested**

31. As set forth in the Complaint<sup>4</sup> and in hearings before this Court,<sup>5</sup> Plaintiff filed the Complaint in an effort to obtain a loan modification. As Plaintiff has recently received a loan modification from Ocwen,<sup>6</sup> there is no additional relief for this Court to grant. For this reason alone, Plaintiff fails to state a claim upon which relief can be granted, and the Complaint must be dismissed.

**(iii) Plaintiff Fails to State a Claim for RICO**

32. Plaintiff’s RICO claims should be dismissed. To bring a civil RICO claim

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<sup>4</sup> Complaint, at page 5, C.

<sup>5</sup> Transcript of Hearing at 40-46, In re Residential Capital, LLC, No. 12-12020 (MG) (Bankr. S.D.N.Y. Aug. 28, 2013) [Docket No. 4895]; Transcript of Hearing at 18-24, In re Residential Capital, LLC, No. 12-12020 (MG) (Bankr. S.D.N.Y. Apr. 24, 2014) [Docket No. 6875]. Excerpts of these transcripts are annexed hereto as Exhibit 3.

<sup>6</sup> See Exhibit 2.



in the Second Circuit, a plaintiff must allege “(1) that the defendant (2) through the commission of two or more acts (3) constituting a pattern (4) of racketeering activity (5) directly or indirectly invests in, or maintains an interest in, or participates in (6) an enterprise (7) the activities of which affect interstate or foreign commerce.” Zavalidroga v. Cote, 395 Fed. Appx. 737, 740–41 (2d Cir. 2010) (citation and internal quotation marks omitted). Several of these terms are defined by statute: (i) “racketeering activity” includes dozens of predicate offenses, including extortion, bribery, counterfeiting, and mail fraud, (ii) a “pattern of racketeering activity” requires at least two acts of racketeering activity, and (iii) an “enterprise” includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.” See 18 U.S.C. § 1961. The alleged “enterprise” must be “distinct from those persons or entities who stand accused of conducting that racketeering activity.” Allstate Ins. Co. v. Rozenberg, 590 F. Supp. 2d 384, 390 (E.D.N.Y. 2008).

33. Here, Plaintiff’s RICO claim is deficiently pled. Plaintiff fails to allege (i) any act(s) committed by the Debtor Defendants, (ii) any racketeering activity, (iii) any pattern of racketeering activity, which by statute requires at least two acts of racketeering, and (iv) any allegation of an enterprise involving the Debtor Defendants. As a result, this claim fails as a matter of law. This Court has denied a borrower’s civil RICO claims where the borrower similarly failed to sufficiently plead such claims. See, e.g., Memorandum Opinion and Order Sustaining Borrower Claims Trust’s Objection to Claim Nos. 4754 and 7181, In re Residential Capital, LLC, No. 12-12020 (MG) (Bankr. S.D.N.Y. Apr. 2, 2014) [Docket No. 6739] (finding the claim at issue failed to support a RICO claim because it failed to provide “allegations necessary to support a civil RICO claim” and “any evidence of a pattern of racketeering activity, definition of any enterprise, or a RICO case statement”).

34. Even if a plaintiff can demonstrate a substantive RICO violation, the plaintiff must also show “injury to the plaintiff’s business or property” and “that such injury was by reason of the substantive RICO violation.” Catholic Health Care W. v. US Foodservice (In re US FoodService Pricing Litig.), 729 F.3d 108, 117 (2d Cir. 2013) (citation omitted). Here, Plaintiff fails to allege any injury whatsoever, and further fails to allege how any injury is the result of a substantive RICO violation. Notably, Plaintiff fails to allege that she has made all of the requisite loan payments to the Debtor Defendants with respect to her loan secured by the property. To the extent Plaintiff suffers any injury at all, it is due to her failure to make such payments.

35. For these reasons, Plaintiff’s civil RICO claim has no merit and the Complaint should be dismissed.

**(iv) Plaintiff Fails to State a Claim for FDCPA**

36. Plaintiff also fails to state a claim for violation of the FDCPA. First, Plaintiff does not allege that the Debtor Defendants are “debt collectors” as defined by the FDCPA. “To state a claim for violation of the FDCPA, a plaintiff must allege that the defendant is a ‘debt collector’ collecting a ‘debt.’” Ines v. Countrywide Home Loans, Inc., No. 08cv1267 (WQH) (NLS), 2008 WL 4791863, at \*2 (S.D. Cal. Nov. 3, 2008) (citation omitted). Second, Plaintiff does not allege that the Debtor Defendants violated any provision of the FDCPA. For example, Plaintiff does not allege that the Debtor Defendants communicated with her at an unusual time or place, in a harassing or abusive manner, in a false or misleading manner, or by unfair or unconscionable means, as prohibited by the FDCPA. See 15 U.S.C. § 1692(a)-(p).

Finally, Plaintiff does not allege any damages resulting from an alleged FDCPA violation.<sup>7</sup>

37. For these reasons, Plaintiff's civil FDCPA claim has no merit and the Complaint should be dismissed.

(v) **Plaintiff Did Not Preserve Any Claims Against the Debtors or the ResCap Trusts**

38. As described in greater detail below, Plaintiff did not file the Proofs of Claim by the General Bar Date, and as a result, Plaintiff has not preserved her rights to seek a recovery from the Debtors or the ResCap Trusts. In addition, to the extent relevant, Plaintiff filed the Complaint commencing the Adversary Proceeding on November 29, 2012, thirteen days after the General Bar Date.

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

**F. The Proofs of Claim Should Be Disallowed and Expunged**

40. The Proofs of Claim should be disallowed and expunged for several reasons. First, the Proofs of Claim were not timely filed. Further, to the extent the Court determines that dismissal of the Adversary Proceeding is warranted, the Court should also disallow the Proofs of Claim (to the extent they are deemed timely filed), which appear to be based on the allegations and claims asserted in the Adversary Proceeding. In addition, the Proofs of Claim should be disallowed and expunged because Plaintiff failed to attach any relevant supporting documentation to substantiate a legal or factual basis to assert any claim against the Debtors.

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<sup>7</sup> The ResCap Trusts reserve the right to contend that GMACM is not a "debt collector" within the meaning of  
(cont'd)

(i) **Legal Standard**

41. A filed proof of claim is “deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). If an objection refuting at least one of the claim’s essential allegations is asserted, the claimant has the burden to demonstrate the validity of the claim. See In re Oneida Ltd., 400 B.R. 384, 389 (Bankr. S.D.N.Y. 2009), aff’d sub nom., Peter J. Solomon Co. v. Oneida, Ltd., No. 09-cv-2229 (DC), 2010 U.S. Dist. LEXIS 6500 (S.D.N.Y. Jan. 22, 2010); In re Rockefeller Ctr. Props., 272 B.R. 524, 539 (Bankr. S.D.N.Y. 2000), aff’d sub nom., NBC v. Rockefeller Ctr. Props. (In re Rockefeller Ctr. Props), 266 B.R. 52 (S.D.N.Y. 2001), aff’d, 46 Fed. Appx. 40 (2d Cir. 2002).

42. Moreover, section 502(b)(1) of the Bankruptcy Code provides, in relevant part, that a claim may not be allowed to the extent that “such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law....” 11 U.S.C. § 502(b)(1). Furthermore, the burden of persuasion is on the holder of a proof of claim to establish a valid claim against a debtor. Feinberg v. Bank of N.Y. (In re Feinberg), 442 B.R. 215, 220-22 (Bankr. S.D.N.Y. 2010).

43. To preserve a claim against a debtor, a creditor must file a proof of claim prior to the deadline established by the Court. The Supreme Court considered the test for determining whether a creditor may be permitted to file a late proof of claim in Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship, 507 U.S. 380 (1993). Specifically, the Court explained that Congress, in empowering “the courts to accept late filings ‘where the failure to act was the result of excusable neglect,’” “Congress plainly contemplated that the courts would be

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*(cont’d from previous page)*

the FDCPA.

permitted, where appropriate, to accept late filings caused by inadvertence, mistake or carelessness, as well as by intervening circumstances beyond the party's control." Id. at 388, 390 (citations omitted). The creditor seeking to file a proof of claim bears the burden of proof to demonstrate excusable neglect. See In re PT-1 Commc'ns, Inc., 403 B.R. 250, 260 (Bankr. E.D.N.Y. 2009) (concluding that late filer bears burden of demonstrating excusable neglect); In re BH S & B Holdings LLC, 435 B.R. 153, 168 (Bankr. S.D.N.Y. 2010) (burden of showing excusable neglect is on the movant).

(ii) **Analysis**

44. The Proofs of Claim should be disallowed and expunged on the basis that they were not timely filed. The Proofs of Claim were filed thirteen days after the General Bar Date. Plaintiff did not seek permission to file a late proof of claim, and Plaintiff has not alleged that her failure to submit the Proofs of Claim on time was the result of excusable neglect.

45. Further, as established above, Plaintiff's claims in the Adversary Proceeding should be dismissed pursuant to FRCP 12(b)(6) for failure to state a claim. Accordingly, the Borrower Trust objects to the Proofs of Claim, which should be disallowed and expunged for the same reasons the Adversary Proceeding should be dismissed.

46. Finally, the Proofs of Claim do not contain any explanation or supporting documentation to substantiate a legal or factual basis to assert any claim against any of the Debtors. The Proofs of Claim merely set forth the aggregate amount of the claim and the secured amount of the claim, and identifies the security interest as real property located at 2377 Scott Oaks Trail SW, Marietta GA 30008. The Liquidating Trust, in support of the Borrower Trust, conducted an exhaustive examination of the Debtors' books and records and concluded that there is no potential basis of liability against the Debtors that could support the Proofs of

Claim other than the claims already asserted by Plaintiff in the Adversary Proceeding, which, as demonstrated above, are without merit.

47. For these reasons, the Proofs of Claim should be disallowed and expunged.

### **CONCLUSION**

Accordingly, for the reasons set forth herein, the ResCap Trusts respectfully request that the Court (i) enter an order dismissing the Adversary Proceeding with prejudice, substantially in the form annexed hereto as **Exhibit 4**; and (ii) enter an order disallowing and expunging the Proofs of Claim, substantially in the form annexed hereto as **Exhibit 5**; and (iii) grant such other and further relief as it deems just and proper.

Dated: September 30, 2016  
New York, New York

/s/ Norman S. Rosenbaum

Norman S. Rosenbaum

Samantha Martin

MORRISON & FOERSTER LLP

250 West 55<sup>th</sup> Street

New York, New York 10019

Telephone: (212) 468-8000

Facsimile: (212) 468-7900

*Counsel for the ResCap Liquidating Trust  
and the ResCap Borrower Claims Trust*

**Exhibit 1**

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

In re:	)	
	)	Case No. 12-12020 (MG)
	)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u> ,	)	Chapter 11
	)	
Debtors.	)	Jointly Administered
	)	
	)	
Gwendolyn B. Hawthorne	)	
	)	
Plaintiff,	)	
	)	Adv. No. 12-02050 (MG)
v.	)	
	)	
GMAC Mortgage, LLC, U.S. Bank	)	
National Association, GMFS LLC, Judy	)	
Faber, Vice President, Brenda Guidry,	)	
and Mortgage Electronic Registration	)	
System Inc., and Duane Thompson,	)	
Assistant Secretary Mortgage Electronic	)	
Registration Systems Inc, as Nominee	)	
for GMFS, LLC, Residential Funding	)	
Corporation	)	
	)	
	)	
Defendants.		

