CAUSE NO. _____

2011-36476 / Court: 011

MARY ELLEN WOLF AND DAVID WOLF **IN THE DISTRICT COURT OF**

vs. **HARRIS COUNTY, TEXAS**

WELLS FARGO BANK N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST, TOM CROFT NEW CENTURY MORTGAGE CORPORATION AND CARRINGTON MORTGAGE SERVICES, LLC **_____ JUDICIAL DISTRICT**

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF THIS COURT:

MARY ELLEN WOLF AND DAVID WOLF, hereinafter referred to as Plaintiff, whether one or more, files this Original Petition pursuant to Texas Rules of Civil Procedure 736(10) against, WELLS FARGO BANK N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST, SERIES 2006-NC3 ASSET BACKED PASS-THROUGH CERTIFICATES, TOM CROFT, NEW CENTURY MORTGAGE CORPORATION, AND CARRINGTON MORTGAGE SERVICES, LLC, hereinafter referred to as Defendants, and show the following:

1. Because Plaintiff and Defendants, Wells Fargo Bank N.A., As Trustee For Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates have previously appeared in Cause Number 2011-08930, personal service of this Original Petition is not necessary on Wells Fargo Bank N.A., As Trustee For Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates. In compliance with Rules 21 and 21a of the Texas Rules of Civil Procedure, Defendants may be served with this Petition by serving Defendants' attorney of record.

2. Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure Plaintiff states that discovery is to be conducted under Rule 190.3, Level 2 Discovery.

3. Plaintiff hereby contests Defendants right to foreclose on the property located at 6404 Buffalo Speedway, Houston, Texas 77005, the property the subject of the Application for Expedited Foreclosure filed in Cause Number 2011-08930 (herein at times referred to as "subject property"), pursuant to Texas Rule of Civil Procedure 736(10). Plaintiff hereby demands damages from Defendants for wrongful filing of the Application in Cause Number 2011-08930.

4. Plaintiff hereby further incorporates by reference as if fully set forth herein at length for all purposes, Plaintiff's Answer filed in Cause Number 2011-08930, in the 151st Judicial District Court of Harris County, Texas.

5. Plaintiff further complains about Defendants improper, reckless and illegal business practices in violation of the Texas Deceptive Trade and Practices Act. Defendants have engaged in a pattern of unfair and fraudulent practices. At all times Plaintiff was a Consumer as defined by the Texas Deceptive Trade and Practices Act and thus Plaintiff is entitled to damages, treble damages and reasonable attorney's fees plus costs pursuant to the statute.

6. Plaintiff's damages arise out of the fraudulent practices and acts of Defendants who have prepared fraudulent documents with the intent to use these fraudulent documents and with the intent that a Third Person would rely on these documents as valid documents to proceed to foreclosure.

7. Plaintiff requests verification of the debt from Defendants, Wells Fargo Bank N.A., As Trustee For Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates, to establish that this Defendants has no standing to bring forth these foreclosure proceedings and/or seek any of the remedies this Defendants is seeking in its Application for Under Texas Rule of Civil Procedure 736 Seeking an Order to Proceed With Foreclosure Sale (herein "Application").

8. Plaintiff hereby further demands that Defendants, Wells Fargo Bank N.A., As Trustee For Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates (herein at times referred to as "Wells Fargo"), produce the ORIGINAL WET INK

SIGNATURE PROMISSORY NOTE AND DEED OF TRUST signed by Plaintiff in association with the property located at 6404 Buffalo Speedway, Houston, Texas 77005, the property the subject of the Application (herein at times referred to as "subject property").

9. Further, Plaintiff hereby further demand that the Defendants, Wells Fargo is in fact the Note Holder in due course and has standing as a party in interest in the Promissory Note in issue. Plaintiff has reason to believe that the subject Note was "sold" under "mortgage backed securities instrument" to investors under a pooling of interest.

10. In truth and in fact Plaintiff would show this Court that Defendants are in involved in a conspiracy of fraud to wrongfully deprive Plaintiff of the subject property. Plaintiff request this Court look at the documents presented in Cause Number 2011-08930 in the Application as they are riddled with material misrepresentations and material errors which cannot support the Application.

11. Plaintiff alleges that the Defendants (and it is unknown at this time, but perhaps along with the law firms that represent them) have conspired to fraudulently deprive the Plaintiff of the subject property.

12. Tom Croft, (it is not known at this time whether he is real person) who allegedly signed the Verification of Application and Affidavit attached to the Wells Fargo's Application, is what is known as a "Robo-Signer". Merely searching in the Internet for the name "Tom Croft" and/or "Tom Croft" and "Robo-Signer" will result in numerous listings of the name "Tom Croft" as a Robo-Signer and shows his association as a Robo-Signer for Carrington Mortgage Services, LLC. It would further show that Tom Croft and Carrington Mortgage Services are associated with numerous fraudulent and wrongful foreclosures throughout the United States of America. Attached hereto as Exhibit "A" and incorporated herein for all purposes as if fully set forth herein are some search results which depict Tom Croft as a "Robo-Signer". Robo-Signers are mortgage lending company employees who prepared and signed off on foreclosures without reviewing them, as the law requires. This robo-signing of affidavits and assignments of

mortgages and all other mortgage foreclosure documents serve to cover up the fact that loan servicers cannot demonstrate the facts required to conduct a lawful foreclosure. This is fraud by claiming knowledge of a financial matter of which they had no personal knowledge. This is just the tip of the iceberg of the fraud these Defendants have committed.

13. A Cease and Refrain Order pursuant to the California Financial Code Section 22712 was issued against New Century Mortgage Corporation on March 16, 2007, because New Century had engaged in and was engaging in acts or practices constituting violations of the California Finance Lenders Law.

14. Further Tom Croft's Affidavit attached to the Application cannot support the Application for various reasons including the fact that it is riddle with errors and inconsistency, especially between the Application and the Affidavit and including the fact that the Affidavit states the wrong date when the account's monthly mortgage is due—the Application states it is **due on January 1, 2010**, and the Affidavit states it is **due July 1, 2010**. It is believed that Tom Croft has perjured himself in the Affidavit in many material ways.

15. Further, the Affidavit of Tom Croft refers to an account number 1007965339 being "contractually due for a July 1, 2010, monthly mortgage installment….", yet there is no proof anywhere as to who that account number refers. Therefore, the Affidavit fails on its face.

16. Tom Croft's Affidavit is a bad faith Affidavit as the law defines such and the Defendants should be punished for their actions jointly and severally including their attorneys for filing a bad faith Affidavit and for filing a frivolous and groundless pleading.

17. Further, Tom Croft states in his Affidavit that "Applicant is the owner and holder of the Note and Security Instrument and is in possession of both". Tom Croft could not possibly be able to attest truthfully to such for the reasons that will appear more clearly herein.

18. Tom Croft signed the Affidavit attached to the Application on behalf of Wells Fargo and "Carrington Mortgage Services, its servicing agent and Attorney-in-Fact". His Title is listed on the Affidavit attached to the Application as "Tom Croft, VP of REO, Carrington

Mortgage Services, LLC. Tom Croft ALSO signed off on the "Transfer of Lien" dated to be effective on 9/30/09, on behalf of "New Century Mortgage Corporation" as "Vice President of REO" , which is attached to the Application as part of "Exhibit A". This Transfer of Lien is believed to be fraudulent. This Transfer of Lien purports to transfer the New Century Mortgage to Wells Fargo. In the Transfer of Lien Tom Croft is attacking on behalf of New Century Mortgage, allegedly transferring the Lien from New Century Mortgage to Wells Fargo Bank N.A., As Trustee For Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates while on the Affidavit attached to the Application, Tom Croft claims to be the custodian of records for Bank N.A., As Trustee For Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates. **This would be Wells Fargo Bank N.A., As Trustee For Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates transferring the Lien to ITSELF!** How can Tom Croft be acting for the allegedly prior Holder of Note Lien, New Century Mortgage, and transfer the Lien on behalf of New Century Mortgage Corporation when he claims on the Affidavit that he is the custodian of records for Wells Fargo and is the servicing agent and Attorney-in-Fact for Carrington Mortgage Services. These documents are obvious fraud and **break the chain of title to the subject property** and show that Wells Fargo is not the holder of the note and as such cannot foreclose on the subject Note and subject property.

19. On March 13, 2007, the New Jersey Department of Banking and Insurance issued a Cease and Desist order against New Century Mortgage Corporation and its affiliate, Home 123 Corporation, both of Irvine California, ordering New Century Mortgage Corp. and Home 123 to stop doing business in the state and took the initial step toward revoking the companies' mortgage lender licenses due to their lending practices and loss of their funding sources.

20. On July 31, 2009, the Ohio Attorney General filed a joint lawsuit with the Ohio Department of Commerce against Carrington Mortgage Services, LLC. The lawsuit alleges that Carrington breached its agreement with the state to offer reasonable loan modifications to

eligible borrowers. The lawsuit also alleges that Carrington violated Ohio's Consumer Sales Practices Act by providing incompetent, inadequate and inefficient customer service in connection with its servicing of Ohio mortgage loans.

21. Plaintiff would show that the conduct of Defendants rise to the level of gross negligence and Plaintiff seeks exemplary damages.

22. Plaintiff hereby seeks an immediate permanent restraining order and permanent injunction restraining Defendants from continuing to pursue any foreclosure against the subject property because if such is not issued Plaintiff will be irreparably harmed. Petitioner requests the Court, after notice and hearing, to dispense with the issuance of a bond, to make temporary orders and issue any appropriate temporary injunctions for the preservation of the property as deemed necessary and equitable.

23. Under Texas Rules of Civil Procedure 194, Plaintiff request that Defendants disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

24. In accordance with Texas statutes and common law, Plaintiff hereby makes a request for attorney's fees, expenses and costs of court from Defendants jointly and severally, including their attorneys if the evidence shows that they were part of the fraud and conspiracy. The Court should order Defendants Wells Fargo and their attorneys, jointly and severally, to pay reasonable interim attorney's fees and expenses of no less than $50,000.00 for the filing of a frivolous and groundless application. Further, for services rendered in connection with this matter, judgment for attorney's fees, expenses, and costs through trial and appeal should be granted against Defendants and in favor of Plaintiff for the use and benefit of Plaintiff's attorney and be ordered paid directly to Plaintiff's attorney, who may enforce the judgment in the attorney's own name. Plaintiff requests prejudgment and postjudgment interest as allowed by law.

25. Plaintiff requests the Court and Jury to consider the relative damages and conduct of the parties and all tortfeasors.

WHEREFORE, Plaintiff prays for judgment against Defendants with interest from the date of judgment at the legal rate, exemplary damages, attorney's fees, costs of court, and all further relief, both general and special, legal and equitable, to which Plaintiff may be entitled.

Respectfully submitted,

THE ALONSO-BUJOSA LAW FIRM
5431 Wigton Dr.
Houston, Texas 77096
Tel: (713) 305-1060
Fax: 866-468-9923

NINA A. BUJOSA
State Bar No. 03319550

ATTORNEY FOR PLAINTIFF, MARY ELLEN WOLF AND DAVID WOLF

CERTIFICATE OF SERVICE

I certify that on the 19th day of June, 2011, a true and correct copy of the foregoing instrument has been forwarded in accordance with the Texas Rules of Civil Procedure to:

VIA FACSIMILE TRANSMISSION TO: 713-464-8553
Thomas D. Pruyn
8584 Katy Freeway, Suite 305
Houston, Texas 77024

NINA A. BUJOSA

CAUSE NO. 2011-36476

MARY ELLEN WOLF AND DAVID WOLF, on behalf of themselves and all others similarly situated,	§	IN THE DISTRICT COURT OF
v.	§	
	§	HARRIS COUNTY, TEXAS
WELLS FARGO BANK, N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST, TOM CROFT, NEW CENTURY MORTGAGE CORPORATION, AND CARRINGTON MORTGAGE SERVICES, LLC.	§	151ST JUDICIAL DISTRICT

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

TO THE HONORABLE MIKE ENGELHART:

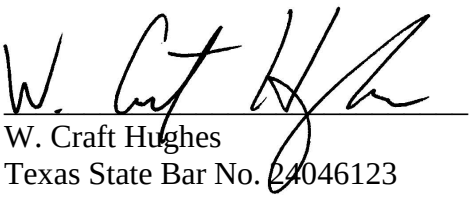
Plaintiffs Mary Ellen Wolf and David Wolf (collectively "Plaintiffs"), individually and on behalf of all other individual residents and entities of Texas similarly situated, by and through their undersigned counsel, respectfully request this Court issue a certification order under Rule 42 of the TEXAS RULES OF CIVIL PROCEDURE (i) certifying this action as a class action with Plaintiffs as the Class Representative, (ii) designating Plaintiffs' counsel as Class Counsel, and (iii) ordering the parties' counsel to meet and confer to develop appropriate notice to Class members.

This Motion is based upon Plaintiffs' contemporaneously filed Memorandum in Support of this Motion and other filings, and upon applicable common and statutory law.

WHEREFORE, Plaintiffs respectfully request this Court grant Plaintiffs' Motion for Class Certification.

Respectfully Submitted,

HUGHES ELLZEY, LLP



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ATTORNEY FOR PLAINTIFFS AND THE PROPOSED CLASS

CERTIFICATE OF SERVICE

By the execution of my signature below, I certify that a true and correct copy of the foregoing document has been served to the following parties on the 5th day of November, 2012 pursuant to rule 21(a) of the TEXAS RULES OF CIVIL PROCEDURE:

Mr. Peter C. Smart
CRAIN CATON & JAMES, P.C.
Five Houston Center, 17th Floor
1404 McKinney, Suite 1700
Houston, TX 77010
Attorney for Defendants, Wells Fargo Bank N.A., as Trustee For Carrington Mortgage Loan Trust, Tom Croft, New Century Mortgage Corporation and Carrington Mortgage Services, LLC

Via Certified Mail
#7011-2000-0001-1177-6299

W. Craft Hughes
E-Mail: craft@crafthugheslaw.com

CAUSE NO. 2011-36476

MARY ELLEN WOLF AND DAVID WOLF, on behalf of themselves and all others similarly situated,	§	IN THE DISTRICT COURT OF
v.	§	HARRIS COUNTY, TEXAS
WELLS FARGO BANK, N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST, TOM CROFT, NEW CENTURY MORTGAGE CORPORATION, AND CARRINGTON MORTGAGE SERVICES, LLC.	§	151ST JUDICIAL DISTRICT

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

Plaintiffs Mary Ellen Wolf and David Wolf respectfully submit this Memorandum of Law in Support of their Motion for Class Certification.

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ATTORNEYS FOR PLAINTIFFS AND THE PROPOSED CLASS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE(S)

CASES

RULES, STATUTES, AND OTHER AUTHORITY

CAUSE NO. 2011-36476

MARY ELLEN WOLF AND DAVID WOLF, on behalf of themselves and all others similarly situated,	§	IN THE DISTRICT COURT OF
v.	§	HARRIS COUNTY, TEXAS
WELLS FARGO BANK, N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST, TOM CROFT, NEW CENTURY MORTGAGE CORPORATION, AND CARRINGTON MORTGAGE SERVICES, LLC.	§	151ST JUDICIAL DISTRICT

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

TO THE HONORABLE MIKE ENGELHART:

Plaintiffs Mary Ellen Wolf and David Wolf (collectively "Plaintiffs") respectfully submit this Memorandum of Law in Support of their Motion for Class Certification pursuant to Rule 42 which states "the court must – at an early practicable time – determine by order whether to certify the action as a class action."[1] Plaintiffs respectfully show as follows:

I. INTRODUCTION

This class action brought on behalf of Texas homeowners involves the fraudulent filing and recording of documents with County Clerk's Offices in the State of Texas by Defendants relating to the 2006-NC3 Trust. Defendants have violated, and continue to violate, Texas law by recording, causing the recording, or permitting the recording of instruments which falsely state that Defendant Wells Fargo has an interest in or lien upon real property in its capacity as "trustee" for the 2006-NC3 Trust. Defendants have also violated, and continue to violate, Texas law by failing to record, causing to be recorded, or requiring to be recorded, all releases,

[1] TEX. R. CIV. P. 42(c)(l)(A).

transfers, assignments, or other actions related to instruments filed of record relating to the 2006-NC3 Trust. Plaintiffs also seek a declaratory judgment that all "Transfers of Liens" and "Assignments" of mortgages relating to the 2006-NC3 Trust from New Century Mortgage Corporation to Wells Fargo are invalid if recorded after August 10, 2006.[2]

This case arose out of an attempted wrongful foreclosure in which a third party, Defendant Wells Fargo, sought to foreclose on Plaintiffs' homestead without being the owner and holder of the Mortgage, Note, and Deed of Trust. On or about October 15, 2009, Defendants executed a "Transfer of Lien" relating to the Wolfs' mortgage, and filed the document with the Harris County Clerk's Office. The "Transfer of Lien" is fraudulent, and wrongfully attempts to transfer ownership of the Wolfs' mortgage into a securitization trust (the "2006-NC3 Trust").

Because Defendants filed identical fraudulent "Transfer of Lien" documents with numerous county clerks' offices across the State of Texas relating to the 2006-NC3 Trust, this case presents a class-wide issue and is particularly well-suited for class treatment. Importantly, it involves the same defendants wrongfully claiming ownership of real property in Texas, using the same securitization trust (2006-NC3 Trust), involving identical claims stemming from a common course of conduct, all in violation of one document (the "Pooling and Service Agreement") governing the 2006-NC3 Trust.

The factual foundation for Plaintiffs' claims is set forth in Plaintiffs' Third Amended Petition filed November 2, 2012 (Fax Filing No. 15342895) and Plaintiffs' Response to Defendants' Motion for Summary Judgment filed September 24, 2012 (E-File No. ED101J017095390). The facts will be repeated here only insofar as necessary to provide context for the Court's consideration of Plaintiffs' Motion for Class Certification. Pursuant to Rule 42 of

[2] TEX. CIV. PRAC. & REM. CODE § 37.

the TEXAS RULES OF CIVIL PROCEDURE, Plaintiffs thus seek to certify a Class defined as:[3]

A. all persons or entities in the State of Texas who currently have or previously had a residential mortgage loan, mortgage lien, mortgage note, or deed of trust relating to real property in the State of Texas securitized into the Carrington Mortgage Loan Trust, Series 2006-NC3 from September 1, 1999 up to and including the date notice is first provided to the Class; and

B. a subclass of all persons or entities in the State of Texas who lost ownership to real property in the State of Texas resulting from a foreclosure initiated by Wells Fargo Bank, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 from September 1, 1999 up to and including the date notice is first provided to the Class.

Excluded from the Class are:

A. defendant Wells Fargo Bank, N.A., any entity in which it has a controlling interest, its legal representatives, officers, directors, assigns and successors, and any other entity related to or affiliated with Defendant Wells Fargo Bank, N.A.;

B. defendant Wells Fargo Bank, N.A.'s Board members or executive level officers, including its attorneys;

C. governmental entities;

D. persons or entities that timely and properly excluded themselves from the Class; and

E. all claims for personal injury, wrongful death, or any incidental or consequential damages over and above those sought herein, except as authorized by law.

The Class should be certified because Plaintiffs meet all the requirements of Rule 42. Accordingly, Plaintiffs respectfully request the Court certify this matter as a class action and permit Plaintiffs leave to conduct discovery on the merits.

II. FACTUAL BACKGROUND

In 2006, the Wolfs sought to refinance their mortgage through a loan from New Century

[3] TEX. R. CIV. P. 42.

Mortgage Corporation ("New Century").[4] New Century agreed to loan the Wolfs $400,000.00.[5] On June 15, 2006, the $400,000.00 loan was memorialized by an instrument entitled "Texas Home Equity Fixed/Adjustable Rate Note" ("Note")[6] and an instrument entitled "Texas Home Equity Security Instrument" ("Deed of Trust").[7]

New Century is the Lender on the Note.[8] The Deed of Trust provides New Century and its assigns with a first lien on the Wolfs' homestead located at 6404 Buffalo Speedway, Houston, Texas 77005, which is more particularly described as:

> The South ½ of Lot Six (6), Block Thirty (30) of West University Place, an addition in Harris County, Texas, according to the Map or Plat thereof recorded in volume 9, Page 13, of the Map Records of Harris County, Texas (together, with the improvements thereon, referred to as the "Property").[9]

The Wolfs executed and delivered the Note and Deed of Trust to New Century on or about June 15, 2006.[10] On June 22, 2006, the Deed of Trust was filed of record with the Harris County Clerk's Office as file number Z394249.[11] The Wolfs have never signed any agreements with Wells Fargo.[12]

Definition (D) of the Deed of Trust designates Eldon L. Youngblood as Trustee under the Security Instrument.[13] The Note indicates that the loan in question is a high-priced subprime

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[4] Exhibit 1 – Oral Deposition of David Wolf ("Deposition of D. Wolf"), at p. 22, ll. 7-14; 22-24; Exhibit 2 – Texas Home Equity Fixed/Adjustable Rate Note (CARRINGTON-00530 to CARRINGTON-00534) ("Note"); Exhibit 3 – Texas Home Equity Security Instrument (CARRINGTON-00535 to CARRINGTON-00555) ("Deed of Trust"). Plaintiffs refer to the Texas Home Equity Security Instrument as the "Deed of Trust" as it operates in the same manner as a deed of trust.
[5] Exhibit 2 – Note at p. 1 (CARRINGTON-00530); s*ee also* Exhibit 4 – Oral Deposition of Mary Ellen Wolf ("Deposition of M.E. Wolf"), at p. 42, ll. 7-8.
[6] Exhibit 2 – Note (CARRINGTON-00530 to CARRINGTON-00534).
[7] Exhibit 3 – Deed of Trust (CARRINGTON-00535 to CARRINGTON-00555).
[8] Exhibit 2 – Note at p. 1, ¶ 1 (CARRINGTON-00530).
[9] Exhibit 3 – Deed of Trust at p. 19 (CARRINGTON-00553).
[10] Exhibit 2 – Note at p. 1 (CARRINGTON-00530).
[11] Exhibit 3 – Deed of Trust at p. 1 (CARRINGTON-00535).
[12] Exhibit 1 – Deposition of D. Wolf at p. 34, ll. 23-24.
[13] Exhibit 3 – Deed of Trust (CARRINGTON-00535 to CARRINGTON-00555).

variable rate mortgage loan beginning with a fixed interest rate of 10.150% for the first two (2) years, and interest rate and monthly payments were to adjust once every six (6) months for the remaining twenty-eight (28) year term to maturity.[14] The distinguishing loan level details are described in the Research Section of McDonnell's Expert Report.[15] The Fixed/Adjustable Rate Rider reiterates the terms set forth in the Fixed/Adjustable Rate Note and is incorporated into and deemed to amend and supplement the Deed of Trust.[16]

Page 5 of the five-page Note contains an undated indorsement in blank, executed by Steve Nagy,[17] who purports to be VP of Records Management for New Century Mortgage Corporation.[18] The indorsement states: "Pay to the order of, without recourse" *i.e.*, no payee was named in the indorsement.[19]

A. Expert Witness Marie McDonnell, C.F.E.

Marie McDonnell ("McDonnell") is a mortgage fraud examiner, forensic analyst, and certified fraud examiner.[20] McDonnell is a certified real estate exchange consultant and received her real estate broker's license approximately 24 years ago in Massachusetts.[21] For the past 25 years, McDonnell has dedicated 100% of her practice to the forensic analysis of real estate transactions.[22] She is an expert in chain of title and securitization disputes between lenders and homeowners.[23] McDonnell is a speaker at the Massachusetts State Bar Association and Boston

[14] Exhibit 2 – Note.
[15] Exhibit 5 – McDonnell Report at p. 10-11 (P02350-P02377).
[16] Exhibit 6 − Fixed/Adjustable Rate Rider, dated 06/15/2006 (CARRINGTON-00070).
[17] Due to the volume of foreclosure related documents Mr. Nagy executed each day, counsel for New Century admits his signature was often electronically attached to assignments. The signature as it appears on the instant Note appears to have been imposed with a rubber stamp. http://www.scribd.com/doc/57612366/THEY-DID-ASSIGNMENTS-INBLANK-HOW-NEW-CENTURY-MORTGAGE-AND-HOME123-CORPORATION-DID-IT
[18] Exhibit 5 – McDonnell Report at p. 10-11.
[19] Exhibit 2 – Note at p. 5.
[20] Exhibit 7 – Deposition of Marie McDonnell ("McDonnell Deposition") at p. 4, ll. 9-11.
[21] Exhibit 7 at p. 5, ll. 11-21.
[22] Exhibit 7 at p. 11, ll. 10-18.
[23] Exhibit 8 – McDonnell Affidavit at p. 2, ¶ 6.

Bar Association courses, and recently co-chaired a two-hour session discussing the national bank settlement with the 49 state Attorney General's offices.[24] McDonnell has also completed numerous courses in foreclosure defense from the Massachusetts State Bar Association and Boston Bar Association.[25]

McDonnell has consulted with several attorneys general in a number of states over the years.[26] The New York State Attorney General's office recently contacted McDonnell and invited her to present their office with a one-day training session about wrongful foreclosure investigations.[27] The seminar involved training both special agents and assistant attorney generals regarding civil and criminal matters.[28]

McDonnell was also recently awarded a contract to provide a three-day training session to special agents of a variety of federal entities.[29] This was at the request of the Office of the Inspector General ("OIG") for the Federal Housing Finance Agency ("FHFA"), which actually regulates Fannie Mae and Freddie Mac.[30] On October 1, 2012, the FHFA OIG's office contacted McDonnell to request a consultation about mortgage servicing issues.[31]

B. The Wolfs' Mortgage

In the present case, Wells Fargo Bank, N.A. ("Wells Fargo") is serving as a trustee of the Carrington Mortgage Loan Trust Series 2006-NC3 ("2006-NC3 Trust").[32] As trustee, Wells Fargo is responsible for the assets that are allegedly held in the trust.[33] According to McDonnell's expert analysis, there is no evidence in the record showing the Wolfs' Note and

[24] Exhibit 7 – McDonnell Deposition at p. 15, ll. 6-9.
[25] Exhibit 7 at p. 14, ll. 20-24.
[26] Exhibit 7 at p. 39, ll. 13-19.
[27] Exhibit 7 at p. 39, ll. 5-24.
[28] Exhibit 7 at p. 39, ll. 13-19.
[29] Exhibit 7 at p. 40, ll. 1-12.
[30] Exhibit 7 at p. 40, ll. 1-12.
[31] Exhibit 7 at p. 40, ll. 1-12.
[32] Exhibit 7 at pp. 23-24, ll. 12-5.
[33] Exhibit 7 at pp. 23-24, ll. 12-5.

Security Instrument were properly negotiated, delivered, or transferred to all necessary parties in the securitization chain.[34] This is required under the mortgage loan purchase agreement and the Pooling and Servicing Agreement ("P&S Agreement")[35] in order to convey these instruments into the 2006-NC3 Trust.[36] There are fatal breaks in the chain of title which indicate these instruments were never transferred into the 2006-NC3 Trust.[37] In McDonnell's expert opinion, Defendant Wells Fargo is not the current owner and holder of the Wolfs' Note and Deed of Trust.[38]

Even if Wells Fargo physically holds the Note, it does not mean they have the right to enforce the Note, collect on the Note, or to enforce the Security Instrument.[39] Paragraph one of the Note signed by the Wolfs states, "Lender, or anyone who takes this Note by transfer and who is entitled to receive payments under the Note, is called the 'Noteholder.'"[40] It is the Noteholder who would have the right to enforce the Note.[41] If Wells Fargo is in physical possession of the Note, it may have the right to negotiate the Note -- that is, sell it to someone else -- but it doesn't mean Wells Fargo has the right to enforce the Note.[42] Wells Fargo must prove it had the right to receive mortgage payments under the Note, it paid consideration for the Note, and the Note was legally and properly transferred into the 2006-NC3 Trust.[43]

[34] Exhibit 7 – McDonnell Deposition at pp. 23-24, ll. 12-5.
[35] Exhibit 9 – Pooling and Service Agreement of the 2006-NC3 Trust dated August 1, 2006 (CARRINGTON-00597 to CARRINGTON-00759).
[36] Exhibit 7 – McDonnell Deposition at pp. 23-24, ll. 12-5.
[37] Exhibit 7 at pp. 23-24, ll. 12-5.
[38] *Id*.
[39] Exhibit 7 at pp. 25-26, ll. 8-11.
[40] *Id*.
[41] *Id*.
[42] *Id*.
[43] *Id*.

According to McDonnell, the Pooling and Service Agreement governs the Wolfs' mortgage, conveyance, and transfer into the 2006-NC3 Trust.[44] In order for the Wolfs' Mortgage Loan[45] to be securitized into the 2006-NC3 Trust, New Century Mortgage Corporation would have had to sell the mortgage loan to an affiliate by the name of NC Capital Corporation who, for purposes of the securitization, is identified as the responsible party.[46] NC Capital Corporation entered into a mortgage loan purchase agreement with Carrington Securities LP and Stanwich Asset Acceptance Company LLC.[47] The mortgage loan purchase agreement states the responsible party would sell the mortgage loans to Carrington Securities LP, who, for purposes of the mortgage loan purchase agreement, was the seller's sponsor.[48] Carrington Securities LP, as the seller's sponsor, is required to sell the mortgage loan to Stanwich Asset Acceptance Company LLC.[49] Stanwich Asset Acceptance Company LLC is the purchaser under the mortgage loan purchase agreement, and the depositor under the pooling and servicing agreement.[50] Stanwich Asset Acceptance Company LLC would then deposit the mortgage loan into the 2006-NC3 Trust over which Wells Fargo served as trustee.[51] The physical documents should have been transferred to Wells Fargo, as trustee.[52] According to the pooling and servicing agreement, Wells Fargo was required to deliver the documents to the custodian Deutsche Bank National Trust Company.[53] However, Wells Fargo never gave the original Note

[44] Exhibit 7 – McDonnell Deposition at p. 31, ll. 6-12.
[45] "mortgage loan" is a defined term in McDonnell's Report referring to the Wolfs' Note and Security Agreement.
[46] Exhibit 7 – McDonnell Deposition at pp. 29-30, ll. 11-25.
[47] *Id*.
[48] *Id*.
[49] *Id*.
[50] *Id*.
[51] *Id*.
[52] *Id*.
[53] *Id*.

to Deutsche Bank National Trust Company at the time the Wolfs' mortgage was allegedly securitized into the 2006-NC3 Trust.[54]

C. Class Certification

McDonnell knows the Wolfs' filed the present lawsuit as a proposed class action,[55] she believes the claims asserted by the Wolfs and class members stem from a "common course of conduct" by Wells Fargo,[56] and it's her opinion the Wolfs and each member of the proposed class have suffered damages caused by Wells Fargo's common course of conduct and action.[57] McDonnell is also aware the Plaintiffs' seek to certify a class comprised of all Texas residents whose mortgages and deeds of trust have been allegedly transferred into the 2006-NC3 Trust.[58]

In McDonnell's expert opinion, there are numerous common questions of fact relating to the 2006-NC3 Trust securitization and foreclosure process that equally apply to the Wolfs' and the proposed class members.[59] At least one material fact issue is shared by every proposed class member that's common to the Wolf's facts in the present case.[60] Specifically, the Defendants are required to follow the exact same securitization procedure for transferring each class members' mortgage into the 2006-NC3 Trust,[61] and any fraudulent "transfer of lien" document filed with a county clerk's office in the State of Texas will involve common factual issues shared by the proposed class and the Wolfs.[62]

[54] Exhibit 7 – McDonnell Deposition at p. 34, ll. 20-24.
[55] Exhibit 7 at p. 40, ll. 13-16.
[56] Exhibit 7 at p. 40, ll. 17-21.
[57] Exhibit 7 at p. 40, ll. 22-25.
[58] Exhibit 7 at p. 42, ll. 2-7.
[59] Exhibit 7 at p. 42, ll. 8-12.
[60] Exhibit 7 at p. 42, ll. 17-20.
[61] Exhibit 7 at pp. 42-43, ll. 21-2.
[62] Exhibit 7 at p. 43, ll. 3-23.

D. Wells Fargo's Attempt to Wrongfully Foreclose on the Wolfs Homestead

Tom Croft ("Croft") was employed by Carrington as the Vice President of REO,[63] was the attorney-in-fact of Wells Fargo,[64] was the custodian of records for Wells Fargo,[65] was the custodian of records for the 2006-NC3 Trust,[66] and also an employee of Wells Fargo.[67] Croft, New Century, and Wells Fargo all share the exact same office address located at 1610 East St. Andrews Place, Santa Ana, CA 92705.[68]

Croft admits Wells Fargo cannot foreclose on the Plaintiffs' property unless it was transferred into the 2006-NC3 Trust,[69] and no mortgages can be transferred in or out of the Trust after the Closing Date, August 10, 2006.[70] Croft also admits the Application to Foreclose on Plaintiffs' home was incorrect at the time it was filed by Defendant Wells Fargo in this Court on February 11, 2011.[71]

During his deposition, Croft testified that New Century sold the Plaintiffs' Mortgage and Note to the 2006-NC3 Trust in 2006,[72] but also testified New Century was the owner and holder of Plaintiffs' Note in 2009.[73] New Century filed for bankruptcy in 2007 after the closing date in the PSA.[74] Croft continued his conflicting deposition testimony by claiming the 2006-NC3 Trust was the owner and holder of Plaintiffs' Note in 2009,[75] and February 3, 2011.[76] Croft also claims the Plaintiffs' mortgage was transferred into the 2006-NC3 Trust in August, 2006, then

[63] Exhibit 10 – Oral Deposition of Tom Croft ("Deposition of Tom Croft"), at p. 32, ll. 7-9; p. 34, ll. 4-7.
[64] Exhibit 10 at p. 42, ll. 23-25; p. 47, ll. 17-25.
[65] Exhibit 10 at p. 48, ll. 20-22.
[66] Exhibit 10 at p. 49, ll. 13-19.
[67] Exhibit 10 at p. 58, ll. 15-25.
[68] Exhibit 10 at p. 87, ll. 9-22.
[69] Exhibit 10 at pp. 154-55, ll. 24-2.
[70] Exhibit 10 at p. 127, ll. 22-25.
[71] Exhibit 10 at pp. 56-57, ll. 11-4.
[72] Exhibit 10 at pp. 58-59, ll. 15-5.
[73] Exhibit 10 at p. 80, ll. 6-11.
[74] Exhibit 10 at pp. 75-76, ll. 23-5.
[75] Exhibit 10 at p. 81, ll. 2-8.
[76] Exhibit 10 at pp. 52-53, ll. 23-4.

re-transferred into the 2006-NC3 Trust in September of 2009.[77] But later testified the Plaintiffs' mortgage and Note were transferred into the 2006-NC3 Trust after the "cut-off" date on August 1, 2006.[78]

E. The Texas Recording System and Defendants' Fraudulent Filings

Recording an interest in real property in Texas is permissive, not mandatory.[79] Although an unrecorded deed of trust "is binding on a party to the [deed of trust]," it is "void as to a creditor or to a subsequent purchaser for a valuable consideration without notice" of the security interest created by the deed of trust.[80] Once a deed of trust is recorded, section 192.007 of the TEX. LOC. GOV'T CODE requires that any release, transfer, assignment, or other action relating to the deed of trust be recorded in the same manner as the original deed of trust was recorded.[81]

On or about October 15, 2009, Tom Croft, acting in his alleged capacity as Vice President of REO for New Century Mortgage Corporation ("Assignor"), executed a Transfer of Lien ("Transfer") "To Be Effective 9/30/2009," which purports to transfer the Wolf Note and Lien ("Mortgage Loan") from New Century Mortgage Corporation to Wells Fargo, as Trustee of the 2006-NC3 Trust."[82] This Transfer of Lien was notarized on October 15, 2009 and subsequently recorded with the Harris County Clerk's Office on October 20, 2009 as Document #20090478521.[83]

On or about February 3, 2011, Tom Croft, acting in his alleged capacity as Attorney-in-Fact and custodian of records for Wells Fargo, and further, as an alleged VP of REO for Carrington Mortgage Services, LLC, executed a Verification of Application and Affidavit

[77] Exhibit 10 – Deposition of Tom Croft at p. 78, ll. 6-14; p. 129, ll. 3-7.
[78] Exhibit 10 at p. 69, ll. 8-11.
[79] TEX. PROP. CODE § 12.001(a).
[80] *Id.* at § 13.001(a)-(b).
[81] TEX. LOC. GOV'T CODE § 192.007.
[82] Exhibit 5 – McDonnell Report at p. 10-11.
[83] Exhibit 11 – Transfer of Lien, dated October 15, 2009.

"*based on his specialized knowledge, training and experience*" that the facts contained therein were true and accurate.[84]

On February 11, 2011, Thomas D. Pruyn of the Balcom Law Firm filed an Application Under Texas Rule of Civil Procedure 736 Seeking an Order to Proceed with Foreclosure Sale ("Application") on behalf of Wells Fargo, as Trustee of the 2006-NC3 Trust.[85] This Application was filed in the 151st District Court of Harris County, Texas,[86] together with the above referenced Verification of Application and Affidavit executed by Tom Croft.[87]

On May 13, 2011, Tom Croft, acting in this instance in his alleged capacity as Vice President and custodian of records for Carrington Mortgage Services, LLC, executed a Verification of First Amended Application and Affidavit restating his specialized knowledge, training and experience and that the facts contained therein were true and accurate.[88]

On or about May 26, 2011, Thomas D. Pruyn of the Balcom Law Firm filed a First Amended Application Under Texas Rule of Civil Procedure 736 Seeking an Order to Proceed with Foreclosure Sale attached to which he appended the above referenced Verification of First Amended Application and Affidavit executed by Tom Croft.[89] This paperwork was certified by Thomas D. Pruyn, Esq. and filed with the District Court of Harris County on May 26, 2011.[90] On June 23, 2011, the 151st District Court abated and dismissed the expedited foreclosure

[84] Exhibit 5 – McDonnell Report at p. 10-11.
[85] *See* TEX. CONST. ART. XVI, § 50(a)(6), TEX. R. CIV. P. 736(1).
[86] *In re: Order for Foreclosure Concerning Mary Ellen Wolf, David Wolf, and 6404 Buffalo Speedway, Houston, Texas 77005,* No. 2011-08930 (151st Dist. Ct., Harris County, Tex. Feb. 11, 2011).
[87] Exhibit 12 – Application to Proceed with Foreclosure, dated February 11, 2011 (P00010-P00014).
[88] Exhibit 5 – McDonnell Report at p. 10-11.
[89] *Id*.
[90] Exhibit 13 − First Amended Application to Proceed with Foreclosure, dated May 26, 2011 (P00083-P00088).

proceeding after Plaintiffs filed a separate petition contesting Wells Fargo's right to foreclose (the present case).[91]

III. ARGUMENT & AUTHORITIES

"Class actions serve an important function in our system of civil justice."[92] The purpose of the class action construct is to conserve "the resources of both the courts and the parties by permitting an issue potentially affecting every [class member] to be litigated in an economical fashion under Rule 23."[93] Class certification presents a procedural issue and is not to be a determination of the merits. "In determining the propriety of a class action, the question is not whether the plaintiff or plaintiffs have stated a cause of action or will prevail on the merits, but rather whether the requirements of Rule 23 are met."[94]

In Texas, a class action may be maintained if a plaintiff demonstrates the following conditions are satisfied: (i) the class is so numerous that joinder of all members is impracticable; (ii) there are questions of law or fact common to the class; (iii) the claims or defenses of the representative parties are typical claims or defense of the class; and (iv) the representative parties will fairly and adequately protect the interests of the class.[95] Rule 42 is identical in most respects to FED. R. CIV. P. 23. Accordingly, federal court decisions interpreting Rule 23 are "persuasive

[91] *See* TEX. R. CIV. P. 736(10) ("A proceeding under Rule 736 is automatically abated if, before the signing of the order, notice is filed with the clerk of the court in which the application is pending that respondent has filed a petition contesting the right to foreclose in a district court in the county where the application is pending. A proceeding that has been abated shall be dismissed.").
[92] *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 99 (1981).
[93] *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 155 (1982).
[94] *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177-78 (1974) ("We find nothing in either the language or history of Rule 23 that gives a court any authority to conduct a preliminary **i**nquiry into the merits of a suit in order to determine whether it may be maintained as a class action.").
[95] TEX. R. CIV. P. 42(a).

authority" in Texas actions.[96] However, federal court decisions are not binding authority.[97] As detailed below, Plaintiffs satisfy each of the prerequisites of federal Rule 23 and Texas Rule 42.

A. Summary and Background of Texas Class Action Law

In 2000, the Texas Supreme Court handed down a series of three decisions that clarified the circumstances where a class action may be certified under TEX. R. CIV. P. 42.[98] The Texas Supreme Court made it quite clear that, while it views class actions favorably, it also insists that lower courts strictly comply with Rule 42 in certifying class actions. The trial court is not bound by class definitions submitted by the parties, and may use its own definition as the needs of the case require.[99]

Unlike Federal Rule 23, the trial court must hold a hearing on the issue of class certification.[100] The hearing should not determine the merits of the case.[101] The trial court may consider matters in the record, regardless whether they are proven in a fully evidentiary hearing.[102] Most importantly, a class must be "clearly ascertainable by reference to objective criteria."[103] A class must not be defined by subjective criteria or by an analysis of the merits of the case.[104] A class definition should not require a separate inquiry into each class member's state of mind to determine whether that person is a member of the class.[105] This avoids creating

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[96] *Best Buy Co. v. Barrera*, 214 S.W.3d 66, 72 n.1 (Tex. App.—Corpus Christi 2006), rev'd on other grounds, 248 S.W.3d 160 (Tex. 2007); *Intratex Gas Co. v. Beeson*, 22 S.W.3d 398, 403 fn. 4 (Tex. 2000); *General Motors Corp. v. Bloyed*, 916 S.W.2d 949, 954 fn. 1 (Tex. 1996).
[97] *See Intratex Gas Co. v. Beeson*, 22 S.W.3d 398, 404 fn. 5 (Tex. 2000) [expressly noting that its holding conflicts with holding of Fifth Circuit, *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620 (5th Cir. 1999)].
[98] *Intratex Gas Co. v. Beeson*, 22 S.W.3d 398 (Tex. 2000); *Southwestern Refining Co., Inc. v. Bernal*, 22 S.W.3d 425 (Tex. 2000); *Ford Motor Co. v. Sheldon*, 22 S.W.3d 444 (Tex. 2000).
[99] *Bailey v. Kemper Cas. Ins. Co.*, 83 S.W.3d 840, 848 (Tex. App.—Texarkana 2002).
[100] TEX. R. CIV. P. 42(c)(1).
[101] *Intratex Gas Co. v. Beeson*, 22 S.W.3d 398, 404 (Tex. 2000).
[102] *Snyder Communs. v. Magana*, 94 S.W.3d 213 (Tex. App.—Corpus Christi, 2002); *Health & Tennis Corp. of America v. Jackson*, 928 S.W.2d 583, 587 (Tex. App.—San Antonio 1996, no writ); *Dresser Industries, Inc. v. Snell*, 847 S.W.2d 367, 376 (Tex. App.—El Paso 1993, no writ).
[103] *Intratex Gas Co. v. Beeson*, 22 S.W.3d 398, 403 (Tex. 2000).
[104] *Id*.
[105] *Ford Motor Co. v. Sheldon*, 22 S.W.3d 444, 454 (Tex. 2000).

a "fail safe" class that is bound only by a judgment favorable to the class, but not by a judgment in favor of the defendant.[106]

B. This Action Should Be Certified Because Plaintiffs Satisfy All Requirements of Rule 42

Rule 42 provides that "[w]hen a person sues or is sued as a representative of a class, the court must – at an early practicable time – determine by order whether to certify the action as a class action."[107] A class action may be maintained if a plaintiff demonstrates that the following conditions are satisfied: (i) the class is so numerous that joinder of all members is impracticable; (ii) there are questions of law or fact common to the class; (iii) the claims or defenses of the representative parties are typical claims or defense of the class; and (iv) the representative parties will fairly and adequately protect the interests of the class.[108]

Class certification is appropriate under the federal rules where the party seeking certification satisfies the four threshold requirements of Rule 23(a) and the requirements of Rule 23(b)(1), (2), or (3).[109] The "essentially factual basis of the certification inquiry and of the district court's inherent power to manage and control pending litigation" provides the district court with "substantial discretion in determining whether to certify a class action."[110] Because of the Court's discretion in adopting appropriate procedures, certifying conditionally, or decertifying a class in later stages of litigation, "the Fifth Circuit has held that judges should err in favor of certification."[111]

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[106] *Intratex Gas Co. v. Beeson*, 22 S.W.3d at 404-405.
[107] TEX. R. CIV. P. 42(c)(l)(A).
[108] TEX. R. CIV. P. 42(a).
[109] *See Maldonado v. Ochsner Clinic Found.*, 493 F.3d 521, 523 (5th Cir. 2007).
[110] *Allison v. Citgo Petroleum Corporation*, 151 F.3d 402, 408 (5th Cir. 1998).
[111] *Hamilton v. First Amer. Title Ins. Co.*, 266 F.R.D. 153, 158 (N.D. Tex. 3-29-2010) (citing *Bywaters v. United States*, 196 F.R.D. 458, 463 (E.D. Tex. 2000); *see Horton v. Goose Creek Ind. School Dist.*, 690 F.2d 470, 487 (5th Cir. 1982), cert. denied, 463 U.S. 1207 (1983).

In addition, one of the requirements to Rule 42(b) must be satisfied, which include Rule 42(b)(l)(A) and (B)—the prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications which would create incompatible standards of conduct for the party opposing the class, or adjudications with respect to individual members of the class would be as a practical matter dispositive of the interests of other members of the class not party to the adjudications or substantially impair or impede the other members of the class' ability to protect their interests—and Rule 42(b)(2)—the party opposing the class has generally acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class as a whole.[112] For the reasons set forth herein the Plaintiffs Action meets all the requirements set forth in Rule 42a and the requirement of Rule 42(b)(l) and (2), and, accordingly, this case should be certified as a class action.

C. Standard of Review on for Class Certification

The Texas Supreme Court reviews a trial court's decision to certify a class under an abuse of discretion standard, but does so without indulging every presumption in favor of the trial court's decision.[113] Actual conformance with Rule 42 is indispensable, and compliance with the rule must be demonstrated, not presumed.[114] A trial court's decision may get reversed for abuse of discretion only if, after searching the record, it is clear the trial court's decision was arbitrary and unreasonable.[115] A trial court has discretion to rule on class certification issues,

[112] TEX. R. CIV. P. 42(b).
[113] *Stonebridge Life Ins. Co. v. Pitts*, 236 S.W.3d 201, 204-05 (Tex. 2007).
[114] *Id*.
[115] *Vincent v. Bank of America*, 109 S.W.3d 856, 864 (Tex. App.—Dallas 2003) (affirming trial court grant of certification).

and some of its determinations—like those based on its assessment of the credibility of witnesses, for example—must be given the benefit of the doubt.[116]

D. The Class is so Numerous that Joinder of All Members is Impracticable

TEXAS RULE OF CIVIL PROCEDURE 42(a)(1) requires that the class be so numerous that joinder of all members is impracticable.[117] The numerosity requirement of federal Rule 23(a) is met when a potential class is so numerous that joinder of all members is impracticable.[118] Both Texas and federal numerosity requirements are satisfied here.

Texas law does not require proof of the precise number of class members.[119] The record reflects there are hundreds of potential class members.[120] Approximately 7,548 mortgage loans were allegedly transferred into the 2006-NC3 Trust.[121] The class is comprised of approximately five-hundred seventy-one (571) Texas residents who currently have or previously had a residential mortgage loan on real property located in the State of Texas securitized into the Carrington Mortgage Loan Trust, 2006-NC3 Asset Backed Pass-Through Certificates ("2006-NC3 Trust").[122] Approximately two-hundred thirty-three (233) of the mortgage loans involve real property located in Harris County, Texas.[123] The class is so numerous that joinder is impracticable.

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[116] *Schein v. Stromboe*, 102 S.W.3d 675, 691 (Tex. 2002).
[117] TEX. R. CIV. P. 42.
[118] *See Watson v. Shell Oil Co.*, 979 F.2d 1014, 1022 (5th Cir. 1992).
[119] *Phillips v. Joint Legislative Committee*, 637 F.2d 1014, 1022 (5th Cir. 1981), cert. denied, 456 U.S. 960 (1982); *Carpenter v. Davis*, 424 F.2d 257, 260 (5th Cir. 1970).
[120] Exhibit 7 –McDonnell Deposition at p. 41, ll. 1-24.
[121] Exhibit 7 at p. 41, ll. 1-6.
[122] Exhibit 7 at p. 41, ll. 7-13; s*ee also* Plaintiffs' Third Amended Petition [hereinafter "Plaintiffs' Petition"] at p. 5.
[123] Exhibit 7 at p. 41, ll. 14-24.

E. Common Questions of Law or Fact Exist

TEXAS RULE OF CIVIL PROCEDURE 42(a)(2) merely requires that there "be questions of law, or fact common to the class."[124] The threshold showing for commonality, in contrast to that for showing the predominance of common question, "is not high."[125] This "commonality" requirement is met under the federal rules when class members "have suffered the same injury" and "all of the class members' claims depend on a common issue of law or fact whose resolution will resolve an issue that is central to the validity of each one of the [] claims in one stroke."[126]

"What matters to class certification…is not the raising of common 'questions' — even in droves — but, rather the capacity of a class wide proceeding to generate common answers apt to drive the resolution of the litigation. Dissimilarities within the proposed class are what have the potential to impede the generation of common answers."[127] Plaintiffs' claims arise from the same set of facts and are based on identical legal theories involving an overarching and uniform course of conduct. More importantly, Plaintiffs' claims "depend upon a common contention that is capable of classwide resolution," and that contention is "of such a nature…that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke."[128]

There are questions of law and fact common to the class, as illustrated by the following examples of common questions:

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[124] TEX. R. CIV. P. 42.
[125] *UPRG v. Hankins*, 111 S.W.3d 69, 74 (Tex. 2003).
[126] *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011) (quoting *Gen. Tel. Co. v. Falcon*, 457 U.S. 147, 161 (1982)) (some internal quotation marks omitted).
[127] *Id*. (quoting Nagareda, *Class Certification in the Age of Aggregate Proof,* 84 N.Y.U. L. Rev. 97, 132 (2009)); *see M.D. Ex Rel. Stukenberg v. Perry*, 675 F.3d 832, 838 (5th Cir. 2012) ("In order to satisfy commonality under *Wal-Mart*, a proposed class must prove that the claims of every class member 'depend upon a common contention that is capable of classwide resolution," meaning that the contention is "of such a nature…that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.' 131 S.Ct. at 2551.").
[128] *Wal-Mart*, 131 S. Ct. at 2551.

1. whether the subject Note and Security Instrument were properly conveyed to Wells Fargo Bank, N.A., as Trustee for the 2006-NC3 Trust as required by the Pooling and Servicing Agreement executed on August 1, 2006 which governs the REMIC Trust;[129]

2. whether the "Transfer of Lien" filed with County Clerk's Offices in Texas is valid, and actually transfers the subject Note and Security Instrument to Wells Fargo Bank, N.A., as Trustee for the 2006-NC3 Trust;[130]

3. whether Wells Fargo Bank, N.A., as Trustee for the 2006-NC3 Trust has standing to foreclose on real property in the State of Texas;

4. whether Wells Fargo Bank, N.A., as Trustee for the 2006-NC3 Trust is the legal owner and holder of mortgage loans, mortgage liens, mortgage notes, or deeds of trust on real property in the State of Texas; and

5. whether Defendants violated TEX. CIV. PRAC. & REM. CODE § 12.002 by filing the "Transfer of Lien" with County Clerk's Offices in Texas attempting to transfer mortgage loans, mortgage liens, mortgage notes, or deeds of trust from New Century Mortgage Corporation to Wells Fargo Bank, N.A., as Trustee for the 2006-NC3 Trust.

Common questions are those questions that, when answered as to the named plaintiff, are answered as to the class members.[131] The standard for commonality is not high.[132] Not all or even a great portion of the questions in the suit must be common to the class.[133] "A single common question can warrant certification."[134] Moreover, the common question may be one of

[129] Exhibit 5 – McDonnell Report at p. 4.
[130] *Id*.
[131] *Health & Tennis Corp. of America v. Jackson*, 928 S.W.2d 583, 590 (Tex. App.—San Antonio 1996, no writ); *Reserve Life Insurance Co. v. Kirkland*, 917 S.W.2d 836, 842 (Tex. App.—Houston [14th Dist.] 1996, no writ).
[132] *Union Pacific Resources Group, Inc. v. Hankins*, 111 S.W.3d 69, 74 (Tex. 2003).
[133] *Microsoft Corp. v. Manning*, 914 S.W.2d 602, 611 (Tex. App.—Texarkana 1996, writ dism'd); *Wente v. Georgia-Pacific Corp.*, 712 S.W.2d 253, 255 (Tex. App.—Austin 1986, no writ); *Reserve Life Insurance Co. v. Kirkland*, 917 S.W.2d at 842.
[134] *Health & Tennis Corp. of America v. Jackso*n, 928 S.W.2d at 590, citing *Microsoft Corp. v. Manning*.

law or fact; it does not have to be both.[135] Affirmative defenses do not destroy commonality.[136] However, the decision to abandon some claims in order to achieve commonality can become "one relevant factor in evaluating the requirements for class certification."[137] Plaintiffs have shown that there are common questions of law and fact sufficient to satisfy TEXAS RULE OF CIVIL PROCEDURE 42(a)(2).

F. Plaintiffs' Claims Are Typical of the Claims of the Class

TEXAS RULE OF CIVIL PROCEDURE 42(a)(3) requires that the claims or defenses of the representatives be "typical" of the claims or defenses of the class.[138] This requirement is that the claims of the representatives be "substantially similar" to those of the class members.[139] Whether a class representative's claims are "typical of the claims" of the class is ordinarily a question of fact to be decided by the district court in considering a motion for class certification.[140] In assessing whether a proposed class representative's claims are typical of those of the class, the focus is "less on the relative strengths of the named and unnamed plaintiffs' cases than on the similarity of the legal and remedial theories behind their claims."[141] In this action, the legal and remedial theories are identical for Plaintiffs and all Class Members.

Plaintiffs assert causes of action based upon conduct of Defendants, which is uniform across all Class Members. And each cause of action is asserted on behalf of each Class Member. Moreover, while the number of subject instruments will be different for each Class Member, the formula for determining each Class Member's recovery is identical.

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[135] *Health & Tennis Corp. of America v. Jackson*, 928 S.W.2d at 590.
[136] *Microsoft Corp. v. Manning*, 914 S.W.2d at 613.
[137] *Bowden v. Phillips Petroleum Co.*, 247 S.W.3d 690, 698 (Tex. 2008).
[138] TEX. R. CIV. P. 42.
[139] *Dresser Industries, Inc. v. Snell*, 847 S.W.2d 367, 372 (Tex. App.—El Paso, no writ); *see East Texas Motor Freight v. Rodriguez*, 431 U.S. 395, 403, 97 S.Ct. 1891, 52 L.Ed.2d 453 (1977) (representatives and members need only "possess the same interest and suffer the same injury").
[140] *See Johnson v. Georgia Highway Express, Inc.*, 417 F.2d 1122, 1124 (5th Cir. 1969).
[141] *Jenkins v. Raymark Industries, Inc.*, 782 F.2d 468, 472 (5th Cir. 1986); *see Bertulli v. Indep. Ass'n of Cont.'s Cont'l Pilots*, 242 F.3d 290, 297, n.32 (5th Cir. 2001).

Here, the Wolfs' claims and the claims of all other Class members arise from the Defendants' fraudulent transfers of mortgages into the 2006-NC3 Trust. All members of the Class, as property owners and mortgagees, have the same interests and suffer the same injury. The typicality requirement is satisfied if the class representative demonstrates that his claims have the same essential characteristics as those of the class as a whole.[142] Unsurprisingly, "the class representative must be a member of the class and have individual standing to sue."[143] The class representative's claims need not be identical to those of absent class members, only substantially similar.[144] All that is required is that the claims arise from the same pattern of conduct and be based on the same legal theory.[145] Public policy does not deny standing to a class plaintiff that holds contractually valid assignments from other class members.[146]

G. Plaintiffs Will Fairly and Adequately Protect the Interests of the Class

TEXAS RULE OF CIVIL PROCEDURE 42(a)(4) requires that the representative parties fairly and adequately protect the interests of the class.[147] Adequacy of representation is demonstrated by showing (1) that no conflict in the litigated issues exists between the representative and the class members, and (2) that class counsel is sufficiently qualified and experienced to prosecute the action vigorously.[148]

A court's adequacy determination involves an inquiry into: (1) the willingness and ability of the representatives to take an active role in and control the litigation and to protect the

[142] *Microsoft Corp. v. Manning*, 914 S.W.2d 602, 613 (Tex. App.—Texarkana 1996, writ dism'd); *Cedar Crest Funeral Home, Inc. v. Lashley*, 889 S.W.2d 325, 331 (Tex. App.—Dallas 1993, no writ).
[143] *Southwestern Bell Telephone Co. v. Marketing on Hold Inc.*, 308 S.W.3d 909, 915 (Tex. 2010).
[144] *Reserve Life Insurance Co. v. Kirkland*, 917 S.W.2d 836, 842 (Tex. App.—Houston [14th Dist.] 1996, no writ); *Cedar Crest Funeral Home, Inc. v. Lashley*, 889 S.W.2d at 331.
[145] *Microsoft Corp. v. Manning*, 914 S.W.2d at 613.
[146] *Southwestern Bell Telephone Co. v. Marketing on Hold Inc.*, 308 S.W.3d 909, 916 (Tex. 2010).
[147] TEX. R. CIV. P. 42.
[148] *Health & Tennis Corp. of America v. Jackson*, 928 S.W.2d 583, 589 (Tex. App.—San Antonio 1996, no writ); *Microsoft Corp. v. Manning*, 914 S.W.2d 602, 614 (Tex. App.—Texarkana 1996, writ dism'd); *Weatherly v. Deloitte & Touche*, 905 S.W.2d 642, 651-652 (Tex. App.—Houston [14th Dist.] 1995, writ dism'd w.o.j.).

interests of absentees, (2) the zeal and competence of the representatives' counsel, and (3) any conflicts of interest between the named plaintiffs and the class they seek to represent.[149]

> The adequacy-of-representation requirement "tend[s] to merge" with the commonality and typicality criteria of Rule 23(a), which "serve as guideposts for determining whether . . . maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence."[150]

Interests are not considered antagonistic unless they relate directly to the matters in controversy.[151] Texas law "does not require a higher standard of involvement from a proposed class representative than from an individual plaintiff."[152] Courts therefore look to class counsel, not the named plaintiff, to determine whether vigorous prosecution is probable. "The qualifications and experience of the class counsel is of greater consequence than the knowledge of the class representatives."[153] If there is any doubt as to a class representative's adequacy, the trial court can easily satisfy it by requiring additional class representatives.

Departing from Federal Rule 23, Texas Rule 42(c)(1) expressly states that the "court may order the naming of additional parties in order to insure the adequacy of class representation." However, deciding not to sue for certain claims – often ones that can't be certified – may raise questions about class adequacy. "A class representative's decision to abandon certain claims may be detrimental to absent class members for whom those claims could be more lucrative or valuable, assuming those class members do not opt out of the class."[154]

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[149] *See Feder v. Elec. Data Sys.*, 429 F.3d 125, 130 (5th Cir. 2005) (internal quotation marks removed).
[150] *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 626, n. 20 (1997) (quoting *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 157, n.13 (1982)).
[151] *Health & Tennis Corp. of America v. Jackson*, 928 S.W.2d at 589, citing *Microsoft Corp. v. Manning*.
[152] *Health & Tennis Corp. of America v. Jackson*, 928 S.W.2d at 589, citing *Weatherly v. Deloitte & Touche*.
[153] *Health & Tennis Corp. of America v. Jackson*, 928 S.W.2d at 589, citing *Microsoft Corp. v. Manning*, 914 S.W.2d at 614; *Weatherly v. Deloitte & Touche*, 905 S.W.2d at 652.
[154] *Citizens Insurance Company of America v. Daccach*, 217 S.W.3d 430 453-454 (Tex. 2007).

There is no evidence in this case to show actual antagonism between the interests of the Plaintiffs and those of the class. Speculation about potential conflicts does not establish inadequacy.[155] Even if non-speculative conflict were shown, it must go to the heart of the case to allow a finding that a proposed class representative is inadequate.[156] The proposed representatives and their counsel will fairly and adequately protect the interests of the class.

H. The Prosecution of Separate Actions Would Risk Inconsistent Adjudications

Here, Rule 42(b)(l)(a) is satisfied because if separate actions were commenced by other members of the Class, the parties would be subject to the risk of inconsistent or varying adjudications.[157] This type of situation requires certification of a class. The Texas rule, as in the Federal rule, allows a class action when prosecution of separate actions by or against individual members of the class would create a risk of either (1) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or (2) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.[158]

I. Defendants Have Acted or Refused to Act on Grounds Generally Applicable to the Class and Final Injunctive Relief is Appropriate

A class may be certified pursuant to Rule 42(b)(2) for injunctive or declaratory purposes when the "party opposing the class has acted or refused to act on grounds generally applicable to

[155] *Employers Cas. Co. v. Texas Ass'n of School Bds. Workers Comp. Self–Ins. Fund*, 886 S.W.2d 470, 476 (Tex. App.—Austin 1994, writ dism'd w.o.j).
[156] *Adams v. Reagan*, 791 S.W.2d 284, 291 (Tex. App.—Forth Worth 1990, no writ).
[157] TEX. R. CIV. P. 42(b)(l).
[158] *Id*.

the class."[159] "Nonequitable monetary relief may be obtained in a (b)(2) class action only if the predominant relief sought is injunctive or declaratory."[160] Defendants have acted on grounds that generally prejudice the interests of the Class.[161] Specifically, defendants wrongful conduct and actions include the following:

1. The "Transfer of Lien" executed by Tom Croft on October 15, 2009 and recorded with the Harris County Clerk's Office on October 20, 2009 is not the operative document by which the Wolfs' Mortgage Loan was conveyed to Wells Fargo Bank, N.A. as Trustee of Carrington Mortgage Loan Trust, Series 2006-NC3;

2. Croft's Transfer of Lien, dated October 15, 2011 is more than five (5) years too late;

3. This Transfer of Lien is a deception that was purposely prepared to create the appearance in the public record that Wells Fargo Bank, N.A. as *Trustee* had the authority to initiate foreclosure proceedings against the Wolfs' Property on behalf of the Issuing Entity, while suppressing the fact – and thus avoiding the burden of proof – that behind the scenes, the Wolfs' Note and Security Instrument had been sold four (4) times and was allegedly securitized on or about August 10, 2006;

4. The creation and recordation of the October 15, 2009 Transfer of Lien was a feigned and fraudulent attempt to cure the gaps in the chain of title;

5. All other documents that were filed with the Harris County Clerk's Office and with the District Court for the 151st Judicial District that depend upon the validity of the Transfer of Lien are also tainted with fraud and, therefore, they should be deemed to have no legal force and effect;

6. Wells Fargo Bank, N.A., is not the current owner and holder of Wolfs' Note and Security Instrument ("Mortgage Loan"); and

7. The Wolfs' Mortgage Loan was never transferred into the 2006-NC3 Trust for which Wells Fargo Bank, N.A. is *Trustee* in strict compliance with the Pooling and Servicing Agreement executed on August 1, 2006 between the parties.

[159] TEX. R. CIV. P. 42.
[160] *Dairyland County Mut. Ins. Co. of Texas v. Casburg*, 63 S.W.3d 590, 592 (Tex. App.—Beaumont 2001).
[161] *See* TEX. R. CIV. P. 42(b)(2).

These actions by Defendants are damaging the Class. Final injunctive relief is necessary to enjoin Defendants from (1) wrongfully claiming ownership to the Mortgage Loans of class members, (2) wrongfully foreclosing on real property owned by class members, and (3) filing fraudulent transfers of lien with county clerk's offices in the State of Texas. Accordingly, the requirements of Rule 42(b)(2) are met.

J. Questions of Law and Fact Predominate

In order to maintain a lawsuit as class action under TEXAS RULE OF CIVIL PROCEDURE 42(b)(3), the named plaintiff must show "both that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy."[162] In applying this section, the trial court must consider "(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action."[163]

The Texas Supreme Court has stated that the "[t]est for predominance is not whether common issues outnumber uncommon issues but…'whether common or individual issues will be the object of most of the efforts of the litigants and the court.'"[164] The predominance inquiry applies to common defenses as well as common claims.[165] This requirement does not mean that all questions of law and fact must be identical, but that an issue of law or fact exists that inheres

[162] *TCI Cablevision of Dallas, Inc. v. Owens*, 8 S.W.3d 837, 842 (Tex. App.—Beaumont 2000).
[163] *Snyder Communications, L.P. v. Magana*, 142 S.W.3d 295, 299 (Tex. 2004).
[164] *Henry Schein, Inc. v. Stromboe*, 102 S.W.3d 675, 693 (Tex. 2002) (quoting *Bernal*, 22 S.W.3d at 434).
[165] *Stonebridge Life Ins. Co. v. Pitts*, 236 S.W.3d 201, 206-207 (Tex. 2007).

in the complaints of all the class members.[166] "Class certification will not be prevented merely because damages must be determined separately for each class member. Likewise, defensive issues peculiar to different members do not destroy the entire class."[167]

In this case Plaintiffs allege, among other things, that Defendant Wells Fargo Bank, N.A., is not the current owner and holder of Wolfs' Note and Security Instrument ("Mortgage Loan"), and the Wolfs' Mortgage Loan was never transferred into the 2006-NC3 Trust for which Wells Fargo Bank, N.A. is *Trustee* in strict compliance with the Pooling and Servicing Agreement executed on August 1, 2006 between the parties. Based on the claims at issue, the controlling substantive issues in this case can be listed as follows:

1. whether the subject Note and Security Instrument were properly conveyed to Wells Fargo Bank, N.A., as Trustee for the 2006-NC3 Trust as required by the Pooling and Servicing Agreement executed on August 1, 2006 which governs the REMIC Trust;[168]

2. whether the "Transfer of Lien" filed with County Clerk's Offices in Texas is valid, and actually transfers the subject Note and Security Instrument to Wells Fargo Bank, N.A., as Trustee for the 2006-NC3 Trust;[169]

3. whether Wells Fargo Bank, N.A., as Trustee for the 2006-NC3 Trust has standing to foreclose on real property in the State of Texas;

4. whether Wells Fargo Bank, N.A., as Trustee for the 2006-NC3 Trust is the legal owner and holder of mortgage loans, mortgage liens, mortgage notes, or deeds of trust on real property in the State of Texas; and

[166] *Entex, a Div. of Noram Energy Corp. v. City of Pearland*, 990 S.W.2d 904, 919 (Tex. App.—Houston [14 Dist.] 1999).
[167] *TCI Cablevision of Dallas, Inc. v. Owens*, 8 S.W.3d 837, 846 (Tex. App.—Beaumont 2000) (internal quotation omitted).
[168] Exhibit 5 – McDonnell Report at p. 4.
[169] *Id*.

5. whether Defendants violated TEX. CIV. PRAC. & REM. CODE § 12.002 by filing the "Transfer of Lien" with County Clerk's Offices in Texas attempting to transfer mortgage loans, mortgage liens, mortgage notes, or deeds of trust from New Century Mortgage Corporation to Wells Fargo Bank, N.A., as Trustee for the 2006-NC3 Trust.

These controlling issues can be proven with common evidence. The focus of the trial is going to be on Defendants' conduct. Either they used a document with knowledge that the document is fraudulent or they did not. Plaintiffs obtained evidence and examples of documents and testimony that could be used to prove on a classwide basis that Defendants used a document with knowledge that the document was fraudulent.[170]

1. The Texas Class Has a Common Trust Agreement

The Pooling and Service Agreement governing the 2006-NC3 Trust is applicable to the Wolfs' case, does not contain different terms for each class member, and uniformly applies to all class members. Thus the primary legal document upon which the claims will be decided appears uniform across the Texas class.

2. Violations of TEX. CIV. PRAC. & REM. CODE § 12.002 Will Uniformly Apply to All Class Members

Defendants made, presented, or used a document or other record with knowledge that the document or other record is a fraudulent court record or a fraudulent lien or claim against real property or an interest in real property. The documents or records filed or caused to be filed by Defendants, falsely represent Defendants' interest in the real property that is the subject of such instruments, causing damages and injuries to Plaintiffs and the Class. Defendants knew at the time of such filing the instruments falsely represented Defendants' interest in the real property that is the subject of such instruments.

[170] *Compare* Exhibit 11 – Transfer of Lien, with Exhibit 9 – Pooling and Service Agreement of the 2006-NC3 Trust dated August 1, 2006 (CARRINGTON-00597 to CARRINGTON-00759).

For over 100 years, Texas law has provided that the grantee or beneficiary of a deed of trust is the lender on the note secured by the deed of trust.[171] So long as a debt exists, the "security will follow the debt," and the assignment of the debt carries with it the rights created by the deed of trust securing the note.[172] Section 11.004 of the TEXAS PROPERTY CODE requires that county clerks in the State of Texas: (1) correctly record, as required by law, within a reasonable time after delivery, any instrument authorized or required to be recorded in that clerk's office that is proved, acknowledged, or sworn to according to law; (2) give a receipt, as required by law, for an instrument delivered for recording; (3) record instruments relating to the same property in the order the instruments are filed; and (4) provide and keep in the clerk's office the indexes required by law.[173]

Section 193.003 of the TEXAS LOCAL GOVERNMENT CODE requires that a county clerk maintain "a well-bound alphabetical index to all recorded deeds, powers of attorney, mortgages, and other instruments relating to real property" with "a cross-index that contains the names of the grantors and grantees in alphabetical order."[174] Under policies in effect for many years, employees of the County Clerk's Offices in Texas record as a "Grantee" any person identified as a "lender," "beneficiary," or "grantee" in a deed of trust.

Further evidence of commonality is that "Transfers of Lien" were filed by uniform documents generated by Defendants. An example of the form "Transfer of Lien" is attached.[175] The evidence shows Defendants prepared uniform "Transfer of Lien" national documents designed to ensure the same basic information regarding the 2006-NC3 Trust was filed in the

[171] *See Lawson v. Gibbs,* 591 S.W.2d 292, 294 (Tex. Civ. App.—Houston [1st. Dist.] 1979, writ ref'd n.r.e.).
[172] A deed of trust in Texas creates a lien in favor of the lender; it does not operate as a transfer of title. This has been the law in Texas for more than a century. *See McLane v. Paschal,* 47 Tex. 365, 369 (1877); *see also Johnson v. Snell,* 504 S.W.2d 397, 399 (Tex. 1973).
[173] TEX. PROP. CODE § 11.004.
[174] TEX. LOC. GOV'T CODE § 193.003.
[175] Exhibit 11 – Transfer of Lien.

real property records at county clerk's offices nationwide, including county clerk's offices in this Texas class.

3. The Damages Sought Present Common Issues

The allegations in Plaintiffs' Third Amended Petition permit class-wide computation of damages.[176] While each class members' amount of damages may vary, the *calculation* of damages will be identical pursuant to Texas statutory law.[177] Furthermore, differences in the amount of damages suffered by individual class members do not destroy predominance or make this case unmanageable. In fact, Rule 23 explicitly envisions class actions with such individualized damage determinations.[178] When such individualized inquiries are necessary, if 'common questions predominate over individual questions as to liability, courts generally find the predominance standard of Rule 23(b) to be satisfied.[179]

4. Wells Fargo's Defenses Present Predominantly Common Issues

The defenses asserted by Wells Fargo include:[180] Plaintiffs lack standing, and non-compliance with the terms of the Pooling and Service Agreement.[181] These defenses are based on predominately common evidence. Therefore, common questions of fact and of law will predominate in the preparation and trial of this lawsuit.

K. Superiority of Class Action

TEXAS RULE OF CIVIL PROCEDURE 42(b)(3) requires the Court to find that class treatment is "superior to other available methods for the fair and efficient adjudication of the

[176] *See* Plaintiffs' Petition, at pp. 39-47.
[177] TEX. CIV. PRAC. & REM. CODE § 12.002.
[178] *See* FED. R. CIV. P. 23 advisory committee's note (1996 Amend., subdivision (c)(4)).
[179] *See* 5 *Moore's Federal Practice* § 23.46[2][a] (1997).
[180] *See* Defendants' Third Amended Answer and Second Amended Counterclaim, filed on July 12, 2012.
[181] Defendants rely on an unpublished case from Minnesota for this defense. *See Anderson v. Countrywide Home Loans*, 2011 WL 1627945, at *4 (D. Minn. April 8, 2011).

controversy."[182] Class actions are superior when individual actions would be wasteful, duplicative, present managerial difficulty or be adverse to judicial economy.[183] This analysis includes consideration of the class members' interest in controlling the actions individually, the extent of any other litigation by or against class member, the desirability of concentrating the litigation in the forum, and the difficulties of managing the case as a class.[184] The purpose of a class action is to "eliminate or reduce the threat of repetitive litigation," "prevent inconsistent resolution of similar cases," and allow a mechanism to litigate claims that would be uneconomical to pursue on an individual basis.[185]

The class members do not have a strong interest in bringing suit individually against Defendants, most of them are experiencing financial problems, and the cost of litigation would be prohibitively expensive in individual litigation. The nature of these wrongful foreclosure claims and the cost and complexity of the litigation make it desirable to concentrate the case in this forum, as opposed to individual cases. It would be inefficient, costly, and a waste of judicial resources, as well as an invitation for conflicting results, to require each class member to litigate the common issues presented in this cause in multiple individual cases. It is economically infeasible for the many hundreds of class members to litigate their claims against Defendants on an individual basis given the enormous expense associated with litigating these common questions.[186]

Not only would responding to Wells Fargo's defensive pleadings and arguments likely require an individual litigant to incur legal fees and costs far in excess of the individual's

[182] TEX. R. CIV. P. 42.
[183] *Mullen v. Treasure Chest Casino, L.L.C.*, 186 F.3d 620, 627 (5th Cir. 1999).
[184] TEX. R. CIV. P. 42(b)(3)(A)-(D).
[185] *Ford Motor Co. v. Sheldon*, 22 S.W.3d 444, 452 (Tex. 2000).
[186] *Phillips Petro. Co. v. Shutts*, 472 U.S. 797, 809 (1985) (explaining that a class action is the superior method when it is necessary to "permit the plaintiffs to pool claims which would be uneconomical to litigate individually").

damages, but in addition, it would be extraordinarily wasteful for the judicial system if similar lawsuits had to be replicated on an individual basis. In fact, without a class the courthouse door would most likely be shut to many of the class members. Here, the core issues can be decided for all class members using common proof. Thus, a class action is the superior method for the fair and efficient adjudication of this action.

Finally, this single-state case should yield a very manageable trial because it only applies Texas law, based upon a single common Trust Agreement, section 12.002 of the TEXAS CIVIL PRACTICE & REMEDIES CODE, and Defendants' common company practices. Proceeding in this case on a class basis is superior to other available methods for the fair and efficient adjudication of this controversy.

L. Determining by Order Whether to Certify Class

According to TEXAS RULE OF CIVIL PROCEDURE 42(c), "the court must–at an early practicable time–determine by order whether to certify the action as a class action."[187] The Texas rule also requires far more detail than the corresponding federal rule, specifying that an order certifying a class action "must define the class and the class claims, issues, or defenses, and must appoint class counsel." Departing from prior practice, the rule expressly requires that any order granting or denying certification of a class for damages under Rule 42(b)(3) must state:

- The elements of each claim or defense asserted in the pleadings;
- Any issues of law or fact common to the class members;
- Any issues of law or fact affecting only individual class members;
- The issues that will be the object of most of the efforts of the litigants and the court;
- Other available methods of adjudication that exist for the controversy;
- Why the issues common to the members of the class do or do not predominate over individual issues;
- Why a class action is or is not superior to other available methods for the fair and efficient adjudication of the controversy; and

[187] TEX. R. CIV. P. 42(c).

- If a class is certified, how the class claims and any issues affecting only individual members, raised by the claims or defenses asserted in the pleadings, will be tried in a manageable, time efficient manner.

This is an innovative and important development, because it requires that a court denying class certification to conduct as rigorous an analysis as a court that certifies a class, and to give its reasoning. The rule also confirms that certifications under (b)(1) and (b)(2) do not require notice to the class, but that a court has discretion to order notice. In fact, however, the Texas Supreme Court held–after it adopted the amendment to the rule–that "trial courts considering certification under (b)(2) must consider, and due process may require, individual notice and opt-out rights to class members who seek monetary damages under any theory.[188]

As to a (b)(3) damages class, the rule attempts to insure that a minimal amount of information to class members is clearly provided. The notice must concisely and clearly state in plain, easily understood language:[189]

(i) the nature of the action;
(ii) the definition of the class certified;
(iii) the class claims, issues, or defenses;
(iv) that a class member may enter an appearance through counsel if the member so desires;
(v) that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded; and
(vi) the binding effect of a class judgment on class members under Rule 42 (c)(3).

M. Appointing Class Counsel

An attorney appointed to serve as class counsel must fairly and adequately represent the interests of the class.[190] Pursuant to Rule 42(g), the court *must* consider (1) the work counsel has done in identifying or investigating potential claims in the action, (2) counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in the action, (3)

[188] *Compaq Computer Corp. v. Lapray*, 135 S.W.3d 657, 667 (Tex. 2004).
[189] TEX. R. CIV. P. 42(b)(3).
[190] TEX. R. CIV. P. 42(g).

counsel's knowledge of the applicable law, and (4) the resources counsel will commit to representing the class.[191] Plaintiffs retained qualified counsel with significant experience prosecuting large consumer rights class actions and other complex litigation.[192] The adequacy requirement is met because Plaintiffs' counsel will fairly and adequately represent the interests of the class.

In addition, the court *may* (1) consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class, and (2) direct potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney fees and nontaxable costs.[193] The rule further provides that the "order appointing class counsel may include provisions about the award of attorney fees or nontaxable costs."[194]

N. Trial Plan

A trial plan is required in every certification order to allow reviewing courts to assure that all requirements for certification under Rule 42 have been satisfied.[195] The formulation of a trial plan assures that a trial court has fulfilled its obligation to rigorously analyze all certification prerequisites, and understands the claims, defenses, relevant facts, and applicable substantive law in order to make a meaningful determination of the certification issues.[196]

The Texas Supreme Court held that it is "improper to certify a class without knowing how the claims can and will likely be tried."[197] To make a proper analysis, going beyond the pleadings is necessary, as a court must understand the claims, defenses, relevant facts, and

[191] TEX. R. CIV. P. 42(g).
[192] Exhibit 14 – Affidavit and Declaration of W. Craft Hughes.
[193] TEX. R. CIV. P. 42.
[194] *Id.*
[195] *State Farm Mut. Auto. Ins. Co. v. Lopez*, 156 S.W.3d 550, 556 (Tex. 2004).
[196] *Id.*; *see also BMG Direct Mktg., Inc. v. Peake*, 178 S.W.3d 763, 778 (Tex. 2005); *North Am. Mortg. Co. v. O'Hara*, 153 S.W.3d 43, 44-45 (Tex. 2004).
[197] *Southwestern Refining Co., Inc. v. Bernal*, 22 S.W.3d 425, 435 (Tex. 2000).

applicable substantive law in order to make a meaningful determination of the certification issues. Any proposal to expedite resolving individual issues must not unduly restrict a party from presenting viable claims or defenses without that party's consent…If it is not determinable from the outset that the individual issues can be considered in a manageable, time-efficient, yet fair manner, then certification is not appropriate.[198]

After *Bernal*, numerous courts interpreted this holding to require a separate formal "trial plan," but the Supreme Court corrected that interpretation in 2002: "The plaintiffs argue correctly that *Bernal* should not be read to require a 'trial plan' by that name, set out in a separate document. Rule 42 does not require adoption of a trial plan as a mere formality; rather, according to *Bernal*, the rule requires a rigorous analysis and a specific explanation of how class claims are to proceed to trial."[199]

Regardless where it belongs, a trial plan is a necessity and must consider virtually every aspect of the class claims pled and all defenses raised. The Supreme Court has faulted trial plans that did not contain a rigorous analysis of (1) all causes of action, (2) how those claims will be tried, (3) every controlling substantive issue, (4) whether or how individual issues related to limitations will be determined, (5) how it would dispose of issues of reliance, (6) how it would try damages, both actual and punitive, (7) why individual issues did not predominate, and (8) why a class action is superior to other methods of resolving the dispute.[200] Accordingly, the superiority requirement is satisfied here.

[198] *Id.*, 22 S.W.3d 425, 435-436 (Tex. 2000) (internal citations omitted).
[199] *Schein v. Stromboe*, 102 S.W.3d 675, 689 (Tex. 2002).
[200] *State Farm Mutual Automobile Ins. Co. v. Lopez*, 156 S.W.3d 550, 557 (Tex. 2004) [first three points]; *Nat'l Western Life Ins. Co. v. Rowe*, 164 S.W.3d 389 (Tex. 2005) [remaining points].

CONCLUSION

The legal issues presented by this action are identical as to all Class Members. The factual issues are also identical across all Class Members, except for the factual issue of how many instruments that violate Texas law have been filed in the deed records relating to each respective Class Member. The formula for calculating each Class Member's portion of any relief afforded the class would be identical for every Class Member, save and except the variable for the number of instruments involved. Plaintiffs respectfully urge that this matter presents a case appropriate for class treatment.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray for class certification and for such other and further relief to which Plaintiffs may show themselves justly entitled.

Respectfully Submitted,

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ATTORNEY FOR PLAINTIFFS AND THE PROPOSED CLASS

CERTIFICATE OF SERVICE

By the execution of my signature below, I certify that a true and correct copy of the foregoing document has been served to the following parties on the 5th day of November, 2012 pursuant to rule 21(a) of the TEXAS RULES OF CIVIL PROCEDURE:

Mr. Peter C. Smart
CRAIN CATON & JAMES, P.C.
Five Houston Center, 17th Floor
1404 McKinney, Suite 1700
Houston, TX 77010
Attorney for Defendants, Wells Fargo Bank N.A., as Trustee For Carrington Mortgage Loan Trust, Tom Croft, New Century Mortgage Corporation and Carrington Mortgage Services, LLC

Via Certified Mail
#7011-2000-0001-1177-6299

W. Craft Hughes
E-Mail: craft@crafthugheslaw.com

CAUSE NO. 2011-36476

MARY ELLEN WOLF and DAVID WOLF	)	IN THE DISTRICT COURT
v.	)	
WELLS FARGO BANK, N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST..., TOM CROFT, NEW CENTURY MORTGAGE CORPORATION and CARRINGTON MORTGAGE SERVICES, LLC	)	HARRIS COUNTY, TEXAS
	)	151st JUDICIAL DISTRICT

****

ORAL DEPOSITION OF
DAVID WOLF
JULY 23, 2012

****

THE ORAL DEPOSITION OF DAVID WOLF, produced as a witness at the instance of the DEFENDANTS, and duly sworn, was taken in the above-styled and numbered cause on July 23, 2012, from 9:08 a.m. to 10:06 a.m., before Mary Beth Carson, CSR in and for the State of Texas, reported by machine shorthand, at the offices of Hughes Ellzey, LLP, 2700 Post Oak Boulevard, Suite 1120, Galleria Tower I, Houston, Texas 77056, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

EXHIBIT 1

could not obtain a title. So we have been between a rock and a hard place and that's why we have sued your company -- the company you're representing.

Q Let's not talk about those two. What do you mean, in your own words, "could not find title"?

A We hired a real estate agent and she did a title search and could not obtain the title. I have no idea what that entails. I'm not a Realtor. But she is and she is a professional licensed Realtor. She could not find a valid title to this property. We even had people knocking on our door wanting to buy the house, but we couldn't sell it because no one knew who owned it.

Q It sounds like what you're saying is your Realtor didn't know if you owned the house or not?

A The Realtor did not -- was not able to get the title. There was no way for her to get a title to the house. There was apparently some problem with the way that Carrington Mortgage or whoever -- I understand there were a lot of entities during that period of time related to Carrington Mortgage. It was -- it wasn't Carrington Mortgage, actually. What was the company that we actually had the loan with that went bankrupt, then Carrington Mortgage took that name over?

And, in any case, so there had been a failure

EXHIBIT 1

to correctly move that title through some processes and she could not determine who had the title. When we bought the house, we paid for a title search and we had the title at that time. So I don't know what happened.

Q Who did you pay for the title search for when you bought the house?

A We had title insurance from -- this was back when we bought it in 2000. It was the company that we went to the closing at was a title company over here on San Felipe right near the Loop.

Q And what was -- who was the Realtor that told you she couldn't find title? What's her name?

A Nancy Dowd.

Q D-o-w-d?

A I believe so. And we have correspondence from her to that effect.

Q And do you know what company she's with?

A No, I don't.

Q And did you go to a title insurance company at that time when you were trying to sell the house --

A No.

Q -- to try and see if they could find title?

A No. We had title when we bought the house. And suddenly the title had disappeared per our Realtor. So we just -- we were in the middle of two sick kids, I

EXHIBIT 1

was unemployed, and we were pretty much overwhelmed.

Q Are you still unemployed?

A No.

Q Who is your employer now?

A I am self-employed but I have quite a bit of hours that I'm able to bill.

Q Would you call yourself a consultant?

A Yes.

Q You are a consultant for something in the computer industry?

A Yes. I help smaller companies with their IT departments.

Q And you're fairly busy?

A Yes.

Q And when was it you were trying to sell the house when Nancy Dowd told you she couldn't find the title? When was that?

A In 2010.

Q That was after the workout agreement or after the exercise, trying to get a workout agreement?

A Yes.

Q What was -- in your own words, what was the workout agreement going to accomplish? What was going to be the end result?

A We were going to get a lower payment, and they

answer to it.

Q All right. And don't tell me what your lawyers have told you. But has any anybody else told you that something is wrong with the title?

A Just Nancy Dowd and my wife -- through my wife, actually.

Q Now, you said that some loan documents were lost at some point in time and you don't know if that was the loan modification in 2008 or the original loan with New Century that we've been looking at here in Exhibits 1 and 2 in 2006; is that correct?

A Yes. And you did mention Carrington Mortgage Services earlier, and now you said New Century. New Century was the company in 2006 that we refinanced with. They went bankrupt. And there was -- Carrington Mortgage started sending us the bills.

Q And so looking at Exhibit 2, it -- on here, it does say, right below the 400,000, it says the lender is New Century Mortgage Corporation. Do you see that? It's right here (indicating).

A Okay. I see it. Yes.

Q Do you recall in June of 2006 that you got a loan from New Century Mortgage Corporation?

A Yes.

Q And -- but that was a refinance?

don't -- you have lawyers who are going to make legal arguments. But just in your own words, do you think that the entities you've sued -- which is Wells Fargo as a trustee on behalf of a trust -- we don't need to name the trust because I'll probably get it wrong.

A I would like you to name that trust, please, exactly. What is that trust?

Q The name of it?

A Yes, please.

Q The name of the trust is Carrington Mortgage Loan Trust Series 2006-NC3 Asset Backed Pass-Through Certificates.

A Thank you.

Q And you have sued Wells Bank -- Wells Fargo Bank, N.A., as trustee for Carrington Mortgage Loan Trust, Series 2006-N3 (sic) Asset-Backed Pass-Through Certificates. And so my question is: Just in your own words, do you think that that entity does not own your mortgage?

MR. ELLZEY: Objection, form. You can answer the question.

THE WITNESS: Okay.

A Well, first of all, I have never signed any agreements with Wells Fargo. I was completely taken aback when we were sued by Wells Fargo.

EXHIBIT 1

Secondly, within the paperwork that Wells Fargo had in their lawsuit were people that we never even heard of that were supposedly the -- also the owners of this note, in their documentation. So we didn't know what that was about.

And after Nancy Dowd told us that the title was totally up in the air, we honestly didn't know and to this date don't know who to pay. And part of the reason that we brought the lawsuit was so that we could know who to pay and that, knowing that after we paid them, that we would own the house. We don't know who to pay.

And I have no idea how Wells Fargo fits into any of this or Carrington Mortgage for that matter at this point. Because according to Nancy Dowd, the title is totally up in the air and it wasn't when we bought the house.

Q (BY MR. SMART) Well, I heard what you said. And let me ask you and maybe you'll answer -- is it your contention that Wells Fargo Bank, N.A., as trustee for Carrington Mortgage Loan Trust Series 2006-NC3 Asset Backed Pass-Through Certificates does not own your mortgage?

MR. ELLZEY: Objection, form.

A Once again, I have never signed anything with Wells Fargo related to our mortgage. They came out of

EXHIBIT 1

OT
96
W

GF#1947001617 ATC/MD

Z394249
06/22/06 300867611 $76.00

Return To.

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

Prepared By,

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

RP 023-51-0071

ITC 06604907 [Space Above This Line for Recording Data]

THIS SECURITY INSTRUMENT SECURES AN EXTENSION OF CREDIT AS DEFINED BY SECTION 50(a)(6), ARTICLE XVI OF THE TEXAS CONSTITUTION.

TEXAS HOME EQUITY SECURITY INSTRUMENT
(First Lien)

This Security Instrument is not intended to finance Borrower's acquisition of the Property.

NOTICE OF CONFIDENTIALITY RIGHTS:

If you are a natural person, you may remove or strike any of the following information from this instrument before it is filed for record in the public records: your social security number or your driver's license number.

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 10, 12, 17, 19, 20 and 21 Certain rules regarding the usage of words used in this document are also provided in Section 15

(A) **"Security Instrument"** means this document, which is dated June 15, 2006 , together with all Riders to this document.

(B) **"Borrower"** is MARY ELLEN WOLF AND DAVID WOLF, WIFE AND HUSBAND

Borrower is the grantor under this Security Instrument

1007965339

FILED
2006 JUN 22 AM 8:18
COUNTY CLERK
HARRIS COUNTY, TEXAS

EXHIBIT 3

(C) "Lender" is New Century Mortgage Corporation

Lender is a Corporation
organized and existing under the laws of California
Lender's address is 18400 Von Karman, Suite 1000, Irvine, CA 92612

Lender includes any holder of the Note who is entitled to receive payments under the Note Lender is the beneficiary under this Security Instrument.
(D) "Trustee" is Eldon L. Youngblood

Trustee's address is
2711 North Haskell Avenue, Suite 2700 LB 25, Dallas, Texas 75204

(E) "Note" means the promissory note signed by Borrower and dated June 15, 2006
The Note states that Borrower owes Lender FOUR HUNDRED THOUSAND AND 00/100
Dollars
(U.S. $ 400,000.00) plus interest Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than 07/01/2036
(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property "
(G) "Extension of Credit" means the debt evidenced by the Note, as defined by Section 50(a)(6), Article XVI of the Texas Constitution and all the documents executed in connection with the debt
(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*].

☐ Texas Home Equity Condominium Rider ☒ Other, Fixed/Arm Rider
☐ Texas Home Equity Planned Unit Development 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" means 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) "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.

Initials: 1007965339

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

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

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Extension of Credit, and all 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 irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described Property located in the

County of Harris :

[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

See Legal Description Attached Hereto and Made a Part Hereof

RP 023-51-0073

Parcel ID Number: 0393210000016
6404 Buffalo Speedway
Houston
("Property Address")

which currently has the address of [Street]

[City], Texas 77005 [Zip Code]

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", provided however, that the Property is limited to homestead property in accordance with Section 50(a)(6)(H), Article XVI of the Texas Constitution.

Initials: 1007965339

EXHIBIT 3

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.

Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any 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 14. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Extension of Credit current. Lender may accept any payment or partial payment insufficient to bring the Extension of Credit current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payment 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 Extension of Credit 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 as described in the Note.

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

RP 023-61-0074

EXHIBIT 3

CARRINGTON-00538

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; and (c) premiums for any and all insurance required by Lender under Section 5. These items are called "Escrow Items." At origination or at any time during the term of the Extension of Credit, 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 14 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 twelve 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 twelve 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.

RP-023-61-0075

Initials: 1007965339

EXHIBIT 3

RP-023-31-0075

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 Extension of Credit.

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 Extension of Credit. 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 Extension of Credit, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

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

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

Initials: 007965339

EXHIBIT 3

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 21 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 now occupies and uses the Property as Borrower's Texas homestead and shall continue to occupy the Property as Borrower's Texas homestead for at least one year after the date of this Security Instrument, 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.

RP-025-94-0027

Initials: 1007965339

EXHIBIT 3

RP 023-51-0078

8. Borrower's Loan Application. Borrower's actions shall constitute actual fraud under Section 50(a)(6)(c), Article XVI of the Texas Constitution and Borrower shall be in default and may be held personally liable for the debt evidenced by the Note and this Security Instrument 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 or any other action or inaction that is determined to be actual fraud. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as a Texas homestead, the representations and warranties contained in the Texas Home Equity Affidavit and Agreement, and the execution of an acknowledgment of fair market value of the property as described in Section 27.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument, (b) appearing in court, and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9. No powers are granted by Borrower to Lender or Trustee that would violate provisions of the Texas Constitution applicable to Extensions of Credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution or other Applicable Law.

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. 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

Initials: 1007965339

Miscellaneous Proceeds If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2

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

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

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

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

Borrower shall be in default if any action or proceeding which is not commenced as a result of Borrower's default under other indebtedness not secured by a prior valid encumbrance against the homestead, 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 18, 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.

11. 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

Initials: 1007965339

RP-029-41-0219

EXHIBIT 3

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.

12. Joint and Several Liability; Security Instrument Execution; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any person who signs this Security Instrument, but does not execute the Note, (a) is signing this Security Instrument only to mortgage, grant and convey the person's interest in the Property under the terms of this Security Instrument and to comply with the requirements of Section 50(a)(6)(A), Article XVI of the Texas Constitution, (b) is not obligated to pay the sums secured by this Security Instrument and is not to be considered a guarantor or surety, (c) agrees that this Security Instrument establishes a voluntary lien on the homestead and constitutes the written agreement evidencing the consent of each owner and each owner's spouse, and (d) agrees that Lender and Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of the Note.

Subject to the provisions of Section 17, 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 19) and benefit the successors and assigns of Lender.

13. Extension of Credit 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 Extension of Credit is subject to a law which sets maximum Extension of Credit charges, and that law is finally interpreted so that the interest or other Extension of Credit charges collected or to be collected in connection with the Extension of Credit exceed the permitted limits, then: (a) any such Extension of Credit 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 will make this refund by making a payment to Borrower. **The Lender's payment of any such refund will extinguish any right of action Borrower might have arising out of such overcharge.**

14. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail (but, by certified mail if the notice is given pursuant to Section 19) 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

Initials: 1007965339

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.

15. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the laws of Texas. 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.

16. Borrower's Copies. Borrower shall be given at the time this Extension of Credit is made, a copy of all documents signed by Borrower related to the Extension of Credit.

17. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 17, "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 14 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.

18. 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, insofar as allowed by Section 50(a)(6), Article XVI of the Texas Constitution, 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

Initials: 1007965339

RP-023-91-0021

EXHIBIT 3

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 17

19. Sale of Note; Change of Loan Servicer; Notice of Grievance; Lender's Right-to-Comply. 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 Extension of Credit 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 14) 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 For example, Section 50(a)(6)(Q)(x), Article XVI of the Texas Constitution, generally provides that a lender has 60 days to comply with its obligations under the extension of credit after being notified by a borrower of a failure to comply with any such obligation. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 21 and the notice of acceleration given to Borrower pursuant to Section 17 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 19.

It is Lender's and Borrower's intention to conform strictly to provisions of the Texas Constitution applicable to Extensions of Credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution

All agreements between Lender and Borrower are hereby expressly limited so that in no event shall any agreement between Lender and Borrower, or between either of them and any third party, be construed not to allow Lender 60 days after receipt of notice to comply, as provided in this Section 19, with Lender's obligations under the Extension of Credit to the full extent permitted by Section 50(a)(6), Article XVI of the Texas Constitution. Borrower understands that the Extension of Credit is being made on the condition that Lender shall have 60 days after receipt of notice to comply with the provisions of Section 50(a)(6), Article XVI of the Texas Constitution. As a precondition to taking any action premised on failure of Lender to comply, Borrower will advise Lender of the noncompliance by a notice given as required by Section 14, and will give Lender 60 days after such notice has been received by Lender to comply Except as otherwise required by Applicable Law, only after Lender has received said notice, has had 60 days to comply, and Lender has failed to comply, shall all principal and interest be forfeited by Lender, as required by Section 50(a)(6)(Q)(x), Article XVI of the Texas Constitution in connection with failure by Lender to comply with its obligations under this Extension of Credit. Borrower will cooperate in reasonable efforts to correct any failure by Lender to comply with Section 50(a)(6), Article XVI of the Texas Constitution.

RP 023-61-0092

Initials: 1007965339

EXHIBIT 3

In the event that, for any reason whatsoever, any obligation of Borrower or of Lender pursuant to the terms or requirements hereof or of any other loan document shall be construed to violate any of the provisions of the Texas Constitution applicable to Extensions of Credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution, then any such obligation shall be subject to the provisions of this Section 19, and the document may be reformed, by written notice from Lender, without the necessity of the execution of any amendment or new document by Borrower, so that Borrower's or Lender's obligation shall be modified to conform to the Texas Constitution, and in no event shall Borrower or Lender be obligated to perform any act, or be bound by any requirement which would conflict therewith.

All agreements between Lender and Borrower are expressly limited so that any interest, Extension of Credit charge or fee collected or to be collected (other than by payment of interest) from Borrower, any owner or the spouse of any owner of the Property in connection with the origination, evaluation, maintenance, recording, insuring or servicing of the Extension of Credit shall not exceed, in the aggregate, the highest amount allowed by Applicable Law.

It is the express intention of Lender and Borrower to structure this Extension of Credit to conform to the provisions of the Texas Constitution applicable to Extensions of Credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution. If, from any circumstance whatsoever, any promise, payment, obligation or provision of the Note, this Security Instrument or any other loan document involving this Extension of Credit transcends the limit of validity prescribed by Applicable Law, then any promise, payment, obligation or provision shall be reduced to the limit of such validity, or eliminated as a requirement if necessary for compliance with such law, and such document may be reformed, by written notice from Lender, without the necessity of the execution of any new amendment or new document by Borrower.

Lender's right-to-comply as provided in this Section 19 shall survive the payoff of the Extension of Credit. The provision of this Section 19 will supersede any inconsistent provision of the Note or this Security Instrument.

20. Hazardous Substances. As used in this Section 20: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

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

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a

Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

21. 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 17 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 will 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 and any other remedies permitted by Applicable Law. Insofar as allowed by Section 50(a)(6), Article XVI of the Texas Constitution, Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 21, including, but not limited to, court costs, reasonable attorneys' fees and costs of title evidence.

The lien evidenced by this Security Instrument may be foreclosed upon only by a court order. Lender may, at its option, follow any rules of civil procedure promulgated by the Texas Supreme Court for expedited foreclosure proceedings related to the foreclosure of liens under Section 50(a)(6), Article XVI of the Texas Constitution ("Rules"), as amended from time to time, which are hereby incorporated by reference. The power of sale granted herein shall be exercised pursuant to such Rules, and Borrower understands that such power of sale is not a confession of judgment or a power of attorney to confess judgment or to appear for Borrower in a judicial proceeding.

22. Power of Sale. It is the express intention of Lender and Borrower that Lender shall have a fully enforceable lien on the Property. It is also the express intention of Lender and Borrower that Lender's default remedies shall include the most expeditious means of foreclosure available by law. Accordingly, Lender and Trustee shall have all the powers provided herein except insofar as may be limited by the Texas Supreme Court. To the extent the Rules do not specify a procedure for the exercise of a power of sale, the following provisions of this Section 22 shall apply, if Lender invokes the power of sale. Lender or Trustee shall give notice of the time, place and terms of sale by posting and filing the notice at least 21 days prior to sale as provided by Applicable Law. Lender shall mail a copy of the notice of sale to Borrower in the manner prescribed by Applicable Law. Sale shall be made at public vendue. The sale must begin at the time stated in the notice of sale or not later than three hours after that time and between the hours of 10 a.m. and 4 p.m. on the first Tuesday of the month. Borrower authorizes Trustee to sell the Property to the highest bidder for cash in one or more parcels and in any order Trustee determines. Lender or its designee may purchase the Property at any sale. In the event of any conflict between such procedure and the Rules, the Rules shall prevail, and this provision shall automatically be reformed to the extent necessary to comply.

RP 023-61-0084

EXHIBIT 3

Trustee shall deliver to the purchaser who acquires title to the Property pursuant to the foreclosure of the lien a Trustee's deed conveying indefeasible title to the Property with covenants of general warranty from Borrower. Borrower covenants and agrees to defend generally the purchaser's title to the Property against all claims and demands. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, court costs and reasonable Trustee's and attorneys' fees, (b) to all sums secured by this Security Instrument, and (c) any excess to the person or persons legally entitled to it.

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 that sale. If possession is not surrendered, Borrower or such person shall be a tenant at sufferance and may be removed by writ of possession or other court proceeding

23. Release. Within a reasonable time after termination and full payment of the Extension of Credit, Lender shall cancel and return the Note to the owner of the Property and give the owner, in recordable form, a release of the lien securing the Extension of Credit or a copy of an endorsement of the Note and assignment of the lien to a lender that is refinancing the Extension of Credit. Owner shall pay only recordation costs. **OWNER'S ACCEPTANCE OF SUCH RELEASE, OR ENDORSEMENT AND ASSIGNMENT, SHALL EXTINGUISH ALL OF LENDER'S OBLIGATIONS UNDER SECTION 50(a)(6), ARTICLE XVI OF THE TEXAS CONSTITUTION.**

24. Non-Recourse Liability. Lender shall be subrogated to any and all rights, superior title, liens and equities owned or claimed by any owner or holder of any liens and debts outstanding immediately prior to execution hereof, regardless of whether said liens or debts are acquired by Lender by assignment or are released by the holder thereof upon payment.

Subject to the limitation of personal liability described below, each person who signs this Security Instrument is responsible for ensuring that all of Borrower's promises and obligations in the Note and this Security Instrument are performed.

Borrower understands that Section 50(a)(6)(C), Article XVI of the Texas Constitution provides that the Note is given without personal liability against each owner of the Property and against the spouse of each owner unless the owner or spouse obtained this Extension of Credit by actual fraud. This means that, absent such actual fraud, Lender can enforce its rights under this Security Instrument solely against the Property and not personally against the owner of the Property or the spouse of an owner.

If this Extension of Credit is obtained by such actual fraud, then, subject to Section 12, Borrower will be personally liable for the payment of any amounts due under the Note or this Security Instrument. This means that a personal judgment could be obtained against Borrower, if Borrower fails to perform Borrower's responsibilities under the Note or this Security Instrument, including a judgment for any deficiency that results from Lender's sale of the Property for an amount less than is owing under the Note, thereby subjecting Borrower's other assets to satisfaction of the debt.

If not prohibited by Section 50(a)(6)(C), Article XVI of the Texas Constitution, this Section 24 shall not impair in any way the lien of this Security Instrument or the right of Lender to collect all sums due under the Note and this Security Instrument or prejudice the right of Lender as to any covenants or conditions of the Note and this Security Instrument.

Initials: [signature] 1007965339

25. Proceeds. Borrower has not been required to apply the proceeds of the Extension of Credit to repay another debt except a debt secured by the Property or debt to another lender.

26. No Assignment of Wages. Borrower has not assigned wages as security for the Extension of Credit.

27. Acknowledgment of Fair Market Value. Lender and Borrower have executed a written acknowledgment as to the fair market value of Borrower's Property on the date the Extension of Credit is made.

28. Substitute Trustee; Trustee Liability. All rights, remedies and duties of Trustee under this Security Instrument may be exercised or performed by one or more trustees acting alone or together. Lender, at its option and with or without cause, may from time to time, by power of attorney or otherwise, remove or substitute any trustee, add one or more trustees, or appoint a successor trustee to any Trustee without the necessity of any formality other than a designation by Lender in writing. Without any further act or conveyance of the Property the substitute, additional or successor trustee shall become vested with the title, rights, remedies, powers and duties conferred upon Trustee herein and by Applicable Law.

Trustee shall not be liable if acting upon any notice, request, consent, demand, statement or other document believed by Trustee to be correct. Trustee shall not be liable for any act or omission unless such act or omission is willful.

29. Acknowledgment of Waiver by Lender of Additional Collateral. Borrower acknowledges that Lender waives all terms in any of Lender's loan documentation (whether existing now or created in the future) which (a) create cross default; (b) provide for additional collateral, and/or (c) create personal liability for any Borrower (except in the event of actual fraud), for the Extension of Credit. This waiver includes, but is not limited to, any (a) guaranty, (b) cross collateralization, (c) future indebtedness, (d) cross default; and/or (e) dragnet provisions in any loan documentation with Lender.

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EXHIBIT 3

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

[DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. THIS DOCUMENT MUST BE EXECUTED AT THE OFFICE OF LENDER, AN ATTORNEY AT LAW OR A TITLE COMPANY. YOU MUST RECEIVE A COPY OF THIS DOCUMENT AFTER YOU HAVE SIGNED IT.]

YOU MAY, WITHIN 3 DAYS AFTER CLOSING, RESCIND THIS EXTENSION OF CREDIT WITHOUT PENALTY OR CHARGE.

Printed Name: Mary Ellen Wolf
[Please Complete]

Mary Ellen Wolf (Seal) -Borrower

Printed Name: David Wolf
[Please Complete]

David Wolf (Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

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EXHIBIT 3

STATE OF TEXAS
County of Harris

Before me MA LOU LEWIS on this day personally appeared
David Wolf
Mary Ellen Wolf

known to me (or proved to me on the oath of ~~or through~~ TX Drivers License) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she/they executed the same for the purposes and consideration therein expressed

Given under my hand and seal of office this 15 day of June, 2024.

(Seal)

MA. LOU LEWIS
Notary Public, State of Texas
My Commission Expires
May 28, 2008

Notary Public

My Commission Expires: 5/28/08

2# 023-61-0038

EXHIBIT 3

Exhibit A

The South 1/2 of Lot Six (6), Block Thirty (30) of WEST UNIVERSITY PLACE, an addition in Harris County, Texas, according to the map or plat thereof recorded in Volume 9, Page 13, of the Map Records of Harris County, Texas.

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EXHIBIT 3

THIS EXTENSION OF CREDIT HAS A VARIABLE RATE OF INTEREST AS AUTHORIZED BY SECTION 50(a)(6)(O), ARTICLE XVI OF THE TEXAS CONSTITUTION

TEXAS HOME EQUITY FIXED/ADJUSTABLE RATE RIDER

(LIBOR 6 Month Index (As Published in *The Wall Street Journal*) - Rate Caps)
(First Lien)

THIS TEXAS HOME EQUITY FIXED/ADJUSTABLE RATE RIDER is made this **15th** day of **June** , **2006** and is incorporated into and shall be deemed to amend and supplement the Security Instrument of the same date given by the undersigned (the "Borrower") to secure Borrower's Texas Home Equity Fixed/Adjustable Rate Note (the "Note") to

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

6404 Buffalo Speedway, Houston, TX 77005
(Property Address)

THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT BORROWER'S ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

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

A. ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial fixed interest rate of **10.150** %. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of **July, 2006** and the adjustable interest rate I will pay may change on that day every 6th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for 6 month U.S. dollar-denominated deposits in the London market ("LIBOR"), 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 that is based upon comparable information. The Note Holder will give me notice of this choice.

Initials: _____

RP 023-51-6050

EXHIBIT 3

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding **Six And Seven Tenth(s)** percentage point(s) (**6.700** %) 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 successive monthly payments, each of which will exceed the amount of accrued interest as of the date of the scheduled installment. 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 **11.650** % or less than **10.150** %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than one and one-half percentage point(s)(1.500%) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than **17.150** %, or less than **10.150** %.

(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 initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any 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.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Texas Home Equity Fixed/Adjustable Rate Rider.

[DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. THIS DOCUMENT MUST BE EXECUTED AT THE OFFICE OF THE LENDER, AN ATTORNEY AT LAW OR A TITLE COMPANY. YOU MUST RECEIVE A COPY OF THIS DOCUMENT AFTER YOU HAVE SIGNED IT.]

Mary Ellen Wolf — Borrower	David Wolf — Borrower
Borrower	Borrower
Borrower	Borrower

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EXHIBIT 3

mcdonnell
PROPERTY ANALYTICS

Securitization Analysis and Foreclosure Forensics™

Property of Mary Ellen Wolf and David Wolf

EXHIBIT 5

P02350

Securitization Analysis & Foreclosure Forensics™

Documenting the Gaps in the Chain of Title

Borrower

Mary Ellen Wolf and David Wolf
6404 Buffalo Speedway, County of Harris, Houston, Texas 77005

Lender

New Century Mortgage Corporation

Assignee

Carrington Mortgage Loan Trust, Series 2006-NC3

October 1, 2012

Prepared By
MCDONNELL PROPERTY ANALYTICS, INC.
15 Cape Lane
Brewster, MA 02631
Office Tel: 774-323-0892 | Fax: 774-323-0894
Marie@mcdonnellanalytics.com

Table of Contents

Preface

PURPOSE & USE OF REPORT

The purpose of this examination is to illuminate:

1. the ownership history of the subject Note and Security Instrument ("Mortgage Loan");
2. whether the party presently claiming to own the subject Mortgage Loan is supported or contradicted by the facts unearthed through my investigation;
3. to investigate whether the subject Note and Security Instrument were properly conveyed to Wells Fargo Bank, N.A. as Trustee of the Carrington Mortgage Loan Trust, Series 2006-NC3 as required by the Pooling and Servicing Agreement executed on August 1, 2006 which governs the REMIC Trust; and
4. to examine the Transfer of Lien filed with the Harris County Clerk's Office on October 20, 2009 that purports to transfer the subject Note and Security Instrument to Wells Fargo Bank, N.A., as Trustee, for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates and analyze whether it is factually accurate and therefore valid, or factually inaccurate and therefore invalid.

QUALIFICATIONS

I, Marie McDonnell, am a Mortgage Fraud and Forensic Analyst and a credentialed Certified Fraud Examiner, a coveted designation awarded by the Association of Certified Fraud Examiners. I am the founder and managing member of Truth In Lending Audit & Recovery Services, LLC of Orleans, Massachusetts and have twenty-five (25) years' experience in transactional analysis, mortgage auditing, and mortgage fraud investigation. I am also the President of McDonnell Property Analytics, Inc., a litigation support and research firm that provides mortgage-backed securities research services and foreclosure forensics to attorneys nationwide. McDonnell Property Analytics also advises and performs services for county registers of deeds, attorneys general, courts and other governmental agencies.

I am the same Marie McDonnell who provided amicus briefs to the Massachusetts Land Court and to the Massachusetts Supreme Judicial Court in the landmark cases *U.S. Bank National Association v. Ibanez* and *Wells Fargo Bank, N.A. v. LaRace*, 458 Mass. 637 (2011) in which the courts vacated two foreclosures prosecuted by trustees of securitization trusts.[1] My seminal contribution was to shift the debate beyond defective assignments of mortgage to an examination of the fatal breaks in the chain of title that occurred due to the utter failure of the entities that securitized these mortgages to document the transfers between themselves.

[1] McDonnell's *Amicus* Brief is available on the Massachusetts Supreme Judicial Court's website at: http://www.ma-appellatecourts.org/search_number.php? dno=SJC-10694&get=Search.

More recently, John O'Brien, Register of the Essex Southern District Registry of Deeds in Salem, Massachusetts, commissioned McDonnell Property Analytics, Inc. to conduct a forensic examination to test the integrity of his registry due to his concerns that: 1) Mortgage Electronic Registration Systems, Inc. ("MERS") boasts that its members can avoid recording assignments of mortgage if they register their mortgages into the MERS System; and 2) due to the robo-signing scandal spotlighting Linda Green as featured in a 60 Minutes exposé on the subject earlier this spring.

METHODOLOGY

Over the past twenty-five (25) years, I have developed, extensively tested, and reliably employed a proprietary set of auditing tools and protocols that enable me to track with precision a lender's loan servicing system and determine with particularity whether a problem is the result of borrower failure, lender malfeasance, or whether it is technology and policy related.

My process begins by assembling the necessary documentation. I then read the loan agreement and set up an amortization schedule reflecting the terms of the loan in a Microsoft Excel spreadsheet. Once accomplished, I compare the declining principal balance in my analysis to the lender's monthly mortgage statements to reconcile my accounting with the lender's records.

This mapping modality enables me to pinpoint where and why problems arise. Through my forensic auditing skills, I am able to detect and quantify a lender's failure to comply with state and federal truth in lending laws; expose errors, omissions, or the imposition of unauthorized fees and costs; describe inappropriate handling of the escrow and suspense accounts; uncover equity skimming schemes; and discover other unfair and deceptive acts and practices as these are defined by the Federal Trade Commission. I am also able to reconstruct lost or suppressed data through a variety of forensic accounting techniques; detect unconscionable loan terms; identify predatory lending schemes that may violate state and federal consumer protection statutes; and uncover fraud.

With respect to my forensic examination of the ownership history of the transaction in question, I used the Bloomberg Terminal, the Securities and Exchange Commission's EDGAR database, and SEC Info^{SM}. I also accessed the online database relative to this matter with the Harris County Clerk's Office, and the docket for Cause No. 2011-36476 in the District Court of Harris County, Texas, 151st Judicial District.

ORGANIZATION OF THIS REPORT

I have organized this report into well-defined sections so that the reader can efficiently move through the content and access specific information as follows:

- **Table of Contents**: The Table of Contents provides an overview of the report's organization and gives page numbers for each section or sub-section for the reader's convenience.

- **Summary**: The Summary and Conclusion sections are virtually identical and provide the reader with a synopsis of my findings and expert opinions.

- **Abstract**: The Abstract describes the key documents that I researched and examined as the basis for forming my opinions.

- **Research**: The Research section is an invaluable source of information that provides hyperlinks to the SEC's public access website as well as a rundown of the parties to the securitization of the subject Mortgage Loan describing their respective roles.

- **Analysis**: the Analysis section is didactic in nature and steps the reader through the securitization process; describes the defects in the documentation that undermines the securitization and foreclosure process; and describes the evidence that would be necessary to prove ownership of the subject Mortgage Loan.

- **Conclusions**: The conclusion section recaps my critical findings and draws logical inferences from the facts as they became known through my analysis.

- **Table of Exhibits**: The Table of Exhibits lists the documents referenced throughout the report for ease of reference.

~ Continued Below ~

Summary

My forensic examination of the documents and records supplied for my review, when compared with credible evidence compiled through the use of the Bloomberg Terminal and further researched via the Securities and Exchange Commission's public access website allowed me to conclude the following with respect to the subject residential mortgage transaction made by and between the *Borrowers*, Mary Ellen Wolf and David Wolf, and their *Lender*, New Century Mortgage Corporation:

- ☑ The Mortgage Loan in question – ***or an economic interest therein*** – was allegedly securitized into the Carrington Mortgage Loan Trust, Series 2006-NC3 on or about August 10, 2006. Therefore, the Pooling and Servicing Agreement that established the Trust governs the conveyance of the Note and Security Instrument ("Mortgage Loan") in accordance with the laws of the State of New York.

- ☑ Before the subject Mortgage Loan could be securitized the *Lender*, New Century Mortgage Corporation, had to negotiate the Note and assign the Security Instrument to NC Capital Corporation.

- ☑ In turn, NC Capital Corporation was required to sell, transfer and assign the Wolfs' Mortgage Loan to Carrington Securities, LP who served as *Seller* pursuant to the Mortgage Loan Purchase Agreement and the Pooling and Servicing Agreement referenced herein.

- ☑ Presently, there is not one scintilla of evidence that these critical transfers actually took place.

- ☑ These two fundamental breaks in the chain of title undermine the securitization of the subject Mortgage Loan and raise a genuine issue of material fact with respect to who the legal owner and holder of the Wolfs' Note and Security Instrument is and was at all relevant times in question.

- ☑ The Transfer of Lien executed by Tom Croft on October 15, 2009 and recorded with the Harris County Clerk's Office on October 20, 2009 is not the operative document by which the Wolfs' Mortgage Loan was conveyed to Wells Fargo Bank, N.A. as Trustee of Carrington Mortgage Loan Trust, Series 2006-NC3.

- ☑ Pursuant to Section 2.01 of PSA, the *Depositor* – and only the *Depositor*, Stanwich Asset Acceptance Company, L.L.C. – had the legal capacity to transfer the Mortgage Loans into the Trust.

- ☑ Moreover, the *Depositor* was required to sell, assign, transfer, and deliver the Mortgage Loans to the *Trustee* for the *Issuing Entity* on or about August 10, 2006 when the Deal closed.

- ☑ Croft's Transfer of Lien, dated October 15, 2011 is more than ***five (5) years too late***.

- ☑ This Transfer of Lien is a deception that was purposely prepared to create the appearance in the public record that Wells Fargo Bank, N.A. as *Trustee* had the authority to initiate foreclosure proceedings against the Wolfs' Property on behalf of the *Issuing Entity*, while suppressing the fact – and thus avoiding the burden of proof – that behind the scenes, the Wolfs' Note and Security Instrument had been sold four (4) times and was allegedly securitized on or about August 10, 2006.

- ☑ The creation and recordation of the October 15, 2009 Transfer of Lien was a feigned and fraudulent attempt to cure the gaps in the chain of title.

- ☑ All other documents that were filed with the Harris County Clerk's Office and with the District Court for the 151st Judicial District that depend upon the validity of the Transfer of Lien are also tainted with fraud and, therefore, they should be deemed to have no legal force and effect.

- ☑ Based on the facts and evidence available as of this writing, and with a reasonable degree of probability, it is my expert opinion that:

A. Wells Fargo Bank, N.A., is not the current owner and holder of Wolfs' Note and Security Instrument ("Mortgage Loan");

B. Wells Fargo Bank, N.A., has never been the owner and holder of Wolfs' Mortgage Loan;

C. The Wolfs' Mortgage Loan was never transferred into the 2006-NC3 Trust for which Wells Fargo Bank, N.A. is *Trustee* in strict compliance with the Pooling and Servicing Agreement executed on August 1, 2006 between the parties which is governed by the laws of the State of New York;

D. The Wolfs' Mortgage Loan was never physically transferred from the *Lender/Originator* (New Century Mortgage Corporation) to the *Responsible Party* (New Century Capital Corporation); or properly conveyed from the *Responsible Party* to the *Seller/Sponsor* (Carrington Securities, LP) of the 2006-NC3 Trust as required by the Mortgage Loan Purchase Agreement executed on August 10, 2006 between the parties;

E. The Wolfs' Mortgage Loan was never physically transferred from the *Seller/Sponsor* (Carrington Securities, LP) to the *Depositor* (Stanwich Asset Acceptance Company, LLC) of the 2006-NC3 Trust or properly conveyed as required by the Mortgage Loan Purchase Agreement referenced above;

F. The Wolfs' Mortgage Loan was never physically transferred from the *Depositor* (Stanwich Asset Acceptance Company, LLC) or properly conveyed to the *Trustee* for the 2006-NC3 Trust as required by the

Pooling and Servicing Agreement dated August 1, 2006 by and between the parties; and

G. The Wolfs' Mortgage Loan was never physically transferred from Wells Fargo Bank, N.A., as *Trustee* of the 2006-NC3 Trust to the *Document Custodian* (Deutsche Bank National Trust Company) as mandated by the Pooling and Servicing Agreement.

The factual and expert opinions I reached above are based on my review of and reliance on the documents and information supplied to date. I reserve the right to amend and supplement my opinion based on my review of documents and data supplied to me in the future.

~ Continued Below ~

Abstract

SUBJECT

The subject of this analysis concerns a residential mortgage transaction that took place on June 15, 2006 ("Settlement Date"), by and between Mary Ellen Wolf and David Wolf, Wife and Husband, ("Borrowers" or "the Wolfs") and New Century Mortgage Corporation ("Lender" or "New Century").

On the Settlement Date, the Borrowers executed a Texas Home Equity Fixed/Adjustable Rate Note ("Note") in favor of New Century and granted a Texas Home Equity Security Instrument (also referred to herein as "Security Instrument" or "Deed of Trust") to obtain funds in the amount of $400,000.00. To ensure repayment of the debt, the Borrowers pledged residential property located at 6404 Buffalo Speedway, County of Harris, Houston, Texas 77005 ("Property"). The Security Instrument and a Texas Home Equity Affidavit and Agreement were recorded in the Harris County Clerk's Office ("Official Records") on June 22, 2006 as Documents #Z394249 and #Z394250 respectively. (*See* Exhibit A. – Security Instrument, 06/15/2006)

Definition (D) of the Deed of Trust designates Eldon L. Youngblood as Trustee under the Security Instrument.

The Fixed/Adjustable Rate Note indicates that the loan in question is a high-priced subprime variable rate mortgage loan that began with a fixed interest rate of 10.150% for the first two (2) years after which interest rate and monthly payments were to adjust once every six (6) months for the remaining twenty-eight (28) year term to maturity. The distinguishing loan level details are described in the Research Section of this report. (*See* Exhibit B. – Fixed/Adjustable Rate Note, 06/15/2006)

The Fixed/Adjustable Rate Rider reiterates the terms set forth in the Fixed/Adjustable Rate Note and is incorporated into and deemed to amend and supplement the Deed of Trust. (*See* Exhibit C. − Fixed/Adjustable Rate Rider, 06/15/2006)

Page 5 of the five-page Note contains an undated indorsement in blank, executed by Steve Nagy,[2] who purports to be VP of Records Management for New Century Mortgage Corporation. The indorsement states: "Pay to the order of, without recourse" i.e., no payee was named in the indorsement.[3] (*See* Exhibit B. − Indorsement to Note, undated, Page 5)

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[2] Due to the volume of foreclosure related documents Mr. Nagy executed each day, counsel for New Century admits that his signature was often electronically attached to assignments. The signature as it appears on the instant Note appears to have been imposed with a rubber stamp. http://www.scribd.com/doc/57612366/THEY-DID-ASSIGNMENTS-IN-BLANK-HOW-NEW-CENTURY-MORTGAGE-AND-HOME123-CORPORATION-DID-IT

[3] This particular version of the Note was presented at the deposition of Tom Croft, a Defendant in litigation brought by the Wolfs as class representatives in a wrongful foreclosure lawsuit.

On or about October 15, 2009, Tom Croft, acting in his alleged capacity as Vice President of REO for New Century Mortgage Corporation ("Assignor"), executed a Transfer of Lien ("Transfer") "To Be Effective 9/30/2009," which purports to transfer the Wolf Note and Lien ("Mortgage Loan") from New Century Mortgage Corporation to Wells Fargo Bank N.A., as Trustee, for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates." This Transfer of Lien was notarized on October 15, 2009 and subsequently recorded in the Official Records on October 20, 2009 as Document #20090478521. (*See* Exhibit D. – Transfer of Lien, 10/15/2009)

On or about February 3, 2011, Tom Croft, acting in his alleged capacity as Attorney-in-Fact and custodian of records for Wells Fargo, N.A. [sic], as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates, and further, as an alleged VP of REO for Carrington Mortgage Services, LLC, executed a Verification of Application and Affidavit "*based on his specialized knowledge, training and experience*" that the facts contained therein were true and accurate.

On February 11, 2011, Thomas D. Pruyn of the Balcom Law Firm filed an Application Under Texas Rule of Civil Procedure 736 Seeking an Order to Proceed with Foreclosure Sale ("Application") on behalf of Wells Fargo Bank, N.A., as Trustee, for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates. This Application was filed in The District Court of Harris County as Case # 2011-08930 together with the above referenced Verification of Application and Affidavit executed by Tom Croft. (*See* Exhibit E. − Application to Proceed with Foreclosure, 02/11/2011)

On May 13, 2011, Tom Croft, acting in this instance in his alleged capacity as Vice President and custodian of records for Carrington Mortgage Services, LLC, executed a Verification of First Amended Application and Affidavit restating his specialized knowledge, training and experience and that the facts contained therein were true and accurate.

On or about May 26, 2011, Thomas D. Pruyn of the Balcom Law Firm filed a First Amended Application Under Texas Rule of Civil Procedure 736 Seeking an Order to Proceed with Foreclosure Sale attached to which he appended the above referenced Verification of First Amended Application and Affidavit executed by Tom Croft. This paperwork was certified by Thomas D. Pruyn, Esq. and filed with the District Court of Harris County on May 26, 2011. (*See* Exhibit F. − First Amended Application to Proceed with Foreclosure, 05/26/2011)

~ Continued Below ~

Research

TRANSACTION DETAILS

Source Documents:	Fixed/Adjustable Rate Note; Security Instrument; Fixed/Adjustable Rate Rider
Settlement Date:	June 15, 2006
Borrower:	Mary Ellen Wolf and David Wolf, Wife and Husband
Lender:	New Century Mortgage Corporation
Trustee:	Eldon L. Youngblood, Dallas Texas 75204
Nominee:	None
Zip Code	77005
Principal Amount:	$400,000.00
First Payment Date:	August 1, 2006
Maturity Date:	July 1, 2036
Riders:	Fixed /ARM Rider

LOAN LEVEL DETAILS

Source Documents:	Fixed/Adjustable Rate Note; Security Instrument; Fixed/Adjustable Rate Rider
Loan Number:	1007965339
Initial Interest Rate:	10.150%
Initial Monthly Pmt.:	$3,554.71
Type of Loan:	High-priced, subprime, Fixed (2-Yrs,)/Adjustable Rate (28 Yrs.)
Index:	The “Index” is the average of interbank offered rates for 6 month U.S. dollar-denominated deposits in the London market (“LIBOR”), as published in *The Wall Street Journal.*
1st Rate Change:	July 1, 2008
Reset Intervals:	…on that day every 6th month thereafter.
Life Rate Cap:	17.150% limited to 11.650% at the first change date.
Life Rate Floor:	10.150%
Adjustable Cap:	1.500%
Adjustable Floor:	1.500%
Margin:	6.700%
Neg. Am. Limit:	0.000%

LOOKUP REFERENCES

Source Documents:	Bloomberg RMBS Database; EDGAR Website; SEC Info Website
Trust I.D.:	Carrington Mortgage Loan Trust, Series 2006-NC3
EDGAR Website:[4]	http://www.sec.gov/cgi-bin/browse-edgar?company=&match=&CIK=1369384&filenum=&State=&Country=&SIC=&owner=exclude&Find=Find+Companies&action=getcompany
SEC Info Website:[5]	http://www.secinfo.com/$/SEC/Registrant.asp?CIK=1369384
Trust Agreement:	*See* PSA
Prospectus: 424B5	http://www.secinfo.com/dsvrn.v6A7.htm
PSA:	http://www.secinfo.com/dsvrn.v6v8.d.htm
Form 8-K:	http://www.secinfo.com/$/SEC/Documents.asp?CIK=1369384&Party=BFO&Type=8-K&Label=Current+Report+%2D%2D+Form+8%2DK
8-K Filing for 8/10/06 And Exhibits dated August 10, 2006	http://www.secinfo.com/dsvrn.v6v8.htm Exhibit 10.1 Pooling and Servicing Agreement Exhibit 10.2 Mortgage Loan Purchase Agreement 10.3 Confirmation to an ISDA Master Agreement 10.4 Schedule to an ISDA Master Agreement
MLPA:	*See* above 8-K Filing Link, Exhibit 10.2
Loan Schedule:	http://www.secinfo.com/dsvrn.v5M3.htm 7/20/06 FWP; Loan Number 6668; *Referenced as* Schedule I of PSA – ("FILED by PAPER")
Governing Law:	The State of New York (*See* Section 13.04 of PSA)

SECURITIZATION DETAILS

Source Documents:	Rule 424(b)(5) Prospectus & Prospectus Supplement
Lender:	New Century Mortgage Corporation

[4] **EDGAR**, the **Electronic Data-Gathering, Analysis, and Retrieval** system, performs automated collection, validation, indexing, acceptance, and forwarding of submissions by companies and others who are required by law to file forms with the U.S. Securities and Exchange Commission (the "SEC"). The database is freely available to the public via the Internet at: http://www.sec.gov/.

[5] ***SEC Info***[SM] is a service of *Fran Finnegan & Company* that provides real-time access to documents that were first filed at and disclosed by the *U.S. Securities and Exchange Commission (SEC)* pursuant to Federal law or the *Canadian Securities Administrators (CSA)* pursuant to Canadian law by a Filer or Filing Agent who is an SEC/CSA Registrant.

The benefit of using ***SEC Info***[SM] rather than **EDGAR** to search the official filings is the enhancements such as hyperlinks between *Table of Contents* and *Sections* that allow the user to quickly and efficiently search, view and print relevant information contained within documents that often consist of hundreds of pages of complex contract and disclosure language. To learn more about ***SEC Info***[SM] visit: http://www.secinfo.com/$/About.asp

Originator(s):	New Century Mortgage Corporation, or Home123 Corporation
Responsible Party:	NC Capital Corporation, a California Corporation
Seller/Sponsor:	Carrington Securities, LP, a Delaware Limited Partnership
Depositor:	Stanwich Asset Acceptance Company, L.L.C., a Delaware Limited Liability Company
Issuing Entity:	Carrington Mortgage Loan Trust, Series 2006-NC3
Trustee:	Wells Fargo Bank, N.A., a National Banking Association
Delaware Trustee:	Not Applicable
Servicer:	New Century Mortgage Corporation, a California Corporation
Custodian:	Deutsche Bank National Trust Company
Underwriter:	Carrington Investment Services, LLC, Deutsche Bank Securities, Bear, Stearns & Co. Inc.
Cut-Off Date:	August 1, 2006
Closing Date:	August 10, 2006

MERS RESEARCH

Source Documents:	Mortgage; MERS Website at: https://www.mers-servicerid.org/sis/
MOM:[6]	No
MIN Number:[7]	None
Lender I.D.:	Not Applicable
Servicer I.D.:	Not Applicable
Investor I.D.:	Not Applicable
Status:	Not Applicable

TITLE DOCUMENTS SUPPLIED

HARRIS COUNTY CLERK'S OFFICE, TEXAS

EXECUTION DATE	RECORDING DATE	DOCUMENT NUMBER	INSTRUMENT
06/15/2006	06/22/2006	00000Z394249	Home Equity Security Instrument (with Rider) (Deed of Trust)
09/30/2009	10/20/2009	20090478521	Transfer of Lien

[6] In the MERS lexicon, "MOM" stands for "MERS as original mortgagee."

[7] In the MERS lexicon, "MIN" stands for Mortgage Identification Number which is a unique 18-digit number assigned to each mortgage registered into the MERS® System.

Analysis

My examination of the evidence available as of this writing revealed the following facts:

I. Securitization Analysis

(1) Using my access to Bloomberg Professional's database of Residential Mortgage Backed Securities ("Bloomberg"), I found that the subject Note and Security Instrument ("Mortgage Loan") is presently being tracked as an asset of the Carrington Mortgage Loan Trust, Series 2006-NC3 ("*Issuing Entity*" or "REMIC Trust" or "Trust Fund" or "Deal").[8]

(2) I was able to verify this finding by examining the collateral loan performance tape provided by the *Servicer* to Bloomberg each month and comparing that information to the loan level details contained in the Wolfs' Loan Documents. A side-by-side comparison revealed that twelve (12) out of fourteen (14) data-points were a perfect match, including the loan number. The two (2) data-points that did not match i.e., the Previous Rate and Previous Principal & Interest do not alter my findings because multiple interest rate and payment changes have been implemented since the Loan Documents were printed on June 15, 2006. (*See* Exhibit G. – Bloomberg Research Results)

(3) Accordingly, I found that the unique characteristics described in the Wolf Mortgage Loan documents were also present in the Bloomberg data, which enabled me to conclude that the subject Mortgage Loan – or an economic interest therein – was allegedly securitized into the Carrington Mortgage Loan Trust, Series 2006-NC3.

(4) Once I had established through my Bloomberg research that the subject Mortgage Loan is being tracked as an asset of the Trust Fund, I investigated whether it was also included in the original Mortgage Loan Schedule that identified the mortgage loans slated for inclusion in this Deal.

(5) I found the Mortgage Loan Schedule ("MLS")[9] was filed with the Securities and Exchange Commission on July 20, 2006 in the form of a Free Writing Prospectus ("FWP"). The MLS

[8] **CAVEAT**: The phrase *"we found that the Borrower's Mortgage Loan is presently being tracked as an asset…"* is a term of art that we purposely use to describe what we are seeing when viewing the information available through Bloomberg. Essentially, Bloomberg provides current and historical data to investors regarding the collateral loan performance, delinquency rates, trigger events, etc. that enable investors to monitor their holdings. This data derives from the accounting supplied by the *Servicer*, *Master Servicer*, and *Securities Administrator* each month as required by the Pooling and Servicing Agreement that governs the Trust. Whether or not a particular Note and Mortgage were legally conveyed into a securitized Trust in accordance with "Applicable Laws" is a separate and distinct factual analysis which ultimately requires a legal opinion we do not, and cannot render here.

[9] **MORTGAGE LOAN SCHEDULE**: The MLS contains the names and addresses of borrowers; property addresses securing the loans; and loan level details regarding the terms of the loans being transferred. In most cases the MLS will be attached to the Pooling and Servicing Agreement or the Free Writing Prospectus.

can be examined at: http://www.secinfo.com/dsvrn.v5M3.htm. To locate the Wolfs' Mortgage Loan, search for Loan #6668.

(6) The Carrington Mortgage Loan Trust, Series 2006-NC3 is a public offering, and the Prospectus, Prospectus Supplement and Pooling and Servicing Agreement (referred to in the industry as the "Deal Documents") are available on the Securities and Exchange Commission's public access website. To perform a search, simply go to EDGAR's Company Search page and type in the Central Index Key ("CIK") 1369384, which you can do here at: http://www.sec.gov/edgar/searchedgar/companysearch.html. Alternatively, all of the relevant hyperlinks are provided in the Research Section of this report under Lookup References.

(7) A more user friendly way to search these same filings may be found on the *SEC Info*SM website at: www.secinfo.com/$/SEC/Registrant.asp?CIK=1369384.

(8) The Prospectus Supplement contains a summary of the securitization and lists the entities that were involved. This offering document may be viewed in its entirety at: http://www.secinfo.com/dsvrn.v6A7.htm. For the reader's convenience, I also provide an excerpt of the most relevant information. (*See* Exhibit H. – Prospectus Supplement Excerpt)

(9) The Pooling and Servicing Agreement ("PSA") that governs the securitization describes how mortgage loans are to be conveyed into the Trust fund in Section 2.01. The PSA may also be viewed in its entirety at: http://www.secinfo.com/dsvrn.v6v8.d.htm.

(10) The securitization paradigm involves one or more "true sales" that are designed to move the Mortgage Loans away from the originating *Lender* to a *Seller/Sponsor* who aggregates the Mortgage Loans slated for securitization. The *Seller/Sponsor* then transfers the Mortgage Loans to an entity designated as the *Depositor* who in turn transfers the assets to a bankruptcy remote Qualified Special Purpose Entity commonly referred to as the *Issuing Entity*. The purpose of the *Issuing Entity* is to hold the assets securely on behalf of investors who purchase securities backed by the Mortgage Loans.

(11) To assist the reader in visualizing the transaction structure for this particular Deal, I prepared a Securitization Flow Chart based on information derived from the Wolfs' Loan Documents and the Deal Documents filed with the SEC which map out the chain of title and identify the participants who were involved, as well as the roles they played. (*See* Exhibit I. – Securitization Flow Chart)

(12) As the Securitization Flow Chart illustrates, before the Wolfs' Mortgage Loan could be securitized, the *Lender*, New Century Mortgage Corporation ("New Century"), had to negotiate the subject Note and assign the Security Instrument to an affiliate, NC Capital Corporation. As will be discussed in detail below, there is no evidence that this critical first "true sale" ever took place.

(13) ***Thus, I identify here what may ultimately prove to be a fatal break in the chain of title that occurred between the Settlement Date of June 15, 2006 and August 10, 2006 which undermines the securitization of the Wolfs' Mortgage Loan***.

(14) According to a Mortgage Loan Purchase Agreement (MLPA") dated August 10, 2006, [10] executed by and between NC Capital Corporation (the "*Responsible Party*"), Carrington Securities, LP (the "*Seller*") and Stanwich Asset Acceptance Company, L.L.C. (the "*Purchaser*"), the loans listed in the MLS were to be bought, sold, transferred and assigned in a specific sequence as follows:

- from the *Responsible Party* (NC Capital Corporation) to
- the *Seller* (Carrington Securities, LP); then from the *Seller* to
- the *Purchaser* (Stanwich Asset Acceptance Company, L.L.C.).

(*See* MLPA at: http://www.secinfo.com/dsvrn.v6v8.htm, Exhibit 10.2 Mortgage Loan Purchase Agreement)

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[10] **MORTGAGE LOAN PURCHASE AGREEMENT**

This is a Mortgage Loan Purchase Agreement (this *"Agreement"*), dated August 10, 2006, among NC CAPITAL CORPORATION, a California corporation (the *"Responsible Party"*), CARRINGTON SECURITIES, LP, a Delaware limited partnership (the *"Seller"*) and STANWICH ASSET ACCEPTANCE COMPANY, L.L.C., a Delaware limited liability company (the *"Purchaser"*).

Preliminary Statement

The Seller intends to sell the Mortgage Loans (as hereinafter identified) to the Purchaser on the terms and subject to the conditions set forth in this Agreement. The Purchaser intends to deposit the Mortgage Loans into a mortgage pool comprising the Trust Fund. The Trust Fund will be evidenced by a single series of mortgage pass-through certificates designated as Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates (the *"Certificates"*). The Certificates will consist of eighteen classes of certificates and will be issued pursuant to a Pooling and Servicing Agreement, dated as of August 1, 2006 (the *"Pooling and Servicing Agreement"*), among the Depositor as depositor, New Century Mortgage Corporation as servicer (the *"Servicer"*) and Wells Fargo Bank, N.A. as trustee (the *"Trustee"*).

Capitalized terms used but not defined herein shall have the meanings set forth in the Pooling and Servicing Agreement.

The parties hereto agree as follows:

SECTION 1 Agreement to Purchase. The Seller agrees to sell and the Purchaser agrees to purchase, on or before August 10, 2006 (the *"Closing Date"*), certain adjustable-rate and fixed-rate, interest-only and fully-amortizing, first lien and second lien, one- to four-family residential mortgage loans ***purchased by the Seller from the Responsible Party (the "Mortgage Loans")***, having an aggregate principal balance as of the close of business on August 1, 2006 (the *"Cut-off Date"*) of $1,620,590,236 (the *"Closing Balance"*), after giving effect to all payments due on the Mortgage Loans on or before the Cut-off Date, whether or not received including the right to any Prepayment Charges payable by the related Mortgagors in connection with any Principal Prepayments on the Mortgage Loans, on an Originator servicing-retained basis…

(*See* MLPA at: http://www.secinfo.com/dsvrn.v6v8.htm, Exhibit 10.2 Mortgage Loan Purchase Agreement)

(15) Here again, the critical first step is to determine whether New Century Mortgage Corporation properly negotiated the Wolfs' Note and assigned their Security Instrument to NC Capital Corporation.

(16) As of this writing, there is not one scintilla of evidence available in the Official Records of Harris County, or in the discovery materials that have been presented for my review that would establish this transaction ever took place.

(17) Accordingly, we need not go any further with respect to establishing the failure to securitize the Wolfs' Mortgage Loan into the Carrington Mortgage Loan Trust, Series 2006-NC3 because if NC Capital Corporation never owned the Wolfs' Mortgage Loan, it could not have sold it to Carrington Securities, LP and so on down the securitization chain. ***Nemo dat quod non habet***.

(18) However, it is instructive to understand the securitization process in order to determine whether improper documents may have been recorded with the Harris County Clerk's Office; or submitted to the District Court in the 151st Judicial District incident to the foreclosure and ongoing litigation in Case No. 2011-36476.

(19) Assuming then for argument's sake that New Century properly sold and assigned the Wolfs' Mortgage Loan to NC Capital Corporation, and that the subsequent sales envisioned by the MLPA from NC Capital Corporation to Carrington Securities, LP as well as from Carrington Securities, LP to Stanwich Asset Acceptance Company, L.L.C. took place, the final conveyance to the Trustee for the Trust Fund must comply strictly with the provisions of the aforementioned Pooling and Servicing Agreement which governs the transaction.

(20) Section 2.01 of the PSA contains active granting language by which the *Depositor* (Stanwich Asset Acceptance Company, L.L.C.) purports to sell, transfer, assign, set over and otherwise convey to the *Trustee* (Wells Fargo Bank, N.A.) without recourse, for the benefit of the Certificateholders, all the right, title and interest of the *Depositor*.

(21) Additionally, Section 2.01 of the PSA contains active granting language by which the *Depositor* (Stanwich Asset Acceptance Company, L.L.C.) purports to sell, transfer and assign all of the Mortgage Loans listed in the MLS to the *Trustee* (Wells Fargo Bank, N.A.) for the *Issuing Entity* (Carrington Mortgage Loan Trust, Series 2006-NC3).

(22) The window of time to complete the securitization process begins on the date the *Issuing Entity* was created, on August 1, 2006, and concludes on the Closing Date, which was on or about August 10, 2006 or within a restricted window of time thereafter (usually 90 days).

(23) In order to transfer the subject Note to the *Trustee*, the *Depositor* was required to deliver:

PSA Section 2.01 (i)

> (i) the original Mortgage Note, endorsed in blank or in the following form "Pay to the order of Wells Fargo Bank, N.A., as Trustee under the applicable agreement, without recourse," with all prior and

intervening endorsements showing a complete chain of endorsement from the originator to the Person so endorsing to the Trustee;

(24) In order to transfer the subject Security Instrument to the *Trustee*, the *Depositor* was required to deliver:

PSA Section 2.01 (ii)

(ii) the original Mortgage with evidence of recording thereon, and the original recorded power of attorney, if the Mortgage was executed pursuant to a power of attorney, with evidence of recording thereon;

(25) With respect to Assignments of the Security Instrument, the *Depositor* was required to deliver:

PSA Section 2.01 (iii) (iv)

(iii) an original Assignment in blank;

(iv) the original recorded Assignment or Assignments showing a complete chain of assignment from the originator to the Person assigning the Mortgage to the Trustee as contemplated by the immediately preceding clause (iii);

(26) Thus, to comply with the representations and warranties made to investors in the Prospectus Supplement, and to adhere strictly to the terms of Section 2.01 of the Pooling and Servicing Agreement as required pursuant to New York law, we would expect to see the following evidence of assignments:

A. from the *Lender/Originator* (New Century Mortgage Corporation) to the *Responsible Party* (NC Capital Corporation);

B. from the *Responsible Party* (NC Capital Corporation) to the *Seller/Sponsor* (Carrington Securities, LP);

C. from the *Seller/Sponsor* (Carrington Securities, LP) to the *Depositor* (Stanwich Asset Acceptance Company, L.L.C.); and finally,

D. from the *Depositor* (Stanwich Asset Acceptance Company, L.L.C.) to

E. the *Trustee* (Wells Fargo Bank, N.A.) for the *Issuing Entity* (Carrington Mortgage Loan Trust, Series 2006-NC3).

(27) All of these conveyances had to be perfected on the Closing date of August 10, 2006; and all of the related paperwork necessary to evidence the Trust Fund's ownership had to be supplied by the *Depositor* to the *Trustee* within ninety (90) days of the Closing Date.

(28) Further, Paragraph 19 of the Borrower Covenants contained in the Security Instrument states:

> "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. (emphasis supplied)

(29) When the plain language of paragraph 19 is read literally, then by contract between Borrower and Lender, the Mortgage must follow the same assignment pathway as the Note. This is consistent with what the Deal Documents mandate.

II. Foreclosure Forensics

(30) In order to establish if, how, and when Note was transferred into the *Issuing Entity*, we would need to examine at the very least the following:

- ☑ The original Mortgage Note endorsed in blank or in the following form "Pay to the order of Wells Fargo Bank, N.A., as Trustee under the applicable agreement, without recourse," ***with all prior and intervening endorsements showing a complete chain of endorsement from the originator to the Person so endorsing to the Trustee*** (each such endorsement being sufficient to transfer all right, title and interest of the party so endorsing, as noteholder or assignee thereof, in and to that Mortgage Note)…" as required by Section 2.01 of the PSA; (emphasis supplied)

- ☑ The execution copy of the PSA together with Schedule I thereto, which is the MLS that presumably includes the Wolfs' Mortgage Loan;

- ☑ ***Proof of delivery*** of the Note from *Originator* (New Century Mortgage Corporation) to the *Responsible Party* (NC Capital Corporation) to the *Seller/Sponsor* (Carrington Securities, LP) to the *Depositor* (Stanwich Asset Acceptance Company, L.L.C.); and from Stanwich Asset Acceptance Company, L.L.C. to the *Trustee* of the *Issuing Entity* (Wells Fargo Bank, N.A., as Trustee for the Carrington Mortgage Loan Trust, Series 2006-NC3);

- ☑ A copy of the document custodian's log maintained by Deutsche Bank National Trust Company relative to the Mortgage Loan file from August 10, 2006 to the present.

The "Breeder Document"

(31) In the lexicon of identity theft, a "breeder document"[11] is the alpha-document, genuine or fraudulent, that can serve as a basis to obtain other identification documents or benefits fraudulently.

(32) For example, in identity theft cases the birth certificate is often referred to as the breeder document because once fabricated, an imposter can use it to acquire a driver's license, Social Security Number, bank account, passport, etc. and obtain rights and privileges of citizenship to which s/he is not legally entitled.

(33) Translating this concept over to the realm of foreclosure fraud, the breeder document is the fraudulent assignment of mortgage, which purports to grant a title interest in the underlying real property to the fraudster, and serves as the basis for obtaining other documents necessary to extinguish the property owner's rights and transfer full legal and equitable title as well as possession to the fraudster.

(34) In the instant case, the October 15, 2009 Transfer of Lien, executed by Tom Croft, is the breeder document from which have or shall arise all other documents necessary to complete the foreclosure, sale, and transfer of the Wolfs' Property to Wells Fargo Bank, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates as explained in detail below. (*See* Exhibit D. – Transfer of Lien, 10/15/2009)

The Assignment of Mortgage is Invalid

(35) On the basis of the facts set forth herein I find that the above referenced Transfer of Lien contains false statements, misrepresentations, and omissions of material fact as follows:

i. It is a false statement for Tom Croft to say that on **October 15, 2009** New Century Mortgage Corporation transferred the Wolfs' Note and Lien to Wells Fargo Bank, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificate ("Transferee" or "Wells Fargo Bank, N.A.") for the following reasons:

☒ The Deal Documents, filed with the SEC provide credible evidence that the *Depositor*, Stanwich Asset Acceptance Company, L.L.C., transferred and assigned the scheduled Mortgage Loans to Wells Fargo Bank, N.A. as *Trustee* on or about **August 10, 2006** when the securitization closed.

☒ New Century Mortgage Corporation divested all right, title and interest when it allegedly sold the subject Mortgage Loan to NC Capital Corporation on some date between June 15, 2006 and August 10, 2006. Therefore, it could

[11] The Oxford Dictionary: http://oxforddictionaries.com/definition/breeder+document?region=us.

not sell it for a second time to a different entity some five (5) years later on October 15, 2011.

- ☒ New Century filed for protection pursuant to Title 11 of the U.S. Bankruptcy Code on April 2, 2007 and was precluded from transferring any of its assets without the Court's approval due to the automatic stay. [12]
- ☒ New Century sold all of the loans it held on its books with Bankruptcy Court approval by June 29, 2007.[13]
- ☒ New Century sold all of its mortgage servicing rights to Carrington Mortgage Services on or about May 23, 2007 with Bankruptcy Court approval. (*See* footnote #13)
- ☒ Therefore, New Century did not own, hold or control the Wolfs' Mortgage Loan on October 15, 2011 when Tom Croft executed the Transfer of Lien in his alleged capacity as Vice president of REO for New Century Mortgage Corporation.
- ☒ In fact, Tom Croft was employed by ***Carrington Mortgage Services, LLC*** and not New Century Mortgage Corporation on October 15, 2011. [14]

ii. It is misleading to purport to transfer the Wolfs' Mortgage Loan from "Party A" (the *Lender*) to "Party E" (the *Issuing Entity*) in the securitization chain, thereby skipping over three necessary parties who took bought and sold the Mortgage Loan in a methodical, sequential and verifiable series of transactions.

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[12] On March 13, 2007, New Century Financial Corporation reported in a regulatory filing that it had received a grand jury subpoena from the U.S. Attorney's Office for the Central District of California as well as a letter from the Securities and Exchange Commission notifying the company of a preliminary investigation. The filing stated that the U.S. Attorney's office indicated in a letter dated February 28, 2007 that it was conducting a criminal inquiry in connection with trading in the company's securities as well as accounting errors regarding the company's allowance for repurchase losses. On April 2, 2007, New Century Financial Corporation and its related entities filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court, District of Delaware located in Wilmington, Delaware. http://en.wikipedia.org/wiki/New_Century

On May 23, 2007, the U.S. Bankruptcy Court for the District of Delaware entered an Order approving the sale of New Century TRS Holdings, Inc., et al, to Carrington Capital Management, LLC and Carrington Mortgage Services, LLC. http://www.nclc.org/images/pdf/foreclosure_mortgage/lender_bankruptcy/new_century_financial_corp/transferofassets.pdf

[13] *See* In re New Century TRS Holdings, Inc., et al; United States Bankruptcy Court, District of Delaware, Case No. 07-10416; Opinion on Confirmation dated July 2, 2008.

[14] At the time Tom Croft executed the subject Transfer as Vice President of REO for New Century Mortgage Corporation, he had been employed by Carrington Mortgage Services since July of 2007. In fact, Croft further discloses that he has never worked for New Century Mortgage Corporation. (*See* Deposition of Tom Croft, Page 31, Line 23 and Page 73, Line 12, dated June 27, 2012)

iii. It is an omission of a material fact to conceal the role of the intervening assignees, "Party B" (the *Responsible Party*) "Party C" (the *Seller/Sponsor*) and "Party D" (the *Depositor*), who bought and sold the Wolfs' Mortgage Loan in order to effectuate four "true sales" that were necessary to achieve the privileges of bankruptcy remoteness and favored tax status as a Real Estate Mortgage Investment Conduit ("REMIC") pursuant to Title 26 of the Internal Revenue Code, 26 U.S.C. § 860G.

iv. In summary, the conveyance represented by the October 15, 2009 Transfer of Lien is fraudulent.

(36) The instant Transfer of Lien does not represent a true sale to a *bona fide* purchaser for value. Rather is it a self-dealing breeder document prepared, executed and recorded by Carrington Mortgage Services, LLC as a precursor to instituting a foreclosure action.

(37) This fraudulent document was purposely prepared under false pretenses to create the appearance in the public record that Wells Fargo Bank, N.A., as *Trustee,* had the authority to foreclose the Wolfs' Property on behalf of the *Issuing Entity*, while suppressing the fact – and thus avoiding the burden of proof – that behind the scenes, the Wolfs' Note and Security Instrument had been sold four (4) times and was allegedly securitized on or about August 10, 2006.

The Foreclosure was Grounded in a Fraudulent Assignment

(38) On February 3, 2011, Tom Croft, acting in dual capacities as the alleged Attorney-in-Fact for Wells Fargo, N.A. as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates and in his alleged capacity as VP of REO Carrington Mortgage Services, LLC, executed a Verification of Application and Affidavit certifying that he has personal and specialized knowledge of the subject Mortgage Loan thereby creating the illusion that Wells Fargo as Trustee had standing to proceed with the instant foreclosure. (*See* Exhibit E. – Application to Proceed with Foreclosure with Affidavit, 02/11/2011)

(39) After Carrington Mortgage Services, LLC prepared, executed and recorded the instant Transfer of Lien, it filed an Application Under Texas Rule of Civil Procedure 736 Seeking an Order to Proceed with Foreclosure Sale on February 11, 2011 which included the Verification of Application and Affidavit executed by Tom Croft . (*See* Exhibit E. – Application to Proceed with Foreclosure with Affidavit, 02/11/2011)

(40) This same process was repeated on May 26, 2011, The Balcom Law Firm filed a First Amended Application Under Texas rule of Civil Procedure 736 736 Seeking an Order to Proceed with Foreclosure Sale attached to which was another Verification executed by Tom Croft in his alleged capacity as Vice President and custodian of records for Carrington Mortgage Services, LLC. (*See* Exhibit F. – Application to Proceed with Foreclosure with Affidavit, 05/26/2011)

(41) All of these documents were prepared by and at the direction of Carrington Mortgage Services, LLC in order to complete the foreclosure and sale of the Wolfs' Property. As such,

these are second generation breeder documents that depend upon, and are therefore tainted by, the underlying fraudulent Transfer of Lien.

III. Robo-Signer Analysis

(42) In a series of recent reports released on March 12, 2012 by the Office of the Inspector General for the U.S. Department of Housing and Urban Development ("HUD-OIG"),[15] the term "robosigning" was defined as:

> *We have defined the term "robosigning" as the practice of an employee or agent of the servicer signing documents automatically without a due diligence review or verification of the facts.*

(43) Notwithstanding his protests to the contrary in his recent deposition on June 27, 2012, Tom Croft, the individual who executed the above described Transfer of Lien and two (2) Verifications of Application and Affidavit, fits HUD-OIG's definition of robo-signer. (*See* Exhibits D. and E.)

(44) More to the point, I identified Tom Croft ("Croft") in my list of robo-signers attached to my *Forensic Examination Of Assignments Of Mortgage Recorded During 2010 In The Essex Southern District Registry Of Deeds* as "Exhibit C" because I found that Croft had executed seven (7) fraudulent Assignments of Mortgage purporting to convey mortgage loans from the originating lender directly into a securitized trust, which is an impermissible act under all pooling and servicing agreements.

(45) In the instant case, Croft executed the following documents in varying capacities:

Table 1 - Documents Executed by Tom Croft

Date	Document	Signing Capacity	Stated Employer
10/15/2009	Transfer of Lien	Vice President of REO	New Century Mortgage Corporation
02/03/2011	Verification of Application and Affidavit	Vice President of REO	Carrington Mortgage Services, LLC
05/13/2011	Verification of Application and Affidavit	Vice President of REO	Carrington Mortgage Services, LLC

[15] **Summary:** As part of the Office of Inspector General's (OIG) nationwide effort to review the foreclosure practices of the five largest Federal Housing Administration (FHA) mortgage servicers (Bank of America, Wells Fargo Bank, CitiMortgage, JP Morgan Chase, and Ally Financial, Incorporated) we reviewed CitiMortgage's foreclosure and claims processes. In addition to this memorandum, OIG issued separate memorandums for each of the other four reviews. OIG performed these reviews due to reported allegations made in the fall of 2010 that national mortgage servicers were engaged in widespread questionable foreclosure practices involving the use of foreclosure "mills" and a practice known as "robosigning" of sworn documents in thousands of foreclosures throughout the United States. (*See*: http://www.hudoig.gov/reports/featured_reports.php)

(46) In his deposition, Croft states that his area of expertise is "default servicing"[16] and not chain of title, securitization, or how loans are transferred to a trust which he said was "not my area."

(47) When questioned during his deposition about whether he had ever seen any document transferring the Wolfs' mortgage from New Century Mortgage Corporation to Carrington Securities, L.P., and from one party to the next down the securitization chain, [as outlined in Exhibit I. – Securitization Flow Chart] Croft answered, "No." [17]

(48) So it appears that Croft never performed any due diligence to determine whether the documents necessary to properly transfer the Wolfs' Mortgage Loan into the Trust Fund existed. As a result, his statement in paragraph 6 of his Verifications that "*Applicant is the owner and holder of the Note and Security Instrument and is in possession of both*" is unfounded.

(49) Although Croft had access to the mortgage servicing records maintained by Carrington Mortgage Services, LLC ("CMS"), when he prepared the Verification dated May 13, 2011, he overstated the Wolfs' delinquency by six (6) months or approximately $21,000.00.

(50) With respect to the preparation of these critical documents that would ultimately deprive the Wolfs of their home, Croft either did not perform a due diligence review, or he remained willfully blind to the truth of the matter. Either way, his actions constitute robo-signing.

~ Continued Below ~

[16] (*See* Deposition of Tom Croft, Page 67, Line 21)

[17] (*See* Deposition of Tom Croft, Page 154, Line 20 through Page 158, Line 10.)

Conclusions

My forensic examination of the documents and records supplied for my review, when compared with credible evidence compiled through the use of the Bloomberg Terminal and further researched via the Securities and Exchange Commission's public access website allowed me to conclude the following with respect to the subject residential mortgage transaction made by and between the *Borrowers*, Mary Ellen Wolf and David Wolf, and their *Lender*, New Century Mortgage Corporation:

- ☑ The Mortgage Loan in question – ***or an economic interest therein*** – was allegedly securitized into the Carrington Mortgage Loan Trust, Series 2006-NC3 on or about August 10, 2006. Therefore, the Pooling and Servicing Agreement that established the Trust governs the conveyance of the Note and Security Instrument ("Mortgage Loan") in accordance with the laws of the State of New York.

- ☑ Before the subject Mortgage Loan could be securitized the *Lender*, New Century Mortgage Corporation, had to negotiate the Note and assign the Security Instrument to NC Capital Corporation.

- ☑ In turn, NC Capital Corporation was required to sell, transfer and assign the Wolfs' Mortgage Loan to Carrington Securities, LP who served as *Seller* pursuant to the Mortgage Loan Purchase Agreement and the Pooling and Servicing Agreement referenced herein.

- ☑ Presently, there is not one scintilla of evidence that these critical transfers actually took place.

- ☑ These two fundamental breaks in the chain of title undermine the securitization of the subject Mortgage Loan and raise a genuine issue of material fact with respect to who the legal owner and holder of the Wolfs' Note and Security Instrument is and was at all relevant times in question.

- ☑ The Transfer of Lien executed by Tom Croft on October 15, 2009 and recorded with the Harris County Clerk's Office on October 20, 2009 is not the operative document by which the Wolfs' Mortgage Loan was conveyed to Wells Fargo Bank, N.A. as Trustee of Carrington Mortgage Loan Trust, Series 2006-NC3.

- ☑ Pursuant to Section 2.01 of PSA, the *Depositor* – and only the *Depositor*, Stanwich Asset Acceptance Company, L.L.C. – had the legal capacity to transfer the Mortgage Loans into the Trust.

- ☑ Moreover, the *Depositor* was required to sell, assign, transfer, and deliver the Mortgage Loans to the *Trustee* for the *Issuing Entity* on or about August 10, 2006 when the Deal closed.

- ☑ Croft's Transfer of Lien, dated October 15, 2011 is more than ***five (5) years too late***.

☑ This Transfer of Lien is a deception that was purposely prepared to create the appearance in the public record that Wells Fargo Bank, N.A. as *Trustee* had the authority to initiate foreclosure proceedings against the Wolfs' Property on behalf of the *Issuing Entity*, while suppressing the fact – and thus avoiding the burden of proof – that behind the scenes, the Wolfs' Note and Security Instrument had been sold four (4) times and was allegedly securitized on or about August 10, 2006.

☑ The creation and recordation of the October 15, 2009 Transfer of Lien was a feigned and fraudulent attempt to cure the gaps in the chain of title.

☑ All other documents that were filed with the Harris County Clerk's Office and with the District Court for the 151st Judicial District that depend upon the validity of the Transfer of Lien are also tainted with fraud and, therefore, they should have no legal force and effect.

☑ Based on the facts and evidence available as of this writing, and with a reasonable degree of probability, it is my expert opinion that:

A. Wells Fargo Bank, N.A., is not the current owner and holder of Wolfs' Note and Security Instrument ("Mortgage Loan");

B. Wells Fargo Bank, N.A., has never been the owner and holder of Wolfs' Mortgage Loan;

C. The Wolfs' Mortgage Loan was never transferred into the 2006-NC3 Trust for which Wells Fargo Bank, N.A. is *Trustee* in strict compliance with the Pooling and Servicing Agreement executed on August 1, 2006 between the parties which is governed by the laws of the State of New York;

D. The Wolfs' Mortgage Loan was never physically transferred from the *Lender/Originator* (New Century Mortgage Corporation) to the *Responsible Party* (New Century Capital Corporation); or properly conveyed from the *Responsible Party* to the *Seller/Sponsor* (Carrington Securities, LP) of the 2006-NC3 Trust as required by the Mortgage Loan Purchase Agreement executed on August 10, 2006 between the parties;

E. The Wolfs' Mortgage Loan was never physically transferred from the *Seller/Sponsor* (Carrington Securities, LP) to the *Depositor* (Stanwich Asset Acceptance Company, LLC) of the 2006-NC3 Trust or properly conveyed as required by the Mortgage Loan Purchase Agreement referenced above;

F. The Wolfs' Mortgage Loan was never physically transferred from the *Depositor* (Stanwich Asset Acceptance Company, LLC) or properly conveyed to the *Trustee* for the 2006-NC3 Trust as required by the

Pooling and Servicing Agreement dated August 1, 2006 by and between the parties; and

G. The Wolfs' Mortgage Loan was never physically transferred from Wells Fargo Bank, N.A., as *Trustee* of the 2006-NC3 Trust to the *Document Custodian* (Deutsche Bank National Trust Company) as mandated by the Pooling and Servicing Agreement.

The factual and expert opinions I reached above are based on my review of and reliance on the documents and information supplied to date. I reserve the right to amend and supplement my opinion based on my review of documents and data supplied to me in the future.

Therefore, based on my education, specialized knowledge as a *Mortgage Fraud and Forensic Analyst* and professional expertise as a *Certified Fraud Examiner*, I find, with a reasonable degree of certainty, that the opinions expressed herein are true and accurate.

Respectfully submitted,

Marie McDonnell

_____

Marie McDonnell, President & CEO
McDonnell Property Analytics, Inc.
Mortgage Fraud and Forensic Analyst
Certified Fraud Examiner, ACFE

THIS EXTENSION OF CREDIT HAS A VARIABLE RATE OF INTEREST AS AUTHORIZED BY SECTION 50(a)(6)(O), ARTICLE XVI OF THE TEXAS CONSTITUTION

TEXAS HOME EQUITY FIXED/ADJUSTABLE RATE RIDER

(LIBOR 6 Month Index (As Published in *The Wall Street Journal*) - Rate Caps)
(First Lien)

THIS TEXAS HOME EQUITY FIXED/ADJUSTABLE RATE RIDER is made this **15th** day of **June**, **2006** and is incorporated into and shall be deemed to amend and supplement the Security Instrument of the same date given by the undersigned (the "Borrower") to secure Borrower's Texas Home Equity Fixed/Adjustable Rate Note (the "Note") to

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

6404 Buffalo Speedway, Houston, TX 77005
(Property Address)

THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT BORROWER'S ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

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

A. ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial fixed interest rate of **10.150** %. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of **July, 2008** and the adjustable interest rate I will pay may change on that day every 6th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for 6 month U.S. dollar-denominated deposits in the London market ("LIBOR"), 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 that is based upon comparable information. The Note Holder will give me notice of this choice.

Initials: [signature]

EXHIBIT 6

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding **Six And Seven Tenth(s)** percentage point(s) (**6.700** %) 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 successive monthly payments, each of which will exceed the amount of accrued interest as of the date of the scheduled installment. 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 **11.650** % or less than **10.150** %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than one and one-half percentage point(s)(1.500%) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than **17.150** %, or less than **10.150** %.

(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 initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any 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.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Texas Home Equity Fixed/Adjustable Rate Rider.

[DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. THIS DOCUMENT MUST BE EXECUTED AT THE OFFICE OF THE LENDER, AN ATTORNEY AT LAW OR A TITLE COMPANY. YOU MUST RECEIVE A COPY OF THIS DOCUMENT AFTER YOU HAVE SIGNED IT.]

Mary Ellen Wolf Borrower

David Wolf Borrower

Borrower

Borrower

Borrower

Borrower

EXHIBIT 6

CAUSE NO. 2011-36476

MARY ELLEN WOLF and DAVID WOLF	)	IN THE DISTRICT COURT OF
VS.	)	HARRIS COUNTY, TEXAS
WELLS FARGO BANK, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates, et al	)	151ST JUDICIAL DISTRICT

****

ORAL DEPOSITION OF

MARIE MCDONNELL

OCTOBER 2, 2012

****

ORAL DEPOSITION of MARIE MCDONNELL, produced as a witness at the instance of the Defendants, and duly sworn, was taken in the above-styled and numbered cause on OCTOBER 2, 2012, from 9:10 a.m. to 10:28 p.m., before Mendy A. Schneider, CSR, RPR, in and for the State of Texas, recorded by machine shorthand, at the offices of HUGHES ELLZEY, LLP, 2700 Post Oak Boulevard, Suite 1120, Houston, Texas, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto; that the deposition shall be read and signed.

EXHIBIT 7

A P P E A R A N C E S

FOR THE PLAINTIFFS:

MR. W. CRAFT HUGHES
HUGHES ELLZEY, LLP
2700 Post Oak Boulevard, Suite 1120
Houston, Texas 77056
(888) 350-3931
Craft@CraftHughesLaw.com

FOR THE DEFENDANTS:

MR. PETER C. SMART
CRAIN, CATON & JAMES, P.C.
1401 McKinney, Suite 1700
Houston, Texas 77010
(713) 658-2323
psmart@craincaton.com

EXHIBIT 7

MARIE MCDONNELL,

having been first duly sworn, testified as follows:

(Marked McDonnell Exhibit Nos. 1 and 2.)

E X A M I N A T I O N

BY MR. SMART:

Q. What is your name, please?

A. My name is Marie McDonnell, spelled M-C-D-O-N-N-E-L-L.

Q. Ms. McDonnell, what do you do for a living?

A. I am a mortgage fraud and forensic analyst and a certified fraud examiner.

Q. And do you have a college degree?

A. I do.

Q. And when did you get that college degree?

A. 1970.

Q. And where did you get it?

A. Merrimac College.

Q. And where is Merrimac?

A. North Andover, Massachusetts.

Q. And what was -- was it a bachelor's degree?

A. Yes.

Q. And what was the major or what was the bachelor in? In what?

A. Political science.

Q. Did you have a minor?

EXHIBIT 7

A. I -- I did, yes; which, actually, I started out as a biology major; so, I -- I actually have more science and math and biology courses than political science, but that's the degree.

Q. So, you have a -- you have a major and a degree in political science, and you have a minor in biology?

A. Yes.

Q. And do you have any postgraduate degrees?

A. No.

Q. And do you have any certificates or licenses of a professional nature?

A. Yes. I have a real estate broker's license in Massachusetts, and I've achieved several designations; most recently, from the Association of Certified Fraud Examiners, the designation of certified fraud examiner.

I am also a certified real estate exchange consultant, and I've achieved the graduate realtor institute designation from the National Association of Realtors.

Q. Is that a sampling or is that -- is that the entirety?

A. That's what I recall at the moment in terms of designations from other trade associations.

EXHIBIT 7

knowledge and comprehension of various aspects of fraud examination and interview techniques and various other things.

Q. In that same sentence in Item 2, you -- where you say, "I'm a mortgage fraud and forensic analysis" -- "analyst" --

A. Analyst, uh-huh.

Q. -- are those -- is that -- are those two categories or one category, mortgage fraud and forensic analyst?

Is that two different things or -- or one thing?

A. It's -- I would say both.

Q. So, it -- it could be two things?

A. Yes.

Q. All right. Well, what -- let's talk about a forensic analyst.

When you say you're a forensic analyst, what -- what does that mean? What does a -- what do you do as a forensic analyst?

A. I have dedicated my practice to essentially understanding real estate and real estate financing transactions; so, essentially, although I do have the capability of looking at other types of documents or information and to -- to be able to understand that

EXHIBIT 7

information to fill in missing gaps and so forth, essentially, my practice is focused in the area of real estate and real estate finance.

In terms of answering your question about what is a forensic analyst, by that, I mean it would be a body of existing information or data or contracts, and there will be a -- often a body of information concerning a certain transaction. I am able to look at all of that information and determine other information that might be missing or where those particular documents or information fits in on a time line and often reconstruct missing data that helps me and others to -- to understand the transaction.

So, it's -- it's an exercise and an ability to understand not only what is there but what isn't there.

Q. So, you -- I don't want to put words in your mouth, but it sounds like you analyze real estate transactions. And that's not -- that's the analyst part.

What is forensic? What does -- in your own words, what is -- how does "forensic" come into play, as an analyst, in what you do?

A. Well, forensic science is -- can be applied to many different fields, of course, both on the

EXHIBIT 7

criminal, civil side; but what "forensic" actually is -- means is looking back historically at some event that happened -- or in my case, it could be looking at a particular document, such as a mortgage note -- and looking at other evidence that relates to that note or the servicing of that note and putting all of those pieces together, including, as I say, missing pieces that I can reconstruct through my understanding and forensic analysis.

Q. And how long have you been doing the forensic analyzing of real estate transactions?

A. For 25 years.

Q. Okay. And what percentage of your -- of your professional practice is -- do you consider your -- you're doing forensic -- working as an forensic analyst?

A. Actually, at this point, I would say, a hundred percent of the time, that's what I'm doing.

Q. And what -- do you have any education in forensic -- being a forensic analyst, or is it just on-the-job training?

A. Well, there -- there is no doubt that my 25 years of experience in the field is the primary qualifier for the work that I do and for my level of achievement. That is an -- it constitutes an

EXHIBIT 7

Massachusetts Association of Realtors in order to achieve that designation of graduate realtor institute.

From the National Association of Realtors, I've taken several commercial investment real estate courses.

From the National Council of Exchangers, a number of courses on the mechanics of real estate exchanging.

I've taken a number of courses on real estate finance, understanding the buying and selling of private mortgages at a discount, I've taken courses in real estate options.

Q. Who's offering these courses that you've taken?

A. These -- these are various masters in their fields, except for, of course, the courses that I've taken from the various realtor institutions at the national and state level.

I've taken a number of courses in foreclosure defense from the Massachusetts Bar Association and the Boston Bar Association, and I've recently presented in several of those courses, as well as a speaker. I have taken --

Q. Would you call those ones offered by the Bar,

EXHIBIT 7

the Massachusetts Bar or the Boston Bar -- are those seminars? Is that what those are, one- or two-day seminars?

A. Yes. Most recently -- and I'm not -- not sure that I'm seeing it on here; I -- I'd have to add it -- I -- I cochaired a two-hour session for the Massachusetts Bar Association that covered the -- the settlement between the national banks and the 49 state attorneys general.

I've taken intensive courses from O. Max Gardner, III, who is a nationally renowned bankruptcy attorney, a highly regarded expert in his field who has been conducting bankruptcy boot camps since about 2006. I've taken two of -- these are intensive four-day training sessions that go for about 12 hours per day. I've taken two of them, and he's asked me to speak at and co-instruct at a number of others.

I've taken various courses in regulation and compliance from the Massachusetts Bankers Association, the CUNA Mutual Group, BankersOnline and....

Q. Okay. Do you consider yourself an expert in any area of the law?

MR. HUGHES: Objection; form.

You can answer.

EXHIBIT 7

until -- if it was taken out of the custody and control from Deutsche Bank National Trust Company for purposes of this legislation, that's one thing.

But the original would be held in a vault maintained by the document custodian, Deutsche Bank.

Q. (BY MR. SMART) And I apologize if I asked this: Can you just summarize the basis for your opinion that Defendant Wells Fargo Bank, N.A. is not the current holder of Plaintiffs' note?

A. Okay.

Well, in this case Wells Fargo Bank, N.A. is serving as a trustee of the Carrington Mortgage Loan Trust Series 2006-NC3; and as trustee, it is responsible for the assets that are allegedly held in that trust fund.

The problem is that my analysis shows that there is no evidence in the record that I have reviewed that the Wolfs' note and their security instrument were properly negotiated, delivered, transferred to all of the necessary parties in the securitization chain that would be required under a mortgage loan purchase agreement and a pooling and servicing agreement in order to convey those instruments into the trust fund. There are fatal

EXHIBIT 7

breaks in the chain of title which indicate that those instruments never made it into the trust fund.

Therefore, Defendant Wells Fargo Bank is not the current owner and holder of the plaintiffs' note and deed of trust.

Q. Okay. So, sounds like you're not saying that Wells Fargo Bank doesn't currently physically have possession of the original note. That's not your opinion, is it?

I mean, that's within the realm of possibility, isn't it, that -- that Wells Fargo Bank, N.A. physically possesses the original note?

A. They may at -- at this moment, yes. That's --

Q. And they may --

A. -- a possibility.

Q. And they may possess -- I mean, you're not saying they don't? You're not saying they don't physically possess it, are you? Is that -- or is that your opinion?

A. Like I say, at this moment in time, I do not have any personal knowledge of where the physical note actually is. I know what -- where it had to be in order to securitize the instruments, and I know what the pooling and servicing agreement require in terms

EXHIBIT 7

of maintaining that -- the negotiable instrument and the security instrument and the other mortgage-related documents in the master file; but I do suspect that due to the litigation, there may have been a request for the release of those documents. And, so, therefore, at the moment, I don't actually know who is physically holding the original note.

However, regardless of who is actually physically holding the note who may have the right to negotiate it, that does not mean they have the right to enforce -- to collect on the note or to enforce the security instrument.

Q. And why is that?

A. Well, under the provisions of the Texas home equity fixed/adjustable rate note that the Wolfs signed, in Paragraph 1, where they make their promise to pay for having received a loan of $400,000, it says, "Lender, or anyone who takes this Note by transfer and who is entitled to receive payments under the Note, is called 'Noteholder.'"

And if you read the -- the note and the security instrument together, it is the noteholder who would have the enforcement rights.

So, if Wells Fargo is in physical possession of the note, it may have the right to

EXHIBIT 7

negotiate that note -- that is, sell it to someone else -- but it doesn't mean that they have the right to enforce the -- the instrument because they would have to prove that they have the right to receive the payments, which means that they paid consideration for it and that it was legally and properly transferred into the trust.

Q. And is that your expert opinion?

A. That is my opinion, yes.

Q. It's one of your opinions?

A. Yes.

Q. All right. And you base that on your interpretation of the language that you just read?

MR. HUGHES: Objection; form.

You can answer.

A. In combination with my research, specialized knowledge, training, and the documents that have been presented for my review.

Q. (BY MR. SMART) Let's look at your third opinion in order here on the affidavit, Page 4, which is under C; and it reads, "Plaintiffs' mortgage loan was never transferred into the 2006-NC3 trust for which Defendant Wells Fargo Bank, N.A. is trustee in strict compliance with the Pooling and Servicing Agreement executed on August 1, 2006 between the

EXHIBIT 7

Q. Okay. So -- well, you -- so, in this case, we had a -- a loan that was -- the lender was New Century Mortgage, correct?

A. Yes, that's right.

Q. And so, would New Century Mortgage -- they're -- you refer to them as the originator, correct?

A. Yes. They were the lender and, for purposes of the securitization, they were also deemed to be the originator.

Q. And so, the way -- let's talk about this particular trust and this particular pooling and servicing agreement.

Can you tell me how the transfer of the note was to occur to the ultimate -- where it was ultimately supposed to end up?

A. Yes.

New Century Mortgage Corporation, in order to have the Wolf mortgage loan -- and by "mortgage loan," that's a defined term in my report which essentially refers to their note and security agreement -- in order for that to be securitized, New Century Mortgage Corporation would have had to sell the mortgage loan to an affiliate by the name of NC Capital Corporation who, for purposes of the

EXHIBIT 7

securitization, is identified as the responsible party.

NC Capital Corporation entered into a mortgage loan purchase agreement with Carrington Securities LP and Stanwich Asset Acceptance Company LLC, and that mortgage loan purchase agreement states that the responsible party would sell the mortgage loans to Carrington Securities LP, who, for purposes of the mortgage loan purchase agreement, was the seller's sponsor.

Carrington Securities LP, as the seller's sponsor, then, sold the mortgage loan to -- would have to sell the mortgage loan to Stanwich Asset Acceptance Company LLC, who is the purchaser under the mortgage loan purchase agreement and the depositor under the pooling and servicing agreement.

So, it would be Stanwich Asset Acceptance Company LLC who would, then, deposit the mortgage loan into the trust fund over which Wells Fargo served as trustee.

Also, the actual physical documents were to be transferred to the trustee Wells Fargo Bank, who, under the pooling and servicing agreement, was required to deliver those to custodian Deutsche Bank National Trust Company.

EXHIBIT 7

Q. So, you've talked about a mortgage loan purchase agreement and a pooling and servicing agreement. Are those the two primary documents that guide the securitization process or are there others also?

A. Well, the pooling and servicing agreement governs this particular securitization. There are other deal documents that were created in conjunction with the securitization, but that is the governing document.

Q. The pooling and servicing agreement?

A. Yes.

Q. And you know that from -- how do you know that?

A. I know that from, first of all, reading the pooling and servicing agreement; from years of studying the subject; from reading various court decisions; speaking to hundreds of attorneys about these subjects; taking specialized training, as well on securitization.

Q. Briefly, do you have a definition of "pooling and servicing agreement" in your report? If -- if not, can you give me in -- in your own words sort of a layman's interpretation of what a pooling and servicing agreement is, generally speaking?

EXHIBIT 7

A. Yes.
Q. Now, how -- what is the basis for your opinion that the -- if I'm reading this correctly, you're saying the note, the physical note, was never -- the custodian never -- never touched it, never had possession of it? Is that what you're saying?
A. No.
Q. What do you mean by "physically transferred"?
A. I mean that Wells Fargo Bank, N.A. did not physically transfer those documents to the document custodian.
Q. I mean, like, I am holding a piece of paper; and -- and if I give it to another person, is that what you mean by "physically transfer" from -- when you give this opinion?
MR. HUGHES: Objection; form.
You can answer.
A. That's what I mean.
Q. (BY MR. SMART) So, it's your opinion that -- that Wells Fargo Bank never gave the original note to Deutsche Bank National Trust Company?
A. Not at the -- not at the time the mortgage loan was allegedly securitized. That's correct.
Q. And what do you base -- what -- what's the

EXHIBIT 7

Q. And in -- in the Ibanez or "ih-ban-yez" (phonetic) case, they were also dealing with a securitization trust?

A. That's correct.

Q. Okay. Have you ever been offered a consulting position with any type of governmental entity to aid the government in assisting them with wrongful foreclosure investigation?

A. Yes.

Q. Okay. And please explain what that is and how that happened.

A. Okay.

Well, I -- I have consulted with attorneys general in a number of states over the years, but most recently I conducted a one-day training for the staff of the New York State Attorney General's office. And this involved training both special agents and assistant attorney generals handling civil matters, as well as criminal matters.

Q. Okay. Let me stop you right there.

A. Uh-huh.

Q. Did they come to you and ask you, or did you submit some type of application?

A. They asked me.

Q. Okay.

EXHIBIT 7

A. And recently, I was awarded a contract to provide a -- a three-day training session to special agents of a variety of federal entities. This was at the request of the Office of the Inspector General for the Federal Housing Finance Agency, which actually regulates Fannie Mae and Freddie Mac.

And just yesterday, I was also contacted by someone in the FHFA OIG's office to consult with them on some mortgage servicing issues.

So, it is anticipated that I'll be doing a fair amount of training going forward for these various special agents.

Q. Okay. And are you aware that the Wolf case at issue here is being filed as a proposed class action?

A. Yes, I am.

Q. Okay. Do you believe that the plaintiffs' -- when I say "the plaintiffs," I mean the Wolfs -- and the class members' claims stem from a common course of conduct by Wells Fargo?

A. Yes.

Q. Okay. And do you believe each member of the proposed class has been damaged by Wells Fargo's course of conduct and action?

A. Yes.

EXHIBIT 7

Q. Do you recall how many mortgages and deeds of trust have been transferred into this 2006-NC3 trust?
A. Just a moment, please. I think I did that research.
Yes. There were 7,548 mortgage loans involved in this securitization.
Q. Okay. And is it true that approximately 571 of these mortgage loans relate to Texas residents and Texas property?
A. I can look that up. I -- and I may have before, so.... That sounds about right.
Q. Approximately?
A. Yes. Uh-huh.
Q. And approximately 233 of these mortgage loans that have been allegedly transferred into this trust involve real property located in Harris County, Texas?
A. Yes. I believe I -- I -- I looked at those statistics, by which I can go in through using the Bloomberg terminal and support all of this -- rather, and analyze all of this data, sorting by ZIP code, metropolitans statical area, state, and so forth.
Q. So, you're saying that you can verify these numbers later?
A. Yes.
Q. Okay.

EXHIBIT 7

A. I -- I certainly can.
Q. And you're aware that the plaintiffs in the proposed class in this case are seeking to certify a class comprised of all Texas residents whose mortgages and deeds of trust have been allegedly transferred into the 2006 trust?
A. Yes.
Q. All right. Do you believe there's numerous common questions of fact that would equally apply to both the plaintiffs and the proposed class?
A. Yes. With respect to the securitization and actually the foreclosure process, yes, I do.
Q. Okay. Is fair to say that the size of the proposed class in this case will number in the hundreds or thousands?
A. Yes.
Q. Is there at least one material fact issue shared by every proposed class member that's common with the plaintiffs in this case?
A. Yes.
Q. Do you -- can you explain or list at least one or two of these common factual issues?
A. Yes.
With respect to what was required to securitize these loans, every single one of them would

EXHIBIT 7

have to follow the same deal flow that I've just described here during the course of this deposition.

Q. Would -- what about an allegation that these -- that a fraudulent transfer of lien was filed with the county clerk's office? Would that be a common factual issue shared by the proposed class and the plaintiffs?

A. Yes.

Q. And when it -- when we allege -- or when the plaintiffs allege a fraudulent transfer of lien, what exactly -- what document is that referring to?

A. For example, in the Wolfs' case, I have it here attached to my report as Exhibit D. It is called "Transfer of lien."

And what this proposes to do is to -- to assign the security instrument and the note from, in this case, New Century Mortgage Corporation, directly into -- or directly over to Wells Fargo Bank, N.A. as trustee for Carrington Mortgage Loan Trust Series 2006-NC3 Asset-Backed Pass-Through Certificates.

So, it purports to assign and transfer all of the rights contained in those instruments to Wells Fargo Bank as trustee.

MR. HUGHES: Okay. I'll pass the witness.

EXHIBIT 7

MR. SMART: No more questions.

(Deposition concluded at 10:28 a.m.)

EXHIBIT 7

CAUSE NO. 2011-36476

MARY ELLEN WOLF and DAVID WOLF	)	IN THE DISTRICT COURT OF
VS.	)	HARRIS COUNTY, TEXAS
WELLS FARGO BANK, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates, et al	)	151ST JUDICIAL DISTRICT

REPORTER'S CERTIFICATION
ORAL DEPOSITION OF MARIE MCDONNELL
OCTOBER 2, 2012

I, Mendy A. Schneider, a Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, MARIE MCDONNELL, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on _____, 2012, to the witness, or to the attorney for the witness, for examination, signature, and return to U.S. Legal Support, Inc., by _____, 2012;

That the amount of time used by each party at the deposition is as follows:

EXHIBIT 7

MR. HUGHES - 00:11:25

MR. SMART - 01:00:49

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

MR. W. CRAFT HUGHES, Attorney for Plaintiffs.
MR. PETER C. SMART, Attorney for Defendants.

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Further certification requirements pursuant to Rule 203 of TRCP will be certified to after they have occurred.

Certified to by me this 9th of October, 2012.

Mendy A. Schneider, CSR NO. 7761
Expiration Date: 12-31-12

EXHIBIT 7

CAUSE NO. 2011-36476

MARY ELLEN WOLF AND DAVID WOLF, on behalf of themselves and all others similarly situated,	§	IN THE DISTRICT COURT OF
v.	§	HARRIS COUNTY, TEXAS
WELLS FARGO BANK, N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST, TOM CROFT, NEW CENTURY MORTGAGE CORPORATION, AND CARRINGTON MORTGAGE SERVICES, LLC.	§	151ST JUDICIAL DISTRICT

AFFIDAVIT OF MARIE MCDONNELL, C.F.E.

COMMONWEALTH OF MASSACHUSETTS §
§
COUNTY OF BARNSTABLE §

Before me, the undersigned notary, on this day personally appeared MARIE MCDONNELL, C.F.E., the affiant, a person whose identity is known to me. After I administered an oath to affiant, affiant testified:

1. "My name is MARIE MCDONNELL, C.F.E., I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. I was retained by counsel for the Plaintiffs Mary Wolf and David Wolf to render an expert opinion in this case. I am a Mortgage Fraud and Forensic Analyst and a credentialed Certified Fraud Examiner ("CFE"). I am the founder and managing member of Truth In Lending Audit & Recovery Services, LLC of Orleans, Massachusetts and have twenty-five years' experience in transactional analysis, mortgage auditing, and mortgage fraud investigation.

3. I received a Certified Exchange Consultant Designation from The Academy of Real Estate, High Honors, in 1989.

4. I've been a Registered Real Estate Broker from February 1988 through the present time.

5. I am also the President of McDonnell Property Analytics, Inc., a litigation support and research firm that provides mortgage-backed securities research services and foreclosure forensics to attorneys nationwide. McDonnell Property Analytics also advises and performs services for county registers of deeds, attorneys general, courts and other governmental agencies.

EXHIBIT 8

6. I am an expert in chain of title, securitization and truth in lending disputes between lenders and homeowners and disputes between governmental bodies and national banks. My experience includes the design, execution and delivery of various company's title and securitization forensic reports to attorneys, consumers, registries of deeds, and other governmental agencies.

7. I've also trained state and federal law enforcement and regulatory agencies regarding detection of invalid assignments, robo-signing, fraud and misrepresentation in mortgage and foreclosure instruments.

8. I've provided litigation support and expert witness services to law firms throughout the country.

9. Throughout my career, I've developed specialized knowledge and implemented protocols to trace the ownership of residential and commercial mortgage loans that had been sold to secondary market investors and private label securitization deals.

10. I've personally audited thousands of residential mortgage loans on behalf of consumers and attorneys who specialize in foreclosure defense.

11. I uncovered a mortgage fraud scheme, orchestrated by The Dime Savings Bank of New York, that led to Attorney General investigations in Massachusetts, New Hampshire and Connecticut and, ultimately, to multi-million dollar settlement awards and relief programs for consumers.

12. In June of 2011, John O'Brien, Register of the Essex Southern District Registry of Deeds, commissioned me to conduct an audit to test the integrity of his registry due to his concern that Mortgage Electronic Registration Systems, Inc. ("MERS") boasts that its members can avoid recording assignments of mortgage if they register their mortgages in the MERS System; and due to the robo-signing scandal featured in a 60 Minutes exposé on the subject.

13. A true and correct copy of my Report entitled *FORENSIC EXAMINATION OF ASSIGNMENTS OF MORTGAGE RECORDED DURING 2010 IN THE ESSEX SOUTHERN DISTRICT REGISTRY OF DEEDS* is attached to the foregoing Plaintiffs' Response to Defendants' Motion for Summary Judgment as Exhibit 8, and incorporated herein by reference for all purposes.

14. I accepted this assignment on a pro bono basis because of its high and urgent value to the public trust, and to educate the 50 Attorneys General who were at the time brokering a settlement with the subject banks in an attempt to resolve fraudulent foreclosure practices. I also wanted to prove the concept that registries of deeds across all counties and jurisdictions in the United States need to have their registries audited in kind. I wanted to give consumers some guidelines as to how they can research the public records to detect invalid documents and gaps in the chain of title that need to be addressed.

EXHIBIT 8

15. I defined the scope of the examination by selecting all assignments of mortgage that were recorded during the year 2010 to and from three of the nation's largest banks: JPMorgan Chase Bank, N.A., Wells Fargo Bank, N.A., and Bank of America, N.A. The sample was not random or arbitrary; we included every assignment that appeared in the Grantor / Grantee index using the registry's online search engine. The study included 147 assignments involving JPMorgan Chase; 278 assignments involving Wells Fargo Bank; and 140 assignments involving Bank of America. A total of 565 assignments were examined.

16. The results, conclusions and findings of the audit I performed for John O'Brien, Register of the Essex Southern District Registry of Deeds include the following:

a. I was able to trace ownership to only 287 of 473 mortgages (60%).
b. 46% and 47% of mortgages were either MERS registered or owned by the Government Sponsored Enterprises (i.e., Fannie Mae, Freddie Mac, Ginnie Mae), respectively. Typically ownership of these mortgages is highly obscure.
c. 37% of mortgages were securitized into public trusts (as opposed to private trusts), which are typically more discoverable through use of forensic tools and high cost, subscription-based databases.
d. Only 16% of all assignments examined are valid.
e. 75% of all assignments examined are invalid and an additional 8.7% are questionable (require more data.)
f. 27% of the invalid assignments are fraudulent, 35% are "robo-signed" and 10% violate the Massachusetts Mortgage Fraud Statute.
g. 683 assignments are missing, translating to approximately $180,000 in lost recording fees per 1,000 mortgages whose current ownership can be traced.

17. I have reviewed the written documents produced by Defendants and Plaintiffs, the pleadings on file, and deposition transcript of Tom Croft in the above-referenced lawsuit at issue in this case, entitled *Mary Ellen Wolf and David Wolf v. Wells Fargo Bank N.A., et al*; Cause No. 2011-36476; In the 151st Judicial District Court of Harris County, Texas.

18. Further, I have conducted my own independent research using: the Bloomberg Professional service, a robust database of Residential Mortgage Backed Securities ("RMBS") that enables me to identify and track individual transactions that were allegedly packaged into RMBS; EDGAR, the Securities and Exchange Commission's official website that contains various Deal Documents filed with the SEC incident to publically offered RMBS; www.SECInfo.com, which provides enhanced viewing options and hyperlinks that make it easier to navigate the documents on file with the SEC; the relevant documents on file with the Harris County Clerk's Office; internet-based public searches; and my own repository of mortgage loan documents issued by New Century Mortgage Corporation.

19. Based on the evidence available as of this writing and with a reasonable degree of probability, it is my expert opinion that:

EXHIBIT 8

a. Defendant Wells Fargo Bank, N.A., is not the current owner and holder of Plaintiffs' Note and Deed of Trust ("Mortgage Loan");

b. Defendant Wells Fargo Bank, N.A., has never been the owner and holder of Plaintiffs' Mortgage Loan;

c. Plaintiffs' Mortgage Loan was never transferred into the 2006-NC3 Trust for which Defendant Wells Fargo Bank, N.A. is Trustee in strict compliance with the Pooling and Servicing Agreement executed on August 1, 2006 between the parties which is governed by the laws of the State of New York;

d. The Plaintiffs' Mortgage Loan was never physically transferred from the originator (New Century Mortgage Corporation) to the Responsible Party (New Century Capital Corporation); or properly conveyed from the Responsible Party to the sponsor (Carrington Securities, LP) of the 2006-NC3 Trust as required by the Mortgage Loan Purchase Agreement executed on August 10, 2006 between the parties;

e. The Plaintiffs' Mortgage Loan was never physically transferred from the sponsor (Carrington Securities, LP) to the depositor (Stanwich Asset Acceptance Company, LLC) of the 2006-NC3 Trust or properly conveyed as required by the Mortgage Loan Purchase Agreement referenced above;

f. The Plaintiffs' Mortgage Loan was never physically transferred from the depositor (Stanwich Asset Acceptance Company, LLC) or properly conveyed to the Trustee for the 2006-NC3 Trust as required by the Pooling and Servicing Agreement dated August 1, 2006 by and between the parties; and

g. The Plaintiffs' Mortgage Loan was never physically transferred from Defendant Wells Fargo Bank, N.A., as Trustee of the 2006-NC3 Trust to the document custodian (Deutsche Bank National Trust Company).

20. The expert opinions I reached above are based on my review and reliance on the documents and information reviewed in this case to date and the reasons underpinning my conclusions will be detailed in my expert report which is yet to be released. I reserve the right to amend and supplement my opinion based on my review of future data.

21. This affidavit is made upon personal knowledge of the affiant, and all facts stated herein are true and correct to the best of my present knowledge.

EXHIBIT 8

Marie McDonnell

MARIE MCDONNELL, C.F.E., Affiant

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF BARNSTABLE, SS

At Brewster, Massachusetts, on this 24th day of September 2012, before me, the undersigned authority, personally appeared MARIE MCDONNELL, proved to me through evidence of identity, to wit: a Massachusetts Driver's License, to be the signer(s) of the attached document, and who swore or affirmed to me, under the penalties of perjury, that the contents of said document are truthful and accurate, to the best of her knowledge and belief.

Subscribed to and sworn before me.

I. Marie Sherman

Notary Public

My Commission expires: 2/14/2014

I. MARIE SHERMAN
Notary Public
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires
February 14, 2014

EXHIBIT 8

STANWICH ASSET ACCEPTANCE COMPANY, L.L.C.

Depositor

NEW CENTURY MORTGAGE CORPORATION,

Servicer

and

WELLS FARGO BANK N.A.,

Trustee

POOLING AND SERVICING AGREEMENT

Dated as of August 1, 2006

Carrington Mortgage Loan Trust, Series 2006-NC3
Asset-Backed Pass-Through Certificates

17381982

EXHIBIT 9

TABLE OF CONTENTS

EXHIBIT 9

TABLE OF CONTENTS
(continued)

Page

EXHIBIT 9

TABLE OF CONTENTS
(continued)

Page

EXHIBIT 9

TABLE OF CONTENTS
(continued)

Page

EXHIBIT 9

Exhibits

EXHIBIT 9

This Pooling and Servicing Agreement, is dated and effective as of August 1, 2006, among STANWICH ASSET ACCEPTANCE COMPANY, L.L.C. as Depositor, NEW CENTURY MORTGAGE CORPORATION as Servicer and WELLS FARGO BANK, N.A. as Trustee.

PRELIMINARY STATEMENT:

The Depositor intends to sell pass-through certificates to be issued hereunder in multiple classes, which in the aggregate will evidence the entire beneficial ownership interest in each REMIC (as defined herein) created hereunder. The Trust Fund (as defined herein) will consist of a segregated pool of assets comprised of the Mortgage Loans and certain other related assets subject to this Agreement.

REMIC I

As provided herein, the Trustee will elect to treat the segregated pool of assets consisting of the Mortgage Loans and certain other related assets (other than any Servicer Prepayment Charge Payment Amounts, the Swap Account and the Swap Agreement) subject to this Agreement as a REMIC for federal income tax purposes, and such segregated pool of assets will be designated as "REMIC I." The Class R-I Interest will be the sole class of "residual interests" in REMIC I for purposes of the REMIC Provisions (as defined herein). The following table irrevocably sets forth the designation, the REMIC I Remittance Rate, the initial Uncertificated Balance and, for purposes of satisfying Treasury regulation Section 1.860G-1(a)(4)(iii), the "latest possible maturity date" for each of the REMIC I Regular Interests (as defined herein). None of the REMIC I Regular Interests will be certificated.

Designation	REMIC I Remittance Rate	Initial Uncertificated Balance	Latest Possible Maturity Date[1]
I-LTAA	Variable (2)	$1,561,132,037.98	August 2036
I-LTA1	Variable (2)	$5,615,410.00	August 2036
I-LTA2	Variable (2)	$3,392,000.00	August 2036
I-LTA3	Variable (2)	$1,959,340.00	August 2036
I-LTA4	Variable (2)	$845,290.00	August 2036
I-LTM1	Variable (2)	$900,040.00	August 2036
I-LTM2	Variable (2)	$828,360.00	August 2036
I-LTM3	Variable (2)	$246,910.00	August 2036
I-LTM4	Variable (2)	$414,180.00	August 2036
I-LTM5	Variable (2)	$302,670.00	August 2036
I-LTM6	Variable (2)	$230,980.00	August 2036
I-LTM7	Variable (2)	$230,980.00	August 2036
I-LTM8	Variable (2)	$167,260.00	August 2036
I-LTM9	Variable (2)	$215,050.00	August 2036
I-LTM10	Variable (2)	$183,190.00	August 2036
I-LTZZ	Variable (2)	$16,328,179.56	August 2036
I-LTP	Variable (2)	$100.00	August 2036

(1) For purposes of Section 1.860G-1(a)(4)(iii) of the Treasury regulations, the Distribution Date immediately following the maturity date for the Mortgage Loan with the latest maturity date has been designated as the "latest possible maturity date" for each REMIC I Regular Interest.

(2) Calculated in accordance with the definition of "REMIC I Remittance Rate" herein.

EXHIBIT 9

REMIC II

As provided herein, the Trustee will elect to treat the segregated pool of assets consisting of the REMIC I Regular Interests as a REMIC for federal income tax purposes, and such segregated pool of assets will be designated as "REMIC II." The Class R-II Interest will evidence the sole class of "residual interests" in REMIC II for purposes of the REMIC Provisions under federal income tax law. The following table irrevocably sets forth the designation, the Pass-Through Rate, the initial aggregate Certificate Principal Balance and, for purposes of satisfying Treasury regulation Section 1.860G-1(a)(4)(iii), the "latest possible maturity date" for the indicated Classes of Certificates.

Designation	Pass-Through Rate	Initial Aggregate Certificate Principal Balance	Latest Possible Maturity Date[1]
Class A-1[2]	Variable[2]	$561,541,000.00	January 25, 2031
Class A-2[2]	Variable[2]	$339,200,000.00	February 25, 2036
Class A-3[2]	Variable[2]	$195,934,000.00	July 25, 2036
Class A-4[2]	Variable[2	$84,529,000.00	July 25, 2036
Class M-1[2]	Variable[2]	$90,004,000.00	August 25, 2036
Class M-2[2]	Variable[2]	$82,836,000.00	August 25, 2036
Class M-3[2]	Variable[2]	$24,691,000.00	August 25, 2036
Class M-4[2]	Variable[2]	$41,418,000.00	August 25, 2036
Class M-5[2]	Variable[2]	$30,267,000.00	August 25, 2036
Class M-6[2]	Variable[2]	$23,098,000.00	August 25, 2036
Class M-7[2]	Variable[2]	$23,098,000.00	August 25, 2036
Class M-8[2]	Variable[2]	$16,726,000.00	August 25, 2036
Class M-9[2]	Variable[2]	$21,505,000.00	August 25, 2036
Class M-10[2]	Variable[2]	$18,319,000.00	August 25, 2036
Class CE[3]	Variable[4]	$39,825,977.54	N/A
Class P	N/A[5]	$100.00	N/A

(1) For purposes of Section 1.860G-1(a)(4)(iii) of the Treasury regulations, the Distribution Date immediately following the maturity date for the Mortgage Loans with the latest maturity date has been designated as the "latest possible maturity date" for each Class of Certificates.

(2) Calculated in accordance with the definition of "Pass-Through Rate" herein. The Class A and Class M Certificates represent ownership of REMIC II Regular Interests, together with certain rights to payments to be made from amounts received under the Swap Agreement which payments are treated for federal income tax purposes as being made outside of REMIC II by the holder of the Class CE Certificates, as the owner of the Swap Agreement.

(3) The Class CE Certificates will be comprised of two REMIC II Regular Interests, a principal only regular interest designated REMIC II Regular Interest CE-PO and an interest only regular interest designated REMIC II Regular Interest CE-IO, each of which will be entitled to distributions as set forth herein.

(4) The Class CE Certificates will accrue interest at its variable Pass-Through Rate on the Notional Amount of the Class CE-IO outstanding from time to time which notional amount shall equal the aggregate Uncertificated Balance of the REMIC I Regular Interests. The Class CE Certificates will not accrue interest on its Certificate Principal Balance. The rights of the Holder of the Class CE Certificates to payments from the Swap Agreement shall be outside and apart from its rights under the REMIC II Regular Interests CE-IO and CE-PO.

(5) The Class P Certificates will not accrue interest.

As of the Cut-off Date, the Mortgage Loans had an aggregate Stated Principal Balance equal to $1,592,991,977.54

In consideration of the mutual agreements herein contained, the Depositor, the Servicer and the Trustee agree as follows:

EXHIBIT 9

ARTICLE I

DEFINITIONS

SECTION 1.01 Defined Terms. Whenever used in this Agreement, including, without limitation, in the Preliminary Statement hereto, the following words and phrases, unless the context otherwise requires, shall have the meanings specified in this Article. Unless otherwise specified, all calculations described herein shall be made on the basis of a 360-day year consisting of twelve 30-day months.

"Accepted Servicing Practices": The servicing standards set forth in Section 3.01.

"Accrued Certificate Interest": With respect to any Class A Certificate, Mezzanine Certificate and the Class CE Certificates and each Distribution Date, interest accrued during the related Interest Accrual Period at the Pass-Through Rate for such Certificate for such Distribution Date on the Certificate Principal Balance, in the case of the Class A Certificates and the Mezzanine Certificates, or on the Notional Amount, in the case of the Class CE Certificates, of such Certificate immediately prior to such Distribution Date. The Class P Certificates are not entitled to distributions in respect of interest and, accordingly, will not accrue interest. All distributions of interest on the Class A Certificates and the Mezzanine Certificates will be calculated on the basis of a 360-day year and the actual number of days in the applicable Interest Accrual Period. All distributions of interest on the Class CE Certificates will be based on a 360-day year consisting of twelve 30-day months. Accrued Certificate Interest with respect to each Distribution Date, as to any Class A Certificate, Mezzanine Certificate or the Class CE Certificates, shall be reduced by an amount equal to the portion allocable to such Certificate pursuant to Section 1.02 hereof of the sum of (a) the aggregate Prepayment Interest Shortfall, if any, for such Distribution Date to the extent not covered by payments pursuant to Section 3.24 and (b) the aggregate amount of any Relief Act Interest Shortfall, if any, for such Distribution Date. In addition, Accrued Certificate Interest with respect to each Distribution Date, as to the Class CE Certificates, shall be reduced by an amount equal to the portion allocable to the Class CE Certificates of Realized Losses, if any, pursuant to Section 4.04 hereof.

"Additional Form 10-D Disclosure" has the meaning set forth in Section 4.06(a).

"Additional Form 10-K Disclosure" has the meaning set forth in Section 4.06(b).

"Additional Servicer" means (i) each affiliated servicer meeting the requirements of Item 1108(a)(2)(ii) of Regulation AB that services any of the Mortgage Loans, and (ii) each unaffiliated servicer meeting the requirements of Item 1108(a)(2)(iii) of Regulation AB (other than the Trustee), who services 10% or more of the Mortgage Loans.

"Adjustable-Rate Mortgage Loan": Each of the Mortgage Loans identified on the Mortgage Loan Schedule as having a Mortgage Rate that is subject to adjustment.

"Adjustment Date": With respect to each Adjustable-Rate Mortgage Loan, the first day of the month in which the Mortgage Rate of such Mortgage Loan changes pursuant to the related

Mortgage Note. The first Adjustment Date following the Cut-off Date as to each Adjustable-Rate Mortgage Loan is set forth in the Mortgage Loan Schedule.

"Advance": As to any Mortgage Loan or REO Property, any advance made by the Servicer in respect of any Distribution Date pursuant to Section 4.03.

"Advance Facility": As defined in Section 3.26(a).

"Advance Facility Trustee": As defined in Section 3.26(b).

"Advancing Person": As defined in Section 3.26(a) hereof.

"Affected Party": As defined in the Swap Agreement.

"Affiliate": With respect to any specified Person, any other Person controlling or controlled by or under common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agreement": This Pooling and Servicing Agreement and all amendments hereof and supplements hereto.

"Allocated Realized Loss Amount": With respect to any Distribution Date and any Class of Class A Certificates or Mezzanine Certificates, an amount equal to (x) the sum of (i) any Realized Losses allocated to such Class of Certificates on such Distribution Date and (ii) the amount of any Allocated Realized Loss Amount for such Class of Certificates remaining unpaid from the previous Distribution Date *minus* (y) the amount of the increase in the related Certificate Principal Balance due to the receipt of Subsequent Recoveries as provided in Section 4.01.

"Assignment": An assignment of Mortgage, notice of transfer or equivalent instrument, in recordable form (excepting therefrom, if applicable, the mortgage recordation information which has not been required pursuant to Section 2.01 hereof or returned by the applicable recorder's office), which is sufficient under the laws of the jurisdiction wherein the related Mortgaged Property is located to reflect of record the sale of the Mortgage, which assignment, notice of transfer or equivalent instrument may be in the form of one or more blanket assignments covering Mortgages secured by Mortgaged Properties located in the same county, if permitted by law.

"Available Distribution Amount": With respect to any Distribution Date, an amount equal to (1) the sum of (a) the aggregate of the amounts on deposit in the Custodial Account and Certificate Account as of the close of business on the related Determination Date, (b) the aggregate of any amounts received in respect of an REO Property withdrawn from any REO Account and deposited in the Certificate Account for such Distribution Date pursuant to Section 3.23, (c) the aggregate of any amounts deposited in the Certificate Account by the Servicer in

respect of Prepayment Interest Shortfalls for such Distribution Date pursuant to Section 3.24, (d) the aggregate of any Advances made by the Servicer for such Distribution Date pursuant to Section 4.03 and (e) the aggregate of any Advances made by the Trustee as successor Servicer or any other successor Servicer for such Distribution Date pursuant to Section 7.02, reduced (to not less than zero), by (2) the portion of the amount described in clause (1)(a) above that represents (i) Monthly Payments on the Mortgage Loans received from a Mortgagor on or prior to the Determination Date but due during any Due Period subsequent to the related Due Period, (ii) Principal Prepayments on the Mortgage Loans received after the related Prepayment Period (together with any interest payments received with such Principal Prepayments to the extent they represent the payment of interest accrued on the Mortgage Loans during a period subsequent to the related Prepayment Period) (other than Prepayment Charges), (iii) Liquidation Proceeds and Insurance Proceeds received in respect of the Mortgage Loans after the related Prepayment Period, (iv) amounts reimbursable or payable to the Depositor, the Servicer, the Trustee, the Custodian, the Seller or any Sub-Servicer pursuant to Section 3.11, Section 3.12, Section 8.05 or otherwise payable in respect of Extraordinary Trust Fund Expenses, (v) the Trustee Fee payable from the Certificate Account pursuant to Section 8.05, (vi) amounts deposited in the Custodial Account or the Certificate Account in error, (vii) the amount of any Prepayment Charges collected by the Servicer in connection with the Principal Prepayment of any of the Mortgage Loans or any Servicer Prepayment Charge Payment Amount and (viii) any Net Swap Payment owed to the Swap Counterparty and Swap Termination Payments owed to the Swap Counterparty not due to a Swap Counterparty Trigger Event for such Distribution Date.

"Bankruptcy Code": The Bankruptcy Reform Act of 1978 (Title 11 of the United States Code), as amended.

"Bankruptcy Loss": With respect to any Mortgage Loan, a Realized Loss resulting from a Deficient Valuation or Debt Service Reduction.

"Bloomberg": As defined in Section 4.02.

"Book-Entry Certificate": The Class A Certificates and the Mezzanine Certificates for so long as the Certificates of such Class shall be registered in the name of the Depository or its nominee.

"Book-Entry Custodian": The custodian appointed pursuant to Section 5.01.

"Business Day": Any day other than a Saturday, a Sunday or a day on which banking or savings and loan institutions in the State of California, the State of New York or in any city in which the Corporate Trust Office of the Trustee is located, are authorized or obligated by law or executive order to be closed.

"Cash-Out Refinancing": A Refinanced Mortgage Loan the proceeds of which are more than a nominal amount in excess of the principal balance of any existing first mortgage or subordinate mortgage on the related Mortgaged Property and any closing costs related to such Refinance Mortgage Loan.

"Certificate": Any one of the Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates, Class A-1, Class A-2, Class A-3, Class A-4, Class M-1, Class M-2, Class M-3, Class M-4, Class M-5, Class M-6, Class M-7, Class M-8, Class M-9, Class M-10, Class CE, Class P and Class R issued under this Agreement.

"Certificate Account": The trust account or accounts created and maintained by the Trustee pursuant to Section 3.10(b), which shall be entitled "Wells Fargo Bank, N.A., as Trustee, in trust for the registered holders of Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates." The Certificate Account must be an Eligible Account.

"Certificate Factor": With respect to any Class of Regular Certificates as of any Distribution Date, a fraction, expressed as a decimal carried to six places, the numerator of which is the aggregate Certificate Principal Balance (or the Notional Amount, in the case of the Class CE Certificates) of such Class of Certificates on such Distribution Date (after giving effect to any distributions of principal and in the case of the Class A Certificates, the Mezzanine Certificates and the Class CE Certificates, the allocations of Realized Losses in reduction of the Certificate Principal Balance (or the Notional Amount, in the case of the Class CE Certificates) of such Class of Certificates to be made on such Distribution Date), and the denominator of which is the initial aggregate Certificate Principal Balance (or the Notional Amount, in the case of the Class CE Certificates) of such Class of Certificates as of the Closing Date.

"Certificateholder" or "Holder": The Person in whose name a Certificate is registered in the Certificate Register, except that a Disqualified Organization or a Non-United States Person shall not be a Holder of a Residual Certificate for any purpose hereof and, solely for the purpose of giving any consent pursuant to this Agreement, any Certificate registered in the name of the Depositor or the Servicer or any Affiliate thereof shall be deemed not to be outstanding and the Voting Rights to which it is entitled shall not be taken into account in determining whether the requisite percentage of Voting Rights necessary to effect any such consent has been obtained, except as otherwise provided in Section 13.01. The Trustee may conclusively rely upon a certificate of the Depositor or the Servicer in determining whether a Certificate is held by an Affiliate thereof. All references herein to "Holders" or "Certificateholders" shall reflect the rights of Certificate Owners as they may indirectly exercise such rights through the Depository and participating members thereof, except as otherwise specified herein; provided, however, that the Trustee shall be required to recognize as a "Holder" or "Certificateholder" only the Person in whose name a Certificate is registered in the Certificate Register.

"Certificate Owner": With respect to a Book-Entry Certificate, the Person who is the beneficial owner of such Certificate as reflected on the books of the Depository or on the books of a Depository Participant or on the books of an indirect participating brokerage firm for which a Depository Participant acts as agent.

"Certificate Principal Balance": With respect to each Class A Certificate, Mezzanine Certificate or Class P Certificate as of any date of determination, the Certificate Principal Balance of such Certificate on the Distribution Date immediately prior to such date of determination *plus* any Subsequent Recoveries added to the Certificate Principal Balance of such Certificate pursuant to Section 4.01, *minus* all distributions allocable to principal made thereon

and, in the case of the Class A Certificates and the Mezzanine Certificates, Realized Losses allocated thereto on such immediately prior Distribution Date (or, in the case of any date of determination up to and including the first Distribution Date, the initial Certificate Principal Balance of such Certificate, as stated on the face thereof). With respect to the Class CE Certificates as of any date of determination, an amount equal to the Percentage Interest evidenced by such Certificate times the excess, if any, of (A) the then aggregate Uncertificated Balance of the REMIC I Regular Interests over (B) the then aggregate Certificate Principal Balance of the Class A Certificates, the Mezzanine Certificates and the Class P Certificates then outstanding.

"Certificate Register": The register maintained pursuant to Section 5.02.

"Class": Collectively, all of the Certificates bearing the same class designation.

"Class A-1 Certificates": Any one of the Class A-1 Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-1 and evidencing (i) a Regular Interest in REMIC II for purposes of the REMIC Provisions and (ii) the right to receive payments from the Swap Account to the extent described herein.

"Class A-2 Certificates": Any one of the Class A-2 Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-2 and evidencing (i) a Regular Interest in REMIC II for purposes of the REMIC Provisions and (ii) the right to receive payments from the Swap Account to the extent described herein.

"Class A-3 Certificates": Any one of the Class A-3 Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-3 and evidencing (i) a Regular Interest in REMIC II for purposes of the REMIC Provisions and (ii) the right to receive payments from the Swap Account to the extent described herein.

"Class A-4 Certificates": Any one of the Class A-4 Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-4 and evidencing (i) a Regular Interest in REMIC II for purposes of the REMIC Provisions and (ii) the right to receive payments from the Swap Account to the extent described herein.

"Class A Certificates": Collectively, the Class A-1 Certificates, the Class A-2 Certificates, the Class A-3 Certificates and the Class A-4 Certificates.

"Class A Principal Distribution Amount": With respect to any Distribution Date, the excess of (x) the aggregate Certificate Principal Balance of the Class A Certificates immediately prior to such Distribution Date over (y) the lesser of (A) the product of (i) the applicable Subordination Percentage and (ii) the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period and (B) the excess, if any, of the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period *over* the Overcollateralization Floor Amount.

"Class CE Certificate": Any one of the Class CE Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-15 and

evidencing two Regular Interests in REMIC II for purposes of the REMIC Provisions together with certain rights to payments under the Swap Agreement.

"Class M-1 Certificate": Any one of the Class M-1 Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-5 and evidencing (i) a Regular Interest in REMIC II for purposes of the REMIC Provisions and (ii) the right to receive payments from the Swap Account to the extent described herein.

"Class M-1 Principal Distribution Amount": With respect to any Distribution Date, the excess of (x) the sum of (i) the aggregate Certificate Principal Balance of the Class A Certificates (after taking into account the distribution of the Class A Principal Distribution Amount on such Distribution Date) and (ii) the Certificate Principal Balance of the Class M-1 Certificates immediately prior to such Distribution Date over (y) the lesser of (A) the product of (i) the applicable Subordination Percentage and (ii) the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period and (B) the excess, if any, of the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period *over* the Overcollateralization Floor Amount.

"Class M-2 Certificate": Any one of the Class M-2 Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-6 and evidencing (i) a Regular Interest in REMIC II for purposes of the REMIC Provisions and (ii) the right to receive payments from the Swap Account to the extent described herein.

"Class M-2 Principal Distribution Amount": With respect to any Distribution Date, the excess of (x) the sum of (i) the aggregate Certificate Principal Balance of the Class A Certificates (after taking into account the distribution of the Class A Principal Distribution Amount on such Distribution Date), (ii) the Certificate Principal Balance of the Class M-1 Certificates (after taking into account the distribution of the Class M-1 Principal Distribution Amount on such Distribution Date) and (iii) the Certificate Principal Balance of the Class M-2 Certificates immediately prior to such Distribution Date over (y) the lesser of (A) the product of (i) the applicable Subordination Percentage and (ii) the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period and (B) the excess, if any, of the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period *over* the Overcollateralization Floor Amount.

"Class M-3 Certificate": Any one of the Class M-3 Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-7 and evidencing (i) a Regular Interest in REMIC II for purposes of the REMIC Provisions and (ii) the right to receive payments from the Swap Account to the extent described herein.

"Class M-3 Principal Distribution Amount": With respect to any Distribution Date, the excess of (x) the sum of (i) the aggregate Certificate Principal Balance of the Class A Certificates (after taking into account the distribution of the Class A Principal Distribution Amount on such Distribution Date), (ii) the Certificate Principal Balance of the Class M-1 Certificates (after taking into account the distribution of the Class M-1 Principal Distribution Amount on such Distribution Date), (iii) the Certificate Principal Balance of the Class M-2 Certificates (after

taking into account the distribution of the Class M-2 Principal Distribution Amount on such Distribution Date) and (iv) the Certificate Principal Balance of the Class M-3 Certificates immediately prior to such Distribution Date over (y) the lesser of (A) the product of (i) the applicable Subordination Percentage and (ii) the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period and (B) the excess, if any, of the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period *over* the Overcollateralization Floor Amount.

"Class M-4 Certificate": Any one of the Class M-4 Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-8 and evidencing (i) a Regular Interest in REMIC II for purposes of the REMIC Provisions and (ii) the right to receive payments from the Swap Account to the extent described herein.

"Class M-4 Principal Distribution Amount": With respect to any Distribution Date, the excess of (x) the sum of (i) the aggregate Certificate Principal Balance of the Class A Certificates (after taking into account the distribution of the Class A Principal Distribution Amount on such Distribution Date), (ii) the Certificate Principal Balance of the Class M-1 Certificates (after taking into account the distribution of the Class M-1 Principal Distribution Amount on such Distribution Date), (iii) the Certificate Principal Balance of the Class M-2 Certificates (after taking into account the distribution of the Class M-2 Principal Distribution Amount on such Distribution Date), (iv) the Certificate Principal Balance of the Class M-3 Certificates (after taking into account the distribution of the Class M-3 Principal Distribution Amount on such Distribution Date) and (v) the Certificate Principal Balance of the Class M-4 Certificates immediately prior to such Distribution Date over (y) the lesser of (A) the product of (i) the applicable Subordination Percentage and (ii) the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period and (B) the excess, if any, of the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period *over* the Overcollateralization Floor Amount.

"Class M-5 Certificate": Any one of the Class M-5 Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-9 and evidencing (i) a Regular Interest in REMIC II for purposes of the REMIC Provisions and (ii) the right to receive payments from the Swap Account to the extent described herein.

"Class M-5 Principal Distribution Amount": With respect to any Distribution Date, the excess of (x) the sum of (i) the aggregate Certificate Principal Balance of the Class A Certificates (after taking into account the distribution of the Class A Principal Distribution Amount on such Distribution Date), (ii) the Certificate Principal Balance of the Class M-1 Certificates (after taking into account the distribution of the Class M-1 Principal Distribution Amount on such Distribution Date), (iii) the Certificate Principal Balance of the Class M-2 Certificates (after taking into account the distribution of the Class M-2 Principal Distribution Amount on such Distribution Date), (iv) the Certificate Principal Balance of the Class M-3 Certificates (after taking into account the distribution of the Class M-3 Principal Distribution Amount on such Distribution Date), (v) the Certificate Principal Balance of the Class M-4 Certificates (after taking into account the distribution of the Class M-4 Principal Distribution Amount on such Distribution Date) and (vi) the Certificate Principal Balance of the Class M-5 Certificates

EXHIBIT 9

immediately prior to such Distribution Date over (y) the lesser of (A) the product of (i) the applicable Subordination Percentage and (ii) the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period and (B) the excess, if any, of the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period *over* the Overcollateralization Floor Amount.

"Class M-6 Certificate": Any one of the Class M-6 Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-10 and evidencing (i) a Regular Interest in REMIC II for purposes of the REMIC Provisions and (ii) the right to receive payments from the Swap Account to the extent described herein.

"Class M-6 Principal Distribution Amount": With respect to any Distribution Date, the excess of (x) the sum of (i) the aggregate Certificate Principal Balance of the Class A Certificates (after taking into account the distribution of the Class A Principal Distribution Amount on such Distribution Date), (ii) the Certificate Principal Balance of the Class M-1 Certificates (after taking into account the distribution of the Class M-1 Principal Distribution Amount on such Distribution Date), (iii) the Certificate Principal Balance of the Class M-2 Certificates (after taking into account the distribution of the Class M-2 Principal Distribution Amount on such Distribution Date), (iv) the Certificate Principal Balance of the Class M-3 Certificates (after taking into account the distribution of the Class M-3 Principal Distribution Amount on such Distribution Date), (v) the Certificate Principal Balance of the Class M-4 Certificates (after taking into account the distribution of the Class M-4 Principal Distribution Amount on such Distribution Date), (vi) the Certificate Principal Balance of the Class M-5 Certificates (after taking into account the distribution of the Class M-5 Principal Distribution Amount on such Distribution Date) and (vii) the Certificate Principal Balance of the Class M-6 Certificates immediately prior to such Distribution Date over (y) the lesser of (A) the product of (i) the applicable Subordination Percentage and (ii) the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period and (B) the excess, if any, of the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period *over* the Overcollateralization Floor Amount.

"Class M-7 Certificate": Any one of the Class M-7 Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-11 and evidencing (i) a Regular Interest in REMIC II for purposes of the REMIC Provisions and (ii) the right to receive payments from the Swap Account to the extent described herein.

"Class M-7 Principal Distribution Amount": With respect to any Distribution Date, the excess of (x) the sum of (i) the aggregate Certificate Principal Balance of the Class A Certificates (after taking into account the distribution of the Class A Principal Distribution Amount on such Distribution Date), (ii) the Certificate Principal Balance of the Class M-1 Certificates (after taking into account the distribution of the Class M-1 Principal Distribution Amount on such Distribution Date), (iii) the Certificate Principal Balance of the Class M-2 Certificates (after taking into account the distribution of the Class M-2 Principal Distribution Amount on such Distribution Date), (iv) the Certificate Principal Balance of the Class M-3 Certificates (after taking into account the distribution of the Class M-3 Principal Distribution Amount on such Distribution Date), (v) the Certificate Principal Balance of the Class M-4 Certificates (after

taking into account the distribution of the Class M-4 Principal Distribution Amount on such Distribution Date), (vi) the Certificate Principal Balance of the Class M-5 Certificates (after taking into account the distribution of the Class M-5 Principal Distribution Amount on such Distribution Date), (vii) the Certificate Principal Balance of the Class M-6 Certificates (after taking into account the distribution of the Class M-6 Principal Distribution Amount on such Distribution Date) and (viii) the Certificate Principal Balance of the Class M-7 Certificates immediately prior to such Distribution Date over (y) the lesser of (A) the product of (i) the applicable Subordination Percentage and (ii) the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period and (B) the excess, if any, of the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period *over* the Overcollateralization Floor Amount.

"Class M-8 Certificate": Any one of the Class M-8 Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-12 and evidencing (i) a Regular Interest in REMIC II for purposes of the REMIC Provisions and (ii) the right to receive payments from the Swap Account to the extent described herein.

"Class M-8 Principal Distribution Amount": With respect to any Distribution Date, the excess of (x) the sum of (i) the aggregate Certificate Principal Balance of the Class A Certificates (after taking into account the distribution of the Class A Principal Distribution Amount on such Distribution Date), (ii) the Certificate Principal Balance of the Class M-1 Certificates (after taking into account the distribution of the Class M-1 Principal Distribution Amount on such Distribution Date), (iii) the Certificate Principal Balance of the Class M-2 Certificates (after taking into account the distribution of the Class M-2 Principal Distribution Amount on such Distribution Date), (iv) the Certificate Principal Balance of the Class M-3 Certificates (after taking into account the distribution of the Class M-3 Principal Distribution Amount on such Distribution Date), (v) the Certificate Principal Balance of the Class M-4 Certificates (after taking into account the distribution of the Class M-4 Principal Distribution Amount on such Distribution Date), (vi) the Certificate Principal Balance of the Class M-5 Certificates (after taking into account the distribution of the Class M-5 Principal Distribution Amount on such Distribution Date), (vii) the Certificate Principal Balance of the Class M-6 Certificates (after taking into account the distribution of the Class M-6 Principal Distribution Amount on such Distribution Date), (viii) the Certificate Principal Balance of the Class M-7 Certificates (after taking into account the distribution of the Class M-7 Principal Distribution Amount on such Distribution Date) and (ix) the Certificate Principal Balance of the Class M-8 Certificates immediately prior to such Distribution Date over (y) the lesser of (A) the product of (i) the applicable Subordination Percentage and (ii) the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period and (B) the excess, if any, of the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period *over* the Overcollateralization Floor Amount.