**DECLARATION OF SARA LATHROP WITH RESPECT TO THE  
JOINT MOTION OF THE RESCAP LIQUIDATING TRUST AND THE RESCAP  
BORROWER CLAIMS TRUST FOR (I) DISMISSAL OF ADVERSARY PROCEEDING  
PURSUANT TO BANKRUPTCY RULE 7012(b) AND FRCP 12(b)(6), AND  
(II) DISALLOWANCE OF PROOFS OF CLAIM NOS. 6273 AND 6274  
FILED BY PLAINTIFF**

I, Sara Lathrop, hereby declare as follows:

**A. Declarant's Background and Qualifications**

1. I serve as Senior Claims Analyst for the ResCap Borrower Claims Trust (the "Borrower Trust"), established pursuant to the terms of the *Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC, et al. and the Official Committee of Unsecured*



*Creditors* [Docket No. 6030] confirmed in the above-captioned Chapter 11 Cases. During the Chapter 11 Cases, I served as Regulatory Compliance Manager and Loss Mitigation Manager in the loan servicing department of Residential Capital, LLC (“ResCap”), a limited liability company organized under the laws of the state of Delaware and the parent of the other debtors in the above-captioned Chapter 11 Cases (collectively, the “Debtors”). I have been employed by affiliates of ResCap since June 2006. I began my association with ResCap in 2006 working as an associate in the Default Division of the loan servicing operation of GMAC Mortgage, LLC (“GMACM”). In 2008, I became a Default Quality Control Specialist, a position that I held until I became a Supervisor in the Default Division in 2009. In 2011, I then became a Supervisor in the Loss Mitigation Division of GMACM’s loan servicing operation, and in February 2012, I became a Manager in that division. In this role, I oversaw GMACM associates in their efforts to provide borrowers with loss mitigation options and assisted in the development of GMACM’s loss mitigation policies. In January of 2013, I became the Regulatory Compliance Manager for ResCap. I became Senior Claims Analyst for ResCap in July 2013 and continued this role with the ResCap Liquidating Trust (the “Liquidating Trust”) in December 2013. In my current position as Senior Claims Analyst to the Borrower Trust, among my other duties, I continue to assist the Borrower Trust in connection with the claims reconciliation process.<sup>1</sup> I am authorized to submit this Declaration with respect to the *Joint Motion of the ResCap Liquidating Trust and the ResCap Borrower Claims Trust for (I) Dismissal of Adversary Proceeding Pursuant To*

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<sup>1</sup>The ResCap Liquidating Trust and the ResCap Borrower Claims Trust are parties to an Access and Cooperation Agreement, dated as December 17, 2013, which, among other things, provides the Borrower Trust with access to the books and records held by the Liquidating Trust and Liquidating Trust’s personnel to assist the Borrower Trust in performing its obligations.

*Bankruptcy Rule 7012(b) and FRCP 12(b)(6), and (II) Disallowance of Proofs of Claim Numbers 6273 and 6274 Filed by Plaintiff (the “Motion”).<sup>2</sup>*

2. In my current and former capacities as Senior Claims Analyst and Loss Mitigation Manager to the Borrower Trust, the Liquidating Trust, and ResCap, I am intimately familiar with the Debtors’ claims reconciliation process. Except as otherwise indicated, all statements in this Declaration are based on my familiarity with the Debtors’ Books and Records kept in the course of their regularly conducted business activities (the “Books and Records”), as well as the Debtors’ schedules of assets and liabilities and statements of financial affairs filed in these Chapter 11 Cases (collectively, the “Schedules”), my review and reconciliation of claims, and/or my review of relevant documents. I or Liquidating Trust personnel have reviewed and analyzed the proof of claim forms and supporting documentation filed by Plaintiff. Since the Plan went effective and the Borrower Trust was established, I, along with members of the Liquidating Trust, have consulted with the Borrower Trust to continue the claims reconciliation process, including analyzing claims and determining the appropriate treatment of the same. In connection with such review and analysis, where applicable, I, or Liquidating Trust personnel, together with professional advisors, have reviewed (i) information supplied or verified by former personnel in departments within the Debtors’ various business units, (ii) the Books and Records, (iii) the Schedules, (iv) other filed proofs of claim, and/or (v) the official claims register maintained in the Debtors’ Chapter 11 Cases.

3. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge of the Debtors’ operations, information learned from my review of relevant documents, and information I have received through my discussions with

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<sup>2</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

other former members of the Debtors' management or other former employees of the Debtors, and/or the Liquidating Trust's and Borrower's Trust's personnel, professionals, and consultants. If I were called upon to testify, I could and would testify competently to the facts set forth in the Motion on that basis.

**B. Background on Plaintiff's Mortgage Loan**

4. Plaintiff is a borrower under a mortgage loan (the "Loan"), that was originated by GMFS, LLC on or about October 24, 2005. The Loan was evidenced by an adjustable rate note in the amount of \$135,000.00 (the "Note"), which was secured by real property located at 2377 Scott Oaks Trail SW, Marietta GA 30008 (the "Property") pursuant to a security deed (the "Security Deed") that was executed contemporaneously with the Note. See Note, annexed hereto as **Exhibit A**, and Security Deed, annexed hereto as **Exhibit B**.

5. GMACM serviced the Loan from July 2009 to February 15, 2013.

6. Plaintiff defaulted on the Loan. To the best of the knowledge of the ResCap Trusts, Plaintiff remains in possession of the Property.

7. Upon the closing of the sale of the Debtors' mortgage loan servicing platform to Ocwen Loan Servicing, LLC ("Ocwen"), Ocwen began servicing the Loan as of February 16, 2013. See Goodbye Letter, annexed hereto as **Exhibit C**.

**C. The Proofs of Claim**

8. On or about November 29, 2012, Plaintiff filed (i) proof of claim #6273 against U.S. National Bank Association, asserting a secured claim in the amount of \$145,821.97, and an unsecured claim in the amount of \$454,178.03, and (ii) proof of claim #6274 against GMACM, as servicer for U.S. Bank, asserting a secured claim in the amount of \$145,821.97, and an unsecured claim in the amount of \$454,178.03 (together, the "Proofs of Claim"), in each case,

in connection with Plaintiff's mortgage loan with respect to the property located at 2377 Scott Oaks Trail SW, Marietta GA 30008. See Proofs of Claim, annexed hereto as **Exhibit D**.

9. On November 20, 2013, this Court entered an order reclassifying proof of claim #6273 as an unsecured claim in the aggregate amount of \$600,000 and re-designating proof of claim #6273 as a claim against Debtor Homecomings Financial, LLC ("Homecomings"). [Case No. 12-12020, Docket No. 5895]

Dated: September 30, 2016

/s/ Sara Lathrop  
Sara Lathrop  
Senior Claims Analyst for the  
ResCap Borrower Claims Trust

**Exhibit A**

7440507069

10103416

Loan No.: [REDACTED] 794  
MTN No.: [REDACTED] 67-3

**ADJUSTABLE RATE NOTE**  
(6-Month LIBOR Index -Rate Caps)  
(First Business Day of Preceding Month Lookback)

**THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.**

October 24, 2005

2377 SCOTT OAKS TRAIL SW  
MARIETTA, GA 30008-  
[Property Address]

ATLANTA, Georgia

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

In return for a loan that I have received, I promise to pay U.S. \$135,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is **GMFS, LLC**. I will make all payments under this Note in the form of cash, check or money order.

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

**2. INTEREST**

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of **8.550%**. The interest rate I will pay will change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

**3. PAYMENTS**

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

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

I will make my monthly payments on the **First** day of each month beginning on **December 01, 2005**. 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 **November 01, 2035**, 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

**GMFS, LLC**  
**7389 Florida Blvd., Ste. 200A**  
**Baton Rouge, LA 70806**

or at a different place if required by the Note Holder.

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

Each of my initial monthly payments will be in the amount of U.S. \$1,042.82. This amount may change.

**(C) Monthly Payment Changes**

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

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

**(A) Change Dates**

The interest rate I will pay may change on the **First** day of **November, 2007**, and may change on that day every sixth month thereafter. Each date on which my interest rate could change is called a "Change Date."

**(B) The Index**

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

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

**(C) Calculation of Changes**

Before each Change Date, the Note Holder will calculate my new interest rate by adding **Six and 492/1000** percentage point(s) (**6.492%**) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

Loan No.: 5794  
MIN No.: 467-3

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

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

The interest rate I am required to pay at the first Change Date will not be greater than 11.550% or less than 8.550%. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than One percentage point(s) ( 1.000% ) from the rate of interest I have been paying for the preceding six months. My interest rate will never be greater than 14.550%, or less than 8.550%.

**(E) Effective Date of Changes**

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

**(F) Notice of Changes**

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

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

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

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. 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 dates of my monthly payment unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

**6. LOAN CHARGES**

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (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.

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

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

If the Note Holder has not received the full amount of any monthly payment by the end of Fifteen calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000% 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.

**8. GIVING OF NOTICES**

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

Loan No.: 5794  
MIN No.: 467-3

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

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

If more than one person signs this Note, each person is fully and personally obligated to keep all 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.

**10. WAIVERS**

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

**11. 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:

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

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

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



Loan No.: [REDACTED] 5794  
MIN No.: [REDACTED] 67-3

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

Gwendolyn B. Hawthorne (Seal)  
GWENDOLYN B. HAWTHORNE -Borrower  
Social Security Number 247-94-8289

[Sign Original Only]

Loan No.: [REDACTED] 5794

**PREPAYMENT RIDER TO NOTE**

This PREPAYMENT RIDER TO NOTE is made this **Twenty-Fourth** day of **October, 2005**, and is incorporated into and shall be deemed to amend and supplement the Note of the same date given by the undersigned (the "Borrower," or "I") in favor of **GMFS, LLC** (who together with anyone who later owns or holds the note, the "Lender").

Notwithstanding anything to the contrary set forth in the Note, Borrower and Lender covenant and agree that the provisions in the section of the Note entitled "BORROWER'S RIGHT TO PREPAY" or "BORROWER'S PAYMENTS BEFORE THEY ARE DUE" are amended to read as follows:

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

I may make a partial prepayment without paying any prepayment fee. If within the first 24 months after the date of the note, I make a full prepayment, the Lender may charge and I agree to pay a prepayment fee equal to 1% computed on the principal prepaid when I make the full prepayment. A "full prepayment" means that I pay the entire remaining principal balance on the loan.