"Class M-9 Certificate": Any one of the Class M-9 Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-13 and evidencing (i) a Regular Interest in REMIC II for purposes of the REMIC Provisions and (ii) the right to receive payments from the Swap Account to the extent described herein.

"Class M-9 Principal Distribution Amount": With respect to any Distribution Date, the excess of (x) the sum of (i) the aggregate Certificate Principal Balance of the Class A Certificates (after taking into account the distribution of the Class A Principal Distribution Amount on such Distribution Date), (ii) the Certificate Principal Balance of the Class M-1 Certificates (after taking into account the distribution of the Class M-1 Principal Distribution Amount on such Distribution Date), (iii) the Certificate Principal Balance of the Class M-2 Certificates (after taking into account the distribution of the Class M-2 Principal Distribution Amount on such Distribution Date), (iv) the Certificate Principal Balance of the Class M-3 Certificates (after taking into account the distribution of the Class M-3 Principal Distribution Amount on such Distribution Date), (v) the Certificate Principal Balance of the Class M-4 Certificates (after taking into account the distribution of the Class M-4 Principal Distribution Amount on such Distribution Date), (vi) the Certificate Principal Balance of the Class M-5 Certificates (after taking into account the distribution of the Class M-5 Principal Distribution Amount on such Distribution Date), (vii) the Certificate Principal Balance of the Class M-6 Certificates (after taking into account the distribution of the Class M-6 Principal Distribution Amount on such Distribution Date), (viii) the Certificate Principal Balance of the Class M-7 Certificates (after taking into account the distribution of the Class M-7 Principal Distribution Amount on such Distribution Date), (ix) the Certificate Principal Balance of the Class M-8 Certificates (after taking into account the distribution of the Class M-8 Principal Distribution Amount on such Distribution Date) and (x) the Certificate Principal Balance of the Class M-9 Certificates immediately prior to such Distribution Date over (y) the lesser of (A) the product of (i) the applicable Subordination Percentage and (ii) the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period and (B) the excess, if any, of the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period *over* the Overcollateralization Floor Amount.

"Class M-10 Certificate": Any one of the Class M-10 Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-14 and evidencing (i) a Regular Interest in REMIC II for purposes of the REMIC Provisions and (ii) the right to receive payments from the Swap Account to the extent described herein.

"Class M-10 Principal Distribution Amount": With respect to any Distribution Date, the excess of (x) the sum of (i) the aggregate Certificate Principal Balance of the Class A Certificates (after taking into account the distribution of the Class A Principal Distribution Amount on such Distribution Date), (ii) the Certificate Principal Balance of the Class M-1 Certificates (after taking into account the distribution of the Class M-1 Principal Distribution Amount on such Distribution Date), (iii) the Certificate Principal Balance of the Class M-2 Certificates (after taking into account the distribution of the Class M-2 Principal Distribution Amount on such Distribution Date), (iv) the Certificate Principal Balance of the Class M-3 Certificates (after taking into account the distribution of the Class M-3 Principal Distribution Amount on such Distribution Date), (v) the Certificate Principal Balance of the Class M-4 Certificates (after taking into account the distribution of the Class M-4 Principal Distribution Amount on such Distribution Date), (vi) the Certificate Principal Balance of the Class M-5 Certificates (after taking into account the distribution of the Class M-5 Principal Distribution Amount on such Distribution Date), (vii) the Certificate Principal Balance of the Class M-6 Certificates (after taking into account the distribution of the Class M-6 Principal Distribution Amount on such

Distribution Date), (viii) the Certificate Principal Balance of the Class M-7 Certificates (after taking into account the distribution of the Class M-7 Principal Distribution Amount on such Distribution Date), (ix) the Certificate Principal Balance of the Class M-8 Certificates (after taking into account the distribution of the Class M-8 Principal Distribution Amount on such Distribution Date), (x) the Certificate Principal Balance of the Class M-9 Certificates (after taking into account the distribution of the Class M-9 Principal Distribution Amount on such Distribution Date) and (xi) the Certificate Principal Balance of the Class M-10 Certificates immediately prior to such Distribution Date over (y) the lesser of (A) the product of (i) the applicable Subordination Percentage and (ii) the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period and (B) the excess, if any, of the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period *over* the Overcollateralization Floor Amount.

"Class P Certificate": Any one of the Class P Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-16 and evidencing a Regular Interest in REMIC II for purposes of the REMIC Provisions.

"Class R Certificate": Any one of the Class R Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-17 and evidencing the ownership of the Class R-I Interest and the Class R-II Interest.

"Class R-I Interest": The uncertificated Residual Interest in REMIC I.

"Class R-II Interest": The uncertificated Residual Interest in REMIC II.

"Closing Date": August 10, 2006.

"Code": The Internal Revenue Code of 1986, as amended.

"Commission": The Securities and Exchange Commission.

"Controlling Person" means, with respect to any Person, any other Person who "controls" such Person within the meaning of the Securities Act.

"Corporate Trust Office": The principal corporate trust office of the Trustee at which at any particular time its corporate trust business in connection with this Agreement shall be administered, which office at the date of the execution of this Agreement is located at (i) for purposes of the transfer and exchange of the certificates, Sixth Street and Marquette Avenue, Minneapolis, Minnesota 55479-0113, Attention: Corporate Trust Services – Carrington 2006-NC3, and (ii) for all other purposes, 9062 Old Annapolis Road, Columbia, Maryland 21045, Attention: Client Manager - Carrington 2006-NC3.

"Corresponding Certificate": With respect to each REMIC I Regular Interest set forth below, the Regular Certificate set forth in the table below:

REMIC I Regular Interest	Certificate
I-LTA1	Class A-1
I-LTA2	Class A-2
I-LTA3	Class A-3
I-LTA4	Class A-4
I-LTM1	Class M-1
I-LTM2	Class M-2
I-LTM3	Class M-3
I-LTM4	Class M-4
I-LTM5	Class M-5
I-LTM6	Class M-6
I-LTM7	Class M-7
I-LTM8	Class M-8
I-LTM9	Class M-9
I-LTM10	Class M-10
I-LTP	Class P

"Credit Enhancement Percentage": For any Distribution Date and for any Class of Certificates, the percentage equivalent of a fraction, the numerator of which is the sum of the aggregate Certificate Principal Balance of the Classes of Certificates with a lower distribution priority than such Class (including the Class CE Certificates), calculated after taking into account payments of principal on the Mortgage Loans and distribution of the Principal Distribution Amount to the Holders of the Certificates then entitled to distributions of principal on such Distribution Date, and the denominator of which is the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period (after giving effect to scheduled payments of principal due during the related Due Period, to the extent received or advanced, and unscheduled collections of principal received during the related Prepayment Period).

"Credit Support Depletion Date": The first Distribution Date on which the Certificate Principal Balances of the Mezzanine Certificates and Class CE Certificates have been reduced to zero.

"Custodial Agreement": The custodial agreement dated as of the Closing Date, among the Servicer, the Trustee and the Custodian providing for the safekeeping of the Mortgage Files on behalf of the Trustee in accordance with this Agreement.

"Custodial Account": The account or accounts created and maintained, or caused to be created and maintained, by the Servicer pursuant to Section 3.10(a), which shall be entitled "New Century Mortgage Corporation, as Servicer for Wells Fargo Bank, N.A., as Trustee, in trust for the registered holders of Carrington Mortgage Loan Trust, Series 2006-NC3, Asset-Backed Pass-Through Certificates." The Custodial Account must be an Eligible Account.

"Custodian": A Custodian, which shall initially be Deutsche Bank National Trust Company pursuant to the Custodial Agreement.

"Custodian Fee": The amount payable to the Custodian by the Trustee as compensation for all services rendered by it under the Custodial Agreement, as agreed upon by the Trustee and the Custodian.

EXHIBIT 9

"Cut-off Date": With respect to each Original Mortgage Loan, August 1, 2006. With respect to all Qualified Substitute Mortgage Loans, their respective dates of substitution. References herein to the "Cut-off Date," when used with respect to more than one Mortgage Loan, shall be to the respective Cut-off Dates for each such Mortgage Loan.

"Debt Service Reduction": With respect to any Mortgage Loan, a reduction in the scheduled Monthly Payment for such Mortgage Loan by a court of competent jurisdiction in a proceeding under the Bankruptcy Code, except such a reduction resulting from a Deficient Valuation.

"Defaulting Party": As defined in the Swap Agreement.

"Deficient Valuation": With respect to any Mortgage Loan, a valuation of the related Mortgaged Property by a court of competent jurisdiction in an amount less than the then outstanding Stated Principal Balance of the Mortgage Loan, which valuation results from a proceeding initiated under the Bankruptcy Code.

"Definitive Certificates": As defined in Section 5.01(b).

"Deleted Mortgage Loan": A Mortgage Loan replaced or to be replaced by a Qualified Substitute Mortgage Loan.

"Delinquency Percentage": As of the last day of the related Due Period, the percentage equivalent of a fraction, the numerator of which is the aggregate unpaid principal balance of the Rolling Three-Month Delinquency Average of the Mortgage Loans plus the aggregate unpaid principal balance of the Mortgage Loans that, as of the last day of the previous calendar month, are in foreclosure, have been converted to REO Properties or have been discharged by reason of bankruptcy, and the denominator of which is the aggregate unpaid principal balance of the Mortgage Loans and REO Properties as of the last day of the previous calendar month; provided, however, that any Mortgage Loan purchased by the Servicer pursuant to Section 3.16(c) shall not be included in either the numerator or the denominator for purposes of calculating the Delinquency Percentage.

"Depositor": Stanwich Asset Acceptance Company, L.L.C., a Delaware limited liability company, or its successor in interest.

"Depository": The Depository Trust Company, or any successor Depository hereafter named. The nominee of the initial Depository, for purposes of registering those Certificates that are to be Book-Entry Certificates, is Cede & Co. The Depository shall at all times be a "clearing corporation" as defined in Section 8-102(a)(5) of the Uniform Commercial Code of the State of New York and a "clearing agency" registered pursuant to the provisions of Section 17A of the Exchange Act.

"Depository Institution": Any depository institution or trust company, including the Trustee, that (a) is incorporated under the laws of the United States of America or any State thereof, (b) is subject to supervision and examination by federal or state banking authorities and (c) has outstanding unsecured commercial paper or other short-term unsecured debt obligations

(or, in the case of a depository institution that is the principal subsidiary of a holding company, such holding company has unsecured commercial paper or other short-term unsecured debt obligations) that are rated at least P-1 by Moody's, F-1 by Fitch (if rated by Fitch) and A-1+ by S&P.

"Depository Participant": A broker, dealer, bank or other financial institution or other Person for whom from time to time a Depository effects book-entry transfers and pledges of securities deposited with the Depository.

"Determination Date": With respect to each Distribution Date, the 15th day of the calendar month in which such Distribution Date occurs or, if such 15th day is not a Business Day, the Business Day immediately preceding such 15th day.

"Directly Operate": With respect to any REO Property, the furnishing or rendering of services to the tenants thereof, the management or operation of such REO Property, the holding of such REO Property primarily for sale to customers, the performance of any construction work thereon or any use of such REO Property in a trade or business conducted by REMIC I other than through an Independent Contractor; provided, however, that the Trustee (or the Servicer on behalf of the Trustee) shall not be considered to Directly Operate an REO Property solely because the Trustee (or the Servicer on behalf of the Trustee) establishes rental terms, chooses tenants, enters into or renews leases, makes payment on or otherwise discharges tax or insurance obligations, or makes decisions as to repairs or capital expenditures with respect to such REO Property.

"Disqualified Organization": Any organization defined as a "disqualified organization" under Section 860E(e)(5) of the Code, including, if not otherwise included, any of the following: (i) the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing (other than an instrumentality which is a corporation if all of its activities are subject to tax and, except for Freddie Mac, a majority of its board of directors is not selected by such governmental unit), (ii) any foreign government, any international organization, or any agency or instrumentality of any of the foregoing, (iii) any organization (other than certain farmers' cooperatives described in Section 521 of the Code) which is exempt from the tax imposed by Chapter 1 of the Code (including the tax imposed by Section 511 of the Code on unrelated business taxable income), (iv) rural electric and telephone cooperatives described in Section 1381(a)(2)(C) of the Code, (v) an "electing large partnership" and (vi) any other Person as set forth in an Opinion of Counsel delivered to the Trustee and the Depositor to the effect that the holding of an Ownership Interest in a Residual Certificate by such Person may cause any Trust REMIC or any Person having an Ownership Interest in any Class of Certificates (other than such Person) to incur a liability for any federal tax imposed under the Code that would not otherwise be imposed but for the Transfer of an Ownership Interest in a Residual Certificate to such Person. The terms "United States," "State" and "international organization" shall have the meanings set forth in Section 7701 of the Code or successor provisions.

"Distribution Date": The 25th day of any month, or if such 25th day is not a Business Day, the Business Day immediately following such 25th day, commencing in September 2006.

"Due Date": With respect to each Mortgage Loan and any Distribution Date, the first day of the calendar month in which such Distribution Date occurs on which the Monthly Payment for such Mortgage Loan was due (or, in the case of any Mortgage Loan under terms of which the Monthly Payment for such Mortgage Loan was due on a day other than the first day of the calendar month in which such Distribution Date occurs, the day during the related Due Period on which such Monthly Payment was due), in each case exclusive of any days of grace.

"Due Period": With respect to any Distribution Date, the period commencing on the second day of the month immediately preceding the month in which such Distribution Date occurs and ending on the first day of the month of such Distribution Date.

"EDGAR": As defined in Section 4.06.

"Eligible Account": Any of (i) an account or accounts maintained with a Depository Institution, (ii) an account or accounts the deposits in which are fully insured by the FDIC or (iii) a segregated non-interest bearing trust account or accounts maintained with the corporate trust department of a federal depository institution or state-chartered depository institution subject to regulations regarding fiduciary funds on deposit similar to Title 12 of the Code of Federal Regulation Section 9.10(b), which, in either case, has corporate trust powers, acting in its fiduciary capacity.

"ERISA": The Employee Retirement Income Security Act of 1974, as amended.

"Escrow Payments": As defined in Section 3.09.

"Excess Overcollateralized Amount": With respect to the Class A Certificates and the Mezzanine Certificates and any Distribution Date, the excess, if any, of (i) the Overcollateralization Amount for such Distribution Date (calculated for this purpose only after assuming that 100% of the Principal Remittance Amount on such Distribution Date has been distributed) over (ii) the Overcollateralization Target Amount for such Distribution Date.

"Exchange Act": As defined in Section 4.06.

"Expense Adjusted Mortgage Rate": With respect to any Mortgage Loan (or the related REO Property), as of any date of determination, a per annum rate of interest equal to the then applicable Mortgage Rate thereon as of the first day of the related Due Period *minus* the sum of (i) the Trustee Fee Rate and (ii) the Servicing Fee Rate.

"Extraordinary Trust Fund Expense": Any amounts reimbursable to the Trustee or any director, officer, employee or agent of the Trustee from the Trust Fund pursuant to Section 8.05 or Section 10.01(c) and any amounts payable from the Certificate Account in respect of taxes pursuant to Section 10.01(g)(iii) and any costs of the Trustee for the recording of the Assignments pursuant to Section 2.01 (to the extent the Seller is unable to pay such costs).

"Fannie Mae": Fannie Mae, a federally chartered and privately owned corporation organized and existing under the Federal National Mortgage Association Charter Act, or any successor thereto.

"FDIC": Federal Deposit Insurance Corporation or any successor thereto.

"Final Recovery Determination": With respect to any defaulted Mortgage Loan or any REO Property (other than a Mortgage Loan or REO Property purchased by the Responsible Party, the Depositor or the Servicer pursuant to or as contemplated by Section 2.03, Section 3.16(c) or Section 9.01), a determination made by the Servicer that all Insurance Proceeds, Liquidation Proceeds and other payments or recoveries which the Servicer, in its reasonable good faith judgment, expects to be finally recoverable in respect thereof have been so recovered. The Servicer shall maintain records, prepared by a Servicing Officer, of each Final Recovery Determination made thereby.

"Fitch": Fitch Ratings, or its successor in interest.

"Fixed Swap Payment": With respect to any Distribution Date on or prior to the Distribution Date in January 2012, an amount equal to the product of (x) a fixed rate equal to 5.425% per annum, (y) the Swap Agreement Notional Balance for that Distribution Date and (z)(i) with respect to the initial Distribution Date, a fraction, the numerator of which is the number of days from and including the Closing Date to and including the day preceding the initial Distribution Date and the denominator of which is 360 and (ii) with respect to each Distribution Date thereafter, a fraction, the numerator of which is 30 and the denominator of which is 360.

"Floating Swap Payment": With respect to any Distribution Date on or prior to the Distribution Date in January 2012, an amount equal to the product of (x) Swap LIBOR (y) the Swap Agreement Notional Balance for that Distribution Date and (z) a fraction, the numerator of which is equal to the actual number of days in the related calculation period as provided in the Swap Agreement and the denominator of which is 360.

"Fixed-Rate Mortgage Loan": Each of the Mortgage Loans identified on the Mortgage Loan Schedule as having a fixed Mortgage Rate.

"Formula Rate": For any Distribution Date and the Class A Certificates and the Mezzanine Certificates, One-Month LIBOR *plus* the related Margin.

"Freddie Mac": Freddie Mac, a corporate instrumentality of the United States created and existing under Title III of the Emergency Home Finance Act of 1970, as amended, or any successor thereto.

"Gross Margin": With respect to each Adjustable-Rate Mortgage Loan, the fixed percentage set forth in the related Mortgage Note that is added to the Index on each Adjustment Date in accordance with the terms of the related Mortgage Note used to determine the Mortgage Rate for such Adjustable-Rate Mortgage Loan.

"Highest Priority": As of any date of determination, the Class of Mezzanine Certificates then outstanding with a Certificate Principal Balance greater than zero, with the highest priority for payments pursuant to Section 4.01, in the following order: Class M-1, Class M-2, Class M-3,

Class M-4, Class M-5, Class M-6, Class M-7, Class M-8, Class M-9 and Class M-10 Certificates.

"Indenture": An indenture relating to the issuance of notes secured by the Class CE Certificates, the Class P Certificates and/or the Class R Certificates (or any portion thereof).

"Independent": When used with respect to any specified Person, any such Person who (i) is in fact independent of the Depositor, the Servicer, the Seller and their respective Affiliates, (ii) does not have any direct financial interest in or any material indirect financial interest in the Depositor, the Servicer, the Seller or any Affiliate thereof, and (iii) is not connected with the Depositor, the Servicer, the Seller or any Affiliate thereof as an officer, employee, promoter, underwriter, trustee, partner, director or Person performing similar functions; provided, however, that a Person shall not fail to be Independent of the Depositor, the Servicer, the Seller or any Affiliate thereof merely because such Person is the beneficial owner of 1% or less of any class of securities issued by the Depositor, the Servicer, the Seller or any Affiliate thereof, as the case may be.

"Independent Contractor": Either (i) any Person (other than the Servicer) that would be an "independent contractor" with respect to REMIC I within the meaning of Section 856(d)(3) of the Code if REMIC I were a real estate investment trust (except that the ownership tests set forth in that section shall be considered to be met by any Person that owns, directly or indirectly, 35% or more of any Class of Certificates), so long as REMIC I does not receive or derive any income from such Person and provided that the relationship between such Person and REMIC I is at arm's length, all within the meaning of Treasury Regulation Section 1.856-4(b)(5), or (ii) any other Person (including the Servicer) if the Trustee has received an Opinion of Counsel to the effect that the taking of any action in respect of any REO Property by such Person, subject to any conditions therein specified, that is otherwise herein contemplated to be taken by an Independent Contractor will not cause such REO Property to cease to qualify as "foreclosure property" within the meaning of Section 860G(a)(8) of the Code (determined without regard to the exception applicable for purposes of Section 860D(a) of the Code), or cause any income realized in respect of such REO Property to fail to qualify as Rents from Real Property.

"Index": With respect to each Adjustable-Rate Mortgage Loan and each related Adjustment Date, the index specified in the related Mortgage Note.

"Insurance Proceeds": Proceeds of any title policy, hazard policy or other insurance policy covering a Mortgage Loan, to the extent such proceeds are not to be applied to the restoration of the related Mortgaged Property or released to the Mortgagor in accordance with the procedures that the Servicer would follow in servicing mortgage loans held for its own account, subject to the terms and conditions of the related Mortgage Note and Mortgage.

"Interest Accrual Period": With respect to any Distribution Date and the Class A Certificates and the Mezzanine Certificates, the period commencing on the Distribution Date of the month immediately preceding the month in which such Distribution Date occurs (or, in the case of the first Distribution Date, commencing on the Closing Date) and ending on the day preceding such Distribution Date. With respect to any Distribution Date and the Class CE

Certificates and the REMIC I Regular Interests, the one-month period ending on the last day of the calendar month preceding the month in which such Distribution Date occurs.

"Interest Carry Forward Amount": With respect to any Distribution Date and the Class A Certificates or the Mezzanine Certificates, the sum of (i) the amount, if any, by which (a) the Interest Distribution Amount for such Class of Certificates as of the immediately preceding Distribution Date exceeded (b) the actual amount distributed on such Class of Certificates in respect of interest on such immediately preceding Distribution Date, (ii) the amount of any Interest Carry Forward Amount for such Class of Certificates remaining unpaid from the previous Distribution Date and (iii) accrued interest on the sum of (i) and (ii) above calculated at the related Pass-Through Rate for the most recently ended Interest Accrual Period.

"Interest Determination Date": With respect to the Class A Certificates, the Mezzanine Certificates, REMIC I Regular Interest I-LTA1, REMIC I Regular Interest I-LTA2, REMIC I Regular Interest I-LTA3, REMIC I Regular Interest I-LTA4, REMIC I Regular Interest I-LTM1, REMIC I Regular Interest I-LTM2, REMIC I Regular Interest I-LTM3, REMIC I Regular Interest I-LTM4, REMIC I Regular Interest I-LTM5, REMIC I Regular Interest I-LTM6, REMIC I Regular Interest I-LTM7, REMIC I Regular Interest I-LTM8, REMIC I Regular Interest I-LTM9, REMIC I Regular Interest I-LTM10 and any Interest Accrual Period therefor, the second London Business Day preceding the commencement of such Interest Accrual Period.

"Interest Distribution Amount": With respect to any Distribution Date and the Class A Certificates, the Mezzanine Certificates and the Class CE Certificates, the aggregate Accrued Certificate Interest on the Certificates of such Class for such Distribution Date.

"Interest Remittance Amount": For any Distribution Date, the excess, if any, of (i) that portion of the Available Distribution Amount (without giving effect to any Net Swap Payment owed to the Swap Counterparty or any Swap Termination Payment owed to the Swap Counterparty not due to a Swap Counterparty Trigger Event) for that Distribution Date that represents interest received or advanced on the Mortgage Loans over (ii) any Net Swap Payment owed to the Swap Counterparty or Swap Termination Payment not due to a Swap Counterparty Trigger Event owed to the Swap Counterparty.

"Investment Account": As defined in Section 3.12.

"Late Collections": With respect to any Mortgage Loan and any Due Period, all amounts received subsequent to the Determination Date immediately following such Due Period, whether as late payments of Monthly Payments or as Insurance Proceeds, Liquidation Proceeds or otherwise, which represent late payments or collections of principal and/or interest due (without regard to any acceleration of payments under the related Mortgage and Mortgage Note) but delinquent for such Due Period and not previously recovered.

"Liquidation Event": With respect to any Mortgage Loan, any of the following events: (i) such Mortgage Loan is paid in full; (ii) a Final Recovery Determination is made as to such Mortgage Loan; or (iii) such Mortgage Loan is removed from REMIC I, by reason of its being purchased, sold or replaced pursuant to or as contemplated by Section 2.03, Section 3.16(c) or

Section 9.01. With respect to any REO Property, either of the following events: (i) a Final Recovery Determination is made as to such REO Property; or (ii) such REO Property is removed from REMIC I by reason of its being purchased pursuant to Section 9.01.

"Liquidation Proceeds": The amount (other than Insurance Proceeds or amounts received in respect of the rental of any REO Property prior to REO Disposition) received by the Servicer in connection with (i) the taking of all or a part of a Mortgaged Property by exercise of the power of eminent domain or condemnation, (ii) the liquidation of a defaulted Mortgage Loan through a trustee's sale, foreclosure sale or otherwise, or (iii) the repurchase, substitution or sale of a Mortgage Loan or an REO Property pursuant to or as contemplated by Section 2.03, Section 3.16(c), Section 3.23 or Section 9.01.

"Loan-to-Value Ratio": As of any date of determination, the fraction, expressed as a percentage, the numerator of which is the principal balance of the related Mortgage Loan at such date and the denominator of which is the Value of the related Mortgaged Property.

"London Business Day": Any day on which banks in the City of London and New York are open and conducting transactions in United States dollars.

"Margin": With respect to each class of the Class A Certificates and Mezzanine Certificates and, for purposes of the Marker Rate and the Maximum I-LTZZ Uncertificated Interest Deferral Amount, the specified REMIC I Regular Interest, as follows:

Class	REMIC I Regular Interest	Margin	
		(1) (%)	(2) (%)
A-1	I-LTA1	0.050%	0.100%
A-2	I-LTA2	0.100%	0.200%
A-3	I-LTA3	0.150%	0.300%
A-4	I-LTA4	0.240%	0.480%
M-1	I-LTM1	0.300%	0.450%
M-2	I-LTM2	0.310%	0.465%
M-3	I-LTM3	0.330%	0.495%
M-4	I-LTM4	0.370%	0.555%
M-5	I-LTM5	0.390%	0.585%
M-6	I-LTM6	0.450%	0.675%
M-7	I-LTM7	0.850%	1.275%
M-8	I-LTM8	0.970%	1.455%
M-9	I-LTM9	1.820%	2.730%
M-10	I-LTM10	2.000%	3.000%

(1) For each Interest Accrual Period for each Distribution Date on or prior to the Optional Termination Date.
(2) For each Interest Accrual Period thereafter.

"Marker Rate": With respect to the Class CE Certificates or the REMIC II Regular Interest CE-IO and any Distribution Date, a per annum rate equal to two (2) multiplied by the weighted average of the REMIC I Remittance Rates for the REMIC I Regular Interests (other than REMIC I Regular Interest I-LTP and REMIC I Regular Interest I-LTAA), with the rate on each such REMIC I Regular Interest (other than REMIC I Regular Interest I-LTZZ) subject to a cap equal to the Pass-Through Rate for the related Corresponding Certificate and with the rate on

EXHIBIT 9

REMIC I Regular Interest I-LTZZ subject to a cap of zero, in each case for purposes of this calculation; provided, however, each cap shall be multiplied by a fraction, the numerator of which is the actual number of days elapsed in the related Interest Accrual Period and the denominator of which is 30.

"Maximum I-LTZZ Uncertificated Interest Deferral Amount": With respect to any Distribution Date, the excess of (i) accrued interest at the REMIC I Remittance Rate applicable to REMIC I Regular Interest I-LTZZ for such Distribution Date on a balance equal to the Uncertificated Balance of REMIC I Regular Interest I-LTZZ *minus* the REMIC I Overcollateralized Amount, in each case for such Distribution Date, over (ii) Uncertificated Interest on REMIC I Regular Interest I-LTA1, REMIC I Regular Interest I-LTA2, REMIC I Regular Interest I-LTA3, REMIC I Regular Interest I-LTA4, REMIC I Regular Interest I-LTM1, REMIC I Regular Interest I-LTM2, REMIC I Regular Interest I-LTM3, REMIC I Regular Interest I-LTM4, REMIC I Regular Interest I-LTM5, REMIC I Regular Interest I-LTM6, REMIC I Regular Interest I-LTM7, REMIC I Regular Interest I-LTM8, REMIC I Regular Interest I-LTM9 and REMIC I Regular Interest I-LTM10 for such Distribution Date, with the rate on each such REMIC I Regular Interest subject to a cap equal to the lesser of (i) One-Month LIBOR *plus* the related Margin for the related Corresponding Certificate and (ii) the Net WAC Pass-Through Rate for the related Corresponding Certificate; provided, however, each cap shall be multiplied by a fraction, the numerator of which is the actual number of days elapsed in the related Interest Accrual Period and the denominator of which is 30.

"Maximum Mortgage Rate": With respect to each Adjustable-Rate Mortgage Loan, the percentage set forth in the related Mortgage Note as the maximum Mortgage Rate thereunder.

"Mezzanine Certificates": Collectively, the Class M-1 Certificates, the Class M-2 Certificates, the Class M-3 Certificates, the Class M-4 Certificates, the Class M-5 Certificates, the Class M-6 Certificates, the Class M-7 Certificates, the Class M-8 Certificates, the Class M-9 Certificates and the Class M-10 Certificates.

"Minimum Mortgage Rate": With respect to each Adjustable-Rate Mortgage Loan, the percentage set forth in the related Mortgage Note as the minimum Mortgage Rate thereunder.

"Monthly Payment": With respect to any Mortgage Loan, the scheduled monthly payment of principal and interest on such Mortgage Loan which is payable by the related Mortgagor from time to time under the related Mortgage Note, determined: (a) after giving effect to (i) any Deficient Valuation and/or Debt Service Reduction with respect to such Mortgage Loan and (ii) any reduction in the amount of interest collectible from the related Mortgagor pursuant to the Relief Act; (b) without giving effect to any extension granted or agreed to by the Servicer pursuant to Section 3.07 and (c) on the assumption that all other amounts, if any, due under such Mortgage Loan are paid when due.

"Moody's": Moody's Investors Service, Inc., or its successor in interest.

"Mortgage": With respect to each Mortgage Note, the mortgage, deed of trust or other instrument creating a first lien or second lien on, or first or second priority security interest in, a Mortgaged Property securing a Mortgage Note.

"Mortgage File": The mortgage documents listed in Section 2.01 pertaining to a particular Mortgage Loan and any additional documents required to be added to the Mortgage File pursuant to this Agreement.

"Mortgage Loan": Each mortgage loan transferred and assigned to the Trustee and delivered to the Custodian on behalf of the Trustee pursuant to Section 2.01 or Section 2.03(b) of this Agreement, as held from time to time as a part of the Trust Fund, the Mortgage Loans so held being identified in the Mortgage Loan Schedule.

"Mortgage Loan Purchase Agreement": The agreement among the Seller, the Responsible Party and the Depositor, regarding the sale of the Mortgage Loans by the Seller to the Depositor, substantially in the form of Exhibit D annexed hereto.

"Mortgage Loan Schedule": As of any date, the list of Mortgage Loans included in REMIC I on such date, attached hereto as Schedule 1. The Mortgage Loan Schedule shall set forth the following information with respect to each Mortgage Loan:

(i) the Mortgage Loan identifying number;

(ii) the state and zip code of the Mortgaged Property;

(iii) a code indicating whether the Mortgaged Property is owner-occupied;

(iv) the type of Residential Dwelling constituting the Mortgaged Property;

(v) the original months to maturity;

(vi) the stated remaining months to maturity from the Cut-off Date based on the original amortization schedule;

(vii) the Loan-to-Value Ratio at origination;

(viii) the Mortgage Rate in effect immediately following the Cut-off Date;

(ix) (A) the date on which the first Monthly Payment was due on the Mortgage Loan and (B) if such date is not consistent with the Due Date currently in effect, such Due Date;

(x) the stated maturity date;

(xi) the amount of the Monthly Payment at origination;

(xii) the amount of the Monthly Payment due on the first Due Date after the Cut-off Date;

(xiii) the last Due Date on which a Monthly Payment was actually applied to the unpaid Stated Principal Balance;

(xiv) the original principal amount of the Mortgage Loan;

(xv) the Stated Principal Balance of the Mortgage Loan as of the close of business on the Cut-off Date;

(xvi) with respect to each Adjustable-Rate Mortgage Loan, the Adjustment Dates, the Gross Margin, the Maximum Mortgage Rate, the Minimum Mortgage Rate, the Periodic Rate Cap, the maximum first Adjustment Date Mortgage Rate adjustment, the first Adjustment Date immediately following the origination date and the rounding code (i.e., nearest 0.125%, next highest 0.125%);

(xvii) a code indicating the purpose of the Mortgage Loan (i.e., purchase financing, Rate/Term Refinancing, Cash-Out Refinancing);

(xviii) the Mortgage Rate at origination;

(xix) a code indicating the documentation program (i.e., Full Documentation, Limited Documentation, Stated Income Documentation);

(xx) the risk grade;

(xxi) the Value of the Mortgaged Property;

(xxii) the sale price of the Mortgaged Property, if applicable;

(xxiii) the actual unpaid principal balance of the Mortgage Loan as of the Cut-off Date;

(xxiv) the type and term of the related Prepayment Charge;

(xxv) the program code; and

(xxvi) the total amount of points and fees charged such Mortgage Loan.

The Mortgage Loan Schedule shall set forth the following information with respect to the Mortgage Loans in the aggregate as of the Cut-off Date:

(1) the number of Mortgage Loans;

(2) the current Stated Principal Balance of the Mortgage Loans;

(3) the weighted average Mortgage Rate of the Mortgage Loans and

(4) weighted average maturity of the Mortgage Loans.

The Mortgage Loan Schedule shall be amended from time to time by the Depositor in accordance with the provisions of this Agreement. With respect to any Qualified Substitute Mortgage Loan, the Cut-off Date shall refer to the related Cut-off Date for such Mortgage Loan, determined in accordance with the definition of Cut-off Date herein.

"Mortgage Note": The original executed note or other evidence of the indebtedness of a Mortgagor under a Mortgage Loan.

"Mortgage Pool": The pool of Mortgage Loans, identified on Schedule 1 and existing from time to time thereafter, and any REO Properties acquired in respect thereof.

"Mortgage Rate": With respect to each Mortgage Loan, the annual rate at which interest accrues on such Mortgage Loan from time to time in accordance with the provisions of the related Mortgage Note, which rate (i) with respect to each Fixed-Rate Mortgage Loan shall remain constant at the rate set forth in the Mortgage Loan Schedule as the Mortgage Rate in effect immediately following the Cut-off Date and (ii) with respect to the Adjustable-Rate Mortgage Loans, (A) as of any date of determination until the first Adjustment Date following the Cut-off Date shall be the rate set forth in the Mortgage Loan Schedule as the Mortgage Rate in effect immediately following the Cut-off Date and (B) as of any date of determination thereafter shall be the rate as adjusted on the most recent Adjustment Date equal to the sum, rounded as provided in the Mortgage Note, of the Index, as most recently available as of a date prior to the Adjustment Date as set forth in the related Mortgage Note, *plus* the related Gross Margin; provided that the Mortgage Rate on such Adjustable-Rate Mortgage Loan on any Adjustment Date shall never be more than the lesser of (i) the sum of the Mortgage Rate in effect immediately prior to the Adjustment Date *plus* the related Periodic Rate Cap, if any, and (ii) the related Maximum Mortgage Rate, and shall never be less than the greater of (i) the Mortgage Rate in effect immediately prior to the Adjustment Date less the Periodic Rate Cap, if any, and (ii) the related Minimum Mortgage Rate. With respect to each Mortgage Loan that becomes an REO Property, as of any date of determination, the annual rate determined in accordance with the immediately preceding sentence as of the date such Mortgage Loan became an REO Property.

"Mortgaged Property": The underlying property securing a Mortgage Loan, including any REO Property, consisting of a fee simple estate in a parcel of land improved by a Residential Dwelling.

"Mortgagor": The obligor on a Mortgage Note.

"Net Monthly Excess Cashflow": With respect to any Distribution Date, the sum of (i) any Overcollateralization Reduction Amount and (ii) the excess of (x) the Available Distribution Amount for such Distribution Date over (y) the sum for such Distribution Date of (A) the Senior Interest Distribution Amount distributable to the holders of the Class A Certificates, (B) the Interest Distribution Amount distributable to the holders of the Mezzanine Certificates and (C) the Principal Remittance Amount.

"Net Swap Payment": With respect to each Distribution Date, the net payment required to be made pursuant to the terms of the Swap Agreement by either the Swap Counterparty or the Trustee, on behalf of the Trust, which net payment shall not take into account any Swap Termination Payment.

"Net WAC Pass-Through Rate": With respect to the Class A Certificates and the Mezzanine Certificates and any Distribution Date, a rate per annum (which will not be less than zero) equal to the excess, if any, of (a) the product of (i) a per annum rate equal to the weighted average of the Expense Adjusted Mortgage Rates of the then outstanding Mortgage Loans, weighted on the basis of the respective Stated Principal Balances of the Mortgage Loans as of the first day of the related Due Period and (ii) a fraction expressed as a percentage, the numerator of which is 30 and the denominator of which is the actual number of days in the related Interest Accrual Period, over (b) the product of (i) a fraction expressed as a percentage the numerator of which is the amount of any Net Swap Payments owed to the Swap Counterparty or Swap Termination Payment owed to the Swap Counterparty not due to a Swap Counterparty Trigger Event, and the denominator of which is equal to the Stated Principal Balance of the outstanding Mortgage Loans as of first day of the related Due Period and (ii) a fraction expressed as a percentage, the numerator of which is 360 and the denominator of which is the actual number of days in the related Interest Accrual Period. For federal income tax purposes, however, the foregoing shall be expressed as a per annum rate equal to the weighted average of the REMIC I Remittance Rates on the REMIC I Regular Interests, weighted on the basis of the Uncertificated Balance of each such REMIC I Regular Interests.

"Net WAC Rate Carryover Amount": With respect to any Class of the Class A Certificates and the Mezzanine Certificates and any Distribution Date, the sum of (A) the positive excess of (i) the amount of interest that would have accrued on such Class of Certificates for such Distribution Date had the Pass-Through Rate been calculated at the related Formula Rate (not to exceed 12.50% per annum) over (ii) the amount of interest accrued on such Class of Certificates at the Net WAC Pass-Through Rate for such Distribution Date and (B) the related Net WAC Rate Carryover Amount for the previous Distribution Date not previously distributed, together with interest thereon at a rate equal to the related Formula Rate (not to exceed 12.50% per annum) for such Class of Certificates for such Distribution Date.

"New Lease": Any lease of REO Property entered into on behalf of REMIC I, including any lease renewed or extended on behalf of REMIC I, if REMIC I has the right to renegotiate the terms of such lease.

"Nonrecoverable Advance": Any Advance previously made or proposed to be made in respect of a Mortgage Loan or REO Property that, in the good faith business judgment of the Servicer, will not or, in the case of a proposed Advance, would not be ultimately recoverable from related Late Collections, Insurance Proceeds or Liquidation Proceeds on such Mortgage Loan or REO Property as provided herein.

"Nonrecoverable Servicing Advance": Any Servicing Advance previously made or proposed to be made in respect of a Mortgage Loan or REO Property that, in the good faith business judgment of the Servicer, will not or, in the case of a proposed Servicing Advance,

EXHIBIT 9

would not be ultimately recoverable from related Late Collections, Insurance Proceeds or Liquidation Proceeds on such Mortgage Loan or REO Property as provided herein.

"Non-United States Person": Any Person other than a United States Person.

"Notional Amount": With respect to the Class CE Certificates and any Distribution Date, the aggregate Uncertificated Balance of the REMIC I Regular Interests for such Distribution Date.

"Officers' Certificate": A certificate signed by the Chairman of the Board, the Vice Chairman of the Board, the President or a vice president (however denominated), and by the Treasurer, the Secretary, or one of the assistant treasurers or assistant secretaries of the Servicer, the Seller or the Depositor, as applicable.

"One-Month LIBOR": With respect to the Class A Certificates, the Mezzanine Certificates and for purposes of the Marker Rate and Maximum I-LTZZ Uncertificated Interest Deferral Amount, REMIC I Regular Interest I-LTA1, REMIC I Regular Interest I-LTA2, REMIC I Regular Interest I-LTA3, REMIC I Regular Interest I-LTA4, REMIC I Regular Interest I-LTM1, REMIC I Regular Interest I-LTM2, REMIC I Regular Interest I-LTM3, REMIC I Regular Interest I-LTM4, REMIC I Regular Interest I-LTM5, REMIC I Regular Interest I-LTM6, REMIC I Regular Interest I-LTM7, REMIC I Regular Interest I-LTM8, REMIC I Regular Interest I-LTM9 and REMIC I Regular Interest I-LTM10 and any Interest Accrual Period therefor, the rate determined by the Trustee on the related Interest Determination Date on the basis of the offered rate for one-month U.S. dollar deposits, as such rate appears on Telerate Page 3750 as of 11:00 a.m. (London time) on such Interest Determination Date; provided that if such rate does not appear on Telerate Page 3750, the rate for such date will be determined on the basis of the offered rates of the Reference Banks for one-month U.S. dollar deposits, as of 11:00 a.m. (London time) on such Interest Determination Date. In such event, the Trustee will request the principal London office of each of the Reference Banks to provide a quotation of its rate. If on such Interest Determination Date, two or more Reference Banks provide such offered quotations, One-Month LIBOR for the related Interest Accrual Period shall be the arithmetic mean of such offered quotations (rounded upwards if necessary to the nearest whole multiple of 1/16%). If on such Interest Determination Date, fewer than two Reference Banks provide such offered quotations, One-Month LIBOR for the related Interest Accrual Period shall be the higher of (i) LIBOR as determined on the previous Interest Determination Date and (ii) the Reserve Interest Rate. Notwithstanding the foregoing, if, under the priorities described above, LIBOR for an Interest Determination Date would be based on LIBOR for the previous Interest Determination Date for the third consecutive Interest Determination Date, the Trustee, after consultation with the Depositor, shall select an alternative comparable index (over which the Trustee has no control), used for determining one-month Eurodollar lending rates that is calculated and published (or otherwise made available) by an independent party. The establishment of One-Month LIBOR by the Trustee and the Trustee's subsequent calculation of the interest rates applicable to the Certificates for the relevant Interest Accrual Period, in the absence of manifest error, shall be final and binding.

"Opinion of Counsel": A written opinion of counsel, who may, without limitation, be salaried counsel for the Depositor or the Servicer, acceptable to the Trustee, if such opinion is delivered to the Trustee, except that any opinion of counsel relating to (a) the qualification of any Trust REMIC as a REMIC or (b) compliance with the REMIC Provisions must be an opinion of Independent counsel.

"Original Mortgage Loan": Any of the Mortgage Loans included in REMIC I as of the Closing Date.

"Originator": New Century Mortgage Corporation, a California corporation, or its successor in interest, or Home123 Corporation, a California Corporation, or its successor in interest, as applicable.

"Overcollateralization Amount": With respect to any Distribution Date, the excess, if any, of (a) the aggregate Stated Principal Balances of the Mortgage Loans and REO Properties as of the last day of the related Due Period over (b) the sum of the aggregate Certificate Principal Balance of the Class A Certificates, the Mezzanine Certificates and the Class P Certificates, after giving effect to distributions to be made on such Distribution Date.

"Overcollateralization Deficiency Amount": With respect to any Distribution Date, the excess, if any, of (a) the Overcollateralization Target Amount applicable to such Distribution Date over (b) the Overcollateralization Amount applicable to such Distribution Date (calculated for this purpose only after assuming that 100% of the Principal Remittance Amount on such Distribution Date has been distributed).

"Overcollateralization Floor Amount": With respect to any Distribution Date, the amount equal to 0.50% of the aggregate Stated Principal Balance of the Mortgage Loans as of the Cut-off Date.

"Overcollateralization Increase Amount": With respect to any Distribution Date, the lesser of (a) the Overcollateralization Deficiency Amount as of such Distribution Date (calculated for this purpose only after assuming that 100% of the Principal Remittance Amount on such Distribution Date has been distributed) and (b) the sum of (i) the Net Monthly Excess Cash Flow for such Distribution Date and (ii) payments made by the Swap Counterparty and available for distribution pursuant to Section 4.07(a)(G).

"Overcollateralization Reduction Amount": With respect to any Distribution Date, an amount equal to the lesser of (a) the Principal Remittance Amount on such Distribution Date and (b) the Excess Overcollateralized Amount.

"Overcollateralization Target Amount": With respect to any Distribution Date, (i) prior to the Stepdown Date, an amount equal to 2.50% of the aggregate outstanding Stated Principal Balance of the Mortgage Loans as of the Cut-off Date, (ii) on or after the Stepdown Date provided a Trigger Event is not in effect, the greater of (x) 5.00% of the then current aggregate outstanding Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period and (y) the Overcollateralization Floor Amount, or (iii) on or after the Stepdown Date and if a Trigger Event is in effect, the Overcollateralization Target Amount for the immediately

preceding Distribution Date. Notwithstanding the foregoing, on and after any Distribution Date following the reduction of the aggregate Certificate Principal Balance of the Class A Certificates, the Mezzanine Certificates and the Class P Certificates to zero, the Overcollateralization Target Amount shall be zero.

"Ownership Interest": As to any Certificate, any ownership or security interest in such Certificate, including any interest in such Certificate as the Holder thereof and any other interest therein, whether direct or indirect, legal or beneficial, as owner or as pledgee.

"Pass-Through Rate": With respect to the Class A Certificates and the Mezzanine Certificates and any Distribution Date, the least of (x) the related Formula Rate for such Distribution Date, (y) the Net WAC Pass-Through Rate for such Distribution Date and (z) 12.50%. With respect to the Class CE Certificates and any Distribution Date, (i) a per annum rate equal to the percentage equivalent of a fraction, the numerator of which is (x) the interest on the Uncertificated Balance of each REMIC I Regular Interest described in clause (y) below computed at a rate equal to the related REMIC I Remittance Rate *minus* the Marker Rate and the denominator of which is (y) the aggregate Uncertificated Balance of REMIC I Regular Interest I-LTAA, I-LTA1, I-LTA2, I-LTA3, I-LTA4, I-LTM1, I-LTM2, I-LTM3, I-LTM4, I-LTM5, I-LTM6, I-LTM7, I-LTM8, I-LTM9, I-LTM10 and I-LTZZ and (ii) 100% of the interest on REMIC I Regular Interest I-LTP, expressed as a per annum rate.

"Percentage Interest": With respect to any Class of Certificates (other than the Residual Certificates), the undivided percentage ownership in such Class evidenced by such Certificate, expressed as a percentage, the numerator of which is the initial Certificate Principal Balance or Notional Amount represented by such Certificate and the denominator of which is the aggregate initial Certificate Principal Balance or initial Notional Amount of all of the Certificates of such Class. The Class A Certificates and the Class M-1 Certificates are issuable only in minimum Percentage Interests corresponding to minimum initial Certificate Principal Balances of $100,000 and integral multiples of $1.00 in excess thereof. The Mezzanine Certificates (other than the Class M-1 Certificates) are issuable only in minimum Percentage Interests corresponding to minimum initial Certificate Principal Balances of $250,000 and integral multiples of $1 in excess thereof. The Class P Certificates are issuable only in Percentage Interests corresponding to initial Certificate Principal Balances of $20 and integral multiples thereof. The Class CE Certificates are issuable only in minimum Percentage Interests corresponding to minimum initial Certificate Principal Balances of $100,000 and integral multiples of $1.00 in excess thereof; provided, however, that a single Certificate of each such Class of Certificates may be issued having a Percentage Interest corresponding to the remainder of the aggregate initial Certificate Principal Balance or Notional Amount of such Class or to an otherwise authorized denomination for such Class *plus* such remainder. With respect to any Residual Certificate, the undivided percentage ownership in such Class evidenced by such Certificate, as set forth on the face of such Certificate. The Residual Certificates are issuable in Percentage Interests of 20% and multiples thereof.

"Perfection Representations": The representations, warranties and covenants set forth in Schedule 3 attached hereto.

"Periodic Rate Cap": With respect to each Adjustable-Rate Mortgage Loan and any Adjustment Date therefor, the fixed percentage set forth in the related Mortgage Note, which is the maximum amount by which the Mortgage Rate for such Mortgage Loan may increase or decrease (without regard to the Maximum Mortgage Rate or the Minimum Mortgage Rate) on such Adjustment Date from the Mortgage Rate in effect immediately prior to such Adjustment Date.

"Permitted Investments": Any one or more of the following obligations or securities acquired at a purchase price of not greater than par, regardless of whether issued or managed by the Depositor, the Servicer, the Trustee or any of their respective Affiliates:

(i) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided such obligations are backed by the full faith and credit of the United States;

(ii) demand and time deposits in, certificates of deposit of, or bankers' acceptances issued by, any Depository Institution;

(iii) repurchase obligations with respect to any security described in clause (i) above entered into with a Depository Institution (acting as principal);

(iv) securities bearing interest or sold at a discount that are issued by any corporation incorporated under the laws of the United States of America or any state thereof and that are rated by each Rating Agency that rates such securities in its highest long-term unsecured rating categories at the time of such investment or contractual commitment providing for such investment, which securities mature in 365 days or less;

(v) commercial paper (including both non-interest-bearing discount obligations and interest-bearing obligations payable on demand or on a specified date not more than 30 days after the date of acquisition thereof) that is rated by each Rating Agency that rates such securities in its highest short-term unsecured debt rating available at the time of such investment;

(vi) units of money market funds, including those managed or advised by the Trustee or its Affiliates, that have been rated "AAA" by Fitch (if rated by Fitch) and "AAAm" or "AAAm-G" by S&P and "Aaa" by Moody's; and

(vii) if previously confirmed in writing to the Trustee, any other demand, money market or time deposit, or any other obligation, security or investment, as may be acceptable to the Rating Agencies as a permitted investment of funds backing securities having ratings equivalent to its highest initial rating of the Class A Certificates;

provided, however, that no instrument described hereunder shall evidence either the right to receive (a) only interest with respect to the obligations underlying such instrument or (b) both principal and interest payments derived from obligations underlying such instrument and the interest and principal payments with respect to such instrument provide a yield to maturity at par greater than 120% of the yield to maturity at par of the underlying obligations.

EXHIBIT 9

"Permitted Transferee": Any Transferee of a Residual Certificate other than a Disqualified Organization or Non-United States Person.

"Person": Any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Plan": Any "employee benefit plan" as defined in Section 3(3) of ERISA that is subject to Title I of ERISA, any "plan" as defined in Section 4975(e)(1) of the Code that is subject to Section 4975 of the Code or any entity deemed to hold plan assets of any of the foregoing.

"Prepayment Assumption": As defined in the Prospectus Supplement.

"Prepayment Charge": With respect to any Prepayment Period, any prepayment premium, penalty or charge payable by a Mortgagor in connection with any Principal Prepayment on a Mortgage Loan pursuant to the terms of the related Mortgage Note (other than any Servicer Prepayment Charge Payment Amount).

"Prepayment Charge Schedule": As of any date, the list of Prepayment Charges included in the Trust Fund on such date, attached hereto as Schedule 2 (including the prepayment charge summary attached thereto). The Prepayment Charge Schedule shall set forth the following information with respect to each Prepayment Charge:

(i) the Mortgage Loan identifying number;

(ii) a code indicating the type of Prepayment Charge;

(iii) the date on which the first Monthly Payment was due on the related Mortgage Loan;

(iv) the term of the related Prepayment Charge;

(v) the original Stated Principal Balance of the related Mortgage Loan; and

(vi) remaining prepayment term in months.

"Prepayment Interest Shortfall": With respect to any Principal Prepayments in full on the Mortgage Loans and any Distribution Date, any interest shortfall resulting from Principal Prepayments occurring between the first day of the related Prepayment Period and the last day of the prior calendar month. The obligations of the Servicer in respect of any Prepayment Interest Shortfall are set forth in Section 3.24.

"Prepayment Period": With respect to any Distribution Date the calendar month immediately preceding the calendar month in which such Distribution Date occurs.

"Principal Distribution Amount": With respect to any Distribution Date, an amount, not less than zero, equal to the sum of:

(i) the principal portion of each Monthly Payment on the Mortgage Loans due during the related Due Period, actually received on or prior to the related Determination Date or Advanced on or prior to the related Distribution Date;

(ii) the Stated Principal Balance of any Mortgage Loan that was purchased during the related Prepayment Period pursuant to or as contemplated by Section 2.03, Section 3.16(c) or Section 9.01 and the amount of any shortfall deposited in the Custodial Account in connection with the substitution of a Deleted Mortgage Loan pursuant to Section 2.03 during the related Prepayment Period;

(iii) the principal portion of all other unscheduled collections (including, without limitation, Principal Prepayments, Insurance Proceeds, Liquidation Proceeds, Subsequent Recoveries and REO Principal Amortization) received during the related Prepayment Period, net of any portion thereof that represents a recovery of principal for which an Advance was made by the Servicer pursuant to Section 4.03 in respect of a preceding Distribution Date; and

(iv) the amount of any Overcollateralization Increase Amount for such Distribution Date; *minus*

(v) the amount of any Overcollateralization Reduction Amount for such Distribution Date; and

(vi) any Net Swap Payment owed to the Swap Counterparty or Swap Termination Payment not due to a Swap Counterparty Trigger Event owed to the Swap Counterparty to the extent not covered by that portion of the Available Distribution Amount (without giving effect to any Net Swap Payment owed to the Swap Counterparty or any Swap Termination Payment owed to the Swap Counterparty not due to a Swap Counterparty Trigger Event) for that Distribution Date that represents interest received or advanced on the Mortgage Loans.

"Principal Prepayment": Any payment of principal made by the Mortgagor on a Mortgage Loan which is received in advance of its scheduled Due Date and which is not accompanied by an amount of interest representing the full amount of scheduled interest due on any Due Date in any month or months subsequent to the month of prepayment.

"Principal Remittance Amount": With respect to any Distribution Date, the sum of the amounts set forth in (i) through (iii) of the definition of Principal Distribution Amount.

"Private Certificates": As defined in Section 5.02(b).

"Prospectus Supplement": The Prospectus Supplement, dated August 7, 2006, relating to the public offering of the Class A Certificates and the Mezzanine Certificates (other than the Class M-10 Certificates).

"PTCE": A Prohibited Transaction Class Exemption issued by the United States Department of Labor which provides that exemptive relief is available to any party to any transaction which satisfies the conditions of the exemption.

"Purchase Price": With respect to any Mortgage Loan or REO Property to be purchased pursuant to or as contemplated by Section 2.03, Section 3.16(c) or Section 9.01, and as confirmed by a certification from a Servicing Officer to the Trustee, an amount equal to the sum of (i) 100% of the Stated Principal Balance thereof as of the date of purchase (or such other price as provided in Section 9.01), (ii) in the case of (x) a Mortgage Loan, accrued interest on such Stated Principal Balance at the applicable Expense Adjusted Mortgage Rate in effect from time to time from the Due Date as to which interest was last covered by a payment by the Mortgagor or an Advance by the Servicer, which payment or Advance had as of the date of purchase been distributed pursuant to Section 4.01, through the end of the calendar month in which the purchase is to be effected *plus* and (y) an REO Property, the sum of (1) accrued interest on such Stated Principal Balance at the applicable Expense Adjusted Mortgage Rate in effect from time to time from the Due Date as to which interest was last covered by a payment by the Mortgagor or an Advance by the Servicer through the end of the calendar month immediately preceding the calendar month in which such REO Property was acquired, *plus* (2) REO Imputed Interest for such REO Property for each calendar month commencing with the calendar month in which such REO Property was acquired and ending with the calendar month in which such purchase is to be effected, net of the total of all net rental income, Insurance Proceeds, Liquidation Proceeds and Advances that as of the date of purchase had been distributed as or to cover REO Imputed Interest pursuant to Section 4.01, (iii) any unreimbursed Servicing Advances and Advances (including Nonrecoverable Advances and Nonrecoverable Servicing Advances) and any unpaid Servicing Fees allocable to such Mortgage Loan or REO Property, (iv) any amounts previously withdrawn from the Custodial Account in respect of such Mortgage Loan or REO Property pursuant to Section 3.11(a)(ix) and Section 3.16(b), and (v) in the case of a Mortgage Loan required to be purchased pursuant to Section 2.03, expenses reasonably incurred or to be incurred by the Servicer or the Trustee in respect of the breach or defect giving rise to the purchase obligation including any costs and damages incurred by the Trust Fund in connection with any violation by such loan of any predatory or abusive lending law.

"Qualified Correspondent": Any Person from which the Servicer purchased Mortgage Loans, provided that the following conditions are satisfied: (i) such Mortgage Loans were originated pursuant to an agreement between the Servicer and such Person that contemplated that such Person would underwrite mortgage loans from time to time, for sale to the Servicer, in accordance with underwriting guidelines designated by the Servicer ("Designated Guidelines") or guidelines that do not vary materially from such Designated Guidelines; (ii) such Mortgage Loans were in fact underwritten as described in clause (i) above and were acquired by the Servicer within 180 days after origination; (iii) either (x) the Designated Guidelines were, at the time such Mortgage Loans were originated, used by the Servicer in origination of mortgage loans of the same type as the Mortgage Loans for the Servicer's own account or (y) the Designated Guidelines were, at the time such Mortgage Loans were underwritten, designated by the Servicer on a consistent basis for use by lenders in originating mortgage loans to be purchased by the Servicer; and (iv) the Servicer employed, at the time such Mortgage Loans were acquired by the Servicer, pre-purchase or post-purchase quality assurance procedures (which may involve,

EXHIBIT 9

among other things, review of a sample of mortgage loans purchased during a particular time period or through particular channels) designed to ensure that Persons from which it purchased mortgage loans properly applied the underwriting criteria designated by the Servicer.

"Qualified Substitute Mortgage Loan": A mortgage loan substituted for a Deleted Mortgage Loan pursuant to the terms of this Agreement which must, on the date of such substitution, (i) have an outstanding Stated Principal Balance, after application of all scheduled payments of principal and interest due during or prior to the month of substitution, not in excess of the Stated Principal Balance of the Deleted Mortgage Loan as of the Due Date in the calendar month during which the substitution occurs, (ii) have a Mortgage Rate not less than (and not more than one percentage point in excess of) the Mortgage Rate of the Deleted Mortgage Loan, (iii) with respect to any Adjustable-Rate Mortgage Loan, have a Maximum Mortgage Rate not less than the Maximum Mortgage Rate on the Deleted Mortgage Loan, (iv) with respect to any Adjustable-Rate Mortgage Loan, have a Minimum Mortgage Rate not less than the Minimum Mortgage Rate of the Deleted Mortgage Loan, (v) with respect to any Adjustable-Rate Mortgage Loan, have a Gross Margin equal to the Gross Margin of the Deleted Mortgage Loan, (vi) with respect to any Adjustable-Rate Mortgage Loan, have a next Adjustment Date not more than two months later than the next Adjustment Date on the Deleted Mortgage Loan, (vii) have a remaining term to maturity not greater than (and not more than one year less than) that of the Deleted Mortgage Loan, (viii) have the same Due Date as the Due Date on the Deleted Mortgage Loan, (ix) have a Loan-to-Value Ratio as of the date of substitution equal to or lower than the Loan-to-Value Ratio of the Deleted Mortgage Loan as of such date, (x) have a risk grading determined by the Originator at least equal to the risk grading assigned on the Deleted Mortgage Loan and (xi) conform to each representation and warranty set forth in Section 6 of the Mortgage Loan Purchase Agreement applicable to the Deleted Mortgage Loan. In the event that one or more mortgage loans are substituted for one or more Deleted Mortgage Loans, the amounts described in clause (i) hereof shall be determined on the basis of aggregate principal balances, the Mortgage Rates described in clause (ii) hereof shall be determined on the basis of weighted average Mortgage Rates, the terms described in clause (vii) hereof shall be determined on the basis of weighted average remaining term to maturity, the Loan-to-Value Ratios described in clause (ix) hereof shall be satisfied as to each such mortgage loan, the risk gradings described in clause (x) hereof shall be satisfied as to each such mortgage loan and, except to the extent otherwise provided in this sentence, the representations and warranties described in clause (xi) hereof must be satisfied as to each Qualified Substitute Mortgage Loan or in the aggregate, as the case may be.

"Rate/Term Refinancing": A Refinanced Mortgage Loan, the proceeds of which are not more than a nominal amount in excess of the existing first mortgage loan and any subordinate mortgage loan on the related Mortgaged Property and related closing costs, and were used exclusively (except for such nominal amount) to satisfy the then existing first mortgage loan and any subordinate mortgage loan of the Mortgagor on the related Mortgaged Property and to pay related closing costs.

"Rating Agency or Rating Agencies": Fitch, Moody's and S&P or their successors. If such agencies or their successors are no longer in existence, "Rating Agencies" shall be such

nationally recognized statistical rating agencies, or other comparable Persons, designated by the Depositor, notice of which designation shall be given to the Trustee and the Servicer.

"Realized Loss": With respect to each Mortgage Loan as to which a Final Recovery Determination has been made, an amount (not less than zero) equal to (i) the unpaid principal balance of such Mortgage Loan as of the commencement of the calendar month in which the Final Recovery Determination was made, *plus* (ii) accrued interest from the Due Date as to which interest was last paid by the Mortgagor through the end of the calendar month in which such Final Recovery Determination was made, calculated in the case of each calendar month during such period (A) at an annual rate equal to the annual rate at which interest was then accruing on such Mortgage Loan and (B) on a principal amount equal to the Stated Principal Balance of such Mortgage Loan as of the close of business on the Distribution Date during such calendar month, *plus* (iii) any amounts previously withdrawn from the Custodial Account in respect of such Mortgage Loan pursuant to Section 3.11(a)(ix) and Section 3.16(b), *minus* (iv) the proceeds, if any, received in respect of such Mortgage Loan during the calendar month in which such Final Recovery Determination was made, net of amounts that are payable therefrom to the Servicer with respect to such Mortgage Loan pursuant to Section 3.11(a)(iii).

With respect to any REO Property as to which a Final Recovery Determination has been made, an amount (not less than zero) equal to (i) the unpaid principal balance of the related Mortgage Loan as of the date of acquisition of such REO Property on behalf of REMIC I, *plus* (ii) accrued interest from the Due Date as to which interest was last paid by the Mortgagor in respect of the related Mortgage Loan through the end of the calendar month immediately preceding the calendar month in which such REO Property was acquired, calculated in the case of each calendar month during such period (A) at an annual rate equal to the annual rate at which interest was then accruing on the related Mortgage Loan and (B) on a principal amount equal to the Stated Principal Balance of the related Mortgage Loan as of the close of business on the Distribution Date during such calendar month, *plus* (iii) REO Imputed Interest for such REO Property for each calendar month commencing with the calendar month in which such REO Property was acquired and ending with the calendar month in which such Final Recovery Determination was made, *plus* (iv) any amounts previously withdrawn from the Custodial Account in respect of the related Mortgage Loan pursuant to Section 3.11(a)(ix) and Section 3.16(b), *minus* (v) the aggregate of all Advances and Servicing Advances (in the case of Servicing Advances, without duplication of amounts netted out of the rental income, Insurance Proceeds and Liquidation Proceeds described in clause (vi) below) made by the Servicer in respect of such REO Property or the related Mortgage Loan for which the Servicer has been or, in connection with such Final Recovery Determination, will be reimbursed pursuant to Section 3.23 out of rental income, Insurance Proceeds and Liquidation Proceeds received in respect of such REO Property, *minus* (vi) the total of all net rental income, Insurance Proceeds and Liquidation Proceeds received in respect of such REO Property that has been, or in connection with such Final Recovery Determination, will be transferred to the Certificate Account pursuant to Section 3.23.

With respect to each Mortgage Loan which has become the subject of a Deficient Valuation, the difference between the principal balance of the Mortgage Loan outstanding

immediately prior to such Deficient Valuation and the principal balance of the Mortgage Loan as reduced by the Deficient Valuation.

With respect to each Mortgage Loan which has become the subject of a Debt Service Reduction, the portion, if any, of the reduction in each affected Monthly Payment attributable to a reduction in the Mortgage Rate imposed by a court of competent jurisdiction. Each such Realized Loss shall be deemed to have been incurred on the Due Date for each affected Monthly Payment.

If the Servicer receives Subsequent Recoveries with respect to any Mortgage Loan, the amount of the Realized Loss with respect to that Mortgage Loan will be reduced to the extent such recoveries are applied to principal distributions on any Distribution Date.

Realized Losses allocated to the Class CE Certificates shall be allocated first to the REMIC II Regular Interest CE-IO in reduction of the accrued but unpaid interest thereon until such accrued and unpaid interest shall have been reduced to zero and then to the REMIC II Regular Interest CE-PO in reduction of the Principal Balance thereof.

"Record Date": With respect to each Distribution Date and any Book-Entry Certificate, the Business Day immediately preceding such Distribution Date. With respect to each Distribution Date and any other Certificates, including any Definitive Certificates, the last Business Day of the month immediately preceding the month in which such Distribution Date occurs, except in the case of the first Record Date which shall be the Closing Date.

"Reference Banks": Deutsche Bank AG, Barclays' Bank PLC, The Tokyo Mitsubishi Bank and National Westminster Bank PLC and their successors in interest; provided, however, that if any of the foregoing banks are not suitable to serve as a Reference Bank, then any leading banks selected by the Trustee, after consultation with the Depositor, which are engaged in transactions in Eurodollar deposits in the international Eurocurrency market (i) with an established place of business in London and (ii) not controlling, under the control of or under common control with the Depositor or any Affiliate thereof.

"Refinanced Mortgage Loan": A Mortgage Loan the proceeds of which were not used to purchase the related Mortgaged Property.

"Regular Certificate": Any Class A Certificate, Mezzanine Certificate, Class CE Certificate or Class P Certificate.

"Regular Interest": A "regular interest" in a REMIC within the meaning of Section 860G(a)(1) of the Code.

"Regulation AB": Subpart 229.1100 – Asset Backed Securities (Regulation AB), 17 C.F.R. §§229.1100-229.1123, as such may be amended from time to time, and subject to such clarification and interpretation as have been provided by the Commission in the adopting release (Asset-Backed Securities, Securities Act Release No. 33-8518, 70 Fed. Reg. 1,506, 1,531 (Jan. 7, 2005)) or by the staff of the Commission, or as may be provided by the Commission or its staff from time to time.

"Relief Act": The Servicemembers Civil Relief Act.

"Relief Act Interest Shortfall": With respect to any Distribution Date and any Mortgage Loan, any reduction in the amount of interest collectible on such Mortgage Loan for the most recently ended calendar month as a result of the application of the Relief Act.

"REMIC": A "real estate mortgage investment conduit" within the meaning of Section 860D of the Code.

"REMIC I": The segregated pool of assets subject hereto (exclusive of the Swap Account and the Swap Agreement, each of which is not an asset of any REMIC), constituting the primary trust created hereby and to be administered hereunder, with respect to which a REMIC election is to be made, consisting of: (i) such Mortgage Loans and Prepayment Charges related thereto as from time to time are subject to this Agreement, together with the Mortgage Files relating thereto, and together with all collections thereon and proceeds thereof; (ii) any REO Property, together with all collections thereon and proceeds thereof; (iii) the Trustee's rights with respect to the Mortgage Loans under all insurance policies required to be maintained pursuant to this Agreement and any proceeds thereof; (iv) the Depositor's rights under the Mortgage Loan Purchase Agreement (including any security interest created thereby); and (v) the Custodial Account (other than any amounts representing any Servicer Prepayment Charge Payment Amount), the Certificate Account (other than any amounts representing any Servicer Prepayment Charge Payment Amount) and any REO Account, and such assets that are deposited therein from time to time and any investments thereof, together with any and all income, proceeds and payments with respect thereto. Notwithstanding the foregoing, however, REMIC I specifically excludes all payments and other collections of principal and interest due on the Mortgage Loans on or before the Cut-off Date and all Prepayment Charges payable in connection with Principal Prepayments on the Mortgage Loans made before the Cut-off Date.

"REMIC I Interest Loss Allocation Amount": With respect to any Distribution Date, an amount equal to (a) the product of (i) the aggregate Stated Principal Balance of the Mortgage Loans and REO Properties then outstanding and (ii) the REMIC I Remittance Rate for REMIC I Regular Interest I-LTAA *minus* the Marker Rate, divided by (b) 12.

"REMIC I Overcollateralized Amount": With respect to any date of determination, (i) 1% of the aggregate Uncertificated Balance of the REMIC I Regular Interests (other than REMIC I Regular Interest I-LTP) *minus* (ii) the aggregate Uncertificated Balance of REMIC I Regular Interest I-LTA1, REMIC I Regular Interest I-LTA2, REMIC I Regular Interest I-LTA3, REMIC I Regular Interest I-LTA4, REMIC I Regular Interest I-LTM1, REMIC I Regular Interest I-LTM2, REMIC I Regular Interest I-LTM3, REMIC I Regular Interest I-LTM4, REMIC I Regular Interest I-LTM5, REMIC I Regular Interest I-LTM6, REMIC I Regular Interest I-LTM7, REMIC I Regular Interest I-LTM8, REMIC I Regular Interest I-LTM9, REMIC I Regular Interest I-LTM10, in each case as of such date of determination.

"REMIC I Principal Loss Allocation Amount": With respect to any Distribution Date, an amount equal to the product of (i) the aggregate Stated Principal Balance of the Mortgage Loans and REO Properties then outstanding and (ii) 1 *minus* a fraction, the numerator of which is two

times the aggregate Uncertificated Balance of REMIC I Regular Interest I-LTA1, REMIC I Regular Interest I-LTA2, REMIC I Regular Interest I-LTA3, REMIC I Regular Interest I-LTA4, REMIC I Regular Interest I-LTM1, REMIC I Regular Interest I-LTM2, REMIC I Regular Interest I-LTM3, REMIC I Regular Interest I-LTM4, REMIC I Regular Interest I-LTM5, REMIC I Regular Interest I-LTM6, REMIC I Regular Interest I-LTM7, REMIC I Regular Interest I-LTM8, REMIC I Regular Interest I-LTM9 and REMIC I Regular Interest I-LTM10 and the denominator of which is the aggregate Uncertificated Balance of REMIC I Regular Interest I-LTA1, REMIC I Regular Interest I-LTA2, REMIC I Regular Interest I-LTA3, REMIC I Regular Interest I-LTM1, REMIC I Regular Interest I-LTM2, REMIC I Regular Interest I-LTM3, REMIC I Regular Interest I-LTM4, REMIC I Regular Interest I-LTM5, REMIC I Regular Interest I-LTM6, REMIC I Regular Interest I-LTM7, REMIC I Regular Interest I-LTM8, REMIC I Regular Interest I-LTM9, REMIC I Regular Interest I-LTM10 and REMIC I Regular Interest I-LTZZ.

"REMIC I Regular Interest": Any of the separate non-certificated beneficial ownership interests in REMIC I issued hereunder and designated as a "regular interest" in REMIC I. Each REMIC I Regular Interest shall accrue interest at the related REMIC I Remittance Rate in effect from time to time or shall otherwise be entitled to interest as set forth herein, and shall be entitled to distributions of principal, subject to the terms and conditions hereof, in an aggregate amount equal to its initial Uncertificated Balance as set forth in the Preliminary Statement hereto. The REMIC I Regular Interests are as follows: REMIC I Regular Interest I-LTAA, REMIC I Regular Interest I-LTA1, REMIC I Regular Interest I-LTA2, REMIC I Regular Interest I-LTA3, REMIC I Regular Interest I-LTA4, REMIC I Regular Interest I-LTM1, REMIC I Regular Interest I-LTM2, REMIC I Regular Interest I-LTM3, REMIC I Regular Interest I-LTM4, REMIC I Regular Interest I-LTM5, REMIC I Regular Interest I-LTM6, REMIC I Regular Interest I-LTM7, REMIC I Regular Interest I-LTM8, REMIC I Regular Interest I-LTM9, REMIC I Regular Interest I-LTM10, REMIC I Regular Interest I-LTZZ and REMIC I Regular Interest I-LTP.

"REMIC I Remittance Rate": With respect to each REMIC I Regular Interest and any Distribution Date, the weighted average of the Expense Adjusted Mortgage Rates of the Mortgage Loans, weighted based on their Stated Principal Balances as of the first day of the related Due Period.

"REMIC I Required Overcollateralized Amount": 1% of the Overcollateralization Target Amount.

"REMIC II": The segregated pool of assets consisting of all of the REMIC I Regular Interests conveyed in trust to the Trustee, for the benefit of the Class A Certificates, the Mezzanine Certificates, the Class CE Certificates, the Class P Certificates and the Class R-II Interest and all amounts deposited therein, with respect to which a separate REMIC election is to be made.

"REMIC II Regular Interests": Any Regular Interest issued by REMIC II, the ownership of which is evidenced by a Class A Certificate, Class M Certificate or Class CE Certificate.

"REMIC II Regular Interest CE-IO": A separate non-certificated regular interest of REMIC II designated as a REMIC II Regular Interest. REMIC II Regular Interest CE-IO shall have no entitlement to principal and shall be entitled to distributions of interest subject to the terms and conditions hereof, in an aggregate amount equal to interest distributable with respect to the Class CE Certificates pursuant to the terms and conditions hereof.

"REMIC II Regular Interest CE-PO": A separate non-certificated regular interest of REMIC II designated as a REMIC II Regular Interest. REMIC II Regular Interest CE-PO shall have no entitlement to interest and shall be entitled to distributions of principal subject to the terms and conditions hereof, in an aggregate amount equal to principal distributable with respect to the Class CE Certificates pursuant to the terms and conditions hereof.

"REMIC Provisions": Provisions of the federal income tax law relating to real estate mortgage investment conduits, which appear at Section 860A through 860G of the Code, and related provisions, and proposed, temporary and final regulations and published rulings, notices and announcements promulgated thereunder, as the foregoing may be in effect from time to time.

"Remittance Report": A report in form and substance acceptable to the Trustee on an electronic data file or tape prepared by the Servicer pursuant to Section 4.03 containing the data elements specified on Schedule 4, hereto, with such additions, deletions and modifications as agreed to by the Trustee and the Servicer.

"Rents from Real Property": With respect to any REO Property, gross income of the character described in Section 856(d) of the Code as being included in the term "rents from real property."

"REO Account": The account or accounts maintained, or caused to be maintained, by the Servicer in respect of an REO Property pursuant to Section 3.23.

"REO Disposition": The sale or other disposition of an REO Property on behalf of REMIC I.

"REO Imputed Interest": As to any REO Property, for any calendar month during which such REO Property was at any time part of REMIC I, one month's interest at the applicable Expense Adjusted Mortgage Rate on the Stated Principal Balance of such REO Property (or, in the case of the first such calendar month, of the related Mortgage Loan, if appropriate) as of the close of business on the Distribution Date in such calendar month.

"REO Principal Amortization": With respect to any REO Property, for any calendar month, the excess, if any, of (a) the aggregate of all amounts received in respect of such REO Property during such calendar month, whether in the form of rental income, sale proceeds (including, without limitation, that portion of the Termination Price paid in connection with a purchase of all of the Mortgage Loans and REO Properties pursuant to Section 9.01 that is allocable to such REO Property) or otherwise, net of any portion of such amounts (i) payable pursuant to Section 3.23(c) in respect of the proper operation, management and maintenance of such REO Property or (ii) payable or reimbursable to the Servicer pursuant to Section 3.23(d) for unpaid Servicing Fees in respect of the related Mortgage Loan and unreimbursed Servicing

Advances and Advances in respect of such REO Property or the related Mortgage Loan, over (b) the REO Imputed Interest in respect of such REO Property for such calendar month.

"REO Property": A Mortgaged Property acquired by the Servicer on behalf of REMIC I through foreclosure or deed-in-lieu of foreclosure, as described in Section 3.23.

"Request for Release": A release signed by a Servicing Officer, in the form of Exhibit 3 to the Custodial Agreement.

"Reserve Interest Rate": With respect to any Interest Determination Date, the rate per annum that the Trustee determines to be either (i) the arithmetic mean (rounded upwards if necessary to the nearest whole multiple of 1/16%) of the one-month U.S. dollar lending rates which New York City banks selected by the Trustee, after consultation with the Depositor, are quoting on the relevant Interest Determination Date to the principal London offices of leading banks in the London interbank market or (ii) in the event that the Trustee can determine no such arithmetic mean, the lowest one-month U.S. dollar lending rate which New York City banks selected by the Trustee, after consultation with the Depositor, are quoting on such Interest Determination Date to leading European banks.

"Residential Dwelling": Any one of the following: (i) an attached, detached or semi-detached one-family dwelling, (ii) an attached, detached or semi-detached two-to four-family dwelling, (iii) a one-family dwelling unit in a Fannie Mae eligible condominium project, or (iv) an attached, detached or semi-detached one-family dwelling in a planned unit development, none of which is a co-operative or mobile home (as defined in 42 United States Code, Section 5402(6)).

"Residual Certificates": The Class R Certificates.

"Residual Interest": The sole class of "residual interests" in a REMIC within the meaning of Section 860G(a)(2) of the Code.

"Responsible Officer": When used with respect to the Trustee, any vice president, managing director, director, any assistant vice president, the Secretary, any assistant secretary, the Treasurer, any assistant treasurer, any associate, any trust officer or assistant trust officer or any other officer of the Trustee having direct responsibility over this Agreement or otherwise engaged in performing functions similar to those performed by any of the above designated officers and, with respect to a particular matter, to whom such matter is referred because of such officer's knowledge of and familiarity with the particular subject.

"Responsible Party": NC Capital Corporation, a California corporation, or its successor in interest, in its capacity as responsible party under the Mortgage Loan Purchase Agreement.

"Rolling Three-Month Delinquency Average": With respect to any Distribution Date, the average aggregate unpaid principal balance of the Mortgage Loans delinquent 60 days or more for each of the three (or one and two, in the case of the Distribution Dates in September 2006 and October 2006, respectively) immediately preceding months.

"S&P": Standard & Poor's Ratings Services, a division of the McGraw-Hill Companies, Inc., or its successor in interest.

"Sarbanes Certification": As defined in Section 12.05(a)(iv).

"Securitization Transaction": Any transaction involving either (1) a sale or other transfer of some or all of the Mortgage Loans directly or indirectly to an issuing entity in connection with an issuance of publicly offered or privately placed, rated or unrated mortgage-backed securities or (2) an issuance of publicly offered or privately placed, rated or unrated securities, the payments on which are determined primarily by reference to one or more portfolios of residential mortgage loans consisting, in whole or in part, of some or all of the Mortgage Loans.

"Seller": Carrington Securities, LP, a Delaware limited partnership, or its successor in interest, in its capacity as seller under the Mortgage Loan Purchase Agreement.

"Senior Interest Distribution Amount": With respect to any Distribution Date, an amount equal to the sum of (i) the Interest Distribution Amount for such Distribution Date for the Class A Certificates and (ii) the Interest Carry Forward Amount, if any, for such Distribution Date for the Class A Certificates.

"Servicer": New Century Mortgage Corporation, a California corporation, or any successor servicer appointed as herein provided, in its capacity as Servicer hereunder.

"Servicer Event of Default": One or more of the events described in Section 7.01.

"Servicer Information": As defined in Section 12.07(a)(i).

"Servicer Prepayment Charge Payment Amount": The amounts payable by the Servicer in respect of any waived Prepayment Charges pursuant to Section 3.01.

"Servicer Remittance Date": With respect to any Distribution Date, by 1:00 p.m. New York time on the Business Day preceding the related Distribution Date.

"Servicer Termination Test": The Servicer Termination Test will be failed with respect to any Distribution Date if the aggregate amount of Realized Losses incurred since the Cut-off Date through the last day of the related Due Period (reduced by the aggregate amount of Subsequent Recoveries received from the Cut-off Date through the last day of the related Due Period) divided by aggregate Stated Principal Balance of the Mortgage Loans as of the Cut-off Date exceeds the applicable percentages set forth below with respect to such Distribution Date:

Distribution Date Occurring In	Percentage
September 2009 through August 2010	3.05% for the first distribution date of this period, plus an additional 1/12th of 1.75% for each distribution date thereafter
September 2010 through August 2011	4.80% for the first distribution date of this period, plus an additional 1/12th of 1.40% for each distribution date thereafter
September 2011 through August 2012	6.20% for the first distribution date of this

EXHIBIT 9

	period, plus an additional 1/12th of 0.75% for each distribution date thereafte
September 2012 and thereafter	6.95%

"Servicing Account": The account or accounts created and maintained pursuant to Section 3.09.

"Servicing Advances": The reasonable "out-of-pocket" costs and expenses (including legal fees) incurred by the Servicer in connection with a default, delinquency or other unanticipated event by the Servicer in the performance of its servicing obligations, including, but not limited to, the cost of (i) the preservation, restoration, inspection and protection of a Mortgaged Property, (ii) any enforcement or judicial proceedings, including but not limited to foreclosures and litigation, in respect of a particular Mortgage Loan, (iii) the management (including reasonable fees in connection therewith) and liquidation of any REO Property and (iv) the performance of its obligations under Section 3.01, Section 3.09, Section 3.14, Section 3.16 and Section 3.23. The Servicer shall not be required to make any Nonrecoverable Servicing Advances.

"Servicing Criteria": The "servicing criteria" set forth in Item 1122(d) of Regulation AB, as such may be amended from time to time.

"Servicing Fee": With respect to each Mortgage Loan and for any calendar month, an amount equal to the Servicing Fee Rate accrued for one month (or in the event of any payment of interest which accompanies a Principal Prepayment in full made by the Mortgagor during such calendar month, interest for the number of days covered by such payment of interest) on the same principal amount on which interest on such Mortgage Loan accrues for such calendar month, calculated on the basis of a 360-day year consisting of twelve 30-day months. A portion of such Servicing Fee may be retained by any Sub-Servicer as its servicing compensation.

"Servicing Fee Rate": 0.500% per annum.

"Servicing Officer": Any officer of the Servicer involved in, or responsible for, the administration and servicing of Mortgage Loans, whose name and specimen signature appear on a list of Servicing Officers furnished by the Servicer to the Trustee and the Depositor on the Closing Date, as such list may from time to time be amended.

"Servicing Transfer Costs": Shall mean all reasonable costs and expenses incurred by the Trustee in connection with the transfer of servicing from a predecessor servicer, including, without limitation, any reasonable costs or expenses associated with the complete transfer of all servicing data and the completion, correction or manipulation of such servicing data as may be required by the Trustee to correct any errors or insufficiencies in the servicing data or otherwise to enable the Trustee (or any successor servicer appointed pursuant to Section 7.02) to service the Mortgage Loans properly and effectively.

"Single Certificate": With respect to any Class of Certificates (other than the Class P Certificates and the Residual Certificates), a hypothetical Certificate of such Class evidencing a Percentage Interest for such Class corresponding to an initial Certificate Principal Balance of

EXHIBIT 9

$1,000. With respect to the Class P Certificates and the Residual Certificates, a hypothetical Certificate of such Class evidencing a 100% Percentage Interest in such Class.

"Startup Day": With respect to each Trust REMIC, the day designated as such pursuant to Section 10.01(b) hereof.

"Stated Principal Balance": With respect to any Mortgage Loan: (a) as of any date of determination up to but not including the Distribution Date on which the proceeds, if any, of a Liquidation Event with respect to such Mortgage Loan would be distributed, the principal balance of such Mortgage Loan as of the Cut-off Date, as shown on the Mortgage Loan Schedule, *minus* the sum of (i) the principal portion of each Monthly Payment due on a Due Date subsequent to the Cut-off Date, to the extent received from the Mortgagor or advanced by the Servicer and distributed pursuant to Section 4.01 on or before such date of determination, (ii) all Principal Prepayments received after the Cut-off Date, to the extent distributed pursuant to Section 4.01 on or before such date of determination, (iii) all Liquidation Proceeds and Insurance Proceeds applied by the Servicer as recoveries of principal in accordance with the provisions of Section 3.16, to the extent distributed pursuant to Section 4.01 on or before such date of determination, and (iv) any Realized Loss incurred with respect thereto as a result of a Deficient Valuation made during or prior to the Prepayment Period for the most recent Distribution Date coinciding with or preceding such date of determination; and (b) as of any date of determination coinciding with or subsequent to the Distribution Date on which the proceeds, if any, of a Liquidation Event with respect to such Mortgage Loan would be distributed, zero. With respect to any REO Property: (a) as of any date of determination up to but not including the Distribution Date on which the proceeds, if any, of a Liquidation Event with respect to such REO Property would be distributed, an amount (not less than zero) equal to the Stated Principal Balance of the related Mortgage Loan as of the date on which such REO Property was acquired on behalf of REMIC I, *minus* the sum of (i) if such REO Property was acquired before the Distribution Date in any calendar month, the principal portion of the Monthly Payment due on the Due Date in the calendar month of acquisition, to the extent advanced by the Servicer and distributed pursuant to Section 4.01 on or before such date of determination, and (ii) the aggregate amount of REO Principal Amortization in respect of such REO Property for all previously ended calendar months, to the extent distributed pursuant to Section 4.01 on or before such date of determination; and (b) as of any date of determination coinciding with or subsequent to the Distribution Date on which the proceeds, if any, of a Liquidation Event with respect to such REO Property would be distributed, zero.

"Stepdown Date": The later to occur of (a) the Distribution Date occurring in September 2009 and (b) the first Distribution Date on which the Credit Enhancement Percentage with respect to the Class A Certificates (calculated for this purpose only prior to any distribution of the Principal Distribution Amount to the holders of the Certificates then entitled to distributions of principal on such Distribution Date) is equal to or greater than 51.70%.

"Subcontractor": Any vendor, subcontractor or other Person (but not including the Trustee, except to the extent described in Article XI) that is not responsible for the overall servicing (as "servicing" is commonly understood by participants in the mortgage-backed securities market) of Mortgage Loans but performs one or more discrete functions identified in

Item 1122(d) of Regulation AB with respect to Mortgage Loans under the direction or authority of the Servicer or a Sub-Servicer.

"Subordination Percentage": With respect to each class of Class A and Mezzanine Certificates, the applicable approximate percentage set forth in the table below.

Class	Percentage	Class	Percentage
A	48.30%	M-6	85.00%
M-1	59.60%	M-7	87.90%
M-2	70.00%	M-8	90.00%
M-3	73.10%	M-9	92.70%
M-4	78.30%	M-10	95.00%
M-5	82.10		

"Sub-Servicer": Any Person with which the Servicer has entered into a Sub-Servicing Agreement and which meets the qualifications of a Sub-Servicer pursuant to Section 3.02.

"Sub-Servicing Account": As defined in Section 3.08.

"Sub-Servicing Agreement": The written contract between the Servicer and a Sub-Servicer relating to servicing and administration of certain Mortgage Loans as provided in Section 3.02.

"Subsequent Recoveries": As of any Distribution Date, unexpected amounts received by the Servicer (net of any related expenses permitted to be reimbursed to the Servicer) specifically related to a Mortgage Loan that was the subject of a liquidation or an REO Disposition prior to the related Prepayment Period that resulted in a Realized Loss. If Subsequent Recoveries are received, they will be included as part of the Principal Remittance Amount for the following Distribution Date. In addition, after giving effect to all distributions on a Distribution Date, the amount of such Subsequent Recoveries will increase the Certificate Principal Balance first, of the Class A Certificates then outstanding, if a Realized Loss had been allocated to the Class A Certificates, on a *pro rata* basis by the amount of such Subsequent Recoveries, and second, of the class of Mezzanine Certificates then outstanding with the highest distribution priority to which a Realized Loss was allocated. Thereafter, such class of Class A and Mezzanine Certificates will accrue interest on the increased Certificate Principal Balance.

"Substitution Shortfall Amount": As defined in Section 2.03(b).

"Swap Account": The separate trust account created and maintained by the Trustee.

"Swap Agreement": The interest rate swap agreement between the Swap Counterparty and the Trustee, on behalf of the Trust, which agreement provides for Net Swap Payments and Swap Termination Payments to be paid, as provided therein, together with any schedules, confirmations or other agreements relating thereto, attached hereto as Exhibit K-1.

"Swap Agreement Notional Balance": As to the Swap Agreement and each "Floating Rate Payer Payment Date" (as defined in the Swap Agreement), the amount set forth on Exhibit K-2 hereto for such Floating Rate Payer Payment Date.

"Swap Counterparty": The swap counterparty under the Swap Agreement either (a) entitled to receive payments from the Trustee from amounts payable by the Trust Fund under this Agreement or (b) required to make payments to the Trustee for payment to the Trust Fund, in either case pursuant to the terms of the Swap Agreement, and any successor in interest or assign. Initially, the Swap Counterparty shall be Swiss Re Financial Corporation.

"Swap LIBOR": LIBOR as determined pursuant to the Swap Agreement.

"Swap Counterparty Trigger Event": With respect to any Distribution Date, (i) an "Event of Default" (as defined in the Swap Agreement) with respect to which the Swap Counterparty is a "Defaulting Party" (as defined in the Swap Agreement) or a "Termination Event" (as defined in the Swap Agreement) (including an "Additional Termination Event" (as defined in the Swap Agreement)) under the Swap Agreement with respect to which the Swap Counterparty is the sole "Affected Party" (as defined in the Swap Agreement).

"Swap Termination Payment": Upon the designation of an "Early Termination Date" (as defined in the Swap Agreement), the payment to be made by the Trustee on behalf of the Trust to the Swap Counterparty from payments from the Trust Fund, or by the Swap Counterparty to the Trustee for payment to the Trust Fund, as applicable, pursuant to the terms of the Swap Agreement.

"Tax Returns": The federal income tax return on Internal Revenue Service Form 1066, U.S. Real Estate Mortgage Investment Conduit Income Tax Return, including Schedule Q thereto, Quarterly Notice to Residual Interest Holders of REMIC Taxable Income or Net Loss Allocation, or any successor forms, to be filed on behalf of the Trust Fund due to the classification of portions thereof as REMICs under the REMIC Provisions, together with any and all other information reports or returns that may be required to be furnished to the Certificateholders or filed with the Internal Revenue Service or any other governmental taxing authority under any applicable provisions of federal, state or local tax laws.

"Telerate Page 3750": The display designated as page "3750" on the Dow Jones Telerate Capital Markets Report (or such other page as may replace page 3750 on that report for the purpose of displaying London interbank offered rates of major banks).

"Termination Price": As defined in Section 9.01.

"Terminator": As defined in Section 9.01.

"Third-Party Originator": Each Person, other than a Qualified Correspondent, that originated Mortgage Loans acquired by the Servicer.

"Transaction Party": As defined in Section 11.02.

"Transfer": Any direct or indirect transfer, sale, pledge, hypothecation, or other form of assignment of any Ownership Interest in a Certificate.

"Transferee": Any Person who is acquiring by Transfer any Ownership Interest in a Certificate.

"Transferor": Any Person who is disposing by Transfer of any Ownership Interest in a Certificate.

"Trigger Event": A Trigger Event is in effect on any Distribution Date on or after the Stepdown Date if:

(a) the Delinquency Percentage exceeds 34.00% of the then current Credit Enhancement Percentage with respect to the Class A Certificates for the prior Distribution Date; or

(b) the aggregate amount of Realized Losses incurred since the Cut-off Date through the last day of the related Due Period (after giving effect to scheduled payments of principal due during the related Due Period, to the extent received or advanced, and unscheduled collections of principal received during the related Prepayment Period, reduced by the aggregate amount of Subsequent Recoveries received since the Cut-off Date through the last day of the related Due Period) divided by aggregate Stated Principal Balance of the Mortgage Loans as of the Cut-off Date exceeds the applicable percentages set forth below with respect to such Distribution Date:

Distribution Date Occurring In	Percentage
September 2009 through August 2010	3.05% for the first distribution date of this period, plus an additional 1/12th of 1.75% for each distribution date thereafter
September 2010 through August 2011	4.80% for the first distribution date of this period, plus an additional 1/12th of 1.40% for each distribution date thereafter
September 2011 through August 2012	6.20% for the first distribution date of this period, plus an additional 1/12th of 0.75% for each distribution date thereafte
September 2012 and thereafter	6.95%

"Trust Fund": Collectively, all of the assets of each Trust REMIC, the Swap Account, the Swap Agreement and the other assets conveyed by the Depositor to the Trustee pursuant to Section 2.01.

"Trust REMIC": Any of REMIC I or REMIC II.

"Trustee": Wells Fargo Bank, N.A., a national banking association, or its successor in interest, or any successor trustee appointed as herein provided.

"Trustee Information": As defined in Section 11.05.

"Trustee Fee": The amount payable to the Trustee on each Distribution Date pursuant to Section 8.05 as compensation for all services rendered by it in the execution of the trust hereby created and in the exercise and performance of any of the powers and duties of the Trustee hereunder, which amount shall equal the Trustee Fee Rate accrued for one month on the

aggregate Stated Principal Balance of the Mortgage Loans and any REO Properties as of the first day of the related Due Period (or, in the case of the initial Distribution Date, as of the Cut-off Date), calculated on the basis of a 360-day year consisting of twelve 30-day months.

"Trustee Fee Rate": 0.0025% per annum.

"Uncertificated Balance": The amount of any REMIC I Regular Interest outstanding as of any date of determination. As of the Closing Date, the Uncertificated Balance of each REMIC I Regular Interest shall equal the amount set forth in the Preliminary Statement hereto as its initial uncertificated balance. On each Distribution Date, the Uncertificated Balance of each REMIC I Regular Interest shall be reduced by all distributions of principal made on such REMIC I Regular Interest on such Distribution Date pursuant to Section 4.01 and, if and to the extent necessary and appropriate, shall be further reduced on such Distribution Date by Realized Losses as provided in Section 4.04. The Uncertificated Balance of REMIC I Regular Interest I-LTZZ shall be increased by interest deferrals as provided in Section 4.01(a)(1)(i)(A). The Uncertificated Balance of each REMIC I Regular Interest shall never be less than zero.

"Uncertificated Interest": With respect to any REMIC I Regular Interest for any Distribution Date, one month's interest at the REMIC I Remittance Rate applicable to such REMIC I Regular Interest for such Distribution Date, accrued on the Uncertificated Balance thereof immediately prior to such Distribution Date. Uncertificated Interest in respect of any REMIC I Regular Interest shall accrue on the basis of a 360-day year consisting of twelve 30-day months. Uncertificated Interest with respect to each Distribution Date, as to any REMIC I Regular Interest, shall be reduced by an amount equal to the sum of (a) the aggregate Prepayment Interest Shortfall, if any, for such Distribution Date to the extent not covered by payments pursuant to Section 3.24 and (b) the aggregate amount of any Relief Act Interest Shortfall, if any allocated, in each case, to such REMIC I Regular Interest pursuant to Section 1.02. In addition, Uncertificated Interest with respect to each Distribution Date, as to any REMIC I Regular Interest shall be reduced by Realized Losses, if any, allocated to such REMIC I Regular Interest pursuant to Section 1.02 and Section 4.04.

"Underwriters' Exemption": An individual exemption issued by the United States Department of Labor, Prohibited Transaction Exemption 90-30 (55 Fed. Reg. 21461, May 24, 1990), as amended, to Bear, Stearns & Co. Inc., for specific offerings in which Bear, Stearns & Co. Inc. or any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Bear, Stearns & Co. Inc. is an underwriter, placement agent or a manager or co-manager of the underwriting syndicate or selling group where the trust and the offered certificates meet specified conditions. The Underwriters' Exemption, as amended, provides a partial exemption for transactions involving certificates representing a beneficial interest in a trust and entitling the holder to pass-through payments of principal, interest and/or other payments with respect to the trust's assets.

"Uninsured Cause": Any cause of damage to a Mortgaged Property such that the complete restoration of such property is not fully reimbursable by the hazard insurance policies required to be maintained pursuant to Section 3.14.

"United States Person": A citizen or resident of the United States, a corporation, partnership (or other entity treated as a corporation or partnership for United States federal income tax purposes) created or organized in, or under the laws of, the United States, any state thereof, or the District of Columbia (except in the case of a partnership, to the extent provided in Treasury regulations) provided that, for purposes solely of the restrictions on the transfer of Class R Certificates, no partnership or other entity treated as a partnership for United States federal income tax purposes shall be treated as a United States Person unless all persons that own an interest in such partnership either directly or through any entity that is not a corporation for United States federal income tax purposes are required by the applicable operative agreement to be United States Persons, or an estate the income of which from sources without the United States is includible in gross income for United States federal income tax purposes regardless of its connection with the conduct of a trade or business within the United States, or a trust if a court within the United States is able to exercise primary supervision over the administration of the trust and one or more United States persons have authority to control all substantial decisions of the trust. The term "United States" shall have the meaning set forth in Section 7701 of the Code or successor provisions.

"Value": With respect to any Mortgaged Property, the lesser of (i) the lesser of (a) the value thereof as determined by an appraisal made for the Originator of the Mortgage Loan at the time of origination of the Mortgage Loan by an appraiser who met the minimum requirements of Fannie Mae and Freddie Mac and (b) the value thereof as determined by a review appraisal conducted by the Originator in accordance with the Originator's underwriting guidelines, and (ii) the purchase price paid for the related Mortgaged Property by the Mortgagor with the proceeds of the Mortgage Loan; provided, however, (A) in the case of a Refinanced Mortgage Loan, such value of the Mortgaged Property is based solely upon the lesser of (1) the value determined by an appraisal made for the Originator of such Refinanced Mortgage Loan at the time of origination of such Refinanced Mortgage Loan by an appraiser who met the minimum requirements of Fannie Mae and Freddie Mac and (2) the value thereof as determined by a review appraisal conducted by the Originator in accordance with the Originator's underwriting guidelines, and (B) in the case of a Mortgage Loan originated in connection with a "lease-option purchase," such value of the Mortgaged Property is based on the lower of the value determined by an appraisal made for the Originator of such Mortgage Loan at the time of origination or the sale price of such Mortgaged Property if the "lease option purchase price" was set less than 12 months prior to origination, and is based on the value determined by an appraisal made for the Originator of such Mortgage Loan at the time of origination if the "lease option purchase price" was set 12 months or more prior to origination.

"Voting Rights": The portion of the voting rights of all of the Certificates which is allocated to any Certificate. With respect to any date of determination, 98% of all Voting Rights will be allocated among the holders of the Class A Certificates, the Mezzanine Certificates and the Class CE Certificates in proportion to the then outstanding Certificate Principal Balances of their respective Certificates, 1% of all Voting Rights will be allocated to the holders of the Class P Certificates and 1% of all Voting Rights will be allocated among the holders of the Residual Certificates. The Voting Rights allocated to each Class of Certificate shall be allocated among Holders of each such Class in accordance with their respective Percentage Interests as of the most recent Record Date.

SECTION 1.02 Allocation of Certain Interest Shortfalls. For purposes of calculating the amount of Accrued Certificate Interest and the amount of the Interest Distribution Amount for the Class A Certificates, the Mezzanine Certificates and the Class CE Certificates for any Distribution Date, (1) the aggregate amount of any Prepayment Interest Shortfalls (to the extent not covered by payments by the Servicer pursuant to Section 3.24) and any Relief Act Interest Shortfall incurred in respect of the Mortgage Loans for any Distribution Date shall be allocated first, to the Class CE Certificates based on, and to the extent of, one month's interest at the then applicable Pass-Through Rate on the Notional Amount of the Class CE Certificates and, thereafter, among the Class A Certificates and the Mezzanine Certificates on a *pro rata* basis based on, and to the extent of, one month's interest at the then applicable respective Pass-Through Rate on the respective Certificate Principal Balance of each such Certificate and (2) the aggregate amount of any Realized Losses incurred for any Distribution Date shall be allocated to the Class CE Certificates based on, and to the extent of, one month's interest at the then applicable Pass-Through Rate on the Notional Amount of the Class CE Certificates.

For purposes of calculating the amount of Uncertificated Interest for the REMIC I Regular Interests for any Distribution Date, the aggregate amount of any Prepayment Interest Shortfalls (to the extent not covered by payments by the Servicer pursuant to Section 3.24) and any Relief Act Interest Shortfalls incurred in respect of the Mortgage Loans for any Distribution Date shall be allocated among REMIC I Regular Interest I-LTAA, REMIC I Regular Interest I-LTA1, REMIC I Regular Interest I-LTA2, REMIC I Regular Interest I-LTA3, REMIC I Regular Interest I-LTA4, REMIC I Regular Interest I-LTM1, REMIC I Regular Interest I-LTM2, REMIC I Regular Interest I-LTM3, REMIC I Regular Interest I-LTM4, REMIC I Regular Interest I-LTM5, REMIC I Regular Interest I-LTM6, REMIC I Regular Interest I-LTM7, REMIC I Regular Interest I-LTM8, REMIC I Regular Interest I-LTM9, REMIC I Regular Interest I-LTM10 and REMIC I Regular Interest I-LTZZ *pro rata* based on, and to the extent of, one month's interest at the then applicable respective Pass-Through Rate on the respective Uncertificated Balance of each such REMIC I Regular Interest.

ARTICLE II

CONVEYANCE OF MORTGAGE LOANS; ORIGINAL ISSUANCE OF CERTIFICATES

SECTION 2.01 Conveyance of the Mortgage Loans. On the Closing Date, the Depositor will transfer, assign, set over and otherwise convey to the Trustee without recourse, for the benefit of the Certificateholders, all the right, title and interest of the Depositor, including any security interest therein for the benefit of the Depositor, in and to the Mortgage Loans identified on the Mortgage Loan Schedule, the rights of the Depositor under the Mortgage Loan Purchase Agreement, and all other assets included or to be included in REMIC I. Such assignment includes all interest and principal received by the Depositor or the Servicer on or with respect to the Mortgage Loans (other than payments of principal and interest due on such Mortgage Loans on or before the Cut-off Date). The Depositor herewith delivers to the Trustee an executed copy of the Mortgage Loan Purchase Agreement. In addition, on the Closing Date, the Trustee is hereby directed to enter into the Swap Agreement on behalf of the Trust Fund with the Swap Counterparty.

In connection with such transfer and assignment, the Depositor shall deliver to and deposit with the Custodian on behalf of the Trustee the following documents or instruments with respect to each Mortgage Loan so transferred and assigned (in each case, a "Mortgage File"):

(i) the original Mortgage Note, endorsed in blank or in the following form "Pay to the order of Wells Fargo Bank, N.A., as Trustee under the applicable agreement, without recourse," with all prior and intervening endorsements showing a complete chain of endorsement from the originator to the Person so endorsing to the Trustee;

(ii) the original Mortgage with evidence of recording thereon, and the original recorded power of attorney, if the Mortgage was executed pursuant to a power of attorney, with evidence of recording thereon;

(iii) an original Assignment in blank;

(iv) the original recorded Assignment or Assignments showing a complete chain of assignment from the originator to the Person assigning the Mortgage to the Trustee as contemplated by the immediately preceding clause (iii);

(v) the original or copies of each assumption, modification or substitution agreement, if any; and

(vi) the original lender's title insurance policy or, if the original title policy has not been issued, the irrevocable commitment to issue the same.

With respect to a maximum of approximately 2.0% of the Original Mortgage Loans by outstanding Stated Principal Balance of the Original Mortgage Loans as of the Cut-off Date, if any original Mortgage Note referred to in Section 2.01(i) above cannot be located, the obligations of the Depositor to deliver such documents shall be deemed to be satisfied upon delivery to the Custodian on behalf of the Trustee of a photocopy of such Mortgage Note, if available, with a lost note affidavit substantially in the form of Exhibit H attached hereto. If any of the original Mortgage Notes for which a lost note affidavit was delivered to the Custodian on behalf of the Trustee is subsequently located, such original Mortgage Note shall be delivered to the Custodian on behalf of the Trustee within three Business Days.

If any of the documents referred to in Sections 2.01(ii), (iii) or (iv) above has, as of the Closing Date, been submitted for recording but either (x) has not been returned from the applicable public recording office or (y) has been lost or such public recording office has retained the original of such document, the obligations of the Depositor to deliver such documents shall be deemed to be satisfied upon (1) delivery to the Custodian on behalf of the Trustee of a copy of each such document certified by the Originator in the case of (x) above or the applicable public recording office in the case of (y) above to be a true and complete copy of the original that was submitted for recording and (2) if such copy is certified by the Originator, delivery to the Custodian on behalf of the Trustee, promptly upon receipt thereof of either the original or a copy of such document certified by the applicable public recording office to be a true and complete copy of the original. Notice shall be provided to the Trustee and the Rating Agencies by the Depositor if delivery pursuant to clause (2) above will be made more than 180

EXHIBIT 9

days after the Closing Date. If the original lender's title insurance policy was not delivered pursuant to Section 2.01(vi) above, the Depositor shall deliver or cause to be delivered to the Custodian on behalf of the Trustee, promptly after receipt thereof, the original lender's title insurance policy. The Depositor shall deliver or cause to be delivered to the Custodian on behalf of the Trustee promptly upon receipt thereof any other original documents constituting a part of a Mortgage File received with respect to any Mortgage Loan, including, but not limited to, any original documents evidencing an assumption or modification of any Mortgage Loan.

The Trustee shall enforce the obligations of the Seller under the Mortgage Loan Purchase Agreement to promptly (within sixty Business Days following the later of the Closing Date and the date of receipt by the Trustee of the recording information for a Mortgage, but in no event later than ninety days following the Closing Date) submit or cause to be submitted for recording, at the expense of the Responsible Party and at no expense to the Trust Fund, the Trustee or the Depositor, in the appropriate public office for real property records, each Assignment referred to in Sections 2.01(iii) and (iv) above and the Depositor shall execute each original Assignment or cause each original Assignment to be executed in the following form: "Wells Fargo Bank, N.A., as Trustee under the applicable agreement." In the event that any such Assignment is lost or returned unrecorded because of a defect therein, the Seller shall promptly prepare or cause to be prepared (at the expense of the Responsible Party) a substitute Assignment or cure or cause to be cured such defect, as the case may be, and thereafter cause each such Assignment to be duly recorded. If the Responsible Party is unable to pay the cost of recording the Assignments, such expense will be paid by the Trustee and shall be reimbursable to the Trustee as an Extraordinary Trust Fund Expense. Notwithstanding the foregoing, the Trustee shall not be responsible for determining whether any Assignment delivered by the Depositor hereunder is in recordable form.

Notwithstanding the foregoing, however, for administrative convenience and facilitation of servicing and to reduce closing costs, the Assignments shall not be required to be submitted for recording (except with respect to any Mortgage Loan located in Maryland) unless the Trustee or the Depositor receives written notice that failure to record would result in a withdrawal or a downgrading by any Rating Agency of the rating on any Class of Certificates; provided, however, the Trustee shall enforce the obligations of the Seller under the Mortgage Loan Purchase Agreement to submit or cause to be submitted each Assignment for recording in the manner described above, at no expense to the Trust Fund or the Trustee, upon the earliest to occur of: (i) reasonable direction by Holders of Certificates entitled to at least 25% of the Voting Rights, (ii) the occurrence of a Servicer Event of Default, (iii) the occurrence of a bankruptcy, insolvency or foreclosure relating to the Servicer, (iv) the occurrence of a servicing transfer as described in Section 7.02 hereof, (v) with respect to any one Assignment, the occurrence of a bankruptcy, insolvency or foreclosure relating to the Mortgagor under the related Mortgage and (vi) any Mortgage Loan that is 90 days or more delinquent. Upon receipt of written notice by the Trustee from the Servicer that recording of the Assignments is required pursuant to one or more of the conditions set forth in the preceding sentence, the Depositor shall be required to deliver such Assignments or shall cause such Assignments to be delivered within 30 days following receipt of such notice.

All original documents relating to the Mortgage Loans that are not delivered to the Custodian on behalf of the Trustee are and shall be held by or on behalf of the Seller, the Depositor or the Servicer, as the case may be, in trust for the benefit of the Trustee on behalf of the Certificateholders. In the event that any such original document is required pursuant to the terms of this Section 2.01 to be a part of a Mortgage File, such document shall be delivered promptly to the Custodian on behalf of the Trustee. Any such original document delivered to or held by the Depositor that is not required pursuant to the terms of this Section to be a part of a Mortgage File, shall be delivered promptly to the Servicer.

The parties hereto understand and agree that it is not intended that any Mortgage Loans be included in the Trust that are (a) "high cost" loans under the Home Ownership and Equity Protection Act of 1994 or (b) "high cost," "threshold," "covered" or "predatory" loans under any other applicable federal, state or local law (including without limitation any regulation or ordinance) (or a similarly classified loan using different terminology under a law imposing heightened regulatory scrutiny or additional legal liability for residential mortgage loans having high interest rates, points and/or fees).

SECTION 2.02 Acceptance of REMIC I by Trustee. The Trustee acknowledges receipt by the Custodian subject to the provisions of Section 2.01 above and subject to any exceptions noted on the exception report described in the next paragraph below, of the documents referred to in Section 2.01 (other than such documents described in Section 2.01(v)) and all other assets included in the definition of "REMIC I" under clauses (i), (iii), (iv) and (v) (to the extent of amounts attributable thereto deposited into the Certificate Account) and declares that it holds and will hold such documents and the other documents delivered to it constituting a Mortgage File, and that it holds or will hold all such assets and such other assets included in the definition of "REMIC I" in trust for the exclusive use and benefit of all present and future Certificateholders.

The Trustee, for the benefit of the Certificateholders, shall cause the Custodian to review each Mortgage File in accordance with the Custodial Agreement, on or before the Closing Date, and the Trustee shall cause the Custodian to certify in substantially the form attached to the Custodial Agreement as Exhibit 1 that, as to each Mortgage Loan listed in the Mortgage Loan Schedule (other than any Mortgage Loan paid in full or any Mortgage Loan specifically identified in the exception report annexed thereto as not being covered by such certification), (i) all documents constituting part of such Mortgage File (other than such documents described in Section 2.01(v)) required to be delivered to it pursuant to this Agreement are in its possession, (ii) such documents have been reviewed by the Custodian and appear regular on their face and relate to such Mortgage Loan and (iii) based on the Custodian's examination and only as to the foregoing, the information set forth in the Mortgage Loan Schedule that corresponds to items (i), (ii), (x), (xi) and (xiv) of the definition of "Mortgage Loan Schedule" accurately reflects information set forth in the Mortgage File. It is herein acknowledged that, in conducting such review, the Trustee (or the Custodian, as applicable) is under no duty or obligation (i) to inspect, review or examine any such documents, instruments, certificates or other papers to determine whether they are genuine, enforceable, valid, legally binding, effective or appropriate for the represented purpose or whether they have actually been recorded or are in recordable form or that they are other than what they purport to be on their face, (ii) to determine whether any Mortgage File should include any of the documents specified in clause (v) of Section 2.01 or (iii)

to determine the perfection or priority of any security interest in any such documents or instruments. Notwithstanding the foregoing, in conducting the review described in this Section 2.02, the Trustee (or the Custodian, if applicable, shall not be responsible for determining (i) if an Assignment is sufficient under the laws of the jurisdiction wherein the related Mortgaged Property is located to reflect of record the sale of the Mortgage or (ii) if a Mortgage creates a first or second lien on, or first or second priority security interest in, a Mortgaged Property.

Prior to the first anniversary date of this Agreement, the Trustee shall cause the Custodian to deliver as required under the Custodial Agreement to the Depositor, the Trustee and the Servicer a final certification in the form attached to the Custodial Agreement as Exhibit 2 evidencing the completeness of the Mortgage Files, with any applicable exceptions noted thereon, and the Servicer shall forward a copy thereof to any Sub-Servicer.