There will be no prepayment fee if a) this loan is prepaid with insurance proceeds, b) this loan is prepaid as a result of a lawsuit or foreclosure, c) the prepayment fee is prohibited by applicable law, or d) this loan is prepaid more than 24 months after the date of the note. I understand that except as I have agreed in this Prepayment Rider, all other terms of the note still apply and are in effect.

BY SIGNING BELOW, the Borrower accepts and agrees to the terms and provisions contained in this PREPAYMENT RIDER TO NOTE.

Gwendolyn B. Hawthorne 10-24-05  
Borrower: GWENDOLYN B HAWTHORNE Date

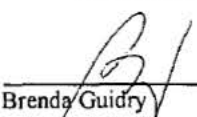
**ALLONGE TO NOTE**

Loan Number: [REDACTED] 5794  
Borrower: GWENDOLYN B HAWTHORNE  
Loan Amount: 135,000.00  
Address: 2377 SCOTT OAKS TRAIL SW  
MARIETTA, GA 30008-  
Loan Date: 10/24/05  
In Favor of: GMFS, LLC

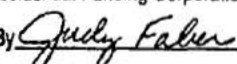
*Pay to the order of*

**RESIDENTIAL FUNDING CORPORATION**

Without Recourse  
GMFS, LLC

By:   
Name: Brenda Guidry  
Title: Funder, GMFS, LLC

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

By:   
Judy Faber, Vice President

**Exhibit B**

Deed Book 14245 Pg 5868  
Filed and Recorded Nov-07-2005 04:14pm  
2005-0198804  
Georgia Intangible Tax Paid \$405.00

J.C. Stephenson

Jay C. Stephenson  
Clerk of Superior Court Cobb Cty. Ga.

After Recording Return To:  
GMFS, LLC  
ATTN: Final Docs  
7389 Florida Blvd., Ste. 200A  
Baton Rouge, LA 70806  
Prepared By:  
Robertson & Anschutz, P.C.  
10333 Richmond Avenue, Suite 550  
Houston, TX 77042

Return to  
Dewrell Sacks, LLP  
100 Galleria Parkway, S.E.  
Suite 1850

Atlanta, GA 30339

DS10A485UA7L

### SECURITY DEED

MIN No. [REDACTED] Loan No. [REDACTED] 5794  
67-3

#### DEFINITIONS

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

- (A) "Security Instrument" means this document, which is dated **October 24, 2005**, together with all Riders to this document.
- (B) "Borrower" is **GWENDOLYN B HAWTHORNE, a single woman**. Borrower is the grantor under this Security Instrument.
- (C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the grantee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.
- (D) "Lender" is GMFS, LLC. Lender is a **Limited Liability Company** organized and existing under the laws of the **State of Delaware**. Lender's address is **7389 Florida Blvd., Ste. 200A, Baton Rouge, LA 70806**.
- (E) "Note" means the promissory note signed by Borrower and dated **October 24, 2005**. The Note states that Borrower owes Lender **One Hundred Thirty-Five Thousand Dollars (U.S. \$135,000.00)** plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **November 01, 2035**.
- (F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property".
- (G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
- (H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

☒ [X] Adjustable Rate Rider

- (I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
- (J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.
- (K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
- (L) "Escrow Items" mean those items that are described in Section 3.
- (M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.
- (N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
- (O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.
- (P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and

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restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

#### TRANSFER OF RIGHTS IN THE PROPERTY

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

**See Exhibit "A" attached hereto and made a part hereof for all purposes**

which currently has the address of **2377 SCOTT OAKS TRAIL SW, MARIETTA, GA 30008-** ("Property Address"):

TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

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

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

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

**1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

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

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

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

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

**3. Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees, and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

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

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

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

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

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

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of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

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

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

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

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

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

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

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

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or

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assessing the value of the Property, and securing and/or repairing the Property (as set forth below). Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, making repairs, replacing doors and windows, drain water from pipes, and eliminating building or other code violations or dangerous conditions. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

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

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

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

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

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

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

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

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

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

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

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

*LBK*

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

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

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

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

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

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

**13. Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent. Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

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

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

**15. Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this

*[Handwritten signature]*

Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

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

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

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

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

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

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

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

**20. Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

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

**21. Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or

*BBB*

formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

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

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

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

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

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

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

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

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

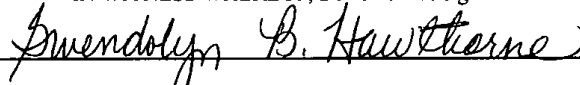
**24. Waiver of Homestead.** Borrower waives all rights of homestead exemption in the Property.

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

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

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

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

 GWENDOLYN B



HAWTHORNE

(Seal)  
-Borrower

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public,                      County

Unofficial Witness

Notary Public,                      County



Loan No.: 5794

**ADJUSTABLE RATE RIDER**  
**(6-Month LIBOR Index -Rate Caps)**  
**(First Business Day of Preceding Month Lookback)**

THIS ADJUSTABLE RATE RIDER is made this **Twenty-Fourth** day of **October, 2005** and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure the Borrower's Adjustable Rate Note (the "Note") to **GMFS, LLC** (the "Lender") of the same date and covering the property described in the Security Instrument and located at:

**2377 SCOTT OAKS TRAIL SW**  
**MARIETTA, GA 30008-**  
[Property Address]

**THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT THE BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE THE BORROWER MUST PAY.**

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

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

The Note provides for an initial interest rate of **8.550%**. The Note provides for changes in the interest rate and the monthly payments, as follows:

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

**(A) Change Dates**

The interest rate I will pay may change on the **First** day of **November, 2007**, and may change on that day every sixth month thereafter. Each date on which my interest rate could change is called a "Change Date."

**(B) The Index**

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

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

**(C) Calculation of Changes**

Before each Change Date, the Note Holder will calculate my new interest rate by adding **Six and 492/1000** percentage point(s) (**6.492%**) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the maturity date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

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

The interest rate I am required to pay at the first Change Date will not be greater than **11.550%** or less than **8.550%**. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than **One** percentage point(s) (**1.000%**) from the rate of interest I have been paying for the preceding six months. My interest rate will never be greater than **14.550%**, or less than **8.550%**.

**(E) Effective Date of Changes**

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

*[Handwritten Signature]*

Loan No.: 5794

**(F) Notice of Changes**

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

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

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

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

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

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

*SLD*

Loan No.: [REDACTED] 5794

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

  
GWENDOLYN B HAWTHORNE (Seal)  
-Borrower



Loan No.: [REDACTED] 5794

GRANTOR: GWENDOLYN B HAWTHORNE  
LENDER: GMFS, LLC  
DATE OF SECURITY DEED: October 24, 2005

### GEORGIA'S WAIVER OF BORROWER'S RIGHTS

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

### FORECLOSURE CLOSING DISCLOSURE

O.C.G.A. SECTION 7-1-1014(3) REQUIRES THAT WE INFORM YOU THAT IF YOU FAIL TO MEET ANY CONDITION OR TERM OF THE DOCUMENTS THAT YOU SIGN IN CONNECTION WITH OBTAINING A MORTGAGE LOAN YOU MAY LOSE THE PROPERTY THAT SERVES AS COLLATERAL FOR THE MORTGAGE LOAN THROUGH FORECLOSURE.

READ AND AGREED BY GRANTOR:

Gwendolyn B. Hawthorne 10-24-05  
Borrower: GWENDOLYN B HAWTHORNE Date

Signed, sealed and delivered in the presence of:

[Signature]  
Notary Public



Loan No.: [REDACTED] 5794

### CLOSING ATTORNEY'S AFFIDAVIT

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

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

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

Sworn to and subscribed before me  
on the date set forth above.

Notary Public

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

Closing Attorney

Exhibit B  
Deed Book 14243 Pg 5882  
Pg 16 of 16  
Clerk of Superior Court Cobb Cty. Ga.

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 485 OF THE 19TH DISTRICT, 2ND SECTION, COBB COUNTY, GEORGIA, BEING LOT 38, BLOCK A OF CUMBERLAND CREEK, (FORMERLY KNOWN AS CALLAWAY GREENS) UNIT 6, PHASE 1, AS PER PLAT RECORDED IN PLAT BOOK 97, PAGE 43, RECORDS OF COBB COUNTY, GEORGIA, WHICH PLAT IS INCORPORATED HEREIN BY REFERENCE FOR A MORE PARTICULAR DESCRIPTION AND DELINEATION OF THE LOT DIMENSIONS THEREOF.

**Exhibit C**



## Notice of Servicing Transfer and Welcome to Ocwen Loan Servicing, LLC

February 7, 2013

GWENDOLYN B HAWTHORNE  
2377 SCOTT OAKS TRAIL SW  
MARIETTA GA 30008 6865



### Your Loan Account Details as of 02/04/2013

Account Number  
7069

Property Address  
2377 SCOTT OAKS TRAIL SW  
MARIETTA GA 30008

Transfer Date  
02/16/2013

Principal Balance  
\$132,668.22

Escrow Balance  
-\$1,870.13

Loan Rate  
3.750%

Next Payment Due  
10/1/2011

Payment Amount  
Please refer to your  
mortgage account statement

Dear GWENDOLYN B HAWTHORNE,

The servicing of your mortgage loan, that is, the right to collect payments from you, is transferring from your current servicer, GMAC Mortgage ("GMACM") to your new servicer, Ocwen Loan Servicing, LLC ("Ocwen") effective February 16, 2013.

Rest assured this transfer of servicing does not affect any term or condition of the mortgage documents, other than those directly related to the servicing of your loan. There will be no change to your account number or payment address, only to the name of the company to which you make your payment. All mailing addresses and phone numbers you previously used to contact GMACM will remain the same but, as of February 16, 2013, they will be maintained by Ocwen. You will continue to be served in a knowledgeable and professional manner, just as you have in the past.

GMACM will stop accepting payments on February 15, 2013. Ocwen will begin to accept payments on February 16, 2013. Send all payments due on or after that date to Ocwen. A temporary coupon is provided below for your convenience. Any account notices prepared prior to February 16, 2013 will reflect GMACM; all notices prepared on or after February 16, 2013 will reflect Ocwen. In addition any payments received by GMACM after February 15, 2013 will automatically be processed by Ocwen.

If you are currently using GMACM's automatic payment service, this program will continue with no lapse in service. If you previously made your payment through GMACMortgage.com, on or after February 16, 2013 you can go to ocwen.mortgagebanksite.com and use your same login ID and password for account access. If you use a third party payment service, please request they update their records to have payments made payable to Ocwen Loan Servicing, LLC effective February 16, 2013.

Because GMACM is the subject of a bankruptcy proceeding, federal law requires either GMACM or Ocwen to send you this notice not more than 30 days after the effective date of the transfer of the servicing of your loan. In this case, all necessary information is combined in this one notice. Please review the reverse side of this letter for legal disclosures, notices and state requirements. It's our goal to make this transfer as seamless as possible.

Enclosed are your (1) final **GMAC Mortgage annual privacy notice** and (2) your **Ocwen initial privacy notice** that becomes effective with the start of your new customer relationship with Ocwen. Please see the Ocwen initial privacy notice for important opt-out elections.