If in the process of reviewing the Mortgage Files and making or preparing, as the case may be, the certifications referred to above, the Custodian, on behalf of the Trustee, finds any document or documents constituting a part of a Mortgage File to be missing or defective in any material respect, at the conclusion of its review the Custodian, on behalf of the Trustee, shall so notify the Depositor and the Servicer. In addition, upon the discovery by the Depositor, the Servicer, the Custodian or the Trustee of a breach of any of the representations and warranties made by either the Responsible Party or the Seller in the related Mortgage Loan Purchase Agreement in respect of any Mortgage Loan which materially adversely affects such Mortgage Loan or the interests of the Certificateholders in such Mortgage Loan, the party discovering such breach shall give prompt written notice to the other parties.

The Trustee shall, at the written request and expense of any Certificateholder, cause the Custodian to provide a written report to the Trustee for forwarding to such Certificateholder of all Mortgage Files released to the Servicer for servicing purposes.

The Depositor and the Trustee intend that the assignment and transfer herein contemplated is absolute and constitutes a sale of the Mortgage Loans, the related Mortgage Notes and the related documents, conveying good title thereto free and clear of any liens and encumbrances, from the Depositor to the Trustee in trust for the benefit of the Certificateholders and that such property not be part of the Depositor's estate or property of the Depositor in the event of any insolvency by the Depositor. In the event that such conveyance is deemed to be, or to be made as security for, a loan, the parties intend that the Depositor shall be deemed to have granted and does hereby grant to the Trustee a first priority perfected security interest in all of the Depositor's right, title and interest in and to the Mortgage Loans, the related Mortgage Notes and the related documents, and that this Agreement shall constitute a security agreement under applicable law.

SECTION 2.03 Repurchase or Substitution of Mortgage Loans by the Responsible Party and the Seller. (a) Upon discovery or receipt of notice of any materially defective document in, or that a document is missing from, a Mortgage File or of the breach by the Responsible Party or the Seller of any representation, warranty or covenant under the Mortgage Loan Purchase Agreement in respect of any Mortgage Loan that materially adversely affects the value of such Mortgage Loan or the interest therein of the Certificateholders, the Trustee shall promptly notify

the Seller, the Responsible Party and the Servicer of such defect, missing document or breach and request that the Responsible Party or the Seller, as applicable, deliver such missing document or cure such defect or breach within 60 days from the date the Responsible Party or the Seller, as applicable, was notified of such missing document, defect or breach, and if the Responsible Party or the Seller, as applicable, does not deliver such missing document or cure such defect or breach in all material respects during such period, the Trustee shall enforce the obligations of the Responsible Party or the Seller, as applicable, under the Mortgage Loan Purchase Agreement to repurchase such Mortgage Loan from REMIC I at the Purchase Price within 90 days after the date on which the Responsible Party or the Seller, as applicable, was notified (subject to Section 2.03(c)) of such missing document, defect or breach, if and to the extent that the Responsible Party or the Seller, as applicable, is obligated to do so under the Mortgage Loan Purchase Agreement. The Purchase Price for the repurchased Mortgage Loan shall be remitted to the Servicer for deposit in the Custodial Account and the Trustee, or the Custodian on behalf of the Trustee, upon receipt of written certification from the Servicer of such deposit, shall release to the Responsible Party or the Seller, as applicable, the related Mortgage File and the Trustee shall execute and deliver such instruments of transfer or assignment, in each case without recourse, as the Responsible Party or the Seller, as applicable, shall furnish to it and as shall be necessary to vest in the Responsible Party or the Seller, as applicable, any Mortgage Loan released pursuant hereto. The Trustee shall not have any further responsibility with regard to such Mortgage File. In lieu of repurchasing any such Mortgage Loan as provided above, if so provided in the Mortgage Loan Purchase Agreement, the Responsible Party or the Seller, as applicable, may cause such Mortgage Loan to be removed from REMIC I (in which case it shall become a Deleted Mortgage Loan) and substitute one or more Qualified Substitute Mortgage Loans in the manner and subject to the limitations set forth in Section 2.03(b); provided, however, the Responsible Party may not substitute a Qualified Substitute Mortgage Loan for any Deleted Mortgage Loan that violates any predatory or abusive lending law. It is understood and agreed that the obligation of the Responsible Party and the Seller to cure or to repurchase (or to substitute for) any Mortgage Loan as to which a document is missing, a material defect in a constituent document exists or as to which such a breach has occurred and is continuing shall constitute the sole remedy respecting such omission, defect or breach available to the Trustee and the Certificateholders.

(b) Any substitution of Qualified Substitute Mortgage Loans for Deleted Mortgage Loans made pursuant to Section 2.03(a) must be effected prior to the date which is two years after the Startup Day for REMIC I.

As to any Deleted Mortgage Loan for which the Responsible Party or the Seller, as applicable, substitutes a Qualified Substitute Mortgage Loan or Loans, such substitution shall be effected by the Responsible Party or the Seller, as applicable, delivering to the Custodian, on behalf of the Trustee, for such Qualified Substitute Mortgage Loan or Loans, the Mortgage Note, the Mortgage, the Assignment to the Trustee, and such other documents and agreements, with all necessary endorsements thereon, as are required by Section 2.01, together with an Officers' Certificate providing that each such Qualified Substitute Mortgage Loan satisfies the definition thereof and specifying the Substitution Shortfall Amount (as described below), if any, in connection with such substitution. In accordance with the Custodial Agreement, the Trustee shall cause the Custodian to acknowledge receipt for such Qualified Substitute Mortgage Loan or

Loans and, within ten Business Days thereafter, shall review such documents as specified in Section 2.02 and cause the Custodian to deliver to the Depositor, the Trustee and the Servicer, with respect to such Qualified Substitute Mortgage Loan or Loans, a certification substantially in the form attached to the Custodial Agreement as Exhibit 1, with any applicable exceptions noted thereon. Within one year of the date of substitution, in accordance with the Custodial Agreement, the Trustee shall cause the Custodian to deliver to the Depositor, the Trustee and the Servicer a certification substantially in the form attached to the Custodial Agreement as Exhibit 2 with respect to such Qualified Substitute Mortgage Loan or Loans, with any applicable exceptions noted thereon. Monthly Payments due with respect to Qualified Substitute Mortgage Loans in the month of substitution are not part of REMIC I and will be retained by the Responsible Party or the Seller, as applicable. For the month of substitution, distributions to Certificateholders will reflect the Monthly Payment due on such Deleted Mortgage Loan on or before the Due Date in the month of substitution, and the Responsible Party or the Seller, as applicable, shall thereafter be entitled to retain all amounts subsequently received in respect of such Deleted Mortgage Loan. The Depositor shall give or cause to be given written notice to the Certificateholders that such substitution has taken place, shall amend the Mortgage Loan Schedule to reflect the removal of such Deleted Mortgage Loan from the terms of this Agreement and the substitution of the Qualified Substitute Mortgage Loan or Loans and shall deliver a copy of such amended Mortgage Loan Schedule to the Trustee and the Custodian. Upon such substitution, such Qualified Substitute Mortgage Loan or Loans shall constitute part of the Mortgage Pool and shall be subject in all respects to the terms of this Agreement and the Mortgage Loan Purchase Agreement, including, all applicable representations and warranties thereof included in the Mortgage Loan Purchase Agreement.

For any month in which the Responsible Party or the Seller, as applicable, substitutes one or more Qualified Substitute Mortgage Loans for one or more Deleted Mortgage Loans, the Servicer will determine the amount (the "Substitution Shortfall Amount"), if any, by which the aggregate Purchase Price of all such Deleted Mortgage Loans exceeds the aggregate of, as to each such Qualified Substitute Mortgage Loan, the Stated Principal Balance thereof as of the date of substitution, together with one month's interest on such Stated Principal Balance at the applicable Expense Adjusted Mortgage Rate, *plus* all outstanding Advances and Servicing Advances (including Nonrecoverable Advances and Nonrecoverable Servicing Advances) related thereto. On the date of such substitution, the Responsible Party or the Seller, as applicable, will deliver or cause to be delivered to the Servicer for deposit in the Custodial Account an amount equal to the Substitution Shortfall Amount, if any, and upon receipt by the Custodian, on behalf of the Trustee, of the related Qualified Substitute Mortgage Loan or Loans and certification by the Servicer to the Trustee of such deposit, the Trustee shall cause the Custodian to release, as required by the Custodial Agreement, to the Responsible Party or the Seller, as applicable, the related Mortgage File or Files and the Trustee shall execute and deliver such instruments of transfer or assignment, in each case without recourse, the Responsible Party or the Seller, as applicable, shall deliver to it and as shall be necessary to vest therein any Deleted Mortgage Loan released pursuant hereto.

In addition, the Responsible Party or the Seller, as applicable, shall obtain at its own expense and deliver to the Trustee an Opinion of Counsel to the effect that such substitution will not cause (a) any federal tax to be imposed on any Trust REMIC, including without limitation,

any federal tax imposed on "prohibited transactions" under Section 860F(a)(1) of the Code or on "contributions after the startup date" under Section 860G(d)(1) of the Code, or (b) any Trust REMIC to fail to qualify as a REMIC at any time that any Certificate is outstanding.

(c) Upon discovery by the Depositor, the Servicer or the Trustee that any Mortgage Loan does not constitute a "qualified mortgage" within the meaning of Section 860G(a)(3) of the Code, the party discovering such fact shall within two Business Days give written notice thereof to the other parties. In connection therewith, the Responsible Party shall repurchase or, subject to the limitations set forth in Section 2.03(b), substitute one or more Qualified Substitute Mortgage Loans for the affected Mortgage Loan within 90 days of the earlier of discovery or receipt of such notice with respect to such affected Mortgage Loan. Such repurchase or substitution shall be made by (i) the Responsible Party or the Seller, as the case may be, if the affected Mortgage Loan's status as a non-qualified mortgage is or results from a breach of any representation, warranty or covenant made by the Responsible Party or the Seller, as the case may be, under the Mortgage Loan Purchase Agreement, or (ii) the Depositor, if the affected Mortgage Loan's status as a non-qualified mortgage is a breach of no representation or warranty. Any such repurchase or substitution shall be made in the same manner as set forth in Section 2.03(a). The Trustee shall reconvey to the Responsible Party the Mortgage Loan to be released pursuant hereto in the same manner, and on the same terms and conditions, as it would a Mortgage Loan repurchased for breach of a representation or warranty.

SECTION 2.04 [Reserved].

SECTION 2.05 Representations, Warranties and Covenants of the Servicer. The Servicer hereby represents, warrants and covenants to the Trustee, for the benefit of the Certificateholders and to the Depositor that as of the Closing Date or as of such date specifically provided herein:

(i) The Servicer is a corporation duly organized and validly existing under the laws of the State of California and is duly authorized and qualified to transact any and all business contemplated by this Agreement to be conducted by the Servicer in any state in which a Mortgaged Property is located or is otherwise not required under applicable law to effect such qualification and, in any event, is in compliance with the doing business laws of any such State, to the extent necessary to ensure its ability to enforce each Mortgage Loan and to service the Mortgage Loans in accordance with the terms of this Agreement;

(ii) The Servicer has the full power and authority to conduct its business as presently conducted by it and to execute, deliver and perform, and to enter into and consummate, all transactions contemplated by this Agreement. The Servicer has duly authorized the execution, delivery and performance of this Agreement, has duly executed and delivered this Agreement, and this Agreement, assuming due authorization, execution and delivery by the Depositor and the Trustee, constitutes a legal, valid and binding obligation of the Servicer, enforceable against it in accordance with its terms except as the enforceability thereof may be limited by bankruptcy, insolvency,

reorganization or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity;

(iii) The execution and delivery of this Agreement by the Servicer, the servicing of the Mortgage Loans by the Servicer hereunder, the consummation by the Servicer of any other of the transactions herein contemplated, and the fulfillment of or compliance with the terms hereof are in the ordinary course of business of the Servicer and will not (A) result in a breach of any term or provision of the charter or by-laws of the Servicer or (B) conflict with, result in a breach, violation or acceleration of, or result in a default under, the terms of any other material agreement or instrument to which the Servicer is a party or by which it may be bound, or any statute, order or regulation applicable to the Servicer of any court, regulatory body, administrative agency or governmental body having jurisdiction over the Servicer; and the Servicer is not a party to, bound by, or in breach or violation of any indenture or other agreement or instrument, or subject to or in violation of any statute, order or regulation of any court, regulatory body, administrative agency or governmental body having jurisdiction over it, which materially and adversely affects or, to the Servicer's knowledge, would in the future materially and adversely affect, (x) the ability of the Servicer to perform its obligations under this Agreement or (y) the business, operations, financial condition, properties or assets of the Servicer taken as a whole;

(iv) The Servicer is a HUD-approved servicer. No event has occurred, including but not limited to a change in insurance coverage, that would make the Servicer unable to comply with HUD eligibility requirements or that would require notification to HUD;

(v) The Servicer does not believe, nor does it have any reason or cause to believe, that it cannot perform each and every covenant made by it and contained in this Agreement;

(vi) No litigation is pending against the Servicer that would materially and adversely affect the execution, delivery or enforceability of this Agreement or the ability of the Servicer to service the Mortgage Loans or to perform any of its other obligations hereunder in accordance with the terms hereof;

(vii) There are no actions or proceedings against, or investigations known to it of, the Servicer before any court, administrative or other tribunal (A) that might prohibit its entering into this Agreement, (B) seeking to prevent the consummation of the transactions contemplated by this Agreement or (C) that might prohibit or materially and adversely affect the performance by the Servicer of its obligations under, or validity or enforceability of, this Agreement;

(viii) No consent, approval, authorization or order of or registration or filing with or notice to any court or governmental agency or body is required for the execution, delivery and performance by the Servicer of, or compliance by the Servicer with, this Agreement or the consummation by it of the transactions contemplated by this

Agreement, except for such consents, approvals, authorizations or orders, if any, that have been obtained prior to the Closing Date;

(ix) The Servicer will not waive any Prepayment Charge unless it is waived in accordance with the standard set forth in Section 3.01;

(x) The Servicer has fully furnished and will continue to fully furnish, in accordance with the Fair Credit Reporting Act and its implementing regulations, accurate and complete information (e.g., favorable and unfavorable) on its borrower credit files to Equifax, Experian and Trans Union Credit Information Company or their successors on a monthly basis; and

(xi) No information, certificate of an officer, statement furnished or to be furnished in writing or report delivered to the Depositor, any Affiliate of the Depositor or the Trustee by the Servicer will, to the knowledge of the Servicer, contain any untrue statement of a material fact or omit a material fact necessary to make the information, certificate, statement or report not misleading.

It is understood and agreed that the representations, warranties and covenants set forth in this Section 2.05 shall survive delivery of the Mortgage Files to the Trustee and shall inure to the benefit of the Trustee, the Depositor and the Certificateholders. Upon discovery by any of the Depositor, the Servicer or the Trustee of a breach of any of the foregoing representations, warranties and covenants which materially and adversely affects the value of any Mortgage Loan or the interests therein of the Certificateholders, the party discovering such breach shall give prompt written notice (but in no event later than two Business Days following such discovery) to the Trustee. Subject to Section 7.01, unless such breach shall not be susceptible of cure within 90 days, the obligation of the Servicer set forth in this Section 2.05 to cure breaches shall constitute the sole remedy against the Servicer available to the Certificateholders, the Depositor and the Trustee on behalf of the Certificateholders respecting a breach of the representations, warranties and covenants contained in this Section 2.05. Notwithstanding the foregoing, within 90 days of the earlier of discovery by the Servicer or receipt of notice by the Servicer of the breach of the representation or covenant of the Servicer set forth in Section 2.05(ix) above, which breach materially and adversely affects the interests of the Holders of the Class P Certificates in any Prepayment Charge, the Servicer shall pay the amount of such waived Prepayment Charge, for the benefit of the Holders of the Class P Certificates, by depositing such amount into the Custodial Account.

SECTION 2.06 Issuance of the REMIC I Regular Interests and the Class R-I Interest. The Trustee acknowledges the assignment to it of the Mortgage Loans and the delivery to it of the Mortgage Files, subject to the provisions of Section 2.01 and Section 2.02, together with the assignment to it of all other assets included in REMIC I, the receipt of which is hereby acknowledged. Concurrently with such assignment and delivery and in exchange therefor, the Trustee, pursuant to the written request of the Depositor executed by an officer of the Depositor, has executed, authenticated and delivered to or upon the order of the Depositor, the Class R Certificates (in respect of the Class R-I Interest) in authorized denominations. The interests evidenced by the Class R-I Interest, together with the REMIC I Regular Interests, constitute the

entire beneficial ownership interest in REMIC I. The rights of the Class R-I Interest and REMIC II (as holder of the REMIC I Regular Interest) to receive distributions from the proceeds of REMIC I in respect of the Class R-I Interest and the REMIC I Regular Interests, and all ownership interests evidenced or constituted by the Class R-I Interest and the REMIC I Regular Interests, shall be as set forth in this Agreement.

SECTION 2.07 Conveyance of the REMIC I Regular Interests; Acceptance of REMIC II by the Trustee. The Depositor, concurrently with the execution and delivery hereof, does hereby transfer, assign, set over and otherwise convey to the Trustee, without recourse all the right, title and interest of the Depositor in and to the REMIC I Regular Interests for the benefit of the Class R-II Interest and REMIC II (as holder of the REMIC I Regular Interests). The Trustee acknowledges receipt of the REMIC I Regular Interests and declares that it holds and will hold the same in trust for the exclusive use and benefit of all present and future holders of the Class R-II Interest and REMIC II (as holder of the REMIC I Regular Interests). The rights of the holders of the Class R-II Interest and REMIC II (as holder of the REMIC I Regular Interests) to receive distributions from the proceeds of REMIC II in respect of the Class R-II Interest and REMIC II Regular Interests, respectively, and all ownership interests evidenced or constituted by the Class R-II Interest and the REMIC II Regular Interests, shall be as set forth in this Agreement.

SECTION 2.08 Issuance of Class R Certificates. The Trustee acknowledges the assignment to it of the REMIC Regular Interests and, concurrently therewith and in exchange therefor, pursuant to the written request of the Depositor executed by an officer of the Depositor, the Trustee has executed, authenticated and delivered to or upon the order of the Depositor, the Class R Certificates in authorized denominations.

ARTICLE III

ADMINISTRATION AND SERVICING OF THE MORTGAGE LOANS

SECTION 3.01 Servicer to Act as Servicer. The Servicer shall service and administer the Mortgage Loans on behalf of the Trust Fund and in the best interests of and for the benefit of the Certificateholders (as determined by the Servicer in its reasonable judgment) in accordance with the terms of this Agreement and the respective Mortgage Loans and, to the extent consistent with such terms, in the same manner in which it services and administers similar mortgage loans for its own portfolio, and in accordance with all applicable laws and customary and usual standards of practice of mortgage lenders and loan servicers administering similar mortgage loans but without regard to:

(i) any relationship that the Servicer, any Sub-Servicer or any Affiliate of the Servicer or any Sub-Servicer may have with the related Mortgagor;

(ii) the ownership or non-ownership of any Certificate by the Servicer or any Affiliate of the Servicer;

also may take the form of benchmark comparisons that identify and interpret the Servicer's strengths and weaknesses relative to similar, unidentified servicers in the industry.

(c) In all cases where the Class CE Certificateholder makes directions to the Servicer, the Class CE Certificateholder will protect the confidentiality of the Servicer and other servicers in the industry whose work is monitored by the Class CE Certificateholder. Under no circumstances will the Class CE Certificateholder divulge any materials confidential of the Servicer, whether a party to this Agreement or not, or the details of any Servicer's proprietary system or approaches.

(d) All advice offered to the Servicer by the Class CE Certificateholder will be kept confidential by the Class CE Certificateholder, except as disclosed as a finding in the Class CE Certificateholder's review and evaluation of the Servicer, as discussed in Section 13.01(e), or in reports to the Depositor.

(e) The Servicer's obligations under this Article XIV shall terminate upon the termination of the Trust Fund pursuant to Section 9.01.

(f) Neither the Servicer nor the Class CE Certificateholder nor any of their respective directors, officers, employees or agents shall be under any liability for any action taken or for refraining from the taking of any action in good faith pursuant to this Article XIV or for errors in judgment; provided, however, that this provision shall not protect the Servicer or the Class CE Certificateholder or any such Person against any liability which would otherwise be imposed by reason of willful malfeasance or bad faith. The Servicer and the Class CE Certificateholder and any director, officer, employee or agent thereof may rely in good faith on any document of any kind prima facie properly executed and submitted by any Person respecting any matters arising hereunder.

(g) The Servicer or the Class CE Certificateholder, as applicable, ("Indemnitor") shall indemnify, defend and hold harmless the other ("Indemnitee") and its officers, directors, agents and employees from and against all claims, losses, expenses, fees (including attorneys' and expert witnesses' fees), costs and judgments involving the rights and obligations of this Article XIV that may be asserted against Indemnitee (a) that result from the acts or omissions of the Indemnitor (including, without limitation, any advice or directions provided pursuant to this Section 14.02), or (b) result from third party claims of intellectual property infringement.

(h) The Class CE Certificateholder agrees that all information supplied by or on behalf of the Servicer shall be used by the Class CE Certificateholder only for the benefit of the Certificateholders of the Trust Fund. Notwithstanding anything to the contrary in this Agreement, the Class CE Certificateholder shall be entitled to retain all records or other information supplied to Class CE Certificateholder pursuant to this Agreement.

[Signatures follow]

IN WITNESS WHEREOF, the Depositor, the Servicer and the Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized, in each case as of the day and year first above written.

STANWICH ASSET ACCEPTANCE COMPANY L.L.C., as Depositor

By: _____
Name:
Title:

NEW CENTURY MORTGAGE CORPORATION, as Servicer

By: _____
Name: KEVIN CLOYD
Title: EXECUTIVE VICE PRESIDENT

WELLS FARGO BANK, N.A., as Trustee

By: _____
Name:
Title:

EXHIBIT 9

STATE OF CA)
) ss.:
COUNTY OF ORANGE)

On the 4th day of August 2006, before me, a notary public in and for said State, personally appeared Kevin Cloud, known to me to be a EVP of New Century Mortgage Corporation, one of the entities that executed the within instrument, and also known to me to be the person who executed it on behalf of said entity, and acknowledged to me that such entity executed the within instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Tiffany A. Nelson
Notary Public

EXHIBIT 9

CARRINGTON-00755

IN WITNESS WHEREOF, the Depositor, the Servicer and the Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized, in each case as of the day and year first above written.

STANWICH ASSET ACCEPTANCE COMPANY L.L.C., as Depositor

By: _____
Name: Bruce M Rose
Title: President

NEW CENTURY MORTGAGE CORPORATION, as Servicer

By: _____
Name:
Title:

WELLS FARGO BANK, N.A., as Trustee

By: _____
Name:
Title:

EXHIBIT 9

STATE OF CONNECTICUT)
) ss.:
COUNTY OF FAIRFIELD)

On the 7 day of August, 2006, before me, a notary public in and for said State, personally appeared Bruce M. Rose, known to me to be President of Stanwich Asset Acceptance Company, L.L.C., one of the entities that executed the within instrument, and also known to me to be the person who executed it on behalf of said entity, and acknowledged to me that such entity executed the within instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public

[Notarial Seal]

EXHIBIT 9

IN WITNESS WHEREOF, the Depositor, the Servicer and the Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized, in each case as of the day and year first above written.

STANWICH ASSET ACCEPTANCE COMPANY L.L.C., as Depositor

By: _____
Name:
Title:

NEW CENTURY MORTGAGE CORPORATION, as Servicer

By: _____
Name:
Title:

WELLS FARGO BANK, N.A., as Trustee

By: _____
Name: Darron C. Woodus
Title: Assistant Vice President

EXHIBIT 9

STATE OF MARYLAND)
) ss.:
COUNTY OF HOWARD)

On the 10th day of August, 2006 before me, a notary public in and for said State, personally appeared Darron C. Woodus known to me to be a Assistant Vice President of Wells Fargo Bank, N.A., one of the corporations that executed the within instrument, and also known to me to be the person who executed it on behalf of such corporation, and acknowledged to me that such corporation executed the within instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public

[SEAL]

GRAHAM M. OGLESBY
NOTARY PUBLIC
BALTIMORE CITY
MARYLAND
MY COMMISSION EXPIRES JANUARY 7 2009

EXHIBIT 9

CAUSE NO. 2011-36476

MARY ELLEN WOLF and DAVID WOLF, on behalf of themselves and all others similarly situated	)	IN THE DISTRICT COURT OF
vs.	)	HARRIS COUNTY, T E X A S
WELLS FARGO BANK, N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST, TOM CROFT, NEW CENTURY MORTGAGE CORPORATION, AND CARRINGTON MORTGAGE SERVICES, LLC.	)	151ST JUDICIAL DISTRICT

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ORAL VIDEOTAPED DEPOSITION OF

TOM CROFT

JUNE 27, 2012

VOLUME I OF I

****

ORAL VIDEOTAPED DEPOSITION OF TOM CROFT, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on June 27, 2012, from 9:05 a.m. to 1:02 p.m., before Julie M. Silhan, Certified Shorthand Reporter in and for the State of Texas, reported by stenographic means, at the offices of Mr. Peter C. Smart, Crain, Caton & James, 1401 McKinney, Suite 1700, Houston, Texas, pursuant to Notice, the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

Q. Were you affiliated or employed by any other company after July of 2007?

A. I don't understand the question.

Q. You were hired by Carrington Property Services in July of 2007, correct?

A. No.

Q. All right. When were you hired?

A. I was hired July 11th, 2007, by Carrington Mortgage Services.

Q. All right. Let's start over. Who do you currently work for?

A. Carrington Property Services.

Q. Okay. And when did you start working for Carrington Property Services?

A. March 1st, 2012.

Q. Prior to working for Carrington Property Services, where were you employed?

A. Carrington Mortgage Services.

Q. And when did you begin employment with Carrington Mortgage Services?

A. July 11th, 2007.

Q. Okay. Prior to July 11th, 2007, where were you employed?

A. Fremont Investment Loan.

Q. How do you spell that?

EXHIBIT 10

foreclosure bankruptcy processing.

Q. You did that for approximately seven years?

A. Yes.

Q. All right. And then, when you were hired at Carrington Mortgage Services in 2007, what was your first job position?

A. VP of REO.

Q. Just in case the jury does not know, can you explain what REO is?

A. REO stands for real estate owned. It's a property that has been foreclosed on and the lender -- the lienholder takes back the property to liquidate it, sell it to recoup money to pay back the loan.

Q. All right. And you were vice president?

A. Yeah, I was hired as vice president of REO.

Q. Did you interview for the job?

A. Yes.

Q. Do you remember who you interviewed with?

A. Dave Gordon.

Q. Is he still with the company?

A. Yes.

Q. What is his title?

A. Currently?

Q. Yes.

A. He is chief operating officer of Carrington

EXHIBIT 10

second sentence beginning "I am of sound mind" out loud?

A. This is entered as evidence, right?

Q. Yeah. I just want to --

A. Okay.

Q. I want the jury to hear it.

A. Okay. Okay.

Q. All right. Can you please read it out loud?

A. I'm not reading it out loud. Enter it as evidence.

Q. I know. I want the jury to hear it. What if the judge says you can't enter this into evidence?

A. Well, it's signed, so that's my signature. We've already said that, right?

Q. All right. I don't want you to argue with me. I'm asking you to -- can you read?

A. Yes, I can read.

Q. Okay. Read the very first sentence in paragraph one.

A. "My name is Tom Croft. I am of sound mind, capable of making this affidavit, and personally acquainted with the facts stated herein."

Q. All right. Keep going.

A. "I am the attorney in fact of Wells Fargo, as trustee for Carrington Mortgage Loan, Trust Series 2006-NC3 Asset-Backed Pass-Through Certificates."

EXHIBIT 10

with that document?

A. I'm sorry. Can you say the question again?

Q. Yeah, I apologize. I was chewing ice. Are you familiar with this document here?

A. Yes.

Q. Okay.

A. It's a Adjustable Rate Rider.

Q. And have you read this document?

A. I recall reviewing this document, yes.

Q. Okay. What about the document on P0037? Are you familiar with this document?

A. It's a Rider Note. Yes. I'm familiar with it, yes.

Q. And have you had a chance to review and read this document?

A. Yes.

Q. Okay. Let's go back to your affidavit, please. It says in your affidavit that your position is attorney in fact for Wells Fargo, N.A., et cetera. Can you explain what attorney in fact means?

A. Attorney in fact is a term that identifies me as the ability to sign on behalf of the trust.

Q. Well, it says it's your position, true?

A. Yeah. I'm the signer for the Wells Fargo Trust, the Carrington Mortgage Loan Trust.

EXHIBIT 10

Q. Okay. And who gave you that authority or position as attorney in fact?

A. There's a power of attorney granted from the trust.

Q. And we'll get to that, okay. All right. It says you're also the custodian of records.

A. Uh-huh.

Q. Is that true?

A. I am a custodian of records, yes.

Q. You're the custodian of -- that's okay.

THE VIDEOGRAPHER: Off the record at 10:06 a.m.

(Short break.)

THE VIDEOGRAPHER: On the record 10:08 a.m.

Q. (By Mr. Hughes) Okay. I think I was asking you about your position as the custodian of records for Wells Fargo.

A. Uh-huh.

Q. And is that, in fact, your position? Are you a custodian of records for Wells Fargo?

A. I am a custodian of records, yes, one of them.

Q. For Wells Fargo?

A. For the trust. For Wells Fargo Carrington Trust, yes.

EXHIBIT 10

Q. Well, it says in your affidavit, it says for Wells Fargo as trustee for Carrington Mortgage Loan Trust Series 2006-NC3, blah, blah, blah.

A. Uh-huh.

Q. Okay. So that is your position, custodian of records for everything I just said?

A. No. I am a custodian of records.

Q. Okay. I'm just trying to make sure that this is true, that this is correct. And so it would be easier if we could just agree that what is said in here is true.

A. Okay.

Q. Okay. So are you the custodian of records for Wells Fargo, N.A., as trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates?

A. I am a custodian of records, yes.

Q. All right. Yes or no?

A. Yes.

Q. You are a -- I understand that you're saying you're a custodian of records.

A. Yeah.

Q. That's clear.

A. Yeah.

Q. But I want to make sure you're the custodian

EXHIBIT 10

A. Yes.

Q. Okay. And is that account number 1007965339?

A. Yes.

Q. Okay. What does that account number reference? Is that a Wells Fargo account number? A loan number? Whose account is that?

A. That's the loan number in our servicing system. That's how we recognize it in our system.

Q. So that's a Carrington Mortgage Services number?

A. It's the loan number.

Q. Issued by who?

A. I think at the time the loan was bought on the system by New Century, that's the number that was issued.

MR. SMART: I think you'll see it on the note.

A. Yeah, it's on the documents, too.

Q. (By Mr. Hughes) Okay. Okay. And this account number is contractually due for the July 1st, 2010 monthly mortgage installment; is that true?

A. Yes.

Q. Okay. All right. Under paragraph six, who's the owner and holder of the note and security instrument relating to this account number 1007965339?

A. The owner is the trust. The trust owns the note.

Q. The 2006-NC3 trust?

A. Correct.

Q. Okay. And is the trust -- is it okay if when I say the trust we'll both agree that's the 2006-NC3 Asset-backed Pass-Through Certificate, that trust?

A. Agreed.

Q. Okay. And the trust owns this note for the Wolfs as of the date you signed this?

A. Correct.

Q. Okay. And the trust is in possession of both the note and the security instrument as of the day you signed this?

A. Yes.

Q. Okay. And you signed this on February 3rd, 2011, correct?

A. Correct.

Q. Okay. Can you tell me what -- do you remember receiving this file, Mary Ellen Wolf and David Wolf?

A. Receiving it systematically for the foreclosure referral?

Q. When was the first time you were notified, if you can remember, that there was going to be a foreclosure on Mary Ellen Wolf and David Wolf? I'm just

EXHIBIT 10

Q. Okay. Are there any other documents or any other information you review prior to signing these affidavits or is that generally it?

A. That's the process.

Q. Okay. So there's no other documents you need to look at? I just want to make sure I'm not missing anything.

A. Well, if there is -- if there was other information uploaded, you know, prior to bankruptcy filings, things like that, I review it.

Q. Okay. On P0011 in the application, paragraph E at the bottom, see that?

A. P11, yes.

Q. Okay. And it says, "A default exists under the deed of trust or security agreement in that respondents failed to pay the monthly payment which became due on January 1st, 2010." Do you see that?

A. Yes.

Q. So is that true and correct?

A. I believe that is incorrect. I believe they're due for July 2010.

Q. Okay. So which one is correct, your affidavit or the application?

A. I believe the affidavit is correct.

Q. The affidavit is correct, so the application

EXHIBIT 10

is incorrect?

A. I believe so, yes.

Q. Yes?

A. I believe so, yes.

Q. Okay. Is it important to make sure that these types of little facts and details are correct?

A. Yes.

Q. And you understand that mothers and fathers and their children are losing their houses when they're foreclosed on? You understand that, right?

A. Uh-huh.

Q. So you'd agree with me that it's very important to make sure these documents are true and correct --

A. Yes.

Q. -- before they're filed with the court?

A. Yes.

Q. When we first started, I was asking you about the New Century Mortgage Corporation's bankruptcy. Do you recall that?

A. Yes.

Q. And you said you knew they filed for bankruptcy in '07?

A. Yes.

Q. Okay. Do you know anyone that works for New

EXHIBIT 10

Century Mortgage Corporation?

A. I'm sorry. Did I know anyone?

Q. No. Do you know anybody right now sitting here who works for New Century Mortgage Corporation?

A. No.

Q. You've never been -- have you ever been employed by Wells Fargo Bank, N.A.?

A. Are you referring to the trust?

Q. No. Just Wells Fargo Bank. Have you ever been employed there?

A. No.

Q. Have you ever been employed there as Wells Fargo bank as trustee?

A. Have I ever been employed by the trustee?

Q. All right. Let me ask you this. When you were working for Carrington Mortgage Services, would you consider yourself an employee of Wells Fargo Bank as trustee?

A. Yes.

Q. Okay. Who purchased the plaintiffs' mortgage in 2006?

A. I believe it was sold to the trust, to the -- created -- securitized into a trust.

Q. Okay. All right. Who sold it? Who was the seller?

EXHIBIT 10

A. New Century.
Q. New Century?
A. Uh-huh.
Q. Is that New Century Mortgage Corporation?
A. I believe so, yes.
Q. All right. And when was that?
A. I'm sorry?
Q. When did New Century Mortgage Corporation acquire or obtain the plaintiffs' mortgage?
A. I don't recall.
Q. Would it have been in June of 2006?
A. Again, I don't recall.
Q. All right. If you look at Plaintiffs' Exhibit No. 3, under P0037.
A. Okay.
Q. All right. What is this document?
A. This is the -- it's the adjusted rate -- it's the note.
Q. Okay. And who's the lender?
A. New Century.
Q. New Century Mortgage Corporation?
A. Correct.
Q. Okay. And what's the date?
A. June 15th, 2006.
Q. Okay. So in your opinion, would New Century

EXHIBIT 10

agreement. At the top, it says it's dated and effective as of August 1st, 2006. Do you see that?

A. Yes.

Q. Okay. So that would have been approximately a month and a half after New Century obtained the plaintiffs' mortgage, correct?

A. Yeah, I believe so.

Q. Okay. So is it your testimony that the plaintiffs' mortgage was transferred into this trust after August 1st, 2006?

A. I believe it was, yes.

Q. Okay. On the next page 607, see where it says "assignment"? Second paragraph from the bottom.

A. Okay.

Q. Says -- these are the definitions and it says an assignment is an assignment of mortgage, notice of transfer, or equivalent instrument in recordable form, and then it goes on and says more things. Do you see that?

A. Yes.

Q. Would you agree with that statement?

MR. SMART: Objection, form.

Q. (By Mr. Hughes) What is an assignment of mortgage?

A. It's one entity assigning a mortgage to

A. I can only speculate.

Q. Okay. Well, if you were to speculate, go ahead. Does that mean that Stanwich somehow obtained the plaintiffs' mortgage?

A. I believe that this loan was put into the pool.

Q. You mean the trust pool?

A. Right, yes.

Q. Okay. All right. On the next page Carrington-626, it defines mortgage at the top. Do you see that?

A. Yes.

Q. Would you agree with me that the plaintiffs' mortgage would qualify as a mortgage under this P&S agreement?

A. Yes.

Q. Okay. On the next page, Carrington-644, see where it says seller, fourth item down?

A. Yes.

Q. Okay. And it says the seller is Carrington Securities, L.P. Have you ever worked for Carrington Securities, L.P.?

A. No.

Q. Do you know if the plaintiffs' mortgage was ever in the possession of Carrington Securities, L.P.?

EXHIBIT 10

definition, is the person who is actually giving or transferring the mortgage?

A. Correct.

Q. Okay. And the third from the bottom on this page, it defines trustee as Wells Fargo Bank, N.A. See that?

A. Yes.

Q. Okay. All right. On the next page, Carrington-652.

A. Okay.

Q. Under Article II, it talks about conveyance of mortgage loans. Do you see that?

A. Yes.

Q. And on the first sentence, it says, "On the closing date," which is August of 2006, "the depositor will transfer, assign, set over, and otherwise convey to the trustee without recourse." Do you see that?

A. Yes.

Q. So is that the provision, in your opinion, that transferred the plaintiffs' mortgage into this trust?

A. I don't know.

Q. Okay. When did Carrington Mortgage Corporation -- I'm sorry. When did New Century Mortgage Corporation file for bankruptcy?

EXHIBIT 10

A. I believe it was February 2007.

Q. Okay. That would have been after this Pooling and Service Agreement, because this was in August of 2006.

A. I believe so.

Q. How did that affect this trust, do you know?

A. I don't know.

Q. Have you ever reviewed or seen any documents transferring the plaintiffs' mortgage from the trust to Carrington Mortgage Services?

A. I don't recall seeing any document that transfers the property from the trust into Carrington's name.

(Croft Exhibit No. 5 was marked.)

Q. (By Mr. Hughes) I'm going to mark as Plaintiffs' Exhibit 5 a Transfer of Lien document, and it's Bates labeled Carrington-00437. I think that's what you were referencing earlier, Mr. Croft. Is that -- you made a reference to a transfer?

A. Okay.

Q. Is that -- is this what you were referring to?

MR. SMART: Objection, form.

A. So, yeah, this is the one I was referring to earlier, the document that I saw in the file prior to the deposition, yes.

EXHIBIT 10

to the plaintiffs' mortgage?

MR. SMART: Objection, form.

Q. (By Mr. Hughes) You can answer.

A. This puts the courts -- the title into the trust.

Q. Okay. Here's where I don't quite understand what's going on. You testified earlier that the plaintiffs' mortgage was transferred into the trust within two months of August 2006.

A. Uh-huh.

Q. Then you just said this Transfer of Lien document transferred it to the trust in September of 2009.

A. Yes.

Q. Okay. So which one is it? When was the plaintiffs' mortgage transferred into the trust?

MR. SMART: Objection, form.

A. In 2006.

Q. (By Mr. Hughes) Okay. Then what's -- why did you sign this Transfer of Lien?

A. It's constructive notice of the transfer.

Q. It's over two years after it's already been transferred into the trust.

A. Yes.

Q. Okay. Did someone instruct you to sign or

EXHIBIT 10

A. Uh-huh.

Q. The next line it says, "Date, to be effective 9/30/09." And the next line it says, "Holder of note and lien."

A. Got it.

Q. Okay. Who does it list in this Transfer of Lien document as the holder of the note, the plaintiffs' note and the plaintiffs' lien?

A. New Century Mortgage Corporation.

Q. Okay. And this is in 2009?

A. Correct.

Q. Okay. Your previous testimony you said the plaintiffs' mortgage was owned the note and the lien by the trust.

A. Uh-huh.

Q. Okay. In 2009, you're saying the holder of the note and lien is New Century Mortgage Corporation.

A. The title -- I'm transferring the title out of New Century's name. The owner is the trust.

Q. No. The trust has the title, ownership and possession --

A. Uh-huh.

Q. -- of the plaintiffs' mortgage --

A. Right.

Q. -- in 2006.

EXHIBIT 10

A. Uh-huh, yes.

Q. And in 2009, you're saying that New Century Mortgage Corporation is the holder of plaintiffs' note and lien, true?

A. Correct.

Q. My question to you is, in 2009, who owned the plaintiffs' mortgage?

A. The trust.

Q. Okay. Why doesn't it list the trust as the holder of the note and lien in this Transfer of Lien, then?

A. This is to record it on title, to give constructive notice.

Q. In this Transfer of Lien, do you ever reference the trust?

A. I'm sorry. Yes, as transferee.

Q. Is this Transfer of Lien document referencing specifically the plaintiffs' mortgage and the plaintiffs' real property?

A. Is this document referencing the plaintiffs' lien and property, yes.

Q. Okay. Did you draft this Transfer of Lien prior to signing it?

A. No.

Q. Do you know who did?

EXHIBIT 10

Holdings. So on the advice of our -- Carrington Mortgage Holdings' attorney, they put me in touch with him.

Q. Okay. Are there other lawsuits currently pending where Carrington Mortgage holdings or Carrington Mortgage Services are named as a party to the lawsuit in Houston or Harris County, Texas? Do you know?

A. I'm not aware of any.

Q. Okay. At the top of the Transfer of Lien document, it lists the holder's mailing address as 1610 East St. Andrews Place, Number B150, Santa Ana, California, 92705. Do you see that?

A. Yes.

Q. And the holder you're referencing there is New Century Mortgage Corporation, true?

A. Correct, yes.

Q. And the transferee is Wells Fargo Bank, as trustee, correct?

A. Correct.

Q. And they also have the identical mailing address, correct?

A. Uh-huh.

Q. Okay. And previously you testified that your office is in this building.

A. Correct.

EXHIBIT 10

Q. Okay. Why isn't there some type of document in 2006 that shows the transfer of the plaintiffs' mortgage into the trust?

A. I don't know.

Q. Did you -- that never crossed your mind that that should have happened?

A. Well, from my perspective, once, you know, the customer defaults and it comes to my area, that's when we record the transfer of the assignment, whatever the case -- whatever state you're in, to put the property invested in the right trust. From my perspective, the constructive notice issue is, you know, they owe somebody, right?

Q. You remember in the Pooling and Service Agreement those definitions? Do you remember that?

A. Sure.

Q. Do you remember a definition called closing date?

A. Uh-huh.

Q. Okay. That was in August of 2006.

A. Uh-huh.

Q. And according to the P&S agreement, as of the closing date none of the mortgages in the trust can be transferred in or out. Okay. Do you understand that?

A. Sure.

EXHIBIT 10

the vesting of who the lienholder is, right? Okay. So either it's New Century or it's the trust.

Q. You're representing to the public in that document that that transaction occurred in 2009.

A. Uh-huh.

Q. You testified earlier it happened in 2006.

A. Right.

Q. My question is, why didn't you clarify that in the Transfer of Lien document?

A. Didn't.

Q. So that Transfer of Lien document is not 100 percent accurate?

A. This document is accurate.

(Croft Exhibit No. 10 was marked.)

Q. (By Mr. Hughes) Okay. I'm going to attach as -- what are we on? Exhibit 10? Plaintiffs' Exhibit 10. These are documents that we've produced in this litigation. All of them have your signature on them for some reason or another. And I'm not sure if you've seen them yet, so if you want to take a minute and review them, that's fine. I'll wait until you're finished. Have you reviewed it?

A. Yes.

Q. Okay. I want to ask you about some of these notaries.

EXHIBIT 10

MR. SMART: Objection, form.

A. Under your scenario, are they paying -- they quit paying their mortgage lender?

Q. (By Mr. Hughes) Yes, they're in default.

A. Okay. So who -- who's the lender on the property currently, then?

Q. Not Wells Fargo as trustee, because it's not in the trust.

A. Okay. So they've defaulted on the former lender.

Q. Yes.

A. Is the former lender paying -- being paid?

Q. They've defaulted.

A. They defaulted that, okay. Have they initiated a foreclosure action?

Q. All right. I'm not going to answer your questions.

A. I don't understand where you're going with this.

Q. Okay. Why does Wells Fargo Bank as trustee have the right to foreclose on any property?

A. They have the right to foreclose under the terms of the mortgage.

Q. Okay. Does the property at issue have to be in the trust in order for Wells Fargo Bank to foreclose

EXHIBIT 10

on the property?

A. Wells Fargo the trust, yes.

Q. Okay. So is it -- okay. So if a piece of property is not in the trust, Wells Fargo Bank cannot bring a foreclosure action as trustee, true?

A. Why would they?

Q. I'm not asking why would they.

A. Okay. So under your hypothetical --

Q. Don't ask -- don't ask me questions, please. I'm asking you questions.

A. I am asking you to clarify your question --

Q. I'll restate.

A. -- which is hypothetical and has got a lot of holes and I'm having trouble understanding it. That's all. That's all I'm asking, is to understand where you're trying to lead me to. Are you trying to say -- are you asking me -- I'm sorry. I can't ask questions.

Q. No. Proceed.

A. Let me try to clarify. Can Wells Fargo foreclose on something they don't have an interest in?

Q. Exactly.

A. No. My question -- no, they can't.

Q. Okay. In your review of the plaintiffs' file, did you ever find a document transferring the plaintiffs' mortgage from New Century Mortgage

EXHIBIT 10

ASSGN
I

20090478521
10/20/2009 ER $20.00

09-008559

TRANSFER OF LIEN

Date: To Be Effective 9/30/09

Holder of Note and Lien:

New Century Mortgage Corporation

Holder's Mailing Address:

1610 E. St. Andrews Pl, #B150
Santa Ana, CA 92705

ER 014 - 09 - 0900

Transferee:

Wells Fargo Bank N.A., as Trustee, for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates 2EE

Transferee's Mailing Address:

1610 E. St. Andrews Pl, #B150
Santa Ana, CA 92705

Note

Date: June 15, 2006

Original Amount: $400,000.00

Maker: Mary Ellen Wolf and David Wolf, Wife and Husband

Payee: New Century Mortgage Corporation

Note and Lien are described in the following documents recorded in:

Deed of Trust recorded under Clerk's File/Instrument Number Z394249/ 023-61-0071, Deed of Trust Records, Harris County, Texas.

Property (including any improvements) Subject to Lien:

THE SOUTH 1/2 OF LOT SIX (6), BLOCK THIRTY (30) OF WEST UNIVERSITY PLACE, AN ADDITION IN HARRIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 9, PAGE 13, OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS D

EXHIBIT 11

Prior Lien(s) (including recording information):

For value received Holder of the note and lien transfers them to Transferee, warrants that the lien is valid against the property in the priority indicated, and represents that the unpaid principal and interest on the note are correctly stated.

When the context requires, singular nouns and pronouns include the plural.

1OR

New Century Mortgage Corporation

BY: TOM CROFT
ITS: VICE PRESIDENT OF REO

(Corporate Acknowledgement)

State of California
County of Orange

On Oct 15 2009, before me, N. Deeter a Notary Public in and for said county, personally appeared Tom Croft who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and Acknowledged to me that he executed the same in his authorized capacity, and that by his signature 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 California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

N. DEETER
COMM. # 1712322
NOTARY PUBLIC-CALIFORNIA
ORANGE COUNTY
My Comm. Exp. Dec. 23, 2010

Signature _____ (seal) _____

AFTER RECORDING, PLEASE RETURN TO:
BAXTER, SCHWARTZ & SHAPIRO LLP
5450 Northwest Central Dr. #307
Houston, TX 77092
/JY
CARRINGTON MORTGAGE SERVICES
Mortgagor: WOLF, DAVID ELLEN AND MARY

ER 014 - 09 - 0901

EXHIBIT 11

ER 014-09-0902

20090478521
Pages 3
10/20/2009 13:48:00 PM
e-Filed & e-Recorded in the
Official Public Records of
HARRIS COUNTY
BEVERLY KAUFMAN
COUNTY CLERK
Fees 20.00

RECORDERS MEMORANDUM
This instrument was received and recorded electronically and any blackouts, additions or changes were present at the time the instrument was filed and recorded.

Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under federal law.
THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas.

COUNTY CLERK
HARRIS COUNTY, TEXAS

EXHIBIT 11

CAUSE NO. 2011-08930 / Court: 151

IN RE: ORDER FOR FORECLOSURE CONCERNING	§	**IN THE DISTRICT COURT OF**
	§	
MARY ELLEN WOLF	§	**HARRIS COUNTY, TEXAS**
DAVID WOLF	§	
6404 BUFFALO SPEEDWAY	§	
HOUSTON, TEXAS 77005	§	**_____ JUDICIAL DISTRICT**

APPLICATION UNDER TEXAS RULE OF CIVIL PROCEDURE 736 SEEKING AN ORDER TO PROCEED WITH FORECLOSURE SALE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, **Wells Fargo Bank N.A., as Trustee, for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates** hereinafter referred to as Applicant, and files this Application for an order allowing foreclosure, pursuant to Rule 736 of the Texas Rules of Civil Procedure. In support of this application, Applicant would show as follows:

1. 736(1)(B): The name of the individual who, according to the records of the holder of the debt, is obligated to pay the debt secured by the property is **Mary Ellen Wolf and David Wolf.**

2. 736(1)(C): The property on which Applicant is attempting to foreclose is located at **6404 Buffalo Speedway, Houston, Texas 77005** and more particularly described as:

> **The South 1/2 of Lot Six (6), Block Thirty (30) of West University Place, an addition in Harris County, Texas, according to the Map or Plat thereof recorded in Volume 9, Page 13, of the Map Records of Harris County, Texas.**

3. 736(1)(D): Applicant is the owner, holder and assignee of a certain promissory note dated **June 15, 2006** in the original principal amount of **$400,000.00** executed by **Mary Ellen Wolf and David Wolf.** Said note was further secured by a Deed of Trust or Security

Instrument Agreement of even date which is recorded in the Real Property Records of **Harris** County, Texas and executed by **Mary Ellen Wolf and David Wolf**. ("Respondent" whether one or more). True and correct copies of the Note, Deed of Trust or Security Agreement and Related Assignments (if applicable) are attached hereto as **"Exhibit A"** collectively, and incorporated herein by reference.

4. 736(1)(E): The Applicant would further show and allege:

a. 736(1)(E)(1): A debt exists. A balance still exists on this debt. The outstanding principal balance owing is **$502,130.90**. Additionally, late charges and interest have been accruing on the debt because of the default by Respondents.

b. 736(1)(E)(2): The debt is secured by a lien created under TEX, CONST. Art. XVI, §50(a)(6), for home equity loan.

c. 736(1)(E)(3): A default has occurred in the payment of the above referenced debt and said default still exists.

d. 736(1)(E)(4): Applicant and/or its attorney has provided the requisite notice of default/notice of intent to accelerate and notice of acceleration to Respondents. Said notice was given by letter dated **December 3, 2010** and mailed to Respondent at the last known mailing address of Respondent as reflected in the records of Applicant. The notice of default/right to cure/notice of intent to accelerate and notice of acceleration were given in accordance with Texas Property Code §51.002, the Deed of Trust or Security Agreement and applicable Texas Law. True and correct copies of these notices are attached as **"Exhibit B"** and incorporated herein.

e. 736(1)(F): A default exists under the Deed of Trust or Security Agreement in that Respondents failed to pay the monthly payment which became due on **January 1, 2010** and every monthly installment that has become due since that date. Respondent is delinquent in

the amounts described in the Verification of Application and Affidavit of Tom Croft attached hereto and incorporated herein by reference.

5. 736(1)(G): Applicant seeks a court order required by Texas Constitution art. XVI, §50(a)(6)(D) to sell the above describes property under the terms of the Deed of Trust or Security Agreement and Texas Property Code §51.002

6. All conditions precedent to applicant's right to recover of all relief requested in this proceeding have been performed or occurred prior to filing this application.

WHEREFORE, **Wells Fargo Bank N.A., as Trustee, for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates**, Its successors and/or assigns pray that upon final hearing, the Court enter a order pursuant to Rule 736 of the Texas Rules of Civil Procedure and as required by Section §50(a)(6), Article XVI of the Texas Constitution allowing Applicant to proceed with foreclosure and sell the property described herein in accordance with Texas Property Code §51.002.

Respectfully submitted,

BALCOM LAW FIRM, P.C.

THOMAS D. PRUYN
TBA# 24031433
GREGORY A. BALCOM
TBA# 01617100
8584 Katy Freeway, Suite #305
Houston, Texas 77024
(713) 973-9900
(713) 464-8553 FAX

VERIFICATION OF APPLICATION AND AFFIDAVIT

STATE OF CALIFORNIA §
§
COUNTY OF ORANGE §

BEFORE ME, the undersigned authority, on this day personally appeared, TOM CROFT, whose identity is known to me. After I administered an oath to him/her, upon his/her oath said:

1. "My name is TOM CROFT. I am of sound mind, capable of making this affidavit, and personally acquainted with the facts stated herein. I am the Attorney In Fact of **Wells Fargo, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates**

2. "All of the opinions set forth herein are based upon my specialized knowledge, training, and experience. I am familiar with the customs, practices, and usage within the mortgage and loan servicing industry.

3. "I have read the Application and I have personal knowledge of all the facts set forth therein and in this verification and affidavit, and all of said facts, statements, and opinions are true and correct. I am familiar with the documents referred to in this verification and affidavit and the circumstances relating to the present action because of my position as Attorney In Fact and custodian of records for **Wells Fargo, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates**, which allows me to review from the business records of **Wells Fargo, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates** regarding account number **1007965339**.

4. "Exhibits "A-B" attached hereto are the business records of **Wells Fargo, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates** Said business records are kept by **Wells Fargo, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates** in the regular course of business, and it was the regular course of business of **Wells Fargo, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates** for an employee or representative of **Wells Fargo, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates** with knowledge of the act, event, condition, or opinion, recorded to make the records or to transmit information thereof to be included in such records; and the records were made at or near the time or reasonably soon thereafter. The records attached hereto are the originals or exact duplicates of the originals.

5. "Account number **1007965339** is contractually due for the **July 1, 2010** monthly mortgage installment. The mortgage account is in default for failure to pay according to the terms of the note. The unpaid principal balance is **$502,130.90**.

6. "Applicant is the owner and holder of the Note and Security Instrument and is in possession of both."

BLF# 609413 Wolf
1007965339
6404 Buffalo Speedway
Houston, Texas 77005

WELLS FARGO, N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST, SERIES 2006-NC3 ASSET-BACKED PASS-THROUGH CERTIFICATES

Carrington Mortgage Services, its servicing agent and Attorney-in-Fact

By: _____

Title: Tom Croft, VP of REO, Affiant
Carrington Mortgage Services, LLC

STATE OF CALIFORNIA §
§
COUNTY OF ORANGE §

SUBSCRIBED AND SWORN TO Before me on the 03 day of February, 2011.

_____
Notary Public in and for the State of

ELIZABETH GONZALES
Commission # 1861968
Notary Public - California
Los Angeles County
My Comm. Expires Aug 21, 2013

BLF# 609413 Wolf
1007965339
6404 Buffalo Speedway
Houston, Texas 77005

CAUSE NO. 2011-08930

IN RE: ORDER FOR FORECLOSURE CONCERNING	§	**IN THE DISTRICT COURT**
	§	
MARY ELLEN WOLF	§	**HARRIS COUNTY, TEXAS**
DAVID WOLF	§	
6404 BUFFALO SPEEDWAY	§	
HOUSTON, TEXAS 77005	§	**151ST JUDICIAL DISTRICT**

FIRST AMENDED APPLICATION UNDER TEXAS RULE OF CIVIL PROCEDURE 736 SEEKING AN ORDER TO PROCEED WITH FORECLOSURE SALE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, **Wells Fargo Bank N.A., as Trustee, for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates** hereinafter referred to as Applicant, and files this First Amended Application for an order allowing foreclosure, pursuant to Rule 736 of the Texas Rules of Civil Procedure. In support of this first amended application, Applicant would show as follows:

1. 736(1)(B): The name of the individual who, according to the records of the holder of the debt, is obligated to pay the debt secured by the property is **Mary Ellen Wolf and David Wolf**.

2. 736(1)(C): The property on which Applicant is attempting to foreclose is located at **6404 Buffalo Speedway, Houston, Texas 77005** and more particularly described as:

> **The South 1/2 of Lot Six (6), Block Thirty (30) of West University Place, an addition in Harris County, Texas, according to the Map or Plat thereof recorded in Volume 9, Page 13, of the Map Records of Harris County, Texas.**

3. 736(1)(D): Applicant is the owner, holder and assignee of a certain promissory note dated **June 15, 2006** in the original principal amount of **$400,000.00** executed by **Mary Ellen Wolf and David Wolf**. Said note was further secured by a Deed of Trust or Security Instrument Agreement of even date which is recorded in the Real Property Records of **Harris**

County, Texas and executed by **Mary Ellen Wolf and David Wolf**. ("Respondent" whether one or more). True and correct copies of the Note, Deed of Trust or Security Agreement and Related Assignments (if applicable) are attached hereto as **"Exhibit A"** collectively, and incorporated herein by reference.

4. 736(1)(E): The Applicant would further show and allege:

a. 736(1)(E)(1): A debt exists. A balance still exists on this debt. The outstanding principal balance owing is **$502,130.90**. Additionally, late charges and interest have been accruing on the debt because of the default by Respondents.

b. 736(1)(E)(2): The debt is secured by a lien created under TEX, CONST. Art. XVI, §50(a)(6), for home equity loan.

c. 736(1)(E)(3): A default has occurred in the payment of the above referenced debt and said default still exists.

d. 736(1)(E)(4): Applicant and/or its attorney has provided the requisite notice of default/notice of intent to accelerate and notice of acceleration to Respondents. Said notice was given by letter dated **December 3, 2010** and mailed to Respondent at the last known mailing address of Respondent as reflected in the records of Applicant. The notice of default/right to cure/notice of intent to accelerate and notice of acceleration were given in accordance with Texas Property Code §51.002, the Deed of Trust or Security Agreement and applicable Texas Law. True and correct copies of these notices are attached as **"Exhibit B"** and incorporated herein.

e. 736(1)(F): A default exists under the Deed of Trust or Security Agreement in that Respondents failed to pay the monthly payment which became due on **January 1, 2010** and every monthly installment that has become due since that date. Respondent is delinquent in the amounts described in the Verification of First Amended Application and Affidavit of Tom Croft attached hereto and incorporated herein by reference.

5. 736(1)(G): Applicant seeks a court order required by Texas Constitution art. XVI, §50(a)(6)(D) to sell the above describes property under the terms of the Deed of Trust or Security Agreement and Texas Property Code §51.002

6. All conditions precedent to applicant's right to recover of all relief requested in this proceeding have been performed or occurred prior to filing this first amended application.

WHEREFORE, **Wells Fargo Bank N.A., as Trustee, for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates**, Its successors and/or assigns pray that upon final hearing, the Court enter a order pursuant to Rule 736 of the Texas Rules of Civil Procedure and as required by Section §50(a)(6), Article XVI of the Texas Constitution allowing Applicant to proceed with foreclosure and sell the property described herein in accordance with Texas Property Code §51.002.

Respectfully submitted,

BALCOM LAW FIRM, P.C.

THOMAS D. PRUYN
TBA# 24031433
GREGORY A. BALCOM
TBA# 01617100
8584 Katy Freeway, Suite #305
Houston, Texas 77024
(713) 973-9900
(713) 464-8553 FAX

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this First Amended Petition was sent by regular mail and certified mail to all parties hereto appearing in this cause on the 26th day of May, 2011.

The Alonso-Bujosa Law Firm
Nina A. Bujosa
5431 Wigton Dr.
Houston, TX 77096

Thomas D. Pruyn

VERIFICATION OF FIRST AMENDED APPLICATION AND AFFIDAVIT

STATE OF CALIFORNIA §
ORANGE §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared, Tom Croft, whose identity is known to me. After I administered an oath to him/her, upon his/her oath said:

1. "My name is Tom Croft. I am of sound mind, capable of making this affidavit, and personally acquainted with the facts stated herein. I am the Vice President of Carrington Mortgage Services, LLC, Attorney-in-fact and mortgage servicer for **Wells Fargo, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates.**

2. "All of the opinions set forth herein are based upon my specialized knowledge, training, and experience. I am familiar with the customs, practices, and usage within the mortgage and loan servicing industry.

3. "I have read the Application and I have personal knowledge of all the facts set forth therein and in this verification and affidavit, and all of said facts, statements, and opinions are true and correct. I am familiar with the documents referred to in this verification and affidavit and the circumstances relating to the present action because of my position as Vice President and custodian of records for Carrington Mortgage Services, LLC, which allows me to review from the business records of **Wells Fargo, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates** regarding account number **1007965339.**

4. "Exhibits "A-B" attached hereto are the business records of **Wells Fargo, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates** Said business records are kept by in the regular course of business, and it was the regular course of business of **Wells Fargo, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates** for an employee or representative of **Wells Fargo, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates** with knowledge of the act, event, condition, or opinion, recorded to make the records or to transmit information thereof to be included in such records; and the records were made at or near the time or reasonably soon thereafter. The records attached hereto are the originals or exact duplicates of the originals.

5. "Account number **1007965339** is contractually due for the **January 1, 2010** monthly mortgage installment. The mortgage account is in default for failure to pay according to the terms of the note. The unpaid principal balance is **$502,130.90**.

6. "Applicant is the owner and holder of the Note and Security Instrument and is in possession of both."

WELLS FARGO, N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST, SERIES 2006-NC3 ASSET-BACKED PASS-THROUGH CERTIFICATES

Carrington Mortgage Services, LLC its servicing agent and Attorney-in-Fact

By: _____

Title: Tom Croft, VP of REO
Carrington Mortgage Services, LLC Affiant

STATE OF CALIFORNIA §
§
COUNTY OF ORANGE §

SUBSCRIBED AND SWORN TO Before me on the 13th day of May, 2011.

_____
Notary Public in and for the State of

ELIZABETH GONZALES
Commission # 1861968
Notary Public - California
Los Angeles County
My Comm. Expires Aug 21, 2013

609413/Wolf/Verification/FMC/6404 Buffalo Speedway

CAUSE NO. 2011-36476

MARY ELLEN WOLF AND DAVID WOLF, on behalf of themselves and all others similarly situated,	§	IN THE DISTRICT COURT OF
v.	§	HARRIS COUNTY, TEXAS
WELLS FARGO BANK, N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST, TOM CROFT, NEW CENTURY MORTGAGE CORPORATION, AND CARRINGTON MORTGAGE SERVICES, LLC.	§	151ST JUDICIAL DISTRICT

AFFIDAVIT AND DECLARATION OF W. CRAFT HUGHES IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

Pursuant to 28 U.S.C. § 1746, I, William Craft Hughes ("WCH"), Esquire, submit this Affidavit and declaration in support of Plaintiffs' Motion for Class Certification. I, William Craft Hughes, the undersigned, being competent to testify, swear under penalty of perjury as provided by 28 U.S.C. § 1746 that the following facts and statements are true and correct, except as to such matters stated to be made on information and belief, and as to such matters, I certify that I believe the same to true, and declare as follows:

1. "This declaration is made in support of Plaintiffs' Motion for Class Certification in the above-referenced matter.

2. I am counsel of record for Plaintiffs in the above-captioned action.

3. I am familiar with (i) the claims, evidence, and legal arguments involved in this matter, and (ii) the relevant defenses, evidence, and legal arguments to date.

4. WCH is an attorney, managing partner, and founder of the law firm of HUGHES ELLZEY, LLP. WCH was admitted to the State Bar of Texas in 2004, United States District Court for the Southern District of Texas in 2004, United States District Court for the Eastern

EXHIBIT 14

District of Texas in 2005, United States District Court for the Northern District of Texas in 2007, United States District Court for the Western District of Texas in 2008, and Supreme Court of the United States of America in 2010.

5. WCH has participated in the filing, prosecution, litigation, negotiation, and settlement of numerous consumer class action lawsuits throughout the nation. On April 3, 2012, the Superior Court of the State of California appointed HUGHES ELLZEY, LLP as interim class counsel in a consumer class action currently pending in California.

6. WCH currently serves as plaintiffs' counsel in several other pending class actions in the United States, including:

- Civil Action No. CV-11-01719; *Ludette Crisler, et al v. Volkswagen Group of America, Inc.*; In the United States District Court for the Central District of California;
- Civil Action No. CV-11-03870; *Tom Stibbie, et al v. Ford Motor Company*; In the United States District Court for the Central District of California;
- Civil Action No. 8:11-CV-00632; *Bob Conrad, et al v. Porsche Cars North America, Inc.;* In the United States District Court for the Central District of California (this case was transferred to MDL No. 2:11-md-2233; In the United States District Court for the Southern District of Ohio);
- Civil Action No. 8:10-CV-00209; *Bryce Burton, et al v. Chrysler Group LLC*; In the United States District Court for the District of South Carolina;
- Master File No. 10-CV-06994; MDL No. 2217; *In Re Discover Payment Protection Plan Marketing and Sales Practice Litigation*; In the United States District Court for the Northern District of Illinois.[1]
- Civil Action No. 11-CVS-1116; *Benjamin Thomas, et al v. Home Credit Corporation, Inc.*; In the North Carolina General Court of Justice, Superior Court Division, County of Vance;
- Civil Action No. 7:10-91-TMC; *Christopher Spelman, et al v. Bayer Corporation*; In the United States District Court for the District of South Carolina; and

[1] *See* Exhibit 1 – Copy of WCH's biography submitted in support of Plaintiffs' Motion for Class Certification.

EXHIBIT 14

- Civil Action No. 2:10-CV-03476; *Ellen Realson, et al v. University Medical Pharmaceuticals, Inc.*; In the United States District Court for the Central District of California (Class Settlement Pending Approval).

7. During the past eight years, WCH has devoted his legal practice to representing plaintiffs in complex civil litigation and jury trials. He is a sustaining member of the American Association of Justice, member of the Texas Trial Lawyers Association, Houston Trial Lawyer's Association, Texas Young Lawyer's Association, Houston Bar Association, and American Bar Association.

8. WCH is lifetime member of the NATIONAL WHISTLEBLOWER CENTER ("NWC") in Washington, DC. He is pre-approved by the NWC as qualified legal counsel; and potential whistleblowers searching for competent counsel are referred to WCH and the law firm of HUGHES ELLZEY, LLP by the NWC.

9. The schedule attached hereto as **Exhibit 1** is a brief biography of my firm and attorneys in my firm who were principally involved in this litigation.

10. This affidavit is made upon personal knowledge of the affiant, and all facts stated herein are true and correct.

11. I declare under penalty of perjury that the foregoing is true and correct."

WILLIAM CRAFT HUGHES

SUBSCRIBED AND SWORN TO, BEFORE ME, on this the 5th day of November, 2012.

MARIA D. ANDRADE
MY COMMISSION EXPIRES
March 24, 2014

NOTARY PUBLIC IN AND FOR
HARRIS COUNTY, TEXAS

EXHIBIT 14

mcdonnell
PROPERTY ANALYTICS

Securitization Analysis and Foreclosure Forensics™

Property of Mary Ellen Wolf and David Wolf

P02350

Securitization Analysis & Foreclosure Forensics™

Documenting the Gaps in the Chain of Title

Borrower

Mary Ellen Wolf and David Wolf
6404 Buffalo Speedway, County of Harris, Houston, Texas 77005

Lender

New Century Mortgage Corporation

Assignee

Carrington Mortgage Loan Trust, Series 2006-NC3

October 1, 2012

Prepared By
MCDONNELL PROPERTY ANALYTICS, INC.
15 Cape Lane
Brewster, MA 02631
Office Tel: 774-323-0892 | Fax: 774-323-0894
Marie@mcdonnellanalytics.com

Table of Contents

Preface

PURPOSE & USE OF REPORT

The purpose of this examination is to illuminate:

1. the ownership history of the subject Note and Security Instrument ("Mortgage Loan");
2. whether the party presently claiming to own the subject Mortgage Loan is supported or contradicted by the facts unearthed through my investigation;
3. to investigate whether the subject Note and Security Instrument were properly conveyed to Wells Fargo Bank, N.A. as Trustee of the Carrington Mortgage Loan Trust, Series 2006-NC3 as required by the Pooling and Servicing Agreement executed on August 1, 2006 which governs the REMIC Trust; and
4. to examine the Transfer of Lien filed with the Harris County Clerk's Office on October 20, 2009 that purports to transfer the subject Note and Security Instrument to Wells Fargo Bank, N.A., as Trustee, for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates and analyze whether it is factually accurate and therefore valid, or factually inaccurate and therefore invalid.

QUALIFICATIONS

I, Marie McDonnell, am a Mortgage Fraud and Forensic Analyst and a credentialed Certified Fraud Examiner, a coveted designation awarded by the Association of Certified Fraud Examiners. I am the founder and managing member of Truth In Lending Audit & Recovery Services, LLC of Orleans, Massachusetts and have twenty-five (25) years' experience in transactional analysis, mortgage auditing, and mortgage fraud investigation. I am also the President of McDonnell Property Analytics, Inc., a litigation support and research firm that provides mortgage-backed securities research services and foreclosure forensics to attorneys nationwide. McDonnell Property Analytics also advises and performs services for county registers of deeds, attorneys general, courts and other governmental agencies.

I am the same Marie McDonnell who provided amicus briefs to the Massachusetts Land Court and to the Massachusetts Supreme Judicial Court in the landmark cases *U.S. Bank National Association v. Ibanez* and *Wells Fargo Bank, N.A. v. LaRace*, 458 Mass. 637 (2011) in which the courts vacated two foreclosures prosecuted by trustees of securitization trusts.[1] My seminal contribution was to shift the debate beyond defective assignments of mortgage to an examination of the fatal breaks in the chain of title that occurred due to the utter failure of the entities that securitized these mortgages to document the transfers between themselves.

[1] McDonnell's *Amicus* Brief is available on the Massachusetts Supreme Judicial Court's website at: http://www.ma-appellatecourts.org/search_number.php? dno=SJC-10694&get=Search.

More recently, John O'Brien, Register of the Essex Southern District Registry of Deeds in Salem, Massachusetts, commissioned McDonnell Property Analytics, Inc. to conduct a forensic examination to test the integrity of his registry due to his concerns that: 1) Mortgage Electronic Registration Systems, Inc. ("MERS") boasts that its members can avoid recording assignments of mortgage if they register their mortgages into the MERS System; and 2) due to the robo-signing scandal spotlighting Linda Green as featured in a 60 Minutes exposé on the subject earlier this spring.

METHODOLOGY

Over the past twenty-five (25) years, I have developed, extensively tested, and reliably employed a proprietary set of auditing tools and protocols that enable me to track with precision a lender's loan servicing system and determine with particularity whether a problem is the result of borrower failure, lender malfeasance, or whether it is technology and policy related.

My process begins by assembling the necessary documentation. I then read the loan agreement and set up an amortization schedule reflecting the terms of the loan in a Microsoft Excel spreadsheet. Once accomplished, I compare the declining principal balance in my analysis to the lender's monthly mortgage statements to reconcile my accounting with the lender's records.

This mapping modality enables me to pinpoint where and why problems arise. Through my forensic auditing skills, I am able to detect and quantify a lender's failure to comply with state and federal truth in lending laws; expose errors, omissions, or the imposition of unauthorized fees and costs; describe inappropriate handling of the escrow and suspense accounts; uncover equity skimming schemes; and discover other unfair and deceptive acts and practices as these are defined by the Federal Trade Commission. I am also able to reconstruct lost or suppressed data through a variety of forensic accounting techniques; detect unconscionable loan terms; identify predatory lending schemes that may violate state and federal consumer protection statutes; and uncover fraud.

With respect to my forensic examination of the ownership history of the transaction in question, I used the Bloomberg Terminal, the Securities and Exchange Commission's EDGAR database, and SEC Info^{SM}. I also accessed the online database relative to this matter with the Harris County Clerk's Office, and the docket for Cause No. 2011-36476 in the District Court of Harris County, Texas, 151st Judicial District.

ORGANIZATION OF THIS REPORT

I have organized this report into well-defined sections so that the reader can efficiently move through the content and access specific information as follows:

- **Table of Contents**: The Table of Contents provides an overview of the report's organization and gives page numbers for each section or sub-section for the reader's convenience.

- **Summary**: The Summary and Conclusion sections are virtually identical and provide the reader with a synopsis of my findings and expert opinions.
- **Abstract**: The Abstract describes the key documents that I researched and examined as the basis for forming my opinions.
- **Research**: The Research section is an invaluable source of information that provides hyperlinks to the SEC's public access website as well as a rundown of the parties to the securitization of the subject Mortgage Loan describing their respective roles.
- **Analysis**: the Analysis section is didactic in nature and steps the reader through the securitization process; describes the defects in the documentation that undermines the securitization and foreclosure process; and describes the evidence that would be necessary to prove ownership of the subject Mortgage Loan.
- **Conclusions**: The conclusion section recaps my critical findings and draws logical inferences from the facts as they became known through my analysis.
- **Table of Exhibits**: The Table of Exhibits lists the documents referenced throughout the report for ease of reference.

~ Continued Below ~

Summary

My forensic examination of the documents and records supplied for my review, when compared with credible evidence compiled through the use of the Bloomberg Terminal and further researched via the Securities and Exchange Commission's public access website allowed me to conclude the following with respect to the subject residential mortgage transaction made by and between the *Borrowers*, Mary Ellen Wolf and David Wolf, and their *Lender*, New Century Mortgage Corporation:

- ☑ The Mortgage Loan in question – ***or an economic interest therein*** – was allegedly securitized into the Carrington Mortgage Loan Trust, Series 2006-NC3 on or about August 10, 2006. Therefore, the Pooling and Servicing Agreement that established the Trust governs the conveyance of the Note and Security Instrument ("Mortgage Loan") in accordance with the laws of the State of New York.

- ☑ Before the subject Mortgage Loan could be securitized the *Lender*, New Century Mortgage Corporation, had to negotiate the Note and assign the Security Instrument to NC Capital Corporation.

- ☑ In turn, NC Capital Corporation was required to sell, transfer and assign the Wolfs' Mortgage Loan to Carrington Securities, LP who served as *Seller* pursuant to the Mortgage Loan Purchase Agreement and the Pooling and Servicing Agreement referenced herein.

- ☑ Presently, there is not one scintilla of evidence that these critical transfers actually took place.

- ☑ These two fundamental breaks in the chain of title undermine the securitization of the subject Mortgage Loan and raise a genuine issue of material fact with respect to who the legal owner and holder of the Wolfs' Note and Security Instrument is and was at all relevant times in question.

- ☑ The Transfer of Lien executed by Tom Croft on October 15, 2009 and recorded with the Harris County Clerk's Office on October 20, 2009 is not the operative document by which the Wolfs' Mortgage Loan was conveyed to Wells Fargo Bank, N.A. as Trustee of Carrington Mortgage Loan Trust, Series 2006-NC3.

- ☑ Pursuant to Section 2.01 of PSA, the *Depositor* – and only the *Depositor*, Stanwich Asset Acceptance Company, L.L.C. – had the legal capacity to transfer the Mortgage Loans into the Trust.

- ☑ Moreover, the *Depositor* was required to sell, assign, transfer, and deliver the Mortgage Loans to the *Trustee* for the *Issuing Entity* on or about August 10, 2006 when the Deal closed.

- ☑ Croft's Transfer of Lien, dated October 15, 2011 is more than ***five (5) years too late***.

- ☑ This Transfer of Lien is a deception that was purposely prepared to create the appearance in the public record that Wells Fargo Bank, N.A. as *Trustee* had the authority to initiate foreclosure proceedings against the Wolfs' Property on behalf of the *Issuing Entity*, while suppressing the fact – and thus avoiding the burden of proof – that behind the scenes, the Wolfs' Note and Security Instrument had been sold four (4) times and was allegedly securitized on or about August 10, 2006.

- ☑ The creation and recordation of the October 15, 2009 Transfer of Lien was a feigned and fraudulent attempt to cure the gaps in the chain of title.

- ☑ All other documents that were filed with the Harris County Clerk's Office and with the District Court for the 151st Judicial District that depend upon the validity of the Transfer of Lien are also tainted with fraud and, therefore, they should be deemed to have no legal force and effect.

- ☑ Based on the facts and evidence available as of this writing, and with a reasonable degree of probability, it is my expert opinion that:

A. Wells Fargo Bank, N.A., is not the current owner and holder of Wolfs' Note and Security Instrument ("Mortgage Loan");

B. Wells Fargo Bank, N.A., has never been the owner and holder of Wolfs' Mortgage Loan;

C. The Wolfs' Mortgage Loan was never transferred into the 2006-NC3 Trust for which Wells Fargo Bank, N.A. is *Trustee* in strict compliance with the Pooling and Servicing Agreement executed on August 1, 2006 between the parties which is governed by the laws of the State of New York;

D. The Wolfs' Mortgage Loan was never physically transferred from the *Lender/Originator* (New Century Mortgage Corporation) to the *Responsible Party* (New Century Capital Corporation); or properly conveyed from the *Responsible Party* to the *Seller/Sponsor* (Carrington Securities, LP) of the 2006-NC3 Trust as required by the Mortgage Loan Purchase Agreement executed on August 10, 2006 between the parties;

E. The Wolfs' Mortgage Loan was never physically transferred from the *Seller/Sponsor* (Carrington Securities, LP) to the *Depositor* (Stanwich Asset Acceptance Company, LLC) of the 2006-NC3 Trust or properly conveyed as required by the Mortgage Loan Purchase Agreement referenced above;

F. The Wolfs' Mortgage Loan was never physically transferred from the *Depositor* (Stanwich Asset Acceptance Company, LLC) or properly conveyed to the *Trustee* for the 2006-NC3 Trust as required by the

Pooling and Servicing Agreement dated August 1, 2006 by and between the parties; and

G. The Wolfs' Mortgage Loan was never physically transferred from Wells Fargo Bank, N.A., as *Trustee* of the 2006-NC3 Trust to the *Document Custodian* (Deutsche Bank National Trust Company) as mandated by the Pooling and Servicing Agreement.

The factual and expert opinions I reached above are based on my review of and reliance on the documents and information supplied to date. I reserve the right to amend and supplement my opinion based on my review of documents and data supplied to me in the future.

~ Continued Below ~

Abstract

SUBJECT

The subject of this analysis concerns a residential mortgage transaction that took place on June 15, 2006 ("Settlement Date"), by and between Mary Ellen Wolf and David Wolf, Wife and Husband, ("Borrowers" or "the Wolfs") and New Century Mortgage Corporation ("Lender" or "New Century").

On the Settlement Date, the Borrowers executed a Texas Home Equity Fixed/Adjustable Rate Note ("Note") in favor of New Century and granted a Texas Home Equity Security Instrument (also referred to herein as "Security Instrument" or "Deed of Trust") to obtain funds in the amount of $400,000.00. To ensure repayment of the debt, the Borrowers pledged residential property located at 6404 Buffalo Speedway, County of Harris, Houston, Texas 77005 ("Property"). The Security Instrument and a Texas Home Equity Affidavit and Agreement were recorded in the Harris County Clerk's Office ("Official Records") on June 22, 2006 as Documents #Z394249 and #Z394250 respectively. (*See* Exhibit A. – Security Instrument, 06/15/2006)

Definition (D) of the Deed of Trust designates Eldon L. Youngblood as Trustee under the Security Instrument.

The Fixed/Adjustable Rate Note indicates that the loan in question is a high-priced subprime variable rate mortgage loan that began with a fixed interest rate of 10.150% for the first two (2) years after which interest rate and monthly payments were to adjust once every six (6) months for the remaining twenty-eight (28) year term to maturity. The distinguishing loan level details are described in the Research Section of this report. (*See* Exhibit B. – Fixed/Adjustable Rate Note, 06/15/2006)

The Fixed/Adjustable Rate Rider reiterates the terms set forth in the Fixed/Adjustable Rate Note and is incorporated into and deemed to amend and supplement the Deed of Trust. (*See* Exhibit C. − Fixed/Adjustable Rate Rider, 06/15/2006)

Page 5 of the five-page Note contains an undated indorsement in blank, executed by Steve Nagy,[2] who purports to be VP of Records Management for New Century Mortgage Corporation. The indorsement states: "Pay to the order of, without recourse" i.e., no payee was named in the indorsement.[3] (*See* Exhibit B. − Indorsement to Note, undated, Page 5)

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[2] Due to the volume of foreclosure related documents Mr. Nagy executed each day, counsel for New Century admits that his signature was often electronically attached to assignments. The signature as it appears on the instant Note appears to have been imposed with a rubber stamp. http://www.scribd.com/doc/57612366/THEY-DID-ASSIGNMENTS-IN-BLANK-HOW-NEW-CENTURY-MORTGAGE-AND-HOME123-CORPORATION-DID-IT

[3] This particular version of the Note was presented at the deposition of Tom Croft, a Defendant in litigation brought by the Wolfs as class representatives in a wrongful foreclosure lawsuit.

On or about October 15, 2009, Tom Croft, acting in his alleged capacity as Vice President of REO for New Century Mortgage Corporation ("Assignor"), executed a Transfer of Lien ("Transfer") "To Be Effective 9/30/2009," which purports to transfer the Wolf Note and Lien ("Mortgage Loan") from New Century Mortgage Corporation to Wells Fargo Bank N.A., as Trustee, for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates." This Transfer of Lien was notarized on October 15, 2009 and subsequently recorded in the Official Records on October 20, 2009 as Document #20090478521. (*See* Exhibit D. – Transfer of Lien, 10/15/2009)

On or about February 3, 2011, Tom Croft, acting in his alleged capacity as Attorney-in-Fact and custodian of records for Wells Fargo, N.A. [sic], as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates, and further, as an alleged VP of REO for Carrington Mortgage Services, LLC, executed a Verification of Application and Affidavit "*based on his specialized knowledge, training and experience*" that the facts contained therein were true and accurate.

On February 11, 2011, Thomas D. Pruyn of the Balcom Law Firm filed an Application Under Texas Rule of Civil Procedure 736 Seeking an Order to Proceed with Foreclosure Sale ("Application") on behalf of Wells Fargo Bank, N.A., as Trustee, for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates. This Application was filed in The District Court of Harris County as Case # 2011-08930 together with the above referenced Verification of Application and Affidavit executed by Tom Croft. (*See* Exhibit E. − Application to Proceed with Foreclosure, 02/11/2011)

On May 13, 2011, Tom Croft, acting in this instance in his alleged capacity as Vice President and custodian of records for Carrington Mortgage Services, LLC, executed a Verification of First Amended Application and Affidavit restating his specialized knowledge, training and experience and that the facts contained therein were true and accurate.

On or about May 26, 2011, Thomas D. Pruyn of the Balcom Law Firm filed a First Amended Application Under Texas Rule of Civil Procedure 736 Seeking an Order to Proceed with Foreclosure Sale attached to which he appended the above referenced Verification of First Amended Application and Affidavit executed by Tom Croft. This paperwork was certified by Thomas D. Pruyn, Esq. and filed with the District Court of Harris County on May 26, 2011. (*See* Exhibit F. − First Amended Application to Proceed with Foreclosure, 05/26/2011)

~ Continued Below ~

Research

TRANSACTION DETAILS

Source Documents:	Fixed/Adjustable Rate Note; Security Instrument; Fixed/Adjustable Rate Rider
Settlement Date:	June 15, 2006
Borrower:	Mary Ellen Wolf and David Wolf, Wife and Husband
Lender:	New Century Mortgage Corporation
Trustee:	Eldon L. Youngblood, Dallas Texas 75204
Nominee:	None
Zip Code	77005
Principal Amount:	$400,000.00
First Payment Date:	August 1, 2006
Maturity Date:	July 1, 2036
Riders:	Fixed /ARM Rider

LOAN LEVEL DETAILS

Source Documents:	Fixed/Adjustable Rate Note; Security Instrument; Fixed/Adjustable Rate Rider
Loan Number:	1007965339
Initial Interest Rate:	10.150%
Initial Monthly Pmt.:	$3,554.71
Type of Loan:	High-priced, subprime, Fixed (2-Yrs,)/Adjustable Rate (28 Yrs.)
Index:	The “Index” is the average of interbank offered rates for 6 month U.S. dollar-denominated deposits in the London market (“LIBOR”), as published in *The Wall Street Journal.*
1st Rate Change:	July 1, 2008
Reset Intervals:	…on that day every 6th month thereafter.
Life Rate Cap:	17.150% limited to 11.650% at the first change date.
Life Rate Floor:	10.150%
Adjustable Cap:	1.500%
Adjustable Floor:	1.500%
Margin:	6.700%
Neg. Am. Limit:	0.000%

LOOKUP REFERENCES

Source Documents:	Bloomberg RMBS Database; EDGAR Website; SEC Info Website
Trust I.D.:	Carrington Mortgage Loan Trust, Series 2006-NC3
EDGAR Website:[4]	http://www.sec.gov/cgi-bin/browse-edgar?company=&match=&CIK=1369384&filenum=&State=&Country=&SIC=&owner=exclude&Find=Find+Companies&action=getcompany
SEC Info Website:[5]	http://www.secinfo.com/$/SEC/Registrant.asp?CIK=1369384
Trust Agreement:	*See* PSA
Prospectus: 424B5	http://www.secinfo.com/dsvrn.v6A7.htm
PSA:	http://www.secinfo.com/dsvrn.v6v8.d.htm
Form 8-K:	http://www.secinfo.com/$/SEC/Documents.asp?CIK=1369384&Party=BFO&Type=8-K&Label=Current+Report+%2D%2D+Form+8%2DK
8-K Filing for 8/10/06 And Exhibits dated August 10, 2006	http://www.secinfo.com/dsvrn.v6v8.htm Exhibit 10.1 Pooling and Servicing Agreement Exhibit 10.2 Mortgage Loan Purchase Agreement 10.3 Confirmation to an ISDA Master Agreement 10.4 Schedule to an ISDA Master Agreement
MLPA:	*See* above 8-K Filing Link, Exhibit 10.2
Loan Schedule:	http://www.secinfo.com/dsvrn.v5M3.htm 7/20/06 FWP; Loan Number 6668; *Referenced as* Schedule I of PSA – ("FILED by PAPER")
Governing Law:	The State of New York (*See* Section 13.04 of PSA)

SECURITIZATION DETAILS

Source Documents:	Rule 424(b)(5) Prospectus & Prospectus Supplement
Lender:	New Century Mortgage Corporation

[4] **EDGAR**, the **Electronic Data-Gathering, Analysis, and Retrieval** system, performs automated collection, validation, indexing, acceptance, and forwarding of submissions by companies and others who are required by law to file forms with the U.S. Securities and Exchange Commission (the "SEC"). The database is freely available to the public via the Internet at: http://www.sec.gov/.

[5] ***SEC Info***[SM] is a service of *Fran Finnegan & Company* that provides real-time access to documents that were first filed at and disclosed by the *U.S. Securities and Exchange Commission (SEC)* pursuant to Federal law or the *Canadian Securities Administrators (CSA)* pursuant to Canadian law by a Filer or Filing Agent who is an SEC/CSA Registrant.

The benefit of using ***SEC Info***[SM] rather than **EDGAR** to search the official filings is the enhancements such as hyperlinks between *Table of Contents* and *Sections* that allow the user to quickly and efficiently search, view and print relevant information contained within documents that often consist of hundreds of pages of complex contract and disclosure language. To learn more about ***SEC Info***[SM] visit: http://www.secinfo.com/$/About.asp

Originator(s):	New Century Mortgage Corporation, or Home123 Corporation
Responsible Party:	NC Capital Corporation, a California Corporation
Seller/Sponsor:	Carrington Securities, LP, a Delaware Limited Partnership
Depositor:	Stanwich Asset Acceptance Company, L.L.C., a Delaware Limited Liability Company
Issuing Entity:	Carrington Mortgage Loan Trust, Series 2006-NC3
Trustee:	Wells Fargo Bank, N.A., a National Banking Association
Delaware Trustee:	Not Applicable
Servicer:	New Century Mortgage Corporation, a California Corporation
Custodian:	Deutsche Bank National Trust Company
Underwriter:	Carrington Investment Services, LLC, Deutsche Bank Securities, Bear, Stearns & Co. Inc.
Cut-Off Date:	August 1, 2006
Closing Date:	August 10, 2006

MERS RESEARCH

Source Documents:	Mortgage; MERS Website at: https://www.mers-servicerid.org/sis/
MOM:[6]	No
MIN Number:[7]	None
Lender I.D.:	Not Applicable
Servicer I.D.:	Not Applicable
Investor I.D.:	Not Applicable
Status:	Not Applicable

TITLE DOCUMENTS SUPPLIED

HARRIS COUNTY CLERK'S OFFICE, TEXAS

EXECUTION DATE	RECORDING DATE	DOCUMENT NUMBER	INSTRUMENT
06/15/2006	06/22/2006	00000Z394249	Home Equity Security Instrument (with Rider) (Deed of Trust)
09/30/2009	10/20/2009	20090478521	Transfer of Lien

[6] In the MERS lexicon, "MOM" stands for "MERS as original mortgagee."

[7] In the MERS lexicon, "MIN" stands for Mortgage Identification Number which is a unique 18-digit number assigned to each mortgage registered into the MERS® System.

Analysis

My examination of the evidence available as of this writing revealed the following facts:

I. Securitization Analysis

(1) Using my access to Bloomberg Professional's database of Residential Mortgage Backed Securities ("Bloomberg"), I found that the subject Note and Security Instrument ("Mortgage Loan") is presently being tracked as an asset of the Carrington Mortgage Loan Trust, Series 2006-NC3 ("*Issuing Entity*" or "REMIC Trust" or "Trust Fund" or "Deal").[8]

(2) I was able to verify this finding by examining the collateral loan performance tape provided by the *Servicer* to Bloomberg each month and comparing that information to the loan level details contained in the Wolfs' Loan Documents. A side-by-side comparison revealed that twelve (12) out of fourteen (14) data-points were a perfect match, including the loan number. The two (2) data-points that did not match i.e., the Previous Rate and Previous Principal & Interest do not alter my findings because multiple interest rate and payment changes have been implemented since the Loan Documents were printed on June 15, 2006. (*See* Exhibit G. – Bloomberg Research Results)

(3) Accordingly, I found that the unique characteristics described in the Wolf Mortgage Loan documents were also present in the Bloomberg data, which enabled me to conclude that the subject Mortgage Loan – or an economic interest therein – was allegedly securitized into the Carrington Mortgage Loan Trust, Series 2006-NC3.

(4) Once I had established through my Bloomberg research that the subject Mortgage Loan is being tracked as an asset of the Trust Fund, I investigated whether it was also included in the original Mortgage Loan Schedule that identified the mortgage loans slated for inclusion in this Deal.

(5) I found the Mortgage Loan Schedule ("MLS")[9] was filed with the Securities and Exchange Commission on July 20, 2006 in the form of a Free Writing Prospectus ("FWP"). The MLS

[8] CAVEAT: The phrase *"we found that the Borrower's Mortgage Loan is presently being tracked as an asset…"* is a term of art that we purposely use to describe what we are seeing when viewing the information available through Bloomberg. Essentially, Bloomberg provides current and historical data to investors regarding the collateral loan performance, delinquency rates, trigger events, etc. that enable investors to monitor their holdings. This data derives from the accounting supplied by the *Servicer*, *Master Servicer*, and *Securities Administrator* each month as required by the Pooling and Servicing Agreement that governs the Trust. Whether or not a particular Note and Mortgage were legally conveyed into a securitized Trust in accordance with "Applicable Laws" is a separate and distinct factual analysis which ultimately requires a legal opinion we do not, and cannot render here.

[9] MORTGAGE LOAN SCHEDULE: The MLS contains the names and addresses of borrowers; property addresses securing the loans; and loan level details regarding the terms of the loans being transferred. In most cases the MLS will be attached to the Pooling and Servicing Agreement or the Free Writing Prospectus.

can be examined at: http://www.secinfo.com/dsvrn.v5M3.htm. To locate the Wolfs' Mortgage Loan, search for Loan #6668.

(6) The Carrington Mortgage Loan Trust, Series 2006-NC3 is a public offering, and the Prospectus, Prospectus Supplement and Pooling and Servicing Agreement (referred to in the industry as the "Deal Documents") are available on the Securities and Exchange Commission's public access website. To perform a search, simply go to EDGAR's Company Search page and type in the Central Index Key ("CIK") 1369384, which you can do here at: http://www.sec.gov/edgar/searchedgar/companysearch.html. Alternatively, all of the relevant hyperlinks are provided in the Research Section of this report under Lookup References.

(7) A more user friendly way to search these same filings may be found on the *SEC Info*SM website at: www.secinfo.com/$/SEC/Registrant.asp?CIK=1369384.

(8) The Prospectus Supplement contains a summary of the securitization and lists the entities that were involved. This offering document may be viewed in its entirety at: http://www.secinfo.com/dsvrn.v6A7.htm. For the reader's convenience, I also provide an excerpt of the most relevant information. (*See* Exhibit H. – Prospectus Supplement Excerpt)

(9) The Pooling and Servicing Agreement ("PSA") that governs the securitization describes how mortgage loans are to be conveyed into the Trust fund in Section 2.01. The PSA may also be viewed in its entirety at: http://www.secinfo.com/dsvrn.v6v8.d.htm.

(10) The securitization paradigm involves one or more "true sales" that are designed to move the Mortgage Loans away from the originating *Lender* to a *Seller/Sponsor* who aggregates the Mortgage Loans slated for securitization. The *Seller/Sponsor* then transfers the Mortgage Loans to an entity designated as the *Depositor* who in turn transfers the assets to a bankruptcy remote Qualified Special Purpose Entity commonly referred to as the *Issuing Entity*. The purpose of the *Issuing Entity* is to hold the assets securely on behalf of investors who purchase securities backed by the Mortgage Loans.

(11) To assist the reader in visualizing the transaction structure for this particular Deal, I prepared a Securitization Flow Chart based on information derived from the Wolfs' Loan Documents and the Deal Documents filed with the SEC which map out the chain of title and identify the participants who were involved, as well as the roles they played. (*See* Exhibit I. – Securitization Flow Chart)

(12) As the Securitization Flow Chart illustrates, before the Wolfs' Mortgage Loan could be securitized, the *Lender*, New Century Mortgage Corporation ("New Century"), had to negotiate the subject Note and assign the Security Instrument to an affiliate, NC Capital Corporation. As will be discussed in detail below, there is no evidence that this critical first "true sale" ever took place.

(13) ***Thus, I identify here what may ultimately prove to be a fatal break in the chain of title that occurred between the Settlement Date of June 15, 2006 and August 10, 2006 which undermines the securitization of the Wolfs' Mortgage Loan***.

(14) According to a Mortgage Loan Purchase Agreement (MLPA") dated August 10, 2006, [10] executed by and between NC Capital Corporation (the "*Responsible Party*"), Carrington Securities, LP (the "*Seller*") and Stanwich Asset Acceptance Company, L.L.C. (the "*Purchaser*"), the loans listed in the MLS were to be bought, sold, transferred and assigned in a specific sequence as follows:

- from the *Responsible Party* (NC Capital Corporation) to
- the *Seller* (Carrington Securities, LP); then from the *Seller* to
- the *Purchaser* (Stanwich Asset Acceptance Company, L.L.C.).

(*See* MLPA at: http://www.secinfo.com/dsvrn.v6v8.htm, Exhibit 10.2 Mortgage Loan Purchase Agreement)

[10] MORTGAGE LOAN PURCHASE AGREEMENT

This is a Mortgage Loan Purchase Agreement (this *"Agreement"*), dated August 10, 2006, among NC CAPITAL CORPORATION, a California corporation (the *"Responsible Party"*), CARRINGTON SECURITIES, LP, a Delaware limited partnership (the *"Seller"*) and STANWICH ASSET ACCEPTANCE COMPANY, L.L.C., a Delaware limited liability company (the *"Purchaser"*).

Preliminary Statement

The Seller intends to sell the Mortgage Loans (as hereinafter identified) to the Purchaser on the terms and subject to the conditions set forth in this Agreement. The Purchaser intends to deposit the Mortgage Loans into a mortgage pool comprising the Trust Fund. The Trust Fund will be evidenced by a single series of mortgage pass-through certificates designated as Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates (the *"Certificates"*). The Certificates will consist of eighteen classes of certificates and will be issued pursuant to a Pooling and Servicing Agreement, dated as of August 1, 2006 (the *"Pooling and Servicing Agreement"*), among the Depositor as depositor, New Century Mortgage Corporation as servicer (the *"Servicer"*) and Wells Fargo Bank, N.A. as trustee (the *"Trustee"*).

Capitalized terms used but not defined herein shall have the meanings set forth in the Pooling and Servicing Agreement.

The parties hereto agree as follows:

SECTION 1 Agreement to Purchase. The Seller agrees to sell and the Purchaser agrees to purchase, on or before August 10, 2006 (the *"Closing Date"*), certain adjustable-rate and fixed-rate, interest-only and fully-amortizing, first lien and second lien, one- to four-family residential mortgage loans ***purchased by the Seller from the Responsible Party (the "Mortgage Loans")***, having an aggregate principal balance as of the close of business on August 1, 2006 (the *"Cut-off Date"*) of $1,620,590,236 (the *"Closing Balance"*), after giving effect to all payments due on the Mortgage Loans on or before the Cut-off Date, whether or not received including the right to any Prepayment Charges payable by the related Mortgagors in connection with any Principal Prepayments on the Mortgage Loans, on an Originator servicing-retained basis…

(*See* MLPA at: http://www.secinfo.com/dsvrn.v6v8.htm, Exhibit 10.2 Mortgage Loan Purchase Agreement)

(15) Here again, the critical first step is to determine whether New Century Mortgage Corporation properly negotiated the Wolfs' Note and assigned their Security Instrument to NC Capital Corporation.

(16) As of this writing, there is not one scintilla of evidence available in the Official Records of Harris County, or in the discovery materials that have been presented for my review that would establish this transaction ever took place.

(17) Accordingly, we need not go any further with respect to establishing the failure to securitize the Wolfs' Mortgage Loan into the Carrington Mortgage Loan Trust, Series 2006-NC3 because if NC Capital Corporation never owned the Wolfs' Mortgage Loan, it could not have sold it to Carrington Securities, LP and so on down the securitization chain. ***Nemo dat quod non habet***.

(18) However, it is instructive to understand the securitization process in order to determine whether improper documents may have been recorded with the Harris County Clerk's Office; or submitted to the District Court in the 151st Judicial District incident to the foreclosure and ongoing litigation in Case No. 2011-36476.

(19) Assuming then for argument's sake that New Century properly sold and assigned the Wolfs' Mortgage Loan to NC Capital Corporation, and that the subsequent sales envisioned by the MLPA from NC Capital Corporation to Carrington Securities, LP as well as from Carrington Securities, LP to Stanwich Asset Acceptance Company, L.L.C. took place, the final conveyance to the Trustee for the Trust Fund must comply strictly with the provisions of the aforementioned Pooling and Servicing Agreement which governs the transaction.

(20) Section 2.01 of the PSA contains active granting language by which the *Depositor* (Stanwich Asset Acceptance Company, L.L.C.) purports to sell, transfer, assign, set over and otherwise convey to the *Trustee* (Wells Fargo Bank, N.A.) without recourse, for the benefit of the Certificateholders, all the right, title and interest of the *Depositor*.

(21) Additionally, Section 2.01 of the PSA contains active granting language by which the *Depositor* (Stanwich Asset Acceptance Company, L.L.C.) purports to sell, transfer and assign all of the Mortgage Loans listed in the MLS to the *Trustee* (Wells Fargo Bank, N.A.) for the *Issuing Entity* (Carrington Mortgage Loan Trust, Series 2006-NC3).

(22) The window of time to complete the securitization process begins on the date the *Issuing Entity* was created, on August 1, 2006, and concludes on the Closing Date, which was on or about August 10, 2006 or within a restricted window of time thereafter (usually 90 days).

(23) In order to transfer the subject Note to the *Trustee*, the *Depositor* was required to deliver:

PSA Section 2.01 (i)

> (i) the original Mortgage Note, endorsed in blank or in the following form "Pay to the order of Wells Fargo Bank, N.A., as Trustee under the applicable agreement, without recourse," with all prior and

intervening endorsements showing a complete chain of endorsement from the originator to the Person so endorsing to the Trustee;

(24) In order to transfer the subject Security Instrument to the *Trustee*, the *Depositor* was required to deliver:

PSA Section 2.01 (ii)

(ii) the original Mortgage with evidence of recording thereon, and the original recorded power of attorney, if the Mortgage was executed pursuant to a power of attorney, with evidence of recording thereon;

(25) With respect to Assignments of the Security Instrument, the *Depositor* was required to deliver:

PSA Section 2.01 (iii) (iv)

(iii) an original Assignment in blank;

(iv) the original recorded Assignment or Assignments showing a complete chain of assignment from the originator to the Person assigning the Mortgage to the Trustee as contemplated by the immediately preceding clause (iii);

(26) Thus, to comply with the representations and warranties made to investors in the Prospectus Supplement, and to adhere strictly to the terms of Section 2.01 of the Pooling and Servicing Agreement as required pursuant to New York law, we would expect to see the following evidence of assignments:

A. from the *Lender/Originator* (New Century Mortgage Corporation) to the *Responsible Party* (NC Capital Corporation);

B. from the *Responsible Party* (NC Capital Corporation) to the *Seller/Sponsor* (Carrington Securities, LP);

C. from the *Seller/Sponsor* (Carrington Securities, LP) to the *Depositor* (Stanwich Asset Acceptance Company, L.L.C.); and finally,

D. from the *Depositor* (Stanwich Asset Acceptance Company, L.L.C.) to

E. the *Trustee* (Wells Fargo Bank, N.A.) for the *Issuing Entity* (Carrington Mortgage Loan Trust, Series 2006-NC3).

(27) All of these conveyances had to be perfected on the Closing date of August 10, 2006; and all of the related paperwork necessary to evidence the Trust Fund's ownership had to be supplied by the *Depositor* to the *Trustee* within ninety (90) days of the Closing Date.

(28) Further, Paragraph 19 of the Borrower Covenants contained in the Security Instrument states:

> "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. (emphasis supplied)

(29) When the plain language of paragraph 19 is read literally, then by contract between Borrower and Lender, the Mortgage must follow the same assignment pathway as the Note. This is consistent with what the Deal Documents mandate.

II. Foreclosure Forensics

(30) In order to establish if, how, and when Note was transferred into the *Issuing Entity*, we would need to examine at the very least the following:

- ☑ The original Mortgage Note endorsed in blank or in the following form "Pay to the order of Wells Fargo Bank, N.A., as Trustee under the applicable agreement, without recourse," ***with all prior and intervening endorsements showing a complete chain of endorsement from the originator to the Person so endorsing to the Trustee*** (each such endorsement being sufficient to transfer all right, title and interest of the party so endorsing, as noteholder or assignee thereof, in and to that Mortgage Note)…" as required by Section 2.01 of the PSA; (emphasis supplied)

- ☑ The execution copy of the PSA together with Schedule I thereto, which is the MLS that presumably includes the Wolfs' Mortgage Loan;

- ☑ ***Proof of delivery*** of the Note from *Originator* (New Century Mortgage Corporation) to the *Responsible Party* (NC Capital Corporation) to the *Seller/Sponsor* (Carrington Securities, LP) to the *Depositor* (Stanwich Asset Acceptance Company, L.L.C.); and from Stanwich Asset Acceptance Company, L.L.C. to the *Trustee* of the *Issuing Entity* (Wells Fargo Bank, N.A., as Trustee for the Carrington Mortgage Loan Trust, Series 2006-NC3);

- ☑ A copy of the document custodian's log maintained by Deutsche Bank National Trust Company relative to the Mortgage Loan file from August 10, 2006 to the present.

The "Breeder Document"

(31) In the lexicon of identity theft, a "breeder document"[11] is the alpha-document, genuine or fraudulent, that can serve as a basis to obtain other identification documents or benefits fraudulently.

(32) For example, in identity theft cases the birth certificate is often referred to as the breeder document because once fabricated, an imposter can use it to acquire a driver's license, Social Security Number, bank account, passport, etc. and obtain rights and privileges of citizenship to which s/he is not legally entitled.

(33) Translating this concept over to the realm of foreclosure fraud, the breeder document is the fraudulent assignment of mortgage, which purports to grant a title interest in the underlying real property to the fraudster, and serves as the basis for obtaining other documents necessary to extinguish the property owner's rights and transfer full legal and equitable title as well as possession to the fraudster.

(34) In the instant case, the October 15, 2009 Transfer of Lien, executed by Tom Croft, is the breeder document from which have or shall arise all other documents necessary to complete the foreclosure, sale, and transfer of the Wolfs' Property to Wells Fargo Bank, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates as explained in detail below. (*See* Exhibit D. – Transfer of Lien, 10/15/2009)

The Assignment of Mortgage is Invalid

(35) On the basis of the facts set forth herein I find that the above referenced Transfer of Lien contains false statements, misrepresentations, and omissions of material fact as follows:

i. It is a false statement for Tom Croft to say that on October 15, 2009 New Century Mortgage Corporation transferred the Wolfs' Note and Lien to Wells Fargo Bank, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificate ("Transferee" or "Wells Fargo Bank, N.A.") for the following reasons:

☒ The Deal Documents, filed with the SEC provide credible evidence that the *Depositor*, Stanwich Asset Acceptance Company, L.L.C., transferred and assigned the scheduled Mortgage Loans to Wells Fargo Bank, N.A. as *Trustee* on or about August 10, 2006 when the securitization closed.

☒ New Century Mortgage Corporation divested all right, title and interest when it allegedly sold the subject Mortgage Loan to NC Capital Corporation on some date between June 15, 2006 and August 10, 2006. Therefore, it could

[11] The Oxford Dictionary: http://oxforddictionaries.com/definition/breeder+document?region=us.

not sell it for a second time to a different entity some five (5) years later on October 15, 2011.

- ☒ New Century filed for protection pursuant to Title 11 of the U.S. Bankruptcy Code on April 2, 2007 and was precluded from transferring any of its assets without the Court's approval due to the automatic stay. [12]
- ☒ New Century sold all of the loans it held on its books with Bankruptcy Court approval by June 29, 2007.[13]
- ☒ New Century sold all of its mortgage servicing rights to Carrington Mortgage Services on or about May 23, 2007 with Bankruptcy Court approval. (*See* footnote #13)
- ☒ Therefore, New Century did not own, hold or control the Wolfs' Mortgage Loan on October 15, 2011 when Tom Croft executed the Transfer of Lien in his alleged capacity as Vice president of REO for New Century Mortgage Corporation.
- ☒ In fact, Tom Croft was employed by ***Carrington Mortgage Services, LLC*** and not New Century Mortgage Corporation on October 15, 2011. [14]

ii. It is misleading to purport to transfer the Wolfs' Mortgage Loan from "Party A" (the *Lender*) to "Party E" (the *Issuing Entity*) in the securitization chain, thereby skipping over three necessary parties who took bought and sold the Mortgage Loan in a methodical, sequential and verifiable series of transactions.

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[12]On March 13, 2007, New Century Financial Corporation reported in a regulatory filing that it had received a grand jury subpoena from the U.S. Attorney's Office for the Central District of California as well as a letter from the Securities and Exchange Commission notifying the company of a preliminary investigation. The filing stated that the U.S. Attorney's office indicated in a letter dated February 28, 2007 that it was conducting a criminal inquiry in connection with trading in the company's securities as well as accounting errors regarding the company's allowance for repurchase losses. On April 2, 2007, New Century Financial Corporation and its related entities filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court, District of Delaware located in Wilmington, Delaware. http://en.wikipedia.org/wiki/New_Century

On May 23, 2007, the U.S. Bankruptcy Court for the District of Delaware entered an Order approving the sale of New Century TRS Holdings, Inc., et al, to Carrington Capital Management, LLC and Carrington Mortgage Services, LLC. http://www.nclc.org/images/pdf/foreclosure_mortgage/lender_bankruptcy/new_century_financial_corp/transferofassets.pdf

[13] *See* In re New Century TRS Holdings, Inc., et al; United States Bankruptcy Court, District of Delaware, Case No. 07-10416; Opinion on Confirmation dated July 2, 2008.

[14] At the time Tom Croft executed the subject Transfer as Vice President of REO for New Century Mortgage Corporation, he had been employed by Carrington Mortgage Services since July of 2007. In fact, Croft further discloses that he has never worked for New Century Mortgage Corporation. (*See* Deposition of Tom Croft, Page 31, Line 23 and Page 73, Line 12, dated June 27, 2012)

iii. It is an omission of a material fact to conceal the role of the intervening assignees, "Party B" (the *Responsible Party*) "Party C" (the *Seller/Sponsor*) and "Party D" (the *Depositor*), who bought and sold the Wolfs' Mortgage Loan in order to effectuate four "true sales" that were necessary to achieve the privileges of bankruptcy remoteness and favored tax status as a Real Estate Mortgage Investment Conduit ("REMIC") pursuant to Title 26 of the Internal Revenue Code, 26 U.S.C. § 860G.

iv. In summary, the conveyance represented by the October 15, 2009 Transfer of Lien is fraudulent.

(36) The instant Transfer of Lien does not represent a true sale to a *bona fide* purchaser for value. Rather is it a self-dealing breeder document prepared, executed and recorded by Carrington Mortgage Services, LLC as a precursor to instituting a foreclosure action.

(37) This fraudulent document was purposely prepared under false pretenses to create the appearance in the public record that Wells Fargo Bank, N.A., as *Trustee,* had the authority to foreclose the Wolfs' Property on behalf of the *Issuing Entity*, while suppressing the fact – and thus avoiding the burden of proof – that behind the scenes, the Wolfs' Note and Security Instrument had been sold four (4) times and was allegedly securitized on or about August 10, 2006.

The Foreclosure was Grounded in a Fraudulent Assignment

(38) On February 3, 2011, Tom Croft, acting in dual capacities as the alleged Attorney-in-Fact for Wells Fargo, N.A. as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates and in his alleged capacity as VP of REO Carrington Mortgage Services, LLC, executed a Verification of Application and Affidavit certifying that he has personal and specialized knowledge of the subject Mortgage Loan thereby creating the illusion that Wells Fargo as Trustee had standing to proceed with the instant foreclosure. (*See* Exhibit E. – Application to Proceed with Foreclosure with Affidavit, 02/11/2011)

(39) After Carrington Mortgage Services, LLC prepared, executed and recorded the instant Transfer of Lien, it filed an Application Under Texas Rule of Civil Procedure 736 Seeking an Order to Proceed with Foreclosure Sale on February 11, 2011 which included the Verification of Application and Affidavit executed by Tom Croft . (*See* Exhibit E. – Application to Proceed with Foreclosure with Affidavit, 02/11/2011)

(40) This same process was repeated on May 26, 2011, The Balcom Law Firm filed a First Amended Application Under Texas rule of Civil Procedure 736 736 Seeking an Order to Proceed with Foreclosure Sale attached to which was another Verification executed by Tom Croft in his alleged capacity as Vice President and custodian of records for Carrington Mortgage Services, LLC. (*See* Exhibit F. – Application to Proceed with Foreclosure with Affidavit, 05/26/2011)

(41) All of these documents were prepared by and at the direction of Carrington Mortgage Services, LLC in order to complete the foreclosure and sale of the Wolfs' Property. As such,

these are second generation breeder documents that depend upon, and are therefore tainted by, the underlying fraudulent Transfer of Lien.