We appreciate the opportunity to serve your home loan needs. If you have questions relating to the transfer of servicing please contact our Transfer Hotline at 1-888-926-3479 weekdays from 8:00 AM to 7:00 PM, Central Time. If you have questions about the general servicing of your loan please call GMACM Customer Care at 800-766-4622, 6:00 a.m. - 10:00 p.m. CT M-F and 8:00 a.m. - 2:00 p.m. Sat.

Sincerely,

Charles R. Hocker  
Sr. Vice President, Customer Care  
GMAC Mortgage

Sincerely,

William C. Erbey  
President and Chief Executive Officer  
Ocwen Loan Servicing, LLC

Enclosure(s)

### Ocwen Loan Servicing, LLC Customer Care Contact Information

Phone:  
800-766-4622  
Personal assistance  
6:00 a.m. - 10:00 p.m. CT M-F  
and 8:00 a.m. - 2:00 p.m. Sat  
24-hour automated service  
Email  
ocwen@mortgagebanksite.com  
Web  
ocwen.mortgagebanksite.com  
Mail  
PO Box 780  
Waterloo, IA 50704-0780

02-1x85-7300(1/13)

## Mortgage Payment Coupon

Ocwen Loan Servicing, LLC

Account Number:  
7069

Due Date:  
10/1/2011

Mortgage Payment:  
See above

Please assist us in applying your payment.	
Full Payments	\$.....
ADDITIONAL Principal	\$.....
ADDITIONAL Escrow	\$.....
Late Charge	\$.....
Other Fees (specify)	\$.....
Total Amount Enclosed	\$.....



OCCWEN  
PO BOX 9001719  
LOUISVILLE, KY 40290-1719



GWENDOLYN B HAWTHORNE

02 1011 7069 00000000 00000 22222 0

### IMPORTANT INFORMATION

#### Schedule of Standard Servicing Fees for Georgia

Fee Name	Fee Description	Estimated Fee Amount
Balloon Reset/Cast	Fee required to reset balloon loans or recast a loan when loan documents allow for this function.	\$170 - \$1200 (includes hard dollar costs which range by county)
Broker Price Opinion (BPO)	Brokers or other qualified individuals provide an estimate of the market value of property.	\$83.00 - \$150.00
Inspection	Inspections are performed to ensure that the property is occupied and appropriately maintained.	\$16.50 - \$42.00
Late Charges	Penalty charged to the borrower if a payment is received past the grace days.	Fees assessed according to loan documents
Non Sufficient Funds (NSF) Fee	Fee charged for a check that was applied to the borrower's account but returned unpaid by the borrower's depository institution (bank, savings bank, etc).	NO CHARGE
Pay by Phone	One time charge to a borrower to make a payment using the pay by phone service. Use of this service is optional. Other payment options are available that have no additional costs.	\$7.50 via phone \$12.50 via customer service
Payoff Statement	Fee charged when a payoff statement is requested to be mailed or faxed.	NO CHARGE
Recording Fee	Fee charged by the county recorder's office to record the release / satisfaction when the loan is paid-in-full.	\$12.00
Subordination	Processing/underwriting fee to review new loan details and our existing second lien loan to consider permitting the new loan to have priority, or first lien position, over our existing second lien loan.	\$100.00
Wire	Fee assessed for wired payments. Use of this service is optional. Other payment options are available that have no additional costs.	\$7.50
All fees and amounts are subject to change without prior notice. Additional fees and amounts may apply depending on your specific request and the status of your loan.		



**Exhibit D**

B 10 (Official Form 10) (12/11)

<b>UNITED STATES BANKRUPTCY COURT     Southern District of New York</b>			<b>PROOF OF CLAIM</b>
Name of Debtor: <b>US NATIONAL BANK ASSOCIATION</b>		Case Number: <b>12-12032</b>	<b>NOV 29 2012</b>
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.			
Name of Creditor (the person or other entity to whom the debtor owes money or property): <b>GWENDOLYN B HAWTHORNE</b>			
Name and address where notices should be sent: <b>2377 SCOTT OAKS TRAIL SW MARIETTA GA 30008</b>		<b>COURT USE ONLY</b>  <input type="checkbox"/> Check this box if this claim amends a previously filed claim.  Court Claim Number: _____ (If known)  Filed on: _____	
Telephone number: <b>(404) 348-6352</b> email: <b>GWENHAWTHORNE@YAHOO.COM</b>			
Name and address where payment should be sent (if different from above):		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach a copy of statement giving details.	
Telephone number:     email:			
1. Amount of Claim as of Date Case Filed:     \$ <u>600,000.00</u>		<b>RECEIVED</b>  <b>DEC 03 2012</b>  <b>KURTZMAN CARSON CONSULTANTS</b>	
If all or part of the claim is secured, complete item 4.			
If all or part of the claim is entitled to priority, complete item 5.			
<input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.			
2. Basis for Claim: <u>SEE ATTACHED</u> (See instruction #2)			
3. Last four digits of any number by which creditor identifies debtor:  <b>7 0 6 9</b>	3a. Debtor may have scheduled account as:  _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional):  _____ (See instruction #3b)	
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any:  \$ _____	
Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: <b>2377 SCOTT OAKS TRAIL SW, MARIETTA GA 30008</b>		Basis for perfection: _____	
Value of Property: \$ _____		Amount of Secured Claim:     \$ <u>145,821.97</u>	
Annual Interest Rate <u>3.75%</u> <input checked="" type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount Unsecured:     \$ _____	
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.			
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).  Amount entitled to priority: \$ _____	
<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)( ).  \$ _____	
*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.			
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)			



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B 10 (Official Form 10) (12/11)

2

**7. Documents:** Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

RECEIVED

DEC 03 2012

**8. Signature:** (See instruction #8)

KURTZMAN CARSON CONSULTANTS

Check the appropriate box.

- ☐ I am the creditor. ☐ I am the creditor's authorized agent. ☐ I am the trustee, or the debtor, or their authorized agent. ☐ I am a guarantor, surety, indorser, or other codebtor. (Attach copy of power of attorney, if any.) (See Bankruptcy Rule 3004.) (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: GWENDOLYN HAWTHORNE

Title:

Company:

Address and telephone number (if different from notice address above):

237 OAKS TRAIL SW, MARIETTA GA

30006

Gwendolyn B. Hawthorne

(Signature)

10/27/2012

(Date)

Telephone number:

email:

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

#### INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

##### Items to be completed in Proof of Claim form

#### Court, Name of Debtor, and Case Number:

Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

#### Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

#### 1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

#### 2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

#### 3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

#### 3a. Debtor May Have Scheduled Account As:

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

#### 3b. Uniform Claim Identifier:

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

#### 4. Secured Claim:

Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

#### 5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

#### 6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

#### 7. Documents:

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

#### 8. Date and Signature:

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

B 10 (Official Form 10) (12/11)

<b>UNITED STATES BANKRUPTCY COURT Southern District of New York</b>		<b>PROOF OF CLAIM</b>
Name of Debtor: <b>GMAC MORTGAGE, LLC AS SERVICER FOR US BANK</b>		Case Number: <b>12-12032</b>
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		<b>NOV 29 2012</b>
Name of Creditor (the person or other entity to whom the debtor owes money or property): <b>GWENDOLYN B HAWTHORNE</b>		<b>COURT USE ONLY</b>  <input type="checkbox"/> Check this box if this claim amends a previously filed claim.  Court Claim Number: _____ (If known)  Filed on: _____  <input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving details.
Name and address where notices should be sent: <b>2377 SCOTT OAKS TRAIL SW MARIETTA GA 30008</b>		
Telephone number: <b>(404) 348-6352</b> email: <b>GWENHAWTHORNE@YAHOO.COM</b>		
Name and address where payment should be sent (if different from above):  Telephone number: _____ email: _____		<b>RECEIVED</b> <b>DEC 03 2012</b>
1. Amount of Claim as of Date Case Filed: \$ <u>600,000.00</u>  If all or part of the claim is secured, complete item 4.  If all or part of the claim is entitled to priority, complete item 5.  <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: <u>SEE ATTACHED</u> (See instruction #2)		
3. Last four digits of any number by which creditor identifies debtor:  <u>7 0 6 9</u>	3a. Debtor may have scheduled account as:  _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional):  _____ (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.  Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: <b>2377 SCOTT OAKS TRAIL SW, MARIETTA GA 30008</b>  Value of Property: \$ _____  Annual Interest Rate: <u>3.75%</u> <input checked="" type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		
Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____  Basis for perfection: _____  Amount of Secured Claim: \$ <u>145,821.97</u>  Amount Unsecured: \$ _____		
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.		
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).
<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).
Amount entitled to priority: \$ _____		
*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.		
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		



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B 13 (Official Form 10) (12/11)

2

**7. Documents:** Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

RECEIVED

DEC 03 2012

**8. Signature:** (See instruction #8)

KURTZMAN CARSON CONSULTANTS

Check the appropriate box.

- ☐ I am the creditor. ☐ I am the creditor's authorized agent. ☐ I am the trustee, or the debtor, or their authorized agent. ☐ I am a guarantor, surety, indorser, or other codebtor. (Attach copy of power of attorney, if any.) (See Bankruptcy Rule 3004.) (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: GWENDOLYN HAWTHORNE

Title:

Company:

Address and telephone number (if different from notice address above):  
2377 OAKS TRAIL SW, MARIETTA GA  
30008

*Gwendolyn B. Hawthorne*  
(Signature)

10/27/2012

(Date)

Telephone number:

email:

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

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##### Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

##### 1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

##### 2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

##### 3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

##### 3a. Debtor May Have Scheduled Account As:

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

##### 3b. Uniform Claim Identifier:

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

##### 4. Secured Claim:

Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

##### 5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a):

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

##### 6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

##### 7. Documents:

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

##### 8. Date and Signature:

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

**Exhibit 2**



P.O. Box 24737

West Palm Beach, Florida 33416-4737

(Do not send correspondence or payments to the above address.)

[WWW.OCWEN.COM](http://WWW.OCWEN.COM)

## Helping Homeowners Is What We Do!™

Tuesday, November 03, 2015

Gwendolyn B Hawthorne  
2377 Scott Oaks Trl Sw  
Marietta, GA 30008

### Your executed Home Affordable Modification Agreement!

Re: Loan Number: [REDACTED] 7069  
Property Address: 2377 Scott Oaks Trl Sw | Marietta, GA 30008

Dear Borrower(s):

We are glad to be able to assist all qualifying homeowners save their homes from foreclosure and thank you for sending in your completed Home Affordable Modification Agreement.

Included with this letter is an executed copy of your Home Affordable Modification Agreement to keep for your records.

If you have any questions regarding your Home Affordable Modification Agreement, please call our Customer Care Center at (800) 746-2936 Monday to Friday 8:00 am to 9:00 pm, Saturday 8:00 am to 5:00 pm and Sunday 12:00 pm to 9:00 pm ET, and remember **"Helping Homeowners is what we do!"**

Sincerely,

Ocwen Loan Servicing, LLC

Investor Loan # \_\_\_\_\_

After Recording Return To:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This document was prepared by \_\_\_\_\_

[Space Above This Line For Recording Data]

## HOME AFFORDABLE MODIFICATION AGREEMENT

### (Step Two of Two-Step Documentation Process)

Borrower(s) ("I"): **Gwendolyn B Hawthorne**

Servicer ("Servicer"): *Ocwen Loan Servicing, LLC*

Date of first lien Security Instrument ("Mortgage") and Note ("Note"): **10/24/2005**

Loan Number: **7069**

Property Address: **2377 Scott Oaks Trl Sw Marietta, GA 30008** ("Property")  
*[and Legal Description if recordation is necessary]*

If my representations in Section 1 continue to be true in all material respects, then this Home Affordable Modification Agreement ("Agreement") will, as set forth in Section 3, amend and supplement (1) the Mortgage on the Property, and (2) the Note secured by the Mortgage. The Mortgage and Note together, as they may previously have been amended, are referred to as the "Loan Documents." Capitalized terms used in this Agreement and not defined have the meaning given to them in Loan Documents.

I understand that after I sign and return two copies of this Agreement to the Servicer, the Servicer will send me a signed copy of this Agreement. This Agreement will not take effect unless the preconditions set forth in Section 2 have been satisfied.

**1. My Representations.** I certify, represent to Servicer and agree:

- A. I am experiencing a financial hardship, and as a result, (i) I am in default under the Loan Documents, and (ii) I do not have sufficient income or access to sufficient liquid assets to make the monthly mortgage payments now or in the near future;
- B. I live in the Property as my principal residence, and the Property has not been condemned;
- C. There has been no change in the ownership of the Property since I signed the Loan Documents;
- D. I have provided documentation for all income that I receive (and I understand that I am not required to disclose child support or alimony unless I chose to rely on such income when requesting to qualify for the Home Affordable Modification program ("Program"));
- E. Under penalty of perjury, all documents and information I have provided to Servicer in connection with this Agreement, including the documents and information regarding my eligibility for the Program, are true and correct;
- F. If Servicer requires me to obtain credit counseling in connection with the Program, I will do so;
- G. I have made or will make all payments required under a Trial Period Plan or Loan Workout Plan; and



2. **Acknowledgements and Preconditions to Modification.** I understand and acknowledge that:

- A. TIME IS OF THE ESSENCE under this Agreement;
- B. If prior to the Modification Effective Date as set forth in Section 3 the Servicer determines that my representations in Section 1 are no longer true and correct, the Loan Documents will not be modified and this Agreement will terminate. In this event, the Servicer will have all of the rights and remedies provided by the Loan Documents; and
- C. I understand that the Loan Documents will not be modified unless and until (i) I receive from the Servicer a copy of this Agreement signed by the Servicer, and (ii) the Modification Effective Date (as defined in Section 3) has occurred. I further understand and agree that the Servicer will not be obligated or bound to make any modification of the Loan Documents if I fail to meet any one of the requirements under this Agreement.

3. **The Modification.** If my representations in Section 1 continue to be true in all material respects and all preconditions to the modification set forth in Section 2 have been met, the Loan Documents will automatically become modified on 12/1/2015 (the "Modification Effective Date") and all unpaid late charges that remain unpaid will be waived. The Loan Documents will be modified and the first modified payment will be due on 12/1/2015.

- A. The new Maturity Date will be: 1/1/2036, at which time a final balloon payment in an amount equal to all remaining amounts owed under the Loan Documents will be due.
- B. The modified Principal balance of my Note will include all amounts and arrearages that will be past due (excluding unpaid late charges) less any amounts paid to the Servicer but not previously credited to my Loan. The new Principal balance of my Note will be [REDACTED] (the "New Principal Balance").
- C. [REDACTED] of the New Principal Balance shall be deferred (the "Deferred Principal Balance") and will be treated as a non-interest bearing principal forbearance. I will not pay interest or make monthly payments on the Deferred Principal Balance. In addition, [REDACTED] of the Deferred Principal Balance is eligible for forgiveness (the "Deferred Principal Reduction Amount"). Provided I am not in default on my new payments such that the equivalent of three full monthly payments are due and unpaid on the last day of any month, on each of the first, second and third anniversaries of 9/1/2015, the Servicer shall reduce the Deferred Principal Balance of my Note in installments equal to one-third of the Deferred Principal Reduction Amount. Application of the Deferred Principal Reduction Amount will not result in a new payment schedule. The New Principal Balance less the Deferred Principal Balance shall be referred to as the "Interest Bearing Principal Balance" and this amount is [REDACTED]. Interest at the rate of [REDACTED] will begin to accrue on the Interest Bearing Principal Balance as of 11/1/2015 and the first new monthly payment on the Interest Bearing Principal Balance will be due on 12/1/2015. My payment schedule for the modified Loan is as follows:

Years	Interest Rate	Interest Rate Change Date	Monthly Principal and Interest Payment Amount	Estimated Monthly Escrow Payment Amount*	Total Monthly Payment	Payment Begins On	Number of Monthly Payments
1-5.0	[REDACTED]	11/1/2015	[REDACTED]	[REDACTED], adjusts annually after year 1	[REDACTED], adjusts annually after year 1	12/1/2015	60
6	[REDACTED]	11/1/2020	[REDACTED]	Adjusts Annually	Adjusts Annually	12/1/2020	12
7-Loans Maturity	[REDACTED]	11/1/2021	[REDACTED]	Adjusts Annually	Adjusts Annually	12/1/2021	170
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-

\*The escrow payments may be adjusted periodically in accordance with applicable law and therefore my total monthly payment may change accordingly.

The above terms in this Section 3.C. shall supersede any provisions to the contrary in the Loan Documents, including but not limited to, provisions for an adjustable or step or simple interest rate.

I further understand that, provided I am not in default under the terms of this Agreement and I pay my Note in full (i) any time more than 30 calendar days after the Modification Effective Date, and (ii) prior to the application of the entire Deferred Principal Reduction Amount, I shall be fully vested in and entitled to the unapplied amount of the Deferred Principal Reduction Amount and the unapplied amount shall be deducted from my payoff balance.

- D. I will be in default if I do not comply with the terms of the Loan Documents, as modified by this Agreement.
  - E. If a default rate of interest is permitted under the Loan Documents, then in the event of default under the Loan Documents, as amended, the interest that will be due will be the rate set forth in Section 3.C.
  - F. I agree to pay in full (1) the Deferred Principal Balance (deferred principal balance will be treated as a non-interest bearing principal forbearance. I will not pay interest or make monthly payments on the deferred principal balance.), if any, and (2) any other amounts still owed under the Loan Documents, by the earliest of: (i) the date I sell or transfer an interest in the Property, (ii) the date I pay the entire Interest Bearing Principal Balance (The new principal balance less the deferred principal balance shall be referred to as the "interest bearing principal balance), or (iii) the new Maturity Date.
  - G. If I make a partial prepayment of Principal, the Servicer may apply that partial prepayment first to any Deferred Principal Balance before applying such partial prepayment to other amounts due.
4. **Additional Agreements.** I agree to the following:

- A. That all persons who signed the Loan Documents or their authorized representative(s) have signed this Agreement, unless a borrower or co-borrower is deceased or the Servicer has waived this requirement in writing.
- B. That this Agreement shall supersede the terms of any modification, forbearance, Trial Period Plan or Workout Plan that I previously entered into with Servicer.
- C. To comply, except to the extent that they are modified by this Agreement, with all covenants, agreements, and requirements of Loan Documents including my agreement to make all payments of taxes, insurance premiums, assessments, Escrow Items, impounds, and all other payments, the amount of which may change periodically over the term of my Loan.
- D. Funds for Escrow Items. I will pay to Servicer on the day payments are due under the Loan Documents as amended by this Agreement, until the Loan is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over the Mortgage as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Servicer under the Loan Documents; (d) mortgage insurance premiums, if any, or any sums payable to Servicer in lieu of the payment of mortgage insurance premiums in accordance with the Loan Documents; and (e) any community association dues, fees, and assessments that Servicer requires to be escrowed. These items are called "Escrow Items." I shall promptly furnish to Servicer all notices of amounts to be paid under this Section 4.D. I shall pay Servicer the Funds for Escrow Items unless Servicer waives my obligation to pay the Funds for any or all Escrow Items.

Servicer may waive my obligation to pay to Servicer Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, I shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Servicer and, if Servicer requires, shall furnish to Servicer receipts evidencing such payment within such time period as Servicer may require. My obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in the Loan Documents, as the phrase "covenant and agreement" is used in the Loan Documents. If I am obligated to pay Escrow Items directly, pursuant to a waiver, and I fail to pay the amount due for an Escrow Item, Servicer may exercise its rights under the Loan Documents and this Agreement and pay such amount and I shall then be obligated to repay to Servicer any such amount. Servicer may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with the Loan Documents, and, upon such revocation, I shall pay to Servicer all Funds, and in such amounts, that are then required under this Section 4.D.

Servicer may, at any time, collect and hold Funds in an amount (a) sufficient to permit Servicer to apply the Funds at the time specified under the Real Estate Settlement Procedures Act ("RESPA"), and (b) not to exceed the maximum amount a Servicer can require under RESPA. Servicer shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

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



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

Upon payment in full of all sums secured by the Loan Documents, Servicer shall promptly refund to me any Funds held by Servicer.