III. Robo-Signer Analysis

(42) In a series of recent reports released on March 12, 2012 by the Office of the Inspector General for the U.S. Department of Housing and Urban Development ("HUD-OIG"),[15] the term "robosigning" was defined as:

> *We have defined the term "robosigning" as the practice of an employee or agent of the servicer signing documents automatically without a due diligence review or verification of the facts.*

(43) Notwithstanding his protests to the contrary in his recent deposition on June 27, 2012, Tom Croft, the individual who executed the above described Transfer of Lien and two (2) Verifications of Application and Affidavit, fits HUD-OIG's definition of robo-signer. (*See* Exhibits D. and E.)

(44) More to the point, I identified Tom Croft ("Croft") in my list of robo-signers attached to my *Forensic Examination Of Assignments Of Mortgage Recorded During 2010 In The Essex Southern District Registry Of Deeds* as "Exhibit C" because I found that Croft had executed seven (7) fraudulent Assignments of Mortgage purporting to convey mortgage loans from the originating lender directly into a securitized trust, which is an impermissible act under all pooling and servicing agreements.

(45) In the instant case, Croft executed the following documents in varying capacities:

Table 1 - Documents Executed by Tom Croft

Date	Document	Signing Capacity	Stated Employer
10/15/2009	Transfer of Lien	Vice President of REO	New Century Mortgage Corporation
02/03/2011	Verification of Application and Affidavit	Vice President of REO	Carrington Mortgage Services, LLC
05/13/2011	Verification of Application and Affidavit	Vice President of REO	Carrington Mortgage Services, LLC

[15] Summary: As part of the Office of Inspector General's (OIG) nationwide effort to review the foreclosure practices of the five largest Federal Housing Administration (FHA) mortgage servicers (Bank of America, Wells Fargo Bank, CitiMortgage, JP Morgan Chase, and Ally Financial, Incorporated) we reviewed CitiMortgage's foreclosure and claims processes. In addition to this memorandum, OIG issued separate memorandums for each of the other four reviews. OIG performed these reviews due to reported allegations made in the fall of 2010 that national mortgage servicers were engaged in widespread questionable foreclosure practices involving the use of foreclosure "mills" and a practice known as "robosigning" of sworn documents in thousands of foreclosures throughout the United States. (*See*: http://www.hudoig.gov/reports/featured_reports.php)

(46) In his deposition, Croft states that his area of expertise is "default servicing"[16] and not chain of title, securitization, or how loans are transferred to a trust which he said was "not my area."

(47) When questioned during his deposition about whether he had ever seen any document transferring the Wolfs' mortgage from New Century Mortgage Corporation to Carrington Securities, L.P., and from one party to the next down the securitization chain, [as outlined in Exhibit I. – Securitization Flow Chart] Croft answered, "No." [17]

(48) So it appears that Croft never performed any due diligence to determine whether the documents necessary to properly transfer the Wolfs' Mortgage Loan into the Trust Fund existed. As a result, his statement in paragraph 6 of his Verifications that "*Applicant is the owner and holder of the Note and Security Instrument and is in possession of both*" is unfounded.

(49) Although Croft had access to the mortgage servicing records maintained by Carrington Mortgage Services, LLC ("CMS"), when he prepared the Verification dated May 13, 2011, he overstated the Wolfs' delinquency by six (6) months or approximately $21,000.00.

(50) With respect to the preparation of these critical documents that would ultimately deprive the Wolfs of their home, Croft either did not perform a due diligence review, or he remained willfully blind to the truth of the matter. Either way, his actions constitute robo-signing.

~ Continued Below ~

[16] (*See* Deposition of Tom Croft, Page 67, Line 21)

[17] (*See* Deposition of Tom Croft, Page 154, Line 20 through Page 158, Line 10.)

Conclusions

My forensic examination of the documents and records supplied for my review, when compared with credible evidence compiled through the use of the Bloomberg Terminal and further researched via the Securities and Exchange Commission's public access website allowed me to conclude the following with respect to the subject residential mortgage transaction made by and between the *Borrowers*, Mary Ellen Wolf and David Wolf, and their *Lender*, New Century Mortgage Corporation:

- ☑ The Mortgage Loan in question – ***or an economic interest therein*** – was allegedly securitized into the Carrington Mortgage Loan Trust, Series 2006-NC3 on or about August 10, 2006. Therefore, the Pooling and Servicing Agreement that established the Trust governs the conveyance of the Note and Security Instrument ("Mortgage Loan") in accordance with the laws of the State of New York.

- ☑ Before the subject Mortgage Loan could be securitized the *Lender*, New Century Mortgage Corporation, had to negotiate the Note and assign the Security Instrument to NC Capital Corporation.

- ☑ In turn, NC Capital Corporation was required to sell, transfer and assign the Wolfs' Mortgage Loan to Carrington Securities, LP who served as *Seller* pursuant to the Mortgage Loan Purchase Agreement and the Pooling and Servicing Agreement referenced herein.

- ☑ Presently, there is not one scintilla of evidence that these critical transfers actually took place.

- ☑ These two fundamental breaks in the chain of title undermine the securitization of the subject Mortgage Loan and raise a genuine issue of material fact with respect to who the legal owner and holder of the Wolfs' Note and Security Instrument is and was at all relevant times in question.

- ☑ The Transfer of Lien executed by Tom Croft on October 15, 2009 and recorded with the Harris County Clerk's Office on October 20, 2009 is not the operative document by which the Wolfs' Mortgage Loan was conveyed to Wells Fargo Bank, N.A. as Trustee of Carrington Mortgage Loan Trust, Series 2006-NC3.

- ☑ Pursuant to Section 2.01 of PSA, the *Depositor* – and only the *Depositor*, Stanwich Asset Acceptance Company, L.L.C. – had the legal capacity to transfer the Mortgage Loans into the Trust.

- ☑ Moreover, the *Depositor* was required to sell, assign, transfer, and deliver the Mortgage Loans to the *Trustee* for the *Issuing Entity* on or about August 10, 2006 when the Deal closed.

- ☑ Croft's Transfer of Lien, dated October 15, 2011 is more than ***five (5) years too late***.

☑ This Transfer of Lien is a deception that was purposely prepared to create the appearance in the public record that Wells Fargo Bank, N.A. as *Trustee* had the authority to initiate foreclosure proceedings against the Wolfs' Property on behalf of the *Issuing Entity*, while suppressing the fact – and thus avoiding the burden of proof – that behind the scenes, the Wolfs' Note and Security Instrument had been sold four (4) times and was allegedly securitized on or about August 10, 2006.

☑ The creation and recordation of the October 15, 2009 Transfer of Lien was a feigned and fraudulent attempt to cure the gaps in the chain of title.

☑ All other documents that were filed with the Harris County Clerk's Office and with the District Court for the 151st Judicial District that depend upon the validity of the Transfer of Lien are also tainted with fraud and, therefore, they should have no legal force and effect.

☑ Based on the facts and evidence available as of this writing, and with a reasonable degree of probability, it is my expert opinion that:

A. Wells Fargo Bank, N.A., is not the current owner and holder of Wolfs' Note and Security Instrument ("Mortgage Loan");

B. Wells Fargo Bank, N.A., has never been the owner and holder of Wolfs' Mortgage Loan;

C. The Wolfs' Mortgage Loan was never transferred into the 2006-NC3 Trust for which Wells Fargo Bank, N.A. is *Trustee* in strict compliance with the Pooling and Servicing Agreement executed on August 1, 2006 between the parties which is governed by the laws of the State of New York;

D. The Wolfs' Mortgage Loan was never physically transferred from the *Lender/Originator* (New Century Mortgage Corporation) to the *Responsible Party* (New Century Capital Corporation); or properly conveyed from the *Responsible Party* to the *Seller/Sponsor* (Carrington Securities, LP) of the 2006-NC3 Trust as required by the Mortgage Loan Purchase Agreement executed on August 10, 2006 between the parties;

E. The Wolfs' Mortgage Loan was never physically transferred from the *Seller/Sponsor* (Carrington Securities, LP) to the *Depositor* (Stanwich Asset Acceptance Company, LLC) of the 2006-NC3 Trust or properly conveyed as required by the Mortgage Loan Purchase Agreement referenced above;

F. The Wolfs' Mortgage Loan was never physically transferred from the *Depositor* (Stanwich Asset Acceptance Company, LLC) or properly conveyed to the *Trustee* for the 2006-NC3 Trust as required by the

Pooling and Servicing Agreement dated August 1, 2006 by and between the parties; and

G. The Wolfs' Mortgage Loan was never physically transferred from Wells Fargo Bank, N.A., as *Trustee* of the 2006-NC3 Trust to the *Document Custodian* (Deutsche Bank National Trust Company) as mandated by the Pooling and Servicing Agreement.

The factual and expert opinions I reached above are based on my review of and reliance on the documents and information supplied to date. I reserve the right to amend and supplement my opinion based on my review of documents and data supplied to me in the future.

Therefore, based on my education, specialized knowledge as a *Mortgage Fraud and Forensic Analyst* and professional expertise as a *Certified Fraud Examiner*, I find, with a reasonable degree of certainty, that the opinions expressed herein are true and accurate.

Respectfully submitted,

Marie McDonnell, President & CEO
McDonnell Property Analytics, Inc.
Mortgage Fraud and Forensic Analyst
Certified Fraud Examiner, ACFE

Table of Exhibits

EXHIBIT “A”

GF#1947001617 ATC/MD

7394249
06/22/06 300867611 $96.00

Return To.

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

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

IRC 0604907 [Space Above This Line for Recording Data]

THIS SECURITY INSTRUMENT SECURES AN EXTENSION OF CREDIT AS DEFINED BY SECTION 50(a)(6), ARTICLE XVI OF THE TEXAS CONSTITUTION.

TEXAS HOME EQUITY SECURITY INSTRUMENT (First Lien)

This Security Instrument is not intended to finance Borrower's acquisition of the Property.

NOTICE OF CONFIDENTIALITY RIGHTS:

If you are a natural person, you may remove or strike any of the following information from this instrument before it is filed for record in the public records: your social security number or your driver's license number.

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 10, 12, 17, 19, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 15.

(A) "Security Instrument" means this document, which is dated June 15, 2006, together with all Riders to this document.

(B) "Borrower" is MARY ELLEN WOLF AND DAVID WOLF, WIFE AND HUSBAND

Borrower is the grantor under this Security Instrument.

FILED
2006 JUN 22 AM 8:18
COUNTY CLERK
HARRIS COUNTY, TEXAS

RP-023-61-0074

P02380

(C) "Lender" is New Century Mortgage Corporation

Lender is a Corporation
organized and existing under the laws of California
Lender's address is 18400 Von Karman, Suite 1000, Irvine, CA 92612

Lender includes any holder of the Note who is entitled to receive payments under the Note Lender is the beneficiary under this Security Instrument.
(D) "Trustee" is Eldon L. Youngblood

Trustee's address is
2711 North Haskell Avenue, Suite 2700 LB 25, Dallas, Texas 75204

(E) "Note" means the promissory note signed by Borrower and dated June 15, 2006
The Note states that Borrower owes Lender FOUR HUNDRED THOUSAND AND 00/100

Dollars
(U.S. $ 400,000.00) plus interest Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than 07/01/2036
(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property "
(G) "Extension of Credit" means the debt evidenced by the Note, as defined by Section 50(a)(6), Article XVI of the Texas Constitution and all the documents executed in connection with the debt
(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*].

☐ Texas Home Equity Condominium Rider ☒ Other. Fixed/Arm Rider
☐ Texas Home Equity Planned Unit Development 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" means 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) "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.

Initials: 1007965339

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Extension of Credit does not qualify as a "federally related mortgage loan" under RESPA.
(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY
This Security Instrument secures to Lender. (i) the repayment of the Extension of Credit, and all 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 irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described Property located in the

County of Harris :
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

See Legal Description Attached Hereto and Made a Part Hereof

BP 023-54-0073

Parcel ID Number. 0393210000016
6404 Buffalo Speedway
Houston
("Property Address")

which currently has the address of
[Street]
[City], Texas 77005 [Zip Code]

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", provided however, that the Property is limited to homestead property in accordance with Section 50(a)(6)(H), Article XVI of the Texas Constitution.

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.

Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any 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 14 Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Extension of Credit current. Lender may accept any payment or partial payment insufficient to bring the Extension of Credit current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payment 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 Extension of Credit 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 as described in the Note.

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

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; and (c) premiums for any and all insurance required by Lender under Section 5. These items are called "Escrow Items." At origination or at any time during the term of the Extension of Credit, 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 14 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 twelve 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 twelve 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.

Initials: 1007965339

RP 023-51-0075

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 Extension of Credit

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 Extension of Credit. 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 Extension of Credit, either (a) a one-time charge for flood zone determination, certification and tracking services, or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower

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

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

Initials: 1007965339

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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 21 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 now occupies and uses the Property as Borrower's Texas homestead and shall continue to occupy the Property as Borrower's Texas homestead for at least one year after the date of this Security Instrument, 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.

Initials: 1007965339

8. Borrower's Loan Application. Borrower's actions shall constitute actual fraud under Section 50(a)(6)(c), Article XVI of the Texas Constitution and Borrower shall be in default and may be held personally liable for the debt evidenced by the Note and this Security Instrument 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 or any other action or inaction that is determined to be actual fraud. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as a Texas homestead, the representations and warranties contained in the Texas Home Equity Affidavit and Agreement, and the execution of an acknowledgment of fair market value of the property as described in Section 27.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to (a) paying any sums secured by a lien which has priority over this Security Instrument, (b) appearing in court, and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9. No powers are granted by Borrower to Lender or Trustee that would violate provisions of the Texas Constitution applicable to Extensions of Credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution or other Applicable Law.

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. 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

Initials: 1007965339

Miscellaneous Proceeds If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2

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

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

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

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

Borrower shall be in default if any action or proceeding which is not commenced as a result of Borrower's default under other indebtedness not secured by a prior valid encumbrance against the homestead, 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 18, 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.

11. 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

BK 023-21-0079

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.

12. Joint and Several Liability; Security Instrument Execution; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any person who signs this Security Instrument, but does not execute the Note: (a) is signing this Security Instrument only to mortgage, grant and convey the person's interest in the Property under the terms of this Security Instrument and to comply with the requirements of Section 50(a)(6)(A), Article XVI of the Texas Constitution, (b) is not obligated to pay the sums secured by this Security Instrument and is not to be considered a guarantor or surety, (c) agrees that this Security Instrument establishes a voluntary lien on the homestead and constitutes the written agreement evidencing the consent of each owner and each owner's spouse, and (d) agrees that Lender and Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of the Note.

Subject to the provisions of Section 17, 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 19) and benefit the successors and assigns of Lender.

13. Extension of Credit 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 Extension of Credit is subject to a law which sets maximum Extension of Credit charges, and that law is finally interpreted so that the interest or other Extension of Credit charges collected or to be collected in connection with the Extension of Credit exceed the permitted limits, then: (a) any such Extension of Credit 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 will make this refund by making a payment to Borrower. **The Lender's payment of any such refund will extinguish any right of action Borrower might have arising out of such overcharge.**

14. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail (but, by certified mail if the notice is given pursuant to Section 19) 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.

15. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the laws of Texas. 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.

16. Borrower's Copies. Borrower shall be given at the time this Extension of Credit is made, a copy of all documents signed by Borrower related to the Extension of Credit.

17. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 17, "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 14 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.

18. 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, insofar as allowed by Section 50(a)(6), Article XVI of the Texas Constitution, 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

Initials: 1007965339

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 17

19. Sale of Note; Change of Loan Servicer; Notice of Grievance; Lender's Right-to-Comply. 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 Extension of Credit 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 14) 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 For example, Section 50(a)(6)(Q)(x), Article XVI of the Texas Constitution, generally provides that a lender has 60 days to comply with its obligations under the extension of credit after being notified by a borrower of a failure to comply with any such obligation. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 21 and the notice of acceleration given to Borrower pursuant to Section 17 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 19.

It is Lender's and Borrower's intention to conform strictly to provisions of the Texas Constitution applicable to Extensions of Credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution

All agreements between Lender and Borrower are hereby expressly limited so that in no event shall any agreement between Lender and Borrower, or between either of them and any third party, be construed not to allow Lender 60 days after receipt of notice to comply, as provided in this Section 19, with Lender's obligations under the Extension of Credit to the full extent permitted by Section 50(a)(6), Article XVI of the Texas Constitution. Borrower understands that the Extension of Credit is being made on the condition that Lender shall have 60 days after receipt of notice to comply with the provisions of Section 50(a)(6), Article XVI of the Texas Constitution. As a precondition to taking any action premised on failure of Lender to comply, Borrower will advise Lender of the noncompliance by a notice given as required by Section 14, and will give Lender 60 days after such notice has been received by Lender to comply Except as otherwise required by Applicable Law, only after Lender has received said notice, has had 60 days to comply, and Lender has failed to comply, shall all principal and interest be forfeited by Lender, as required by Section 50(a)(6)(Q)(x), Article XVI of the Texas Constitution in connection with failure by Lender to comply with its obligations under this Extension of Credit. Borrower will cooperate in reasonable efforts to correct any failure by Lender to comply with Section 50(a)(6), Article XVI of the Texas Constitution.

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In the event that, for any reason whatsoever, any obligation of Borrower or of Lender pursuant to the terms or requirements hereof or of any other loan document shall be construed to violate any of the provisions of the Texas Constitution applicable to Extensions of Credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution, then any such obligation shall be subject to the provisions of this Section 19, and the document may be reformed, by written notice from Lender, without the necessity of the execution of any amendment or new document by Borrower, so that Borrower's or Lender's obligation shall be modified to conform to the Texas Constitution, and in no event shall Borrower or Lender be obligated to perform any act, or be bound by any requirement which would conflict therewith

All agreements between Lender and Borrower are expressly limited so that any interest, Extension of Credit charge or fee collected or to be collected (other than by payment of interest) from Borrower, any owner or the spouse of any owner of the Property in connection with the origination, evaluation, maintenance, recording, insuring or servicing of the Extension of Credit shall not exceed, in the aggregate, the highest amount allowed by Applicable Law.

It is the express intention of Lender and Borrower to structure this Extension of Credit to conform to the provisions of the Texas Constitution applicable to Extensions of Credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution If, from any circumstance whatsoever, any promise, payment, obligation or provision of the Note, this Security Instrument or any other loan document involving this Extension of Credit transcends the limit of validity prescribed by Applicable Law, then any promise, payment, obligation or provision shall be reduced to the limit of such validity, or eliminated as a requirement if necessary for compliance with such law, and such document may be reformed, by written notice from Lender, without the necessity of the execution of any new amendment or new document by Borrower

Lender's right-to-comply as provided in this Section 19 shall survive the payoff of the Extension of Credit The provision of this Section 19 will supersede any inconsistent provision of the Note or this Security Instrument

20. Hazardous Substances. As used in this Section 20: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances. gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials, (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection, (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law, and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup

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

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a

Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

21. 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 17 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 will 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 and any other remedies permitted by Applicable Law. Insofar as allowed by Section 50(a)(6), Article XVI of the Texas Constitution, Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 21, including, but not limited to, court costs, reasonable attorneys' fees and costs of title evidence.

The lien evidenced by this Security Instrument may be foreclosed upon only by a court order. Lender may, at its option, follow any rules of civil procedure promulgated by the Texas Supreme Court for expedited foreclosure proceedings related to the foreclosure of liens under Section 50(a)(6), Article XVI of the Texas Constitution ("Rules"), as amended from time to time, which are hereby incorporated by reference. The power of sale granted herein shall be exercised pursuant to such Rules, and Borrower understands that such power of sale is not a confession of judgment or a power of attorney to confess judgment or to appear for Borrower in a judicial proceeding.

22. Power of Sale. It is the express intention of Lender and Borrower that Lender shall have a fully enforceable lien on the Property. It is also the express intention of Lender and Borrower that Lender's default remedies shall include the most expeditious means of foreclosure available by law. Accordingly, Lender and Trustee shall have all the powers provided herein except insofar as may be limited by the Texas Supreme Court To the extent the Rules do not specify a procedure for the exercise of a power of sale, the following provisions of this Section 22 shall apply, if Lender invokes the power of sale. Lender or Trustee shall give notice of the time, place and terms of sale by posting and filing the notice at least 21 days prior to sale as provided by Applicable Law. Lender shall mail a copy of the notice of sale to Borrower in the manner prescribed by Applicable Law. Sale shall be made at public vendue. The sale must begin at the time stated in the notice of sale or not later than three hours after that time and between the hours of 10 a m and 4 p.m. on the first Tuesday of the month. Borrower authorizes Trustee to sell the Property to the highest bidder for cash in one or more parcels and in any order Trustee determines. Lender or its designee may purchase the Property at any sale. In the event of any conflict between such procedure and the Rules, the Rules shall prevail, and this provision shall automatically be reformed to the extent necessary to comply.

Trustee shall deliver to the purchaser who acquires title to the Property pursuant to the foreclosure of the lien a Trustee's deed conveying indefeasible title to the Property with covenants of general warranty from Borrower. Borrower covenants and agrees to defend generally the purchaser's title to the Property against all claims and demands. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, court costs and reasonable Trustee's and attorneys' fees, (b) to all sums secured by this Security Instrument, and (c) any excess to the person or persons legally entitled to it.

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 that sale. If possession is not surrendered, Borrower or such person shall be a tenant at sufferance and may be removed by writ of possession or other court proceeding

23. Release. Within a reasonable time after termination and full payment of the Extension of Credit, Lender shall cancel and return the Note to the owner of the Property and give the owner, in recordable form, a release of the lien securing the Extension of Credit or a copy of an endorsement of the Note and assignment of the lien to a lender that is refinancing the Extension of Credit Owner shall pay only recordation costs. **OWNER'S ACCEPTANCE OF SUCH RELEASE, OR ENDORSEMENT AND ASSIGNMENT, SHALL EXTINGUISH ALL OF LENDER'S OBLIGATIONS UNDER SECTION 50(a)(6), ARTICLE XVI OF THE TEXAS CONSTITUTION.**

24. Non-Recourse Liability. Lender shall be subrogated to any and all rights, superior title, liens and equities owned or claimed by any owner or holder of any liens and debts outstanding immediately prior to execution hereof, regardless of whether said liens or debts are acquired by Lender by assignment or are released by the holder thereof upon payment.

Subject to the limitation of personal liability described below, each person who signs this Security Instrument is responsible for ensuring that all of Borrower's promises and obligations in the Note and this Security Instrument are performed.

Borrower understands that Section 50(a)(6)(C), Article XVI of the Texas Constitution provides that the Note is given without personal liability against each owner of the Property and against the spouse of each owner unless the owner or spouse obtained this Extension of Credit by actual fraud. This means that, absent such actual fraud, Lender can enforce its rights under this Security Instrument solely against the Property and not personally against the owner of the Property or the spouse of an owner.

If this Extension of Credit is obtained by such actual fraud, then, subject to Section 12, Borrower will be personally liable for the payment of any amounts due under the Note or this Security Instrument This means that a personal judgment could be obtained against Borrower, if Borrower fails to perform Borrower's responsibilities under the Note or this Security Instrument, including a judgment for any deficiency that results from Lender's sale of the Property for an amount less than is owing under the Note, thereby subjecting Borrower's other assets to satisfaction of the debt

If not prohibited by Section 50(a)(6)(C), Article XVI of the Texas Constitution, this Section 24 shall not impair in any way the lien of this Security Instrument or the right of Lender to collect all sums due under the Note and this Security Instrument or prejudice the right of Lender as to any covenants or conditions of the Note and this Security Instrument.

25. Proceeds. Borrower has not been required to apply the proceeds of the Extension of Credit to repay another debt except a debt secured by the Property or debt to another lender.

26. No Assignment of Wages. Borrower has not assigned wages as security for the Extension of Credit

27. Acknowledgment of Fair Market Value. Lender and Borrower have executed a written acknowledgment as to the fair market value of Borrower's Property on the date the Extension of Credit is made.

28. Substitute Trustee; Trustee Liability. All rights, remedies and duties of Trustee under this Security Instrument may be exercised or performed by one or more trustees acting alone or together. Lender, at its option and with or without cause, may from time to time, by power of attorney or otherwise, remove or substitute any trustee, add one or more trustees, or appoint a successor trustee to any Trustee without the necessity of any formality other than a designation by Lender in writing. Without any further act or conveyance of the Property the substitute, additional or successor trustee shall become vested with the title, rights, remedies, powers and duties conferred upon Trustee herein and by Applicable Law

Trustee shall not be liable if acting upon any notice, request, consent, demand, statement or other document believed by Trustee to be correct. Trustee shall not be liable for any act or omission unless such act or omission is willful

29. Acknowledgment of Waiver by Lender of Additional Collateral. Borrower acknowledges that Lender waives all terms in any of Lender's loan documentation (whether existing now or created in the future) which (a) create cross default; (b) provide for additional collateral, and/or (c) create personal liability for any Borrower (except in the event of actual fraud), for the Extension of Credit. This waiver includes, but is not limited to, any (a) guaranty, (b) cross collateralization, (c) future indebtedness, (d) cross default; and/or (e) dragnet provisions in any loan documentation with Lender.

RP 023-61-0086

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

[DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. THIS DOCUMENT MUST BE EXECUTED AT THE OFFICE OF LENDER, AN ATTORNEY AT LAW OR A TITLE COMPANY. YOU MUST RECEIVE A COPY OF THIS DOCUMENT AFTER YOU HAVE SIGNED IT.]

YOU MAY, WITHIN 3 DAYS AFTER CLOSING, RESCIND THIS EXTENSION OF CREDIT WITHOUT PENALTY OR CHARGE.

Printed Name: Mary Ellen Wolf
[Please Complete]

Mary Ellen Wolf (Seal) -Borrower

Printed Name David Wolf
[Please Complete]

David Wolf (Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

BK 0323-34-0097

1007965339

P02396

STATE OF TEXAS
County of Harris

Before me MA LOU LEWIS on this day personally appeared
David Wolf
Mary Ellen Wolf

known to me (or proved to me on the oath of
~~or through~~ TX Drivers License) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she/they executed the same for the purposes and consideration therein expressed

Given under my hand and seal of office this 15 day of June, 2006 .

(Seal)

MA. LOU LEWIS
Notary Public, State of Texas
My Commission Expires
May 28, 2008

Notary Public

My Commission Expires: 5/28/08

RP 023-61-0098

P02397

Exhibit A

The South 1/2 of Lot Six (6), Block Thirty (30) of WEST UNIVERSITY PLACE, an addition in Harris County, Texas, according to the map or plat thereof recorded in Volume 9, Page 13, of the Map Records of Harris County, Texas.

RP-2023-543999

EXHIBIT “B”

THIS IS AN EXTENSION OF CREDIT AS DEFINED BY SECTION 50(a)(6), ARTICLE XVI OF THE TEXAS CONSTITUTION

THIS EXTENSION OF CREDIT HAS A VARIABLE RATE OF INTEREST AS AUTHORIZED BY SECTION 50(a)(6)(O), ARTICLE XVI OF THE TEXAS CONSTITUTION

2 YEAR RATE LOCK

TEXAS HOME EQUITY FIXED/ADJUSTABLE RATE NOTE

(LIBOR 6 Month Index (As Published in *The Wall Street Journal*) - Rate Caps)

(First Lien)

THIS NOTE PROVIDES FOR A CHANGE IN MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

Place of Execution:

June 15, 2006	Houston	Texas
(Date)	(City)	(State)

6404 Buffalo Speedway, Houston, TX 77005
(Property Address)

1. BORROWER'S PROMISE TO PAY

This is an extension of credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution (the "Extension of Credit"). In return for the Extension of Credit that I have received evidenced by this Note, I promise to pay U.S. $ **400,000.00** (this amount is called "Principal"), plus interest, to the order of the Lender. Lender is **New Century Mortgage Corporation**.

I will make all payments under this Note in the form of cash, check or money order. I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

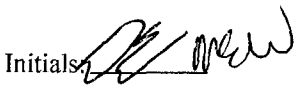
I understand that this is not an open-end account that may be debited from time to time or under which credit may be extended from time to time.

The property described above by the Property Address is subject to the lien of the Security Instrument executed concurrently herewith (the "Security Instrument").

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 **10.150** %. The interest rate I will pay may change in accordance with Section 4 of this Note. It is agreed that the total of all interest and other charges that constitute interest under applicable law shall not exceed the maximum amount of interest permitted by applicable law. Nothing in this Note or the Security Instrument shall entitle the Note Holder upon any contingency or event whatsoever, including by reason of acceleration of the maturity or prepayment of the Extension of Credit, to receive or collect interest or other charges that constitute interest in excess of the highest rate allowed by applicable law on the Principal or on a monetary obligation incurred to protect the property described above authorized by the Security Instrument, and in no event shall I be obligated to pay interest in excess of such rate.

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.

Initials: 

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 **August 1 , 2006** . I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on **07/01/2036** , I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date." I will make my monthly payments at **18400 Von Karman, Suite 1000, Irvine, CA 92612**
or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. $ **3,554.71** . This amount may change.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of the Extension of Credit 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. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of **July, 2008** and the adjustable interest rate I will pay may change on that day every 6th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for 6 month U.S. dollar-denominated deposits in the London market ("LIBOR"), 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 that 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 Seven Tenth(s)** percentage point(s) (**6.700** %) 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 successive monthly payments, each of which will exceed the amount of accrued interest as of the date of the scheduled installment. 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 **11.650** % or less than **10.150** %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than one and one half percentage points from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than **17.150** % or less than **10.150** %.

(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 initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any 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 this 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 this Note. If I make a partial Prepayment, there will be no changes in the due dates or amounts of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES AND FEES

All agreements between Note Holder and me are expressly limited so that any interest, loan charges or fees (other than interest) collected or to be collected from me, any owner or the spouse of any owner of the property described above in connection with the origination, evaluation, maintenance, recording, insuring or servicing of the Extension of Credit shall not exceed, in the aggregate, the highest amount allowed by applicable law.

If a law, which applies to this Extension of Credit 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 Extension of Credit 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 will make this refund by making a payment to me. **The Note Holder's payment of any such refund will extinguish right of action I might have arising out of such overcharge.**

It is the express intention of the Note Holder and me to structure this Extension of Credit to conform to the provisions of the Texas Constitution applicable to extensions of credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution. If, from any circumstance whatsoever, any promise, payment, obligation or provision of this Note, the Security Instrument or any other loan document involving this Extension of Credit transcends the limit of validity prescribed by applicable law, then such promise, payment, obligation or provision shall be reduced to the limit of such validity, or eliminated as a requirement, if necessary for compliance with such law, and such document may be reformed by written notice from the Note Holder without the necessity of the execution of any new amendment or new document by me.

The provisions of this Section 6 shall supersede any inconsistent provision of this Note or the Security Instrument.

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 **15** calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be **5.000**% 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 that has not been paid and all the interest 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. This Note may not be accelerated because of a decrease in the market value of the property described above or because of my default under any indebtedness not evidenced by this Note or the Security Instrument.

(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, including Section 50(a)(6), Article XVI of the Texas Constitution. Those expenses include, for example, reasonable attorneys' fees. I understand that these expenses are not contemplated as fees to be incurred in connection with maintaining or servicing this Extension of Credit.

Initials: 

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.

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. However, if the purpose of the notice is to notify Note Holder of failure to comply with Note Holder's obligations under this Extension of Credit, or noncompliance with any provisions of the Texas Constitution applicable to extensions of credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution, then notice by certified mail is required.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

Subject to the limitation of personal liability described below, each person who signs this Note is responsible for ensuring that all of my promises and obligations in this Note are performed, including the payment of the full amount owed. Any person who takes over these obligations is also so responsible.

I understand that Section 50(a)(6)(C), Article XVI of the Texas Constitution provides that this Note is given without personal liability against each owner of the property described above and against the spouse of each owner unless the owner or spouse obtained this Extension of Credit by actual fraud. This means that, absent such actual fraud, the Note Holder can enforce its rights under this Note solely against the property described above and not personally against any owner of such property or the spouse of an owner.

If this Extension of Credit is obtained by such actual fraud, I will be personally liable for the payment of any amounts due under this Note. This means that a personal judgment could be obtained against me if I fail to perform my responsibilities under this Note, including a judgment for any deficiency that results from Note Holder's sale of the property described above for an amount less than is owing under this Note.

If not prohibited by Section 50(a)(6)(C), Article XVI of the Texas Constitution, this Section 9 shall not impair in any way the right of the Note Holder to collect all sums due under this Note or prejudice the right of the Note Holder as to any promises or conditions of 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. SECURED NOTE

In addition to the protections given to the Note Holder under this Note, 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 that I make in this Note. The 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 read as follows:

> **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 17, "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 or 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 14 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.

12. APPLICABLE LAW

This Note shall be governed by the law of Texas and any applicable federal law. In the event of any conflict between the Texas Constitution and other applicable law, it is the intent that the provisions of the Texas Constitution shall be applied to resolve the conflict. In the event of a conflict between any provision of this Note and applicable law, the applicable law shall control to the extent of such conflict and the conflicting provisions contained in this Note shall be modified to the extent necessary to comply with applicable law. All other provisions in this Note will remain fully effective and enforceable.

13. NO ORAL AGREEMENTS

THIS NOTE CONSTITUTES A "WRITTEN LOAN AGREEMENT" PURSUANT TO SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE, IF SUCH SECTION APPLIES. THIS WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

WITNESS THE HAND(S) OF THE UNDERSIGNED.

[DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. THIS DOCUMENT MUST BE EXECUTED AT THE OFFICE OF THE LENDER, AN ATTORNEY AT LAW OR A TITLE COMPANY. YOU MUST RECEIVE A COPY OF THIS DOCUMENT AFTER YOU HAVE SIGNED IT.]

Mary Ellen Wolf Borrower

David Wolf Borrower

Borrower

Borrower

Borrower

Borrower

Borrower

Borrower

Pay to the order of, without recourse

New Century Mortgage Corporation
By: _____
Steve Nagy
V.P. Records Management

EXHIBIT “C”

THIS EXTENSION OF CREDIT HAS A VARIABLE RATE OF INTEREST AS AUTHORIZED BY SECTION 50(a)(6)(O), ARTICLE XVI OF THE TEXAS CONSTITUTION

TEXAS HOME EQUITY FIXED/ADJUSTABLE RATE RIDER

(LIBOR 6 Month Index (As Published in *The Wall Street Journal*) - Rate Caps)
(First Lien)

THIS TEXAS HOME EQUITY FIXED/ADJUSTABLE RATE RIDER is made this **15th** day of **June**, **2006** and is incorporated into and shall be deemed to amend and supplement the Security Instrument of the same date given by the undersigned (the "Borrower") to secure Borrower's Texas Home Equity Fixed/Adjustable Rate Note (the "Note") to

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

6404 Buffalo Speedway, Houston, TX 77005
(Property Address)

THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT BORROWER'S ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

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

A. ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial fixed interest rate of **10.150** %. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of **July, 2008** and the adjustable interest rate I will pay may change on that day every 6th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for 6 month U.S. dollar-denominated deposits in the London market ("LIBOR"), 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 that is based upon comparable information. The Note Holder will give me notice of this choice.

Initials: _____

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding **Six And Seven Tenth(s)** percentage point(s) (**6.700** %) 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 successive monthly payments, each of which will exceed the amount of accrued interest as of the date of the scheduled installment. 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 **11.650** % or less than **10.150** %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than one and one-half percentage point(s)(1.500%) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than **17.150** %, or less than **10.150** %.

(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 initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any 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.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Texas Home Equity Fixed/Adjustable Rate Rider.

[DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. THIS DOCUMENT MUST BE EXECUTED AT THE OFFICE OF THE LENDER, AN ATTORNEY AT LAW OR A TITLE COMPANY. YOU MUST RECEIVE A COPY OF THIS DOCUMENT AFTER YOU HAVE SIGNED IT.]

Mary Ellen Wolf Borrower

David Wolf Borrower

Borrower

Borrower

Borrower

Borrower

RP 023-54-0091

NCMC
TX Home Equity Fixed/Adjustable Rate Rider
(Libor 6 Month) (Cash Out - First Lien)
RE-211 (0306)

1007965339

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.
THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in file number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED, in the Official Public Records of Real Property of Harris County, Texas on

JUN 22 2006

COUNTY CLERK
HARRIS COUNTY, TEXAS

RECORDER'S MEMORANDUM:
At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

P02407

EXHIBIT “D”

ASSGN
I

20090478521
10/20/2009 ER $20.00

09-008559

TRANSFER OF LIEN

Date: To Be Effective 9/30/09

Holder of Note and Lien:

New Century Mortgage Corporation

Holder's Mailing Address:

1610 E. St. Andrews Pl, #B150
Santa Ana, CA 92705

ER 014 - 09 - 0900

Transferee:

Wells Fargo Bank N.A., as Trustee, for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates 2EE

Transferee's Mailing Address:

1610 E. St. Andrews Pl, #B150
Santa Ana, CA 92705

Note

Date: June 15, 2006

Original Amount: $400,000.00

Maker: Mary Ellen Wolf and David Wolf, Wife and Husband

Payee: New Century Mortgage Corporation

Note and Lien are described in the following documents recorded in:

Deed of Trust recorded under Clerk's File/Instrument Number Z394249/ 023-61-0071, Deed of Trust Records, Harris County, Texas.

Property (including any improvements) Subject to Lien:

THE SOUTH 1/2 OF LOT SIX (6), BLOCK THIRTY (30) OF WEST UNIVERSITY PLACE, AN ADDITION IN HARRIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 9, PAGE 13, OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS. D

effective 9-30-09

10-20-09

P02409

Prior Lien(s) (including recording information):

For value received Holder of the note and lien transfers them to Transferee, warrants that the lien is valid against the property in the priority indicated, and represents that the unpaid principal and interest on the note are correctly stated.

When the context requires, singular nouns and pronouns include the plural.

1OR

New Century Mortgage Corporation

BY: TOM CROFT
ITS: VICE PRESIDENT OF REO

(Corporate Acknowledgement)

State of California
County of Orange

On Oct 15 2009, before me, N. Deeter a Notary Public in and for said county, personally appeared Tom Croft who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and Acknowledged to me that he executed the same in his authorized capacity, and that by his signature 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 California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

N. DEETER
COMM. # 1712322
NOTARY PUBLIC-CALIFORNIA
ORANGE COUNTY
My Comm. Exp. Dec. 29, 2010

Signature _____ (seal) _____

AFTER RECORDING, PLEASE RETURN TO:
BAXTER, SCHWARTZ & SHAPIRO LLP
5450 Northwest Central Dr. #307
Houston, TX 77092
/JY
CARRINGTON MORTGAGE SERVICES
Mortgagor: WOLF, DAVID ELLEN AND MARY

ER 014 - 09 - 0901

ER 014-09-0902

20090478521
Pages 3
10/20/2009 13:48:00 PM
e-Filed & e-Recorded in the
Official Public Records of
HARRIS COUNTY
BEVERLY KAUFMAN
COUNTY CLERK
Fees 20.00

RECORDERS MEMORANDUM
This instrument was received and recorded electronically and any blackouts, additions or changes were present at the time the instrument was filed and recorded.

Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under federal law.
THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas.

COUNTY CLERK
HARRIS COUNTY, TEXAS

EXHIBIT “E”

CAUSE NO. 2011-08930 / Court: 151

IN RE: ORDER FOR FORECLOSURE CONCERNING	§	**IN THE DISTRICT COURT OF**
	§	
MARY ELLEN WOLF	§	**HARRIS COUNTY, TEXAS**
DAVID WOLF	§	
6404 BUFFALO SPEEDWAY	§	
HOUSTON, TEXAS 77005	§	**_____ JUDICIAL DISTRICT**

APPLICATION UNDER TEXAS RULE OF CIVIL PROCEDURE 736 SEEKING AN ORDER TO PROCEED WITH FORECLOSURE SALE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, **Wells Fargo Bank N.A., as Trustee, for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates** hereinafter referred to as Applicant, and files this Application for an order allowing foreclosure, pursuant to Rule 736 of the Texas Rules of Civil Procedure. In support of this application, Applicant would show as follows:

1. 736(1)(B): The name of the individual who, according to the records of the holder of the debt, is obligated to pay the debt secured by the property is **Mary Ellen Wolf and David Wolf.**

2. 736(1)(C): The property on which Applicant is attempting to foreclose is located at **6404 Buffalo Speedway, Houston, Texas 77005** and more particularly described as:

> **The South 1/2 of Lot Six (6), Block Thirty (30) of West University Place, an addition in Harris County, Texas, according to the Map or Plat thereof recorded in Volume 9, Page 13, of the Map Records of Harris County, Texas.**

3. 736(1)(D): Applicant is the owner, holder and assignee of a certain promissory note dated **June 15, 2006** in the original principal amount of **$400,000.00** executed by **Mary Ellen Wolf and David Wolf.** Said note was further secured by a Deed of Trust or Security

Instrument Agreement of even date which is recorded in the Real Property Records of **Harris** County, Texas and executed by **Mary Ellen Wolf and David Wolf**. ("Respondent" whether one or more). True and correct copies of the Note, Deed of Trust or Security Agreement and Related Assignments (if applicable) are attached hereto as **"Exhibit A"** collectively, and incorporated herein by reference.

4. 736(1)(E): The Applicant would further show and allege:

a. 736(1)(E)(1): A debt exists. A balance still exists on this debt. The outstanding principal balance owing is **$502,130.90**. Additionally, late charges and interest have been accruing on the debt because of the default by Respondents.

b. 736(1)(E)(2): The debt is secured by a lien created under TEX, CONST. Art. XVI, §50(a)(6), for home equity loan.

c. 736(1)(E)(3): A default has occurred in the payment of the above referenced debt and said default still exists.

d. 736(1)(E)(4): Applicant and/or its attorney has provided the requisite notice of default/notice of intent to accelerate and notice of acceleration to Respondents. Said notice was given by letter dated **December 3, 2010** and mailed to Respondent at the last known mailing address of Respondent as reflected in the records of Applicant. The notice of default/right to cure/notice of intent to accelerate and notice of acceleration were given in accordance with Texas Property Code §51.002, the Deed of Trust or Security Agreement and applicable Texas Law. True and correct copies of these notices are attached as **"Exhibit B"** and incorporated herein.

e. 736(1)(F): A default exists under the Deed of Trust or Security Agreement in that Respondents failed to pay the monthly payment which became due on **January 1, 2010** and every monthly installment that has become due since that date. Respondent is delinquent in

the amounts described in the Verification of Application and Affidavit of Tom Croft attached hereto and incorporated herein by reference.

5. 736(1)(G): Applicant seeks a court order required by Texas Constitution art. XVI, §50(a)(6)(D) to sell the above describes property under the terms of the Deed of Trust or Security Agreement and Texas Property Code §51.002

6. All conditions precedent to applicant's right to recover of all relief requested in this proceeding have been performed or occurred prior to filing this application.

WHEREFORE, **Wells Fargo Bank N.A., as Trustee, for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates**, Its successors and/or assigns pray that upon final hearing, the Court enter a order pursuant to Rule 736 of the Texas Rules of Civil Procedure and as required by Section §50(a)(6), Article XVI of the Texas Constitution allowing Applicant to proceed with foreclosure and sell the property described herein in accordance with Texas Property Code §51.002.

Respectfully submitted,

BALCOM LAW FIRM, P.C.

THOMAS D. PRUYN
TBA# 24031433
GREGORY A. BALCOM
TBA# 01617100
8584 Katy Freeway, Suite #305
Houston, Texas 77024
(713) 973-9900
(713) 464-8553 FAX

VERIFICATION OF APPLICATION AND AFFIDAVIT

STATE OF CALIFORNIA §
§
COUNTY OF ORANGE §

BEFORE ME, the undersigned authority, on this day personally appeared, TOM CROFT, whose identity is known to me. After I administered an oath to him/her, upon his/her oath said:

1. "My name is TOM CROFT. I am of sound mind, capable of making this affidavit, and personally acquainted with the facts stated herein. I am the Attorney In Fact of **Wells Fargo, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates**

2. "All of the opinions set forth herein are based upon my specialized knowledge, training, and experience. I am familiar with the customs, practices, and usage within the mortgage and loan servicing industry.

3. "I have read the Application and I have personal knowledge of all the facts set forth therein and in this verification and affidavit, and all of said facts, statements, and opinions are true and correct. I am familiar with the documents referred to in this verification and affidavit and the circumstances relating to the present action because of my position as Attorney In Fact and custodian of records for **Wells Fargo, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates**, which allows me to review from the business records of **Wells Fargo, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates** regarding account number **1007965339**.

4. "Exhibits "A-B" attached hereto are the business records of **Wells Fargo, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates** Said business records are kept by **Wells Fargo, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates** in the regular course of business, and it was the regular course of business of **Wells Fargo, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates** for an employee or representative of **Wells Fargo, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates** with knowledge of the act, event, condition, or opinion, recorded to make the records or to transmit information thereof to be included in such records; and the records were made at or near the time or reasonably soon thereafter. The records attached hereto are the originals or exact duplicates of the originals.

5. "Account number **1007965339** is contractually due for the **July 1, 2010** monthly mortgage installment. The mortgage account is in default for failure to pay according to the terms of the note. The unpaid principal balance is **$502,130.90**.

6. "Applicant is the owner and holder of the Note and Security Instrument and is in possession of both."

BLF# 609413 Wolf
1007965339
6404 Buffalo Speedway
Houston, Texas 77005

P02416

WELLS FARGO, N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST, SERIES 2006-NC3 ASSET-BACKED PASS-THROUGH CERTIFICATES

Carrington Mortgage Services, its servicing agent and Attorney-in-Fact

By: _____

Title: Tom Croft, VP of REO, Affiant
Carrington Mortgage Services, LLC

STATE OF CALIFORNIA §
§
COUNTY OF ORANGE §

SUBSCRIBED AND SWORN TO Before me on the 03 day of February, 2011.

_____
Notary Public in and for the State of

ELIZABETH GONZALES
Commission # 1861968
Notary Public - California
Los Angeles County
My Comm. Expires Aug 21, 2013

BLF# 609413 Wolf
1007965339
6404 Buffalo Speedway
Houston, Texas 77005

P02417

EXHIBIT “F”

CAUSE NO. 2011-08930

IN RE: ORDER FOR FORECLOSURE CONCERNING	§	**IN THE DISTRICT COURT**
	§	
MARY ELLEN WOLF	§	**HARRIS COUNTY, TEXAS**
DAVID WOLF	§	
6404 BUFFALO SPEEDWAY	§	
HOUSTON, TEXAS 77005	§	**151ST JUDICIAL DISTRICT**

FIRST AMENDED APPLICATION UNDER TEXAS RULE OF CIVIL PROCEDURE 736 SEEKING AN ORDER TO PROCEED WITH FORECLOSURE SALE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, **Wells Fargo Bank N.A., as Trustee, for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates** hereinafter referred to as Applicant, and files this First Amended Application for an order allowing foreclosure, pursuant to Rule 736 of the Texas Rules of Civil Procedure. In support of this first amended application, Applicant would show as follows:

1. 736(1)(B): The name of the individual who, according to the records of the holder of the debt, is obligated to pay the debt secured by the property is **Mary Ellen Wolf and David Wolf**.

2. 736(1)(C): The property on which Applicant is attempting to foreclose is located at **6404 Buffalo Speedway, Houston, Texas 77005** and more particularly described as:

> **The South 1/2 of Lot Six (6), Block Thirty (30) of West University Place, an addition in Harris County, Texas, according to the Map or Plat thereof recorded in Volume 9, Page 13, of the Map Records of Harris County, Texas.**

3. 736(1)(D): Applicant is the owner, holder and assignee of a certain promissory note dated **June 15, 2006** in the original principal amount of **$400,000.00** executed by **Mary Ellen Wolf and David Wolf**. Said note was further secured by a Deed of Trust or Security Instrument Agreement of even date which is recorded in the Real Property Records of **Harris**

County, Texas and executed by **Mary Ellen Wolf and David Wolf**. ("Respondent" whether one or more). True and correct copies of the Note, Deed of Trust or Security Agreement and Related Assignments (if applicable) are attached hereto as **"Exhibit A"** collectively, and incorporated herein by reference.

4. 736(1)(E): The Applicant would further show and allege:

a. 736(1)(E)(1): A debt exists. A balance still exists on this debt. The outstanding principal balance owing is **$502,130.90**. Additionally, late charges and interest have been accruing on the debt because of the default by Respondents.

b. 736(1)(E)(2): The debt is secured by a lien created under TEX, CONST. Art. XVI, §50(a)(6), for home equity loan.

c. 736(1)(E)(3): A default has occurred in the payment of the above referenced debt and said default still exists.

d. 736(1)(E)(4): Applicant and/or its attorney has provided the requisite notice of default/notice of intent to accelerate and notice of acceleration to Respondents. Said notice was given by letter dated **December 3, 2010** and mailed to Respondent at the last known mailing address of Respondent as reflected in the records of Applicant. The notice of default/right to cure/notice of intent to accelerate and notice of acceleration were given in accordance with Texas Property Code §51.002, the Deed of Trust or Security Agreement and applicable Texas Law. True and correct copies of these notices are attached as **"Exhibit B"** and incorporated herein.

e. 736(1)(F): A default exists under the Deed of Trust or Security Agreement in that Respondents failed to pay the monthly payment which became due on **January 1, 2010** and every monthly installment that has become due since that date. Respondent is delinquent in the amounts described in the Verification of First Amended Application and Affidavit of Tom Croft attached hereto and incorporated herein by reference.

5. 736(1)(G): Applicant seeks a court order required by Texas Constitution art. XVI, §50(a)(6)(D) to sell the above describes property under the terms of the Deed of Trust or Security Agreement and Texas Property Code §51.002

6. All conditions precedent to applicant's right to recover of all relief requested in this proceeding have been performed or occurred prior to filing this first amended application.

WHEREFORE, **Wells Fargo Bank N.A., as Trustee, for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates**, Its successors and/or assigns pray that upon final hearing, the Court enter a order pursuant to Rule 736 of the Texas Rules of Civil Procedure and as required by Section §50(a)(6), Article XVI of the Texas Constitution allowing Applicant to proceed with foreclosure and sell the property described herein in accordance with Texas Property Code §51.002.

Respectfully submitted,

BALCOM LAW FIRM, P.C.

THOMAS D. PRUYN
TBA# 24031433
GREGORY A. BALCOM
TBA# 01617100
8584 Katy Freeway, Suite #305
Houston, Texas 77024
(713) 973-9900
(713) 464-8553 FAX

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this First Amended Petition was sent by regular mail and certified mail to all parties hereto appearing in this cause on the 26th day of May, 2011.

The Alonso-Bujosa Law Firm
Nina A. Bujosa
5431 Wigton Dr.
Houston, TX 77096

Thomas D. Pruyn

VERIFICATION OF FIRST AMENDED APPLICATION AND AFFIDAVIT

STATE OF CALIFORNIA §
ORANGE §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared, Tom Croft, whose identity is known to me. After I administered an oath to him/her, upon his/her oath said:

1. "My name is Tom Croft. I am of sound mind, capable of making this affidavit, and personally acquainted with the facts stated herein. I am the Vice President of Carrington Mortgage Services, LLC, Attorney-in-fact and mortgage servicer for **Wells Fargo, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates.**

2. "All of the opinions set forth herein are based upon my specialized knowledge, training, and experience. I am familiar with the customs, practices, and usage within the mortgage and loan servicing industry.

3. "I have read the Application and I have personal knowledge of all the facts set forth therein and in this verification and affidavit, and all of said facts, statements, and opinions are true and correct. I am familiar with the documents referred to in this verification and affidavit and the circumstances relating to the present action because of my position as Vice President and custodian of records for Carrington Mortgage Services, LLC, which allows me to review from the business records of **Wells Fargo, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates** regarding account number **1007965339.**

4. "Exhibits "A-B" attached hereto are the business records of **Wells Fargo, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates** Said business records are kept by in the regular course of business, and it was the regular course of business of **Wells Fargo, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates** for an employee or representative of **Wells Fargo, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates** with knowledge of the act, event, condition, or opinion, recorded to make the records or to transmit information thereof to be included in such records; and the records were made at or near the time or reasonably soon thereafter. The records attached hereto are the originals or exact duplicates of the originals.

5. "Account number **1007965339** is contractually due for the **January 1, 2010** monthly mortgage installment. The mortgage account is in default for failure to pay according to the terms of the note. The unpaid principal balance is **$502,130.90**.

6. "Applicant is the owner and holder of the Note and Security Instrument and is in possession of both."

Carrington Mortgage Services, LLC its servicing agent and Attorney-in-Fact

By: _____

Title: Tom Croft, VP of REO
Carrington Mortgage Services, LLC Affiant

STATE OF CALIFORNIA §
§
COUNTY OF ORANGE §

SUBSCRIBED AND SWORN TO Before me on the 13th day of May, 2011.

_____
Notary Public in and for the State of

ELIZABETH GONZALES
Commission # 1861968
Notary Public - California
Los Angeles County
My Comm. Expires Aug 21, 2013

609413/Wolf/Verification/FMC/6404 Buffalo Speedway

P02424

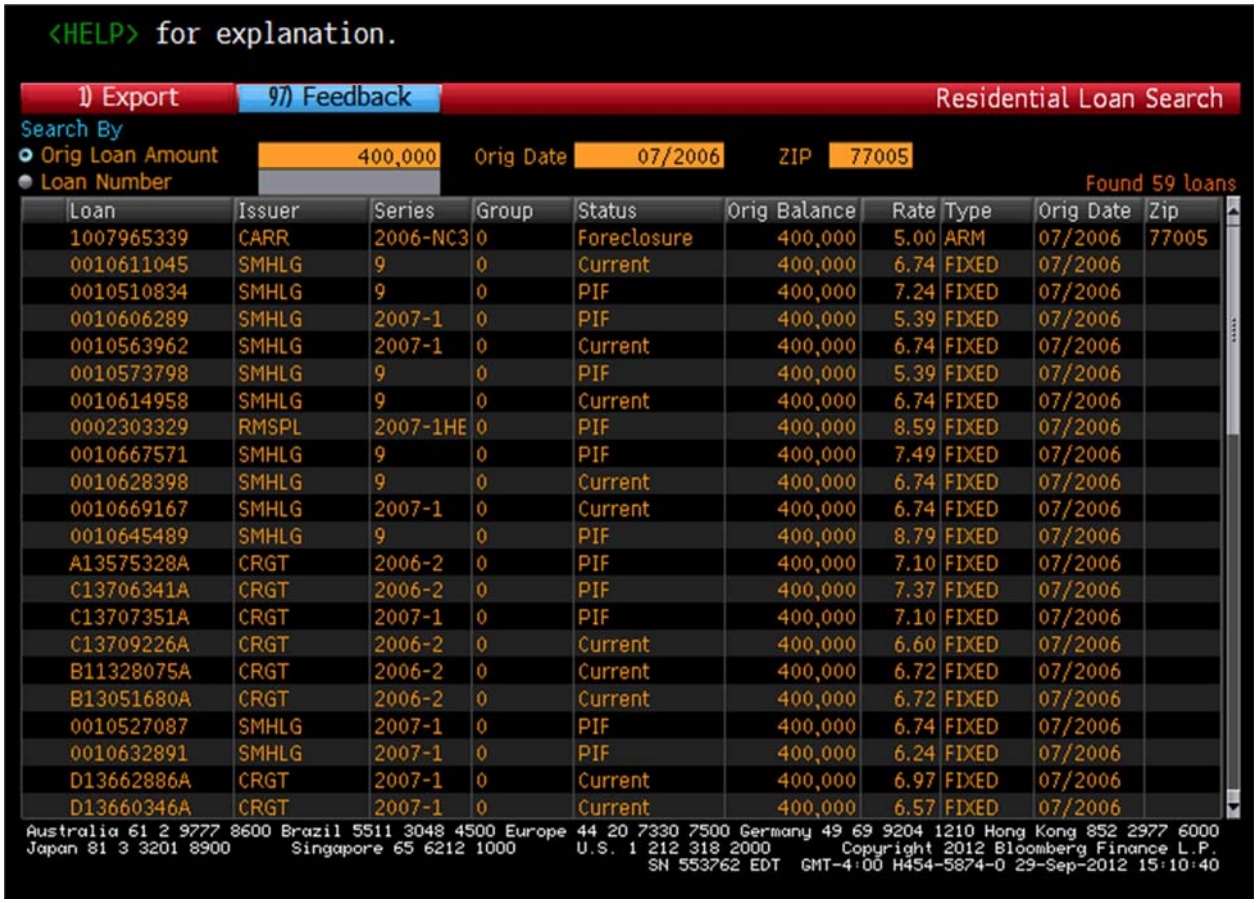
EXHIBIT “G”

Bloomberg Research Results

September 29, 2012

Borrower: Mary Ellen Wolf and David Wolf
Lender: New Century Mortgage Corporation
Date of Transaction: June 15, 2006

Our inquiry using Bloomberg Professional's Residential Loan Search engine successfully traced the above referenced Mortgage Loan which is being tracked as an asset of the Carrington Mortgage Loan Trust, Series 2006-NC3 ("CARR 2006-NC3"). The Loan Level Details on the following pages match the characteristics of the subject Fixed/Adjustable Rate Note, Security Instrument, and Fixed/Adjustable Rate Rider. (*See* Loan Number 1007965339 Below)



<HELP> for explanation.

1) Export | 97) Feedback | Residential Loan Search

Search By
Orig Loan Amount 400,000 Orig Date 07/2006 ZIP 77005
Loan Number

Found 59 loans

Loan	Issuer	Series	Group	Status	Orig Balance	Rate	Type	Orig Date	Zip
1007965339	CARR	2006-NC3	0	Foreclosure	400,000	5.00	ARM	07/2006	77005
0010611045	SMHLG	9	0	Current	400,000	6.74	FIXED	07/2006	
0010510834	SMHLG	9	0	PIF	400,000	7.24	FIXED	07/2006	
0010606289	SMHLG	2007-1	0	PIF	400,000	5.39	FIXED	07/2006	
0010563962	SMHLG	2007-1	0	Current	400,000	6.74	FIXED	07/2006	
0010573798	SMHLG	9	0	PIF	400,000	5.39	FIXED	07/2006	
0010614958	SMHLG	9	0	Current	400,000	6.74	FIXED	07/2006	
0002303329	RMSPL	2007-1HE	0	PIF	400,000	8.59	FIXED	07/2006	
0010667571	SMHLG	9	0	PIF	400,000	7.49	FIXED	07/2006	
0010628398	SMHLG	9	0	Current	400,000	6.74	FIXED	07/2006	
0010669167	SMHLG	2007-1	0	Current	400,000	6.74	FIXED	07/2006	
0010645489	SMHLG	9	0	PIF	400,000	8.79	FIXED	07/2006	
A13575328A	CRGT	2006-2	0	PIF	400,000	7.10	FIXED	07/2006	
C13706341A	CRGT	2006-2	0	PIF	400,000	7.37	FIXED	07/2006	
C13707351A	CRGT	2007-1	0	PIF	400,000	7.10	FIXED	07/2006	
C13709226A	CRGT	2006-2	0	Current	400,000	6.60	FIXED	07/2006	
B11328075A	CRGT	2006-2	0	Current	400,000	6.72	FIXED	07/2006	
B13051680A	CRGT	2006-2	0	Current	400,000	6.72	FIXED	07/2006	
0010527087	SMHLG	2007-1	0	PIF	400,000	6.74	FIXED	07/2006	
0010632891	SMHLG	2007-1	0	PIF	400,000	6.24	FIXED	07/2006	
D13662886A	CRGT	2007-1	0	Current	400,000	6.97	FIXED	07/2006	
D13660346A	CRGT	2007-1	0	Current	400,000	6.57	FIXED	07/2006	

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Japan 81 3 3201 8900 Singapore 65 6212 1000 U.S. 1 212 318 2000 Copyright 2012 Bloomberg Finance L.P.
SN 553762 EDT GMT-4:00 H454-5874-0 29-Sep-2012 15:10:40

Bloomberg Research Results

September 29, 2012

Borrower: Mary Ellen Wolf and David Wolf
Lender: New Century Mortgage Corporation
Date of Transaction: June 15, 2006

The Loan Details provided by Bloomberg in the screen shot below indicate that the subject Mortgage Loan is being tracked on Line #206 as Loan Number 1007965339.

<HELP> for explanation.
<MENU> Return to Previous Screen.

99) Stratify: None | 99) Export | CARR 2006-NC3 | Loan Details

Group: ALL collateral | As of: 09/12

	Count	Curr, Amt (USD)	Bal%	WALTV	Score	Orig. Amt	WAC	WAM	WALA
Active Loans	2,692	551,356,183	100	79.5	615	536,047,770	5.94	348	75

	Loan	Pay History	Curr. Amt	Orig Amt	Group(s)	Modifications	Mod Date	Rate
200	1008038161	CCCCCCCCCCCCCCCCCC33C3C	402,107	404,000	0	Recap, Term, Ballo	08/2009	5.00
201	1007967024	FFFFFFF63CCCCCCCCCM63CCC	431,728	403,750	0	Rate, Recap, Term,	03/2011	4.88
202	1008103072	FFFFFFFFFFFFFFFFFFFFFFF	397,343	403,750	0			8.20
203	1008024880	BBBBBBBBBBBBBBBBBBFFF6C3	447,895	403,000	0	Rate, Recap, ARM,	02/2010	5.00
204	1008006034	3CCCMFFFFFFFFFFFF63CCC9	483,805	400,500	0	Rate, Recap, Term,	05/2012	4.00
205	1008462736	99963CCCCM963CCCCCCCCC3C	438,303	400,500	0	Rate, Recap, Term,	12/2011	4.25
206	1007965339	FFFFFFFFFFFFFFFFFFFFF99	487,943	400,000	0	Rate, Recap, Term,	01/2010	5.00
207	1007964107	BBMBBBBBBBBBBBBBBBBCCCC	474,522	400,000	0	Rate, Recap, Term,	07/2012	2.00
208	1008206531	CCCCCCCCCCCCCCCCCCCCCCC	460,832	400,000	0	Rate, Recap, Term,	02/2010	5.00
209	1008252142	BBBBBBBBBBCCCCCCCCCCCCC	428,126	400,000	0	Rate, Recap, Term,	04/2010	5.00
210	1008330120	CCC363363CC6363CCCCCCCCC	427,070	400,000	0	Rate, Recap, Term,	07/2010	5.13
211	1008070295	RRRRRRRRRRRFFFBBFFFFFFFF	427,053	400,000	0	Rate, P&I	01/2009	6.50
212	1007553346	CCCCCCCCCCCCCCCCCCCCCCC	391,524	400,000	0			8.99
213	1008216487	CCCCCCCCCCCCCCCCCCCCCCC	389,373	400,000	0	Rate, Recap, Term,	04/2010	6.63
214	1008277161	FFFFFFFFFF63CC3CCCCCCCC	411,071	399,200	0	Rate, Recap, Term,	03/2010	5.00
215	1007976933	F99963CCCCCCCCCCCCCCCCC	394,166	399,200	0	Rate, P&I	02/2009	6.50
216	1007925622	FFFFFFFFFFFFFFFFF999999	431,469	399,000	0	Rate, P&I	04/2009	6.50
217	1006761578	F9999963CCCCCCCCC33CCMFF	491,257	398,250	0	Rate, Recap, Term,	12/2010	4.38

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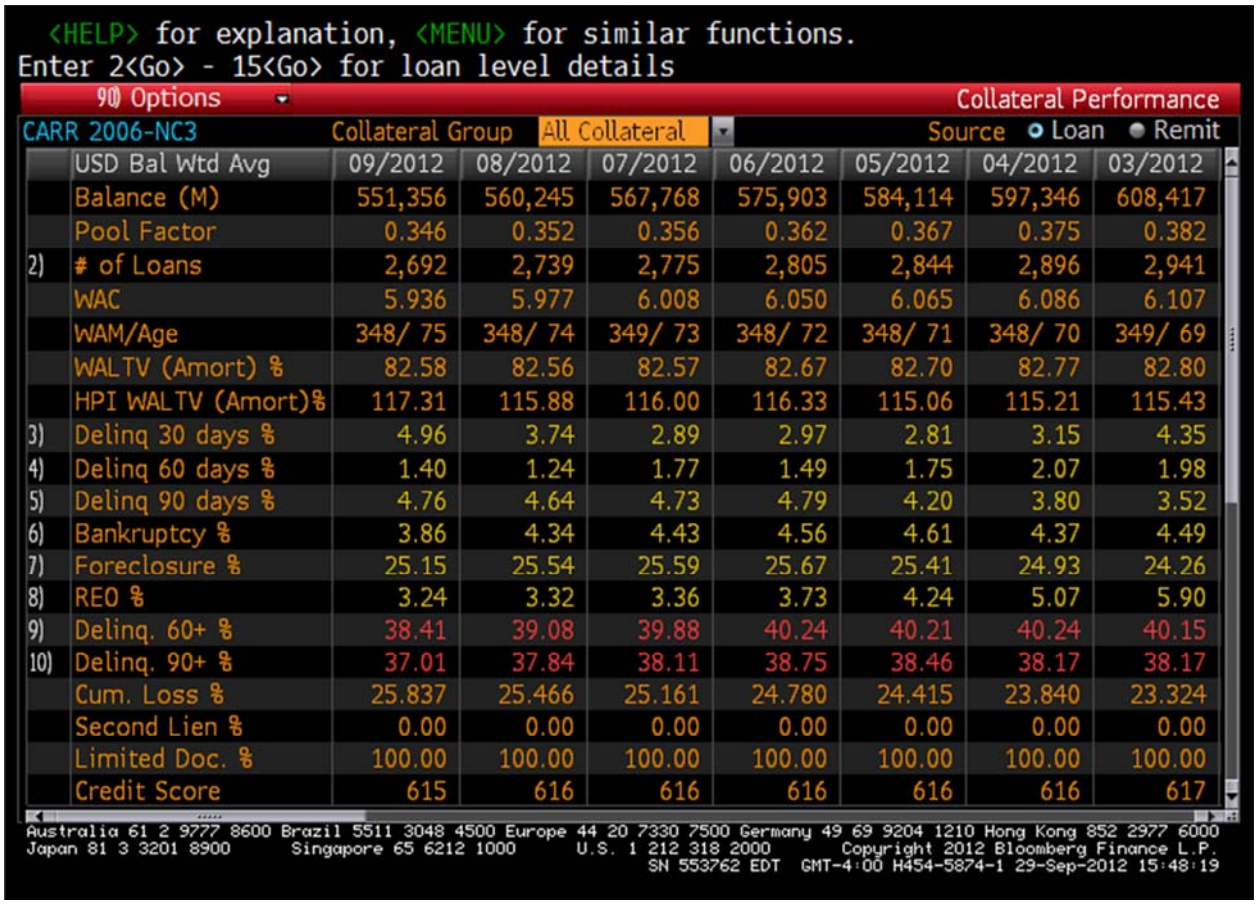
Bloomberg Research Results

September 29, 2012

Borrower: Mary Ellen Wolf and David Wolf
Lender: New Century Mortgage Corporation
Date of Transaction: June 15, 2006

Bloomberg's Collateral Performance screen shot below indicates that as of September 29, 2012 there were 2,692 loans remaining in CARR 2006-NC3 and that the 60+ day delinquency rate stood at an astronomical rate of 38.41%.



<HELP> for explanation, <MENU> for similar functions.
Enter 2<Go> - 15<Go> for loan level details

Options — Collateral Performance

CARR 2006-NC3 | Collateral Group: All Collateral | Source: Loan / Remit

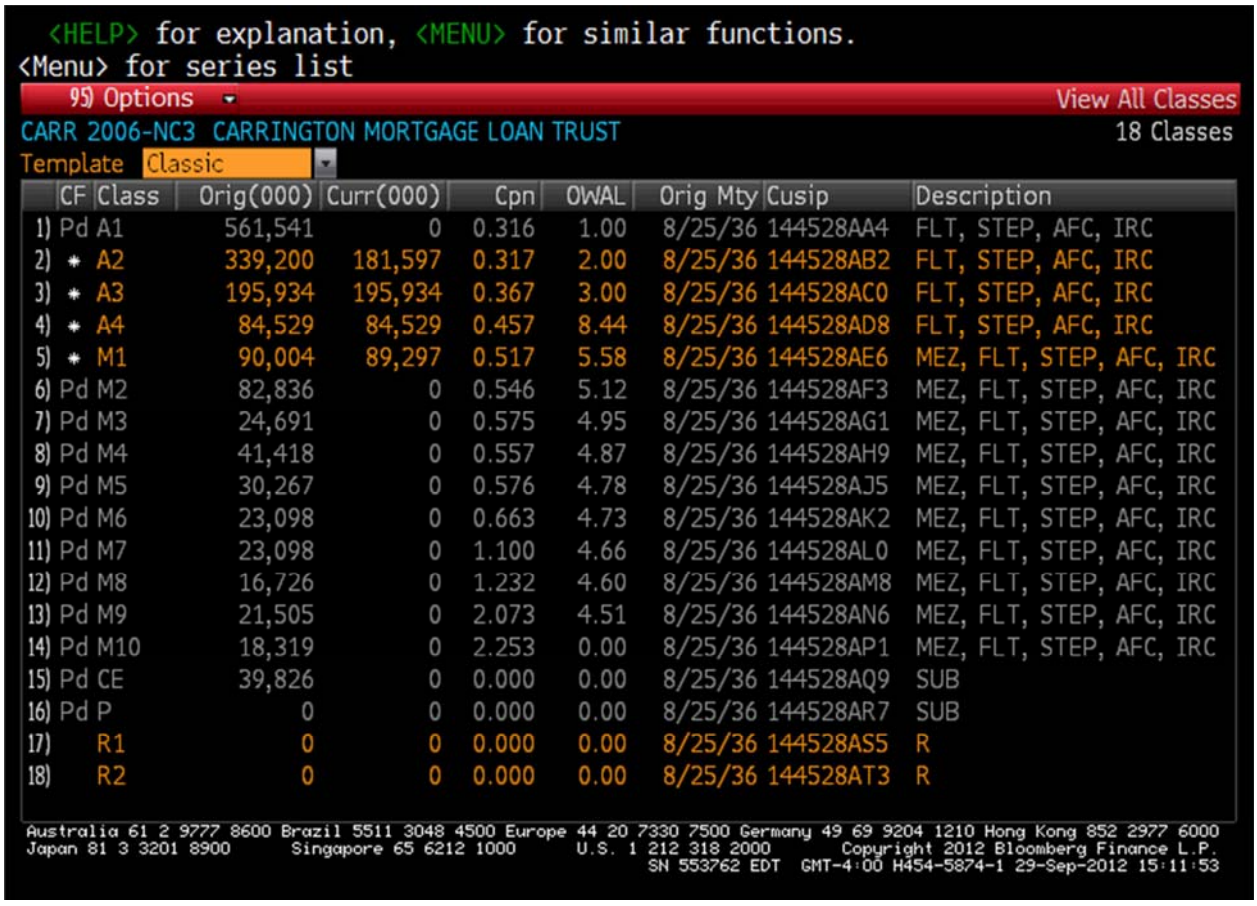
	USD Bal Wtd Avg	09/2012	08/2012	07/2012	06/2012	05/2012	04/2012	03/2012
	Balance (M)	551,356	560,245	567,768	575,903	584,114	597,346	608,417
	Pool Factor	0.346	0.352	0.356	0.362	0.367	0.375	0.382
2)	# of Loans	2,692	2,739	2,775	2,805	2,844	2,896	2,941
	WAC	5.936	5.977	6.008	6.050	6.065	6.086	6.107
	WAM/Age	348/ 75	348/ 74	349/ 73	348/ 72	348/ 71	348/ 70	349/ 69
	WALTV (Amort) %	82.58	82.56	82.57	82.67	82.70	82.77	82.80
	HPI WALTV (Amort)%	117.31	115.88	116.00	116.33	115.06	115.21	115.43
3)	Delinq 30 days %	4.96	3.74	2.89	2.97	2.81	3.15	4.35
4)	Delinq 60 days %	1.40	1.24	1.77	1.49	1.75	2.07	1.98
5)	Delinq 90 days %	4.76	4.64	4.73	4.79	4.20	3.80	3.52
6)	Bankruptcy %	3.86	4.34	4.43	4.56	4.61	4.37	4.49
7)	Foreclosure %	25.15	25.54	25.59	25.67	25.41	24.93	24.26
8)	REO %	3.24	3.32	3.36	3.73	4.24	5.07	5.90
9)	Delinq. 60+ %	38.41	39.08	39.88	40.24	40.21	40.24	40.15
10)	Delinq. 90+ %	37.01	37.84	38.11	38.75	38.46	38.17	38.17
	Cum. Loss %	25.837	25.466	25.161	24.780	24.415	23.840	23.324
	Second Lien %	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	Limited Doc. %	100.00	100.00	100.00	100.00	100.00	100.00	100.00
	Credit Score	615	616	616	616	616	616	617

Bloomberg Research Results

September 29, 2012

Borrower: Mary Ellen Wolf and David Wolf
Lender: New Century Mortgage Corporation
Date of Transaction: June 15, 2006

Bloomberg's View All Classes screen shot below clearly illustrates that all but four (4) of the structured finance tranches have been either paid off, or were terminated as a result of the high delinquency rate. The ownership of the residual tranches R1, and R2 should be investigated.



<HELP> for explanation, <MENU> for similar functions.
<Menu> for series list

95) Options — View All Classes

CARR 2006-NC3 CARRINGTON MORTGAGE LOAN TRUST — 18 Classes

Template: Classic

	CF	Class	Orig(000)	Curr(000)	Cpn	OWAL	Orig Mty	Cusip	Description
1)	Pd	A1	561,541	0	0.316	1.00	8/25/36	144528AA4	FLT, STEP, AFC, IRC
2)	*	A2	339,200	181,597	0.317	2.00	8/25/36	144528AB2	FLT, STEP, AFC, IRC
3)	*	A3	195,934	195,934	0.367	3.00	8/25/36	144528AC0	FLT, STEP, AFC, IRC
4)	*	A4	84,529	84,529	0.457	8.44	8/25/36	144528AD8	FLT, STEP, AFC, IRC
5)	*	M1	90,004	89,297	0.517	5.58	8/25/36	144528AE6	MEZ, FLT, STEP, AFC, IRC
6)	Pd	M2	82,836	0	0.546	5.12	8/25/36	144528AF3	MEZ, FLT, STEP, AFC, IRC
7)	Pd	M3	24,691	0	0.575	4.95	8/25/36	144528AG1	MEZ, FLT, STEP, AFC, IRC
8)	Pd	M4	41,418	0	0.557	4.87	8/25/36	144528AH9	MEZ, FLT, STEP, AFC, IRC
9)	Pd	M5	30,267	0	0.576	4.78	8/25/36	144528AJ5	MEZ, FLT, STEP, AFC, IRC
10)	Pd	M6	23,098	0	0.663	4.73	8/25/36	144528AK2	MEZ, FLT, STEP, AFC, IRC
11)	Pd	M7	23,098	0	1.100	4.66	8/25/36	144528AL0	MEZ, FLT, STEP, AFC, IRC
12)	Pd	M8	16,726	0	1.232	4.60	8/25/36	144528AM8	MEZ, FLT, STEP, AFC, IRC
13)	Pd	M9	21,505	0	2.073	4.51	8/25/36	144528AN6	MEZ, FLT, STEP, AFC, IRC
14)	Pd	M10	18,319	0	2.253	0.00	8/25/36	144528AP1	MEZ, FLT, STEP, AFC, IRC
15)	Pd	CE	39,826	0	0.000	0.00	8/25/36	144528AQ9	SUB
16)	Pd	P	0	0	0.000	0.00	8/25/36	144528AR7	SUB
17)		R1	0	0	0.000	0.00	8/25/36	144528AS5	R
18)		R2	0	0	0.000	0.00	8/25/36	144528AT3	R

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Bloomberg Research Results

September 29, 2012

Borrower: Mary Ellen Wolf and David Wolf
Lender: New Century Mortgage Corporation
Date of Transaction: June 15, 2006

Bloomberg' Structure Finance Notes in the screen shot below provide a snapshot of several key entities who participated in structuring the CARR 2006-NC3 securitization.

Bloomberg Research Results

September 29, 2012

Borrower: Mary Ellen Wolf and David Wolf
Lender: New Century Mortgage Corporation
Date of Transaction: June 15, 2006

BLOOMBERG FIELDS	BLOOMBERG LOAN LEVEL DETAILS	LOAN DOCUMENTS	DATA POINTS
Loan	1007965339	107965339*	1. Match
Pay History	FFFFFFFFFFFFFFFFFFFFF99		
Current Amount	$487,942.72		
Original Amount	$400,000.00	$400,000.00	2. Match
Group(s)	0		
Modifications	Rate, Recap, Term, P&I		
Modification Date	01/2010		
Rate	5.000		
Previous Rate	7.250	10.150%**	3. No Match
Principal & Interest	$2,494.17		
Previous Principal & Interest	$3,159.46	$3,554.71***	4. No Match
Interest Only Term	0		
Documentation	Limited		
Original Loan To Value	80.00		
Amortization Loan To Value	97.59		
HA Loan To Value	88.14		
FICO Score	519		
Age	74		
Months To Maturity	406		
Type	ARM	ARM	5. Match
Index	LIBOR6MO		6. Match
Initial MTR	-49		
Life Cap – Interest Rate	17.150	17.150%	7. Match
Life Floor – Interest Rate	10.150	10.150%	8. Match
Adjustable Rate Cap	1.500	1.500%	9. Match

Bloomberg Research Results

September 29, 2012

Borrower: Mary Ellen Wolf and David Wolf
Lender: New Century Mortgage Corporation
Date of Transaction: June 15, 2006

BLOOMBERG FIELDS	BLOOMBERG LOAN LEVEL DETAILS	LOAN DOCUMENTS	DATA POINTS
Adjustable Rate Floor	0.000	1.500%	10. Match
Margin	6.700	6.700%	11. Match
Geographic Region	TX	TX	12. Match
Delinquency Days	-		
Special Servicing	Foreclosure		
Property Type	Single Housing		
Occupancy	Own		
Purpose	Equity takeout		
Origination (Focal Date)	07/2006	07/2006	13. Match
Zip Code	77005	77005	14. Match
MSA	Houston-Sugar Land-Baytown, TX		
Servicing Fees	0.5		
Lien	1		
#Months B/F/R	22		

DATA POINTS – denote instances where information is contained both in the "Bloomberg Loan Level Details" and the "Loan Documents" we reviewed.

* Loan Numbers are often re-serialized when loans have been pooled for securitization.

** The Previous Rate in the Bloomberg servicer tape is different from the Loan Documents due to subsequent interest rate changes from the origination of the loan to the present time.

*** Likewise, the Previous P&I (Principal and Interest) is different due to the fact that these amounts reflect different time periods.

**** The Adjustable Rate Cap and Floor govern the increase or decrease that interest rates can change on any given change date and are always the same amount. When the "Adjustable Rate Floor" is given a value of 0.000 we reference the "Adjustable Rate Cap" to determine if there is a "Match" for this Data Point.

EXHIBIT “H”

Prospectus Supplement dated August 7, 2006 (To Prospectus dated August 1, 2006)

$1,561,439,000 (Approximate)

Stanwich Asset Acceptance Company, L.L.C.

Depositor

Carrington Mortgage Loan Trust, Series 2006-NC3

Issuing Entity

Carrington Securities, LP

Sponsor

New Century Mortgage Corporation

Servicer

Carrington Mortgage Loan Trust, Series 2006-NC3
Asset-Backed Pass-Through Certificates

Offered Certificates

The trust will consist primarily of a pool of one- to four-family adjustable-rate and fixed-rate, interest-only, balloon and fully-amortizing, first lien and second lien, closed-end, subprime mortgage loans. The trust will issue four classes of senior certificates, the Class A Certificates, designated Class A-1, Class A-2, Class A-3 and Class A-4, and ten classes of mezzanine certificates, the Class M Certificates, designated Class M-1, Class M-2, Class M-3, Class M-4, Class M-5, Class M-6, Class M-7, Class M-8, Class M-9 and Class M-10. Only the Class A Certificates and Class M Certificates (other than the Class M-10 Certificates) are offered by this prospectus supplement and are more fully described in the table on page S-8 of this prospectus supplement.

Credit Enhancement

Credit enhancement for the offered certificates consists of:

- excess cash flow and overcollateralization; and
- subordination provided to the Class A Certificates by the Class M Certificates, and subordination provided to the Class M Certificates by each class of Class M Certificates with a lower payment priority.

The trust will also enter into a swap agreement for the benefit of the Class A Certificates and Class M Certificates.

Distributions on the certificates will be on the 25th of each month or, if the 25th is not a business day, on the next business day, beginning September 25, 2006.

You should consider carefully the risk factors beginning on page S-18 in this prospectus supplement.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the offered certificates or determined that this prospectus supplement or the prospectus is accurate or complete. Any representation to the contrary is a criminal offense.

The Attorney General of the State of New York has not passed on or endorsed the merits of this offering. Any representation to the contrary is unlawful.

The certificates represent interests only in the trust, as the issuing entity, and do not represent interests in or obligations of Stanwich Asset Acceptance Company, L.L.C., as the depositor, Carrington Securities, LP, as the sponsor, or any of their affiliates.

Class[1]	Initial Certificate Principal Balance[2]	Price to Public	Underwriting Discount	Proceeds to the Depositor[3]	Class[1]	Initial Certificate Principal Balance[2]	Price to Public	Underwriting Discount	Proceeds to the Depositor[3]
Class A-1	$571,273,000	100.0000%	0.2500%	99.7500%	Class M-4	$42,135,000	100.0000%	0.2500%	99.7500%
Class A-2	$345,073,000	100.0000%	0.2500%	99.7500%	Class M-5	$30,791,000	100.0000%	0.2500%	99.7500%
Class A-3	$199,331,000	100.0000%	0.2500%	99.7500%	Class M-6	$23,499,000	100.0000%	0.2500%	99.7500%
Class A-4	$ 85,991,000	100.0000%	0.2500%	99.7500%	Class M-7	$23,499,000	100.0000%	0.2500%	99.7500%
Class M-1	$ 91,563,000	100.0000%	0.2500%	99.7500%	Class M-8	$17,016,000	100.0000%	0.2500%	99.7500%
Class M-2	$ 84,271,000	100.0000%	0.2500%	99.7500%	Class M-9	$21,878,000	100.0000%	0.2500%	99.7500%
Class M-3	$ 25,119,000	100.0000%	0.2500%	99.7500%					

(1) The pass-through rates on such classes will be based on one-month LIBOR plus the applicable margin, subject to certain caps as described in this prospectus supplement.

(2) Approximate, subject to the variance in the outstanding principal balance of the mortgage loans described in the second paragraph of "*Description of the Mortgage Pool–General*" in this prospectus supplement.

(3) Before deducting expenses payable by the depositor estimated to be approximately $1,650,000.

Bear, Stearns & Co. Inc.
(Lead Manager)

Citigroup
(Co-Manager)

Carrington Investment Services, LLC
(Selected Dealer)

P02434

Important Notice About Information Presented in this Prospectus Supplement and the Accompanying Prospectus

We provide information to you about the offered certificates in two separate documents that provide progressively more detail:

- the accompanying prospectus, which provides general information, some of which may not apply to your series of certificates; and
- this prospectus supplement, including Annex I attached hereto, which describes the specific terms of your series of certificates.

The depositor's principal offices are located at Seven Greenwich Office Park, 599 West Putnam Avenue, Greenwich, Connecticut 06830 and its telephone number is (203) 661-6186.

This prospectus is being delivered to you solely to provide you with information about the offering of the offered certificates referred to in this prospectus and to solicit an offer to purchase the offered certificates, when, as and if issued. Any such offer to purchase made by you will not be accepted and will not constitute a contractual commitment by you to purchase any of the certificates, until we have accepted your offer to purchase the offered certificates.

The certificates referred to in these materials are being sold when, as and if issued. The issuer is not obligated to issue such certificates or any similar security and the underwriter's obligation to deliver such offered certificates is subject to the terms and conditions of the underwriting agreement with the issuer and the availability of such certificates when, as and if issued by the issuer. You are advised that the terms of the certificates, and the characteristics of the mortgage loan pool backing them, may change (due, among other things, to the possibility that mortgage loans that comprise the pool may become delinquent or defaulted or may be removed or replaced and that similar or different mortgage loans may be added to the pool, and that one or more classes of certificates may be split, combined or eliminated), at any time prior to issuance or availability of a final prospectus. You are advised that certificates may not be issued that have the characteristics described in these materials. The underwriter's obligation to sell such offered certificates to you is conditioned on the mortgage loans and offered certificates having the characteristics described in these materials. If for any reason the issuer does not deliver such certificates, the underwriter will notify you, and neither the issuer nor any underwriter will have any obligation to you to deliver all or any portion of the offered certificates which you have committed to purchase, and none of the issuer nor any underwriter will be liable for any costs or damages whatsoever arising from or related to such non-delivery.

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

Page

Summary

The following summary provides a brief description of material aspects of this offering, and does not contain all of the information that you should consider in making your investment decision. To understand the terms of the offered certificates, you should read carefully this entire document and the prospectus.

Issuing entity	Carrington Mortgage Loan Trust, Series 2006-NC3.
Title of the offered certificates	Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates.
Depositor and Issuer	Stanwich Asset Acceptance Company, L.L.C.
Sponsor	Carrington Securities, LP.
Originators	New Century Mortgage Corporation, a California Corporation, and Home123 Corporation, a California Corporation.
Servicer	New Century Mortgage Corporation.
Trustee	Wells Fargo Bank, N.A.
Swap Counterparty	Swiss Re Financial Products Corporation.
Responsible Party	NC Capital Corporation. The responsible party makes certain representations and warranties with respect to the mortgage loans and has certain obligations with respect to the repurchase and substitution of the mortgage loans. *See "Description of the Mortgage Pool—General" in this prospectus supplement.*
Mortgage pool	7,548 mortgage loans consisting of adjustable-rate and fixed-rate, interest-only, balloon and fully-amortizing, first lien and second lien, closed-end, subprime mortgage loans with an aggregate principal balance of approximately $1,620,590,236 as of the cut-off date after application of scheduled payments due on or before the cut-off date whether or not received and subject to a permitted variance of plus or minus 5%.
Cut-off date	The close of business on August 1, 2006.
Closing date	On or about August 10, 2006.
Distribution dates	On the 25th of each month or, if the 25th is not a business day, on the next business day, beginning in September 2006.

Final scheduled distribution date	The final scheduled distribution date with respect to the Class A-1 Certificates, Class A-2 Certificates, Class A-3 Certificates and Class A-4 Certificates will be the distribution date in January 2031, February 2036, July 2036 and July 2036, respectively. The final scheduled distribution date with respect to the Class M Certificates will be the distribution date in August 2036. The actual final distribution date with respect to any class of certificates could be substantially earlier. *See "Certain Yield and Prepayment Considerations" in this prospectus supplement.*
Form of offered certificates	Book-entry. *See "Description of the Certificates—Book-Entry Registration of the Offered Certificates" in this prospectus supplement.*
Minimum denominations	Class A and Class M-1 Certificates: $100,000 and integral multiples of $1 in excess thereof. Class M-2, Class M-3, Class M-4, Class M-5, Class M-6, Class M-7, Class M-8 and Class M-9 Certificates: $250,000 and integral multiples of $1 in excess thereof.
ERISA Considerations	Subject to the considerations described in "Certain ERISA Considerations" in this prospectus supplement and in the accompanying prospectus, the Class A-1 and the Class A-2 Certificates are expected to be eligible for purchase by persons investing assets of employee benefit plans, individual retirement accounts or other retirement accounts or arrangements, provided that certain conditions are met. The depositor does not intend to rely on the Exemption, as described in "Certain ERISA Considerations" in the prospectus, for the purchase and holding of the Class A-1 or the Class A-2 Certificates prior to the termination of the swap agreement in January 2012. Fiduciaries of plans subject to ERISA or Section 4975 of the Internal Revenue Code are encouraged to consult with their legal advisors before investing in the Class A-1 or the Class A-2 Certificates. Until the swap agreement terminates in January 2012, the Class A-3 Certificates, the Class A-4 Certificates and the Class M Certificates may not be

	purchased by or transferred to Benefit Plans (as defined in this prospectus supplement under "Certain ERISA Considerations"). Each purchaser and transferee of a Class A-3 Certificate, a Class A-4 Certificate or a Class M Certificate or any interest therein will be deemed to have represented, by virtue of its acquisition or holding of such certificate or any interest therein, that it is not a Benefit Plan (as defined in this prospectus supplement under "Certain ERISA Considerations"). *See "Certain ERISA Considerations" in this prospectus supplement and in the accompanying prospectus.*
Legal investment.....	The offered certificates will not constitute "mortgage related securities" for purposes of the Secondary Mortgage Market Enhancement Act of 1984, or SMMEA. *See "Legal Investment" in this prospectus supplement and "Legal Investment Matters" in the prospectus.*

Offered Certificates

Class	Pass-Through Rate[1]	Initial Certificate Principal Balance[2]	Initial Rating (S&P/Moody's/Fitch)[3]	Designations	Final Scheduled Distribution Date
Class A Certificates:					
A-1	Adjustable	571,273,000	AAA/Aaa/AAA	Senior/ Adjustable Rate	January 25, 2031
A-2	Adjustable	345,073,000	AAA/Aaa/AAA	Senior/ Adjustable Rate	February 25, 2036
A-3	Adjustable	199,331,000	AAA/Aaa/AAA	Senior/ Adjustable Rate	July 25, 2036
A-4	Adjustable	85,991,000	AAA/Aaa/AAA	Senior/ Adjustable Rate	July 25, 2036
Total Class A Certificates:		1,201,668,000			
Class M Certificates:					
M-1	Adjustable	91,563,000	AA+/Aa1/AA+	Mezzanine/Adjustable Rate	August 25, 2036
M-2	Adjustable	84,271,000	AA/Aa2/AA	Mezzanine/Adjustable Rate	August 25, 2036
M-3	Adjustable	25,119,000	AA-/Aa3/AA-	Mezzanine/Adjustable Rate	August 25, 2036
M-4	Adjustable	42,135,000	A+/A1/A+	Mezzanine/Adjustable Rate	August 25, 2036
M-5	Adjustable	30,791,000	A/A2/A	Mezzanine/Adjustable Rate	August 25, 2036
M-6	Adjustable	23,499,000	A-/A3/A-	Mezzanine/Adjustable Rate	August 25, 2036
M-7	Adjustable	23,499,000	BBB+/Baa1/BBB+	Mezzanine/Adjustable Rate	August 25, 2036
M-8	Adjustable	17,016,000	BBB/Baa1/BBB	Mezzanine/Adjustable Rate	August 25, 2036
M-9	Adjustable	21,878,000	BBB-/Baa2/BBB-	Mezzanine/Adjustable Rate	August 25, 2036
Total Offered Class M Certificates:		359,771,000			
Total Offered Certificates:		1,561,439,000			

Non-Offered Certificates

M-10	Adjustable	18,637,000	BB+/Baa3/BB+	Mezzanine/Adjustable Rate	August 25, 2036
CE	N/A	40,514, 136	NR	Subordinate	N/A
P	N/A	100	NR	Prepayment Charges	N/A
R-I	N/A	N/A	NR	Residual	N/A
R-II	N/A	N/A	NR	Residual	N/A
Total non-offered certificates:		59,151,236			
Total offered and non-offered certificates:		1,620,590,236			

(1) See the description of "Pass-Through Rates" on the following page.
(2) Approximate, subject to the variance in the outstanding principal balance of the mortgage loans described in the second paragraph of "Description of the Mortgage Pool—General" in this prospectus supplement.
(3) It is a condition to the issuance of the offered certificates that they be given the ratings listed above.

Other Information:

Only the offered certificates are offered for sale pursuant to this prospectus supplement and the related prospectus. The non-offered certificates will not be offered.

Pass-Through Rates:

The pass-through rate on each class of Class A and Class M Certificates will be the least of:

- a per annum rate equal to one-month LIBOR plus the related margin;
- a per annum rate equal to the weighted average of the net mortgage rates on the then outstanding mortgage loans (after taking into account any net swap payments owed to the swap counterparty or swap termination payments owed to the swap counterparty not due to a swap counterparty trigger event), adjusted to a rate based on the actual number of days in a month and a 360-day year; and
- 12.50%.

Related Margin (%)

Class	(1)	(2)
A-1	0.050%	0.100%
A-2	0.100%	0.200%
A-3	0.150%	0.300%
A-4	0.240%	0.480%
M-1	0.300%	0.450%
M-2	0.310%	0.465%
M-3	0.330%	0.495%
M-4	0.370%	0.555%
M-5	0.390%	0.585%
M-6	0.450%	0.675%
M-7	0.850%	1.275%
M-8	0.970%	1.455%
M-9	1.820%	2.730%
M-10	2.000%	3.000%

(1) For the interest accrual period for each distribution date through and including the first distribution date on which the aggregate principal balance of the mortgage loans remaining in the mortgage pool is reduced to less than 10% of the aggregate principal balance of the mortgage loans as of the cut-off date.
(2) For each interest accrual period thereafter.

The Trust

The depositor will establish a trust with respect to the Series 2006-NC3 Certificates. On the closing date, the depositor will deposit the pool of mortgage loans described in this prospectus supplement into the trust. In addition, the trust will enter into a swap agreement for the benefit of the Class A Certificates and Class M Certificates. Each certificate will represent a partial ownership interest in the trust.

The Mortgage Pool

The mortgage loans will consist of adjustable-rate and fixed-rate, interest-only, balloon and fully-amortizing, first lien and second lien, closed-end, subprime mortgage loans. The mortgage loans to be deposited into the trust will have the following approximate characteristics as of the cut-off date:

	Range	Weighted Average
Principal balance	$30,152 to $649,848	$214,705*
Mortgage rate	5.575% to 13.500%	8.192%
Remaining term to stated maturity (months)	118 to 359	358

* Principal balance is an average.

The properties securing the mortgage loans include attached or detached, one- to four-family dwelling units, individual condominium units and modular homes.

The interest rate on each adjustable rate mortgage loan will adjust on each adjustment date to equal the sum of the related index and the related note margin on the mortgage note, subject to periodic rate caps and a maximum and minimum interest rate, as described in this prospectus supplement.

The securities described on the table on page S-8 are the only securities backed by this mortgage pool that will be issued.

For additional information regarding the mortgage pool, see "Description of the Mortgage Pool" in this prospectus supplement.

Servicing

New Century Mortgage Corporation will service the mortgage loans, as more fully described under "Pooling and Servicing Agreement" herein.

The servicing fees for each mortgage loan are payable out of the interest payments on that mortgage loan prior to payments to certificateholders. The servicing fees consist of servicing fees payable to the servicer, which are payable with respect to each mortgage loan at a rate of 0.500% per annum, and other related compensation payable to the servicer including assumption fees, late payment charges and other miscellaneous servicing fees (except for prepayment charges which, to the extent collected from mortgagors, will be distributed to the holders of the Class P Certificates).

Repurchases or Substitutions of Mortgage Loans

If NC Capital Corporation, as responsible party, or the sponsor cannot cure a breach of any representation or warranty made by it and assigned to the trustee for the benefit of the certificateholders relating to a mortgage loan within 90 days of notice given to the responsible party or the sponsor, and the breach materially and adversely affects the interests of the certificateholders in the mortgage loan, the responsible party or the sponsor will be obligated to purchase the mortgage loan at a price equal to its

principal balance as of the date of purchase plus accrued and unpaid interest to the end of the calendar month of the repurchase, less the amount payable in respect of servicing compensation or reimbursement.

Likewise, as described under *"Description of the Certificates—Review of Mortgage Loan Documents"* in the prospectus, if the mortgage collateral seller cannot cure certain documentary defects with respect to a mortgage loan, the mortgage collateral seller will be required to repurchase the related mortgage loan. If the conditions described under "*The Trusts – Limited Right of Substitution*" in the prospectus are satisfied, a substitution may be made in lieu of such repurchase obligation**.** *See "The Trusts—Repurchases of Mortgage Collateral" in the prospectus***.**

Distributions on the Class A and Class M Certificates

Amount available for monthly distribution. On each distribution date, the trustee will make distributions to investors. The amounts available for distribution will include:

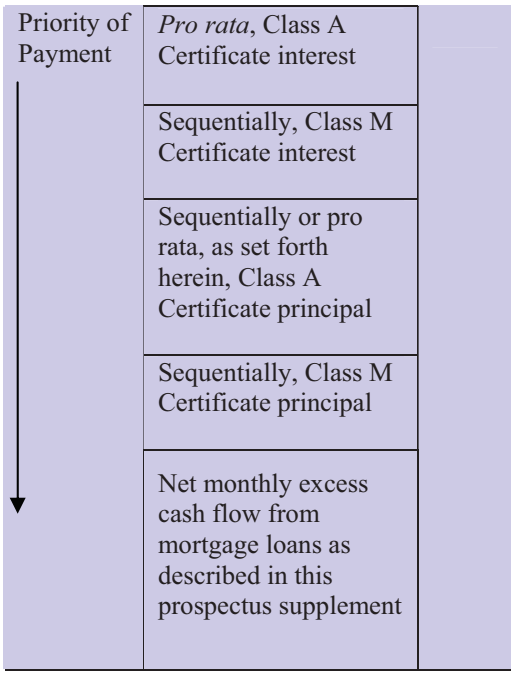
- collections of monthly payments on the mortgage loans, including prepayments and other unscheduled collections; *plus*
- all payments of compensating interest made by the servicer with respect to the mortgage loans; *plus*
- advances for delinquent payments on the mortgage loans that are deemed recoverable by the servicer; *minus*
- net swap payments payable to the swap counterparty and net swap termination payments payable to the swap counterparty not due to a swap counterparty trigger event; *minus*
- fees and expenses of the trustee and the servicer for the mortgage loans, including reimbursement for advances.

In addition, certificateholders will be entitled to amounts, if any, available under the swap agreement.

See "Description of the Certificates—Glossary of Terms—Available Distribution Amount" and "—Swap Agreement—Payments under the Swap Agreement" in this prospectus supplement.

Priority of Distributions. Payments to the certificateholders will be made from the available distribution amount as follows:

Priority of Distributions



See "Description of the Certificates—Interest Distributions," "—Principal Distributions" and "—Net Monthly Excess Cash Flow and Overcollateralization" in this prospectus supplement.

Interest Distributions. The amount of interest owed to each class of Class A and Class M Certificates on each distribution date will equal:

- the pass-through rate for that class of certificates; *multiplied by*
- the certificate principal balance of that class of certificates as of the day immediately prior to the related distribution date; *multiplied by*
- the actual number of days in the related interest accrual period divided by 360; *minus*
- the share of some types of interest shortfalls allocated to that class, as described more fully in the definition of "Interest Distribution Amount" in *"Description of the Certificates – Glossary of Terms" in this prospectus supplement.*

See "Description of the Certificates—Interest Distributions" in this prospectus supplement.

Allocations of Principal. Principal distributions on the certificates will be made primarily from principal payments on the mortgage loans as follows:

On each distribution date (a) prior to a stepdown date or (b) on which a trigger event is in effect, principal distributions will be distributed in the following order of priority:

- sequentially, to the holders of the Class A-1 Certificates, Class A-2 Certificates, Class A-3 Certificates and Class A-4 Certificates, in that order, until the certificate principal balance of each class of Class A Certificates has been reduced to zero; and
- sequentially, to the holders of the Class M-1 Certificates, Class M-2 Certificates, Class M-3 Certificates, Class M-4 Certificates, Class M-5 Certificates, Class M-6 Certificates, Class M-7 Certificates, Class M-8 Certificates, Class M-9 Certificates and Class M-10 Certificates, in that order, until the certificate principal balance of each such class has been reduced to zero.

On each distribution date (a) on or after the stepdown date and (b) on which a trigger event is not in effect, the principal distributions will be distributed in the following order of priority:

- sequentially, to the holders of the Class A-1 Certificates, Class A-2 Certificates, Class A-3 Certificates and Class A-4 Certificates, in that order, up to an amount equal to the Class A principal distribution amount, until the certificate principal balance of each class of Class A Certificates has been reduced to zero; and
- sequentially, to the holders of the Class M-1 Certificates, Class M-2 Certificates, Class M-3 Certificates, Class M-4 Certificates, Class M-5 Certificates, Class M-6 Certificates, Class M-7 Certificates, Class M-8 Certificates, Class M-9 Certificates and Class M-10 Certificates, in that order, up to an amount equal to the related Class M principal distribution amount until the certificate principal balance of each such class has been reduced to zero.

On or after the occurrence of the first distribution date on which the certificate principal balances of the Class M and Class CE Certificates have been reduced to zero, all priorities relating to distributions as described in this section of the Summary entitled "Allocations of Principal" in respect

of principal among the Class A Certificates will be disregarded, and principal distributions will be distributed to the remaining Class A Certificates on a pro rata basis in accordance with their respective outstanding certificate principal balances.

See "Description of the Certificates—Glossary of Terms—Trigger Event" in this prospectus supplement.

Allocations of Net Monthly Excess Cash Flow. In addition, the Class A and Class M Certificates will receive distributions of principal and interest to reimburse allocated realized losses and net WAC rate carryover amounts to the extent of any net monthly excess cash flow from the mortgage loans available to cover specified amounts, as and to the extent described in this prospectus supplement.

Net monthly excess cash flow, if any, will be applied on any distribution date as follows:

- distribution of additional principal in order to maintain the required level of overcollateralization;

- distribution sequentially to the Class M-1 Certificates, Class M-2 Certificates, Class M-3 Certificates, Class M-4 Certificates, Class M-5 Certificates, Class M-6 Certificates, Class M-7 Certificates, Class M-8 Certificates, Class M-9 Certificates and Class M-10 Certificates, in that order, in each case up to the related interest carry forward amount related to these certificates for the related distribution date;

- distribution first *pro rata* to the Class A Certificates, then sequentially to the Class M-1 Certificates, Class M-2 Certificates, Class M-3 Certificates, Class M-4 Certificates, Class M-5 Certificates, Class M-6 Certificates, Class M-7 Certificates, Class M-8 Certificates, Class M-9 Certificates and Class M-10 Certificates, in that order, in each case up to the related allocated realized loss amount for these classes for the related distribution date;

- to the Class A Certificates and the Class M Certificates, any related unpaid net WAC rate carryover amount, distributed to the Class A Certificates on a pro rata basis based on the remaining net WAC rate carryover amount for each such class and then to the Class M Certificates in their order of payment priority;

- to the swap counterparty, payment in respect of any swap termination payment triggered by a swap counterparty trigger event;

- to the holders of the Class CE Certificates as provided in the pooling and servicing agreement; and

- to the holders of the Class R Certificates, any remaining amounts; provided that if the related distribution date is the distribution date immediately following the expiration of the latest prepayment charge term or any distribution date thereafter, then any of these remaining amounts will be distributed first to the Class P Certificates, until the certificate principal balance thereof has been reduced to zero, and second to the holders of the Class R Certificates.

See "Description of the Certificates—Principal Distributions" and "—Net Monthly Excess Cash Flow and Overcollateralization" in this prospectus supplement.

Allocation of Losses. Losses on the mortgage loans will be allocated or covered in full for each distribution date:

- *first*, to any excess cash flow for such distribution date;
- *second,* by any amounts available from the swap agreement for the related distribution date;
- *third*, to the first listed class in the following order with a certificate balance greater than zero; Class CE Certificates, Class M-10 Certificates, Class M-9 Certificates, Class M-8 Certificates, Class M-7 Certificates, Class M-6 Certificates, Class M-5 Certificates, Class M-4 Certificates, Class M-3 Certificates, Class M-2 Certificates and Class M-1 Certificates; and
- *fourth*, concurrently to the Class A-1 Certificates, Class A-2 Certificates, Class A-3 Certificates and Class A-4 Certificates on a pro rata basis based on the certificate balance of each such class with a certificate balance greater than zero.

Credit Enhancement

The credit enhancement for the benefit of the Class A and Class M Certificates consists of:

Excess Cash Flow. Because more interest with respect to the mortgage loans is payable by the mortgagors than is expected to be necessary to distribute interest on the Class A and Class M Certificates each month and related expenses, there may be excess cash flow with respect to the mortgage loans. Some of this excess cash flow will be used, if necessary, to protect the Class A and Class M Certificates against some realized losses by making an additional payment of principal up to the amount of the realized losses.

Overcollateralization. The aggregate principal balance of the mortgage loans as of the cut-off date will exceed the aggregate certificate principal balance of the Class A Certificates, the Class M Certificates and the Class P Certificates on the closing date by approximately $40,514,136, which is equal to the initial certificate principal balance of the Class CE Certificates. This amount represents approximately 2.50% of the aggregate principal balance of the mortgage loans as of the cut-off date, and is approximately equal to the initial amount of overcollateralization required to be provided by the mortgage pool under the pooling and servicing agreement.

See "Description of the Certificates—Net Monthly Excess Cash Flow and Overcollateralization" in this prospectus supplement.

Subordination. The rights of the holders of the Class M Certificates and the Class CE Certificates to receive distributions will be subordinated, to the extent described in this prospectus supplement, to the rights of the holders of the Class A Certificates.

In addition, the rights of the holders of the Class M Certificates with higher numerical class designations to receive distributions will be subordinated to the rights of the holders of the Class M Certificates with lower numerical class designations, to the extent described under "Description of the Certificates—Allocation of Losses" in this prospectus supplement.

Subordination is intended to enhance the likelihood of regular distributions on the more senior certificates in respect of interest and principal and to afford the more senior

certificates protection against realized losses on the mortgage loans, as described under "Description of the Certificates—Allocation of Losses" in this prospectus supplement.

Swap Agreement

The holders of the Class A Certificates and the Class M Certificates will benefit from a swap agreement. On each distribution date, the trust will be obligated to make fixed payments, and the swap counterparty will be obligated to make floating payments, in each case as set forth in the swap agreement and as described in this prospectus supplement. To the extent that the fixed payment exceeds the floating payment on any distribution date, amounts otherwise available to certificateholders will be applied to make a net payment to the swap counterparty. To the extent that the floating payment exceeds the fixed payment on any distribution date, the swap counterparty will make a net swap payment to the trust which may be used to cover certain interest shortfalls, realized losses and any net WAC rate carryover amounts as described in this prospectus supplement, in each case to the extent not covered by net monthly excess cash flow.

Upon early termination of the swap agreement, the trust or the swap counterparty may be liable to make a swap termination payment to the other party (regardless of which party has caused the termination). The swap termination payment will be computed in accordance with the procedures set forth in the swap agreement. In the event that the trust is required to make a swap termination payment to the swap counterparty, that amount will be paid by the trust on the related distribution date and on any subsequent distribution dates until paid in full, prior to any distribution to the Class A and Class M Certificates, except for certain swap termination payments resulting from an event of default by or certain termination events with respect to the swap counterparty as described in this prospectus supplement for which payments by the trust to the swap counterparty will be subordinated to all distributions to the Class A and Class M Certificates. The swap agreement will terminate after the distribution date in January 2012.

Except as described in the second preceding sentence, amounts payable by the trust to the swap counterparty will be deducted from the amounts available for distribution to certificateholders before distribution to certificateholders.

See "The Swap Counterparty" and "Description of the Certificates—The Swap Agreement" in this prospectus supplement.

Advances

With respect to any month, if the servicer does not receive the full scheduled payment on a mortgage loan, the servicer will advance its own funds to cover that shortfall. However, the servicer will make an advance only if it determines that the advance will be recoverable from future payments or collections on that mortgage loan.

See "Description of the Certificates—Advances" in this prospectus supplement.

Optional Termination

At its option, the majority holder of the Class CE Certificates may purchase all of the mortgage loans, together with any properties in respect of such mortgage loans acquired on behalf of the trust, and thereby effect termination and early retirement of the certificates, after the aggregate principal balance of the mortgage loans remaining in the trust at the time of purchase, and properties acquired in respect of such

mortgage loans remaining in the trust at the time of purchase, has been reduced to less than 10% of the aggregate principal balance of the mortgage loans as of the cut-off date.

See "Pooling and Servicing Agreement—Termination" in this prospectus supplement and "The Pooling and Servicing Agreement—Termination; Retirement of Certificates" in the prospectus.

Ratings

When issued, the offered certificates will receive the ratings listed on page S-8 of this prospectus supplement. A security rating is not a recommendation to buy, sell or hold a security and may be changed or withdrawn at any time by the assigning rating agency. The ratings also do not address the rate of principal prepayments on the mortgage loans or the payment of net WAC rate carryover amounts, if any. The rate of prepayments, if different than originally anticipated, could adversely affect the yield realized by holders of the offered certificates. In addition, the ratings do not address the likelihood of the receipt of any amounts in respect of prepayment interest shortfalls, relief act shortfalls or basis risk shortfalls.

See "Ratings" in this prospectus supplement.

Legal Investment

The Class A and Class M Certificates will **not** constitute "mortgage related securities" for purposes of the Secondary Mortgage Market Enhancement Act of 1984. You are encouraged to consult your legal advisors in determining whether and to what extent the Class A and Class M Certificates constitute legal investments for you.

See "Legal Investment" in this prospectus supplement for important information concerning possible restrictions on ownership of the Class A and Class M Certificates by regulated institutions.

ERISA Considerations

Subject to the considerations described in "Certain ERISA Considerations" in this prospectus supplement and in the accompanying prospectus, the Class A-1 and the Class A-2 Certificates are expected to be eligible for purchase by persons investing assets of employee benefit plans, individual retirement accounts or other retirement accounts or arrangements, provided that certain conditions are met. The depositor does not intend to rely on the Exemption, as described in "Certain ERISA Considerations" in the prospectus, for the purchase and holding of the Class A-1 or the Class A-2 Certificates prior to the termination of the swap agreement in January 2012. Fiduciaries of plans subject to ERISA or Section 4975 of the Internal Revenue Code are encouraged to consult with their legal advisors before investing in the Class A-1 or the Class A-2 Certificates.

Until the swap agreement terminates in January 2012, the Class A-3 Certificates, the Class A-4 Certificates and the Class M Certificates may not be purchased by or transferred to Benefit Plans (as defined in this prospectus supplement under "Certain ERISA Considerations"). Each purchaser and transferee of a Class A-3 Certificate, a Class A-4 Certificate or a Class M Certificate or any interest therein will be deemed to have represented, by virtue of its acquisition or holding of such certificate or any interest therein, that it is not a Benefit Plan (as defined in this prospectus supplement under "Certain ERISA Considerations").

See "Certain ERISA Considerations" in this prospectus supplement and in the prospectus.

Tax Status

For federal income tax purposes, the depositor will elect to treat certain segregated assets comprising the trust, exclusive of the swap account and the swap agreement, as two REMICs. The Class A and Class M Certificates each will represent ownership of a regular interest in a REMIC, which generally will be treated as debt instruments for federal income tax purposes, coupled with the right to receive payments in certain instances in respect of net WAC rate carryover amounts. Holders of Class A and Class M Certificates will be required to include in income all interest and original issue discount, if any, on their certificates in accordance with the accrual method of accounting regardless of the certificateholder's usual method of accounting. For federal income tax purposes, the residual certificates will represent the sole residual interest in each REMIC.

For further information regarding the federal income tax consequences of investing in the Class A and Class M Certificates, see "Material Federal Income Tax Consequences" in this prospectus supplement and in the prospectus.