- E. That this Agreement constitutes notice that the Servicer's waiver as to payment of Escrow Items, if any, has been revoked, and I have been advised of the amount needed to fully fund my Escrow Account.
- F. That the Loan Documents are composed of duly valid, binding agreements, enforceable in accordance with their terms and are hereby reaffirmed.
- G. That all terms and provisions of the Loan Documents, except as expressly modified by this Agreement, remain in full force and effect; nothing in this Agreement shall be understood or construed to be a satisfaction or release in whole or in part of the obligations contained in the Loan Documents; and that except as otherwise specifically provided in, and as expressly modified by, this Agreement, the Servicer and I will be bound by, and will comply with, all of the terms and conditions of the Loan Documents.
- H. That, as of the Modification Effective Date, notwithstanding any other provision of the Loan Documents, I agree as follows: If all or any part of the Property or any interest in it is sold or transferred without Servicer's prior written consent, Servicer may, at its option, require immediate payment in full of all sums secured by the Mortgage. However, Servicer shall not exercise this option if federal law prohibits the exercise of such option as of the date of such sale or transfer. If Servicer exercises this option, Servicer shall give me notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which I must pay all sums secured by the Mortgage. If I fail to pay these sums prior to the expiration of this period, Servicer may invoke any remedies permitted by the Mortgage without further notice or demand on me.
- I. That, as of the Modification Effective Date, I understand that the Servicer will only allow the transfer and assumption of the Loan, including this Agreement, to a transferee of my property as permitted under the Garn St. Germain Act, 12 U.S.C. Section 1701j-3. A buyer or transferee of the Property will not be permitted, under any circumstance, to assume the Loan. Except as noted herein, this Agreement may not, under any circumstances, be assigned to, or assumed by, a buyer of the Property.
- J. If under the Servicer's procedures a title endorsement or subordination agreements are required to ensure that the modified mortgage Loan retains its first lien position and is fully enforceable, I understand and agree that the Servicer will not be obligated or bound to make any modification of the Loan Documents or to execute the Modification Agreement if the Servicer has not received an acceptable title endorsement and/or subordination agreements from other lien holders, as Servicer determines necessary.
- K. That, as of the Modification Effective Date, any provision in the Note, as amended, for the assessment of a penalty for full or partial prepayment of the Note is null and void.
- L. Corrections and Omissions. You agree to execute such other and further documents as may be reasonably necessary to consummate the transactions contemplated herein or to perfect the liens and security interests intended to secure the payment of the loan evidenced by the Note. If an error in the terms hereof is detected after execution of this Agreement, you understand that a corrected Agreement will be provided to you and this Agreement will be void upon notice of such error. Should you elect not to sign any such corrected Agreement, your loan will revert to the terms of your original Loan Documents.
- M. Mortgage Electronic Registration Systems, Inc. "MERS" is a separate corporation existing under the laws of Delaware and has an address and telephone number of P.O. Box 2026 Flint, MI 48501-2026, (888) 679-MERS. In cases where the Loan has been registered (solely as nominee for lender and lender's successors and assigns) with MERS and MERS is named as mortgagee in the Loan Documents, MERS, if necessary to comply with law or custom, has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Servicer including, but not limited to, releasing and canceling the mortgage loan.
- N. That if any document related to the Loan Documents and/or this Agreement is lost, misplaced, misstated, inaccurately reflects the true and correct terms and conditions of the Loan as modified, or is otherwise missing, I will comply with the Lender's request to execute, acknowledge, initial and deliver to the Lender any documentation the Lender deems necessary. All documents the Lender requests of me under this Section 4.N. shall be referred to as "Documents." I agree to deliver the Documents within ten (10) days after I receive the Lender's written request for such replacement.

☐ If this box is checked, Borrower(s) signature must be notarized.

In Witness Whereof, the Servicer and I have executed this Agreement.

Sign Here →

Gwendolyn B Hawthorne 10 / 21 / 2015 Date  
Gwendolyn B Hawthorne

State of Georgia)

County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_ personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature(s) on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Georgia that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

Print Name: \_\_\_\_\_

Commission expiration date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_

Sign Here →

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_ Date

State of Georgia)

County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_ personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature(s) on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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Signature \_\_\_\_\_ (Seal)

Print Name: \_\_\_\_\_

Commission expiration date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_

\*All individuals on the title (even if not a borrower on the note) must sign this agreement. If there are more than two title holders to this property, please have them sign below. If no other title holders exist, please leave page 6 blank and return it with the rest of the agreement.

In Witness Whereof, the Servicer and I have executed this Agreement.

Sign Here→ \_\_\_\_\_ / \_\_\_\_ / \_\_\_\_ Date  
State of Georgia

County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_ personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature(s) on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Georgia that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

Print Name: \_\_\_\_\_

Commission expiration date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_

Sign Here→ \_\_\_\_\_ / \_\_\_\_ / \_\_\_\_ Date  
State of Georgia

County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_ personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature(s) on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Georgia that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

Print Name: \_\_\_\_\_

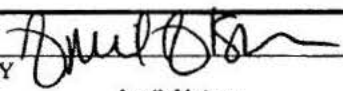
Commission expiration date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_

Servicer \_\_\_\_\_  
NOV 03 2015

Date \_\_\_\_\_  
If applicable: \_\_\_\_\_

BY   
April Alston  
Authorized Officer

Mortgage Electronic Registration Systems, Inc. – Nominee for Servicer

**BALLOON PAYMENT DISCLOSURE**

Borrower(s) ("I"): Gwendolyn B Hawthorne

Servicer ("Servicer"): *Ocwen Loan Servicing, LLC*

Date of first lien Security Instrument ("Mortgage") and Note ("Note"): 10/24/2005

Loan Number: 7069

Property Address: 2377 Scott Oaks Trl Sw Marietta, GA 30008

THIS BALLOON PAYMENT DISCLOSURE is made this 15 day of October, 2015, and is incorporated into and shall be deemed to supplement the Loan Modification Agreement (the "Agreement") of the same date given by the undersigned Borrower(s). The Agreement contains a balloon payment provision representing the amount of the Deferred Principal Balance under the Agreement. The Agreement also contains a principal reduction feature that may reduce the Deferred Principal Balance in three equal installments of [REDACTED] in accordance with Section 3(C) of the Agreement, provided that the Borrower remains eligible for principal reduction for the time period specified in Section 3(C) of the Agreement.

A balloon payment is a scheduled lump sum usually due at the end of the mortgage loan term that is significantly larger than the other regularly scheduled periodic payments. This means that even if I make all payments full and on time, the loan will not be paid in full by the final payment date. The amount of the balloon payment may vary depending on my payment history. If my loan is an adjustable rate mortgage, the amount of the balloon payment also may vary based on any interest rate changes that occur during the life of the loan.

If the Borrower remains eligible for the time period specified in the following table, the Deferred Principal Balance will be adjusted to the amounts reflected in the table.

Duration of Eligibility	Deferred Principal Balance due on Maturity
12/1/2015 up to 9/1/2016	[REDACTED] - NO ADJUSTMENT
9/1/2016 up to 9/1/2017	[REDACTED]
9/1/2017 up to 9/1/2018	[REDACTED]
9/1/2018 up to 1/1/2036	[REDACTED]

THIS CONTRACT IS NOT PAYABLE IN INSTALLMENTS OF EQUAL AMOUNTS: AN INSTALLMENT OF [REDACTED] WILL BE DUE AND PAYABLE IN FULL ON 1/1/2036, PROVIDED THAT ALL PAYMENTS ARE MADE IN ACCORDANCE WITH THE LOAN TERMS AND THE INTEREST RATE DOES NOT CHANGE FOR THE ENTIRE LOAN TERM. The balloon payment on the loan modification I have applied for is due 242 months from the effective date of the modification.

***Notice required by North Dakota law:***

**CAUTION TO BORROWER: IF YOU DO NOT HAVE THE FUNDS TO PAY THE BALLOON PAYMENT WHEN DUE, IT MAY BE NECESSARY FOR YOU TO OBTAIN A NEW LOAN AGAINST YOUR PROPERTY FOR THIS PURPOSE AND YOU MAY BE REQUIRED TO AGAIN PAY COMMISSION AND EXPENSES FOR ARRANGING THE LOAN. KEEP THIS IN MIND IN DECIDING UPON THE AMOUNT AND TERMS OF THE LOAN MODIFICATION THAT YOU OBTAIN AT THIS TIME.**


If I cannot pay the balloon payment when due, I may have to obtain a new loan to make the balloon payment or I may lose my property through foreclosure. Before deciding to take this loan, I will consider my ability to pay the balloon payment when it comes due. In addition, the value of the real estate securing this loan may change during the term of the loan. On the date the balloon payment becomes due, the value of the real estate may not be sufficient to secure a new loan in an amount equal to the balloon payment.

NEITHER OCWEN LOAN SERVICING, LLC NOR ANY LENDER TO WHICH THIS LOAN IS TRANSFERRED IS UNDER ANY OBLIGATION TO FINANCE THE AMOUNT OF THE BALLOON PAYMENT. THEREFORE, I MAY BE REQUIRED TO REPAY THE LOAN OUT OF ASSETS I OWN OR I MAY HAVE TO FIND ANOTHER LENDER TO REFINANCE THE LOAN.

ASSUMING THE OWNER OF MY LOAN OR ANOTHER LENDER REFINANCES THIS LOAN AT MATURITY, I WILL PROBABLY BE CHARGED INTEREST AT MARKET RATES PREVAILING AT THAT TIME AND SUCH RATES MAY BE HIGHER THAN THE INTEREST RATE PAID ON THIS LOAN. I MAY ALSO HAVE TO PAY SOME OR ALL OF THE CLOSING COSTS NORMALLY ASSOCIATED WITH A NEW MORTGAGE LOAN.

I/we have read the above disclosure and acknowledge receiving a copy by signing below.

**\*All individuals on the title (even if not a borrower on the note) must sign this agreement. If there are more than two title holders to this property, please have them sign below.**

Ernestine B. Hawthorne   
Borrower

10/21/2015  
Date



\_\_\_\_\_  
Borrower

\_\_\_\_\_  
Date

**Exhibit 3**



**In Re:**  
*RESIDENTIAL CAPITAL, LLC, et al.*  
*Case No. 12-12020(MG)*

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*August 28, 2013*

---

*eScribers, LLC*  
*(973) 406-2250*  
*operations@escribers.net*  
*www.escribers.net*

*To purchase copies of this transcript, please contact us by phone or email*



1 not respond to the motion to dismiss by Faber and MERS. But I  
2 need to satisfy myself as to the subject matter jurisdiction  
3 issue. Okay?

4 MR. ROSENBAUM: Thank you, Your Honor.

5 THE COURT: Okay. Next.

6 MR. ROSENBAUM: Your Honor, the next matter is the  
7 status conference in Hawthorne v. GMAC. And I'll cede the  
8 podium to my colleague, Samantha Martin.

9 THE COURT: Good morning.

10 MS. MARTIN: Good morning, Your Honor. Samantha  
11 Martin from Morrison & Foerster, on behalf of the debtors.

12 Next on the agenda is the adversary proceeding filed  
13 by Ms. Gwendolyn Hawthorne. It's case number 12-02050. I'm  
14 not sure whether Ms. Hawthorne is appearing by phone.

15 THE COURT: Ms. Hawthorne, are you present in the  
16 courtroom or on the telephone?

17 MR. HAWTHORNE: Yes, this is her son, James Hawthorne,  
18 and my mother's on the other line.

19 THE COURT: Okay, thank you very much.

20 All right. Go ahead, Ms. Martin.

21 MR. HAWTHORNE: Yes, sir.

22 THE COURT: And I'll give you a chance to speak after  
23 debtors' counsel speaks.

24 Go ahead, Ms. Martin.

25 MS. MARTIN: Your Honor, Ms. Hawthorne filed a



1 complaint in November 2012. After several extensions of the  
2 response deadline to enable the parties to discuss a  
3 settlement, on April 3rd, Your Honor entered an order directing  
4 the applicability of the adversary --

5 THE COURT: Slow down a little bit --

6 MS. MARTIN: -- procedures. Oh, sure.

7 THE COURT: Okay, so I can hear you clearly. Go  
8 ahead.

9 MS. MARTIN: Sure. The borrower adversary procedures  
10 apply to this matter.

11 THE COURT: Right.

12 MS. MARTIN: The parties held the initial conference  
13 required by the procedures on May 15, 2013. During the  
14 conference, Ms. Hawthorne indicated an interest in a potential  
15 settlement involving either a loan modification or a purchase  
16 of the note.