Issuing Entity

The depositor will establish a trust with respect to Series 2006-NC3 on the closing date, under a pooling and servicing agreement, dated as of August 1, 2006, among the depositor, the servicer and the trustee. The pooling and servicing agreement is governed by the laws of the state of New York. On the closing date, the depositor will deposit into the trust a mortgage pool of mortgage loans secured by first and second liens on one- to four- family residential properties with terms to maturity of not more than 30 years. The issuing entity will not have any additional equity apart from the certificates. The trustee shall, for federal income tax purposes, maintain the books and records of the issuing entity on a calendar year basis. The pooling and servicing agreement authorizes the issuing entity to engage only in selling the certificates in exchange for the mortgage loans, entering into and performing its obligations under the pooling and servicing agreement, activities necessary, suitable or convenient to such actions and other activities as may be required in connection with the conservation of the trust fund and making or causing to be made distributions to certificateholders.

The pooling and servicing agreement provides that the depositor assigns to the trustee for the benefit of the certificateholders without recourse all the right, title and interest of the depositor in and to the mortgage loans. Furthermore, the pooling and servicing agreement states that, although it is intended that the conveyance by the depositor to the trustee of the mortgage loans be construed as a sale, the conveyance of the mortgage loans shall also be deemed to be a grant by the depositor to the trustee of a security interest in the mortgage loans and related collateral.

Some capitalized terms used in this prospectus supplement have the meanings given below under "Description of the Certificates—Glossary of Terms" or in the prospectus under "Glossary."

Sponsor

Carrington Securities, LP, formerly known as Carrington Mortgage Credit Fund I, LP, or Carrington Securities, is a limited partnership formed in the state of Delaware in December 2003. Carrington Securities is headquartered in Greenwich, Connecticut. Carrington Securities buys residential mortgage loans under several loan purchase agreements from mortgage loan originators or sellers nationwide that meet its seller/servicer eligibility requirements. *See "The Trusts—Mortgage Collateral Sellers" in the prospectus for a general description of the characteristics used to determine eligibility of collateral sellers.*

Carrington Securities began operations in March 2004. Carrington Securities acquires mortgage loans secured by first and second liens on one- to four- family residential properties. From time to time, Carrington Securities funds its acquisition of mortgage loans through several financing facilities it has in place with national lending institutions, including affiliates of Bear, Stearns & Co. Inc. and Citigroup Global Markets Inc. The fundings under these financing facilities are secured by a pledge of the mortgage loans. Through its securitization program, Carrington Securities satisfies its obligations under the financing facilities with the proceeds from the sale of the offered securities. The structuring of the offerings through the Carrington Securities' securitization program is done by the underwriters for each such transaction.

Carrington Securities sponsored its first securitization in 2004. It sponsored two securitizations that year, with an aggregate issuance of mortgage-backed securities representing interests in a pool of mortgage loans with approximately $633 million in original principal balance. In 2005, Carrington Securities sponsored seven securitizations of mortgage loans with approximately $8.0 billion in original principal balance. This year, Carrington Securities has sponsored five securitizations of mortgage loans with approximately $5.32 billion in original principal balance. Generally, Carrington Securities contracts with the seller of the mortgage loans to act as servicer therefore under the related pooling and servicing agreement.

Affiliations Among Transaction Parties

Stanwich Asset Acceptance Company, L.L.C., the depositor, is a wholly-owned subsidiary of Carrington Securities, LP, the sponsor. Certain owners of the indirect parent of Carrington Investment Services, LLC, a selected dealer in this offering, are also owners and employees of the general partner of the sponsor and thus have an ownership interest in the sponsor. NC Capital Corporation, the responsible party, is an affiliate of New Century Mortgage Corporation, an originator and the servicer and Home123 Corporation, an originator. Each of New Century Mortgage Corporation, Home123 Corporation and NC Capital Corporation, is an indirect wholly-owned subsidiary of New Century Financial Corporation. New Century Financial Corporation is an affiliate of Carrington Capital Management, LLC, an affiliate of the sponsor. A portion of the proceeds received from the sale of the offered certificates will be used by the sponsor to satisfy obligations under a financing facility in place with an affiliate of Bear, Stearns & Co. Inc., an unaffiliated underwriter, with respect to all of the mortgage loans.

Description of the Mortgage Pool

General

The mortgage pool will consist of 7,548 adjustable-rate and fixed-rate, interest-only, balloon and fully-amortizing, first lien and second lien, closed-end, subprime mortgage loans with an aggregate unpaid principal balance of approximately $1,620,590,236 as of the cut-off date after application of scheduled payments due on or before the cut-off date whether or not received and subject to a permitted variance of plus or minus 5%. The mortgage loans are secured by first liens and second liens on fee simple interests in one- to four- family residential properties with terms to maturity of not more than 30 years.

All percentages of the mortgage loans described in this prospectus supplement are approximate percentages by outstanding principal balance determined as of the cut-off date after application of scheduled payments due on or before the cut-off date whether or not received and subject to a permitted variance of plus or minus 5%, unless otherwise indicated.

Investors should note that the mortgage pool as described in this prospectus supplement has an aggregate principal balance of approximately $1,620,590,236. However, on the closing date the depositor will deliver mortgage loans with a smaller aggregate principal balance, subject to a permitted variance of 5%. It is not anticipated that the mortgage loans delivered on the closing date will differ in any material respect other that the aggregate principal balance thereof. All calculations and percentages shown in this prospectus supplement are based on the mortgage pool as described herein.

The mortgage loans are secured by mortgages or deeds of trust or other similar security instruments creating first liens or second liens on residential properties. The mortgaged properties consist of attached or detached, one- to four- family dwelling units and individual condominium units and modular homes. The mortgage loans will be acquired by the depositor from the sponsor in the manner described in this prospectus supplement. New Century Mortgage Corporation will act as the servicer under the pooling and servicing agreement.

Each mortgage loan will accrue interest at the fixed-rate or adjustable-rate calculated as specified under the terms of the related mortgage note. As of the cut-off date, approximately 83.15% of the mortgage loans are adjustable-rate mortgage loans and approximately 16.85% of the mortgage loans are fixed-rate mortgage loans.

Each fixed-rate mortgage loan has a mortgage rate that is fixed for the life of such mortgage loan.

Some of the adjustable-rate mortgage loans provide for semi-annual adjustment to their mortgage rates; provided, however, that in the case of approximately 93.79%, approximately 6.08% and approximately 0.13% of the adjustable-rate mortgage loans, the first adjustment will not occur until after the initial period of approximately two years, three years and five years, respectively, from the date of origination. In connection with each such mortgage rate adjustment, the mortgage loans have corresponding adjustments to their monthly payment amount, in each case on each applicable adjustment date. On each adjustment date, the mortgage rate on each adjustable-rate mortgage loan will be adjusted to equal the sum, rounded to the nearest multiple of 0.125%, of the index and a fixed percentage amount, or gross margin, for that mortgage loan specified in the related mortgage note. However, the mortgage rate on each adjustable-rate mortgage loan will not increase or decrease, initially, by more than 2.000% per annum, and thereafter, by more than 1.500% per annum, on any related adjustment date and will not exceed a specified maximum mortgage rate over the life of the adjustable-rate mortgage loan or be less than a specified minimum mortgage rate over the life of the mortgage loan. Effective with the first monthly payment due on each adjustable-rate mortgage loan (other than the adjustable-rate balloon mortgage loans) after each related adjustment date, the monthly payment amount will be adjusted to an amount that will amortize fully the outstanding principal balance of that mortgage loan over its remaining term and pay interest at the mortgage rate as so adjusted after taking into account any interest only period, if any. Due to the application of the periodic rate caps and the maximum mortgage rates, the mortgage rate on each adjustable-rate mortgage loan, as adjusted on any related adjustment date, may be less than the sum of the index, calculated as described in this prospectus supplement, and the related gross margin. *See "—The Index" in this prospectus supplement.* None of the adjustable-rate mortgage loans permits the related mortgagor to convert the adjustable mortgage rate thereon to a fixed mortgage rate.

Approximately 21.59% of the mortgage loans provide that for a period of 60 months, after origination, the required monthly payments are limited to accrued interest. At the end of such period, the monthly payments on each such mortgage loan will be recalculated to provide for amortization of the principal balance by the maturity date and payment of interest at the then-current mortgage rate.

The mortgage loans have scheduled monthly payments due on the first day of the month and that day is referred to in this prospectus supplement as the "due date." Each mortgage loan

will contain a customary due-on-sale clause which provides that the mortgage loan must be repaid at the time of a sale of the related mortgaged property or, in the case of an adjustable-rate mortgage loan, assumed by a creditworthy purchaser of the related mortgage property.

Approximately 70.33% of the mortgage loans provide for payment by the mortgagor of a prepayment charge in limited circumstances on prepayments as provided in the related mortgage note. These mortgage loans provide for payment of a prepayment charge on some partial prepayments and all prepayments in full made within a specified period not in excess of three years from the date of origination of the mortgage loan, as provided in the related mortgage note. The amount of the prepayment charge is as provided in the related mortgage note, but, in most cases, is equal to six months' interest on any amounts prepaid in excess of 20% of the original principal balance of the related mortgage loan in any 12 month period, as permitted by law. The holders of the Class P Certificates will be entitled to all prepayment charges received on the mortgage loans, and these amounts will not be available for distribution on the Class A and Class M Certificates. Under the limited instances described under the terms of the pooling and servicing agreement, the servicer may waive the payment of any otherwise applicable prepayment charge. Investors should conduct their own analysis of the effect, if any, that the prepayment charges, and decisions by the servicer with respect to the waiver of the prepayment charges, may have on the prepayment performance of the mortgage loans. *See "Certain Legal Aspects of the Mortgage Loans and Contracts—Default Interest and Limitations on Prepayments" in the prospectus*.

Under a mortgage loan purchase agreement whereby the sponsor sells the mortgage loans to the depositor, the responsible party will make certain limited representations and warranties regarding the mortgage loans as of the date of issuance of the certificates. The responsible party will be required to repurchase or substitute for any mortgage loan as to which a breach of its representations and warranties with respect to that mortgage loan occurs, if such breach materially and adversely affects the interests of the certificateholders in any of those mortgage loans. The depositor will assign its rights under the mortgage loan purchase agreement to the trustee for the benefit of the certificateholders, including the right to require the responsible party to repurchase any such mortgage loan in the event of a breach of any of its representations and warranties. *See "The Trusts—Representations with Respect to Mortgage Collateral" in the prospectus*.

The Index

As of any adjustment date, the index applicable to the determination of the mortgage rate on each adjustable-rate mortgage loan will be the average of the interbank offered rates for six-month United States dollar deposits in the London market as published in *The Wall Street Journal* and as most recently available as specified in the related mortgage note either as of the first business day 45 days prior to that adjustment date or as of the first business day of the month preceding the month of the adjustment date.

In the event that the index becomes unavailable or otherwise unpublished, the servicer will select a comparable alternative index over which it has no direct control and which is readily verifiable.

Mortgage Loan Characteristics

The mortgage loans will have the following characteristics as of the cut-off date, as adjusted for scheduled principal payments due on or before the cut-off date whether or not received:

Number of Mortgage Loans	7,548
Mortgage Rates:	
Weighted average	8.192%
Range	5.575% to 13.500%
Note Margins of the Adjustable Rate Mortgage Loans:	
Weighted average	6.190%
Range	3.250% to 8.400%
Minimum Mortgage Rates of the Adjustable Rate Mortgage Loans:	
Weighted average	8.246%
Range	5.900% to 12.825%
Maximum Mortgage Rates of the Adjustable Rate Mortgage Loans:	
Weighted average	15.240%
Range	12.350% to 19.825%
Periodic Caps of the Adjustable Rate Mortgage Loans:	
Weighted average	1.498%
Range	1.000% to 1.500%
Weighted average months to initial interest rate adjustment date of the Adjustable Rate Mortgage Loans	23

The mortgage loans will have the following additional characteristics:

- The mortgage loans have an aggregate principal balance as of the cut-off date, after application of scheduled payments due on or before the cut-off date whether or not received and subject to a permitted variance of plus or minus 5% of approximately $1,620,590,236.

- The mortgage loans had individual principal balances at origination of at least $30,180 but not more than $650,000 with an average principal balance at origination of approximately $214,816.

- None of the mortgage loans will have been originated prior to December 22, 2005 or will have a maturity date later than July 1, 2036.

- No mortgage loans will have a remaining term to stated maturity as of the cut-off date of less than 118 months.

- The weighted average remaining term to stated maturity of the mortgage loans as of the cut-off date will be approximately 358 months. The weighted average original term to maturity of the mortgage loans as of the cut-off date will be approximately 359 months.

- As of the close of business on July 31, 2006, none of the mortgage loans (to be included in the mortgage pool as of the closing date) were 30 or more days delinquent in the payment of principal and/or interest. *For a description of the methodology used to categorize mortgage loans as delinquent, see "—Static Pool Information" below*.

- None of the mortgage loans are Buy-Down Loans.

- None of the mortgage loans are subject to the Homeownership Act.

- Approximately 99.01% of the mortgage loans are secured by first liens on fee simple interests in one to four family residential properties, and approximately 0.99% of the mortgage loans are secured by second liens on fee simple interests in one to four family residential properties.

- To Carrington Securities, LP's knowledge, approximately 32.60% of the mortgage loans are secured by mortgaged properties with respect to which second-lien mortgage loans were originated at the same time as the first-lien mortgage loan. These second-lien mortgage loans may or may not be part of the mortgage pool. The owners of the mortgaged properties may obtain second-lien mortgage loans at any time without Carrington Securities, LP's knowledge and, thus, more mortgaged properties than described above may also secure second-lien mortgage loans.

- No mortgage loan provides for deferred interest or negative amortization.

- No mortgage loan will have a CLTV as of the cut-off date of greater than 100.00%.

- No mortgage loan provides for conversion from an adjustable rate to a fixed rate.

- Approximately 50.56% of the mortgage loans are balloon mortgage loans.

- Approximately 21.59% of the mortgage loans will require the related mortgagors to pay interest only on those mortgage loans for a period of up to 5 years. Under the terms of these loans, borrowers are required to pay only accrued interest each month, with no corresponding principal payments, until the end of the interest

only period. Once the interest only period ends, monthly payments of principal are required to amortize the loan over its remaining term, in addition to accrued interest.

The mortgage loans which are adjustable-rate loans are generally assumable in accordance with the terms of the related mortgage note. *See "Maturity and Prepayment Considerations" in the prospectus*.

Set forth below is a description of additional characteristics of the mortgage loans as of the cut-off date, except as otherwise indicated. All percentages of the mortgage loans are approximate percentages by aggregate principal balance of the mortgage loans as of the cut-off date, except as otherwise indicated. Unless otherwise specified, all principal balances of the mortgage loans are as of the cut-off date, after application of scheduled payments due on or before the cut-off date whether or not received and subject to a permitted variance of plus or minus 5%, and are rounded to the nearest dollar. For purposes of calculating the original loan to value ratio for second lien mortgage loans in the following tables, the original loan to value ratio will be the combined LTV ratio.

Pooling and Servicing Agreement

General

The certificates will be issued pursuant to the pooling and servicing agreement dated as of August 1, 2006, among the depositor, the servicer and the trustee. Reference is made to the prospectus for important information in addition to that set forth in this prospectus supplement regarding the terms and conditions of the pooling and servicing agreement and the offered certificates. The trustee, or any of its affiliates, in its individual or any other capacity, may become the owner or pledgee of certificates with the same rights as it would have if it were not trustee. The depositor will provide a prospective or actual certificateholder, without charge, on written request, a copy, without exhibits, of the pooling and servicing agreement. Requests should be addressed to the President, Stanwich Asset Acceptance Company, L.L.C., Seven Greenwich Office Park, 599 West Putnam Avenue, Greenwich, CT 06830. In addition to the circumstances described in the prospectus, the depositor may terminate the trustee for cause under some circumstances. *See "The Pooling and Servicing Agreement—The Trustee" in the prospectus*.

Custodial Arrangements

Deutsche Bank National Trust Company will serve as custodian for the mortgage loans. The custodian is not an affiliate of the depositor, the servicer or the sponsor. The servicer will not have custodial responsibility for the mortgage loans. The custodian will maintain mortgage loan files that contain originals of the notes, mortgages, assignments and allonges in vaults located at the custodian's premises in Santa Ana, California. Only the custodian has access to these vaults. A shelving or filing system segregates the files relating to the mortgage loans from other assets custodied by the custodian by means of a document tracking system.

The Servicer

Servicer. The servicer will be responsible for servicing the mortgage loans. Servicing responsibilities include:

- reconciling servicing activity with respect to the mortgage loans;
- sending remittances to the trustee for distributions to certificateholders;
- coordinating loan repurchases;
- servicing mortgage loans that are delinquent or for which servicing decisions may need to be made;
- management and liquidation of mortgaged properties acquired by foreclosure or deed in lieu of foreclosure;
- providing certain notices and other responsibilities as detailed in the pooling and servicing agreement;

- communicating with borrowers;
- sending monthly remittance statements to borrowers;
- collecting payments from borrowers;
- recommending and/or approving a loss mitigation strategy for borrowers who have defaulted on their loans (i.e. repayment plan, modification, foreclosure, etc.);
- accurate and timely accounting and administration of escrow and impound accounts, if applicable;
- paying escrows for borrowers, if applicable;
- calculating and reporting payoffs and liquidations;
- maintaining an individual file for each loan; and
- maintaining primary mortgage insurance commitments or certificates if required, and filing any primary mortgage insurance claims.

The servicer may, from time to time, outsource certain of its servicing functions, such as foreclosure management, although any such outsourcing will not relieve the servicer of any of its responsibilities or liabilities under the pooling and servicing agreement. If the servicer engages any subservicer to subservice 10% or more of the mortgage loans, or any subservicer that performs the types of services requiring additional disclosure, the issuing entity will file a report on Form 8-K providing the additional disclosure regarding such subservicer.

For a general description of material terms relating to the servicer's removal or replacement, see "The Pooling and Servicing Agreement — Rights Upon Event of Default" in the prospectus.

New Century Mortgage Corporation is a consumer finance and mortgage banking company headquartered in Irvine, California. *See "Description of the Mortgage Pool-The Originators" in this prospectus supplement*.

The servicer serviced mortgage loans from July 1998 to August 2001 when the platform was sold. At the time of the sale, the servicer serviced a portfolio of mortgage loans with an aggregate principal balance of approximately $6.04 billion. Following the sale of servicing in August 2001, the servicer retained its servicing manager in anticipation of re-establishing its servicing platform.

The servicer began servicing mortgage loans again on October 1, 2002, and it was able to re-hire many of its former servicing managers and staff. As of December 31, 2005, the balance of the servicer's servicing platform was approximately $39.6 billion in mortgage loans, consisting of approximately $15.2 billion in mortgage loans held for investment, approximately $6.7 billion in mortgage loans held for sale, approximately $10.0 billion in mortgage loans sold

on a servicing retained basis and approximately $7.8 billion in loans serviced on a temporary basis for the purchasers thereof.

New Century Mortgage Corporation's sub-prime residential mortgage servicing operations are currently rated "SQ3+" by Moody's, "Above Average" by Standard & Poor's and "RPS3" by Fitch.

Servicing Compensation and Payment of Expenses

The principal compensation to be paid to the servicer in respect of its servicing activities for the certificates will consist of the servicing fee. The servicing fee will accrue at the Servicing Fee Rate on the aggregate principal balance of the mortgage loans. As additional servicing compensation, the servicer will be entitled to retain all assumption fees, late payment charges and other miscellaneous servicing fees (except for prepayment charges which, to the extent collected from mortgagors, will be distributed to the holders of the Class P Certificates), and any interest or other income earned on funds held in the Custodial Account and any escrow accounts.

The servicer is obligated to pay certain insurance premiums and certain ongoing expenses associated with the mortgage pool incurred by the servicer in connection with its responsibilities under the pooling and servicing agreement and is entitled to reimbursement for these expenses as provided in the pooling and servicing agreement. *See "Servicing and Administration of Mortgage Collateral" in the prospectus for information regarding expenses payable by the servicer*.

The following table sets forth the fees and expenses that are payable out of payments on the mortgage loans, prior to payments of interest and principal to the certificateholders:

Description	Amount	Receiving Party
Servicer Fee	0.500% per annum of the principal balance of each mortgage loan	Servicer
Trustee Fee	0.0025% per annum of the principal balance of each mortgage loan	Trustee

In addition, the servicer may recover from payments on the mortgage loans or withdraw from the Custodial Account the amount of any Advances and/or servicing advances previously made, interest and investment income, foreclosure profits, indemnification payments payable under the pooling and servicing agreement, and certain other servicing expenses, including foreclosure expenses.

Fees and expenses of the trustee and the servicer, including reimbursement for advances, will not be included in the amount available for distribution to the certificateholders.

Events of Default

In addition to those events of default described in the prospectus under "Pooling and Servicing Agreement—Events of Default," upon the occurrence of certain loss triggers with respect to the mortgage loans, and in the event the servicer fails to make any Advances required to be made by it, the servicer may be removed as servicer of the mortgage loans in accordance with the terms of the pooling and servicing agreement.

Voting Rights

Some actions specified in the prospectus that may be taken by holders of certificates evidencing a specified percentage of all undivided interests in the trust may be taken by holders of certificates entitled in the aggregate to such percentage of the voting rights. 98% of all voting rights will be allocated among all holders of the Class A, Class M and Class CE Certificates in proportion to their then outstanding Certificate Principal Balances, 1% of all voting rights will be allocated to the holders of the Class P Certificates and 1% of all voting rights will be allocated to holders of the Class R Certificates. The percentage interest of an offered certificate is equal to the percentage obtained by dividing the initial Certificate Principal Balance of that certificate by the aggregate initial Certificate Principal Balance of all of the certificates of that class.

Termination

The circumstances under which the obligations created by the pooling and servicing agreement will terminate in respect of the certificates are described in "The Pooling and Servicing Agreement—Termination; Retirement of Certificates" in the prospectus. The majority holder of the Class CE Certificates, as described in the pooling and servicing agreement, will have the right to purchase all remaining mortgage loans and any properties acquired in respect of the mortgage loans and thereby effect early retirement of the certificates on any distribution date following the Due Period during which the aggregate principal balance of the mortgage loans and properties acquired in respect of the mortgage loans remaining in the trust at the time of purchase is reduced to less than 10% of the aggregate principal balance of the mortgage loans as of the cut-off date. In the event such option is exercised, the purchase price will be equal to the greater of (i) the aggregate principal balance of the mortgage loans and the appraised value of the REO Properties and (ii) the fair market value of the mortgage loans and the REO Properties, in each case, without duplication, plus accrued and unpaid interest for each mortgage loan at the related mortgage rate to but not including the first day of the month in which such repurchase price is paid plus unreimbursed servicing advances, any Swap Termination Payment payable to the swap counterparty then remaining unpaid or which is due to the exercise of such option, Advances, any unpaid servicing fees allocable to such mortgage loans and REO Properties and any accrued and unpaid Net WAC Rate Carryover Amounts. However, this option may only be exercised if the termination price is sufficient to pay all interest accrued on, as well as amounts necessary to retire the principal balance of, any net interest margin securities to be issued by a separate trust and secured by all or a portion of the Class CE and Class P Certificates. In the event such option is exercised, the portion of the purchase price allocable to the Class A and Class M Certificates will be, to the extent of available funds:

- 100% of the then outstanding Certificate Principal Balance of the Class A and Class M Certificates, plus

- one month's interest on the then outstanding Certificate Principal Balance of the Class A and Class M Certificates at the then applicable pass-through rates thereon, plus

- any previously accrued but unpaid interest thereon to which the holders of the Class A and Class M Certificates are entitled, together with the amount of any Net WAC Rate Carryover Amounts payable to and from the reserve account, plus

- in the case of the Class A and Class M Certificates, any previously undistributed Allocated Realized Loss Amount.

The holders of the Residual Certificates will pledge any amount received in a termination in excess of par to the holders of the Class CE Certificates. In no event will the trust created by the pooling and servicing agreement continue beyond the expiration of 21 years from the death of the survivor of the persons named in the pooling and servicing agreement. *See "The Pooling and Servicing Agreement — Termination; Retirement of Certificates" in the prospectus*.

The Trustee

Wells Fargo Bank, National Association ("Wells Fargo Bank") will act as Trustee under the pooling and servicing agreement. Wells Fargo Bank is a national banking association and a wholly-owned subsidiary of Wells Fargo & Company. A diversified financial services company with approximately $482 billion in assets, 23 million customers and over 153,000 employees as of December 31, 2005, Wells Fargo & Company is a U.S. bank holding company, providing banking, insurance, trust, mortgage and consumer finance services throughout the United States and internationally. Wells Fargo Bank provides retail and commercial banking services and corporate trust, custody, securities lending, securities transfer, cash management, investment management and other financial and fiduciary services. The Depositor, the Sponsor and the Servicer may maintain banking and other commercial relationships with Wells Fargo Bank and its affiliates. Wells Fargo Bank maintains principal corporate trust offices located at 9062 Old Annapolis Road, Columbia, Maryland 21045-1951 (among other locations), and its office for certificate transfer services is located at Sixth Street and Marquette Avenue, Minneapolis, Minnesota 55479.

Wells Fargo Bank has provided corporate trust services since 1934. Wells Fargo Bank acts as a trustee for a variety of transactions and asset types, including corporate and municipal bonds, mortgage-backed and asset-backed securities and collateralized debt obligations. As of June 30, 2006, Wells Fargo Bank was acting as trustee on more than approximately 1,230 series of residential mortgage-backed securities with an aggregate principal balance of approximately $282,142,062,265.

Under the terms of the pooling and servicing agreement, the trustee also is responsible for securities administration, which includes pool performance calculations, distribution calculations and the preparation of monthly distribution reports. As securities administrator, the trustee is responsible for the preparation of all REMIC tax returns on behalf of the trust and the

preparation of monthly reports on Form 10-D in regards to distribution and pool performance information, current reports on Form 8-K and annual reports on Form 10-K that are required to be filed with the Securities and Exchange Commission on behalf of the issuing trust. Wells Fargo Bank has been engaged in the business of securities administration since June 30, 1995. As of June 30, 2006, Wells Fargo Bank was acting as securities administrator with respect to more than $894,773,136,436 of outstanding residential mortgage-backed securities.

Unless an event of default has occurred and is continuing under the pooling and servicing agreement, the trustee will perform only such duties as are specifically set forth in the pooling and servicing agreement. If an event of default occurs and is continuing under the pooling and servicing agreement, the trustee is required to exercise such of the rights and powers vested in it by the pooling and servicing agreement, such as either acting as the servicer or appointing a successor servicer, and use the same degree of care and skill in their exercise as a prudent investor would exercise or use under the circumstances in the conduct of such investor's own affairs. Subject to certain qualifications specified in the pooling and servicing agreement, the trustee will be liable for its own negligent action, its own negligent failure to act and its own willful misconduct for actions.

The trustee's duties and responsibilities under the pooling and servicing agreement include collecting funds from the Custodial Account to distribute to certificateholders based on the servicer report, providing certificateholders and applicable rating agencies with monthly distribution statements and notices of the occurrence of a default under the pooling and servicing agreement, removing the servicer as a result of any such default, appointing a successor servicer, and effecting any optional termination of the trust.

The trustee will withdraw from the certificate account all amounts necessary to pay its trustee fee and to reimburse itself for all reasonable expenses incurred or made in accordance with any of the provisions of the pooling and servicing agreement, except any such expense as may arise from the trustee's negligence or bad faith. The trustee will be indemnified by the trust fund or the servicer, as applicable, for any losses and expenses incurred without negligence or willful misconduct on the trustee's part arising out of the acceptance and administration of the trust.

The trustee may resign at any time, in which event the depositor will be obligated to appoint a successor trustee. The depositor may also remove the trustee if the trustee ceases to be eligible to continue as trustee under the pooling and servicing agreement or if the trustee becomes insolvent. Upon becoming aware of those circumstances, the depositor will be obligated to appoint a successor trustee. The trustee may also be removed at any time by the holders of certificates evidencing not less than 66% of the aggregate voting rights in the related trust. Any resignation or removal of the trustee and appointment of a successor trustee will not become effective until acceptance of the appointment by the successor trustee.

Any costs associated with removing and replacing a trustee will be payable by the trustee being removed or replaced if such trustee is being removed or replaced for cause.

electronic book-entry delivery against payment, thereby eliminating the need for physical movement of certificates and any risk from lack of simultaneous transfers of securities and cash. The Euroclear System operator is Euroclear Bank S.A./N.V., under contract with the clearance cooperative, Euroclear System Clearance Systems S.C., a Belgian co-operative corporation. All operations are conducted by the Euroclear System operator, and all Euroclear System securities clearance accounts and Euroclear System cash accounts are accounts with the Euroclear System operator, not the clearance cooperative.

The clearance cooperative establishes policy for Euroclear System on behalf of Euroclear System participants. Securities clearance accounts and cash accounts with the Euroclear System operator are governed by the terms and conditions Governing Use of Euroclear System and the related operating procedures of the Euroclear System and applicable Belgian law. The terms and conditions govern transfers of securities and cash within Euroclear System, withdrawals of securities and cash from Euroclear System, and receipts of payments with respect to securities in Euroclear System. All securities in Euroclear System are held on a fungible basis without attribution of specific certificates to specific securities clearance accounts.

Distributions on the book-entry certificates will be forwarded by the trustee to DTC, and DTC will be responsible for forwarding those payments to participants, each of which will be responsible for disbursing the payments to the beneficial owners it represents or, if applicable, to indirect participants. Accordingly, beneficial owners may experience delays in the receipt of payments relating to their certificates. Under DTC's procedures, DTC will take actions permitted to be taken by holders of any class of book-entry certificates under the pooling and servicing agreement only at the direction of one or more participants to whose account the book-entry certificates are credited and whose aggregate holdings represent no less than any minimum amount of percentage interests or voting rights required therefor. DTC may take conflicting actions with respect to any action of certificateholders of any class to the extent that participants authorize those actions. None of the master servicer, the servicer, the depositor, the Certificate Administrator, the trustee or any of their respective affiliates has undertaken any responsibility or assumed any responsibility for any aspect of the records relating to or payments made on account of beneficial ownership interests in the book-entry certificates, or for maintaining, supervising or reviewing any records relating to those beneficial ownership interests.

Assignment of Mortgage Loans

At the time of issuance of a series of certificates, the depositor will cause the mortgage loans or mortgage securities and any other assets being included in the related trust to be assigned to the trustee or its nominee, which may be the custodian, together with, if specified in the accompanying prospectus supplement, all principal and interest received on the mortgage loans or mortgage securities after the last day of the month of the cut-off date, other than principal and interest due on or before such date and any uncertificated interest allocable to interest in a trust. The trustee will, concurrently with that assignment, deliver a series of certificates to the depositor in exchange for the mortgage loans or mortgage securities. Each mortgage loan or mortgage security will be identified in a schedule appearing as an exhibit to the related pooling and servicing agreement. Each schedule of mortgage loans will include, among other things, information as to the principal balance of each mortgage loan as of the cut-off date, as well as information respecting the mortgage rate, the currently scheduled monthly payment of

principal and interest, the maturity of the mortgage note and the LTV ratio or CLTV ratio and junior mortgage ratio, as applicable, at origination or modification, without regard to any secondary financing.

If stated in the accompanying prospectus supplement, and in accordance with the rules of membership of Merscorp, Inc. and/or Mortgage Electronic Registration Systems, Inc. or, MERS, assignments of the mortgages for the mortgage loans in the related trust will be registered electronically through Mortgage Electronic Registration Systems, Inc., or MERS® System. For mortgage loans registered through the MERS® System, MERS shall serve as mortgagee of record solely as a nominee in an administrative capacity on behalf of the trustee and shall not have any interest in any of those mortgage loans.

In addition, except as described in the accompanying prospectus supplement, the depositor will, as to each mortgage loan other than mortgage loans underlying any mortgage securities, deliver to the trustee, or to the custodian, a set of legal documents relating to each mortgage loan that are in possession of the depositor, including:

- the mortgage note and any modification or amendment thereto endorsed without recourse either in blank or to the order of the trustee or its nominee;

- the mortgage, except for any mortgage not returned from the public recording office, with evidence of recording indicated thereon or a copy of the mortgage with evidence of recording indicated thereon;

- an assignment in recordable form of the mortgage, or evidence that the mortgage is held for the trustee through the MERS® System and, for a mixed-use mortgage loan, the assignment of leases, rents and profits, if separate from the mortgage, and an executed reassignment of the assignment of leases, rents and profits; and

- if applicable, any riders or modifications to the mortgage note and mortgage, together with any other documents at such times as described in the related pooling and servicing agreement.

The assignments may be blanket assignments covering mortgages secured by mortgaged properties located in the same county, if permitted by law. If so provided in the accompanying prospectus supplement, the depositor may not be required to deliver one or more of the related documents if any of the documents are missing from the files of the party from whom the mortgage loan was purchased.

If, for any mortgage loan, the depositor cannot deliver the mortgage with evidence of recording thereon concurrently with the execution and delivery of the related pooling and servicing agreement because of a delay caused by the public recording office, the depositor will deliver or cause to be delivered to the trustee or the custodian a copy of the mortgage. The depositor will deliver or cause to be delivered to the trustee or the custodian such mortgage with evidence of recording indicated thereon after receipt thereof from the public recording office or from the related servicer or subservicer.

Except as otherwise specified in the accompanying prospectus supplement, assignments of the mortgage loans to the trustee will not be submitted for recording in any public recording office.

Notwithstanding the preceding four paragraphs, the documents for home equity loans will be delivered to the trustee, or to the custodian, only to the extent specified in the accompanying prospectus supplement. Generally these documents will be retained by the master servicer or the servicer.

Review of Mortgage Loan Documents

The trustee or the custodian will hold documents in trust for the benefit of the certificateholders and, within 90 days after receipt thereof, will review such documents. If any such document is found to be defective in any material respect, the trustee or the custodian shall promptly notify the master servicer or the servicer, if any, and the depositor, and the master servicer or the servicer shall notify the mortgage collateral seller, a designated seller, or subservicer. If the mortgage collateral seller, the designated seller or the subservicer, as the case may be, cannot cure the defect within 60 days, or within the period specified in the accompanying prospectus supplement, after notice of the defect is given to the mortgage collateral seller, the designated seller or the subservicer, as applicable, the mortgage collateral seller, the designated seller or the subservicer will be obligated no later than 90 days after such notice, or within the period specified in the accompanying prospectus supplement, to either repurchase the related mortgage loan or any related property from the trustee or substitute a new mortgage loan in accordance with the standards described in this prospectus under "The Trust—Repurchases of Mortgage Collateral." Unless otherwise specified in the accompanying prospectus supplement, the obligation of the mortgage collateral seller or subservicer to repurchase or substitute for a mortgage loan constitutes the sole remedy available to the certificateholders or the trustee for a material defect in a constituent document. Any mortgage loan not so purchased or substituted shall remain in the related trust.

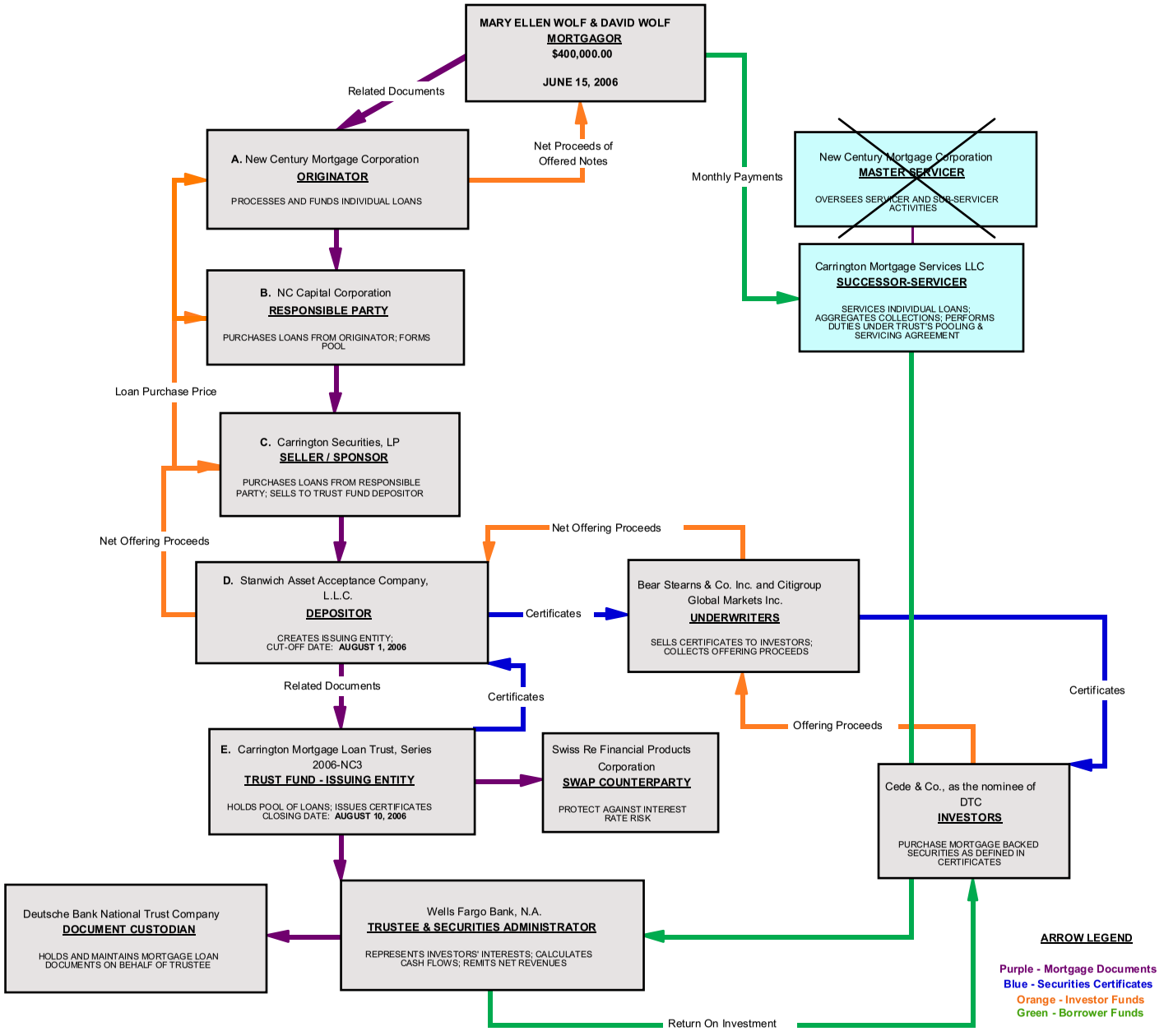
Assignment of Mortgage Securities

The depositor will transfer, convey and assign to the trustee or its nominee, which may be the custodian, all right, title and interest of the depositor in the mortgage securities and other property to be included in the trust for a series. The assignment will include all principal and interest due on or with respect to the mortgage securities after the cut-off date specified in the accompanying prospectus supplement, except for any uncertificated interest allocable to interest in a trust asset. The depositor will cause the mortgage securities to be registered in the name of the trustee or its nominee, and the trustee will concurrently authenticate and deliver the certificates. Unless otherwise specified in the accompanying prospectus supplement, the trustee will not be in possession of or be assignee of record of any underlying assets for a mortgage security. Each mortgage security will be identified in a schedule appearing as an exhibit to the related pooling and servicing agreement, which will specify as to each mortgage security information regarding the original principal amount and outstanding principal balance of each mortgage security as of the cut-off date, as well as the annual pass-through rate or interest rate for each mortgage security conveyed to the trustee.

EXHIBIT “I”

SECURITIZATION FLOW CHART

Carrington Mortgage LoanTrust, Series 2006-NC3



P02468

CAUSE NO. 2011-36476

MARY ELLEN WOLF and DAVID WOLF	)	IN THE DISTRICT COURT OF
VS.	)	HARRIS COUNTY, TEXAS
WELLS FARGO BANK, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates, et al	)	151ST JUDICIAL DISTRICT

****

ORAL DEPOSITION OF

MARIE MCDONNELL

OCTOBER 2, 2012

****

ORAL DEPOSITION of MARIE MCDONNELL, produced as a witness at the instance of the Defendants, and duly sworn, was taken in the above-styled and numbered cause on OCTOBER 2, 2012, from 9:10 a.m. to 10:28 p.m., before Mendy A. Schneider, CSR, RPR, in and for the State of Texas, recorded by machine shorthand, at the offices of HUGHES ELLZEY, LLP, 2700 Post Oak Boulevard, Suite 1120, Houston, Texas, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto; that the deposition shall be read and signed.

EXHIBIT 2

A P P E A R A N C E S

FOR THE PLAINTIFFS:

MR. W. CRAFT HUGHES
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FOR THE DEFENDANTS:

MR. PETER C. SMART
CRAIN, CATON & JAMES, P.C.
1401 McKinney, Suite 1700
Houston, Texas 77010
(713) 658-2323
psmart@craincaton.com

EXHIBIT 2

MARIE MCDONNELL,

having been first duly sworn, testified as follows:

(Marked McDonnell Exhibit Nos. 1 and 2.)

E X A M I N A T I O N

BY MR. SMART:

Q. What is your name, please?

A. My name is Marie McDonnell, spelled M-C-D-O-N-N-E-L-L.

Q. Ms. McDonnell, what do you do for a living?

A. I am a mortgage fraud and forensic analyst and a certified fraud examiner.

Q. And do you have a college degree?

A. I do.

Q. And when did you get that college degree?

A. 1970.

Q. And where did you get it?

A. Merrimac College.

Q. And where is Merrimac?

A. North Andover, Massachusetts.

Q. And what was -- was it a bachelor's degree?

A. Yes.

Q. And what was the major or what was the bachelor in? In what?

A. Political science.

Q. Did you have a minor?

EXHIBIT 2

A. I -- I did, yes; which, actually, I started out as a biology major; so, I -- I actually have more science and math and biology courses than political science, but that's the degree.

Q. So, you have a -- you have a major and a degree in political science, and you have a minor in biology?

A. Yes.

Q. And do you have any postgraduate degrees?

A. No.

Q. And do you have any certificates or licenses of a professional nature?

A. Yes. I have a real estate broker's license in Massachusetts, and I've achieved several designations; most recently, from the Association of Certified Fraud Examiners, the designation of certified fraud examiner.

I am also a certified real estate exchange consultant, and I've achieved the graduate realtor institute designation from the National Association of Realtors.

Q. Is that a sampling or is that -- is that the entirety?

A. That's what I recall at the moment in terms of designations from other trade associations.

EXHIBIT 2

knowledge and comprehension of various aspects of fraud examination and interview techniques and various other things.

Q. In that same sentence in Item 2, you -- where you say, "I'm a mortgage fraud and forensic analysis" -- "analyst" --

A. Analyst, uh-huh.

Q. -- are those -- is that -- are those two categories or one category, mortgage fraud and forensic analyst?

Is that two different things or -- or one thing?

A. It's -- I would say both.

Q. So, it -- it could be two things?

A. Yes.

Q. All right. Well, what -- let's talk about a forensic analyst.

When you say you're a forensic analyst, what -- what does that mean? What does a -- what do you do as a forensic analyst?

A. I have dedicated my practice to essentially understanding real estate and real estate financing transactions; so, essentially, although I do have the capability of looking at other types of documents or information and to -- to be able to understand that

EXHIBIT 2

information to fill in missing gaps and so forth, essentially, my practice is focused in the area of real estate and real estate finance.

In terms of answering your question about what is a forensic analyst, by that, I mean it would be a body of existing information or data or contracts, and there will be a -- often a body of information concerning a certain transaction. I am able to look at all of that information and determine other information that might be missing or where those particular documents or information fits in on a time line and often reconstruct missing data that helps me and others to -- to understand the transaction.

So, it's -- it's an exercise and an ability to understand not only what is there but what isn't there.

Q. So, you -- I don't want to put words in your mouth, but it sounds like you analyze real estate transactions. And that's not -- that's the analyst part.

What is forensic? What does -- in your own words, what is -- how does "forensic" come into play, as an analyst, in what you do?

A. Well, forensic science is -- can be applied to many different fields, of course, both on the

EXHIBIT 2

criminal, civil side; but what "forensic" actually is -- means is looking back historically at some event that happened -- or in my case, it could be looking at a particular document, such as a mortgage note -- and looking at other evidence that relates to that note or the servicing of that note and putting all of those pieces together, including, as I say, missing pieces that I can reconstruct through my understanding and forensic analysis.

Q. And how long have you been doing the forensic analyzing of real estate transactions?

A. For 25 years.

Q. Okay. And what percentage of your -- of your professional practice is -- do you consider your -- you're doing forensic -- working as an forensic analyst?

A. Actually, at this point, I would say, a hundred percent of the time, that's what I'm doing.

Q. And what -- do you have any education in forensic -- being a forensic analyst, or is it just on-the-job training?

A. Well, there -- there is no doubt that my 25 years of experience in the field is the primary qualifier for the work that I do and for my level of achievement. That is an -- it constitutes an

EXHIBIT 2

Massachusetts Association of Realtors in order to achieve that designation of graduate realtor institute.

From the National Association of Realtors, I've taken several commercial investment real estate courses.

From the National Council of Exchangers, a number of courses on the mechanics of real estate exchanging.

I've taken a number of courses on real estate finance, understanding the buying and selling of private mortgages at a discount, I've taken courses in real estate options.

Q. Who's offering these courses that you've taken?

A. These -- these are various masters in their fields, except for, of course, the courses that I've taken from the various realtor institutions at the national and state level.

I've taken a number of courses in foreclosure defense from the Massachusetts Bar Association and the Boston Bar Association, and I've recently presented in several of those courses, as well as a speaker. I have taken --

Q. Would you call those ones offered by the Bar,

EXHIBIT 2

the Massachusetts Bar or the Boston Bar -- are those seminars? Is that what those are, one- or two-day seminars?

A. Yes. Most recently -- and I'm not -- not sure that I'm seeing it on here; I -- I'd have to add it -- I -- I cochaired a two-hour session for the Massachusetts Bar Association that covered the -- the settlement between the national banks and the 49 state attorneys general.

I've taken intensive courses from O. Max Gardner, III, who is a nationally renowned bankruptcy attorney, a highly regarded expert in his field who has been conducting bankruptcy boot camps since about 2006. I've taken two of -- these are intensive four-day training sessions that go for about 12 hours per day. I've taken two of them, and he's asked me to speak at and co-instruct at a number of others.

I've taken various courses in regulation and compliance from the Massachusetts Bankers Association, the CUNA Mutual Group, BankersOnline and....

Q. Okay. Do you consider yourself an expert in any area of the law?

MR. HUGHES: Objection; form.

You can answer.

EXHIBIT 2

until -- if it was taken out of the custody and control from Deutsche Bank National Trust Company for purposes of this legislation, that's one thing.

But the original would be held in a vault maintained by the document custodian, Deutsche Bank.

Q. (BY MR. SMART) And I apologize if I asked this: Can you just summarize the basis for your opinion that Defendant Wells Fargo Bank, N.A. is not the current holder of Plaintiffs' note?

A. Okay.

Well, in this case Wells Fargo Bank, N.A. is serving as a trustee of the Carrington Mortgage Loan Trust Series 2006-NC3; and as trustee, it is responsible for the assets that are allegedly held in that trust fund.

The problem is that my analysis shows that there is no evidence in the record that I have reviewed that the Wolfs' note and their security instrument were properly negotiated, delivered, transferred to all of the necessary parties in the securitization chain that would be required under a mortgage loan purchase agreement and a pooling and servicing agreement in order to convey those instruments into the trust fund. There are fatal

EXHIBIT 2

breaks in the chain of title which indicate that those instruments never made it into the trust fund.

Therefore, Defendant Wells Fargo Bank is not the current owner and holder of the plaintiffs' note and deed of trust.

Q. Okay. So, sounds like you're not saying that Wells Fargo Bank doesn't currently physically have possession of the original note. That's not your opinion, is it?

I mean, that's within the realm of possibility, isn't it, that -- that Wells Fargo Bank, N.A. physically possesses the original note?

A. They may at -- at this moment, yes. That's --

Q. And they may --

A. -- a possibility.

Q. And they may possess -- I mean, you're not saying they don't? You're not saying they don't physically possess it, are you? Is that -- or is that your opinion?

A. Like I say, at this moment in time, I do not have any personal knowledge of where the physical note actually is. I know what -- where it had to be in order to securitize the instruments, and I know what the pooling and servicing agreement require in terms

EXHIBIT 2

of maintaining that -- the negotiable instrument and the security instrument and the other mortgage-related documents in the master file; but I do suspect that due to the litigation, there may have been a request for the release of those documents. And, so, therefore, at the moment, I don't actually know who is physically holding the original note.

However, regardless of who is actually physically holding the note who may have the right to negotiate it, that does not mean they have the right to enforce -- to collect on the note or to enforce the security instrument.

Q. And why is that?

A. Well, under the provisions of the Texas home equity fixed/adjustable rate note that the Wolfs signed, in Paragraph 1, where they make their promise to pay for having received a loan of $400,000, it says, "Lender, or anyone who takes this Note by transfer and who is entitled to receive payments under the Note, is called 'Noteholder.'"

And if you read the -- the note and the security instrument together, it is the noteholder who would have the enforcement rights.

So, if Wells Fargo is in physical possession of the note, it may have the right to

EXHIBIT 2

negotiate that note -- that is, sell it to someone else -- but it doesn't mean that they have the right to enforce the -- the instrument because they would have to prove that they have the right to receive the payments, which means that they paid consideration for it and that it was legally and properly transferred into the trust.

Q. And is that your expert opinion?

A. That is my opinion, yes.

Q. It's one of your opinions?

A. Yes.

Q. All right. And you base that on your interpretation of the language that you just read?

MR. HUGHES: Objection; form.

You can answer.

A. In combination with my research, specialized knowledge, training, and the documents that have been presented for my review.

Q. (BY MR. SMART) Let's look at your third opinion in order here on the affidavit, Page 4, which is under C; and it reads, "Plaintiffs' mortgage loan was never transferred into the 2006-NC3 trust for which Defendant Wells Fargo Bank, N.A. is trustee in strict compliance with the Pooling and Servicing Agreement executed on August 1, 2006 between the

EXHIBIT 2

Q. Okay. So -- well, you -- so, in this case, we had a -- a loan that was -- the lender was New Century Mortgage, correct?

A. Yes, that's right.

Q. And so, would New Century Mortgage -- they're -- you refer to them as the originator, correct?

A. Yes. They were the lender and, for purposes of the securitization, they were also deemed to be the originator.

Q. And so, the way -- let's talk about this particular trust and this particular pooling and servicing agreement.

Can you tell me how the transfer of the note was to occur to the ultimate -- where it was ultimately supposed to end up?

A. Yes.

New Century Mortgage Corporation, in order to have the Wolf mortgage loan -- and by "mortgage loan," that's a defined term in my report which essentially refers to their note and security agreement -- in order for that to be securitized, New Century Mortgage Corporation would have had to sell the mortgage loan to an affiliate by the name of NC Capital Corporation who, for purposes of the

EXHIBIT 2

securitization, is identified as the responsible party.

NC Capital Corporation entered into a mortgage loan purchase agreement with Carrington Securities LP and Stanwich Asset Acceptance Company LLC, and that mortgage loan purchase agreement states that the responsible party would sell the mortgage loans to Carrington Securities LP, who, for purposes of the mortgage loan purchase agreement, was the seller's sponsor.

Carrington Securities LP, as the seller's sponsor, then, sold the mortgage loan to -- would have to sell the mortgage loan to Stanwich Asset Acceptance Company LLC, who is the purchaser under the mortgage loan purchase agreement and the depositor under the pooling and servicing agreement.

So, it would be Stanwich Asset Acceptance Company LLC who would, then, deposit the mortgage loan into the trust fund over which Wells Fargo served as trustee.

Also, the actual physical documents were to be transferred to the trustee Wells Fargo Bank, who, under the pooling and servicing agreement, was required to deliver those to custodian Deutsche Bank National Trust Company.

EXHIBIT 2

Q. So, you've talked about a mortgage loan purchase agreement and a pooling and servicing agreement. Are those the two primary documents that guide the securitization process or are there others also?

A. Well, the pooling and servicing agreement governs this particular securitization. There are other deal documents that were created in conjunction with the securitization, but that is the governing document.

Q. The pooling and servicing agreement?

A. Yes.

Q. And you know that from -- how do you know that?

A. I know that from, first of all, reading the pooling and servicing agreement; from years of studying the subject; from reading various court decisions; speaking to hundreds of attorneys about these subjects; taking specialized training, as well on securitization.

Q. Briefly, do you have a definition of "pooling and servicing agreement" in your report? If -- if not, can you give me in -- in your own words sort of a layman's interpretation of what a pooling and servicing agreement is, generally speaking?

EXHIBIT 2

A. Yes.
Q. Now, how -- what is the basis for your opinion that the -- if I'm reading this correctly, you're saying the note, the physical note, was never -- the custodian never -- never touched it, never had possession of it? Is that what you're saying?
A. No.
Q. What do you mean by "physically transferred"?
A. I mean that Wells Fargo Bank, N.A. did not physically transfer those documents to the document custodian.
Q. I mean, like, I am holding a piece of paper; and -- and if I give it to another person, is that what you mean by "physically transfer" from -- when you give this opinion?
MR. HUGHES: Objection; form.
You can answer.
A. That's what I mean.
Q. (BY MR. SMART) So, it's your opinion that -- that Wells Fargo Bank never gave the original note to Deutsche Bank National Trust Company?
A. Not at the -- not at the time the mortgage loan was allegedly securitized. That's correct.
Q. And what do you base -- what -- what's the

EXHIBIT 2

Q. And in -- in the Ibanez or "ih-ban-yez" (phonetic) case, they were also dealing with a securitization trust?

A. That's correct.

Q. Okay. Have you ever been offered a consulting position with any type of governmental entity to aid the government in assisting them with wrongful foreclosure investigation?

A. Yes.

Q. Okay. And please explain what that is and how that happened.

A. Okay.

Well, I -- I have consulted with attorneys general in a number of states over the years, but most recently I conducted a one-day training for the staff of the New York State Attorney General's office. And this involved training both special agents and assistant attorney generals handling civil matters, as well as criminal matters.

Q. Okay. Let me stop you right there.

A. Uh-huh.

Q. Did they come to you and ask you, or did you submit some type of application?

A. They asked me.

Q. Okay.

EXHIBIT 2

A. And recently, I was awarded a contract to provide a -- a three-day training session to special agents of a variety of federal entities. This was at the request of the Office of the Inspector General for the Federal Housing Finance Agency, which actually regulates Fannie Mae and Freddie Mac.

And just yesterday, I was also contacted by someone in the FHFA OIG's office to consult with them on some mortgage servicing issues.

So, it is anticipated that I'll be doing a fair amount of training going forward for these various special agents.

Q. Okay. And are you aware that the Wolf case at issue here is being filed as a proposed class action?

A. Yes, I am.

Q. Okay. Do you believe that the plaintiffs' -- when I say "the plaintiffs," I mean the Wolfs -- and the class members' claims stem from a common course of conduct by Wells Fargo?

A. Yes.

Q. Okay. And do you believe each member of the proposed class has been damaged by Wells Fargo's course of conduct and action?

A. Yes.

EXHIBIT 2

Q. Do you recall how many mortgages and deeds of trust have been transferred into this 2006-NC3 trust?

A. Just a moment, please. I think I did that research.

Yes. There were 7,548 mortgage loans involved in this securitization.

Q. Okay. And is it true that approximately 571 of these mortgage loans relate to Texas residents and Texas property?

A. I can look that up. I -- and I may have before, so.... That sounds about right.

Q. Approximately?

A. Yes. Uh-huh.

Q. And approximately 233 of these mortgage loans that have been allegedly transferred into this trust involve real property located in Harris County, Texas?

A. Yes. I believe I -- I -- I looked at those statistics, by which I can go in through using the Bloomberg terminal and support all of this -- rather, and analyze all of this data, sorting by ZIP code, metropolitans statical area, state, and so forth.

Q. So, you're saying that you can verify these numbers later?

A. Yes.

Q. Okay.

EXHIBIT 2

A. I -- I certainly can.
Q. And you're aware that the plaintiffs in the proposed class in this case are seeking to certify a class comprised of all Texas residents whose mortgages and deeds of trust have been allegedly transferred into the 2006 trust?
A. Yes.
Q. All right. Do you believe there's numerous common questions of fact that would equally apply to both the plaintiffs and the proposed class?
A. Yes. With respect to the securitization and actually the foreclosure process, yes, I do.
Q. Okay. Is fair to say that the size of the proposed class in this case will number in the hundreds or thousands?
A. Yes.
Q. Is there at least one material fact issue shared by every proposed class member that's common with the plaintiffs in this case?
A. Yes.
Q. Do you -- can you explain or list at least one or two of these common factual issues?
A. Yes.
With respect to what was required to securitize these loans, every single one of them would

EXHIBIT 2

have to follow the same deal flow that I've just described here during the course of this deposition.

Q. Would -- what about an allegation that these -- that a fraudulent transfer of lien was filed with the county clerk's office? Would that be a common factual issue shared by the proposed class and the plaintiffs?

A. Yes.

Q. And when it -- when we allege -- or when the plaintiffs allege a fraudulent transfer of lien, what exactly -- what document is that referring to?

A. For example, in the Wolfs' case, I have it here attached to my report as Exhibit D. It is called "Transfer of lien."

And what this proposes to do is to -- to assign the security instrument and the note from, in this case, New Century Mortgage Corporation, directly into -- or directly over to Wells Fargo Bank, N.A. as trustee for Carrington Mortgage Loan Trust Series 2006-NC3 Asset-Backed Pass-Through Certificates.

So, it purports to assign and transfer all of the rights contained in those instruments to Wells Fargo Bank as trustee.

MR. HUGHES: Okay. I'll pass the witness.

EXHIBIT 2

MR. SMART: No more questions.

(Deposition concluded at 10:28 a.m.)

EXHIBIT 2

CAUSE NO. 2011-36476

MARY ELLEN WOLF and DAVID WOLF	)	IN THE DISTRICT COURT OF
VS.	)	HARRIS COUNTY, TEXAS
WELLS FARGO BANK, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates, et al	)	151ST JUDICIAL DISTRICT

REPORTER'S CERTIFICATION
ORAL DEPOSITION OF MARIE MCDONNELL
OCTOBER 2, 2012

I, Mendy A. Schneider, a Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, MARIE MCDONNELL, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on _____, 2012, to the witness, or to the attorney for the witness, for examination, signature, and return to U.S. Legal Support, Inc., by _____, 2012;

That the amount of time used by each party at the deposition is as follows:

EXHIBIT 2

MR. HUGHES - 00:11:25

MR. SMART - 01:00:49

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

MR. W. CRAFT HUGHES, Attorney for Plaintiffs.
MR. PETER C. SMART, Attorney for Defendants.

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Further certification requirements pursuant to Rule 203 of TRCP will be certified to after they have occurred.

Certified to by me this 9th of October, 2012.

_____
Mendy A. Schneider, CSR NO. 7761
Expiration Date: 12-31-12

EXHIBIT 2

CAUSE NO. 2011-36476

MARY ELLEN WOLF AND DAVID WOLF, on behalf of themselves and all others similarly situated,	§	IN THE DISTRICT COURT OF
v.	§	HARRIS COUNTY, TEXAS
WELLS FARGO BANK, N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST, TOM CROFT, NEW CENTURY MORTGAGE CORPORATION, AND CARRINGTON MORTGAGE SERVICES, LLC.	§	151ST JUDICIAL DISTRICT

AFFIDAVIT OF MARIE MCDONNELL, C.F.E.

COMMONWEALTH OF MASSACHUSETTS §
§
COUNTY OF BARNSTABLE §

Before me, the undersigned notary, on this day personally appeared MARIE MCDONNELL, C.F.E., the affiant, a person whose identity is known to me. After I administered an oath to affiant, affiant testified:

1. "My name is MARIE MCDONNELL, C.F.E., I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. I was retained by counsel for the Plaintiffs Mary Wolf and David Wolf to render an expert opinion in this case. I am a Mortgage Fraud and Forensic Analyst and a credentialed Certified Fraud Examiner ("CFE"). I am the founder and managing member of Truth In Lending Audit & Recovery Services, LLC of Orleans, Massachusetts and have twenty-five years' experience in transactional analysis, mortgage auditing, and mortgage fraud investigation.

3. I received a Certified Exchange Consultant Designation from The Academy of Real Estate, High Honors, in 1989.

4. I've been a Registered Real Estate Broker from February 1988 through the present time.

5. I am also the President of McDonnell Property Analytics, Inc., a litigation support and research firm that provides mortgage-backed securities research services and foreclosure forensics to attorneys nationwide. McDonnell Property Analytics also advises and performs services for county registers of deeds, attorneys general, courts and other governmental agencies.

EXHIBIT 3

6. I am an expert in chain of title, securitization and truth in lending disputes between lenders and homeowners and disputes between governmental bodies and national banks. My experience includes the design, execution and delivery of various company's title and securitization forensic reports to attorneys, consumers, registries of deeds, and other governmental agencies.

7. I've also trained state and federal law enforcement and regulatory agencies regarding detection of invalid assignments, robo-signing, fraud and misrepresentation in mortgage and foreclosure instruments.

8. I've provided litigation support and expert witness services to law firms throughout the country.

9. Throughout my career, I've developed specialized knowledge and implemented protocols to trace the ownership of residential and commercial mortgage loans that had been sold to secondary market investors and private label securitization deals.

10. I've personally audited thousands of residential mortgage loans on behalf of consumers and attorneys who specialize in foreclosure defense.

11. I uncovered a mortgage fraud scheme, orchestrated by The Dime Savings Bank of New York, that led to Attorney General investigations in Massachusetts, New Hampshire and Connecticut and, ultimately, to multi-million dollar settlement awards and relief programs for consumers.

12. In June of 2011, John O'Brien, Register of the Essex Southern District Registry of Deeds, commissioned me to conduct an audit to test the integrity of his registry due to his concern that Mortgage Electronic Registration Systems, Inc. ("MERS") boasts that its members can avoid recording assignments of mortgage if they register their mortgages in the MERS System; and due to the robo-signing scandal featured in a 60 Minutes exposé on the subject.

13. A true and correct copy of my Report entitled *FORENSIC EXAMINATION OF ASSIGNMENTS OF MORTGAGE RECORDED DURING 2010 IN THE ESSEX SOUTHERN DISTRICT REGISTRY OF DEEDS* is attached to the foregoing Plaintiffs' Response to Defendants' Motion for Summary Judgment as Exhibit 8, and incorporated herein by reference for all purposes.

14. I accepted this assignment on a pro bono basis because of its high and urgent value to the public trust, and to educate the 50 Attorneys General who were at the time brokering a settlement with the subject banks in an attempt to resolve fraudulent foreclosure practices. I also wanted to prove the concept that registries of deeds across all counties and jurisdictions in the United States need to have their registries audited in kind. I wanted to give consumers some guidelines as to how they can research the public records to detect invalid documents and gaps in the chain of title that need to be addressed.

EXHIBIT 3

15. I defined the scope of the examination by selecting all assignments of mortgage that were recorded during the year 2010 to and from three of the nation's largest banks: JPMorgan Chase Bank, N.A., Wells Fargo Bank, N.A., and Bank of America, N.A. The sample was not random or arbitrary; we included every assignment that appeared in the Grantor / Grantee index using the registry's online search engine. The study included 147 assignments involving JPMorgan Chase; 278 assignments involving Wells Fargo Bank; and 140 assignments involving Bank of America. A total of 565 assignments were examined.

16. The results, conclusions and findings of the audit I performed for John O'Brien, Register of the Essex Southern District Registry of Deeds include the following:

a. I was able to trace ownership to only 287 of 473 mortgages (60%).
b. 46% and 47% of mortgages were either MERS registered or owned by the Government Sponsored Enterprises (i.e., Fannie Mae, Freddie Mac, Ginnie Mae), respectively. Typically ownership of these mortgages is highly obscure.
c. 37% of mortgages were securitized into public trusts (as opposed to private trusts), which are typically more discoverable through use of forensic tools and high cost, subscription-based databases.
d. Only 16% of all assignments examined are valid.
e. 75% of all assignments examined are invalid and an additional 8.7% are questionable (require more data.)
f. 27% of the invalid assignments are fraudulent, 35% are "robo-signed" and 10% violate the Massachusetts Mortgage Fraud Statute.
g. 683 assignments are missing, translating to approximately $180,000 in lost recording fees per 1,000 mortgages whose current ownership can be traced.

17. I have reviewed the written documents produced by Defendants and Plaintiffs, the pleadings on file, and deposition transcript of Tom Croft in the above-referenced lawsuit at issue in this case, entitled *Mary Ellen Wolf and David Wolf v. Wells Fargo Bank N.A., et al*; Cause No. 2011-36476; In the 151st Judicial District Court of Harris County, Texas.

18. Further, I have conducted my own independent research using: the Bloomberg Professional service, a robust database of Residential Mortgage Backed Securities ("RMBS") that enables me to identify and track individual transactions that were allegedly packaged into RMBS; EDGAR, the Securities and Exchange Commission's official website that contains various Deal Documents filed with the SEC incident to publically offered RMBS; www.SECInfo.com, which provides enhanced viewing options and hyperlinks that make it easier to navigate the documents on file with the SEC; the relevant documents on file with the Harris County Clerk's Office; internet-based public searches; and my own repository of mortgage loan documents issued by New Century Mortgage Corporation.

19. Based on the evidence available as of this writing and with a reasonable degree of probability, it is my expert opinion that:

EXHIBIT 3

a. Defendant Wells Fargo Bank, N.A., is not the current owner and holder of Plaintiffs' Note and Deed of Trust ("Mortgage Loan");

b. Defendant Wells Fargo Bank, N.A., has never been the owner and holder of Plaintiffs' Mortgage Loan;

c. Plaintiffs' Mortgage Loan was never transferred into the 2006-NC3 Trust for which Defendant Wells Fargo Bank, N.A. is Trustee in strict compliance with the Pooling and Servicing Agreement executed on August 1, 2006 between the parties which is governed by the laws of the State of New York;

d. The Plaintiffs' Mortgage Loan was never physically transferred from the originator (New Century Mortgage Corporation) to the Responsible Party (New Century Capital Corporation); or properly conveyed from the Responsible Party to the sponsor (Carrington Securities, LP) of the 2006-NC3 Trust as required by the Mortgage Loan Purchase Agreement executed on August 10, 2006 between the parties;

e. The Plaintiffs' Mortgage Loan was never physically transferred from the sponsor (Carrington Securities, LP) to the depositor (Stanwich Asset Acceptance Company, LLC) of the 2006-NC3 Trust or properly conveyed as required by the Mortgage Loan Purchase Agreement referenced above;

f. The Plaintiffs' Mortgage Loan was never physically transferred from the depositor (Stanwich Asset Acceptance Company, LLC) or properly conveyed to the Trustee for the 2006-NC3 Trust as required by the Pooling and Servicing Agreement dated August 1, 2006 by and between the parties; and

g. The Plaintiffs' Mortgage Loan was never physically transferred from Defendant Wells Fargo Bank, N.A., as Trustee of the 2006-NC3 Trust to the document custodian (Deutsche Bank National Trust Company).

20. The expert opinions I reached above are based on my review and reliance on the documents and information reviewed in this case to date and the reasons underpinning my conclusions will be detailed in my expert report which is yet to be released. I reserve the right to amend and supplement my opinion based on my review of future data.

21. This affidavit is made upon personal knowledge of the affiant, and all facts stated herein are true and correct to the best of my present knowledge.

EXHIBIT 3

Marie McDonnell

MARIE MCDONNELL, C.F.E., Affiant

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF BARNSTABLE, SS

At Brewster, Massachusetts, on this 24th day of September 2012, before me, the undersigned authority, personally appeared MARIE MCDONNELL, proved to me through evidence of identity, to wit: a Massachusetts Driver's License, to be the signer(s) of the attached document, and who swore or affirmed to me, under the penalties of perjury, that the contents of said document are truthful and accurate, to the best of her knowledge and belief.

Subscribed to and sworn before me.

I. Marie Sherman

Notary Public

My Commission expires: 2/14/2014

I. MARIE SHERMAN
Notary Public
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires
February 14, 2014

EXHIBIT 3

Cause No. 2011-36476

P-2
OBJDY

MARY ELLEN WOLF and DAVID WOLF	§	**CIVIL DISTRICT COURT**
	§	
v.	§	**HARRIS COUNTY, TEXAS**
	§	
WELLS FARGO BANK, N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST ... , TOM CROFT, NEW CENTURY MORTGAGE CORPORATION and CARRINGTON MORTGAGE SERVICES, LLC	§	**151st JUDICIAL DISTRICT**

ORDER SUSTAINING OBJECTION TO AFFIDAVIT OF MARIE McDONNELL

OVERRULING

On this ~~day~~ came on to be heard Defendants' Objection to, and Motion to Strike, Affidavit of Marie McDonnell as Summary Judgment Evidence. The Court reviewed the motion and is of the opinion that it should be ~~granted~~. It is therefore,

OVERRULED

ORDERED that Defendants' objection to the Affidavit of Marie McDonnell is ~~sustained~~. It is further,

overruled.

ORDERED that the Affidavit of Marie McDonnell that is an exhibit to Plaintiff's response to Defendants' Motion for Summary Judgment will not be considered as summary judgment evidence.

OCT - 9 2012

Signed this ____ day of October, 2012.

JUDGE PRESIDING

EXHIBIT 4

CAUSE NO. 2011-36476

MARY ELLEN WOLF AND DAVID WOLF, on behalf of themselves and all others similarly situated, v. WELLS FARGO BANK, N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST, TOM CROFT, NEW CENTURY MORTGAGE CORPORATION, AND CARRINGTON MORTGAGE SERVICES, LLC.	§ § § § § § § § § § § §	IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS 151ST JUDICIAL DISTRICT

PLAINTIFFS' RESPONSE TO DEFENDANTS' *DAUBERT-ROBINSON* MOTION TO STRIKE/EXCLUDE MARIE MCDONNELL FROM TESTIFYING AS EXPERT WITNESS

COME NOW Plaintiffs MARY ELLEN WOLF and DAVID WOLF ("Plaintiffs" or "Wolfs"), by and through their undersigned attorney, responding to the Motion to Strike Marie McDonnell as Expert Witness filed by Defendants, Wells Fargo Bank, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates (for the sake of brevity only, "Wells Fargo"), Carrington Mortgage Services, LLC, ("Carrington") and Tom Croft ("Croft") (collectively "Defendants"). Plaintiffs ask this Court to take judicial notice of its own records in this case, which Plaintiffs fully incorporate by reference herein[1].

I. INTRODUCTION & SUMMARY OF RESPONSE

This case involves the fraudulent filing and recording of documents with County Clerk's Offices in the State of Texas by Defendants relating to the 2006-NC3 Trust. Defendants have violated, and continue to violate, Texas law by recording, causing the recording, or permitting the recording of instruments which falsely state Defendant Wells Fargo has an interest in or lien

[1] *See In re Douglas*, 333 S.W.3d 273, 278 n.3 (Tex. App.—Houston [1st Dist.] 2010, pet. denied) (holding that trial court may take judicial notice of its own records involving same parties and subject matter).

upon real property in its capacity as "trustee" for the 2006-NC3 Trust. Defendants have also violated, and continue to violate, Texas law by failing to record, causing to be recorded, or requiring to be recorded, all releases, transfers, assignments, or other actions related to instruments filed of record relating to the 2006-NC3 Trust.

The case arose out of an attempted wrongful foreclosure in which a third party, Defendant Wells Fargo, sought to foreclose on Plaintiffs' homestead without being the owner and holder of the Mortgage, Note, and Deed of Trust. On or about October 15, 2009, Defendants executed a "Transfer of Lien" relating to the Wolfs' mortgage, and filed the document with the Harris County Clerk's Office. The "Transfer of Lien" is fraudulent, and wrongfully attempts to transfer ownership of the Wolfs' mortgage into a securitization trust (the "2006-NC3 Trust").

On May 10, 2012, Plaintiffs' timely designated Marie McDonnell, CFE ("McDonnell") as their expert witness in this case. On October 2, 2012, Plaintiffs filed their First Supplemental Response to Defendants' Request for Disclosure, attaching the expert report of Marie McDonnell ("Expert Report of McDonnell").[2] On or about October 25, 2012, Defendants filed their Motion to Strike/Exclude Marie McDonnell ("Defendants' Motion") based solely on the following three grounds:

1. McDonnell's opinions are irrelevant because Plaintiffs' do not have standing to complain about whether the note and/or deed of trust were assigned in compliance with trust agreements;

2. McDonnell's opinions are inadmissible because they are legal in nature; and

3. McDonnell is not qualified to offer a legal opinion.

[2] Exhibit 1 – Expert Report of McDonnell (P002350-P002468).

As discussed in more detail below, this Court should admit the expert testimony of Marie McDonnell, CFE because her testimony meets all requirements of the TEXAS RULES OF EVIDENCE, TEXAS RULES OF CIVIL PROCEDURE, and Texas case law.

II. EXHIBITS

In support, Plaintiffs attach and fully incorporate by reference herein the following:

EXHIBIT 1: Expert Report of Marie McDonnell;

EXHIBIT 2: Deposition Excerpts of Marie McDonnell;

EXHIBIT 3: Affidavit of Marie McDonnell; and

EXHIBIT 4: Order Overruling Objection to Affidavit of Marie McDonnell.

III. ARGUMENT & AUTHORITIES

An expert witness may testify regarding "scientific, technical, or other specialized" matters if (1) the expert is qualified and (2) the expert's opinion is relevant and based on a reliable foundation. *See* TEX. R. EVID. 402, 403, 702, 705; *Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 579 (Tex. 2006). "[N]o rigid formula exists for determining whether a particular witness is qualified to testify as an expert," and "[r]ule 702 authorizes an expert to give an opinion based on practical experience." *Mega Child Care, Inc. v. Tex. Dep't of Protective & Regulatory Servs.*, 29 S.W.3d 303, 310 (Tex. App.—Houston [14th Dist.] 2000, no pet.).

A. McDonnell is Well Qualified

McDonnell is a mortgage fraud examiner, forensic analyst, and a credentialed Certified Fraud Examiner ("CFE").[3] McDonnell has twenty-five years' experience in mortgage auditing, and mortgage fraud investigation.[4] McDonnell is a certified real estate exchange consultant,[5]

[3] Exhibit 2 – Deposition of Marie McDonnell ("McDonnell Deposition") at 4:9-11.
[4] *Id.*
[5] Exhibit 2, at 5:11-21.

and registered Real Estate Broker for the past 24 years.[6] For the past 25 years, McDonnell has dedicated 100% of her practice to the forensic analysis of real estate transactions.[7] McDonnell is an expert in chain of title and securitization disputes between lenders and homeowners.[8] McDonnell is well qualified through her knowledge, skill, experience, training, and education to offer expert opinions relating to mortgage fraud, mortgage auditing, and validity of real estate transactions. *See* TEX. R. EVID. 702; *Mega Child Care, Inc.*, 29 S.W.3d at 310. Furthermore, this Court previously issued an Order overruling Defendants' objection to the Affidavit of Marie McDonnell.[9]

McDonnell has consulted with several attorneys general in a number of states over the years.[10] The New York State Attorney General's office recently contacted McDonnell and invited her to present their office with a one-day training session about wrongful foreclosure investigations.[11] The seminar involved training both special agents and assistant attorney generals about civil and criminal matters.[12]

McDonnell was also recently awarded a contract to provide a three-day training session to special agents of a variety of federal entities.[13] This was at the request of the Office of the Inspector General ("OIG") for the Federal Housing Finance Agency ("FHFA"), which actually regulates Fannie Mae and Freddie Mac.[14] On October 1, 2012, the FHFA OIG's office contacted McDonnell to request a consultation about mortgage servicing issues.[15]

A court should allow the opinion testimony of an expert if the expert is qualified to give

[6] Exhibit 3, at p. 1, ¶ 4.
[7] Exhibit 2, at 11:10-18.
[8] Exhibit 3, at p. 2, ¶ 6.
[9] Exhibit 4 – Order Overruling Objection to Affidavit of Marie McDonnell, signed October 9, 2012.
[10] Exhibit 2, at 39:13-19.
[11] Exhibit 2, at 39:5-24.
[12] Exhibit 2, at 39:13-19.
[13] Exhibit 2, at 40:1-12.
[14] Exhibit 2, at 40:1-12.
[15] Exhibit 2, at 40:1-12.

an opinion by knowledge, skill, experience, training, or education. TEX. R. EVID. 702. An expert must have a higher degree of knowledge, skill, experience, training, or education about the subject of the testimony than an ordinary person has. *See id.*; *Roberts v. Williamson*, 111 S.W.3d 113, 121 (Tex. 2003); *Broders v. Heise*, 924 S.W.2d 148, 153 (Tex. 1996).

Throughout her career, McDonnell developed specialized knowledge and implemented protocols to trace the ownership of residential and commercial mortgage loans that had been sold to secondary market investors and private label securitization deals.[16] McDonnell is a speaker at the Massachusetts State Bar Association and Boston Bar Association courses, and recently co-chaired a two-hour session discussing the national bank settlement with the 49 state Attorney General's offices.[17] McDonnell has also completed numerous courses in foreclosure defense from the Massachusetts State Bar Association and Boston Bar Association.[18]

In June of 2011, John O'Brien, Register of the Essex Southern District Registry of Deeds in Massachusetts ("Essex Registry"), commissioned McDonnell to conduct an audit of real property records and test the integrity of his registry.[19] During her audit, McDonnell examined a total of 565 assignments, including 278 assignments involving Defendant Wells Fargo.[20]

McDonnell has reviewed the written documents produced by Defendants and Plaintiffs, the pleadings on file, and deposition transcript of Tom Croft in the above-referenced lawsuit at issue in this case.[21] McDonnell conducted her own independent research, reviewed the relevant documents on file with the Harris County Clerk's Office, and her own repository of mortgage

[16] Exhibit 3, at p. 2, ¶ 9.
[17] Exhibit 2, at 15:6-9.
[18] Exhibit 2, at 14:20-24.
[19] Exhibit 3, at p. 2, ¶ 12.
[20] Exhibit 3, at p. 3, ¶ 15.
[21] Exhibit 3, at p. 3, ¶ 17.

loan documents issued by New Century Mortgage Corporation.[22] Based on the evidence in this case, and with a reasonable degree of probability, it is McDonnell's expert opinion that:[23]

(1) Defendant Wells Fargo Bank, N.A., is not the current owner and holder of Plaintiffs' Note and Deed of Trust ("Mortgage Loan").[24]

(2) Defendant Wells Fargo Bank, N.A., has never been the owner and holder of Plaintiffs' Mortgage Loan.[25]

(3) Plaintiffs' Mortgage Loan was never transferred into the 2006-NC3 Trust for which Defendant Wells Fargo Bank, N.A. is Trustee in strict compliance with the Pooling and Servicing Agreement executed on August 1, 2006 between the parties which is governed by the laws of the State of New York.[26]

(4) The Plaintiffs' Mortgage Loan was never physically transferred from the originator (New Century Mortgage Corporation) to the Responsible Party (New Century Capital Corporation); or properly conveyed from the Responsible Party to the sponsor (Carrington Securities, LP) of the 2006-NC3 Trust as required by the Mortgage Loan Purchase Agreement executed on August 10, 2006 between the parties.[27]

(5) The Plaintiffs' Mortgage Loan was never physically transferred from the sponsor (Carrington Securities, LP) to the depositor (Stanwich Asset Acceptance Company, LLC) of the 2006-NC3 Trust or properly conveyed as required by the Mortgage Loan Purchase Agreement referenced above.[28]

(6) The Plaintiffs' Mortgage Loan was never physically transferred from the depositor (Stanwich Asset Acceptance Company, LLC) or properly conveyed to the Trustee for the 2006-NC3 Trust as required by the Pooling and Servicing Agreement dated August 1, 2006 by and between the parties.[29]

[22] Exhibit 3, at p. 3, ¶ 18.
[23] Exhibit 3, at p. 3, ¶ 19.
[24] Exhibit 3, at p. 4, ¶ 19(a).
[25] Exhibit 3, at p. 4, ¶ 19(b).
[26] Exhibit 3, at p. 4, ¶ 19(c).
[27] Exhibit 3, at p. 4, ¶ 19(d).
[28] Exhibit 3, at p. 4, ¶ 19(e).
[29] Exhibit 3, at p. 4, ¶ 19(f).

(7) The Plaintiffs' Mortgage Loan was never physically transferred from Defendant Wells Fargo Bank, N.A., as Trustee of the 2006-NC3 Trust to the document custodian (Deutsche Bank National Trust Company).[30]

As such, McDonnell has abundant education, training, and practical experience in mortgage fraud detection, mortgage auditing, and the validity of real estate transactions to qualify her as an expert to testify about Plaintiffs' mortgage in this case. Accordingly, McDonnell's opinions are relevant, reliable, based on proper foundational data, and will greatly assist the jury in determining fact issues in this case. *See* TEX. R. CIV. P. 402-403, 702, 704-705. This Court should thus admit McDonnell's testimony and deny Defendants' Motion.

B. McDonnell's Opinions Regarding the Plaintiffs' Mortgage are Relevant and Admissible

A court should allow the opinion testimony of an expert if it is relevant. *See* TEX. R. EVID. 401, 402. To be relevant, the testimony must be "sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute." *E.I. du Pont de Nemours & Co. v. Robinson*, 923 S.W.2d 549, 556 (Tex. 1995).

In the present case, Defendant Wells Fargo Bank, N.A. ("Wells Fargo") is serving as a trustee of the Carrington Mortgage Loan Trust Series 2006-NC3 ("2006-NC3 Trust").[31] As trustee, Wells Fargo is responsible for the assets that are allegedly held in the trust.[32] On or about October 15, 2009, Tom Croft, acting in his alleged capacity as Vice President of REO for New Century Mortgage Corporation ("Assignor"), executed a Transfer of Lien ("Transfer") "To Be Effective 9/30/2009," which purports to transfer the Wolf Note and Lien ("Mortgage Loan") from New Century Mortgage Corporation to Wells Fargo, as Trustee of the 2006-NC3 Trust."[33]

[30] Exhibit 3, at p. 4, ¶ 19(g).
[31] Exhibit 2, at 23:12-24:5.
[32] Exhibit 2, at 23:12-24:5.
[33] Exhibit 1, at p. 10-11.

According to McDonnell's expert analysis, there is no evidence in the record showing the Wolfs' Note and Security Instrument were properly negotiated, delivered, or transferred to all necessary parties in the securitization chain.[34] This is required under the mortgage loan purchase agreement and the Pooling and Servicing Agreement ("P&S Agreement")[35] in order to convey these instruments into the 2006-NC3 Trust.[36] There are fatal breaks in the chain of title which indicate these instruments were never transferred into the 2006-NC3 Trust.[37] In McDonnell's expert opinion, Defendant Wells Fargo is not the current owner and holder of the Wolfs' Note and Deed of Trust.[38]

Even if Wells Fargo physically holds the Note, it does not mean they have the right to enforce the Note, collect on the Note, or to enforce the Security Instrument.[39] Paragraph one of the Note signed by the Wolfs states, "Lender, or anyone who takes this Note by transfer and who is entitled to receive payments under the Note, is called the 'Noteholder.'"[40] It is the Noteholder who would have the right to enforce the Note.[41] If Wells Fargo is in physical possession of the Note, it may have the right to negotiate the Note -- that is, sell it to someone else -- but it doesn't mean Wells Fargo has the right to enforce the Note.[42] Wells Fargo must prove it had the right to receive mortgage payments under the Note, it paid consideration for the Note, and the Note was legally and properly transferred into the 2006-NC3 Trust.[43]

According to McDonnell, the Pooling and Service Agreement governs the Wolfs'

[34] Exhibit 2, at 23:12-24:5.
[35] *See* Pooling and Service Agreement of the 2006-NC3 Trust dated August 1, 2006 (CARRINGTON-00597 to CARRINGTON-00759).
[36] Exhibit 2, at 23:12-24:5.
[37] Exhibit 2, at 23:12-24:5.
[38] *Id.*
[39] Exhibit 2, at 25:8-26:11.
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.*

mortgage, conveyance, and transfer into the 2006-NC3 Trust.[44] In order for the Wolfs' Mortgage Loan[45] to be securitized into the 2006-NC3 Trust, New Century Mortgage Corporation would have had to sell the mortgage loan to an affiliate by the name of NC Capital Corporation who, for purposes of the securitization, is identified as the responsible party.[46] NC Capital Corporation entered into a mortgage loan purchase agreement with Carrington Securities LP and Stanwich Asset Acceptance Company LLC.[47] The mortgage loan purchase agreement states the responsible party would sell the mortgage loans to Carrington Securities LP, who, for purposes of the mortgage loan purchase agreement, was the seller's sponsor.[48] Carrington Securities LP, as the seller's sponsor, is required to sell the mortgage loan to Stanwich Asset Acceptance Company LLC.[49] Stanwich Asset Acceptance Company LLC is the purchaser under the mortgage loan purchase agreement, and the depositor under the pooling and servicing agreement.[50] Stanwich Asset Acceptance Company LLC would then deposit the mortgage loan into the 2006-NC3 Trust over which Wells Fargo served as trustee.[51] The physical documents should have been transferred to Wells Fargo, as trustee.[52] According to the pooling and servicing agreement, Wells Fargo was required to deliver the documents to the custodian Deutsche Bank National Trust Company.[53] However, Wells Fargo never gave the original Note to Deutsche Bank National Trust Company at the time the Wolfs' mortgage was allegedly securitized into the 2006-NC3 Trust.[54]

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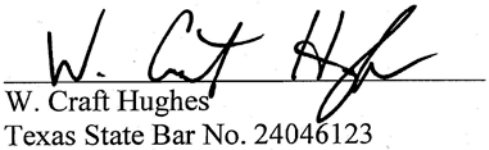
[44] Exhibit 2, at 31:6-12.
[45] "mortgage loan" is a defined term in McDonnell's Report referring to the Wolfs' Note and Security Agreement.
[46] Exhibit 2, at 29:11-30:25.
[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] Exhibit 2, at 34:20-24.

CONCLUSION & PRAYER

For these reasons, Plaintiffs respectfully request this Court to deny Defendants' Motion and admit the testimony of Plaintiffs' expert, Marie McDonnell, CFE. Plaintiffs further request all other relief to which they may be justly entitled.

Respectfully submitted,

HUGHES ELLZEY, LLP



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ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

By the execution of my signature below, I certify that a true and correct copy of the foregoing document has been served to the following parties on the 10th day of November, 2012 pursuant to rule 21(a) of the TEXAS RULES OF CIVIL PROCEDURE:

Mr. Peter C. Smart
CRAIN CATON & JAMES, P.C.
Five Houston Center, 17th Floor
1404 McKinney, Suite 1700
Houston, TX 77010
Attorney for Defendants, Wells Fargo Bank N.A., as Trustee For Carrington Mortgage Loan Trust, Tom Croft, New Century Mortgage Corporation and Carrington Mortgage Services, LLC

Via Certified Mail #7011-2000-0001-1177-6305

W. Craft Hughes
E-Mail: craft@crafthugheslaw.com

P-24
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FFCLO

CAUSE NO. 2011-36476

MARY ELLEN WOLF AND DAVID WOLF, on behalf of themselves and all others similarly situated,	§	IN THE DISTRICT COURT OF
v.	§	
WELLS FARGO BANK, N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST, TOM CROFT, NEW CENTURY MORTGAGE CORPORATION, AND CARRINGTON MORTGAGE SERVICES, LLC.	§	HARRIS COUNTY, TEXAS 151ST JUDICIAL DISTRICT

FILED
Chris Daniel
District Clerk
MAY -1 2013
Time: 1:20
Harris County, Texas
By
Deputy

ORDER GRANTING CLASS CERTIFICATION

On December 10, 2012, came on for hearing the Motion for Class Certification filed by Plaintiffs Mary Ellen Wolf and David Wolf (collectively "Plaintiffs"). Having taken notice of and considered the Court's entire file in this cause, all evidence and arguments of counsel, all accompanying affidavits and exhibits thereto, and all of the legal authorities and documents submitted in support of Plaintiffs' Motion, and GOOD CAUSE appearing, **IT IS HEREBY ORDERED** that Plaintiffs' Motion for Class Certification under Rule 42 of the TEXAS RULES OF CIVIL PROCEDURE is **GRANTED**.

A class action is a procedural device intended to advance judicial economy by trying claims together that lend themselves to collective treatment.[1] When properly applied the class action device is unquestionably a valuable tool in protecting the rights of our citizens, including Texas homeowners.[2]

Plaintiffs seek certification of a class consisting of "all persons and entities having a residential mortgage loan on real property in the State of Texas securitized into the 2006-NC4 Trust, with a court record, lien, claim, or claim against an interest in the real property filed in

[1] *Southwestern Refining Co., Inc. v. Bernal*, 22 S.W.3d 425, 437 (Tex. 2000).
[2] *Id.* at 439.

Texas after August 10, 2006, up to and including the date notice is first provided to the Class," and also seek certification of a subclass consisting of "all persons and entities that lost ownership to real property in the State of Texas resulting from a foreclosure initiated by Wells Fargo Bank, N.A., as Trustee for the 2006-NC4 Trust after August 10, 2006 up to and including the date notice is first provided to the Class." In support of this order, the Court makes the following **FINDINGS OF FACT AND CONCLUSIONS OF LAW** on the elements of this Rule 42 common-question class:

A. Factual Background

Wells Fargo Bank, N.A. ("Wells Fargo") is serving as a trustee of the Carrington Mortgage Loan Trust Series 2006-NC3 ("2006-NC3 Trust").[3] As trustee, Wells Fargo is responsible for the assets that are allegedly held in the trust.[4] According to McDonnell's expert analysis, there is no evidence in the record showing the Wolfs' Note and Security Instrument were properly negotiated, delivered, or transferred to all necessary parties in the securitization chain.[5] This is required under the mortgage loan purchase agreement and the Pooling and Servicing Agreement ("P&S Agreement")[6] in order to convey these instruments into the 2006-NC3 Trust.[7] There are fatal breaks in the chain of title which indicate these instruments were never transferred into the 2006-NC3 Trust.[8] In McDonnell's expert opinion, Defendant Wells Fargo is not the current owner and holder of the Wolfs' Note and Deed of Trust.[9]

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[3] Exhibit 7 of Plaintiffs' Memo in Support of Class Certification at pp. 23-24, ll. 12-5.
[4] *Id.*
[5] *Id.*
[6] Exhibit 9 of Plaintiffs' Memo in Support of Class Certification.
[7] Exhibit 7 of Plaintiffs' Memo in Support of Class Certification at pp. 23-24, ll. 12-5.
[8] *Id.*
[9] *Id.*

Even if Wells Fargo physically holds the Note, it does not mean they have the right to enforce the Note, collect on the Note, or to enforce the Security Instrument.[10] Paragraph one of the Note signed by the Wolfs states, "Lender, or anyone who takes this Note by transfer and who is entitled to receive payments under the Note, is called the 'Noteholder.'"[11] It is the Noteholder who would have the right to enforce the Note.[12] If Wells Fargo is in physical possession of the Note, it may have the right to negotiate the Note -- that is, sell it to someone else -- but it doesn't mean Wells Fargo has the right to enforce the Note.[13] Wells Fargo must prove it had the right to receive mortgage payments under the Note, it paid consideration for the Note, and the Note was legally and properly transferred into the 2006-NC3 Trust.[14]

According to McDonnell, the Pooling and Service Agreement governs the Wolfs' mortgage, conveyance, and transfer into the 2006-NC3 Trust.[15] In order for the Wolfs' Mortgage Loan[16] to be securitized into the 2006-NC3 Trust, New Century Mortgage Corporation would have had to sell the mortgage loan to an affiliate by the name of NC Capital Corporation who, for purposes of the securitization, is identified as the responsible party.[17] NC Capital Corporation entered into a mortgage loan purchase agreement with Carrington Securities LP and Stanwich Asset Acceptance Company LLC.[18] The mortgage loan purchase agreement states the responsible party would sell the mortgage loans to Carrington Securities LP, who, for purposes of the mortgage loan purchase agreement, was the seller's sponsor.[19] Carrington Securities LP,

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[10] Exhibit 7 of Plaintiffs' Memo in Support of Class Certification at pp. 25-26, ll. 8-11.
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] Exhibit 7 of Plaintiffs' Memo in Support of Class Certification at p. 31, ll. 6-12.
[16] "mortgage loan" is a defined term in McDonnell's Report referring to the Wolfs' Note and Security Agreement.
[17] Exhibit 7 of Plaintiffs' Memo in Support of Class Certification at pp. 29-30, ll. 11-25.
[18] *Id.*
[19] *Id.*

as the seller's sponsor, is required to sell the mortgage loan to Stanwich Asset Acceptance Company LLC.[20] Stanwich Asset Acceptance Company LLC is the purchaser under the mortgage loan purchase agreement, and the depositor under the pooling and servicing agreement.[21] Stanwich Asset Acceptance Company LLC would then deposit the mortgage loan into the 2006-NC3 Trust over which Wells Fargo served as trustee.[22] The physical documents should have been transferred to Wells Fargo, as trustee.[23] According to the pooling and servicing agreement, Wells Fargo was required to deliver the documents to the custodian Deutsche Bank National Trust Company.[24] However, Wells Fargo never gave the original Note to Deutsche Bank National Trust Company at the time the Wolfs' mortgage was allegedly securitized into the 2006-NC3 Trust.[25]

McDonnell knows the Wolfs' filed the present lawsuit as a proposed class action,[26] she believes the claims asserted by the Wolfs and class members stem from a "common course of conduct" by Wells Fargo,[27] and it's her opinion the Wolfs and each member of the proposed class have suffered damages caused by Wells Fargo's common course of conduct and action.[28] McDonnell is also aware the Plaintiffs' seek to certify a class comprised of all Texas residents whose mortgages and deeds of trust have been allegedly transferred into the 2006-NC3 Trust.[29]

In McDonnell's expert opinion, there are numerous common questions of fact relating to the 2006-NC3 Trust securitization and foreclosure process that equally apply to the Wolfs' and

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[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] Exhibit 7 of Plaintiffs' Memo in Support of Class Certification at p. 34, ll. 20-24.
[26] Exhibit 7 of Plaintiffs' Memo in Support of Class Certification at p. 40, ll. 13-16.
[27] Exhibit 7 of Plaintiffs' Memo in Support of Class Certification at p. 40, ll. 17-21.
[28] Exhibit 7 of Plaintiffs' Memo in Support of Class Certification at p. 40, ll. 22-25.
[29] Exhibit 7 of Plaintiffs' Memo in Support of Class Certification at p. 42, ll. 2-7.

the proposed class members.[30] At least one material fact issue is shared by every proposed class member that's common to the Wolf's facts in the present case.[31] Specifically, the Defendants are required to follow the exact same securitization procedure for transferring each class members' mortgage into the 2006-NC3 Trust,[32] and any fraudulent "transfer of lien" document filed with a county clerk's office in the State of Texas will involve common factual issues shared by the proposed class and the Wolfs.[33]

Recording an interest in real property in Texas is permissive, not mandatory.[34] Although an unrecorded deed of trust "is binding on a party to the [deed of trust]," it is "void as to a creditor or to a subsequent purchaser for a valuable consideration without notice" of the security interest created by the deed of trust.[35] Once a deed of trust is recorded, section 192.007 of the TEX. LOC. GOV'T CODE requires that any release, transfer, assignment, or other action relating to the deed of trust be recorded in the same manner as the original deed of trust was recorded.[36]

B. Numerosity

TEXAS RULE OF CIVIL PROCEDURE 42(a)(1) requires the class be so numerous that joinder of all members is impracticable.[37] The numerosity requirement of federal Rule 23(a) is met when a potential class is so numerous that joinder of all members is impracticable.[38] Both Texas and federal numerosity requirements are satisfied in the present case.

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[30] Exhibit 7 of Plaintiffs' Memo in Support of Class Certification at p. 42, ll. 8-12.
[31] Exhibit 7 of Plaintiffs' Memo in Support of Class Certification at p. 42, ll. 17-20.
[32] Exhibit 7 of Plaintiffs' Memo in Support of Class Certification at pp. 42-43, ll. 21-2.
[33] Exhibit 7 of Plaintiffs' Memo in Support of Class Certification at p. 43, ll. 3-23.
[34] TEX. PROP. CODE § 12.001(a).
[35] *Id.* at § 13.001(a)-(b).
[36] TEX. LOC. GOV'T CODE § 192.007.
[37] TEX. R. CIV. P. 42.
[38] *See Watson v. Shell Oil Co.*, 979 F.2d 1014, 1022 (5th Cir. 1992).

Texas law does not require proof of the precise number of class members.[39] The record reflects there are hundreds of potential class members.[40] Approximately 7,548 mortgage loans were allegedly transferred into the 2006-NC3 Trust.[41] The class is comprised of approximately five-hundred seventy-one (571) Texas residents who currently have or previously had a residential mortgage loan on real property located in the State of Texas securitized into the Carrington Mortgage Loan Trust, 2006-NC3 Asset Backed Pass-Through Certificates ("2006-NC3 Trust").[42] Approximately two-hundred thirty-three (233) of the mortgage loans involve real property located in Harris County, Texas.[43] The class is so numerous that joinder is impracticable.

C. Commonality

TEXAS RULE OF CIVIL PROCEDURE 42(a)(2) merely requires that there "be questions of law, or fact common to the class."[44] The threshold showing for commonality, in contrast to that for showing the predominance of common question, "is not high."[45] This "commonality" requirement is met under the federal rules when class members "have suffered the same injury" and "all of the class members' claims depend on a common issue of law or fact whose resolution will resolve an issue that is central to the validity of each one of the [] claims in one stroke."[46]

"What matters to class certification...is not the raising of common 'questions' — even in droves — but, rather the capacity of a class wide proceeding to generate common answers apt to

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[39] *Phillips v. Joint Legislative Committee*, 637 F.2d 1014, 1022 (5th Cir. 1981), cert. denied, 456 U.S. 960 (1982); *Carpenter v. Davis*, 424 F.2d 257, 260 (5th Cir. 1970).
[40] Exhibit 7 of Plaintiffs' Memo in Support of Class Certification –McDonnell Deposition at p. 41, ll. 1-24.
[41] Exhibit 7 of Plaintiffs' Memo in Support of Class Certification at p. 41, ll. 1-6.
[42] Exhibit 7 of Plaintiffs' Memo in Support of Class Certification at p. 41, ll. 7-13; *see also* Plaintiffs' Third Amended Petition [hereinafter "Plaintiffs' Petition"] at p. 5.
[43] Exhibit 7 of Plaintiffs' Memo in Support of Class Certification at p. 41, ll. 14-24.
[44] TEX. R. CIV. P. 42.
[45] *UPRG v. Hankins*, 111 S.W.3d 69, 74 (Tex. 2003).
[46] *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011) (quoting *Gen. Tel. Co. v. Falcon*, 457 U.S. 147, 161 (1982)) (some internal quotation marks omitted).

drive the resolution of the litigation. Dissimilarities within the proposed class are what have the potential to impede the generation of common answers."[47] Plaintiffs' claims arise from the same set of facts and are based on identical legal theories involving an overarching and uniform course of conduct. More importantly, Plaintiffs' claims "depend upon a common contention that is capable of classwide resolution," and that contention is "of such a nature...that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke."[48]

There are questions of law and fact common to the class, as illustrated by the following examples of common questions:

1. whether the subject Note and Security Instrument were properly conveyed to Wells Fargo Bank, N.A., as Trustee for the 2006-NC3 Trust as required by the Pooling and Servicing Agreement executed on August 1, 2006 which governs the REMIC Trust;[49]

2. whether the "Transfer of Lien" filed with County Clerk's Offices in Texas is valid, and actually transfers the subject Note and Security Instrument to Wells Fargo Bank, N.A., as Trustee for the 2006-NC3 Trust;[50]

3. whether Wells Fargo Bank, N.A., as Trustee for the 2006-NC3 Trust has standing to foreclose on real property in the State of Texas;

4. whether Wells Fargo Bank, N.A., as Trustee for the 2006-NC3 Trust is the legal owner and holder of mortgage loans, mortgage liens, mortgage notes, or deeds of trust on real property in the State of Texas; and

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[47] *Id.* (quoting Nagareda, *Class Certification in the Age of Aggregate Proof,* 84 N.Y.U. L. Rev. 97, 132 (2009)); *see M.D. Ex Rel. Stukenberg v. Perry*, 675 F.3d 832, 838 (5th Cir. 2012) ("In order to satisfy commonality under *Wal-Mart*, a proposed class must prove that the claims of every class member 'depend upon a common contention that is capable of classwide resolution," meaning that the contention is "of such a nature...that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.' 131 S.Ct. at 2551.").

[48] *Wal-Mart*, 131 S. Ct. at 2551.

[49] Exhibit 5 of Plaintiffs' Memo in Support of Class Certification at p. 4.

[50] *Id.*

5. whether Defendants violated TEX. CIV. PRAC. & REM. CODE § 12.002 by filing the "Transfer of Lien" with County Clerk's Offices in Texas attempting to transfer mortgage loans, mortgage liens, mortgage notes, or deeds of trust from New Century Mortgage Corporation to Wells Fargo Bank, N.A., as Trustee for the 2006-NC3 Trust.

Common questions are those questions that, when answered as to the named plaintiff, are answered as to the class members.[51] The standard for commonality is not high.[52] Not all or even a great portion of the questions in the suit must be common to the class.[53] "A single common question can warrant certification."[54] Moreover, the common question may be one of law or fact; it does not have to be both.[55] Affirmative defenses do not destroy commonality.[56] However, the decision to abandon some claims in order to achieve commonality can become "one relevant factor in evaluating the requirements for class certification."[57] Plaintiffs have shown that there are common questions of law and fact sufficient to satisfy TEXAS RULE OF CIVIL PROCEDURE 42(a)(2).

D. Typicality

TEXAS RULE OF CIVIL PROCEDURE 42(a)(3) requires that the claims or defenses of the representatives be "typical" of the claims or defenses of the class.[58] This requirement is that the

[51] *Health & Tennis Corp. of America v. Jackson*, 928 S.W.2d 583, 590 (Tex. App.—San Antonio 1996, no writ); *Reserve Life Insurance Co. v. Kirkland*, 917 S.W.2d 836, 842 (Tex. App.—Houston [14th Dist.] 1996, no writ).
[52] *Union Pacific Resources Group, Inc. v. Hankins*, 111 S.W.3d 69, 74 (Tex. 2003).
[53] *Microsoft Corp. v. Manning*, 914 S.W.2d 602, 611 (Tex. App.—Texarkana 1996, writ dism'd); *Wente v. Georgia-Pacific Corp.*, 712 S.W.2d 253, 255 (Tex. App.—Austin 1986, no writ); *Reserve Life Insurance Co. v. Kirkland*, 917 S.W.2d at 842.
[54] *Health & Tennis Corp. of America v. Jackson*, 928 S.W.2d at 590, citing *Microsoft Corp. v. Manning*.
[55] *Health & Tennis Corp. of America v. Jackson*, 928 S.W.2d at 590.
[56] *Microsoft Corp. v. Manning*, 914 S.W.2d at 613.
[57] *Bowden v. Phillips Petroleum Co.*, 247 S.W.3d 690, 698 (Tex. 2008).
[58] TEX. R. CIV. P. 42.

claims of the representatives be "substantially similar" to those of the class members.[59] Whether a class representative's claims are "typical of the claims" of the class is ordinarily a question of fact to be decided by the district court in considering a motion for class certification.[60] In assessing whether a proposed class representative's claims are typical of those of the class, the focus is "less on the relative strengths of the named and unnamed plaintiffs' cases than on the similarity of the legal and remedial theories behind their claims."[61] In this action, the legal and remedial theories are identical for Plaintiffs and all Class Members.

Plaintiffs assert causes of action based upon conduct of Defendants, which is uniform across all Class Members. And each cause of action is asserted on behalf of each Class Member. Moreover, while the number of subject instruments will be different for each Class Member, the formula for determining each Class Member's recovery is identical.

Here, the Wolfs' claims and the claims of all other Class members arise from the Defendants' fraudulent transfers of mortgages into the 2006-NC3 Trust. All members of the Class, as property owners and mortgagees, have the same interests and suffer the same injury. The typicality requirement is satisfied if the class representative demonstrates that his claims have the same essential characteristics as those of the class as a whole.[62] Unsurprisingly, "the class representative must be a member of the class and have individual standing to sue."[63] The class representative's claims need not be identical to those of absent class members, only

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[59] *Dresser Industries, Inc. v. Snell*, 847 S.W.2d 367, 372 (Tex. App.—El Paso, no writ); *see East Texas Motor Freight v. Rodriguez*, 431 U.S. 395, 403, 97 S.Ct. 1891, 52 L.Ed.2d 453 (1977) (representatives and members need only "possess the same interest and suffer the same injury").
[60] *See Johnson v. Georgia Highway Express, Inc.*, 417 F.2d 1122, 1124 (5th Cir. 1969).
[61] *Jenkins v. Raymark Industries, Inc.*, 782 F.2d 468, 472 (5th Cir. 1986); *see Bertulli v. Indep. Ass'n of Cont.'s Cont'l Pilots*, 242 F.3d 290, 297, n.32 (5th Cir. 2001).
[62] *Microsoft Corp. v. Manning*, 914 S.W.2d 602, 613 (Tex. App.—Texarkana 1996, writ dism'd); *Cedar Crest Funeral Home, Inc. v. Lashley*, 889 S.W.2d 325, 331 (Tex. App.—Dallas 1993, no writ).
[63] *Southwestern Bell Telephone Co. v. Marketing on Hold Inc.*, 308 S.W.3d 909, 915 (Tex. 2010).

substantially similar.[64] All that is required is that the claims arise from the same pattern of conduct and be based on the same legal theory.[65] Public policy does not deny standing to a class plaintiff that holds contractually valid assignments from other class members.[66]

E. Adequacy

TEXAS RULE OF CIVIL PROCEDURE 42(a)(4) requires that the representative parties fairly and adequately protect the interests of the class.[67] Adequacy of representation is demonstrated by showing (1) that no conflict in the litigated issues exists between the representative and the class members, and (2) that class counsel is sufficiently qualified and experienced to prosecute the action vigorously.[68]

A court's adequacy determination involves an inquiry into: (1) the willingness and ability of the representatives to take an active role in and control the litigation and to protect the interests of absentees, (2) the zeal and competence of the representatives' counsel, and (3) any conflicts of interest between the named plaintiffs and the class they seek to represent.[69]

> The adequacy-of-representation requirement "tend[s] to merge" with the commonality and typicality criteria of Rule 23(a), which "serve as guideposts for determining whether . . . maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the

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[64] *Reserve Life Insurance Co. v. Kirkland*, 917 S.W.2d 836, 842 (Tex. App.—Houston [14th Dist.] 1996, no writ); *Cedar Crest Funeral Home, Inc. v. Lashley*, 889 S.W.2d at 331.
[65] *Microsoft Corp. v. Manning*, 914 S.W.2d at 613.
[66] *Southwestern Bell Telephone Co. v. Marketing on Hold Inc.*, 308 S.W.3d 909, 916 (Tex. 2010).
[67] TEX. R. CIV. P. 42.
[68] *Health & Tennis Corp. of America v. Jackson*, 928 S.W.2d 583, 589 (Tex. App.—San Antonio 1996, no writ); *Microsoft Corp. v. Manning*, 914 S.W.2d 602, 614 (Tex. App.—Texarkana 1996, writ dism'd); *Weatherly v. Deloitte & Touche*, 905 S.W.2d 642, 651-652 (Tex. App.—Houston [14th Dist.] 1995, writ dism'd w.o.j.).
[69] *See Feder v. Elec. Data Sys.*, 429 F.3d 125, 130 (5th Cir. 2005) (internal quotation marks removed).

interests of the class members will be fairly and adequately protected in their absence."[70]

Interests are not considered antagonistic unless they relate directly to the matters in controversy.[71] Texas law "does not require a higher standard of involvement from a proposed class representative than from an individual plaintiff."[72] Courts therefore look to class counsel, not the named plaintiff, to determine whether vigorous prosecution is probable. "The qualifications and experience of the class counsel is of greater consequence than the knowledge of the class representatives."[73] If there is any doubt as to a class representative's adequacy, the trial court can easily satisfy it by requiring additional class representatives.

Departing from Federal Rule 23, Texas Rule 42(c)(1) expressly states that the "court may order the naming of additional parties in order to insure the adequacy of class representation." However, deciding not to sue for certain claims – often ones that can't be certified – may raise questions about class adequacy. "A class representative's decision to abandon certain claims may be detrimental to absent class members for whom those claims could be more lucrative or valuable, assuming those class members do not opt out of the class."[74]

There is no evidence in this case to show actual antagonism between the interests of the Plaintiffs and those of the class. Speculation about potential conflicts does not establish inadequacy.[75] Even if non-speculative conflict were shown, it must go to the heart of the case to

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[70] *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 626, n. 20 (1997) (quoting *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 157, n.13 (1982)).
[71] *Health & Tennis Corp. of America v. Jackson*, 928 S.W.2d at 589, citing *Microsoft Corp. v. Manning*.
[72] *Health & Tennis Corp. of America v. Jackson*, 928 S.W.2d at 589, citing *Weatherly v. Deloitte & Touche*.
[73] *Health & Tennis Corp. of America v. Jackson*, 928 S.W.2d at 589, citing *Microsoft Corp. v. Manning*, 914 S.W.2d at 614; *Weatherly v. Deloitte & Touche*, 905 S.W.2d at 652.
[74] *Citizens Insurance Company of America v. Daccach*, 217 S.W.3d 430 453-454 (Tex. 2007).
[75] *Employers Cas. Co. v. Texas Ass'n of School Bds. Workers Comp. Self–Ins. Fund*, 886 S.W.2d 470, 476 (Tex. App.—Austin 1994, writ dism'd w.o.j).

allow a finding that a proposed class representative is inadequate.[76] The proposed representatives and their counsel will fairly and adequately protect the interests of the class.

F. Predominance

In order to maintain a lawsuit as class action under TEXAS RULE OF CIVIL PROCEDURE 42(b)(3), the named plaintiff must show "both that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy."[77] In applying this section, the trial court must consider "(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action."[78]

The Texas Supreme Court has stated that the "[t]est for predominance is not whether common issues outnumber uncommon issues but…'whether common or individual issues will be the object of most of the efforts of the litigants and the court.'"[79] The predominance inquiry applies to common defenses as well as common claims.[80] This requirement does not mean that all questions of law and fact must be identical, but that an issue of law or fact exists that inheres in the complaints of all the class members.[81] "Class certification will not be prevented merely

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[76] *Adams v. Reagan*, 791 S.W.2d 284, 291 (Tex. App.—Forth Worth 1990, no writ).
[77] *TCI Cablevision of Dallas, Inc. v. Owens*, 8 S.W.3d 837, 842 (Tex. App.—Beaumont 2000).
[78] *Snyder Communications, L.P. v. Magana*, 142 S.W.3d 295, 299 (Tex. 2004).
[79] *Henry Schein, Inc. v. Stromboe*, 102 S.W.3d 675, 693 (Tex. 2002) (quoting *Bernal*, 22 S.W.3d at 434).
[80] *Stonebridge Life Ins. Co. v. Pitts*, 236 S.W.3d 201, 206-207 (Tex. 2007).
[81] *Entex, a Div. of Noram Energy Corp. v. City of Pearland*, 990 S.W.2d 904, 919 (Tex. App.—Houston [14 Dist.] 1999).

because damages must be determined separately for each class member. Likewise, defensive issues peculiar to different members do not destroy the entire class."[82]

In this case Plaintiffs allege, among other things, that Defendant Wells Fargo Bank, N.A., is not the current owner and holder of Wolfs' Note and Security Instrument ("Mortgage Loan"), and the Wolfs' Mortgage Loan was never transferred into the 2006-NC3 Trust for which Wells Fargo Bank, N.A. is *Trustee* in strict compliance with the Pooling and Servicing Agreement ("PSA") executed on August 1, 2006 between the parties. Based on the claims at issue, the controlling substantive issues in this case can be listed as follows:

1. whether the subject Note and Security Instrument were properly conveyed to Wells Fargo Bank, N.A., as Trustee for the 2006-NC3 Trust as required by the Pooling and Servicing Agreement executed on August 1, 2006 which governs the REMIC Trust;[83]

2. whether the "Transfer of Lien" filed with County Clerk's Offices in Texas is valid, and actually transfers the subject Note and Security Instrument to Wells Fargo Bank, N.A., as Trustee for the 2006-NC3 Trust;[84]

3. whether Wells Fargo Bank, N.A., as Trustee for the 2006-NC3 Trust has standing to foreclose on real property in the State of Texas;

4. whether Wells Fargo Bank, N.A., as Trustee for the 2006-NC3 Trust is the legal owner and holder of mortgage loans, mortgage liens, mortgage notes, or deeds of trust on real property in the State of Texas; and

5. whether Defendants violated TEX. CIV. PRAC. & REM. CODE § 12.002 by filing the "Transfer of Lien" with County Clerk's Offices in Texas attempting to transfer mortgage loans, mortgage liens, mortgage notes, or deeds

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[82] *TCI Cablevision of Dallas, Inc. v. Owens*, 8 S.W.3d 837, 846 (Tex. App.—Beaumont 2000) (internal quotation omitted).
[83] Exhibit 5 of Plaintiffs' Memo in Support of Class Certification at p. 4.
[84] *Id.*

of trust from New Century Mortgage Corporation to Wells Fargo Bank, N.A., as Trustee for the 2006-NC3 Trust.

These controlling issues can be proven with common evidence. The focus of the trial is going to be on Defendants' conduct. Either they used a document with knowledge that the document is fraudulent or they did not. Plaintiffs allege that they have obtained evidence and examples of documents and testimony that could be used to prove on a classwide basis that Defendants used a document with knowledge that the document was fraudulent.[85]

1. The Texas Class Has a Common Trust Agreement

The Pooling and Service Agreement governing the 2006-NC3 Trust is applicable to the Wolfs' case, does not contain different terms for each class member, and uniformly applies to all class members. Thus the primary legal document upon which the claims will be decided appears uniform across the Texas class.

2. Violations of TEX. CIV. PRAC. & REM. CODE § 12.002 Will Uniformly Apply to All Class Members

Defendants made, presented, or used a document or other record with knowledge that the document or other record is a fraudulent court record or a fraudulent lien or claim against real property or an interest in real property. The documents or records filed or caused to be filed by Defendants, falsely represent Defendants' interest in the real property that is the subject of such instruments, causing damages and injuries to Plaintiffs and the Class. Defendants knew at the time of such filing the instruments falsely represented Defendants' interest in the real property that is the subject of such instruments.

[85] *Compare* Exhibit 11 of Plaintiffs' Memo in Support of Class Certification (Transfer of Lien), with Exhibit 9 of Plaintiffs' Memo in Support of Class Certification (PSA).

For over 100 years, Texas law has provided that the grantee or beneficiary of a deed of trust is the lender on the note secured by the deed of trust.[86] So long as a debt exists, the "security will follow the debt," and the assignment of the debt carries with it the rights created by the deed of trust securing the note.[87] Section 11.004 of the TEXAS PROPERTY CODE requires that county clerks in the State of Texas: (1) correctly record, as required by law, within a reasonable time after delivery, any instrument authorized or required to be recorded in that clerk's office that is proved, acknowledged, or sworn to according to law; (2) give a receipt, as required by law, for an instrument delivered for recording; (3) record instruments relating to the same property in the order the instruments are filed; and (4) provide and keep in the clerk's office the indexes required by law.[88]

Section 193.003 of the TEXAS LOCAL GOVERNMENT CODE requires that a county clerk maintain "a well-bound alphabetical index to all recorded deeds, powers of attorney, mortgages, and other instruments relating to real property" with "a cross-index that contains the names of the grantors and grantees in alphabetical order."[89] Under policies in effect for many years, employees of the County Clerk's Offices in Texas record as a "Grantee" any person identified as a "lender," "beneficiary," or "grantee" in a deed of trust.

Further evidence of commonality is that "Transfers of Lien" were filed by uniform documents generated by Defendants. An example of the form "Transfer of Lien" is attached.[90] The evidence shows Defendants prepared uniform "Transfer of Lien" national documents designed to ensure the same basic information regarding the 2006-NC3 Trust was filed in the

[86] *See Lawson v. Gibbs,* 591 S.W.2d 292, 294 (Tex. Civ. App.—Houston [1st. Dist.] 1979, writ ref'd n.r.e.).
[87] A deed of trust in Texas creates a lien in favor of the lender; it does not operate as a transfer of title. This has been the law in Texas for more than a century. *See McLane v. Paschal,* 47 Tex. 365, 369 (1877); *see also Johnson v. Snell,* 504 S.W.2d 397, 399 (Tex. 1973).
[88] TEX. PROP. CODE § 11.004.
[89] TEX. LOC. GOV'T CODE § 193.003.
[90] Exhibit 11 of Plaintiffs' Memo in Support of Class Certification.

real property records at county clerk's offices nationwide, including county clerk's offices in this Texas class.

3. The Damages Sought Present Common Issues

The allegations in Plaintiffs' Third Amended Petition permit class-wide computation of damages.[91] While each class members' amount of damages may vary, the *calculation* of damages will be identical pursuant to Texas statutory law.[92] Furthermore, differences in the amount of damages suffered by individual class members do not destroy predominance or make this case unmanageable. In fact, Rule 23 explicitly envisions class actions with such individualized damage determinations.[93] When such individualized inquiries are necessary, if 'common questions predominate over individual questions as to liability, courts generally find the predominance standard of Rule 23(b) to be satisfied.[94]

4. Wells Fargo's Defenses Present Predominantly Common Issues

The defenses asserted by Wells Fargo include:[95] Plaintiffs lack standing, and non-compliance with the terms of the Pooling and Service Agreement.[96] These defenses are based on predominately common evidence. Therefore, common questions of fact and of law will predominate in the preparation and trial of this lawsuit.

G. Superiority

TEXAS RULE OF CIVIL PROCEDURE 42(b)(3) requires the Court to find that class treatment is "superior to other available methods for the fair and efficient adjudication of the

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[91] *See* Plaintiffs' Petition, at pp. 39-47.
[92] TEX. CIV. PRAC. & REM. CODE § 12.002.
[93] *See* FED. R. CIV. P. 23 advisory committee's note (1996 Amend., subdivision (c)(4)).
[94] *See* 5 *Moore's Federal Practice* § 23.46[2][a] (1997).
[95] *See* Defendants' Third Amended Answer and Second Amended Counterclaim, filed on July 12, 2012.
[96] Defendants rely on an unpublished case from Minnesota for this defense. *See Anderson v. Countrywide Home Loans*, 2011 WL 1627945, at *4 (D. Minn. April 8, 2011).

controversy."[97] Class actions are superior when individual actions would be wasteful, duplicative, present managerial difficulty or be adverse to judicial economy.[98] This analysis includes consideration of the class members' interest in controlling the actions individually, the extent of any other litigation by or against class member, the desirability of concentrating the litigation in the forum, and the difficulties of managing the case as a class.[99] The purpose of a class action is to "eliminate or reduce the threat of repetitive litigation," "prevent inconsistent resolution of similar cases," and allow a mechanism to litigate claims that would be uneconomical to pursue on an individual basis.[100]

The class members do not have a strong interest in bringing suit individually against Defendants, most of them are experiencing financial problems, and the cost of litigation would be prohibitively expensive in individual litigation. The nature of these wrongful foreclosure claims and the cost and complexity of the litigation make it desirable to concentrate the case in this forum, as opposed to individual cases. It would be inefficient, costly, and a waste of judicial resources, as well as an invitation for conflicting results, to require each class member to litigate the common issues presented in this cause in multiple individual cases. It is economically infeasible for the many hundreds of class members to litigate their claims against Defendants on an individual basis given the enormous expense associated with litigating these common questions.[101]

Not only would responding to Wells Fargo's defensive pleadings and arguments likely require an individual litigant to incur legal fees and costs far in excess of the individual's

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[97] TEX. R. CIV. P. 42.
[98] *Mullen v. Treasure Chest Casino, L.L.C.*, 186 F.3d 620, 627 (5th Cir. 1999).
[99] TEX. R. CIV. P. 42(b)(3)(A)-(D).
[100] *Ford Motor Co. v. Sheldon*, 22 S.W.3d 444, 452 (Tex. 2000).
[101] *Phillips Petro. Co. v. Shutts*, 472 U.S. 797, 809 (1985) (explaining that a class action is the superior method when it is necessary to "permit the plaintiffs to pool claims which would be uneconomical to litigate individually").

damages, but in addition, it would be extraordinarily wasteful for the judicial system if similar lawsuits had to be replicated on an individual basis. In fact, without a class the courthouse door would most likely be shut to many of the class members. Here, the core issues can be decided for all class members using common proof. Thus, a class action is the superior method for the fair and efficient adjudication of this action.

Finally, this single-state case should yield a very manageable trial because it only applies Texas law, based upon a single common Trust Agreement, section 12.002 of the TEXAS CIVIL PRACTICE & REMEDIES CODE, and Defendants' routine pattern of business practices. Proceeding in this case on a class basis is superior to other available methods for the fair and efficient adjudication of this controversy.

H. Class Definition

The trial court is not bound by class definitions submitted by the parties, and may use its own definition as the needs of the case require.[102] The certified class is defined as:

> All persons and entities with a residential mortgage loan on real property in the State of Texas securitized into the 2006-NC4 Trust, with a court record, lien, claim against real property, or claim against an interest in real property filed by Defendants after August 10, 2006 up to and including the date notice is first provided to the Class.

The certified subclass is defined as:

> All persons and entities that lost ownership to real property in the State of Texas resulting from a foreclosure initiated by Wells Fargo Bank, N.A., as Trustee for the 2006-NC4 Trust after August 10, 2006 up to and including the date notice is first provided to the Class.

Excluded from the Class are:

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[102] *Bailey v. Kemper Cas. Ins. Co.*, 83 S.W.3d 840, 848 (Tex. App.—Texarkana 2002).

1. Defendant Wells Fargo Bank, N.A., any entity in which it has a controlling interest, its legal representatives, officers, directors, assigns and successors, and any other entity related to or affiliated with Defendant Wells Fargo Bank, N.A.;

2. Defendant Wells Fargo Bank, N.A.'s Board members or executive level officers, including its attorneys;

3. Defendant Tom Croft, his legal representatives, and agents;

4. Defendant New Century Mortgage Corporation, any entity in which it has a controlling interest, its legal representatives, officers, directors, assigns and successors, and any other entity related to or affiliated with Defendant New Century Mortgage Corporation;

5. Defendant Carrington Mortgage Services, LLC, any entity in which it has a controlling interest, its legal representatives, officers, directors, assigns and successors, and any other entity related to or affiliated with Defendant Carrington Mortgage Services, LLC;

6. Defendant Carrington Mortgage Services, LLC's Board members or executive level officers, including its attorneys;

7. governmental entities;

8. persons or entities that timely and properly excluded themselves from the Class; and

9. all claims for personal injury, wrongful death, or any incidental or consequential damages over and above those sought herein, except as authorized by law.

I. Class Claims, Issues, and Defenses

1. *Plaintiffs' Claims*

Plaintiffs claim violations of TEX. CIV. PRAC. & REM. CODE § 12 in which Plaintiffs allege Defendants made, presented, or used a document or other record with knowledge that the document or other record is a fraudulent court record or a fraudulent lien or claim against real

property or an interest in real property. Any action by the 2006-NC3 Trust in contravention of the PSA is void under New York Trust Law.[103]

The deadline to assign, convey and transfer the mortgage loans and notes into the 2006-NC3 Trust was August 10, 2006 ("Closing Date")[104] according to the PSA. On August 10, 2006, all rights, title and interest in the Plaintiffs' mortgage loans were purportedly transferred and assigned to Wells Fargo as Trustee for the 2006-NC3 Trust. Therefore, the 2006-NC3 Trust allegedly owned the Plaintiffs' mortgage loan and note as of the Closing Date on August 10, 2006. The assignments filed by Defendants purported to create liens on Plaintiffs' property or claims on Plaintiffs' property for the payment of a debt or security interest as defined by TEX. CIV. PRAC. & REM. CODE § 12.001(3).

Additionally, a document or instrument is presumed to be fraudulent if it is not provided for by the constitution of the laws of this state or of the United States, if it is not created by the implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property, or is not an equitable, constructive, or other lien imposed by a court.[105]

Plaintiffs allege Defendants made, presented, or used a document or other record with intent that the document or other record be given the same legal effect as a court record or document of a court created by or established under the Texas constitution or laws of the State of Texas, evidencing a valid lien or claim against real property or an interest in real property.

Plaintiffs allege the documents or records filed or caused to be filed by Defendants, falsely represent Defendants' interest in the real property that is the subject of such instruments,

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[103] *See* New York Estates, Powers & Trusts, Part 2, § 7-2.4 ("If the trust is expressed in the instrument creating the estate of the trustee, every sale, conveyance or other act of the trustee in contravention of the trust...is void").
[104] PSA Section 2.01. On the Closing Date, Stanwich will transfer, assign, set over and otherwise convey to Wells Fargo without recourse, all the right, title and interest of Stanwich in and to the Mortgage Loans. Such assignment includes all interest and principal received by Stanwich or the Servicer on or with respect to the Mortgage Loans.
[105] *See* TEX. GOV'T CODE ANN. § 51.901(c).

causing damages and injuries to Plaintiffs and the Class. Defendants knew at the time of such filing the instruments falsely represented Defendants' interest in the real property that is the subject of such instruments. Defendants made, presented, or used a document or other record with intent to cause Plaintiffs and the Class Members to suffer financial injury, mental anguish, or emotional distress.

Plaintiffs' allege Defendants' conduct and actions violated TEX. CIV. PRAC. & REM. CODE § 12 on or after August 10, 2006 in violation of the PSA and New York law, for which Plaintiffs and the Class Members seek judgment against Defendants, jointly and severally, equal to $10,000 per violation, together with attorney's fees, court costs, and exemplary damages in an amount determined by the Court.

2. *Defendants' Contentions and Defenses*

Defendants contend the note and deed of trust were legally and validly assigned under Texas law. Defendants further contend the note was indorsed "in blank" pursuant to Section 3.205(b) of the TEXAS BUSINESS & COMMERCE CODE, and that, therefore, whoever has possession of the note is the holder and a valid assignee. Defendants contend the note and deed of trust were assigned pursuant to the terms of the PSA.

Defendants also assert, however, that Plaintiffs do not have standing to contest whether the note and deed of trust were assigned pursuant to the terms of the PSA because Plaintiffs were not parties to, or third party beneficiaries of, the PSA.[106] However, the Texas Supreme Court recently held that so long as a plaintiff has standing on *some* claim, he has standing to pursue class certification as to that claim.[107]

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[106] A plaintiff need not have standing on *all* claims of the purported class in order to seek class certification. *See Heckman v. Williamson County*, 369 S.W.3d 137 (Tex. 2012).
[107] *Id.*

Defendants contend the filing of an assignment of lien or assignment of deed of trust does not give rise to liability under Section 12.002 of the TEXAS CIVIL PRACTICE & REMEDIES CODE because those assignments do not purport to create a lien or claim on real property but, rather, merely purport to transfer an existing deed of trust from one entity to another.

J. Requirements of TEX. R. CIV. P. 42(c)(1)(D)

The required elements of Plaintiffs' claim for violations of Section 12.002 of the TEXAS CIVIL PRACTICE & REMEDIES CODE ("CPRC") provide:

> (a) A person may not make, present, or use a document or other record with:
>
> (1) knowledge that the document or other record is a fraudulent court record or a fraudulent lien or claim against real or personal property or an interest in real or personal property;
>
> (2) intent that the document or other record be given the same legal effect as a court record or document of a court created by or established under the constitution or laws of this state or the United States or another entity listed in Section 37.01, Penal Code, evidencing a valid lien or claim against real or personal property or an interest in real or personal property; and
>
> (3) intent to cause another person to suffer:
>
> (A) physical injury;
>
> (B) financial injury; or
>
> (C) mental anguish or emotional distress.
>
> (b) A person who violates Subsection (a) or (a-1) is liable to each injured person for:
>
> (1) the greater of:
>
> (A) $10,000; or

(B) the actual damages caused by the violation;

(2) court costs;

(3) reasonable attorney's fees; and

(4) exemplary damages in an amount determined by the court.

TEX. CIV. PRAC. & REM. CODE § 12.002.

K. Appointment of Class Counsel Pursuant to Rule 42(g)

An attorney appointed to serve as class counsel must fairly and adequately represent the interests of the class.[108] Pursuant to Rule 42(g), the court *must* consider (1) the work counsel has done in identifying or investigating potential claims in the action, (2) counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in the action, (3) counsel's knowledge of the applicable law, and (4) the resources counsel will commit to representing the class.[109] Plaintiffs retained qualified counsel with significant experience prosecuting large consumer rights class actions and other complex litigation.[110] The adequacy requirement is met because Plaintiffs' counsel will fairly and adequately represent the interests of the class.

In addition, the court *may* (1) consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class, and (2) direct potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for

[108] TEX. R. CIV. P. 42(g).
[109] TEX. R. CIV. P. 42(g).
[110] Exhibit 14 of Plaintiffs' Memo in Support of Class Certification (Affidavit and Declaration of W. Craft Hughes).

attorney fees and nontaxable costs.[111] The rule further provides that the "order appointing class counsel may include provisions about the award of attorney fees or nontaxable costs."[112]

Therefore, the Court appoints Plaintiffs Mary Ellen Wolf and David Wolf as Class Representatives of the above-described Class. The Court hereby appoints attorneys W. Craft Hughes, Jarrett L. Ellzey, and the law firm of HUGHES ELLZEY, LLP as Class Counsel ("Class Counsel"). The Court has considered the work Class Counsel has performed in (i) identifying and investigating potential claims in this action, (ii) Class Counsels' experience in handling class actions, other complex litigation, and claims of the type asserted in this action, (iii) Class Counsels' knowledge of the applicable law, and (iv) the resources Class Counsel will commit to representing the Class. The Court also finds that Class Counsel is experienced and adequate counsel, and will fairly and adequately represent the interests of the Class.

It is further ORDERED that the parties shall meet and confer within two weeks of the date of this Order and, within 30 days of the date of this Order, file a plan or the appropriate motion and order (or competing plans or motions and orders) with respect to the identification of and notice to class members pursuant to Texas Rule of Civil Procedure 42(c)2.

SIGNED this MAY -1 2013 day of _____, 2013.

HONORABLE MIKE ENGELHART

[111] TEX. R. CIV. P. 42.
[112] *Id.*

CAUSE NO. 2011-36476

MARY ELLEN WOLF and DAVID WOLF	)	IN THE DISTRICT COURT OF
VS.	)	HARRIS COUNTY, TEXAS
WELLS FARGO BANK, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates, et al	)	151ST JUDICIAL DISTRICT

****

ORAL DEPOSITION OF

MARIE MCDONNELL

OCTOBER 2, 2012

****

ORAL DEPOSITION of MARIE MCDONNELL, produced as a witness at the instance of the Defendants, and duly sworn, was taken in the above-styled and numbered cause on OCTOBER 2, 2012, from 9:10 a.m. to 10:28 p.m., before Mendy A. Schneider, CSR, RPR, in and for the State of Texas, recorded by machine shorthand, at the offices of HUGHES ELLZEY, LLP, 2700 Post Oak Boulevard, Suite 1120, Houston, Texas, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto; that the deposition shall be read and signed.

A P P E A R A N C E S

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EXAMINATION INDEX

WITNESS: MARIE MCDONNELL

EXHIBIT INDEX

MARIE MCDONNELL,

having been first duly sworn, testified as follows:

(Marked McDonnell Exhibit Nos. 1 and 2.)

E X A M I N A T I O N

BY MR. SMART:

Q. What is your name, please?

A. My name is Marie McDonnell, spelled M-C-D-O-N-N-E-L-L.

Q. Ms. McDonnell, what do you do for a living?

A. I am a mortgage fraud and forensic analyst and a certified fraud examiner.

Q. And do you have a college degree?

A. I do.

Q. And when did you get that college degree?

A. 1970.

Q. And where did you get it?

A. Merrimac College.

Q. And where is Merrimac?

A. North Andover, Massachusetts.

Q. And what was -- was it a bachelor's degree?

A. Yes.

Q. And what was the major or what was the bachelor in? In what?

A. Political science.

Q. Did you have a minor?

A. I -- I did, yes; which, actually, I started out as a biology major; so, I -- I actually have more science and math and biology courses than political science, but that's the degree.

Q. So, you have a -- you have a major and a degree in political science, and you have a minor in biology?

A. Yes.

Q. And do you have any postgraduate degrees?

A. No.

Q. And do you have any certificates or licenses of a professional nature?

A. Yes. I have a real estate broker's license in Massachusetts, and I've achieved several designations; most recently, from the Association of Certified Fraud Examiners, the designation of certified fraud examiner.

I am also a certified real estate exchange consultant, and I've achieved the graduate realtor institute designation from the National Association of Realtors.

Q. Is that a sampling or is that -- is that the entirety?

A. That's what I recall at the moment in terms of designations from other trade associations.

Q. When did you get your broker's license?
A. I believe that was January of 1988.
Q. Did you work in real estate from the time you graduated in '70 until '88, or did you do other things?
A. No, I did other things.
Q. What -- what -- what -- professionally, what did you do between the time you graduated and the time you started working in a -- in a real estate-related field?
A. Uh-huh. Well, in 1970, I married, had three children. So, I was a stay-at-home home for about seven years. After that, I started my own home-based cottage industry business which was a handcraft manufacturing of my own design work.

That actually gave me a lot of business experience. It required that I travel to various cities in the United States where I had manufacturers' representatives representing my product. It took me to the Philippines for about five weeks in 1981, where I worked with a manufacturer there and licensed my designs. So, it -- it gave me a basic background in business.
Q. And when did you start working in the real estate field?

A. I obtained my real estate salesperson's license in late 1986 and apprenticed for a year under a real estate broker and investor who was also a real estate developer. After the year's apprenticeship, I, then, formed my own consulting practice as Marie McDonnell, Real Estate Counselor and conducted that from about 1988 through 1991, when I changed my d/b/a to The Mortgage Counselor.

Q. I'm going to show you what's marked as Exhibit 1, which is an affidavit that I think you signed. If you'll confirm that that's your affidavit that you signed.

A. Yes.

Q. Looking at -- we're going to go over this a little bit, and I'll ask some questions about some of the things that -- that you've said in this affidavit.

Looking at Item 2 on the first page, you say in this affidavit that you are a -- a credentialed, certified fraud examiner. Do you see that?

A. I do.

Q. And who -- who gives that -- that -- when you say "credentialed," does that -- that means you -- you have a certificate?

A. Yes, I do.

Q. Okay. And who -- who is -- what the body? Can you talk a little bit about the body that gives this certificate?

A. The Association of Certified Fraud Examiners, which I believe is headquartered right here in Texas; Austin, I believe. And this is a -- an international association that provides very specialized training, education, educational materials to individuals who are involved in some capacity in investigations, fraud examination. Its members consist of attorneys, accountants, fraud examiners for insurance companies, various departments of state and federal government; quite a varied body of professionals.

Q. It's not only people who work in real estate?

A. No, not at all.

Q. What does one have to do to receive the certificate that you received, which is, I think, a certified fraud examiner?

A. Yes. They require a certain educational background -- I believe, at least five years of field experience working under a more experienced professional -- three letters of recommendation from existing members of the Association of Certified Fraud Examiners or otherwise, I believe; and I had to take an examination that required that I have a basic

knowledge and comprehension of various aspects of fraud examination and interview techniques and various other things.

Q. In that same sentence in Item 2, you -- where you say, "I'm a mortgage fraud and forensic analysis" -- "analyst" --

A. Analyst, uh-huh.

Q. -- are those -- is that -- are those two categories or one category, mortgage fraud and forensic analyst?

Is that two different things or -- or one thing?

A. It's -- I would say both.

Q. So, it -- it could be two things?

A. Yes.

Q. All right. Well, what -- let's talk about a forensic analyst.

When you say you're a forensic analyst, what -- what does that mean? What does a -- what do you do as a forensic analyst?

A. I have dedicated my practice to essentially understanding real estate and real estate financing transactions; so, essentially, although I do have the capability of looking at other types of documents or information and to -- to be able to understand that

information to fill in missing gaps and so forth, essentially, my practice is focused in the area of real estate and real estate finance.

In terms of answering your question about what is a forensic analyst, by that, I mean it would be a body of existing information or data or contracts, and there will be a -- often a body of information concerning a certain transaction. I am able to look at all of that information and determine other information that might be missing or where those particular documents or information fits in on a time line and often reconstruct missing data that helps me and others to -- to understand the transaction.

So, it's -- it's an exercise and an ability to understand not only what is there but what isn't there.

Q. So, you -- I don't want to put words in your mouth, but it sounds like you analyze real estate transactions. And that's not -- that's the analyst part.

What is forensic? What does -- in your own words, what is -- how does "forensic" come into play, as an analyst, in what you do?

A. Well, forensic science is -- can be applied to many different fields, of course, both on the

criminal, civil side; but what "forensic" actually is -- means is looking back historically at some event that happened -- or in my case, it could be looking at a particular document, such as a mortgage note -- and looking at other evidence that relates to that note or the servicing of that note and putting all of those pieces together, including, as I say, missing pieces that I can reconstruct through my understanding and forensic analysis.

Q. And how long have you been doing the forensic analyzing of real estate transactions?

A. For 25 years.

Q. Okay. And what percentage of your -- of your professional practice is -- do you consider your -- you're doing forensic -- working as an forensic analyst?

A. Actually, at this point, I would say, a hundred percent of the time, that's what I'm doing.

Q. And what -- do you have any education in forensic -- being a forensic analyst, or is it just on-the-job training?

A. Well, there -- there is no doubt that my 25 years of experience in the field is the primary qualifier for the work that I do and for my level of achievement. That is an -- it constitutes an

irreplaceable body of knowledge and firsthand experience.

But, to your answer your question, yes, I have taken specific training from the Association of Certified Fraud Examiners, from various bar associations, from banking compliance concerns. I belong as well to a Listserv of attorneys who practice in this area and in bankruptcy.

So, there is a -- an ongoing self-study process, as well as more formalized training.

Q. What -- can you talk a little bit about the formalized training you've had in this -- in this field?

A. Yes.

Q. Are you looking at your CV?

A. I am.

Q. Is that part of your report?

A. I -- I did not include it in the report; but I did bring a file with me that we can print, or we can make copies of this.

MR. HUGHES: Well, we've -- we've produced your --

THE WITNESS: Okay.

MR. HUGHES: -- CV in --

THE WITNESS: Okay.

MR. HUGHES: -- our disclosure response.
THE WITNESS: Right.
MR. HUGHES: Our first disclosure response.
MR. SMART: Okay.
Q. (BY MR. SMART) Well, then, answer the question.
A. Would you repeat the question, please?
MR. SMART: Can you read -- can you read the question back, please.
(The requested portion was read.)
A. All right. From the Association of Certified Fraud Examiners, I've taken a course in ethical issues for fraud examiners. The certified fraud examiner exam review course, which is very comprehensive. I've taken a course in various areas of the practice of fraud examination from the association. I have --
Q. (BY MR. SMART) Were those courses real estate related?
A. No, not specifically real estate related.
Real estate-related courses I've taken from the American Real Estate Academy. Basic qualifying courses. I have a continuing legal -- or continuing education requirement to maintain my -- my license. I've taken a number of courses from the

Massachusetts Association of Realtors in order to achieve that designation of graduate realtor institute.

From the National Association of Realtors, I've taken several commercial investment real estate courses.

From the National Council of Exchangers, a number of courses on the mechanics of real estate exchanging.

I've taken a number of courses on real estate finance, understanding the buying and selling of private mortgages at a discount, I've taken courses in real estate options.

Q. Who's offering these courses that you've taken?

A. These -- these are various masters in their fields, except for, of course, the courses that I've taken from the various realtor institutions at the national and state level.

I've taken a number of courses in foreclosure defense from the Massachusetts Bar Association and the Boston Bar Association, and I've recently presented in several of those courses, as well as a speaker. I have taken --

Q. Would you call those ones offered by the Bar,

the Massachusetts Bar or the Boston Bar -- are those seminars? Is that what those are, one- or two-day seminars?

A. Yes. Most recently -- and I'm not -- not sure that I'm seeing it on here; I -- I'd have to add it -- I -- I cochaired a two-hour session for the Massachusetts Bar Association that covered the -- the settlement between the national banks and the 49 state attorneys general.

I've taken intensive courses from O. Max Gardner, III, who is a nationally renowned bankruptcy attorney, a highly regarded expert in his field who has been conducting bankruptcy boot camps since about 2006. I've taken two of -- these are intensive four-day training sessions that go for about 12 hours per day. I've taken two of them, and he's asked me to speak at and co-instruct at a number of others.

I've taken various courses in regulation and compliance from the Massachusetts Bankers Association, the CUNA Mutual Group, BankersOnline and....

Q. Okay. Do you consider yourself an expert in any area of the law?

MR. HUGHES: Objection; form.

You can answer.

A. I am not an expert in law.
Q. (BY MR. SMART) Do you consider yourself an -- an expert in -- in anything to do with handwriting, like a signature, whether or not the -- whether it's a forged signature or not?
A. I am not an expert, although I'm very familiar with signatures on real estate-related documents and I do have an ability to spot what I believe might be --
MR. HUGHES: Hold on just a minute.
THE WITNESS: Okay.
MR. HUGHES: I'm going to object to the form of the question.
But you keep answering. Keep going, okay?
THE WITNESS: Okay.
A. But I -- I -- I have, in the past, accurately identified forged signatures on documents.
Q. (BY MR. SMART) Let me ask it another way. And maybe I answered....
Do you have any training in -- in detecting forged signatures?
A. No formal training in detecting forged signatures, no.
Q. And do you hold yourself out as an expert --

as a handwriting expert?

A. I do not.

MR. HUGHES: Objection; form.

Q. (BY MR. SMART) Looking at Item 5 in your affidavit which is Exhibit 1, I see the word there, "foreclosure forensics."

What do you mean by "foreclosure forensics"?

A. By that, I mean reviewing foreclosure-related documents that, of course, relate back to a real estate financing transaction.

And I conduct research using various mortgage-backed securities databases that I subscribe to to check the accuracy of some of these foreclosure-related documents and essentially analyze whether the documents I'm examining are accurate, truthful, or whether there are conflicts between those documents and research that I've conducted using various other tools and databases at my disposal.

Essentially, I describe that process in my expert report in this case.

Q. Looking at Item 7, Page 2 of your affidavit, I see the word "robo-signing," which is a word I've -- I've heard a lot.

Can you tell me what you mean when you

say "robo-signing"?
A. Yes. And for a moment, I'm just going to refer to my report, if I may.
Q. Does your report give a definition of "robo-signing"?
A. It does on Page 24.
Q. Let's look at -- here's Exhibit 2 to your deposition, which I think is the report you're looking at.
Just so the record's clear, we're on Page 24?
A. Yes.
Q. Of Exhibit 2. And I'm looking at Item 42?
A. Yes, that's right.
Q. Where "robo-signing" is defined as the practice of an employee or agent of the servicer signing documents automatically, without a due diligence review or verification of facts.
A. Yes. And that's a definition that was devised by the Office of the Inspector General for the United States Department of Housing and Urban Development, and it's about as good a general definition of "robo-signing" as I've seen.
I actually go further than this, though, in terms of my own definition of what constitutes a

robo-signer.

Q. All right. Why don't you tell me how you go further.

A. Sure.

I actually -- before I would ever identify a signing officer -- that is, an individual who executes a mortgage-related document; for example, an assignment of the mortgage or discharge of the mortgage or an affidavit, anything along those lines -- I first analyze the document itself to determine whether or not that document is truthful and accurate based upon my ability to go in and research the transaction.

Where I find that the document contains misrepresentations, false statements, omissions of material fact, and where I find that happens repeatedly, then, I will identify that individual as a robo-signer.

So, in my definition, it's not just that they're signing a lot of documents; they're signing documents that they know or should know contain inaccuracies or misrepresentations.

Q. Is it possible that under your definition of a robo-signer, someone could have performed a due diligence review?

A. Yes, it is, to some extent.
Q. Does your report list what you've reviewed for this case for your opinions in this case?
A. It does, yes.
Q. All right. Let's -- let's go to Page 4 of your affidavit, where I think you've listed seven opinions or conclusions that you've reached, and it looks like those may be the same opinion that you put in your report. I think those are the same.
A. Yes.
Q. Those are the -- those are -- those are your opinions in your report also, I think.
A. Yes. I removed the reference to defendant and plaintiff in the report because, essentially, I'm just identifying the entities here.
Q. All right. So, let's -- let's look at this.
The first one, the first opinion in the -- on Page 4 of your affidavit, reads, "Defendant Wells Fargo Bank, N.A. is not the current owner and holder of Plaintiffs' Note and Deed of Trust."
Okay. Who is -- who do you -- do you have an opinion as to who is the current owner and holder of the plaintiffs' note?
MR. HUGHES: Objection; form.
You can answer.

A. I don't know. And I think that is the subject of the litigation that a court will ultimately decide.

Q. (BY MR. SMART) I guess what I'm asking is: Do you have an....

Let me ask this: Do you have an opinion as to who is the current holder of Plaintiffs' note?

A. I know who should be physically holding the note, yes.

Q. But do you have an expert opinion as to who is physically holding the note?

A. Yes.

Q. And what is that opinion?

A. That would be Deutsche Bank National Trust Company.

Q. It's your opinion that Deutsche Bank is the current holder of the original note?

A. Yes.

Q. And what do you base that on?

MR. HUGHES: Objection; form.

You can answer.

A. I base that on the requirements of the pooling and servicing agreement that governs this particular securitization.

Q. (BY MR. SMART) Have you seen a -- a copy of

the note in this case that has an endorsement?
A. I have seen a copy of the note, yes.
Q. All right. And was it endorsed specifically or was it endorsed in blank?
A. The copy that I reviewed is endorsed in blank.
Q. All right. Do you know what the effect of an endorsement in blank means?
MR. HUGHES: Objection; form.
You can answer.
A. Yes, I do.
Q. (BY MR. SMART) What does it mean?
A. An endorsement of a negotiable instrument in blank without naming a payee would convert that instrument to bearer paper, meaning that whoever is actually physically holding that note, under Article 3 of the Uniform Commercial Code, has the ability to negotiate it.
Q. And do you know who is holding the original note, physical -- physically holding the original note?
A. I can't --
MR. HUGHES: Objection; form.
Go ahead.
A. I can't say that I do at this moment; but up

until -- if it was taken out of the custody and control from Deutsche Bank National Trust Company for purposes of this legislation, that's one thing.

But the original would be held in a vault maintained by the document custodian, Deutsche Bank.

Q. (BY MR. SMART) And I apologize if I asked this: Can you just summarize the basis for your opinion that Defendant Wells Fargo Bank, N.A. is not the current holder of Plaintiffs' note?

A. Okay.

Well, in this case Wells Fargo Bank, N.A. is serving as a trustee of the Carrington Mortgage Loan Trust Series 2006-NC3; and as trustee, it is responsible for the assets that are allegedly held in that trust fund.

The problem is that my analysis shows that there is no evidence in the record that I have reviewed that the Wolfs' note and their security instrument were properly negotiated, delivered, transferred to all of the necessary parties in the securitization chain that would be required under a mortgage loan purchase agreement and a pooling and servicing agreement in order to convey those instruments into the trust fund. There are fatal

breaks in the chain of title which indicate that those instruments never made it into the trust fund.

Therefore, Defendant Wells Fargo Bank is not the current owner and holder of the plaintiffs' note and deed of trust.

Q. Okay. So, sounds like you're not saying that Wells Fargo Bank doesn't currently physically have possession of the original note. That's not your opinion, is it?

I mean, that's within the realm of possibility, isn't it, that -- that Wells Fargo Bank, N.A. physically possesses the original note?

A. They may at -- at this moment, yes. That's --

Q. And they may --

A. -- a possibility.

Q. And they may possess -- I mean, you're not saying they don't? You're not saying they don't physically possess it, are you? Is that -- or is that your opinion?

A. Like I say, at this moment in time, I do not have any personal knowledge of where the physical note actually is. I know what -- where it had to be in order to securitize the instruments, and I know what the pooling and servicing agreement require in terms

of maintaining that -- the negotiable instrument and the security instrument and the other mortgage-related documents in the master file; but I do suspect that due to the litigation, there may have been a request for the release of those documents. And, so, therefore, at the moment, I don't actually know who is physically holding the original note.

However, regardless of who is actually physically holding the note who may have the right to negotiate it, that does not mean they have the right to enforce -- to collect on the note or to enforce the security instrument.

Q. And why is that?

A. Well, under the provisions of the Texas home equity fixed/adjustable rate note that the Wolfs signed, in Paragraph 1, where they make their promise to pay for having received a loan of $400,000, it says, "Lender, or anyone who takes this Note by transfer and who is entitled to receive payments under the Note, is called 'Noteholder.'"

And if you read the -- the note and the security instrument together, it is the noteholder who would have the enforcement rights.

So, if Wells Fargo is in physical possession of the note, it may have the right to

negotiate that note -- that is, sell it to someone else -- but it doesn't mean that they have the right to enforce the -- the instrument because they would have to prove that they have the right to receive the payments, which means that they paid consideration for it and that it was legally and properly transferred into the trust.

Q. And is that your expert opinion?

A. That is my opinion, yes.

Q. It's one of your opinions?

A. Yes.

Q. All right. And you base that on your interpretation of the language that you just read?

MR. HUGHES: Objection; form.

You can answer.

A. In combination with my research, specialized knowledge, training, and the documents that have been presented for my review.

Q. (BY MR. SMART) Let's look at your third opinion in order here on the affidavit, Page 4, which is under C; and it reads, "Plaintiffs' mortgage loan was never transferred into the 2006-NC3 trust for which Defendant Wells Fargo Bank, N.A. is trustee in strict compliance with the Pooling and Servicing Agreement executed on August 1, 2006 between the

parties, which was governed by the laws of the State of New York."

Do you see that?

A. I do.

Q. What did you mean by the word "parties" in that -- in that opinion?

A. Well, the parties to the pooling and servicing agreement.

Q. Do you know if the Wolfs were a party to the pooling and servicing agreement?

A. They were not a party to the pooling and servicing agreement.

Q. Who were the parties, if you know, to the pooling and servicing agreement? Do you have that in your report?

A. Actually, I don't have a copy of the pooling and servicing agreement as a part of the report; I have links to the site.

But that would be -- the pooling and servicing agreement would be -- and I'd have to double check in this case; but it would be between the depositor, who, in this case, was Stanwich Asset Acceptance Company LLC and the trustee Wells Fargo Bank, N.A. and the master servicer, who, at the time, was New Century Mortgage Corporation.

Q. So, we've got a servicer, we've got a depositor and we've got -- a servicer, a depositor, and who -- who --

A. The trustee.

Q. The trustee. Of the trust?

A. Yes.

Q. Okay. What is the role of the depositor in a pooling and servicing agreement or in -- in any of the securitization process?

A. The depositor is a special-purpose entity that essentially serves as a pass-through entity whose job it is to purchase the mortgage loans from the sellers' sponsor in what is defined as a true sale. It organizes -- that is, the depositor, then, organizes the -- a qualified special-purpose entity known as issuing entity -- which, in this case, was named Carrington Mortgage Loan Trust Series 2006-NC3 -- and draws up certificates and -- on behalf of the -- the issuing entity.

It, then, deposits the mortgage loans and all of the rights to other contracts and to payments and receivables, as well as the mortgage loans -- it deposits all of the corpus of the trust fund into the issuing entity in exchange for those certificates, which are, then, sold to investors.

Q. Okay. So -- well, you -- so, in this case, we had a -- a loan that was -- the lender was New Century Mortgage, correct?

A. Yes, that's right.

Q. And so, would New Century Mortgage -- they're -- you refer to them as the originator, correct?

A. Yes. They were the lender and, for purposes of the securitization, they were also deemed to be the originator.

Q. And so, the way -- let's talk about this particular trust and this particular pooling and servicing agreement.

Can you tell me how the transfer of the note was to occur to the ultimate -- where it was ultimately supposed to end up?

A. Yes.

New Century Mortgage Corporation, in order to have the Wolf mortgage loan -- and by "mortgage loan," that's a defined term in my report which essentially refers to their note and security agreement -- in order for that to be securitized, New Century Mortgage Corporation would have had to sell the mortgage loan to an affiliate by the name of NC Capital Corporation who, for purposes of the

securitization, is identified as the responsible party.

NC Capital Corporation entered into a mortgage loan purchase agreement with Carrington Securities LP and Stanwich Asset Acceptance Company LLC, and that mortgage loan purchase agreement states that the responsible party would sell the mortgage loans to Carrington Securities LP, who, for purposes of the mortgage loan purchase agreement, was the seller's sponsor.

Carrington Securities LP, as the seller's sponsor, then, sold the mortgage loan to -- would have to sell the mortgage loan to Stanwich Asset Acceptance Company LLC, who is the purchaser under the mortgage loan purchase agreement and the depositor under the pooling and servicing agreement.

So, it would be Stanwich Asset Acceptance Company LLC who would, then, deposit the mortgage loan into the trust fund over which Wells Fargo served as trustee.

Also, the actual physical documents were to be transferred to the trustee Wells Fargo Bank, who, under the pooling and servicing agreement, was required to deliver those to custodian Deutsche Bank National Trust Company.

Q. So, you've talked about a mortgage loan purchase agreement and a pooling and servicing agreement. Are those the two primary documents that guide the securitization process or are there others also?

A. Well, the pooling and servicing agreement governs this particular securitization. There are other deal documents that were created in conjunction with the securitization, but that is the governing document.

Q. The pooling and servicing agreement?

A. Yes.

Q. And you know that from -- how do you know that?

A. I know that from, first of all, reading the pooling and servicing agreement; from years of studying the subject; from reading various court decisions; speaking to hundreds of attorneys about these subjects; taking specialized training, as well on securitization.

Q. Briefly, do you have a definition of "pooling and servicing agreement" in your report? If -- if not, can you give me in -- in your own words sort of a layman's interpretation of what a pooling and servicing agreement is, generally speaking?

A. I -- I do discuss the pooling and servicing agreement in the analysis section of my report; but generally speaking, the pooling and servicing agreement is the agreement that actually creates the -- the trust, the entity, and governs the trust. It has to be created under a certain document, and that is the pooling and servicing agreement.

And it describes very precisely, actually, the roles of each entities -- each of the entities involved in the securitization. It also has quite a long list of definitions of terms. It's organized into certain sections that cover the various aspects of how this entity is to function and what the rules of the various parties are who will see the securitization through to its completion.

Q. Can you sort of give me the same description or can you also describe for me, generally speaking, what a mortgage loan purchase agreement is?

A. Sure.

The -- the mortgage loan purchase agreement is essentially a purchase and sale agreement between, in this case, NC Capital Corporation as the responsible party, Carrington Securities LP as the seller's sponsor and Stanwich Asset Acceptance Company LLC as the purchaser under the mortgage loan

purchase agreement.

I actually have an excerpt from the mortgage loan purchase agreement in my report, on Page 17; and essentially, the mortgage loan purchase agreement is an agreement between these parties to buy and sell particular mortgage loans that have been identified on a mortgage loan schedule that have been slated for securitization into this particular deal. And this buy-sell transaction creates another, quote, "true sale" that is important to the whole structured finance deal and to qualifying the transaction and the issuing entity for favored tax status under the Internal Revenue Code.

Q. All right. Let's look still at your affidavit, Exhibit -- I mean, Page 4. Let's look at the opinion that's under G.

A. Okay.

Q. Do you see that? Where I think you say the plaintiffs' mortgage loan was never physically transferred from Defendant Wells Fargo Bank, N.A. as trustee of the 2006-NC3 trust to the document custodian Deutsche Bank National Trust Company.

By the "mortgage loan," looking at your definition up above, you're talking about the note and the deed of the trust, right?

A. Yes.
Q. Now, how -- what is the basis for your opinion that the -- if I'm reading this correctly, you're saying the note, the physical note, was never -- the custodian never -- never touched it, never had possession of it? Is that what you're saying?
A. No.
Q. What do you mean by "physically transferred"?
A. I mean that Wells Fargo Bank, N.A. did not physically transfer those documents to the document custodian.
Q. I mean, like, I am holding a piece of paper; and -- and if I give it to another person, is that what you mean by "physically transfer" from -- when you give this opinion?
MR. HUGHES: Objection; form.
You can answer.
A. That's what I mean.
Q. (BY MR. SMART) So, it's your opinion that -- that Wells Fargo Bank never gave the original note to Deutsche Bank National Trust Company?
A. Not at the -- not at the time the mortgage loan was allegedly securitized. That's correct.
Q. And what do you base -- what -- what's the

basis for that opinion?

A. Here's where my specialized knowledge comes into play.

I have heard trial testimony and read many court cases and have discussed this process among my peers; have also spoken to correspondent lenders who originated these type of transactions and whose job it was to actually physically deliver those files, the original mortgage loan documents. And to a high degree of probability, I make this statement that the trustee Wells Fargo Bank did not physically deliver these instruments to Deutsche Bank National Trust Company.

That's not to say Deutsche Bank National Trust Company didn't receive them; it's just that the trustee was not the one to ever have physical possession of them nor transfer them to Deutsche Bank.

Q. And correct me if I'm wrong: It sounds like you're basing that on, that's what -- that's what happens a lot of the time. So, your opinion is, it probably happened this time, too?

MR. HUGHES: Objection; form.

You can answer.

A. Yes, I think that's fair to say.

(Mr. Hughes exited the room.)

MR. SMART: Let's go off the record while he's out of the room.

(Break from 10:09 a.m. to 10:16 a.m.)

(Mr Hughes entered the room.)

Q. (BY MR. SMART) Ms. McDonnell, have you -- are you being paid for your services in this case?

A. Yes.

Q. And who is it who retained you?

A. Craft Hughes retained me.

Q. Okay.

A. His firm retained me.

Q. And are you being paid by the hour?

A. Yes.

Q. And is your hourly rate the same or does it -- is it different depending on whether you're in a deposition or reviewing documents?

A. It's the same.

Q. And what is your hourly rate?

A. $395 an hour.

Q. All right.

That's all the questions I have.

MR. HUGHES: I have just a few questions.

THE WITNESS: Sure.

E X A M I N A T I O N

BY MR. HUGHES:

Q. Have you been involved in any other lawsuits or litigation or cases relating to wrongful foreclosure?

A. Yes.

Q. Okay. And can you please explain for the jury what those cases are and what your involvement was.

A. Yes. That would be a long list.

Q. Well, let's start with Eaton.

A. Yes. Okay.

There is an important case that was brought in the Commonwealth of Massachusetts, at first, brought in a superior court on the state level, styled, Henrietta Eaton versus Federal National Mortgage Association, or Fannie Mae as it's commonly referred to. My role in that case was to file an amicus brief, a friend-of-the-court brief, when that case was appealed up to our Massachusetts Supreme Judicial Court.

It involved a case where Henrietta Eaton had been foreclosed upon by a mortgage servicing company, and, at the eviction stage, she challenged whether or not that foreclosure was brought properly.

The state court judge ruled that it was not a proper foreclosure because there was a separation between the note and the mortgage, and the party who brought the foreclosure may have owned the mortgage but was not the owner and the holder of the note.

Q. Okay. And did you file an amicus brief in that case?

A. I did.

Q. Okay. And what about Ibanez?

A. In the -- the -- what's referred to commonly as the Ibanez case in the Massachusetts, I played a role at the trial court level there. Again, I -- in this case, I was allowed to intervene as a friend of the court.

Q. Okay.

A. And that case involved -- actually, it started out three loans that had been securitized; all had been foreclosed upon by the trustees of the securitization trust. And in two out of three of those cases, the trial court judge overturned those foreclosures as wrongful.

Q. Okay. And as you know in this case, we're dealing with a securitization trust?

A. Yes.

Q. And in -- in the Ibanez or "ih-ban-yez" (phonetic) case, they were also dealing with a securitization trust?

A. That's correct.

Q. Okay. Have you ever been offered a consulting position with any type of governmental entity to aid the government in assisting them with wrongful foreclosure investigation?

A. Yes.

Q. Okay. And please explain what that is and how that happened.

A. Okay.

Well, I -- I have consulted with attorneys general in a number of states over the years, but most recently I conducted a one-day training for the staff of the New York State Attorney General's office. And this involved training both special agents and assistant attorney generals handling civil matters, as well as criminal matters.

Q. Okay. Let me stop you right there.

A. Uh-huh.

Q. Did they come to you and ask you, or did you submit some type of application?

A. They asked me.

Q. Okay.

A. And recently, I was awarded a contract to provide a -- a three-day training session to special agents of a variety of federal entities. This was at the request of the Office of the Inspector General for the Federal Housing Finance Agency, which actually regulates Fannie Mae and Freddie Mac.

And just yesterday, I was also contacted by someone in the FHFA OIG's office to consult with them on some mortgage servicing issues.

So, it is anticipated that I'll be doing a fair amount of training going forward for these various special agents.

Q. Okay. And are you aware that the Wolf case at issue here is being filed as a proposed class action?

A. Yes, I am.

Q. Okay. Do you believe that the plaintiffs' -- when I say "the plaintiffs," I mean the Wolfs -- and the class members' claims stem from a common course of conduct by Wells Fargo?

A. Yes.

Q. Okay. And do you believe each member of the proposed class has been damaged by Wells Fargo's course of conduct and action?

A. Yes.

Q. Do you recall how many mortgages and deeds of trust have been transferred into this 2006-NC3 trust?

A. Just a moment, please. I think I did that research.

Yes. There were 7,548 mortgage loans involved in this securitization.

Q. Okay. And is it true that approximately 571 of these mortgage loans relate to Texas residents and Texas property?

A. I can look that up. I -- and I may have before, so.... That sounds about right.

Q. Approximately?

A. Yes. Uh-huh.

Q. And approximately 233 of these mortgage loans that have been allegedly transferred into this trust involve real property located in Harris County, Texas?

A. Yes. I believe I -- I -- I looked at those statistics, by which I can go in through using the Bloomberg terminal and support all of this -- rather, and analyze all of this data, sorting by ZIP code, metropolitans statical area, state, and so forth.

Q. So, you're saying that you can verify these numbers later?

A. Yes.

Q. Okay.

A. I -- I certainly can.
Q. And you're aware that the plaintiffs in the proposed class in this case are seeking to certify a class comprised of all Texas residents whose mortgages and deeds of trust have been allegedly transferred into the 2006 trust?
A. Yes.
Q. All right. Do you believe there's numerous common questions of fact that would equally apply to both the plaintiffs and the proposed class?
A. Yes. With respect to the securitization and actually the foreclosure process, yes, I do.
Q. Okay. Is fair to say that the size of the proposed class in this case will number in the hundreds or thousands?
A. Yes.
Q. Is there at least one material fact issue shared by every proposed class member that's common with the plaintiffs in this case?
A. Yes.
Q. Do you -- can you explain or list at least one or two of these common factual issues?
A. Yes.
With respect to what was required to securitize these loans, every single one of them would

have to follow the same deal flow that I've just described here during the course of this deposition.

Q. Would -- what about an allegation that these -- that a fraudulent transfer of lien was filed with the county clerk's office? Would that be a common factual issue shared by the proposed class and the plaintiffs?

A. Yes.

Q. And when it -- when we allege -- or when the plaintiffs allege a fraudulent transfer of lien, what exactly -- what document is that referring to?

A. For example, in the Wolfs' case, I have it here attached to my report as Exhibit D. It is called "Transfer of lien."

And what this proposes to do is to -- to assign the security instrument and the note from, in this case, New Century Mortgage Corporation, directly into -- or directly over to Wells Fargo Bank, N.A. as trustee for Carrington Mortgage Loan Trust Series 2006-NC3 Asset-Backed Pass-Through Certificates.

So, it purports to assign and transfer all of the rights contained in those instruments to Wells Fargo Bank as trustee.

MR. HUGHES: Okay. I'll pass the witness.

MR. SMART: No more questions.

(Deposition concluded at 10:28 a.m.)

WITNESS CORRECTIONS AND SIGNATURE

Please indicate changes on this sheet of paper, giving the change, page number, line number and reason for the change. Please sign each page of changes.

PAGE/LINE	CORRECTION	REASON FOR CHANGE

_____
MARIE MCDONNELL

I, MARIE MCDONNELL, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted on the previous page(s), and that I am signing this before a Notary Public.

_____
MARIE MCDONNELL

STATE OF T E X A S *

COUNTY OF _____ *

Before me, _____, on this day personally appeared MARIE MCDONNELL, known to me, or proved to me under oath or through _____ (description of identity card or other document), to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this, the _____ day of _____, 2012.

_____
NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS

My Commission Expires: _____

JOB NO. 1-133489

CAUSE NO. 2011-36476

MARY ELLEN WOLF and DAVID WOLF	)	IN THE DISTRICT COURT OF
VS.	)	HARRIS COUNTY, TEXAS
WELLS FARGO BANK, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates, et al	)	151ST JUDICIAL DISTRICT

REPORTER'S CERTIFICATION
ORAL DEPOSITION OF MARIE MCDONNELL
OCTOBER 2, 2012

I, Mendy A. Schneider, a Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, MARIE MCDONNELL, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on _____, 2012, to the witness, or to the attorney for the witness, for examination, signature, and return to U.S. Legal Support, Inc., by _____, 2012;

That the amount of time used by each party at the deposition is as follows:

MR. HUGHES - 00:11:25

MR. SMART - 01:00:49

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

MR. W. CRAFT HUGHES, Attorney for Plaintiffs.
MR. PETER C. SMART, Attorney for Defendants.

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Further certification requirements pursuant to Rule 203 of TRCP will be certified to after they have occurred.

Certified to by me this 9th of October, 2012.

Mendy A. Schneider, CSR NO. 7761
Expiration Date: 12-31-12

FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was _____ was not _____ returned to the deposition officer on _____, 2012.

If returned, the attached Corrections and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to MR. PETER C. SMART, Custodial Attorney;

That $_____ is the deposition officer's charges to the Attorney for Defendants, MR. PETER C. SMART, TBA# 00784989, for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein and filed with the Clerk.

Certified to by me this 9th of October, 2012.

_____
Mendy A. Schneider, CSR NO. 7761
Expiration Date: 12-31-12

U.S. Legal Support, Inc.
Firm Registration No. 122
363 North Sam Houston Pkwy East
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Houston, TX 77060-4001
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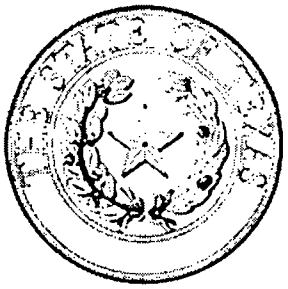
JOB NO. 1-133489

P.9

Reversed and Remanded and Opinion filed August 21, 2014.



In The

Fourteenth Court of Appeals

NO. 14-13-00435-CV

WELLS FARGO BANK, N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST, SERIES 2006-NC3 ASSET BACKED PASS-THROUGH CERTIFICATES, TOM CROFT, NEW CENTURY MORTGAGE CORPORATION, AND CARRINGTON MORTGAGE SERVICES, LLC, Appellants

V.

MARY ELLEN WOLF AND DAVID WOLF, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, Appellees

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On Appeal from the 151st District Court
Harris County, Texas
Trial Court Cause No. 2011-36476

O P I N I O N

Appellants, Wells Fargo Bank, N.A., As Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates ("Wells Fargo"), Tom Croft ("Croft"), New Century Mortgage Corporation ("New Century"), and Carrington Mortgage Services, LLC ("Carrington"), appeal an

Order Granting Class Certification on behalf of appellees, Mary Ellen Wolf and David Wolf (collectively "the Wolfs"), On Behalf of Themselves and All Others Similarly Situated. In their suit, the Wolfs seek damages and equitable relief, alleging that (1) appellants incorrectly claim Wells Fargo is lienholder relative to the Wolfs' residential mortgage, and (2) appellants executed and filed fraudulent documents to claim that status. The trial court granted appellants' motion for summary judgment on the Wolfs' claims for damages but denied the motion relative to their request for equitable relief. The trial court then certified a class consisting of allegedly similarly-situated mortgagors on a statutory claim for damages. Because we conclude the trial court erred by certifying a class on a claim that had already been disposed of via summary judgment, we reverse the Order Granting Class Certification and remand for further proceedings.

I. BACKGROUND

In June 2006, the Wolfs refinanced their mortgage via a home equity loan of $400,000 from New Century. To memorialize the loan, the Wolfs executed a promissory note and a deed of trust in favor of New Century.

On August 1, 2006, three entities executed a Pooling and Servicing Agreement, creating the Carrington Mortgage Loan Trust, Series 2006-NC3 ("the Trust"): New Century as "Servicer;" Wells Fargo as "Trustee;" and an entity who is not a party to the present case as "Depositor." The purpose of the Trust was that loans conveyed into the Trust would be securitized for sale to investors.

Appellants claim that the Wolfs' loan was conveyed into the Trust and thus assigned to Wells Fargo it in its capacity as trustee. On October 20, 2009, Wells Fargo filed with the Harris County clerk a document entitled "Transfer of Lien," indicating it was executed by Croft as an officer of New Century. The document

purported to show a transfer of the Wolfs' note and deed of trust from New Century to Wells Fargo, effective September 30, 2009.

Wells Fargo appointed Carrington (successor in interest to New Century, which had filed bankruptcy) as Wells Fargo's attorney-in-fact, with full authority to take actions relative to the loans securitized into the Trust. In December 2010, Carrington sent the Wolfs a notice of intent to foreclose because they were delinquent on the loan. When the Wolfs failed to cure, Wells Fargo filed an application to proceed with a non-judicial foreclosure. In support, Wells Fargo filed an affidavit of Croft, indicating he was signing as an officer of Carrington and attorney in fact for Wells Fargo.

The Wolfs then filed the present suit, alleging appellants were attempting a wrongful foreclosure and the documents intended to support the foreclosure were fraudulent. Because of the filing of this suit, the separate foreclosure action was abated and dismissed. Appellees have filed a counterclaim in the present suit, requesting permission to proceed with the foreclosure.

The Wolfs amended their petition several times to further define the basis for their claims. The Wolfs alleged that (1) their loan was not properly securitized into the Trust in the manner required under the Pooling and Servicing Agreement and other pertinent documents and thus Wells Fargo is not owner and holder of the loan instruments, and (2) appellants filed the Transfer of Lien in the Harris County real property records in a fraudulent attempt to cure defects in the original attempt to convey the loan into the Trust.

The Wolfs asserted a claim for violations of Texas Civil Practice and Remedies Code section 12.002, which provides in pertinent part:

> (a) A person may not make, present, or use a document or other record with:

(1) knowledge that the document or other record is a fraudulent court record or a fraudulent lien or claim against real or personal property or an interest in real or personal property;

(2) intent that the document or other record be given the same legal effect as a court record or document of a court created by or established under the constitution or laws of this state or the United States or another entity listed in Section 37.01, Penal Code, evidencing a valid lien or claim against real or personal property or an interest in real or personal property; and

(3) intent to cause another person to suffer:

(A) physical injury;

(B) financial injury; or

(C) mental anguish or emotional distress.

. . .

(b) A person who violates Subsection (a) . . . is liable to each injured person for:

(1) the greater of:

(A) $10,000; or

(B) the actual damages caused by the violation;

(2) court costs;

(3) reasonable attorney's fees; and

(4) exemplary damages in an amount determined by the court.

Tex. Civ. Prac. & Rem Code Ann. § 12.002 (West Supp. 2014).

According to the Wolfs, Wells Fargo violated section 12.002(a) by filing the Transfer of Lien in the real property records and, therefore, the Wolfs are entitled to the damages prescribed under section 12.002(b). The Wolfs also sought actual and exemplary damages based on claims for negligence, gross negligence, unjust enrichment, and "money had and received." Further, the Wolfs included a request for declaratory relief.

Appellants moved for summary judgment on various grounds, including the statute of limitations. On October 9, 2012, the trial court signed an order granting, in part, and denying, in part, the motion for summary judgment. The trial court granted summary judgment on the Wolfs' claims for damages on the statute-of-limitations ground. The trial court has not signed any order withdrawing that ruling. The trial court denied summary judgment on the Wolfs' equitable claims and denied appellants' motion for reconsideration of that ruling.

Approximately a month after the summary-judgment order, the Wolfs filed an amended petition—their live petition—continuing to plead both their claims for damages and equitable relief. Several days later, the Wolfs filed a motion for class certification on, inter alia, their section 12.002 claim.[1] They alleged that the putative class members also had mortgages which were not properly conveyed into the Trust and Wells Fargo filed fraudulent Transfer of Lien documents relative to these mortgages.

On May 1, 2013, the trial court signed an Order Granting Class Certification. The certified class is defined as:

> All persons and entities with a residential mortgage loan on real property in the State of Texas securitized into [the Trust], with a court record, lien, claim against real property, or claim against an interest in real property filed by Defendants after August 10, 2006 up to and including the date notice is first provided to the Class.

The certified subclass is defined as:

> All persons and entities that lost ownership to real property in the State of Texas resulting from a foreclosure initiated by Wells Fargo . . . as Trustee for [the Trust] after August 10, 2006 up to and including the date notice is first provided to the Class.

[1] In several previous amended petitions, the Wolfs alleged a class action, but they did not move for class certification until after the trial court granted summary judgment on the claim for damages and the Wolfs filed their live petition.

Appellants now appeal that order. *See* Tex. Civ. Prac. & Rem Code Ann. § 51.014(a)(3) (West Supp. 2014) (authorizing interlocutory appeal of order that certifies a class).

II. ANALYSIS

On appeal, appellants present four issues challenging the class certification order: (1) the order must be reversed because the trial court previously ruled the Wolfs may not maintain the sole claim they assert on behalf of the class; (2) the order rests on erroneous legal conclusions because (a) the putative class members lack standing to allege violations of the Pooling and Servicing Agreement when they were not parties to the agreement, and (b) the Transfer of Lien documents cannot constitute fraudulent liens within the meaning of section 12.002; (3) the trial court abused its discretion by certifying a class without issuing an adequate trial plan; and (4) the trial court abused its discretion by certifying a class that does not satisfy the commonality, predominance, and superiority requirements of Texas Rule of Civil Procedure 42. We agree with appellants' first issue, and thus we need not consider their remaining issues.

We review a class certification order for abuse of discretion. *Bowden v. Phillips Petroleum Co.*, 247 S.W.3d 690, 696 (Tex. 2008). A trial court abuses its discretion if it acts arbitrarily, unreasonably, or without reference to any guiding principles. *Id.*; *Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992). A trial court also abuses its discretion if it fails to correctly analyze or apply the law. *In re Cerberus Capital Mgmt, L.P.*, 164 S.W.3d 379, 382 (Tex. 2005); *Walker*, 827 S.W.2d at 839–40. In the present case, we conclude the trial court failed to correctly analyze or apply the law.

In particular, if a putative class representative has no live individual claim, that individual has no standing to bring suit on behalf of a putative class. *Tex. Commerce Bank v. Grizzle*, 96 S.W.3d 240, 255 (Tex. 2002). Accordingly, claims made on behalf of a putative class by such an individual must fail as a matter of law. *Id.* "'[A] plaintiff without a claim cannot be allowed to bring suit by making a class action allegation.'" *Id.* (quoting *Turner v. First Wis. Mortgage Trust*, 454 F. Supp. 899, 913 (E.D. Wis. 1978)).

As mentioned above, the trial court granted summary judgment in favor of appellants on all of the Wolfs' claims for damages, including the section 12.002 claim, which had already been pleaded. The trial court never expressly withdrew that ruling, nor did the Wolfs request that the trial court do so. Further, the Wolfs did not move to sever those claims and appeal the summary judgment. Thus, when the trial court certified the class, the Wolfs had no live claims for damages, including their section 12.002 claim. As appellees acknowledge, the trial court certified the class solely on a section 12.002 claim for damages.[2] Consequently, on May 1, 2013, the trial court certified a class on a cause of action that it had previously disposed of by summary judgment against the named plaintiffs on October 9, 2012.[3]

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[2] The motion for class certification may be construed as seeking class certification on both the section 12.002 claim for damages and a request for equitable relief enjoining appellants from wrongfully claiming ownership of the mortgages, foreclosing on the class members' real property, and filing fraudulent documents in the real property records. Regardless, the trial court certified a class only on the section 12.002 claim for damages.

[3] In the Statement of Facts section of their brief, appellees note that, after the trial court granted summary judgment on the claims for damages, the Wolfs filed their live petition raising the discovery rule as responsive to appellants' statute-of-limitations defense. Appellees further note that appellants have not addressed this amendment, in either their motion to reconsider denial of summary judgment on the equitable claims or their appellate brief. Contrary to appellees' suggestion, the Wolfs had already pleaded the discovery rule before appellants moved for summary judgment and raised the issue in their summary-judgment response. Nonetheless, appellants had no reason to challenge any new allegations in the amended petition relative to a

Appellees do not dispute that the trial court granted summary judgment on the section 12.002 claim on the basis of limitations. Instead, appellees appear to urge that the summary-judgment order does not exist any longer. The crux of appellees' argument on appeal is that the trial court implicitly withdrew the summary judgment by issuing the inconsistent class certification order. We disagree. Appellees cite the principle, undisputed in this case, that a trial court may withdraw an order granting summary judgment if the party who obtained summary judgment has a fair opportunity to present evidence to the jury on the issues reinjected into the case. *See Bi–Ed, Ltd. v. Ramsey*, 935 S.W.2d 122, 123–24 (Tex. 1996) (citing *Elder Construction, Inc. v. City of Colleyville*, 839 S.W.2d 91, 92 (Tex. 1992)); *see also Rush v. Barrios*, 56 S.W.3d 88, 98–99 (Tex. App.—Houston [14th Dist.] 2001, pet. denied). Appellees further cite cases holding that a trial court implicitly modifies or withdraws a partial summary judgment if its final findings of fact and conclusions of law are inconsistent with the partial summary judgment. *See, e.g.*, *Fabio v. Ertel*, 226 S.W.3d 557, 561 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (citing *Loy v. Harter*, 128 S.W.3d 397, 409 (Tex. App.—Texarkana 2004, pet. denied)).

Appellees cite no authority, however, applying this principle when a trial court certifies a class on a claim which has already been disposed of via summary judgment. Appellees also cite nothing in the record to suggest that the trial court *sua sponte* reconsidered its grant of summary judgment on limitations. Indeed, the trial court's class certification order includes no plan for trying the statute-of-limitations defense presented by appellants. The absence of such a plan supports

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claim that had already been disposed of via summary judgment. We disagree that amending a petition after summary judgment has been granted to make an allegation that might have defeated entitlement to summary judgment somehow revives the dismissed claim. We also note that the merits of the summary judgment are not before us, and we express no opinion on it.

our conclusion that the trial court did not reconsider its order granting summary judgment on the Wolfs' claim for damages based on the statute of limitations.

On this record, we cannot foreclose the possibility that the trial court did not intend to withdraw the summary judgment but instead simply erred by certifying a class on the dismissed claim. Accordingly, we cannot construe the class certification order as necessarily withdrawing the summary judgment. Instead, we hold that the trial court erred by certifying the class when the Wolfs had no live claim on the cause of action addressed by the certification order.

In summary, we hold that the trial court erred by certifying a class action. Accordingly, we sustain appellants' first issue, reverse the Order Granting Class Certification, and remand for further proceedings consistent with this opinion.

/s/ Ken Wise
Justice

Panel consists of Justices McCally, Busby, and Wise.

Case No. 201136476

P-3
ORTX

WOLF, MARY ELLEN
vs.
WELLS FARGO BANK N A (AS TRUST

IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
151st JUDICIAL DISTRICT

ORDER RESETTING TRIAL

This case is reset for TRIAL for the two week period beginning 04-06-2015. If the case has not been reached by the second Friday after this date, the trial will be reset. All previous pre-trial deadlines remain in effect, unless changed by the court.

If you have any questions regarding this notice, please contact the court coordinator, CORINA TENIENTE at (713) 368-6211.

Signed OCT -9 2014

MIKE ENGELHART
Judge, 151ST DISTRICT COURT
Generated on: 10/08/2014

FILED
Chris Daniel
District Clerk
OCT -9 2014
Time: 3:45 pm
Harris County, Texas
By Deputy

RECORDER'S MEMORANDUM
This instrument is of poor quality at the time of imaging

24046123

WILLIAM CRAFT HUGHES
2700 POST OAK BLVD. 1120
HOUSTON, TX 77056

JCVF17
rev 12311999

Case No. 201136476

ORTX

WOLF, MARY ELLEN
vs.
WELLS FARGO BANK N A (AS TRUST

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Signed OCT - 9 2014

MIKE ENGELHART 151
Judge, 151ST DISTRICT COURT
Generated on: 10/08/2014

784989

PETER C. SMART
1401 MCKINNEY, SUITE 1700
HOUSTON, TX 77010

JCVF17
rev 12311999

Case No. 201136476

ORTX

WOLF, MARY ELLEN
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Signed OCT - 9 2014

MIKE ENGELHART 151
Judge, 151ST DISTRICT COURT
Generated on: 10/08/2014

24031433

THOMAS DAVID PRUYN
2311 CANAL STREET SUITE 124
HOUSTON, TX 77003

JCVF17
rev 12311999

P-4

MAN

"AF"

FILED
Chris Daniel
District Clerk
OCT 31 2014
Time: 10:11 Am
Harris County, Texas
By PWelsh
Deputy

MANDATE

The Fourteenth Court of Appeals

NO. 14-13-00435-CV

Wells Fargo Bank, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates, Tom Croft, New Century Mortgage Corporation, and Carrington Mortgage Services, LLC, Appellants

v.

Mary Ellen Wolf and David Wolf, on behalf of Themselves And All Others Similarly Situated, Appellees

Appealed from the 151st District Court of Harris County. (Tr. Ct. No. 2011-36476). Opinion delivered by Justice Wise. Justices McCally and Busby also participating.

TO THE 151ST DISTRICT COURT OF HARRIS COUNTY, GREETINGS:

Before our Court of Appeals on August 21, 2014, the cause upon appeal to revise or reverse your judgment was determined. Our Court of Appeals made its order in these words:

This cause, an appeal from the Order Granting Class Certification, signed May 1, 2013, was heard on the transcript of the record. We have inspected the record and find error in the order. We therefore order that the Order Granting Class Certification of the court below is **REVERSED** and **REMAND** the cause for proceedings in accordance with the court's opinion.

We further order that all costs incurred by reason of this appeal be paid by appellees, Mary Ellen Wolf and David Wolf, on behalf of Themselves And All Others Similarly Situated.

We further order this decision certified below for observance.

WHEREFORE, WE COMMAND YOU to observe the order of our said Court in this behalf and in all things have it duly recognized, obeyed, and executed.

WITNESS, the Hon. Kem Thompson Frost, Chief Justice of our Fourteenth Court of Appeals, with the Seal thereof affixed, at the City of Houston, October 31, 2014.

CHRISTOPHER A. PRINE, CLERK

Christopher A. Prine

BILL OF COSTS

TEXAS COURT OF APPEALS, FOURTEENTH DISTRICT, AT HOUSTON

No. 14-13-00435-CV

Wells Fargo Bank, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates, Carrington Mortgage Services, LLC and Tom Croft

v.

Mary Ellen Wolf and David Wolf, on behalf of Themselves And All Others Similarly Situated

(No. 2011-36476 IN 151ST DISTRICT COURT OF HARRIS COUNTY)

TYPE OF FEE	CHARGES	PAID/DUE	STATUS	PAID BY
MT FEE	$10.00	05/06/2014	E-PAID	ANT
E-TXGOV FEE	$5.00	11/22/2013	E-PAID	ANT
MT FEE	$10.00	11/22/2013	E-PAID	ANT
E-TXGOV FEE	$5.00	11/21/2013	E-PAID	APE
E-TXGOV FEE	$5.00	10/08/2013	E-PAID	ANT
MT FEE	$10.00	10/04/2013	E-PAID	APE
MT FEE	$10.00	10/04/2013	E-PAID	APE
E-TXGOV FEE	$5.00	10/04/2013	E-PAID	APE
E-TXGOV FEE	$5.00	10/04/2013	E-PAID	APE
E-TXGOV FEE	$5.00	10/02/2013	E-FILED	APE
MT FEE	$10.00	08/28/2013	E-PAID	ANT
E-TXGOV FEE	$5.00	08/28/2013	E-PAID	ANT
E-TXGOV FEE	$5.00	08/27/2013	E-PAID	APE
MT FEE	$10.00	08/27/2013	E-PAID	APE
E-TXGOV FEE	$5.00	07/25/2013	E-PAID	APE
MT FEE	$10.00	07/25/2013	E-PAID	APE
E-TXGOV FEE	$5.00	07/23/2013	E-PAID	ANT
COPIES	$2.00	07/05/2013	PAID	ANT
CLK RECORD	$2,084.00	07/03/2013	PAID	ANT
MT FEE	$10.00	06/19/2013	E-PAID	ANT
MT FEE	$10.00	06/19/2013	E-PAID	ANT
MT FEE	$10.00	06/19/2013	E-PAID	ANT
E-TXGOV FEE	$5.00	06/19/2013	E-PAID	ANT
E-TXGOV FEE	$5.00	06/19/2013	E-PAID	ANT

E-TXGOV FEE	$5.00	06/19/2013	E-PAID	ANT
RPT RECORD	$540.00	05/28/2013	PAID	ANT
FILING	$175.00	05/22/2013	E-PAID	ANT
E-TXGOV FEE	$5.00	05/22/2013	E-PAID	ANT
E-TXGOV FEE	$5.00	05/22/2013	E-PAID	ANT
E-TXGOV FEE	$5.00	05/17/2013	E-PAID	ANT

The costs incurred on appeal to the Fourteenth Court of Appeals Houston, Texas are $2,981.00.

Court costs in this cause shall be paid as per the Judgment issued by this Court.

I, **CHRISTOPHER A. PRINE, CLERK** OF THE FOURTEENTH COURT OF APPEALS OF THE STATE OF TEXAS, do hereby certify that the above and foregoing is a true and correct copy of the cost bill of THE COURT OF APPEALS FOR THE FOURTEENTH DISTRICT OF TEXAS, showing the charges and payments, in the above numbered and styled cause, as the same appears of record in this office.

IN TESTIMONY WHEREOF, witness my hand and the Seal of the **COURT OF APPEALS** for the Fourteenth District of Texas, October 31, 2014.

COURT OF APPEALS
OF THE STATE OF TEXAS

CHRISTOPHER A. PRINE, CLERK

P.3

TRPOX

Cause No. 201136476

WOLF, MARY ELLEN	*	IN THE DISTRICT COURT OF
vs.	*	HARRIS COUNTY, TEXAS
WELLS FARGO BANK N A (AS TRUST	*	151st JUDICIAL DISTRICT

TRIAL PREPARATION ORDER

☒ **Pursuant to Rule 166** of the Texas Rule of Civil Procedure, before the Pretrial Conference scheduled for this case, the items that are checked below **must be furnished to opposing counsel in advance** with enough time to allow review for objections, and **brought with you** to the Pretrial Conference.

☒ **Pursuant to Rule 166** of the Texas Rules of Civil Procedure, the items that are checked below must be **FILED/EXCHANGED** by **03-26-2015.**

☒ **Pursuant to Rule 166** of the Texas Rules of Civil Procedure, the items that are checked must be completed and ready for discussion with the court at the Pretrial Conference.

* * * * * *

☒ **Party/Attorney List.** Names, addresses, and phone numbers of each pro se party and attorney.

☒ **Trial Witnesses List.** The name, address and telephone number of any person expected to testify at trial, and a brief statement of each identified person's connection with the case.

☒ **Draft Jury Charge** (if a jury fee has been paid) or Findings of Fact and Conclusions of Law. Modifications may be submitted as the trial progresses.

☒ **Exhibits.** An exhibit list is required. All exhibits must be pre-marked with inadmissible matters redacted(e.g. insurance). Objections to authenticity must be made pursuant to Rule 193.7.

☒ **Deposition Excerpts or Edited Videotapes.** Designate page and line in sequence to be used at trial.

☒ **Motions in Limine.**

☒ **Trial Scheduling.** Estimated trial length, and potential attorney or witness conflicts or travel difficulties.

☒ **Other.**
ALL PRE-TRIAL DOCUMENTS MUST BE COMPLETED AND MUST BE FILED AND EXCHANGED BEFORE DOCKET CALL. MOTIONS FOR CONTINUANCES MUST BE FILED BEFORE DOCKET CALL. DOCKET CALL IS CONDUCTED OVER THE TELEPHONE ON 3/27/15 BETWEEN 9AM AND 1PM.

Signed

MIKE ENGELHART
Judge, 151ST DISTRICT COURT
DATE GENERATED: 03/09/2015

WILLIAM CRAFT HUGHES
2700 POST OAK BLVD. 1120
HOUSTON, TX 77056

JCV001
rev.032802

24046123

TRPOX

Cause No. 201136476

WOLF, MARY ELLEN	*	IN THE DISTRICT COURT OF
vs.	*	HARRIS COUNTY, TEXAS
WELLS FARGO BANK N A (AS TRUST	*	151st JUDICIAL DISTRICT

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Signed

MIKE ENGELHART
Judge, 151ST DISTRICT COURT
DATE GENERATED: 03/09/2015

PETER C. SMART
1401 MCKINNEY, SUITE 1700
HOUSTON, TX 77010

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TRPOX

Cause No. 201136476

WOLF, MARY ELLEN	*	IN THE DISTRICT COURT OF
vs.	*	HARRIS COUNTY, TEXAS
WELLS FARGO BANK N A (AS TRUST	*	151st JUDICIAL DISTRICT

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Signed

THOMAS DAVID PRUYN
2311 CANAL STREET SUITE 124
HOUSTON, TX 77003

MIKE ENGELHART
Judge, 151ST DISTRICT COURT
DATE GENERATED: 03/09/2015

24031433

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3/16/2015 2:54:03 PM
Chris Daniel - District Clerk Harris County
Envelope No. 4514026
By: JIMMY RODRIGUEZ
Filed: 3/16/2015 2:54:03 PM

CAUSE NO. 2011-36476

MARY ELLEN WOLF AND DAVID WOLF, on behalf of themselves and all others similarly situated,	§	IN THE DISTRICT COURT OF
v.	§	
	§	HARRIS COUNTY, TEXAS
WELLS FARGO BANK, N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST, TOM CROFT, NEW CENTURY MORTGAGE CORPORATION, AND CARRINGTON MORTGAGE SERVICES, LLC.	§	151ST JUDICIAL DISTRICT

PLAINTIFFS' RESPONSE TO DEFENDANTS' SECOND MOTION TO RECONSIDER DEFENDANTS' MOTION FOR SUMMARY JUDGMENT and DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT

COME NOW Plaintiffs MARY ELLEN WOLF and DAVID WOLF ("Plaintiffs" or "Wolfs"), by and through their undersigned attorney, responding to the Second Motion to Reconsider Summary Judgment and Second Motion for Summary Judgment filed by Defendants, Wells Fargo Bank, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates (for the sake of brevity only, "Wells Fargo"), Carrington Mortgage Services, LLC, ("Carrington") and Tom Croft ("Croft") (collectively "Defendants"). Based on the evidence, facts, and case law cited herein, Plaintiffs respectfully ask the Court to deny Defendants' Second Motion to Reconsider Summary Judgment and Second Motion for Summary Judgment ("Defendant's Motion").

I. SUMMARY OF RESPONSE & REQUEST FOR SANCTIONS

In Defendants' Motion, they claim the Court granted their original motion for summary judgment filed on July 12, 2012.[1] *See* Defendants' Motion, p.1. Plaintiffs' disagree; and the

[1] A copy of this Court's MSJ Order dated October 9, 2012 is attached as Exhibit 11.

Fourteenth Court of Appeals was also confused about this issue.[2] Simultaneously with the filing of this response, Plaintiffs also filed a Request for the Court to Withdraw the Summary Judgment Order Signed October 9, 2012 and Alternative Motion for Clarification. **Also, Defendants recklessly filed documents with their motion in the public record containing Plaintiffs' entire social security numbers, entire dates of birth, and sensitive financial information** (*e.g.*, Defendants' Exhibit 1, p.1). It's difficult to believe this was not intentional given the past 2-3 years of hotly contested litigation in this matter including an interlocutory appeal. Defendants should be sanctioned, should be responsible for paying all costs associated with the removal of this information from the public record, and also be required to provide a detailed explanation to the Court as to why they undertook such outrageous actions against Plaintiffs.

II. INCORPORATION BY REFERENCE OF PLAINTIFFS' SUMMARY JUDGMENT EVIDENCE

Plaintiffs' Response incorporates by reference all summary-judgment evidence attached in the Appendix to Plaintiffs' Response to Defendants' Motion for Summary Judgment filed on September 24, 2012.[3] All the summary judgment proof and evidence included in the previous Appendix is incorporated herein by reference into this Response for all purposes, which includes:

EXHIBIT 1: Oral Deposition of David Wolf;

EXHIBIT 2: Texas Home Equity Fixed/Adjustable Rate Note ***(produced by Defendants);***

EXHIBIT 3: Texas Home Equity Security Instrument ***(produced by Defendants);***

EXHIBIT 4: Oral Deposition of Mary Ellen Wolf;

EXHIBIT 5: Pooling And Servicing Agreement dated August 1, 2006.

[2] A copy of the opinion issued by the Fourteenth Court of Appeals is attached as Exhibit 12.

[3] *See* TEX. R. CIV. P. 166a(d); *e.g.*, *Barraza v. Eureka Co.*, 25 S.W.3d 225, 228-29 (Tex. App.—El Paso 2000, pet. denied) (attaching unfiled discovery and making specific reference to some of it in summary judgment response was sufficient).

Stanwich Asset Acceptance Company, L.L.C. ("Depositor"), New Century Mortgage Corporation ("Servicer"), and Wells Fargo Bank N.A. ("Trustee")
(produced by Defendants);

EXHIBIT 6: Transfer of Lien
(produced by Defendants);

EXHIBIT 7: Mortgage Loan Purchase Agreement dated August 10, 2006, among NC Capital Corporation, a California corporation (the "Responsible Party"), Carrington Securities, LP, a Delaware limited partnership (the "Seller") and Stanwich Asset Acceptance Company, L.L.C.
(produced by Defendants);

EXHIBIT 8: Expert Marie McDonnell's Report entitled *FORENSIC EXAMINATION OF ASSIGNMENTS OF MORTGAGE RECORDED DURING 2010 IN THE ESSEX SOUTHERN DISTRICT REGISTRY OF DEEDS;*

EXHIBIT 9: Affidavit of Expert Marie McDonnell;

EXHIBIT 10: Oral Deposition of Tom Croft;

EXHIBIT 11: A copy of this Court's MSJ Order dated October 9, 2012; and

EXHIBIT 12: A copy of the opinion issued by the Fourteenth Court of Appeals in Case No. 14-13-00435-CV.

III. PROCEDURAL HISTORY

On July 12, 2012, Defendants filed a motion for summary judgment ("Defendants' MSJ").[4] With respect to the statute of limitations, Defendants moved for summary judgment in two short paragraphs:

> The Note and Deed of Trust were executed on June 15, 2006. Plaintiffs filed this suit on June 19, 2011, more than 5 years later. Therefore, Plaintiffs' claims are barred by the statute of limitations.

[4] Defendants Wells Fargo Bank, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates, Carrington Mortgage Services, LLC, and Tom Croft are collectively referred to as "Defendants."

> The statute of limitations for negligence is two years. The statute of limitations for fraud is four years. The statute of limitations for unjust enrichment and Chapter 12 fraudulent lien claims are either two or four years. The residual statute of limitations for causes of action that do not have a specific statutory limitation period is 4 years.

See Defendants' MSJ, p. 13. Notably, Defendants' MSJ relied on the faulty premise that the Plaintiffs' Section 12.002 claims accrued when the initial Note and Deed of Trust were executed. *Id*. Plaintiffs highlighted this deficiency in their MSJ response filed on September 24, 2012, and further raised the discovery rule.

In a handwritten order signed on October 9, 2012 (filed on September 24, 2012, ED101J017095390), the trial court granted, in part, Defendants' MSJ ("MSJ Order"). The court's written notation stated the motion was "Granted as to Plaintiffs claims for damages based upon Defendants' assertion of the statute of limitations. The motion is hereby DENIED in all other respects."

On November 2, 2012, Plaintiffs filed a third amended petition. In the petition, Plaintiffs alleged the date of the claimed Section 12.002 violation on behalf of themselves and other similarly-situated Texas homeowners seeking statutory damages for each fraudulent assignment recorded by Defendants. On November 5, 2012, the Plaintiffs filed a motion to certify the class on the Section 12.002 claims.

On November 14, 2012, Defendants' filed a motion to reconsider the MSJ Order. On March 22, 2013, the Court entered an order denying Defendants' motion to reconsider, expressly stating "The Court believes it was correct to have previously denied Defendants' Motion for Summary Judgment, and recent case law supports that decision."

On May 1, 2013, the Court granted Plaintiffs' motion for class certification. Shortly thereafter, Defendants' filed an interlocutory appeal of the Court's order granting class certification to the Fourteenth Court of Appeals (No. 14-13-00435-CV). On appeal, Plaintiffs

argument was that the trial court implicitly withdrew the MSJ Order by issuing an inconsistent class certification order. *Wells Fargo Bank, N.A. v. Wolf*, 444 S.W.3d 685, 689 (Tex. App.—Houston [14th Dist.] 2014, no pet.). On August 21, 2014, after briefing and oral arguments, the Fourteenth Court of Appeals issued its opinion reversing the trial court's order granting class certification.

The court of appeals was forced to *assume* this court did not withdraw the MSJ Order. Indeed, the appellate opinion states "On this record, *we cannot foreclose the possibility* that the trial court did not intend to withdraw the summary judgment but instead simply erred by certifying a class on the dismissed claim." *Id*. at 690 (emphasis added). "Appellees also cite nothing in the record to suggest that the trial court *sua sponte* reconsidered its grant of summary judgment on limitations." The appellate opinion on this issue continues, stating "The trial court *never expressly withdrew that* [MSJ Order] *ruling*, nor did the Wolfs request that the trial court do so." *Id*. at 688 (emphasis added).

IV. FACTUAL BACKGROUND

This is a case arising out of an attempted wrongful foreclosure in which a third party, Defendant Wells Fargo, sought to foreclose on Plaintiffs' homestead without being the owner and holder of the Mortgage, Note, and Deed of Trust. Three different entities are named as the mortgagee and/or owner and holder of the Note in Defendants' summary judgment evidence. Furthermore, Plaintiffs' expert witness has reviewed the relevant documents and evidence in this case, and her expert opinion is:

a. Defendant Wells Fargo Bank, N.A., ***is not*** the current owner and holder of Plaintiffs' Note and Deed of Trust ("Mortgage Loan").

b. Defendant Wells Fargo Bank, N.A., has ***never been*** the owner and holder of Plaintiffs' Mortgage Loan.

c. Plaintiffs' Mortgage Loan was ***never transferred into the 2006-NC3 Trust*** for which Defendant Wells Fargo Bank, N.A. is Trustee in strict compliance with the Pooling and Servicing Agreement executed on August 1, 2006 between the parties which is governed by the laws of the State of New York.

Both Defendants' summary judgment evidence and Plaintiffs' summary judgment evidence raise fact issues as to the entity which is the actual owner and holder of Plaintiffs' Mortgage, Note, and Deed of Trust.

The summary judgment evidence requires denial of Defendants' Motion. The summary judgment evidence raises genuine issues of material fact bearing on all elements of Plaintiffs' claims. Furthermore, Defendants failed to prove as a matter of law Wells Fargo is the owner and holder of Plaintiffs' Mortgage, Note, and Deed of Trust. Thus, the Court should deny Defendants' Motion.

Defendants' summary judgment evidence includes two affidavits by interested witnesses but such evidence is not clear, positive, direct, otherwise credible and free from contradictions and inconsistencies and susceptible of being readily controverted. Such evidence merely raises fact issues. Such evidence also contains unsupported conclusory statements which are inadmissible. Thus, the Court should deny Defendants' Second Motion to Reconsider Summary Judgment and Defendants' Second Motion for Summary Judgment

A. Refinancing of Plaintiffs' Mortgage in 2006

In 2006, the Wolfs sought to refinance their mortgage through a loan from New Century

Mortgage Corporation ("New Century").[5] New Century agreed to loan the Wolfs $400,000.00.[6] On June 15, 2006, the $400,000.00 loan was memorialized by an instrument entitled "Texas Home Equity Fixed/Adjustable Rate Note"[7] and an instrument entitled "Texas Home Equity Security Instrument."[8]

New Century is the Lender on the Note.[9] The Deed of Trust provides New Century and its assigns with a first lien on the Wolfs' homestead located at 6404 Buffalo Speedway, Houston, Texas 77005, which is more particularly described as:

> The South ½ of Lot Six (6), Block Thirty (30) of West University Place, an addition in Harris County, Texas, according to the Map or Plat thereof recorded in volume 9, Page 13, of the Map Records of Harris County, Texas (together, with the improvements thereon, referred to as the "Property").[10]

The Wolfs executed and delivered the Note and Deed of Trust to New Century on or about June 15, 2006.[11] On June 22, 2006, the Deed of Trust was filed of record with the Harris County Clerk's Office as file number Z394249.[12] The Wolfs have never signed any agreements with Wells Fargo.[13]

The Note is a "written loan agreement" pursuant to TEXAS BUSINESS & COMMERCE CODE

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[5] *See* Oral Deposition of David Wolf ("Deposition of D. Wolf"), at p. 22, ll. 7-14; 22-24, attached and incorporated herein as Exhibit 1; Texas Home Equity Fixed/Adjustable Rate Note (CARRINGTON-00530 to CARRINGTON-00534) ("Note"), attached and incorporated herein as Exhibit 2; Texas Home Equity Security Instrument (CARRINGTON-00535 to CARRINGTON-00555) ("Deed of Trust"), attached and incorporated herein as Exhibit 3. Plaintiffs refer to the Texas Home Equity Security Instrument as the "Deed of Trust" as it operates in the same manner as a deed of trust.

[6] *See* Note at p. 1 (CARRINGTON-00530), Exhibit 2. *See also* Oral Deposition of Mary Ellen Wolf ("Deposition of M.E. Wolf"), at p. 42, ll. 7-8, attached and incorporated herein as Exhibit 4.

[7] *See* Note (CARRINGTON-00530 to CARRINGTON-00534), Exhibit 2.

[8] *See* Deed of Trust (CARRINGTON-00535 to CARRINGTON-00555), Exhibit 3.

[9] *See* Note at p. 1, ¶ 1 (CARRINGTON-00530), Exhibit 2.

[10] *See* Deed of Trust at p. 19 (CARRINGTON-00553), Exhibit 3.

[11] *See* Note at p. 1 (CARRINGTON-00530), Exhibit 2.

[12] *See* Deed of Trust at p. 1 (CARRINGTON-00535), Exhibit 3.

[13] *See* Deposition of D. Wolf at p. 34, ll. 23-24, Exhibit 1.

§ 26.02, is the "final agreement" between the parties, and may not be contradicted by evidence of contemporaneous or subsequent oral agreements of the parties.[14] There are no unwritten oral agreements between the Wolfs and New Century. The terms of the Note also expressly state as follows:

> Lender or anyone who takes this Note **by transfer** *and* **who is entitled to receive payments under this Note** is called the **"Note Holder."**[15]

B. The 2006-NC3 Trust

On August 1, 2006, Wells Fargo Bank, N.A. and New Century signed and executed a Pooling and Service Agreement ("PSA").[16] The PSA outlines the terms and conditions of the 2006-NC3 Trust.[17]

1. Definitions in the PSA

Definitions in the PSA that are relevant in this Response include the following:

- "Originator" is New Century;[18]
- "Closing Date" means August 10, 2006;[19]
- "Depositor" is Stanwich Asset Acceptance Company, L.L.C.;[20]
- "Trustee" is Wells Fargo Bank, N.A.;[21]
- "Certificate" is any one of the Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates, Class A-1, Class A-2, Class A-3, Class A-4, Class M-1, Class M-2, Class M-3, Class M-4, Class M-5, Class

[14] *See* Note at p. 5, ¶ 13 (CARRINGTON-00534), Exhibit 2.
[15] *See* Note at p. 1, ¶ 1 (CARRINGTON-00530) (emphasis added), Exhibit 2.
[16] *See* Pooling and Servicing Agreement ("PSA"), attached and incorporated herein as Exhibit 5 (CARRINGTON-00597 to CARRINGTON-00759).
[17] *See* PSA Table of Contents at pp. i-vi (CARRINGTON-000598 to CARRINGTON-00603), Exhibit 5.
[18] *See* PSA at p. 28 (CARRINGTON-00631), Exhibit 5.
[19] *See* PSA at p. 13 (CARRINGTON-00616), Exhibit 5.
[20] *See* PSA at p. 15 (CARRINGTON-00618), Exhibit 5.
[21] *See* PSA at p. 46 (CARRINGTON-00649), Exhibit 5.

M-6, Class M-7, Class M-8, Class M-9, Class M-10, Class CE, Class P and Class R issued under the PSA;[22]

- "Certificateholders" is defined as "the Person in whose name a Certificate is registered in the Certificate Register, except that a Disqualified Organization or a Non-United States Person shall not be a Holder of a Residual Certificate for any purpose hereof and, solely for the purpose of giving any consent pursuant to this Agreement, any Certificate registered in the name of the Depositor or the Servicer or any Affiliate thereof shall be deemed not to be outstanding and the Voting Rights to which it is entitled shall not be taken into account in determining whether the requisite percentage of Voting Rights necessary to effect any such consent has been obtained, except as otherwise provided in Section 13.01;"[23]

- "Mortgage" is defined to include each Mortgage Note, the mortgage, deed of trust or other instrument creating a first lien or second lien on, or first or second priority security interest in, a Mortgaged Property securing a Mortgage Note;[24] Tom Croft admits the Plaintiffs' mortgage qualifies as a "mortgage" under the PSA.[25]

- "Mortgage Loan" means each mortgage loan transferred and assigned to the Trustee and delivered to the Custodian on behalf of the Trustee pursuant to Section 2.01 or Section 2.03(b) of the PSA;[26]

- "Mortgage Loan Schedule" means as of any date, the list of Mortgage Loans included in REMIC I on such date, attached hereto as Schedule 1;[27]

- "Mortgage Loan Purchase Agreement" is the agreement among the Seller, the Responsible Party and the Depositor, regarding the sale of the Mortgage Loans by the Seller to the Depositor;[28]

- "Seller" is Carrington Securities, LP;[29]

- "REMIC I" is the segregated pool of assets subject hereto (exclusive of the Swap Account and the Swap Agreement, each of which is not an asset of any REMIC), constituting the primary trust created hereby and to be administered

[22] *See* PSA at p. 6 (CARRINGTON-00609), Exhibit 5.
[23] *See* PSA at p. 6 (CARRINGTON-00609), Exhibit 5.
[24] *See* PSA at p. 23 (CARRINGTON-00626), Exhibit 5.
[25] *See* Deposition of Tom Croft at p. 72, ll. 13-16, Exhibit 10.
[26] *See* PSA at p. 23 (CARRINGTON-00626), Exhibit 5.
[27] *See* PSA at p. 23 (CARRINGTON-00626), Exhibit 5.
[28] *See* PSA at p. 23 (CARRINGTON-00626), Exhibit 5.
[29] *See* PSA at p. 41 (CARRINGTON-00644), Exhibit 5.

hereunder, with respect to which a REMIC election is to be made;[30]

- "Servicer" is New Century;[31]

- "Cut-off Date" is defined as August 1, 2006 with respect to each Original Mortgage Loan and their respective dates of substitution with respect to all Qualified Substitute Mortgage Loans;[32]

- "Swap Agreement" is defined as the interest rate swap agreement between the Swap Counterparty and the Trustee, on behalf of the Trust, which agreement provides for Net Swap Payments and Swap Termination Payments to be paid, as provided therein, together with any schedules, confirmations or other agreements relating thereto, attached hereto as Exhibit K-1;"[33]

- "Trust Fund" means all of the assets of each Trust REMIC, the Swap Account, the Swap Agreement and the other assets conveyed by the Depositor to the Trustee pursuant to the PSA;[34]

- "Swap Counterparty" is the swap counterparty under the Swap Agreement either (a) entitled to receive payments from the Trustee from amounts payable by the Trust Fund under this Agreement or (b) required to make payments to the Trustee for payment to the Trust Fund, in either case pursuant to the terms of the Swap Agreement, and any successor in interest or assign. Initially, the Swap Counterparty shall be Swiss Re Financial Corporation;[35]

- "Mortgage Note" is defined as the original executed note or other evidence of the indebtedness of a Mortgagor under a Mortgage Loan;[36]

- "Mortgage File" includes the mortgage documents listed in Section 2.01 pertaining to a particular Mortgage Loan and any additional documents required to be added to the Mortgage File pursuant to the PSA;[37]

- "Person" is defined as any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof;[38]

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[30] *See* PSA at p. 37 (CARRINGTON-00640), Exhibit 5. The full definition includes a description of what is included in the segregated pool of assets. *Id*.

[31] *See* PSA at p. 41 (CARRINGTON-00644), Exhibit 5.

[32] *See* PSA at p. 15 (CARRINGTON-00618), Exhibit 5.

[33] *See* PSA at p. 44 (CARRINGTON-00647), Exhibit 5.

[34] *See* PSA at p. 46 (CARRINGTON-00649), Exhibit 5.

[35] *See* PSA at p. 45 (CARRINGTON-00648), Exhibit 5.

[36] *See* PSA at p. 25 (CARRINGTON-00628), Exhibit 5.

[37] *See* PSA at p. 23 (CARRINGTON-00626), Exhibit 5.

[38] *See* PSA at p. 31 (CARRINGTON-00634), Exhibit 5.

- "Assignment" is defined by the PSA as an assignment of Mortgage or notice of transfer sufficient to reflect the ***sale*** of the mortgage;[39]

- "Transfer" is any direct or indirect transfer, sale, pledge, hypothecation, or other form of assignment of any Ownership Interest in a Certificate.[40]

2. Conveyance of mortgages into the trust under the terms of the PSA

Section 2.01 of the PSA governs the conveyance of Mortgage Loans into the 2006-NC3 Trust and states, in relevant part, the following:

> **SECTION 2.01 Conveyance of the Mortgage Loans.** On the ***Closing Date***, the ***Depositor will transfer, assign, set over and otherwise convey*** to the Trustee without recourse, for the benefit of the Certificateholders, all the right, title and interest of the Depositor, including any security interest therein for the benefit of the Depositor, in and to the Mortgage Loans identified on the Mortgage Loan Schedule, the rights of the Depositor under the Mortgage Loan Purchase Agreement, and all other assets included or to be included in REMIC I. ***Such assignment includes all interest and principal received by the Depositor or the Servicer on or with respect to the Mortgage Loans*** (other than payments of principal and interest due on such Mortgage Loans on or before the Cut-off Date). The Depositor herewith delivers to the Trustee an executed copy of the Mortgage Loan Purchase Agreement. In addition, on the Closing Date, the Trustee is hereby directed to enter into the Swap Agreement on behalf of the Trust Fund with the Swap Counterparty.[41]

The assignments and transfers of Mortgage Loans into the 2006-NC3 Trust are absolute and constitute a ***sale*** of the Mortgage Loans, Mortgage Notes and related documents, conveying good title free and clear of any liens and encumbrances, ***from Depositor (Stanwich) to Trustee (Wells Fargo).***[42] In Section 2.06 of the PSA, ***Wells Fargo acknowledged receiving the***

[39] *See* PSA at p. 4 (CARRINGTON-00607) (emphasis added), Exhibit 5.
[40] *See* PSA at p. 45 (CARRINGTON-00648), Exhibit 5.
[41] *See* PSA at p. 49 (CARRINGTON-00652) (emphasis added), Exhibit 5.
[42] *See* PSA at p. 49 (CARRINGTON-00652) (emphasis added), Exhibit 5.

assignments of the Mortgage Loans and the delivery of Mortgage Files.[43]

Pursuant to Section 2.01, in connection with the transfer and assignment of the Mortgage Loans, the ***Depositor is required*** to deliver and deposit with the Custodian on behalf of the Trustee the following documents or instruments with respect to each Mortgage Loan so transferred and assigned (in each case, a "Mortgage File"):

> i. the original Mortgage Note, endorsed in blank or in the following form "Pay to the order of Wells Fargo Bank, N.A., as Trustee under the applicable agreement, without recourse," with all prior and intervening endorsements showing a complete chain of endorsement from the originator to the Person so endorsing to the Trustee;
>
> ii. the original Mortgage with evidence of recording thereon, and the original recorded power of attorney, if the Mortgage was executed pursuant to a power of attorney, with evidence of recording thereon;
>
> iii. an original Assignment in blank;
>
> iv. the ***original recorded Assignment*** or Assignments ***showing a complete chain of assignment from the originator to the Person assigning the Mortgage*** to the Trustee as contemplated by the immediately preceding clause (iii);
>
> v. the original or copies of each assumption, modification or substitution agreement, if any; and
>
> vi. the original lender's title insurance policy or, if the original title policy has not been issued, the irrevocable commitment to issue the same.[44]

3. Recording requirements under the terms of the PSA

Section 2.01 of the PSA also sets forth the following recording ***requirement*** which Wells

[43] *See* PSA at p. 58 (CARRINGTON-00661) (emphasis added), Exhibit 5. Section 2.06 is entitled "Issuance of the REMIC I Regular Interests and the Class R-I Interest" and it states "The Trustee acknowledges the assignment to it of the Mortgage Loans and the delivery to it of the Mortgage Files,…the receipt of which is hereby acknowledged…The interests…constitute the entire beneficial ownership interest in REMIC I."

[44] *See* PSA at p. 50 (CARRINGTON-00653) (emphasis added), Exhibit 5.

Fargo must complete ***within ninety (90) days following the Closing Date***:

> The ***Trustee shall*** enforce the obligations of the Seller under the Mortgage Loan Purchase Agreement to promptly (within sixty Business Days following the later of the Closing Date and the date of receipt by the Trustee of the recording information for a Mortgage, but ***in no event later than ninety days following the Closing Date***) submit or cause to be submitted for recording, at the expense of the Responsible Party and at no expense to the Trust Fund, the Trustee or the Depositor, in the appropriate public office for real property records, each Assignment referred to in Sections 2.01(iii) and (iv) above and the Depositor shall execute each original Assignment or cause each original Assignment to be executed in the following form: "Wells Fargo Bank, N.A., as Trustee under the applicable agreement."[45]

Since the Closing Date was August 10, 2006, the deadline for Wells Fargo to record each Assignment of the Mortgage Loans into the 2006-NC3 Trust was November 8, 2006.[46]

C. The Purported Assignment or "Transfer" of Plaintiffs' Mortgage in 2009

On October 20, 2009, a Transfer of Lien was filed with the Harris County Clerk's Office.[47] The Transfer of Lien identifies New Century as the "Holder of Note and Lien," "Wells Fargo Bank N.A., as Trustee, for the 2006-NC3 Trust" as the Transferee and New Century as the Note payee.[48] At the top of the first page, it also states "Date: To Be Effective 9/30/09."[49] As for the substance of the Transfer of Lien, it states "Holder of the note and lien transfers them to the transferee…." or, to be specific, New Century transfers the note and lien to Wells Fargo.[50]

D. Wells Fargo's Application to Foreclose and Plaintiffs' Original Petition against Wells Fargo, *et al*.

[45] *See* PSA at p. 51 (CARRINGTON-00654) (emphasis added), Exhibit 5.
[46] *See* PSA at p. 13 (CARRINGTON-00616), Exhibit 5.
[47] *See* Transfer of Lien (CARRINGTON-00437 to CARRINGTON-00439), attached and incorporated herein as Exhibit 6.
[48] *See* Transfer of Lien at p. 1 (CARRINGTON-00437), Exhibit 6.
[49] *Id.*
[50] *Id.*

On February 11, 2011, Wells Fargo filed an Application under TEXAS RULE OF CIVIL PROCEDURE 736 Seeking an Order to Proceed with Foreclosure Sale in Cause No. 2011-08930; *In Re: Order for Foreclosure Concerning Mary Ellen Wolf David Wolf 6404 Buffalo Speedway, Houston, Texas 77005*; In the District Court of Harris County, 151st Judicial District.[51]

On or about June 19, 2011, the Wolfs' filed their Original Petition in this Court (the present suit). On June 20, 2011, Wells Fargo voluntarily dismissed its foreclosure action.[52]

E. Plaintiff's Expert Witness – Marie McDonnell, C.F.E.

Marie McDonnell ("Expert McDonnell" or "McDonnell") is a Mortgage Fraud and Forensic Analyst and a credentialed Certified Fraud Examiner ("CFE").[53] Expert McDonnell has twenty-five years' experience in mortgage auditing, and mortgage fraud investigation.[54] She has been a registered Real Estate Broker for the past 24 years.[55] McDonnell is an expert in chain of title and securitization disputes between lenders and homeowners.[56]

McDonnell has trained state and federal law enforcement and regulatory agencies regarding detection of invalid assignments, robo-signing, fraud and misrepresentation in mortgage and foreclosure instruments.[57] Throughout her career, McDonnell developed specialized knowledge and implemented protocols to trace the ownership of residential and commercial mortgage loans that had been sold to secondary market investors and private label securitization

[51] *See* Application under TEXAS RULE OF CIVIL PROCEDURE 736 Seeking an Order to Proceed with Foreclosure Sale, of which the Court can take judicial notice.

[52] *See* Notice of Non-Suit *In Re: Order for Foreclosure Concerning Mary Ellen Wolf David Wolf 6404 Buffalo Speedway, Houston, Texas 77005*, of which the Court can take judicial notice.

[53] *See* Affidavit of Marie McDonnell ("McDonnell Affidavit"), at p. 1, ¶ 2, attached and incorporated herein as Exhibit 9.

[54] *Id.*

[55] *See* McDonnell Affidavit at p. 1, ¶ 4, Exhibit 9.

[56] *See* McDonnell Affidavit at p. 2, ¶ 6, Exhibit 9.

[57] *See* McDonnell Affidavit at p. 2, ¶ 7, Exhibit 9.

deals.[58]

In June of 2011, John O'Brien, Register of the Essex Southern District Registry of Deeds in Massachusetts ("Essex Registry"), commissioned McDonnell to conduct an audit of real property records and test the integrity of his registry.[59] A true and correct copy of McDonnell's Report for the Essex Registry entitled *FORENSIC EXAMINATION OF ASSIGNMENTS OF MORTGAGE RECORDED DURING 2010 IN THE ESSEX SOUTHERN DISTRICT REGISTRY OF DEEDS* is attached to her affidavit and this Response to Defendants' Motion for Summary Judgment as Exhibit 8, and incorporated herein by reference for all purposes.[60] McDonnell examined a total of 565 assignments, including 278 assignments involving Defendant Wells Fargo.[61] Approximately 75% of all assignments examined by McDonnell were invalid.[62]

McDonnell has reviewed the written documents produced by Defendants and Plaintiffs, the pleadings on file, and deposition transcript of Tom Croft in the above-referenced lawsuit at issue in this case.[63] McDonnell conducted her own independent research, reviewed the relevant documents on file with the Harris County Clerk's Office, and her own repository of mortgage loan documents issued by New Century Mortgage Corporation.[64] Based on the evidence in this case, and with a reasonable degree of probability, it is McDonnell's expert opinion that:[65]

a. Defendant Wells Fargo Bank, N.A., is not the current owner and holder of Plaintiffs' Note and Deed of Trust ("Mortgage Loan").[66]

[58] *See* McDonnell Affidavit at p. 2, ¶ 9, Exhibit 9.
[59] *See* McDonnell Affidavit at p. 2, ¶ 12, Exhibit 9.
[60] *See* McDonnell Affidavit at p. 2, ¶ 13, Exhibit 9.
[61] *See* McDonnell Affidavit at p. 3, ¶ 15, Exhibit 9.
[62] *See* McDonnell Affidavit at p. 3, ¶ 16(e), Exhibit 9.
[63] *See* McDonnell Affidavit at p. 3, ¶ 17, Exhibit 9.
[64] *See* McDonnell Affidavit at p. 3, ¶ 18, Exhibit 9.
[65] *See* McDonnell Affidavit at p. 3, ¶ 19, Exhibit 9.
[66] *See* McDonnell Affidavit at p. 4, ¶ 19(a), Exhibit 9.

b. Defendant Wells Fargo Bank, N.A., has never been the owner and holder of Plaintiffs' Mortgage Loan.[67]

c. Plaintiffs' Mortgage Loan was never transferred into the 2006-NC3 Trust for which Defendant Wells Fargo Bank, N.A. is Trustee in strict compliance with the Pooling and Servicing Agreement executed on August 1, 2006 between the parties which is governed by the laws of the State of New York.[68]

d. The Plaintiffs' Mortgage Loan was never physically transferred from the originator (New Century Mortgage Corporation) to the Responsible Party (New Century Capital Corporation); or properly conveyed from the Responsible Party to the sponsor (Carrington Securities, LP) of the 2006-NC3 Trust as required by the Mortgage Loan Purchase Agreement executed on August 10, 2006 between the parties.[69]

e. The Plaintiffs' Mortgage Loan was never physically transferred from the sponsor (Carrington Securities, LP) to the depositor (Stanwich Asset Acceptance Company, LLC) of the 2006-NC3 Trust or properly conveyed as required by the Mortgage Loan Purchase Agreement referenced above.[70]

f. The Plaintiffs' Mortgage Loan was never physically transferred from the depositor (Stanwich Asset Acceptance Company, LLC) or properly conveyed to the Trustee for the 2006-NC3 Trust as required by the Pooling and Servicing Agreement dated August 1, 2006 by and between the parties.[71]

g. The Plaintiffs' Mortgage Loan was never physically transferred from Defendant Wells Fargo Bank, N.A., as Trustee of the 2006-NC3 Trust to the document custodian (Deutsche Bank National Trust Company).[72]

F. Oral Deposition of Tom Croft – V.P. of REO at Carrington

[67] *See* McDonnell Affidavit at p. 4, ¶ 19(b), Exhibit 9.
[68] *See* McDonnell Affidavit at p. 4, ¶ 19(c), Exhibit 9.
[69] *See* McDonnell Affidavit at p. 4, ¶ 19(d), Exhibit 9.
[70] *See* McDonnell Affidavit at p. 4, ¶ 19(e), Exhibit 9.
[71] *See* McDonnell Affidavit at p. 4, ¶ 19(f), Exhibit 9.
[72] *See* McDonnell Affidavit at p. 4, ¶ 19(g), Exhibit 9.