17 THE COURT: Slower. Go ahead.

18 MS. MARTIN: Since the servicing was transferred to  
19 Ocwen in the sale, we reached out to Ocwen to explain Ms.  
20 Hawthorne's proposal and on May 20th we sent her a loan  
21 modification package that needed to be filled out and I  
22 provided her with a name, phone number and e-mail address of an  
23 attorney at Troutman Sanders for turning in the package because  
24 her file's under a litigation hold and it needs to go through  
25 an attorney.

1 We held a second conference on May 21st, 2013 where we  
2 agreed that she would continue to seek a loan modification or a  
3 note purchase. And we followed up with her by e-mail and  
4 phoned several times but have not heard back from her recently.

5 We also followed up with Troutman Sanders yesterday  
6 and confirmed that she did not turn in the loan modification  
7 package or reach out to them in any way.

8 At this point, she's had three months to try and get a  
9 loan modification or a note purchase to settle the matter and  
10 she hasn't so we were hoping to propose a schedule with you  
11 today to move forward with briefing on the matter.

12 THE COURT: Okay. Let me hear from Mr. Hawthorne or  
13 Ms. Hawthorne.

14 MR. HAWTHORNE: Yes. Yes, this is James Hawthorne.  
15 My mother's on the other line.

16 Your Honor, I -- we spoke with the debtors' attorney.  
17 We received the package. We sent the package back over to  
18 Ocwen. But Ocwen has failed to get back in co -- although they  
19 put an attorney involved and we called the attorneys, Ocwen  
20 keeps telling my mother that they do not have her loan  
21 documents, her paperwork. We have an investor that's ready to  
22 purchase my mother's property and we sent Ocwen a letter  
23 stating this and we have not heard back from them.

24 We hired a young lady by the name of Celeste (ph.) to  
25 do the loan modification package. She is a licensed

1 modification specialist and she submitted the documents to them  
2 but they keep telling my mother that they do not have her  
3 files.

4 THE COURT: May I ask you this, Mr. Hawthorne? Was  
5 the loan modification package sent to Ocwen by some form of  
6 mail that provided a receipt as to mailing?

7 MR. HAWTHORNE: Yes, sir. We faxed it in to a fax  
8 number that they provided us and I would need to call Ms.  
9 Brooks (ph.) -- Celeste Brooks to ask her. I think that  
10 normally procedures for her company is to send modification  
11 packages in via express mail or registered mail.

12 THE COURT: Okay. Approximately when was the loan  
13 modification package sent to Ocwen, if you know?

14 MR. HAWTHORNE: Yes, I do know the exact date is --  
15 was July -- around July the 23rd or the 25th of July.

16 THE COURT: All right. Ms. Martin, let me ask you,  
17 have you had any conversations with anyone from Ocwen since  
18 July 25th?

19 MS. MARTIN: I spoke with a representative of Ocwen  
20 in, I believe, it was May or June and they specifically said  
21 that -- the loan modification package shouldn't go straight to  
22 Ocwen; it should go through this attorney because when a --  
23 when a --

24 THE COURT: Because of the litigation hold.

25 MS. MARTIN: -- loan is on litigation hold, the Ocwen

1 representatives directly won't handle the matter.

2 THE COURT: Maybe I could ask either the borrowers --  
3 the committees' borrower special counsel to try and follow up  
4 before the debtors go ahead with any motion practice. It's  
5 certainly not unheard of, let me put it this way, for loan  
6 modification packages to go awry or wind up on the wrong  
7 person's desk or wind up on a person's desk who says, well,  
8 there's a litigation hold I'm not going to do anything with  
9 this. So I think what would be most helpful is perhaps the  
10 committees' special borrower counsel could try and track this  
11 down. Maybe you could talk to Ms. Hawthorne's son and he can  
12 fill you in on any details.

13 Do you have any contact information for them?

14 MR. HAWTHORNE: Well, my -- I'm sorry, Your Honor.  
15 They have been e-mailing.

16 THE COURT: Okay.

17 MR. HAWTHORNE: We go back-and-forth --

18 THE COURT: Okay. All right. Well, good, they --

19 MR. HAWTHORNE: -- but they have all our contact  
20 information.

21 THE COURT: All right. They have your e-mail address  
22 and they can get back in touch with you.

23 Look, we're going to adjourn the matter from today.  
24 We'll get it set on another omnibus date. Ms. Martin, you'll  
25 make sure that the Hawthornes know when that is. But I think,

1 more importantly, we ought to see whether -- I accept their  
2 representation that they completed the package with the help of  
3 someone and submitted it recently. It would have been -- it  
4 sounds like it was very recent. And it would certainly be my  
5 preference to have that sort of -- track it down, get it to the  
6 right person. If they need authorization, perhaps Ms.  
7 Hawthorne could provide the authorization in writing for them  
8 to proceed directly with them and see if you can get around the  
9 litigation hold issue because if it goes to Ocwen's lawyer's  
10 first because of the litigation hold, they're going to have to  
11 deal with people at Ocwen who'd actually evaluate whether a  
12 modification will fit. So let's see if we can -- is that  
13 acceptable, counsel? Can we --

14 MR. KRELL: Yes, Your Honor.

15 THE COURT: Okay.

16 MR. KRELL: I'll see what I can do.

17 THE COURT: Let's see if we can do that.

18 All right. So, Mr. Hawthorne, you ought to hear  
19 from -- probably the committees' special counsel and we'll see  
20 if we can move this forward. Okay?

21 MR. HAWTHORNE: Yes, sir.

22 THE COURT: Thank you very much.

23 MS. MARTIN: Thank you, Your Honor.

24 THE COURT: Okay. Mr. Newton?

25 MR. NEWTON: Good morning, Your Honor. James Newton

1 of Morrison & Foerster on behalf of the debtors again.

2 The next matter on the agenda is an adversary  
3 proceeding filed by Alfredia Pruitt. It's case number 13-  
4 01350. I believe Ms. Pruitt is in the courtroom today.

5 THE COURT: Okay.

6 MR. NEWTON: You'll recall that this is not the first  
7 matter before Your Honor filed by Ms. Pruitt. Ms. Pruitt filed  
8 a motion for relief from stay back in March, docket number  
9 3223, which was amended at docket number 3273. And that motion  
10 raised issues regarding an allegedly improper foreclosure. Ms.  
11 Pruitt claimed that the debtors did not hold a note when they  
12 foreclosed on her property back in 2010, I believe. The  
13 debtors objected to that relief from stay on the bases that Ms.  
14 Pruitt had filed numerous prior lawsuits based on the same  
15 facts which ultimately were all resolved against Ms. Pruitt and  
16 ultimately resulted in a bill of peace being entered in the  
17 Georgia court preventing Ms. Pruitt from filing additional  
18 actions without first obtaining approval from the Georgia court  
19 and also based on the fact that Ms. Pruitt had withdrawn her  
20 claim -- her proof of claim in the bankruptcy case. Your Honor  
21 granted that motion for relief from stay. That was docket 3433  
22 and noting the same basis as in our objection.

23 Your Honor, this adversary proceeding raises the same  
24 issues and as far as I'm aware doesn't raise any facts that  
25 weren't previously raised by Ms. Pruitt in her prior cases.

**In Re:**

*RESIDENTIAL CAPITAL, LLC, et al.*

*Case Nos. 12-12020-mg, 12-02050-mg, 13-01436-mg*

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*April 24, 2014*

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1 THE COURT: Okay. Is anybody -- well, go ahead, Mr.  
2 Rosenbaum.

3 MR. ROSENBAUM: It says that it -- maybe I'll get it  
4 right this time. It's page 9, Roman numeral III of the agenda.

5 THE COURT: Okay.

6 MR. ROSENBAUM: I believe --

7 THE COURT: Is anybody on the phone for Hawthorne? Is  
8 anybody appearing --

9 MS. HAWTHORNE: Yes, this is Gwen Hawthorne, sir.

10 THE COURT: Okay. Thank you, Ms. Hawthorne.

11 I read -- I saw your status letters with respect to  
12 both Hawthorne and Von Brincken. So I've reviewed that. So go  
13 ahead Mr. Rosenbaum. And then I'll give Ms. Hawthorne a chance  
14 to respond.

15 MR. ROSENBAUM: Thank you, Your Honor. As indicated  
16 in the status report, Your Honor was concerned at the last  
17 status conference we had on this matter in February that the  
18 loan modification application make its way to Ocwen. And we  
19 agreed to do everything we could to facilitate that. We did  
20 pass on the application that was received by Morrison &  
21 Foerster to Ocwen's counsel, who has joined the hearing today,  
22 at our request. That's Matt Brooks of Troutman Sanders.

23 THE COURT: Okay.

24 MR. ROSENBAUM: My understanding is that the  
25 application was routed to Ocwen by Mr. Brooks on March 8th.



1 THE COURT: Let me just stop -- Mr. Brooks, are you on  
2 the phone?

3 MR. BROOKS: I am, Your Honor.

4 THE COURT: Okay, go ahead, Mr. Rosenbaum.

5 MR. ROSENBAUM: It's our understanding -- but Ms.  
6 Hawthorne and Mr. Brooks are on the phone and they can  
7 elaborate -- it's our understanding that this application, in  
8 effect, asks for a short -- request for a short sale, not a  
9 loan modification. In early April, April 3rd, I believe, Mr.  
10 Brooks responded to Ms. Hawthorne and her son, indicating what  
11 items were missing from the application for the short sale and  
12 inquiring again as to whether she, in fact, would still want to  
13 be considered for a loan modification.

14 My understanding -- our understanding is, there has  
15 yet to be a response from the Hawthornes.

16 THE COURT: Okay.

17 MR. ROSENBAUM: From the perspective of the  
18 liquidating trust, we're happy to continue to try to facilitate  
19 this, if this can resolve the matter. And if there is to be a  
20 further continuance, that's fine from the trust's perspective.  
21 But if not, at some point we'll want to move with a dismissal  
22 of the complaint.

23 THE COURT: So, Mr. Brooks, maybe you could tell me  
24 from Ocwen's standpoint, where things stand?

25 MR. BROOKS: I'd be happy to, Judge. It's -- Ocwen

1 mailed out a letter to Ms. Hawthorne around the same time I  
2 sent my e-mail, April 3rd, indicating that some additional  
3 documents would be necessary. And I don't know -- I don't  
4 think the status report detailed what those items were, but  
5 it's a few documents confirming pay that -- an income that was  
6 indicated in the loan modification, as well as a sale contract  
7 that has allegedly been entered into.

8 And I followed up with Ms. Hawthorne and left her a  
9 voice mail on April the 10th to see if she had any questions  
10 about either Ocwen's letter or my e-mail outlining what  
11 documents would be needed. And as of yet, I haven't heard  
12 anything. And I confirmed with Ocwen yesterday, that Ms.  
13 Hawthorne has not submitted any of the additional documents  
14 that it requested.

15 THE COURT: Okay. Ms. Hawthorne?

16 MS. HAWTHORNE: Yes, Your Honor, I actually apologize.  
17 I've been in the hospital and trying to recover, so I wasn't  
18 able to probably get all of that information. It's probably  
19 why he didn't hear from me, because I didn't know I received  
20 it.

21 THE COURT: Let me ask you, do you have a contract for  
22 a proposed short sale of the property?

23 MS. HAWTHORNE: We have an offer for the house. Yes  
24 we do.

25 THE COURT: Okay. So really, at this point, Ms.

1 Hawthorne, and I'm sorry if you were ill and in the hospital --

2 MS. HAWTHORNE: Thank you.

3 THE COURT: -- you need to -- if you want to pursue it  
4 with Ocwen either to get approval for a short sale or if you  
5 still want to seek a loan modification, you need to provide the  
6 information that Ocwen's requesting.

7 MS. HAWTHORNE: Absolutely. Absolutely.

8 THE COURT: Okay. What I would like to -- I mean, I  
9 want -- I think what I'm going to do, Mr. Rosenbaum, is adjourn  
10 the matter. I don't want to see the trust have to go through  
11 the expense of preparing a motion to dismiss if there's a  
12 consensual resolution that will solve the matter. And  
13 certainly from reading the status report and hearing Mr.  
14 Brooks, it certainly sounds to me that Ocwen is prepared to  
15 consider -- it hasn't made any decision, I understand that --  
16 Ocwen is prepared to consider approving a short sale. And Mr.  
17 Brooks inquired also whether Ms. Hawthorne was interested,  
18 alternatively, in a loan modification.

19 But when will you be able -- do you know what  
20 information Ocwen is asking for, Ms. Hawthorne? Do you have  
21 the request that Mr. Brooks has forwarded to you?

22 MS. HAWTHORNE: I can probably get the request. I've  
23 been back and forth from my sister's house. That's probably  
24 why I didn't receive it.

25 THE COURT: Okay, well me -- Mr. Brooks --

1 MS. HAWTHORNE: So --

2 THE COURT: -- can you send -- do you have her -- Ms.  
3 Hawthorne, do you have e-mail?

4 MS. HAWTHORNE: I do. I have e-mail.

5 THE COURT: Okay. Mr. Brooks do you have her e-mail  
6 address?

7 MR. BROOKS: I do, Judge.

8 THE COURT: Okay. Could you -- may I ask you to do  
9 this? Could you just, so that -- it sounds as if Ms. Hawthorne  
10 doesn't have it immediately at hand. If you would forward the  
11 request. And you really -- it's one of these things. Whenever  
12 you seek either a modification or approval for a short sale,  
13 it's important that you respond quickly, Ms. Hawthorne, because  
14 you run the risk that the information you've provided to Ocwen  
15 becomes stale, and the result is that they need more  
16 information from you.

17 So to try to and move this along --

18 MS. HAWTHORNE: Okay.

19 THE COURT: -- it's important that you really respond  
20 promptly. Are you able to do that, Ms. Hawthorne?

21 MS. HAWTHORNE: I am. Definitely, Your Honor.

22 THE COURT: Okay, Mr. Brooks --

23 MS. HAWTHORNE: I'm a lot better, Your Honor. But if  
24 he could e-mail that -- forward that by e-mail, I'll respond  
25 ASAP.

1 THE COURT: Mr. Brooks, may I ask you to do that?

2 MR. BROOKS: I will, Judge. And you raised a good  
3 point. Ocwen told me yesterday that the current information in  
4 Ms. Hawthorne's loan modification request is going to get stale  
5 at the end of this week.

6 THE COURT: Okay.

7 MR. BROOKS: And so if Ms. Hawthorne has the  
8 information available that she can send today or tomorrow, I  
9 can prevent that from happening. But if we move into next  
10 week, then I'm going to need some more information.

11 THE COURT: Okay. That's true for both a short sale  
12 or a modification, or --

13 MR. BROOKS: That's right. For both, Judge.

14 THE COURT: Okay. So, Ms. Hawthorne, let me say, I  
15 mean, because of my experience as a judge with loan  
16 modifications, I certainly -- I don't think that was intended  
17 as a threat. I mean, all loan servicers' information has to  
18 be -- is required to be current for them to consider either a  
19 short sale or a loan modification. So it really is important  
20 that you get Mr. Brooks the information that he's asking for.  
21 Otherwise, the result is you've got to go back and do it again.

22 MS. HAWTHORNE: Your Honor, this is like every two  
23 years we're doing this. So I understand the urgency. Yes.

24 THE COURT: Okay. So do it as quickly as you can.

25 MS. HAWTHORNE: Okay.

1 THE COURT: Okay.

2 MS. HAWTHORNE: Thank you.

3 THE COURT: Mr. Rosenbaum, I guess I would ask this of  
4 you or one of your colleagues. If -- keep tabs on this for the  
5 next couple of weeks. If there isn't a resolution, you can go  
6 ahead with a motion to dismiss. I'm trying to save the trust  
7 from having to go through the expense, if it really is -- if a  
8 resolution is possible consensually. Okay?

9 MR. ROSENBAUM: We're happy to do that, Your Honor.  
10 Thank you.

11 THE COURT: Thanks very much. Okay.

12 Now, Von Brincken? Thank -- Ms. Hawthorne, you're  
13 certainly excused.

14 MS. HAWTHORNE: Thank you, Your Honor.

15 THE COURT: Okay.

16 MR. ROSENBAUM: Your Honor, the next matter and final  
17 matter on the agenda is at page 10. It's the pre-trial status  
18 conference on Von Brincken v. GMAC Mortgage. That's adversary  
19 proceeding number 13-1436. I believe earlier I heard Ms. Von  
20 Brincken had made an appearance.

21 THE COURT: Ms. Von Brincken, are you on the phone?

22 MS. VON BRINCKEN: Yes, Your Honor. John and Shelley  
23 are on -- Von Brincken --

24 THE COURT: Okay.

25 MS. VON BRINCKEN: -- are on the phone.

**Exhibit 4**

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

In re:	)	
	)	Case No. 12-12020 (MG)
	)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u> ,	)	Chapter 11
	)	
Debtors.	)	Jointly Administered
	)	
	)	
Gwendolyn B. Hawthorne	)	
	)	
Plaintiff,	)	
	)	Adv. No. 12-02050 (MG)
v.	)	
	)	
GMAC Mortgage, LLC, U.S. Bank	)	
National Association, GMFS LLC, Judy	)	
Faber, Vice President, Brenda Guidry,	)	
and Mortgage Electronic Registration	)	
System Inc., and Duane Thompson,	)	
Assistant Secretary Mortgage Electronic	)	
Registration Systems Inc, as Nominee	)	
for GMFS, LLC, Residential Funding	)	
Corporation	)	
	)	
	)	
Defendants.		

**ORDER DISMISSING ADVERSARY PROCEEDING  
PURSUANT TO BANKRUPTCY RULE 7012(b)  
AND FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)**

Upon consideration of the complaint (the “Complaint”) filed by *pro se* plaintiff Gwendolyn B. Hawthorne in the above-captioned adversary proceeding (the “Adversary Proceeding”); and upon consideration of the *Joint Motion of the ResCap Liquidating Trust and the ResCap Borrower Claims Trust for (I) Dismissal of Adversary Proceeding Pursuant To Bankruptcy Rule 7012(b) and FRCP 12(b)(6), and (II) Disallowance of Proofs of Claim Numbers 6273 and 6274 Filed by Plaintiff* (ECF Doc. # [ ]) (the “Motion”); and it appearing that



this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon consideration of the arguments presented with respect to the Motion at the hearing held on November 17, 2016 to consider the Motion (the “Hearing”); and after due deliberation; it is hereby

**ORDERED ADJUDGED, AND DECREED THAT:**

1. For the reasons stated on the record at the Hearing, the Motion is **GRANTED** as provided in this Order.
2. The Complaint is dismissed with prejudice in its entirety with respect to all Debtor Defendants pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted, as made applicable to the Adversary Proceeding by Bankruptcy Rule 7012(b).
3. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: November \_\_, 2016  
New York, New York

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THE HONORABLE MARTIN GLENN  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 5**

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

-----X  
In re :  
: Case No. 12-12020 (MG)  
RESIDENTIAL CAPITAL, LLC, *et al.*, :  
: Chapter 11  
: Debtors : Jointly Administered  
-----X

**ORDER GRANTING OBJECTION OF THE RESCAP BORROWER  
CLAIMS TRUST TO PROOFS OF CLAIM # 6273 AND 6274  
FILED BY GWENDOLYN B. HAWTHORNE**

Upon the *Joint Motion of the ResCap Liquidating Trust and the ResCap Borrower Claims Trust for (I) Dismissal of Adversary Proceeding Pursuant To Bankruptcy Rule 7012(b) and FRCP 12(b)(6), and (II) Disallowance of Proofs of Claim Numbers 6273 and 6274 Filed by Plaintiff* (ECF Doc. # [ ]) (the “Objection”), seeking entry of an order, pursuant to section 502(b) of the Bankruptcy Code and Bankruptcy Rule 3007, disallowing and expunging proofs of claim numbers 6273 and 6274 filed by Gwendolyn B. Hawthorne (the “Proof of Claim”), for the reasons set forth in the Objection; and the Court having jurisdiction to consider the Objection pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Objection and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Objection having been provided, and it appearing that no other or further notice need be provided; and upon consideration of the Objection and the declaration of Sara Lathrop annexed to the Objection as Exhibit 1; and upon consideration of the arguments presented with respect to the Objection at the hearing held on November 17, 2016 to consider the Objection; and the Court having found and determined that the relief sought in the Objection is in the best interests of the

Borrower Trust, the Borrower Trust's beneficiaries, the Debtors, their estates, creditors, and other parties in interest, and that the legal and factual bases set forth in the Objection establish just cause for the relief granted herein; and responses to the Objection, if any, having been resolved, withdrawn or otherwise overruled by this Order; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the relief requested in the Objection is granted to the extent provided herein; and it is further

ORDERED that, pursuant to section 502(b) of the Bankruptcy Code, the Proofs of Claim are disallowed and expunged with prejudice; and it is further

ORDERED that Kurtzman Carson Consultants LLC, the notice and claims agent in these Chapter 11 Cases, is directed to disallow and expunge the Proofs of Claim so that they are no longer reflected on the claims register maintained in the Chapter 11 Cases; and it is further

ORDERED that entry of this Order is without prejudice to the Borrower Trust's right to object to any other claims in these Chapter 11 Cases; and it is further

ORDERED that the Borrower Trust and the Debtors are authorized and empowered to take all actions as may be necessary and appropriate to implement the terms of this Order; and it is further

ORDERED that notice of the Objection, as provided therein, is deemed good and sufficient notice of such objection, and the requirements of Bankruptcy Rule 3007(a), the Case Management Procedures entered on May 23, 2012 [Docket No. 141], the Procedures Order, and the Local Bankruptcy Rules of this Court are satisfied by such notice; and it is further

ORDERED that the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters  
arising from or related to this Order.

Dated: November \_\_, 2016  
New York, New York

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THE HONORABLE MARTIN GLENN  
UNITED STATES BANKRUPTCY JUDGE