Tom Croft ("Croft") was employed by Carrington as the Vice President of REO,[73] was the attorney-in-fact of Wells Fargo,[74] was the custodian of records for Wells Fargo,[75] was the custodian of records for the 2006-NC3 Trust,[76] and also an employee of Wells Fargo.[77] Croft, New Century, and Wells Fargo all share the exact same office address located at 1610 East St. Andrews Place, Santa Ana, CA 92705.[78]

Croft admits Wells Fargo cannot foreclose on the Plaintiffs' property unless it was transferred into the 2006-NC3 Trust,[79] and no mortgages can be transferred in or out of the Trust after the Closing Date, August 10, 2006.[80] Croft also admits the Application to Foreclose on Plaintiffs' home was incorrect at the time it was filed by Defendant Wells Fargo in this Court on February 11, 2011.[81]

During his deposition, Croft testified that New Century sold the Plaintiffs' Mortgage and Note to the 2006-NC3 Trust in 2006,[82] but also testified New Century was the owner and holder of Plaintiffs' Note in 2009.[83] New Century filed for bankruptcy in 2007 after the closing date in the PSA.[84] Croft continued his conflicting deposition testimony by claiming the 2006-NC3 Trust was the owner and holder of Plaintiffs' Note in 2009,[85] and February 3, 2011.[86] Croft also claims

[73] *See* Oral Deposition of Tom Croft ("Deposition of Tom Croft"), at p. 32, ll. 7-9; p. 34, ll. 4-7, attached and incorporated herein as Exhibit 10.
[74] *See* Deposition of Tom Croft at p. 42, ll. 23-25; p. 47, ll. 17-25, Exhibit 10.
[75] *See* Deposition of Tom Croft at p. 48, ll. 20-22, Exhibit 10.
[76] *See* Deposition of Tom Croft at p. 49, ll. 13-19, Exhibit 10.
[77] *See* Deposition of Tom Croft at p. 58, ll. 15-25, Exhibit 10.
[78] *See* Deposition of Tom Croft at p. 87, ll. 9-22, Exhibit 10.
[79] *See* Deposition of Tom Croft at pp. 154-55, ll. 24-2, Exhibit 10.
[80] *See* Deposition of Tom Croft at p. 127, ll. 22-25, Exhibit 10.
[81] *See* Deposition of Tom Croft at pp. 56-57, ll. 11-4, Exhibit 10.
[82] *See* Deposition of Tom Croft at pp. 58-59, ll. 15-5, Exhibit 10.
[83] *See* Deposition of Tom Croft at p. 80, ll. 6-11, Exhibit 10.
[84] *See* Deposition of Tom Croft at pp. 75-76, ll. 23-5, Exhibit 10.
[85] *See* Deposition of Tom Croft at p. 81, ll. 2-8, Exhibit 10.
[86] *See* Deposition of Tom Croft at pp. 52-53, ll. 23-4, Exhibit 10.

the Plaintiffs' mortgage was transferred into the 2006-NC3 Trust in August, 2006, then re-transferred into the 2006-NC3 Trust in September of 2009.[87] But later testified the Plaintiffs' mortgage and Note were transferred into the 2006-NC3 Trust after the "cut-off" date on August 1, 2006.[88]

V. SUMMARY JUDGMENT STANDARD

"A traditional summary judgment under Rule 166a(c) is proper only when the movant establishes that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law." *Onwukwe v. Ike*, 137 S.W.3d 159, 163 (Tex. App. – Houston [1st Dist.] 2004, no pet.) (citing TEX. R. CIV. P. 166a(c); *Randall's Food Mkts., Inc. v. Johnson*, 891 S.W.2d 640, 644 (Tex. 1995)). The Court must "indulge every reasonable inference in favor of the non-movant and resolve any doubts in its favor." *Onwukwe*, 137 S.W.3d at 163 (citing *Johnson*, 891 S.W.2d at 644; *Lawson v. B Four Corp.*, 888 S.W.2d 31, 33 (Tex. App. – Houston [1st Dist.] 1994, writ denied)). The Court must "take all evidence favorable to the non-movant as true." *Onwukwe*, 137 S.W.3d at 163 (citing *Johnson*, 891 S.W.2d at 644; *Lawson*, 888 S.W.2d at 33). "Evidence favoring the movant's position will not be considered unless it is uncontradicted." *Bernsen v. Live Oak Ins. Agency, Inc.*, 52 S.W.3d 306, 308 (Tex. App. – Corpus Christi 2001, no pet.) (citation omitted). A defendant is entitled to summary judgment on a plaintiff's cause of action if the defendant can disprove at least one element of the plaintiff's cause of action as a matter of law. *Randall's Food Mkts., Inc. v. Johnson*, 891 S.W.2d 640, 644 (Tex. 1995); *Wornick Co. v. Casas*, 856 S.W.2d 732, 733 (Tex. 1993); *Black v. Victoria Lloyds Ins. Co.*, 797 S.W.2d 20, 27 (Tex. 1990); *see also* TEX. R. CIV. P. 166a(c); *Powell Indus., Inc. v. Allen*, 985 S.W.2d 455, 456 (Tex.

[87] *See* Deposition of Tom Croft at p. 78, ll. 6-14; p. 129, ll. 3-7, Exhibit 10.
[88] *See* Deposition of Tom Croft at p. 69, ll. 8-11, Exhibit 10.

1998).

For reasons indicated below, Defendants' Motion fails to justify summary judgment under the stated standards.

VI. ARGUMENT & AUTHORITIES – RESPONSE TO MOTION

The Court should deny Defendants' Motion for Summary Judgment because the summary judgment evidence, including evidence filed by Defendants and evidence filed by Plaintiffs, raises genuine issues of material fact and because Defendants did not disprove as a matter of law at least one element of Plaintiffs' claims. *See Randall's Food Mkts., Inc. v. Johnson*, 891 S.W.2d 640, 644 (Tex. 1995).

A. Defendants' summary judgment evidence raises fact issues on the identity of the owner and holder of the Note.

With their Motion, Defendants have attached fourteen exhibits. Such exhibits include two brief affidavits, several documents relating to Plaintiffs' mortgage, documents filed with the real property records of the Harris County Clerk's Office and other documents.[89] Many of these documents state the name of the mortgagee and/or identify the owner and holder of the Note.

First, the following documents are dated June 15, 2006 and they identify New Century as the Lender: (i) Texas Home Equity Fixed/Adjustable Rate Note (it also identifies New Century as the "Note Holder");[90] (ii) Texas Home Equity Security Instrument;[91] (iii) Texas Home Equity Affidavit and Agreement;[92] and (iv) Settlement Statement.[93]

Second, the Transfer of Lien was purportedly signed on October 15, 2009.[94] It identifies

[89] *See* Defendants' Motion (Exhibits 1 to 14).
[90] *See* Defendants' Motion (Exhibit 2).
[91] *See* Defendants' Motion (Exhibit 3).
[92] *See* Defendants' Motion (Exhibit 4).
[93] *See* Defendants' Motion (Exhibit 6).
[94] *See* Defendants' Motion (Exhibit 10).

New Century as the "Holder of Note and Lien" and the Note payee and "Wells Fargo Bank N.A., as Trustee, for the 2006-NC3 Trust" as the Transferee.[95] At the top of the first page, it also states "Date: To Be Effective 9/30/09."[96] As for the substance of the Transfer of Lien, it states "Holder of the note and lien transfers them to the transferee…." or, to be specific, New Century transfers the note and lien to Wells Fargo.[97]

Third, Carrington Mortgage Services, LLC's Notice of Intent to Foreclose is dated December 3, 2010 and identifies Carrington Mortgage Loan Trust as "the Mortgagee(s) of the Note and Deed of Trust or Mortgage associated with your real estate loan."[98] Defendants do not explain how the Note and Deed of Trust were transferred or assigned from Wells Fargo to Carrington Mortgage Loan Trust.

Fourth, two separate Notices of Acceleration from the Balcom Law Firm, P.C. are dated February 3, 2011.[99] Contrary to the Transfer of Lien and the Notice of Intent to Foreclose, they identify New Century Mortgage Corporation as the Mortgagee and "the Owner and Holder of the above referenced Note and the Lien securing the Note."[100] Defendants do not explain how the Note and Deed of Trust were transferred or assigned from Wells Fargo to New Century.

Fifth, in the Affidavit of Carrington Mortgage Services, LLC ("Issa Affidavit"), Adel Issa testifies that "[t]he loan … was, at all relevant times, serviced by CMS."[101] Ms. Issa further testifies that "Wells Fargo … has been the owner and holder of the Note since CMS has been servicing the Note and Deed of Trust, including all relevant times pertaining to Plaintiffs' default

[95] *Id.*
[96] *Id.*
[97] *Id.*
[98] *See* Defendants' Motion (Exhibit 11).
[99] *See* Defendants' Motion (Exhibit 12).
[100] *Id.*
[101] *See* Defendants' Motion (Exhibit 13).

and the foreclosure process."[102] The Issa Affidavit does not state actual dates during which Wells Fargo has been the owner and holder of the Note.[103]

In their Motion, Defendants aver that their evidence shows Wells Fargo is the owner and holder of the Note and Deed of Trust.[104] However, one document indicates Wells Fargo is the holder of the Note as of September/October 2009 while subsequent documents indicate New Century is the owner and holder of the Note as of February 3, 2011.[105] Yet another document states Carrington Mortgage Loan Trust is the mortgagee as of December 3, 2010.[106]

Such documents fail to show a clear chain of title and in fact cause confusion as to the owner and holder of the Note for Plaintiffs' mortgage. Indeed, Defendants' Motion does not address or even acknowledge the inconsistent identification of the owner and holder of the Note in the foregoing documents.

Defendants' summary judgment evidence raises fact issues on the identity of the owner and holder of the Note. Such evidence also fails to disprove at least one element of each of Plaintiffs' claims. Thus, Defendants are not entitled to summary judgment and their Motion should be denied.

Furthermore, Defendants' summary judgment evidence also raises fact issues as to whether the Note was actually endorsed "in blank" as argued by Defendants.[107] In this argument, Defendants cite to page 5 of the Note.[108] A simple viewing of page 5 of the Note reveals a stamp stating as follows:

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[102] *Id.*
[103] *Id.*
[104] *See* Defendants' Motion at ¶ 37.
[105] *See* Defendants' Motion (Exhibits 10, 12).
[106] *See* Defendants' Motion (Exhibit 11).
[107] *See* Defendants' Motion (Exhibit 2 at ¶¶ 12, 19).
[108] *See* Defendants' Motion (Exhibit 2 at ¶ 12).

"Pay to the order of, without recourse

_____

New Century Mortgage Corporation
By: [handwritten signature]
Steve [surname illegible]
V.P. [word illegible] Management"[109]

The stamp constitutes an endorsement and therefore the Note was not endorsed "in blank" as argued by Defendants. Alternatively, the stamp at least raises genuine issues of material fact as to whether the stamp constitutes an endorsement and therefore whether the Note was endorsed "in blank."[110] Accordingly, Defendants are not entitled to summary judgment and their Motion should be denied.

B. Plaintiffs' summary judgment evidence raises fact issues on the identity of the owner and holder of the note for Plaintiffs' mortgage.

Plaintiffs' summary judgment evidence shows key facts that preclude summary judgment.

1. Plaintiffs' expert opinion creates fact issues.

Based on the evidence in this case, and with a reasonable degree of probability, it is McDonnell's expert opinion that:[111]

a. Defendant Wells Fargo Bank, N.A., is not the current owner and holder of Plaintiffs' Note and Deed of Trust ("Mortgage Loan").[112]

b. Defendant Wells Fargo Bank, N.A., has never been the owner and holder of Plaintiffs' Mortgage Loan.[113]

c. Plaintiffs' Mortgage Loan was never transferred into the 2006-NC3 Trust for which Defendant Wells Fargo Bank, N.A. is Trustee in strict compliance with the Pooling and Servicing Agreement executed on August 1, 2006

[109] *See* Defendants' Motion (Exhibit 2 at p. 5).

[110] Furthermore, Defendants have not filed any evidence explaining how the stamp came to be placed on the Note. *See* Defendants' Motion.

[111] *See* McDonnell Affidavit at p. 3, ¶ 19, Exhibit 9.

[112] *See* McDonnell Affidavit at p. 4, ¶ 19(a), Exhibit 9.

[113] *See* McDonnell Affidavit at p. 4, ¶ 19(b), Exhibit 9.

between the parties which is governed by the laws of the State of New York.[114]

d. The Plaintiffs' Mortgage Loan was never physically transferred from the originator (New Century Mortgage Corporation) to the Responsible Party (New Century Capital Corporation); or properly conveyed from the Responsible Party to the sponsor (Carrington Securities, LP) of the 2006-NC3 Trust as required by the Mortgage Loan Purchase Agreement executed on August 10, 2006 between the parties.[115]

e. The Plaintiffs' Mortgage Loan was never physically transferred from the sponsor (Carrington Securities, LP) to the depositor (Stanwich Asset Acceptance Company, LLC) of the 2006-NC3 Trust or properly conveyed as required by the Mortgage Loan Purchase Agreement referenced above.[116]

f. The Plaintiffs' Mortgage Loan was never physically transferred from the depositor (Stanwich Asset Acceptance Company, LLC) or properly conveyed to the Trustee for the 2006-NC3 Trust as required by the Pooling and Servicing Agreement dated August 1, 2006 by and between the parties.[117]

g. The Plaintiffs' Mortgage Loan was never physically transferred from Defendant Wells Fargo Bank, N.A., as Trustee of the 2006-NC3 Trust to the document custodian (Deutsche Bank National Trust Company).[118]

2. Plaintiffs' mortgage was not transferred into the 2006-NC3 Trust.

As noted, the Pooling and Service Agreement ("PSA"), which Wells Fargo and New Century executed,[119] outlines the terms and conditions of the 2006-NC3 Trust.[120] Section 2.01 of the PSA governs the conveyance of Mortgage Loans into the 2006-NC3 Trust and it sets forth specific requirements and deadlines for the conveyance of mortgages into the 2006-NC3 Trust. Perhaps most importantly, it ***requires*** all conveyances ***into the 2006-NC3 Trust*** be completed ***by***

[114] *See* McDonnell Affidavit at p. 4, ¶ 19(c), Exhibit 9.
[115] *See* McDonnell Affidavit at p. 4, ¶ 19(d), Exhibit 9.
[116] *See* McDonnell Affidavit at p. 4, ¶ 19(e), Exhibit 9.
[117] *See* McDonnell Affidavit at p. 4, ¶ 19(f), Exhibit 9.
[118] *See* McDonnell Affidavit at p. 4, ¶ 19(g), Exhibit 9.
[119] *See* PSA Signatures at p. S-1 (CARRINGTON-00754 to CARRINGTON-00759), Exhibit 5.
[120] *See* PSA Table of Contents at pp. i-vi (CARRINGTON-000598 to CARRINGTON-00603), Exhibit 5.

the Closing Date of August 10, 2006.[121]

The Transfer of Lien identifies New Century as the Holder of Note and Lien and the Note payee and Wells Fargo as the Transferee.[122] It also purports to transfer the "note and lien" from New Century to Wells Fargo/2006-NC3 Trust.[123]

But, the Transfer of Lien was not signed until October 15, 2009.[124] Notably, it also states "Date: To Be Effective 9/30/09."[125] The inclusion of the effective date demonstrates that the purported transfer occurred in September 2009.[126] The Closing Date of August 10, 2006 passed over three years prior to the execution of the Transfer of Lien on October 15, 2009.[127] The Closing Date also passed more than three years prior to the effective date of September 30, 2009.[128]

Since the Transfer of Lien was not signed prior to the Closing Date,[129] it is ineffective and Plaintiffs' mortgage was not transferred into the 2006-NC3 Trust.[130] Accordingly, Wells Fargo is not the owner and holder of the Note and Defendants' Motion should be denied.

C. Defendants are not entitled to summary judgment on their affirmative defense based on the statute of limitations.

"A defendant moving for summary judgment on a statute of limitations affirmative defense must prove conclusively that defense's elements." *Nolan v. Hughes*, 349 S.W.3d 209, 212 (Tex. App. – Dallas 2011, no pet.) (citing *Velsicol Chem. Corp. v. Winograd*, 956 S.W.2d 529, 530 (Tex. 1997) (per curiam)). The defendant must conclusively prove when the cause of action accrued.

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[121] *See* PSA at p. 49 (CARRINGTON-00652) (emphasis added), Exhibit 5.
[122] *See* Transfer of Lien at p. 1 (CARRINGTON-00437), Exhibit 6.
[123] *Id.*
[124] *See* Transfer of Lien at p. 2 (CARRINGTON-00438), Exhibit 6.
[125] *See* Transfer of Lien at p. 1 (CARRINGTON-00437), Exhibit 6.
[126] Alternatively, the effective date at least raises fact issues as to the date of the transfer and whether it was in 2006 or 2009.
[127] *See* PSA at p. 13 (CARRINGTON-00616), Exhibit 5; Transfer of Lien, Exhibit 6.
[128] *See* PSA at p. 13 (CARRINGTON-00616), Exhibit 5; Transfer of Lien, Exhibit 6.
[129] Nor was the Transfer of Lien made effective before the Closing Date.
[130] *See* PSA at p. 13 (CARRINGTON-00616), Exhibit 5.

Serrano v. Ryan's Crossing Apartments, 241 S.W.3d 560, 563 (Tex. App. – El Paso 2007, pet. denied) (citing *Edwards v. Mesa Hills Mall Co. Ltd. Partnership*, 186 S.W.3d 587, 590 (Tex. App. – El Paso 2006, no pet. h.); *KPMG Peat Marwick v. Hamson County Hous. Fin. Corp.*, 988 S.W.2d 746, 748 (Tex. 1999)). "Limitations begins to run when a cause of action accrues, and the date of accrual is a question of law." *In re Estate of Melchior*, 365 S.W.3d 794, 799 (Tex. App. – San Antonio 2012) (citing *Holy Cross Church of God in Christ v. Wolf*, 44 S.W.3d 562, 567 (Tex. 2001); *Moreno v. Sterling Drug, Inc.*, 787 S.W.2d 348, 351 (Tex. 1990)). "A cause of action generally accrues when the alleged wrongful act effects an injury." *Melchior*, 365 S.W.3d at 799 (citing *S.V. v. R.V.*, 933 S.W.2d 1, 4 (Tex. 1996); *Moreno*, 787 S.W.2d at 351).

Plaintiffs have alleged the following causes of action: (i) violation of Texas Civil Practice & Remedies Code § 12.002; (ii) negligence per se; (iii) gross negligence per se; (iv) declaratory judgment; and (v) unjust enrichment. In their Motion, Defendants also argue that "Plaintiffs' claims are barred by the statute of limitations."[131] Defendants aver the Note and Deed of Trust were executed on June 15, 2006 and they cite three documents relating to Plaintiffs' mortgage with New Century.[132] This is the only evidence cited by Defendants and their entire argument is a mere six sentences.

Defendants have not conclusively proven when each of Plaintiffs' causes of action accrued. Instead, Defendants only state the date of execution for the Note and Deed of Trust and the date of filing of Plaintiffs' suit.[133] Defendants do not cite any authority establishing when any of Plaintiffs' causes of action would have accrued. Since Defendants have not met their burden of proof on their statute of limitations affirmative defense, they are not entitled to summary judgment.

[131] *See* Defendants' Motion at ¶¶ 34-35.
[132] *See* Defendants' Motion at ¶ 34.
[133] *See* Defendants' Motion at ¶¶ 34-35.

See Nolan, 349 S.W.3d at 212 (stating Defendant must conclusively prove affirmative defense's elements); *Serrano*, 241 S.W.3d at 563.

Even assuming Defendants have met their burden of proof, Defendants are not entitled to summary judgment because the discovery rule tolls the limitations period on Plaintiffs' causes of action. "The discovery rule is a judicially constructed rule that tolls the running of limitations until the time a plaintiff discovers, or through the exercise of reasonable diligence should discover, the nature of his injury." *Melchior*, 365 S.W.3d at 799 (citing *Moreno*, 787 S.W.2d at 351). Plaintiffs did not discover the nature of their injury, *i.e.* Defendants' negligent and grossly negligent acts and omissions with respect to title to Plaintiffs' home, until 2010.[134] Plaintiffs filed suit in June 2011 which is well within two years after discovering Defendants' negligent and grossly negligent acts and omissions in 2010.[135] Since Plaintiffs filed suit within the tolled statute of limitations, whether they are two or four years as averred in Defendants' Motion, Defendants are not entitled to summary judgment on their limitations defense and their Motion should be denied.

D. Defendants are not entitled to summary judgment on Plaintiffs' unjust enrichment claim because there is no contract.

In their Motion, Defendants make a single sentence argument that Plaintiffs' unjust enrichment claim fails because of the Note and Deed of Trust.[136] Defendants' argument is without merit on its face. Clearly, even if Wells Fargo is the holder and owner of the Note (which it is not) as argued by Defendants, the Note and Deed of Trust are not somehow also a binding contract between Plaintiffs and Carrington Mortgage Services, LLC or between Plaintiffs and Tom Croft

[134] *See* Deposition of D. Wolf at pp. 18-19, ll. 14- 4; p. 19, ll. 11-13; p. 20, ll. 15- 21; and pp. 34-35, ll. 23-5, Exhibit 1. *See also* Deposition of M.E. Wolf at p. 45, ll. 12-22; pp. 47-48, ll. 3-2; and p. 48, ll. 11-14, Exhibit 4.

[135] *See* Plaintiffs' Original Petition filed on or about June 19, 2011, on file in this cause and of which the Court may take judicial notice.

[136] *See* Defendants' Motion at ¶ 13.

or between Plaintiffs and New Century. Defendants cannot have it both ways by arguing they have conclusively proven that Wells Fargo is the holder and owner of the Note but yet also arguing there is a contract between Plaintiffs and each of the other Defendants.

Moreover, Plaintiffs' unjust enrichment claim is based on the primary disputed fact in this matter: the identity of the actual holder and owner of the Note for Plaintiffs' mortgage. In fact, in their live pleadings, Plaintiff aver "Defendants have been unjustly enriched by their conduct described above by receiving mortgage payments … relating to real property in the State of Texas in which Defendants were not the legal owner and holder of the mortgage loans, mortgage liens, mortgage notes, or deeds of trust."[137]

The argument and evidence stated in sections A and B of this Response show there are fact issues as to the holder and owner of the Note and Plaintiffs incorporate and re-allege all argument and evidence stated in those sections of this Response, *supra*, as if set forth fully herein.

Since there are genuine issues of material fact concerning the holder and owner of the Note and concerning the existence of a contract between Plaintiffs and Defendants, Defendants are not entitled to summary judgment on Plaintiffs' unjust enrichment claim and Defendants' Motion should be denied.

E. Adel Issa is an interested witness and the Affidavit by Adel Issa does no more than raise fact issues.

"A summary judgment may be based on the uncontroverted testimonial evidence of an interested witness if the evidence is clear, positive, direct, otherwise credible and free from contradictions and inconsistencies, 'and could have been readily controverted.'" *Blancett*, 177 S.W.3d at 589 (citing TEX. R. CIV. P. 166a(c)). But, "[a]s a general rule, the testimony of an

[137] *See* Plaintiffs' Second Amended Petition at ¶ 147.

interested witness…though not contradicted, does no more than raise a fact issue to be determined by the jury." *Disbrow v. Healey*, 982 S.W.2d 189, 193 (Tex. App. – Houston [1st Dist.] 1998, no pet.) (citing *Ragsdale v. Progressive Voters League*, 801 S.W.2d 880, 882 (Tex. 1990)). "If the evidence is unreasonable, incredible, or its belief questionable, then such evidence would only raise a fact issue to be determined by the trier of fact." *Disbrow*, 982 S.W.2d at 193.

In support of their Motion, Defendant filed the Issa Affidavit. Adel Issa is "an employee of Carrington Mortgage Services, LLC"[138] but the Issa Affidavit does not rise to the heightened requirements for summary judgment affidavits by interested witnesses: it is not clear, direct and positive, and free from contradiction, inaccuracies, and circumstances tending to cast suspicion thereon.[139] *See id.* The Issa Affidavit sets forth few substantive facts, draws unsupported conclusions and does not demonstrate that it is based on personal knowledge.[140] The Issa Affidavit only raises fact issues to be determined by the trier of fact. *See Disbrow*, 982 S.W.2d at 193.

In particular, the Issa Affidavit fails to state the actual dates during which Wells Fargo has been the owner and holder of the Note and fails to describe the "Loan" in any manner other than referring to it as the "loan (the "Loan") made the basis of this lawsuit."[141] The Issa Affidavit is not "clear, positive, direct, otherwise credible and free from contradictions and inconsistencies" or susceptible to being readily controverted. *See Blancett*, 177 S.W.3d at 589.

The Issa Affidavit also lists certain documents attached to Defendants' Motion and states they "were either prepared by or submitted to CMS in connection with the Loan."[142] The Issa Affidavit fails to state which documents were prepared by CMS and which documents were

[138] Adel Issa's position is unknown as it is not stated in the Issa Affidavit.
[139] *See* Defendant's Motion (Exhibit 13).
[140] *Id.*
[141] *Id.*
[142] *Id.*

submitted to CMS.[143] Plaintiffs also have limited, if any, ability to controvert the statement that Wells Fargo has been the owner and holder of the Note at all relevant times without knowing what is meant by "all relevant times." The Issa Affidavit also is not credible and free from contradictions due to its failure to provide underlying and/or specific facts explaining what is meant by its conclusions.

Since the Issa Affidavit is not clear, positive, direct, otherwise credible and free from contradictions and inconsistencies and susceptible of being readily controverted, it only raises fact issues as to the owner and holder of the Note at the time of Defendants' attempted foreclosure of Plaintiffs' mortgage. *See Disbrow*, 982 S.W.2d at 193.

F. Defendants' Motion also contains unsupported allegations which must not be considered.

Defendants' Motion includes several unsupported allegations. Pleadings do not constitute evidence. *Krishnan v. Law Offices of Preston Henrichson, P.C.*, 83 S.W.3d 295, 300 (Tex. App. – Corpus Christi 2002, pet. denied) (stating "pleadings do not constitute summary judgment evidence and should not be considered in determining whether fact issues are expressly presented in summary judgment motions") (citing *City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 678 (Tex. 1979)). Defendants have offered no evidence of several allegations in their Motion, including but not limited to the following: (i) "New Century…retained servicing rights to the Note after it was assigned;"[144] (ii) "Plaintiffs have not attempted to pay off the Note or even the past due amount;"[145] and (iii) "The Note was endorsed 'in blank' and Wells Fargo has the original

[143] *See* Defendant's Motion (Exhibit 13).
[144] *See* Defendants' Motion at ¶ 13.
[145] *See* Defendants' Motion at ¶ 32.

Note."[146] Such allegations should not be considered as they do not constitute evidence and are not part of the summary judgment record. *See Krishnan*, 83 S.W.3d at 300.

VI. ARGUMENT & AUTHORITIES – OBJECTIONS AND MOTION TO STRIKE

"To be considered by the trial or reviewing court, summary judgment evidence must be presented in a form that would be admissible at trial." *Blancett v. Lagniappe Ventures, Inc.*, 177 S.W.3d 584, 589 (Tex. App. – Houston [1st Dist.] 2005, no pet.) (citing TEX. R. CIV. P. 166a(f); *United Blood Servs. v. Longoria*, 938 S.W.2d 29, 30 (Tex. 1997)). "Conclusory statements in affidavits are not proper as summary judgment proof if there are no facts to support the conclusions." *Hodges v. Bryan*, 99 S.W.3d 669, 674 (Tex. App. – Houston [14th Dist.] 2003, no pet.) (citing *Ryland Group, Inc. v. Hood*, 924 S.W.2d 120, 122 (Tex. 1996)). "A conclusory statement is one that does not provide the underlying facts to support the conclusion." *Hodges*, 99 S.W.3d at 674 (citing *Rizkallah v. Conner*, 952 S.W.2d 580, 587 (Tex. App. – Houston [1st Dist.] 1997, no writ)).

Here, Defendants' Exhibit 13 is the Affidavit of Peter C. Smart ("Smart Affidavit") and Exhibit 14 is the Affidavit of Carrington Mortgage Services, LLC which is by Adel Issa ("Issa Affidavit") (collectively "Affidavits"). Both Affidavits contain conclusory statements.[147] For example, the Issa Affidavit states "Wells Fargo…has been the owner and holder of the Note since CMS has been servicing the Note and Deed of Trust, including all relevant times pertaining to Plaintiffs' default and the foreclosure process."[148] The Issa Affidavit does not provide the underlying facts to support its conclusion and it is not competent summary judgment proof.[149] *See*

[146] *See* Defendants' Motion at ¶ 37. *See also* Defendants' Motion (Exhibit 2) (reflecting endorsement stamp rather than "in blank" endorsement).
[147] *See* Defendants' Motion (Exhibits 13-14).
[148] *See* Defendants' Motion (Exhibits 13).
[149] *Id.*

Hodges, 99 S.W.3d at 674. The Smart Affidavit states certain documents are true and correct copies of documents "filed in the real property records of Harris County, Texas" and "an Order from the United States Bankruptcy Court…"[150] But, the Smart Affidavit does not provide the underlying facts to support such conclusions and it is not competent summary judgment proof.[151] *See Hodges*, 99 S.W.3d at 674. The Smart Affidavit also does not show how Mr. Smart has personal knowledge of the authenticity of the real property records.[152]

Furthermore, Plaintiffs object that the Issa Affidavit is not clear, positive, direct, otherwise credible and free from contradictions and inconsistencies and susceptible of being readily controverted.[153] Since Defendants' summary judgment evidence is inadmissible, Plaintiffs' Objections should be sustained and their Motion to Strike should be granted.

VII. CONCLUSION

In Defendants' own summary judgment evidence, several different entities are named as the mortgagee and/or owner and holder of the Note. The listing of several different entities and lack of a clear chain of title precludes summary judgment. Furthermore, the expert opinions of Marie McDonnell raise fact issues on all of Plaintiffs' claims in this case. Plaintiffs' mortgage also was not transferred into the 2006-NC3 Trust. There are numerous genuine issues of material fact as to the entity which is the actual owner and holder of the Note as reflected in both Defendants' summary judgment evidence and Plaintiffs' summary judgment evidence. Accordingly, Defendants' Motion should be denied.

Defendants' Affidavits, including the Affidavit of Peter C. Smart and the Affidavit of

[150] *See* Defendants' Motion (Exhibit 14).
[151] *Id.*
[152] *Id.*
[153] *See* Section E of Argument in Response to Defendants' Motion, *supra*, which is re-alleged and incorporated herein.

Carrington Mortgage Services, LLC, are by interested witnesses but the testimony is not clear, positive, direct, otherwise credible and free from contradictions and inconsistencies and susceptible of being readily controverted; thus, such evidence merely raises fact issues. *See Disbrow*, 982 S.W.2d at 193. Such Affidavits also contain unsupported and inadmissible conclusory statements. *See Hodges*, 99 S.W.3d at 674. Therefore, the Court should sustain Plaintiffs' Objections to Defendants' Summary Judgment Evidence and grant Plaintiffs' Motion to Strike Defendants' Summary Judgment Evidence.

For these reasons, Plaintiffs Mary Ellen Wolf and David Wolf respectfully request the Court deny Defendants' Defendants' Second Motion to Reconsider Summary Judgment and Second Motion for Summary Judgment. Plaintiffs further request all other relief, at law and in equity, to which they are entitled.

Respectfully submitted,

HUGHES ELLZEY, LLP

/s/ W. Craft Hughes

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ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

By the execution of my signature below, I certify that a true and correct copy of the foregoing document has been served to the following parties on the 16th day of March, 2015 pursuant to rule 21(a) of the TEXAS RULES OF CIVIL PROCEDURE:

Via E-File
Mr. Peter C. Smart
CRAIN CATON & JAMES, P.C.
Five Houston Center, 17th Floor
1404 McKinney, Suite 1700
Houston, TX 77010
Attorney for Defendants,
Wells Fargo Bank N.A., as Trustee
For Carrington Mortgage Loan Trust,
Tom Croft, New Century Mortgage
Corporation and Carrington
Mortgage Services, LLC

/s/ W. Craft Hughes
W. Craft Hughes

CAUSE NO. 2011-36476

MARY ELLEN WOLF and DAVID WOLF	)	IN THE DISTRICT COURT
v.	)	
WELLS FARGO BANK, N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST..., TOM CROFT, NEW CENTURY MORTGAGE CORPORATION and CARRINGTON MORTGAGE SERVICES, LLC	)	HARRIS COUNTY, TEXAS
	)	151st JUDICIAL DISTRICT

****

ORAL DEPOSITION OF
DAVID WOLF
JULY 23, 2012

****

THE ORAL DEPOSITION OF DAVID WOLF, produced as a witness at the instance of the DEFENDANTS, and duly sworn, was taken in the above-styled and numbered cause on July 23, 2012, from 9:08 a.m. to 10:06 a.m., before Mary Beth Carson, CSR in and for the State of Texas, reported by machine shorthand, at the offices of Hughes Ellzey, LLP, 2700 Post Oak Boulevard, Suite 1120, Galleria Tower I, Houston, Texas 77056, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

EXHIBIT 1

could not obtain a title. So we have been between a rock and a hard place and that's why we have sued your company -- the company you're representing.

Q Let's not talk about those two. What do you mean, in your own words, "could not find title"?

A We hired a real estate agent and she did a title search and could not obtain the title. I have no idea what that entails. I'm not a Realtor. But she is and she is a professional licensed Realtor. She could not find a valid title to this property. We even had people knocking on our door wanting to buy the house, but we couldn't sell it because no one knew who owned it.

Q It sounds like what you're saying is your Realtor didn't know if you owned the house or not?

A The Realtor did not -- was not able to get the title. There was no way for her to get a title to the house. There was apparently some problem with the way that Carrington Mortgage or whoever -- I understand there were a lot of entities during that period of time related to Carrington Mortgage. It was -- it wasn't Carrington Mortgage, actually. What was the company that we actually had the loan with that went bankrupt, then Carrington Mortgage took that name over?

And, in any case, so there had been a failure

EXHIBIT 1

to correctly move that title through some processes and she could not determine who had the title. When we bought the house, we paid for a title search and we had the title at that time. So I don't know what happened.

Q Who did you pay for the title search for when you bought the house?

A We had title insurance from -- this was back when we bought it in 2000. It was the company that we went to the closing at was a title company over here on San Felipe right near the Loop.

Q And what was -- who was the Realtor that told you she couldn't find title? What's her name?

A Nancy Dowd.

Q D-o-w-d?

A I believe so. And we have correspondence from her to that effect.

Q And do you know what company she's with?

A No, I don't.

Q And did you go to a title insurance company at that time when you were trying to sell the house --

A No.

Q -- to try and see if they could find title?

A No. We had title when we bought the house. And suddenly the title had disappeared per our Realtor. So we just -- we were in the middle of two sick kids, I

EXHIBIT 1

was unemployed, and we were pretty much overwhelmed.

Q Are you still unemployed?

A No.

Q Who is your employer now?

A I am self-employed but I have quite a bit of hours that I'm able to bill.

Q Would you call yourself a consultant?

A Yes.

Q You are a consultant for something in the computer industry?

A Yes. I help smaller companies with their IT departments.

Q And you're fairly busy?

A Yes.

Q And when was it you were trying to sell the house when Nancy Dowd told you she couldn't find the title? When was that?

A In 2010.

Q That was after the workout agreement or after the exercise, trying to get a workout agreement?

A Yes.

Q What was -- in your own words, what was the workout agreement going to accomplish? What was going to be the end result?

A We were going to get a lower payment, and they

answer to it.

Q All right. And don't tell me what your lawyers have told you. But has any anybody else told you that something is wrong with the title?

A Just Nancy Dowd and my wife -- through my wife, actually.

Q Now, you said that some loan documents were lost at some point in time and you don't know if that was the loan modification in 2008 or the original loan with New Century that we've been looking at here in Exhibits 1 and 2 in 2006; is that correct?

A Yes. And you did mention Carrington Mortgage Services earlier, and now you said New Century. New Century was the company in 2006 that we refinanced with. They went bankrupt. And there was -- Carrington Mortgage started sending us the bills.

Q And so looking at Exhibit 2, it -- on here, it does say, right below the 400,000, it says the lender is New Century Mortgage Corporation. Do you see that? It's right here (indicating).

A Okay. I see it. Yes.

Q Do you recall in June of 2006 that you got a loan from New Century Mortgage Corporation?

A Yes.

Q And -- but that was a refinance?

EXHIBIT 1

don't -- you have lawyers who are going to make legal arguments. But just in your own words, do you think that the entities you've sued -- which is Wells Fargo as a trustee on behalf of a trust -- we don't need to name the trust because I'll probably get it wrong.

A I would like you to name that trust, please, exactly. What is that trust?

Q The name of it?

A Yes, please.

Q The name of the trust is Carrington Mortgage Loan Trust Series 2006-NC3 Asset Backed Pass-Through Certificates.

A Thank you.

Q And you have sued Wells Bank -- Wells Fargo Bank, N.A., as trustee for Carrington Mortgage Loan Trust, Series 2006-N3 (sic) Asset-Backed Pass-Through Certificates. And so my question is: Just in your own words, do you think that that entity does not own your mortgage?

MR. ELLZEY: Objection, form. You can answer the question.

THE WITNESS: Okay.

A Well, first of all, I have never signed any agreements with Wells Fargo. I was completely taken aback when we were sued by Wells Fargo.

EXHIBIT 1

Secondly, within the paperwork that Wells Fargo had in their lawsuit were people that we never even heard of that were supposedly the -- also the owners of this note, in their documentation. So we didn't know what that was about.

And after Nancy Dowd told us that the title was totally up in the air, we honestly didn't know and to this date don't know who to pay. And part of the reason that we brought the lawsuit was so that we could know who to pay and that, knowing that after we paid them, that we would own the house. We don't know who to pay.

And I have no idea how Wells Fargo fits into any of this or Carrington Mortgage for that matter at this point. Because according to Nancy Dowd, the title is totally up in the air and it wasn't when we bought the house.

Q (BY MR. SMART) Well, I heard what you said. And let me ask you and maybe you'll answer -- is it your contention that Wells Fargo Bank, N.A., as trustee for Carrington Mortgage Loan Trust Series 2006-NC3 Asset Backed Pass-Through Certificates does not own your mortgage?

MR. ELLZEY: Objection, form.

A Once again, I have never signed anything with Wells Fargo related to our mortgage. They came out of

EXHIBIT 1

THIS IS AN EXTENSION OF CREDIT AS DEFINED BY SECTION 50(a)(6), ARTICLE XVI OF THE TEXAS CONSTITUTION

THIS EXTENSION OF CREDIT HAS A VARIABLE RATE OF INTEREST AS AUTHORIZED BY SECTION 50(a)(6)(O), ARTICLE XVI OF THE TEXAS CONSTITUTION

2 YEAR RATE LOCK

TEXAS HOME EQUITY
FIXED/ADJUSTABLE RATE NOTE

(LIBOR 6 Month Index (As Published in *The Wall Street Journal*) - Rate Caps)

(First Lien)

THIS NOTE PROVIDES FOR A CHANGE IN MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

Place of Execution:

June 15, 2006	Houston	Texas
(Date)	(City)	(State)

6404 Buffalo Speedway, Houston, TX 77005
(Property Address)

1. BORROWER'S PROMISE TO PAY

This is an extension of credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution (the "Extension of Credit"). In return for the Extension of Credit that I have received evidenced by this Note, I promise to pay U.S. $ 400,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. Lender is New Century Mortgage Corporation

I will make all payments under this Note in the form of cash, check or money order. I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

I understand that this is not an open-end account that may be debited from time to time or under which credit may be extended from time to time.

The property described above by the Property Address is subject to the lien of the Security Instrument executed concurrently herewith (the "Security Instrument").

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 10.150 %. The interest rate I will pay may change in accordance with Section 4 of this Note. It is agreed that the total of all interest and other charges that constitute interest under applicable law shall not exceed the maximum amount of interest permitted by applicable law. Nothing in this Note or the Security Instrument shall entitle the Note Holder upon any contingency or event whatsoever, including by reason of acceleration of the maturity or prepayment of the Extension of Credit, to receive or collect interest or other charges that constitute interest in excess of the highest rate allowed by applicable law on the Principal or on a monetary obligation incurred to protect the property described above authorized by the Security Instrument, and in no event shall I be obligated to pay interest in excess of such rate.

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.

Initials: _____

EXHIBIT 2

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 **August 1 ,2006**. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on **07/01/2036**, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date." I will make my monthly payments at **18400 Von Karman, Suite 1000, Irvine, CA 92612** or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. $ **3,554.71**. This amount may change.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of the Extension of Credit 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. **ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES**

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of **July, 2008** and the adjustable interest rate I will pay may change on that day every 6th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for 6 month U.S. dollar-denominated deposits in the London market ("LIBOR"), 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 that 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 Seven Tenth(s)** percentage point(s) (**6.700 %**) 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 successive monthly payments, each of which will exceed the amount of accrued interest as of the date of the scheduled installment. 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 **11.650 %** or less than **10.150 %**. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than one and one half percentage points from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than **17.150 %** or less than **10.150 %**.

(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 initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any 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.

EXHIBIT 2

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 this 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 this Note. If I make a partial Prepayment, there will be no changes in the due dates or amounts of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES AND FEES

All agreements between Note Holder and me are expressly limited so that any interest, loan charges or fees (other than interest) collected or to be collected from me, any owner or the spouse of any owner of the property described above in connection with the origination, evaluation, maintenance, recording, insuring or servicing of the Extension of Credit shall not exceed, in the aggregate, the highest amount allowed by applicable law.

If a law, which applies to this Extension of Credit 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 Extension of Credit 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 will make this refund by making a payment to me. **The Note Holder's payment of any such refund will extinguish right of action I might have arising out of such overcharge.**

It is the express intention of the Note Holder and me to structure this Extension of Credit to conform to the provisions of the Texas Constitution applicable to extensions of credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution. If, from any circumstance whatsoever, any promise, payment, obligation or provision of this Note, the Security Instrument or any other loan document involving this Extension of Credit transcends the limit of validity prescribed by applicable law, then such promise, payment, obligation or provision shall be reduced to the limit of such validity, or eliminated as a requirement, if necessary for compliance with such law, and such document may be reformed by written notice from the Note Holder without the necessity of the execution of any new amendment or new document by me.

The provisions of this Section 6 shall supersede any inconsistent provision of this Note or the Security Instrument.

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 **15** calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be **5.000%** 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 that has not been paid and all the interest 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. This Note may not be accelerated because of a decrease in the market value of the property described above or because of my default under any indebtedness not evidenced by this Note or the Security Instrument.

(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, including Section 50(a)(6), Article XVI of the Texas Constitution. Those expenses include, for example, reasonable attorneys' fees. I understand that these expenses are not contemplated as fees to be incurred in connection with maintaining or servicing this Extension of Credit.

EXHIBIT 2

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.

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. However, if the purpose of the notice is to notify Note Holder of failure to comply with Note Holder's obligations under this Extension of Credit, or noncompliance with any provisions of the Texas Constitution applicable to extensions of credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution, then notice by certified mail is required.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

Subject to the limitation of personal liability described below, each person who signs this Note is responsible for ensuring that all of my promises and obligations in this Note are performed, including the payment of the full amount owed. Any person who takes over these obligations is also so responsible.

I understand that Section 50(a)(6)(C), Article XVI of the Texas Constitution provides that this Note is given without personal liability against each owner of the property described above and against the spouse of each owner unless the owner or spouse obtained this Extension of Credit by actual fraud. This means that, absent such actual fraud, the Note Holder can enforce its rights under this Note solely against the property described above and not personally against any owner of such property or the spouse of an owner.

If this Extension of Credit is obtained by such actual fraud, I will be personally liable for the payment of any amounts due under this Note. This means that a personal judgment could be obtained against me if I fail to perform my responsibilities under this Note, including a judgment for any deficiency that results from Note Holder's sale of the property described above for an amount less than is owing under this Note.

If not prohibited by Section 50(a)(6)(C), Article XVI of the Texas Constitution, this Section 9 shall not impair in any way the right of the Note Holder to collect all sums due under this Note or prejudice the right of the Note Holder as to any promises or conditions of 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. SECURED NOTE

In addition to the protections given to the Note Holder under this Note, 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 that I make in this Note. The 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 read as follows:

> **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 17, "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 or 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 14 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.

EXHIBIT 2

12. APPLICABLE LAW

This Note shall be governed by the law of Texas and any applicable federal law. In the event of any conflict between the Texas Constitution and other applicable law, it is the intent that the provisions of the Texas Constitution shall be applied to resolve the conflict. In the event of a conflict between any provision of this Note and applicable law, the applicable law shall control to the extent of such conflict and the conflicting provisions contained in this Note shall be modified to the extent necessary to comply with applicable law. All other provisions in this Note will remain fully effective and enforceable.

13. NO ORAL AGREEMENTS

THIS NOTE CONSTITUTES A "WRITTEN LOAN AGREEMENT" PURSUANT TO SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE, IF SUCH SECTION APPLIES. THIS WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

WITNESS THE HAND(S) OF THE UNDERSIGNED.

[DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. THIS DOCUMENT MUST BE EXECUTED AT THE OFFICE OF THE LENDER, AN ATTORNEY AT LAW OR A TITLE COMPANY. YOU MUST RECEIVE A COPY OF THIS DOCUMENT AFTER YOU HAVE SIGNED IT.]

Mary Ellen Wolf — Borrower

David Wolf — Borrower

_____ Borrower

_____ Borrower

_____ Borrower

_____ Borrower

_____ Borrower

_____ Borrower

Pay to the order of, without recourse
New Century Mortgage Corporation
By: _____
Steve Negy
V.P. Records Management

EXHIBIT 2

CAUSE NO. 2011-36476

MARY ELLEN WOLF and DAVID WOLF	)	IN THE DISTRICT COURT
v.	)	
WELLS FARGO BANK, N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST..., TOM CROFT, NEW CENTURY MORTGAGE CORPORATION and CARRINGTON MORTGAGE SERVICES, LLC	)	HARRIS COUNTY, TEXAS
	)	151st JUDICIAL DISTRICT

****

ORAL DEPOSITION OF
MARY ELLEN WOLF
JULY 23, 2012

****

THE ORAL DEPOSITION OF MARY ELLEN WOLF, produced as a witness at the instance of the DEFENDANTS, and duly sworn, was taken in the above-styled and numbered cause on July 23, 2012, from 10:42 a.m. to 11:55 a.m., before Mary Beth Carson, CSR in and for the State of Texas, reported by machine shorthand, at the offices of Hughes Ellzey, LLP, 2700 Post Oak Boulevard, Suite 1120, Galleria Tower I, Houston, Texas 77056, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

EXHIBIT 4

was, like, $2500 or something. And I don't know, it was not a home equity. It was a loan or a mortgage loan. It was a new mortgage with Carrington Mortgage. It wasn't a home equity. It was, like, we were trying to lower the mortgage payment.

They'd still get their money. It was still, like, $500,000 -- or at the time I think it was, like, $400,000. And we were trying to get -- if you qualified, which we did, then we would be able to pay, not, like, $3,000 a month but, like, $2200 a month. So when we got on the phone with the Carrington Mortgage and the Money Management people out of Sugar Land -- because you had to work with a Money Management person.

So, first of all, if you qualified, you got the letter from HUD Housing or TARP, from Washington, D.C. Like, "Oh, you qualified? There's something wrong." If you meet these standards -- so the standards were: You hadn't paid your mortgage for, like, you know, as long as we had, for, you know, ten months, because of a job loss and because of health, medical bills, then you qualified to have your loan or your mortgage -- not refinanced -- I guess restructured. So you had lower payments. You still owed the person the money. It wasn't not ever, ever trying to get out of not paying the money. That was never, ever it. That was never the

EXHIBIT 4

yes to your house because you haven't paid a payment in ten months."

And I said, "No kidding. That's why I'm calling you to make payments so we can stay in the house and you can keep your loan with us because that's what you want is your money."

MR. ELLZEY: Excuse me, Peter, when you get a second, let's take a break.

MR. SMART: Yeah.

(A recess was taken and proceedings resumed.)

Q (BY MR. SMART) Ms. Wolf, your husband talked about attempts to sell the house in 2011 -- maybe it was 2010 -- 2010, 2011.

A Yes.

Q Do you recall those efforts to try and sell the house?

A Yes.

Q Was your Realtor's name Nancy Dowd?

A Dodd.

Q Dodd? How do you spell that?

A D-o-d-d.

Q Okay. Do you know, is she with a company?

A I think so.

Q Do you know what company she's with?

Q -- of 500,000?
A Yes.
Q And did you sell the house?
A No.
Q And do you know why?
A They couldn't find the title a couple times when someone wanted to short sell it or something. Like -- I don't know why. That's what I heard. That's what she told me.
Q Nancy Dodd, as best as you -- in your own words or as best as you recall, what did she tell you about the title?
A "Who holds the title," she asked me. "Who has the title?"
Q She asked you, "Who has the title?"
A Right.
Q And what did you say?
A I said, "I don't know." And then she researched it and she couldn't find it. That's all I know.
Q So when you say "title," you mean who owns it or who has the lien?
A Whatever you need to do to sell a house. She couldn't sell it -- couldn't short sell it.
Q Couldn't --

EXHIBIT 4

A Anything. We couldn't do anything with the house. That's all I know.

Q Okay. Let's -- you could not short sell it?

A Well, not even that. That's the term she threw out there -- "I couldn't even sell it, not even short sell it."

Q Do you know what a "short sale" is?

A Not really. Something where you sell it.

Q Did you ask her what a short -- did she tell you what a short sale is?

A I looked it up on the internet. She discussed it. All I know is that we couldn't sell the house -- and it was listed -- because we couldn't find the title. That's what I was told.

Q Who told you that?

A The Realtor.

Q Nancy Dodd?

A Yes.

Q Did she tell you what efforts she made to try and find the title?

A No. I mean, I would drop the price. That's all I know. We did our part to try and sell the house to pay back the mortgage people.

Q Did she tell you what efforts she did to try and find the title?

EXHIBIT 4

STANWICH ASSET ACCEPTANCE COMPANY, L.L.C.

Depositor

NEW CENTURY MORTGAGE CORPORATION,

Servicer

and

WELLS FARGO BANK N.A.,

Trustee

POOLING AND SERVICING AGREEMENT

Dated as of August 1, 2006

Carrington Mortgage Loan Trust, Series 2006-NC3
Asset-Backed Pass-Through Certificates

17381982

EXHIBIT 5

TABLE OF CONTENTS

EXHIBIT 5

TABLE OF CONTENTS
(continued)

Page

EXHIBIT 5

TABLE OF CONTENTS
(continued)

Page

EXHIBIT 5

TABLE OF CONTENTS
(continued)

Page

EXHIBIT 5

Exhibits

EXHIBIT 5

This Pooling and Servicing Agreement, is dated and effective as of August 1, 2006, among STANWICH ASSET ACCEPTANCE COMPANY, L.L.C. as Depositor, NEW CENTURY MORTGAGE CORPORATION as Servicer and WELLS FARGO BANK, N.A. as Trustee.

PRELIMINARY STATEMENT:

The Depositor intends to sell pass-through certificates to be issued hereunder in multiple classes, which in the aggregate will evidence the entire beneficial ownership interest in each REMIC (as defined herein) created hereunder. The Trust Fund (as defined herein) will consist of a segregated pool of assets comprised of the Mortgage Loans and certain other related assets subject to this Agreement.

REMIC I

As provided herein, the Trustee will elect to treat the segregated pool of assets consisting of the Mortgage Loans and certain other related assets (other than any Servicer Prepayment Charge Payment Amounts, the Swap Account and the Swap Agreement) subject to this Agreement as a REMIC for federal income tax purposes, and such segregated pool of assets will be designated as "REMIC I." The Class R-I Interest will be the sole class of "residual interests" in REMIC I for purposes of the REMIC Provisions (as defined herein). The following table irrevocably sets forth the designation, the REMIC I Remittance Rate, the initial Uncertificated Balance and, for purposes of satisfying Treasury regulation Section 1.860G-1(a)(4)(iii), the "latest possible maturity date" for each of the REMIC I Regular Interests (as defined herein). None of the REMIC I Regular Interests will be certificated.

Designation	REMIC I Remittance Rate	Initial Uncertificated Balance	Latest Possible Maturity Date[1]
I-LTAA	Variable (2)	$1,561,132,037.98	August 2036
I-LTA1	Variable (2)	$5,615,410.00	August 2036
I-LTA2	Variable (2)	$3,392,000.00	August 2036
I-LTA3	Variable (2)	$1,959,340.00	August 2036
I-LTA4	Variable (2)	$845,290.00	August 2036
I-LTM1	Variable (2)	$900,040.00	August 2036
I-LTM2	Variable (2)	$828,360.00	August 2036
I-LTM3	Variable (2)	$246,910.00	August 2036
I-LTM4	Variable (2)	$414,180.00	August 2036
I-LTM5	Variable (2)	$302,670.00	August 2036
I-LTM6	Variable (2)	$230,980.00	August 2036
I-LTM7	Variable (2)	$230,980.00	August 2036
I-LTM8	Variable (2)	$167,260.00	August 2036
I-LTM9	Variable (2)	$215,050.00	August 2036
I-LTM10	Variable (2)	$183,190.00	August 2036
I-LTZZ	Variable (2)	$16,328,179.56	August 2036
I-LTP	Variable (2)	$100.00	August 2036

(1) For purposes of Section 1.860G-1(a)(4)(iii) of the Treasury regulations, the Distribution Date immediately following the maturity date for the Mortgage Loan with the latest maturity date has been designated as the "latest possible maturity date" for each REMIC I Regular Interest.

(2) Calculated in accordance with the definition of "REMIC I Remittance Rate" herein.

EXHIBIT 5

REMIC II

As provided herein, the Trustee will elect to treat the segregated pool of assets consisting of the REMIC I Regular Interests as a REMIC for federal income tax purposes, and such segregated pool of assets will be designated as "REMIC II." The Class R-II Interest will evidence the sole class of "residual interests" in REMIC II for purposes of the REMIC Provisions under federal income tax law. The following table irrevocably sets forth the designation, the Pass-Through Rate, the initial aggregate Certificate Principal Balance and, for purposes of satisfying Treasury regulation Section 1.860G-1(a)(4)(iii), the "latest possible maturity date" for the indicated Classes of Certificates.

Designation	Pass-Through Rate	Initial Aggregate Certificate Principal Balance	Latest Possible Maturity Date[1]
Class A-1[2]	Variable[2]	$561,541,000.00	January 25, 2031
Class A-2[2]	Variable[2]	$339,200,000.00	February 25, 2036
Class A-3[2]	Variable[2]	$195,934,000.00	July 25, 2036
Class A-4[2]	Variable[2	$84,529,000.00	July 25, 2036
Class M-1[2]	Variable[2]	$90,004,000.00	August 25, 2036
Class M-2[2]	Variable[2]	$82,836,000.00	August 25, 2036
Class M-3[2]	Variable[2]	$24,691,000.00	August 25, 2036
Class M-4[2]	Variable[2]	$41,418,000.00	August 25, 2036
Class M-5[2]	Variable[2]	$30,267,000.00	August 25, 2036
Class M-6[2]	Variable[2]	$23,098,000.00	August 25, 2036
Class M-7[2]	Variable[2]	$23,098,000.00	August 25, 2036
Class M-8[2]	Variable[2]	$16,726,000.00	August 25, 2036
Class M-9[2]	Variable[2]	$21,505,000.00	August 25, 2036
Class M-10[2]	Variable[2]	$18,319,000.00	August 25, 2036
Class CE[3]	Variable[4]	$39,825,977.54	N/A
Class P	N/A[5]	$100.00	N/A

(1) For purposes of Section 1.860G-1(a)(4)(iii) of the Treasury regulations, the Distribution Date immediately following the maturity date for the Mortgage Loans with the latest maturity date has been designated as the "latest possible maturity date" for each Class of Certificates.

(2) Calculated in accordance with the definition of "Pass-Through Rate" herein. The Class A and Class M Certificates represent ownership of REMIC II Regular Interests, together with certain rights to payments to be made from amounts received under the Swap Agreement which payments are treated for federal income tax purposes as being made outside of REMIC II by the holder of the Class CE Certificates, as the owner of the Swap Agreement.

(3) The Class CE Certificates will be comprised of two REMIC II Regular Interests, a principal only regular interest designated REMIC II Regular Interest CE-PO and an interest only regular interest designated REMIC II Regular Interest CE-IO, each of which will be entitled to distributions as set forth herein.

(4) The Class CE Certificates will accrue interest at its variable Pass-Through Rate on the Notional Amount of the Class CE-IO outstanding from time to time which notional amount shall equal the aggregate Uncertificated Balance of the REMIC I Regular Interests. The Class CE Certificates will not accrue interest on its Certificate Principal Balance. The rights of the Holder of the Class CE Certificates to payments from the Swap Agreement shall be outside and apart from its rights under the REMIC II Regular Interests CE-IO and CE-PO.

(5) The Class P Certificates will not accrue interest.

As of the Cut-off Date, the Mortgage Loans had an aggregate Stated Principal Balance equal to $1,592,991,977.54

In consideration of the mutual agreements herein contained, the Depositor, the Servicer and the Trustee agree as follows:

EXHIBIT 5

ARTICLE I

DEFINITIONS

SECTION 1.01 Defined Terms. Whenever used in this Agreement, including, without limitation, in the Preliminary Statement hereto, the following words and phrases, unless the context otherwise requires, shall have the meanings specified in this Article. Unless otherwise specified, all calculations described herein shall be made on the basis of a 360-day year consisting of twelve 30-day months.

"Accepted Servicing Practices": The servicing standards set forth in Section 3.01.

"Accrued Certificate Interest": With respect to any Class A Certificate, Mezzanine Certificate and the Class CE Certificates and each Distribution Date, interest accrued during the related Interest Accrual Period at the Pass-Through Rate for such Certificate for such Distribution Date on the Certificate Principal Balance, in the case of the Class A Certificates and the Mezzanine Certificates, or on the Notional Amount, in the case of the Class CE Certificates, of such Certificate immediately prior to such Distribution Date. The Class P Certificates are not entitled to distributions in respect of interest and, accordingly, will not accrue interest. All distributions of interest on the Class A Certificates and the Mezzanine Certificates will be calculated on the basis of a 360-day year and the actual number of days in the applicable Interest Accrual Period. All distributions of interest on the Class CE Certificates will be based on a 360-day year consisting of twelve 30-day months. Accrued Certificate Interest with respect to each Distribution Date, as to any Class A Certificate, Mezzanine Certificate or the Class CE Certificates, shall be reduced by an amount equal to the portion allocable to such Certificate pursuant to Section 1.02 hereof of the sum of (a) the aggregate Prepayment Interest Shortfall, if any, for such Distribution Date to the extent not covered by payments pursuant to Section 3.24 and (b) the aggregate amount of any Relief Act Interest Shortfall, if any, for such Distribution Date. In addition, Accrued Certificate Interest with respect to each Distribution Date, as to the Class CE Certificates, shall be reduced by an amount equal to the portion allocable to the Class CE Certificates of Realized Losses, if any, pursuant to Section 4.04 hereof.

"Additional Form 10-D Disclosure" has the meaning set forth in Section 4.06(a).

"Additional Form 10-K Disclosure" has the meaning set forth in Section 4.06(b).

"Additional Servicer" means (i) each affiliated servicer meeting the requirements of Item 1108(a)(2)(ii) of Regulation AB that services any of the Mortgage Loans, and (ii) each unaffiliated servicer meeting the requirements of Item 1108(a)(2)(iii) of Regulation AB (other than the Trustee), who services 10% or more of the Mortgage Loans.

"Adjustable-Rate Mortgage Loan": Each of the Mortgage Loans identified on the Mortgage Loan Schedule as having a Mortgage Rate that is subject to adjustment.

"Adjustment Date": With respect to each Adjustable-Rate Mortgage Loan, the first day of the month in which the Mortgage Rate of such Mortgage Loan changes pursuant to the related

EXHIBIT 5

Mortgage Note. The first Adjustment Date following the Cut-off Date as to each Adjustable-Rate Mortgage Loan is set forth in the Mortgage Loan Schedule.

"Advance": As to any Mortgage Loan or REO Property, any advance made by the Servicer in respect of any Distribution Date pursuant to Section 4.03.

"Advance Facility": As defined in Section 3.26(a).

"Advance Facility Trustee": As defined in Section 3.26(b).

"Advancing Person": As defined in Section 3.26(a) hereof.

"Affected Party": As defined in the Swap Agreement.

"Affiliate": With respect to any specified Person, any other Person controlling or controlled by or under common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agreement": This Pooling and Servicing Agreement and all amendments hereof and supplements hereto.

"Allocated Realized Loss Amount": With respect to any Distribution Date and any Class of Class A Certificates or Mezzanine Certificates, an amount equal to (x) the sum of (i) any Realized Losses allocated to such Class of Certificates on such Distribution Date and (ii) the amount of any Allocated Realized Loss Amount for such Class of Certificates remaining unpaid from the previous Distribution Date *minus* (y) the amount of the increase in the related Certificate Principal Balance due to the receipt of Subsequent Recoveries as provided in Section 4.01.

"Assignment": An assignment of Mortgage, notice of transfer or equivalent instrument, in recordable form (excepting therefrom, if applicable, the mortgage recordation information which has not been required pursuant to Section 2.01 hereof or returned by the applicable recorder's office), which is sufficient under the laws of the jurisdiction wherein the related Mortgaged Property is located to reflect of record the sale of the Mortgage, which assignment, notice of transfer or equivalent instrument may be in the form of one or more blanket assignments covering Mortgages secured by Mortgaged Properties located in the same county, if permitted by law.

"Available Distribution Amount": With respect to any Distribution Date, an amount equal to (1) the sum of (a) the aggregate of the amounts on deposit in the Custodial Account and Certificate Account as of the close of business on the related Determination Date, (b) the aggregate of any amounts received in respect of an REO Property withdrawn from any REO Account and deposited in the Certificate Account for such Distribution Date pursuant to Section 3.23, (c) the aggregate of any amounts deposited in the Certificate Account by the Servicer in

EXHIBIT 5

respect of Prepayment Interest Shortfalls for such Distribution Date pursuant to Section 3.24, (d) the aggregate of any Advances made by the Servicer for such Distribution Date pursuant to Section 4.03 and (e) the aggregate of any Advances made by the Trustee as successor Servicer or any other successor Servicer for such Distribution Date pursuant to Section 7.02, reduced (to not less than zero), by (2) the portion of the amount described in clause (1)(a) above that represents (i) Monthly Payments on the Mortgage Loans received from a Mortgagor on or prior to the Determination Date but due during any Due Period subsequent to the related Due Period, (ii) Principal Prepayments on the Mortgage Loans received after the related Prepayment Period (together with any interest payments received with such Principal Prepayments to the extent they represent the payment of interest accrued on the Mortgage Loans during a period subsequent to the related Prepayment Period) (other than Prepayment Charges), (iii) Liquidation Proceeds and Insurance Proceeds received in respect of the Mortgage Loans after the related Prepayment Period, (iv) amounts reimbursable or payable to the Depositor, the Servicer, the Trustee, the Custodian, the Seller or any Sub-Servicer pursuant to Section 3.11, Section 3.12, Section 8.05 or otherwise payable in respect of Extraordinary Trust Fund Expenses, (v) the Trustee Fee payable from the Certificate Account pursuant to Section 8.05, (vi) amounts deposited in the Custodial Account or the Certificate Account in error, (vii) the amount of any Prepayment Charges collected by the Servicer in connection with the Principal Prepayment of any of the Mortgage Loans or any Servicer Prepayment Charge Payment Amount and (viii) any Net Swap Payment owed to the Swap Counterparty and Swap Termination Payments owed to the Swap Counterparty not due to a Swap Counterparty Trigger Event for such Distribution Date.

"Bankruptcy Code": The Bankruptcy Reform Act of 1978 (Title 11 of the United States Code), as amended.

"Bankruptcy Loss": With respect to any Mortgage Loan, a Realized Loss resulting from a Deficient Valuation or Debt Service Reduction.

"Bloomberg": As defined in Section 4.02.

"Book-Entry Certificate": The Class A Certificates and the Mezzanine Certificates for so long as the Certificates of such Class shall be registered in the name of the Depository or its nominee.

"Book-Entry Custodian": The custodian appointed pursuant to Section 5.01.

"Business Day": Any day other than a Saturday, a Sunday or a day on which banking or savings and loan institutions in the State of California, the State of New York or in any city in which the Corporate Trust Office of the Trustee is located, are authorized or obligated by law or executive order to be closed.

"Cash-Out Refinancing": A Refinanced Mortgage Loan the proceeds of which are more than a nominal amount in excess of the principal balance of any existing first mortgage or subordinate mortgage on the related Mortgaged Property and any closing costs related to such Refinance Mortgage Loan.

"Certificate": Any one of the Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates, Class A-1, Class A-2, Class A-3, Class A-4, Class M-1, Class M-2, Class M-3, Class M-4, Class M-5, Class M-6, Class M-7, Class M-8, Class M-9, Class M-10, Class CE, Class P and Class R issued under this Agreement.

"Certificate Account": The trust account or accounts created and maintained by the Trustee pursuant to Section 3.10(b), which shall be entitled "Wells Fargo Bank, N.A., as Trustee, in trust for the registered holders of Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates." The Certificate Account must be an Eligible Account.

"Certificate Factor": With respect to any Class of Regular Certificates as of any Distribution Date, a fraction, expressed as a decimal carried to six places, the numerator of which is the aggregate Certificate Principal Balance (or the Notional Amount, in the case of the Class CE Certificates) of such Class of Certificates on such Distribution Date (after giving effect to any distributions of principal and in the case of the Class A Certificates, the Mezzanine Certificates and the Class CE Certificates, the allocations of Realized Losses in reduction of the Certificate Principal Balance (or the Notional Amount, in the case of the Class CE Certificates) of such Class of Certificates to be made on such Distribution Date), and the denominator of which is the initial aggregate Certificate Principal Balance (or the Notional Amount, in the case of the Class CE Certificates) of such Class of Certificates as of the Closing Date.

"Certificateholder" or "Holder": The Person in whose name a Certificate is registered in the Certificate Register, except that a Disqualified Organization or a Non-United States Person shall not be a Holder of a Residual Certificate for any purpose hereof and, solely for the purpose of giving any consent pursuant to this Agreement, any Certificate registered in the name of the Depositor or the Servicer or any Affiliate thereof shall be deemed not to be outstanding and the Voting Rights to which it is entitled shall not be taken into account in determining whether the requisite percentage of Voting Rights necessary to effect any such consent has been obtained, except as otherwise provided in Section 13.01. The Trustee may conclusively rely upon a certificate of the Depositor or the Servicer in determining whether a Certificate is held by an Affiliate thereof. All references herein to "Holders" or "Certificateholders" shall reflect the rights of Certificate Owners as they may indirectly exercise such rights through the Depository and participating members thereof, except as otherwise specified herein; provided, however, that the Trustee shall be required to recognize as a "Holder" or "Certificateholder" only the Person in whose name a Certificate is registered in the Certificate Register.

"Certificate Owner": With respect to a Book-Entry Certificate, the Person who is the beneficial owner of such Certificate as reflected on the books of the Depository or on the books of a Depository Participant or on the books of an indirect participating brokerage firm for which a Depository Participant acts as agent.

"Certificate Principal Balance": With respect to each Class A Certificate, Mezzanine Certificate or Class P Certificate as of any date of determination, the Certificate Principal Balance of such Certificate on the Distribution Date immediately prior to such date of determination *plus* any Subsequent Recoveries added to the Certificate Principal Balance of such Certificate pursuant to Section 4.01, *minus* all distributions allocable to principal made thereon

EXHIBIT 5

and, in the case of the Class A Certificates and the Mezzanine Certificates, Realized Losses allocated thereto on such immediately prior Distribution Date (or, in the case of any date of determination up to and including the first Distribution Date, the initial Certificate Principal Balance of such Certificate, as stated on the face thereof). With respect to the Class CE Certificates as of any date of determination, an amount equal to the Percentage Interest evidenced by such Certificate times the excess, if any, of (A) the then aggregate Uncertificated Balance of the REMIC I Regular Interests over (B) the then aggregate Certificate Principal Balance of the Class A Certificates, the Mezzanine Certificates and the Class P Certificates then outstanding.

"Certificate Register": The register maintained pursuant to Section 5.02.

"Class": Collectively, all of the Certificates bearing the same class designation.

"Class A-1 Certificates": Any one of the Class A-1 Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-1 and evidencing (i) a Regular Interest in REMIC II for purposes of the REMIC Provisions and (ii) the right to receive payments from the Swap Account to the extent described herein.

"Class A-2 Certificates": Any one of the Class A-2 Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-2 and evidencing (i) a Regular Interest in REMIC II for purposes of the REMIC Provisions and (ii) the right to receive payments from the Swap Account to the extent described herein.

"Class A-3 Certificates": Any one of the Class A-3 Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-3 and evidencing (i) a Regular Interest in REMIC II for purposes of the REMIC Provisions and (ii) the right to receive payments from the Swap Account to the extent described herein.

"Class A-4 Certificates": Any one of the Class A-4 Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-4 and evidencing (i) a Regular Interest in REMIC II for purposes of the REMIC Provisions and (ii) the right to receive payments from the Swap Account to the extent described herein.

"Class A Certificates": Collectively, the Class A-1 Certificates, the Class A-2 Certificates, the Class A-3 Certificates and the Class A-4 Certificates.

"Class A Principal Distribution Amount": With respect to any Distribution Date, the excess of (x) the aggregate Certificate Principal Balance of the Class A Certificates immediately prior to such Distribution Date over (y) the lesser of (A) the product of (i) the applicable Subordination Percentage and (ii) the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period and (B) the excess, if any, of the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period *over* the Overcollateralization Floor Amount.

"Class CE Certificate": Any one of the Class CE Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-15 and

evidencing two Regular Interests in REMIC II for purposes of the REMIC Provisions together with certain rights to payments under the Swap Agreement.

"Class M-1 Certificate": Any one of the Class M-1 Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-5 and evidencing (i) a Regular Interest in REMIC II for purposes of the REMIC Provisions and (ii) the right to receive payments from the Swap Account to the extent described herein.

"Class M-1 Principal Distribution Amount": With respect to any Distribution Date, the excess of (x) the sum of (i) the aggregate Certificate Principal Balance of the Class A Certificates (after taking into account the distribution of the Class A Principal Distribution Amount on such Distribution Date) and (ii) the Certificate Principal Balance of the Class M-1 Certificates immediately prior to such Distribution Date over (y) the lesser of (A) the product of (i) the applicable Subordination Percentage and (ii) the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period and (B) the excess, if any, of the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period *over* the Overcollateralization Floor Amount.

"Class M-2 Certificate": Any one of the Class M-2 Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-6 and evidencing (i) a Regular Interest in REMIC II for purposes of the REMIC Provisions and (ii) the right to receive payments from the Swap Account to the extent described herein.

"Class M-2 Principal Distribution Amount": With respect to any Distribution Date, the excess of (x) the sum of (i) the aggregate Certificate Principal Balance of the Class A Certificates (after taking into account the distribution of the Class A Principal Distribution Amount on such Distribution Date), (ii) the Certificate Principal Balance of the Class M-1 Certificates (after taking into account the distribution of the Class M-1 Principal Distribution Amount on such Distribution Date) and (iii) the Certificate Principal Balance of the Class M-2 Certificates immediately prior to such Distribution Date over (y) the lesser of (A) the product of (i) the applicable Subordination Percentage and (ii) the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period and (B) the excess, if any, of the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period *over* the Overcollateralization Floor Amount.

"Class M-3 Certificate": Any one of the Class M-3 Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-7 and evidencing (i) a Regular Interest in REMIC II for purposes of the REMIC Provisions and (ii) the right to receive payments from the Swap Account to the extent described herein.

"Class M-3 Principal Distribution Amount": With respect to any Distribution Date, the excess of (x) the sum of (i) the aggregate Certificate Principal Balance of the Class A Certificates (after taking into account the distribution of the Class A Principal Distribution Amount on such Distribution Date), (ii) the Certificate Principal Balance of the Class M-1 Certificates (after taking into account the distribution of the Class M-1 Principal Distribution Amount on such Distribution Date), (iii) the Certificate Principal Balance of the Class M-2 Certificates (after

taking into account the distribution of the Class M-2 Principal Distribution Amount on such Distribution Date) and (iv) the Certificate Principal Balance of the Class M-3 Certificates immediately prior to such Distribution Date over (y) the lesser of (A) the product of (i) the applicable Subordination Percentage and (ii) the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period and (B) the excess, if any, of the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period *over* the Overcollateralization Floor Amount.

"Class M-4 Certificate": Any one of the Class M-4 Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-8 and evidencing (i) a Regular Interest in REMIC II for purposes of the REMIC Provisions and (ii) the right to receive payments from the Swap Account to the extent described herein.

"Class M-4 Principal Distribution Amount": With respect to any Distribution Date, the excess of (x) the sum of (i) the aggregate Certificate Principal Balance of the Class A Certificates (after taking into account the distribution of the Class A Principal Distribution Amount on such Distribution Date), (ii) the Certificate Principal Balance of the Class M-1 Certificates (after taking into account the distribution of the Class M-1 Principal Distribution Amount on such Distribution Date), (iii) the Certificate Principal Balance of the Class M-2 Certificates (after taking into account the distribution of the Class M-2 Principal Distribution Amount on such Distribution Date), (iv) the Certificate Principal Balance of the Class M-3 Certificates (after taking into account the distribution of the Class M-3 Principal Distribution Amount on such Distribution Date) and (v) the Certificate Principal Balance of the Class M-4 Certificates immediately prior to such Distribution Date over (y) the lesser of (A) the product of (i) the applicable Subordination Percentage and (ii) the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period and (B) the excess, if any, of the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period *over* the Overcollateralization Floor Amount.

"Class M-5 Certificate": Any one of the Class M-5 Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-9 and evidencing (i) a Regular Interest in REMIC II for purposes of the REMIC Provisions and (ii) the right to receive payments from the Swap Account to the extent described herein.

"Class M-5 Principal Distribution Amount": With respect to any Distribution Date, the excess of (x) the sum of (i) the aggregate Certificate Principal Balance of the Class A Certificates (after taking into account the distribution of the Class A Principal Distribution Amount on such Distribution Date), (ii) the Certificate Principal Balance of the Class M-1 Certificates (after taking into account the distribution of the Class M-1 Principal Distribution Amount on such Distribution Date), (iii) the Certificate Principal Balance of the Class M-2 Certificates (after taking into account the distribution of the Class M-2 Principal Distribution Amount on such Distribution Date), (iv) the Certificate Principal Balance of the Class M-3 Certificates (after taking into account the distribution of the Class M-3 Principal Distribution Amount on such Distribution Date), (v) the Certificate Principal Balance of the Class M-4 Certificates (after taking into account the distribution of the Class M-4 Principal Distribution Amount on such Distribution Date) and (vi) the Certificate Principal Balance of the Class M-5 Certificates

EXHIBIT 5

immediately prior to such Distribution Date over (y) the lesser of (A) the product of (i) the applicable Subordination Percentage and (ii) the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period and (B) the excess, if any, of the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period *over* the Overcollateralization Floor Amount.

"Class M-6 Certificate": Any one of the Class M-6 Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-10 and evidencing (i) a Regular Interest in REMIC II for purposes of the REMIC Provisions and (ii) the right to receive payments from the Swap Account to the extent described herein.

"Class M-6 Principal Distribution Amount": With respect to any Distribution Date, the excess of (x) the sum of (i) the aggregate Certificate Principal Balance of the Class A Certificates (after taking into account the distribution of the Class A Principal Distribution Amount on such Distribution Date), (ii) the Certificate Principal Balance of the Class M-1 Certificates (after taking into account the distribution of the Class M-1 Principal Distribution Amount on such Distribution Date), (iii) the Certificate Principal Balance of the Class M-2 Certificates (after taking into account the distribution of the Class M-2 Principal Distribution Amount on such Distribution Date), (iv) the Certificate Principal Balance of the Class M-3 Certificates (after taking into account the distribution of the Class M-3 Principal Distribution Amount on such Distribution Date), (v) the Certificate Principal Balance of the Class M-4 Certificates (after taking into account the distribution of the Class M-4 Principal Distribution Amount on such Distribution Date), (vi) the Certificate Principal Balance of the Class M-5 Certificates (after taking into account the distribution of the Class M-5 Principal Distribution Amount on such Distribution Date) and (vii) the Certificate Principal Balance of the Class M-6 Certificates immediately prior to such Distribution Date over (y) the lesser of (A) the product of (i) the applicable Subordination Percentage and (ii) the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period and (B) the excess, if any, of the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period *over* the Overcollateralization Floor Amount.

"Class M-7 Certificate": Any one of the Class M-7 Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-11 and evidencing (i) a Regular Interest in REMIC II for purposes of the REMIC Provisions and (ii) the right to receive payments from the Swap Account to the extent described herein.

"Class M-7 Principal Distribution Amount": With respect to any Distribution Date, the excess of (x) the sum of (i) the aggregate Certificate Principal Balance of the Class A Certificates (after taking into account the distribution of the Class A Principal Distribution Amount on such Distribution Date), (ii) the Certificate Principal Balance of the Class M-1 Certificates (after taking into account the distribution of the Class M-1 Principal Distribution Amount on such Distribution Date), (iii) the Certificate Principal Balance of the Class M-2 Certificates (after taking into account the distribution of the Class M-2 Principal Distribution Amount on such Distribution Date), (iv) the Certificate Principal Balance of the Class M-3 Certificates (after taking into account the distribution of the Class M-3 Principal Distribution Amount on such Distribution Date), (v) the Certificate Principal Balance of the Class M-4 Certificates (after

taking into account the distribution of the Class M-4 Principal Distribution Amount on such Distribution Date), (vi) the Certificate Principal Balance of the Class M-5 Certificates (after taking into account the distribution of the Class M-5 Principal Distribution Amount on such Distribution Date), (vii) the Certificate Principal Balance of the Class M-6 Certificates (after taking into account the distribution of the Class M-6 Principal Distribution Amount on such Distribution Date) and (viii) the Certificate Principal Balance of the Class M-7 Certificates immediately prior to such Distribution Date over (y) the lesser of (A) the product of (i) the applicable Subordination Percentage and (ii) the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period and (B) the excess, if any, of the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period *over* the Overcollateralization Floor Amount.

"Class M-8 Certificate": Any one of the Class M-8 Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-12 and evidencing (i) a Regular Interest in REMIC II for purposes of the REMIC Provisions and (ii) the right to receive payments from the Swap Account to the extent described herein.

"Class M-8 Principal Distribution Amount": With respect to any Distribution Date, the excess of (x) the sum of (i) the aggregate Certificate Principal Balance of the Class A Certificates (after taking into account the distribution of the Class A Principal Distribution Amount on such Distribution Date), (ii) the Certificate Principal Balance of the Class M-1 Certificates (after taking into account the distribution of the Class M-1 Principal Distribution Amount on such Distribution Date), (iii) the Certificate Principal Balance of the Class M-2 Certificates (after taking into account the distribution of the Class M-2 Principal Distribution Amount on such Distribution Date), (iv) the Certificate Principal Balance of the Class M-3 Certificates (after taking into account the distribution of the Class M-3 Principal Distribution Amount on such Distribution Date), (v) the Certificate Principal Balance of the Class M-4 Certificates (after taking into account the distribution of the Class M-4 Principal Distribution Amount on such Distribution Date), (vi) the Certificate Principal Balance of the Class M-5 Certificates (after taking into account the distribution of the Class M-5 Principal Distribution Amount on such Distribution Date), (vii) the Certificate Principal Balance of the Class M-6 Certificates (after taking into account the distribution of the Class M-6 Principal Distribution Amount on such Distribution Date), (viii) the Certificate Principal Balance of the Class M-7 Certificates (after taking into account the distribution of the Class M-7 Principal Distribution Amount on such Distribution Date) and (ix) the Certificate Principal Balance of the Class M-8 Certificates immediately prior to such Distribution Date over (y) the lesser of (A) the product of (i) the applicable Subordination Percentage and (ii) the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period and (B) the excess, if any, of the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period *over* the Overcollateralization Floor Amount.

"Class M-9 Certificate": Any one of the Class M-9 Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-13 and evidencing (i) a Regular Interest in REMIC II for purposes of the REMIC Provisions and (ii) the right to receive payments from the Swap Account to the extent described herein.

"Class M-9 Principal Distribution Amount": With respect to any Distribution Date, the excess of (x) the sum of (i) the aggregate Certificate Principal Balance of the Class A Certificates (after taking into account the distribution of the Class A Principal Distribution Amount on such Distribution Date), (ii) the Certificate Principal Balance of the Class M-1 Certificates (after taking into account the distribution of the Class M-1 Principal Distribution Amount on such Distribution Date), (iii) the Certificate Principal Balance of the Class M-2 Certificates (after taking into account the distribution of the Class M-2 Principal Distribution Amount on such Distribution Date), (iv) the Certificate Principal Balance of the Class M-3 Certificates (after taking into account the distribution of the Class M-3 Principal Distribution Amount on such Distribution Date), (v) the Certificate Principal Balance of the Class M-4 Certificates (after taking into account the distribution of the Class M-4 Principal Distribution Amount on such Distribution Date), (vi) the Certificate Principal Balance of the Class M-5 Certificates (after taking into account the distribution of the Class M-5 Principal Distribution Amount on such Distribution Date), (vii) the Certificate Principal Balance of the Class M-6 Certificates (after taking into account the distribution of the Class M-6 Principal Distribution Amount on such Distribution Date), (viii) the Certificate Principal Balance of the Class M-7 Certificates (after taking into account the distribution of the Class M-7 Principal Distribution Amount on such Distribution Date), (ix) the Certificate Principal Balance of the Class M-8 Certificates (after taking into account the distribution of the Class M-8 Principal Distribution Amount on such Distribution Date) and (x) the Certificate Principal Balance of the Class M-9 Certificates immediately prior to such Distribution Date over (y) the lesser of (A) the product of (i) the applicable Subordination Percentage and (ii) the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period and (B) the excess, if any, of the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period *over* the Overcollateralization Floor Amount.

"Class M-10 Certificate": Any one of the Class M-10 Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-14 and evidencing (i) a Regular Interest in REMIC II for purposes of the REMIC Provisions and (ii) the right to receive payments from the Swap Account to the extent described herein.

"Class M-10 Principal Distribution Amount": With respect to any Distribution Date, the excess of (x) the sum of (i) the aggregate Certificate Principal Balance of the Class A Certificates (after taking into account the distribution of the Class A Principal Distribution Amount on such Distribution Date), (ii) the Certificate Principal Balance of the Class M-1 Certificates (after taking into account the distribution of the Class M-1 Principal Distribution Amount on such Distribution Date), (iii) the Certificate Principal Balance of the Class M-2 Certificates (after taking into account the distribution of the Class M-2 Principal Distribution Amount on such Distribution Date), (iv) the Certificate Principal Balance of the Class M-3 Certificates (after taking into account the distribution of the Class M-3 Principal Distribution Amount on such Distribution Date), (v) the Certificate Principal Balance of the Class M-4 Certificates (after taking into account the distribution of the Class M-4 Principal Distribution Amount on such Distribution Date), (vi) the Certificate Principal Balance of the Class M-5 Certificates (after taking into account the distribution of the Class M-5 Principal Distribution Amount on such Distribution Date), (vii) the Certificate Principal Balance of the Class M-6 Certificates (after taking into account the distribution of the Class M-6 Principal Distribution Amount on such

EXHIBIT 5

Distribution Date), (viii) the Certificate Principal Balance of the Class M-7 Certificates (after taking into account the distribution of the Class M-7 Principal Distribution Amount on such Distribution Date), (ix) the Certificate Principal Balance of the Class M-8 Certificates (after taking into account the distribution of the Class M-8 Principal Distribution Amount on such Distribution Date), (x) the Certificate Principal Balance of the Class M-9 Certificates (after taking into account the distribution of the Class M-9 Principal Distribution Amount on such Distribution Date) and (xi) the Certificate Principal Balance of the Class M-10 Certificates immediately prior to such Distribution Date over (y) the lesser of (A) the product of (i) the applicable Subordination Percentage and (ii) the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period and (B) the excess, if any, of the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period *over* the Overcollateralization Floor Amount.

"Class P Certificate": Any one of the Class P Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-16 and evidencing a Regular Interest in REMIC II for purposes of the REMIC Provisions.

"Class R Certificate": Any one of the Class R Certificates executed, authenticated and delivered by the Trustee, substantially in the form annexed hereto as Exhibit A-17 and evidencing the ownership of the Class R-I Interest and the Class R-II Interest.

"Class R-I Interest": The uncertificated Residual Interest in REMIC I.

"Class R-II Interest": The uncertificated Residual Interest in REMIC II.

"Closing Date": August 10, 2006.

"Code": The Internal Revenue Code of 1986, as amended.

"Commission": The Securities and Exchange Commission.

"Controlling Person" means, with respect to any Person, any other Person who "controls" such Person within the meaning of the Securities Act.

"Corporate Trust Office": The principal corporate trust office of the Trustee at which at any particular time its corporate trust business in connection with this Agreement shall be administered, which office at the date of the execution of this Agreement is located at (i) for purposes of the transfer and exchange of the certificates, Sixth Street and Marquette Avenue, Minneapolis, Minnesota 55479-0113, Attention: Corporate Trust Services – Carrington 2006-NC3, and (ii) for all other purposes, 9062 Old Annapolis Road, Columbia, Maryland 21045, Attention: Client Manager - Carrington 2006-NC3.

"Corresponding Certificate": With respect to each REMIC I Regular Interest set forth below, the Regular Certificate set forth in the table below:

EXHIBIT 5

REMIC I Regular Interest	Certificate
I-LTA1	Class A-1
I-LTA2	Class A-2
I-LTA3	Class A-3
I-LTA4	Class A-4
I-LTM1	Class M-1
I-LTM2	Class M-2
I-LTM3	Class M-3
I-LTM4	Class M-4
I-LTM5	Class M-5
I-LTM6	Class M-6
I-LTM7	Class M-7
I-LTM8	Class M-8
I-LTM9	Class M-9
I-LTM10	Class M-10
I-LTP	Class P

"Credit Enhancement Percentage": For any Distribution Date and for any Class of Certificates, the percentage equivalent of a fraction, the numerator of which is the sum of the aggregate Certificate Principal Balance of the Classes of Certificates with a lower distribution priority than such Class (including the Class CE Certificates), calculated after taking into account payments of principal on the Mortgage Loans and distribution of the Principal Distribution Amount to the Holders of the Certificates then entitled to distributions of principal on such Distribution Date, and the denominator of which is the aggregate Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period (after giving effect to scheduled payments of principal due during the related Due Period, to the extent received or advanced, and unscheduled collections of principal received during the related Prepayment Period).

"Credit Support Depletion Date": The first Distribution Date on which the Certificate Principal Balances of the Mezzanine Certificates and Class CE Certificates have been reduced to zero.

"Custodial Agreement": The custodial agreement dated as of the Closing Date, among the Servicer, the Trustee and the Custodian providing for the safekeeping of the Mortgage Files on behalf of the Trustee in accordance with this Agreement.

"Custodial Account": The account or accounts created and maintained, or caused to be created and maintained, by the Servicer pursuant to Section 3.10(a), which shall be entitled "New Century Mortgage Corporation, as Servicer for Wells Fargo Bank, N.A., as Trustee, in trust for the registered holders of Carrington Mortgage Loan Trust, Series 2006-NC3, Asset-Backed Pass-Through Certificates." The Custodial Account must be an Eligible Account.

"Custodian": A Custodian, which shall initially be Deutsche Bank National Trust Company pursuant to the Custodial Agreement.

"Custodian Fee": The amount payable to the Custodian by the Trustee as compensation for all services rendered by it under the Custodial Agreement, as agreed upon by the Trustee and the Custodian.

EXHIBIT 5

"Cut-off Date": With respect to each Original Mortgage Loan, August 1, 2006. With respect to all Qualified Substitute Mortgage Loans, their respective dates of substitution. References herein to the "Cut-off Date," when used with respect to more than one Mortgage Loan, shall be to the respective Cut-off Dates for each such Mortgage Loan.

"Debt Service Reduction": With respect to any Mortgage Loan, a reduction in the scheduled Monthly Payment for such Mortgage Loan by a court of competent jurisdiction in a proceeding under the Bankruptcy Code, except such a reduction resulting from a Deficient Valuation.

"Defaulting Party": As defined in the Swap Agreement.

"Deficient Valuation": With respect to any Mortgage Loan, a valuation of the related Mortgaged Property by a court of competent jurisdiction in an amount less than the then outstanding Stated Principal Balance of the Mortgage Loan, which valuation results from a proceeding initiated under the Bankruptcy Code.

"Definitive Certificates": As defined in Section 5.01(b).

"Deleted Mortgage Loan": A Mortgage Loan replaced or to be replaced by a Qualified Substitute Mortgage Loan.

"Delinquency Percentage": As of the last day of the related Due Period, the percentage equivalent of a fraction, the numerator of which is the aggregate unpaid principal balance of the Rolling Three-Month Delinquency Average of the Mortgage Loans plus the aggregate unpaid principal balance of the Mortgage Loans that, as of the last day of the previous calendar month, are in foreclosure, have been converted to REO Properties or have been discharged by reason of bankruptcy, and the denominator of which is the aggregate unpaid principal balance of the Mortgage Loans and REO Properties as of the last day of the previous calendar month; provided, however, that any Mortgage Loan purchased by the Servicer pursuant to Section 3.16(c) shall not be included in either the numerator or the denominator for purposes of calculating the Delinquency Percentage.

"Depositor": Stanwich Asset Acceptance Company, L.L.C., a Delaware limited liability company, or its successor in interest.

"Depository": The Depository Trust Company, or any successor Depository hereafter named. The nominee of the initial Depository, for purposes of registering those Certificates that are to be Book-Entry Certificates, is Cede & Co. The Depository shall at all times be a "clearing corporation" as defined in Section 8-102(a)(5) of the Uniform Commercial Code of the State of New York and a "clearing agency" registered pursuant to the provisions of Section 17A of the Exchange Act.

"Depository Institution": Any depository institution or trust company, including the Trustee, that (a) is incorporated under the laws of the United States of America or any State thereof, (b) is subject to supervision and examination by federal or state banking authorities and (c) has outstanding unsecured commercial paper or other short-term unsecured debt obligations

(or, in the case of a depository institution that is the principal subsidiary of a holding company, such holding company has unsecured commercial paper or other short-term unsecured debt obligations) that are rated at least P-1 by Moody's, F-1 by Fitch (if rated by Fitch) and A-1+ by S&P.

"Depository Participant": A broker, dealer, bank or other financial institution or other Person for whom from time to time a Depository effects book-entry transfers and pledges of securities deposited with the Depository.

"Determination Date": With respect to each Distribution Date, the 15th day of the calendar month in which such Distribution Date occurs or, if such 15th day is not a Business Day, the Business Day immediately preceding such 15th day.

"Directly Operate": With respect to any REO Property, the furnishing or rendering of services to the tenants thereof, the management or operation of such REO Property, the holding of such REO Property primarily for sale to customers, the performance of any construction work thereon or any use of such REO Property in a trade or business conducted by REMIC I other than through an Independent Contractor; provided, however, that the Trustee (or the Servicer on behalf of the Trustee) shall not be considered to Directly Operate an REO Property solely because the Trustee (or the Servicer on behalf of the Trustee) establishes rental terms, chooses tenants, enters into or renews leases, makes payment on or otherwise discharges tax or insurance obligations, or makes decisions as to repairs or capital expenditures with respect to such REO Property.

"Disqualified Organization": Any organization defined as a "disqualified organization" under Section 860E(e)(5) of the Code, including, if not otherwise included, any of the following: (i) the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing (other than an instrumentality which is a corporation if all of its activities are subject to tax and, except for Freddie Mac, a majority of its board of directors is not selected by such governmental unit), (ii) any foreign government, any international organization, or any agency or instrumentality of any of the foregoing, (iii) any organization (other than certain farmers' cooperatives described in Section 521 of the Code) which is exempt from the tax imposed by Chapter 1 of the Code (including the tax imposed by Section 511 of the Code on unrelated business taxable income), (iv) rural electric and telephone cooperatives described in Section 1381(a)(2)(C) of the Code, (v) an "electing large partnership" and (vi) any other Person as set forth in an Opinion of Counsel delivered to the Trustee and the Depositor to the effect that the holding of an Ownership Interest in a Residual Certificate by such Person may cause any Trust REMIC or any Person having an Ownership Interest in any Class of Certificates (other than such Person) to incur a liability for any federal tax imposed under the Code that would not otherwise be imposed but for the Transfer of an Ownership Interest in a Residual Certificate to such Person. The terms "United States," "State" and "international organization" shall have the meanings set forth in Section 7701 of the Code or successor provisions.

"Distribution Date": The 25th day of any month, or if such 25th day is not a Business Day, the Business Day immediately following such 25th day, commencing in September 2006.

"Due Date": With respect to each Mortgage Loan and any Distribution Date, the first day of the calendar month in which such Distribution Date occurs on which the Monthly Payment for such Mortgage Loan was due (or, in the case of any Mortgage Loan under terms of which the Monthly Payment for such Mortgage Loan was due on a day other than the first day of the calendar month in which such Distribution Date occurs, the day during the related Due Period on which such Monthly Payment was due), in each case exclusive of any days of grace.

"Due Period": With respect to any Distribution Date, the period commencing on the second day of the month immediately preceding the month in which such Distribution Date occurs and ending on the first day of the month of such Distribution Date.

"EDGAR": As defined in Section 4.06.

"Eligible Account": Any of (i) an account or accounts maintained with a Depository Institution, (ii) an account or accounts the deposits in which are fully insured by the FDIC or (iii) a segregated non-interest bearing trust account or accounts maintained with the corporate trust department of a federal depository institution or state-chartered depository institution subject to regulations regarding fiduciary funds on deposit similar to Title 12 of the Code of Federal Regulation Section 9.10(b), which, in either case, has corporate trust powers, acting in its fiduciary capacity.

"ERISA": The Employee Retirement Income Security Act of 1974, as amended.

"Escrow Payments": As defined in Section 3.09.

"Excess Overcollateralized Amount": With respect to the Class A Certificates and the Mezzanine Certificates and any Distribution Date, the excess, if any, of (i) the Overcollateralization Amount for such Distribution Date (calculated for this purpose only after assuming that 100% of the Principal Remittance Amount on such Distribution Date has been distributed) over (ii) the Overcollateralization Target Amount for such Distribution Date.

"Exchange Act": As defined in Section 4.06.

"Expense Adjusted Mortgage Rate": With respect to any Mortgage Loan (or the related REO Property), as of any date of determination, a per annum rate of interest equal to the then applicable Mortgage Rate thereon as of the first day of the related Due Period *minus* the sum of (i) the Trustee Fee Rate and (ii) the Servicing Fee Rate.

"Extraordinary Trust Fund Expense": Any amounts reimbursable to the Trustee or any director, officer, employee or agent of the Trustee from the Trust Fund pursuant to Section 8.05 or Section 10.01(c) and any amounts payable from the Certificate Account in respect of taxes pursuant to Section 10.01(g)(iii) and any costs of the Trustee for the recording of the Assignments pursuant to Section 2.01 (to the extent the Seller is unable to pay such costs).

"Fannie Mae": Fannie Mae, a federally chartered and privately owned corporation organized and existing under the Federal National Mortgage Association Charter Act, or any successor thereto.

EXHIBIT 5

"FDIC": Federal Deposit Insurance Corporation or any successor thereto.

"Final Recovery Determination": With respect to any defaulted Mortgage Loan or any REO Property (other than a Mortgage Loan or REO Property purchased by the Responsible Party, the Depositor or the Servicer pursuant to or as contemplated by Section 2.03, Section 3.16(c) or Section 9.01), a determination made by the Servicer that all Insurance Proceeds, Liquidation Proceeds and other payments or recoveries which the Servicer, in its reasonable good faith judgment, expects to be finally recoverable in respect thereof have been so recovered. The Servicer shall maintain records, prepared by a Servicing Officer, of each Final Recovery Determination made thereby.

"Fitch": Fitch Ratings, or its successor in interest.

"Fixed Swap Payment": With respect to any Distribution Date on or prior to the Distribution Date in January 2012, an amount equal to the product of (x) a fixed rate equal to 5.425% per annum, (y) the Swap Agreement Notional Balance for that Distribution Date and (z)(i) with respect to the initial Distribution Date, a fraction, the numerator of which is the number of days from and including the Closing Date to and including the day preceding the initial Distribution Date and the denominator of which is 360 and (ii) with respect to each Distribution Date thereafter, a fraction, the numerator of which is 30 and the denominator of which is 360.

"Floating Swap Payment": With respect to any Distribution Date on or prior to the Distribution Date in January 2012, an amount equal to the product of (x) Swap LIBOR (y) the Swap Agreement Notional Balance for that Distribution Date and (z) a fraction, the numerator of which is equal to the actual number of days in the related calculation period as provided in the Swap Agreement and the denominator of which is 360.

"Fixed-Rate Mortgage Loan": Each of the Mortgage Loans identified on the Mortgage Loan Schedule as having a fixed Mortgage Rate.

"Formula Rate": For any Distribution Date and the Class A Certificates and the Mezzanine Certificates, One-Month LIBOR *plus* the related Margin.

"Freddie Mac": Freddie Mac, a corporate instrumentality of the United States created and existing under Title III of the Emergency Home Finance Act of 1970, as amended, or any successor thereto.

"Gross Margin": With respect to each Adjustable-Rate Mortgage Loan, the fixed percentage set forth in the related Mortgage Note that is added to the Index on each Adjustment Date in accordance with the terms of the related Mortgage Note used to determine the Mortgage Rate for such Adjustable-Rate Mortgage Loan.

"Highest Priority": As of any date of determination, the Class of Mezzanine Certificates then outstanding with a Certificate Principal Balance greater than zero, with the highest priority for payments pursuant to Section 4.01, in the following order: Class M-1, Class M-2, Class M-3,

Class M-4, Class M-5, Class M-6, Class M-7, Class M-8, Class M-9 and Class M-10 Certificates.

"Indenture": An indenture relating to the issuance of notes secured by the Class CE Certificates, the Class P Certificates and/or the Class R Certificates (or any portion thereof).

"Independent": When used with respect to any specified Person, any such Person who (i) is in fact independent of the Depositor, the Servicer, the Seller and their respective Affiliates, (ii) does not have any direct financial interest in or any material indirect financial interest in the Depositor, the Servicer, the Seller or any Affiliate thereof, and (iii) is not connected with the Depositor, the Servicer, the Seller or any Affiliate thereof as an officer, employee, promoter, underwriter, trustee, partner, director or Person performing similar functions; provided, however, that a Person shall not fail to be Independent of the Depositor, the Servicer, the Seller or any Affiliate thereof merely because such Person is the beneficial owner of 1% or less of any class of securities issued by the Depositor, the Servicer, the Seller or any Affiliate thereof, as the case may be.

"Independent Contractor": Either (i) any Person (other than the Servicer) that would be an "independent contractor" with respect to REMIC I within the meaning of Section 856(d)(3) of the Code if REMIC I were a real estate investment trust (except that the ownership tests set forth in that section shall be considered to be met by any Person that owns, directly or indirectly, 35% or more of any Class of Certificates), so long as REMIC I does not receive or derive any income from such Person and provided that the relationship between such Person and REMIC I is at arm's length, all within the meaning of Treasury Regulation Section 1.856-4(b)(5), or (ii) any other Person (including the Servicer) if the Trustee has received an Opinion of Counsel to the effect that the taking of any action in respect of any REO Property by such Person, subject to any conditions therein specified, that is otherwise herein contemplated to be taken by an Independent Contractor will not cause such REO Property to cease to qualify as "foreclosure property" within the meaning of Section 860G(a)(8) of the Code (determined without regard to the exception applicable for purposes of Section 860D(a) of the Code), or cause any income realized in respect of such REO Property to fail to qualify as Rents from Real Property.

"Index": With respect to each Adjustable-Rate Mortgage Loan and each related Adjustment Date, the index specified in the related Mortgage Note.

"Insurance Proceeds": Proceeds of any title policy, hazard policy or other insurance policy covering a Mortgage Loan, to the extent such proceeds are not to be applied to the restoration of the related Mortgaged Property or released to the Mortgagor in accordance with the procedures that the Servicer would follow in servicing mortgage loans held for its own account, subject to the terms and conditions of the related Mortgage Note and Mortgage.

"Interest Accrual Period": With respect to any Distribution Date and the Class A Certificates and the Mezzanine Certificates, the period commencing on the Distribution Date of the month immediately preceding the month in which such Distribution Date occurs (or, in the case of the first Distribution Date, commencing on the Closing Date) and ending on the day preceding such Distribution Date. With respect to any Distribution Date and the Class CE

Certificates and the REMIC I Regular Interests, the one-month period ending on the last day of the calendar month preceding the month in which such Distribution Date occurs.

"Interest Carry Forward Amount": With respect to any Distribution Date and the Class A Certificates or the Mezzanine Certificates, the sum of (i) the amount, if any, by which (a) the Interest Distribution Amount for such Class of Certificates as of the immediately preceding Distribution Date exceeded (b) the actual amount distributed on such Class of Certificates in respect of interest on such immediately preceding Distribution Date, (ii) the amount of any Interest Carry Forward Amount for such Class of Certificates remaining unpaid from the previous Distribution Date and (iii) accrued interest on the sum of (i) and (ii) above calculated at the related Pass-Through Rate for the most recently ended Interest Accrual Period.

"Interest Determination Date": With respect to the Class A Certificates, the Mezzanine Certificates, REMIC I Regular Interest I-LTA1, REMIC I Regular Interest I-LTA2, REMIC I Regular Interest I-LTA3, REMIC I Regular Interest I-LTA4, REMIC I Regular Interest I-LTM1, REMIC I Regular Interest I-LTM2, REMIC I Regular Interest I-LTM3, REMIC I Regular Interest I-LTM4, REMIC I Regular Interest I-LTM5, REMIC I Regular Interest I-LTM6, REMIC I Regular Interest I-LTM7, REMIC I Regular Interest I-LTM8, REMIC I Regular Interest I-LTM9, REMIC I Regular Interest I-LTM10 and any Interest Accrual Period therefor, the second London Business Day preceding the commencement of such Interest Accrual Period.

"Interest Distribution Amount": With respect to any Distribution Date and the Class A Certificates, the Mezzanine Certificates and the Class CE Certificates, the aggregate Accrued Certificate Interest on the Certificates of such Class for such Distribution Date.

"Interest Remittance Amount": For any Distribution Date, the excess, if any, of (i) that portion of the Available Distribution Amount (without giving effect to any Net Swap Payment owed to the Swap Counterparty or any Swap Termination Payment owed to the Swap Counterparty not due to a Swap Counterparty Trigger Event) for that Distribution Date that represents interest received or advanced on the Mortgage Loans over (ii) any Net Swap Payment owed to the Swap Counterparty or Swap Termination Payment not due to a Swap Counterparty Trigger Event owed to the Swap Counterparty.

"Investment Account": As defined in Section 3.12.

"Late Collections": With respect to any Mortgage Loan and any Due Period, all amounts received subsequent to the Determination Date immediately following such Due Period, whether as late payments of Monthly Payments or as Insurance Proceeds, Liquidation Proceeds or otherwise, which represent late payments or collections of principal and/or interest due (without regard to any acceleration of payments under the related Mortgage and Mortgage Note) but delinquent for such Due Period and not previously recovered.

"Liquidation Event": With respect to any Mortgage Loan, any of the following events: (i) such Mortgage Loan is paid in full; (ii) a Final Recovery Determination is made as to such Mortgage Loan; or (iii) such Mortgage Loan is removed from REMIC I, by reason of its being purchased, sold or replaced pursuant to or as contemplated by Section 2.03, Section 3.16(c) or

Section 9.01. With respect to any REO Property, either of the following events: (i) a Final Recovery Determination is made as to such REO Property; or (ii) such REO Property is removed from REMIC I by reason of its being purchased pursuant to Section 9.01.

"Liquidation Proceeds": The amount (other than Insurance Proceeds or amounts received in respect of the rental of any REO Property prior to REO Disposition) received by the Servicer in connection with (i) the taking of all or a part of a Mortgaged Property by exercise of the power of eminent domain or condemnation, (ii) the liquidation of a defaulted Mortgage Loan through a trustee's sale, foreclosure sale or otherwise, or (iii) the repurchase, substitution or sale of a Mortgage Loan or an REO Property pursuant to or as contemplated by Section 2.03, Section 3.16(c), Section 3.23 or Section 9.01.

"Loan-to-Value Ratio": As of any date of determination, the fraction, expressed as a percentage, the numerator of which is the principal balance of the related Mortgage Loan at such date and the denominator of which is the Value of the related Mortgaged Property.

"London Business Day": Any day on which banks in the City of London and New York are open and conducting transactions in United States dollars.

"Margin": With respect to each class of the Class A Certificates and Mezzanine Certificates and, for purposes of the Marker Rate and the Maximum I-LTZZ Uncertificated Interest Deferral Amount, the specified REMIC I Regular Interest, as follows:

Class	REMIC I Regular Interest	Margin	
		(1) (%)	(2) (%)
A-1	I-LTA1	0.050%	0.100%
A-2	I-LTA2	0.100%	0.200%
A-3	I-LTA3	0.150%	0.300%
A-4	I-LTA4	0.240%	0.480%
M-1	I-LTM1	0.300%	0.450%
M-2	I-LTM2	0.310%	0.465%
M-3	I-LTM3	0.330%	0.495%
M-4	I-LTM4	0.370%	0.555%
M-5	I-LTM5	0.390%	0.585%
M-6	I-LTM6	0.450%	0.675%
M-7	I-LTM7	0.850%	1.275%
M-8	I-LTM8	0.970%	1.455%
M-9	I-LTM9	1.820%	2.730%
M-10	I-LTM10	2.000%	3.000%

(1) For each Interest Accrual Period for each Distribution Date on or prior to the Optional Termination Date.
(2) For each Interest Accrual Period thereafter.

"Marker Rate": With respect to the Class CE Certificates or the REMIC II Regular Interest CE-IO and any Distribution Date, a per annum rate equal to two (2) multiplied by the weighted average of the REMIC I Remittance Rates for the REMIC I Regular Interests (other than REMIC I Regular Interest I-LTP and REMIC I Regular Interest I-LTAA), with the rate on each such REMIC I Regular Interest (other than REMIC I Regular Interest I-LTZZ) subject to a cap equal to the Pass-Through Rate for the related Corresponding Certificate and with the rate on

EXHIBIT 5

REMIC I Regular Interest I-LTZZ subject to a cap of zero, in each case for purposes of this calculation; provided, however, each cap shall be multiplied by a fraction, the numerator of which is the actual number of days elapsed in the related Interest Accrual Period and the denominator of which is 30.

"Maximum I-LTZZ Uncertificated Interest Deferral Amount": With respect to any Distribution Date, the excess of (i) accrued interest at the REMIC I Remittance Rate applicable to REMIC I Regular Interest I-LTZZ for such Distribution Date on a balance equal to the Uncertificated Balance of REMIC I Regular Interest I-LTZZ *minus* the REMIC I Overcollateralized Amount, in each case for such Distribution Date, over (ii) Uncertificated Interest on REMIC I Regular Interest I-LTA1, REMIC I Regular Interest I-LTA2, REMIC I Regular Interest I-LTA3, REMIC I Regular Interest I-LTA4, REMIC I Regular Interest I-LTM1, REMIC I Regular Interest I-LTM2, REMIC I Regular Interest I-LTM3, REMIC I Regular Interest I-LTM4, REMIC I Regular Interest I-LTM5, REMIC I Regular Interest I-LTM6, REMIC I Regular Interest I-LTM7, REMIC I Regular Interest I-LTM8, REMIC I Regular Interest I-LTM9 and REMIC I Regular Interest I-LTM10 for such Distribution Date, with the rate on each such REMIC I Regular Interest subject to a cap equal to the lesser of (i) One-Month LIBOR *plus* the related Margin for the related Corresponding Certificate and (ii) the Net WAC Pass-Through Rate for the related Corresponding Certificate; provided, however, each cap shall be multiplied by a fraction, the numerator of which is the actual number of days elapsed in the related Interest Accrual Period and the denominator of which is 30.

"Maximum Mortgage Rate": With respect to each Adjustable-Rate Mortgage Loan, the percentage set forth in the related Mortgage Note as the maximum Mortgage Rate thereunder.

"Mezzanine Certificates": Collectively, the Class M-1 Certificates, the Class M-2 Certificates, the Class M-3 Certificates, the Class M-4 Certificates, the Class M-5 Certificates, the Class M-6 Certificates, the Class M-7 Certificates, the Class M-8 Certificates, the Class M-9 Certificates and the Class M-10 Certificates.

"Minimum Mortgage Rate": With respect to each Adjustable-Rate Mortgage Loan, the percentage set forth in the related Mortgage Note as the minimum Mortgage Rate thereunder.

"Monthly Payment": With respect to any Mortgage Loan, the scheduled monthly payment of principal and interest on such Mortgage Loan which is payable by the related Mortgagor from time to time under the related Mortgage Note, determined: (a) after giving effect to (i) any Deficient Valuation and/or Debt Service Reduction with respect to such Mortgage Loan and (ii) any reduction in the amount of interest collectible from the related Mortgagor pursuant to the Relief Act; (b) without giving effect to any extension granted or agreed to by the Servicer pursuant to Section 3.07 and (c) on the assumption that all other amounts, if any, due under such Mortgage Loan are paid when due.

"Moody's": Moody's Investors Service, Inc., or its successor in interest.

"Mortgage": With respect to each Mortgage Note, the mortgage, deed of trust or other instrument creating a first lien or second lien on, or first or second priority security interest in, a Mortgaged Property securing a Mortgage Note.

"Mortgage File": The mortgage documents listed in Section 2.01 pertaining to a particular Mortgage Loan and any additional documents required to be added to the Mortgage File pursuant to this Agreement.

"Mortgage Loan": Each mortgage loan transferred and assigned to the Trustee and delivered to the Custodian on behalf of the Trustee pursuant to Section 2.01 or Section 2.03(b) of this Agreement, as held from time to time as a part of the Trust Fund, the Mortgage Loans so held being identified in the Mortgage Loan Schedule.

"Mortgage Loan Purchase Agreement": The agreement among the Seller, the Responsible Party and the Depositor, regarding the sale of the Mortgage Loans by the Seller to the Depositor, substantially in the form of Exhibit D annexed hereto.

"Mortgage Loan Schedule": As of any date, the list of Mortgage Loans included in REMIC I on such date, attached hereto as Schedule 1. The Mortgage Loan Schedule shall set forth the following information with respect to each Mortgage Loan:

(i) the Mortgage Loan identifying number;

(ii) the state and zip code of the Mortgaged Property;

(iii) a code indicating whether the Mortgaged Property is owner-occupied;

(iv) the type of Residential Dwelling constituting the Mortgaged Property;

(v) the original months to maturity;

(vi) the stated remaining months to maturity from the Cut-off Date based on the original amortization schedule;

(vii) the Loan-to-Value Ratio at origination;

(viii) the Mortgage Rate in effect immediately following the Cut-off Date;

(ix) (A) the date on which the first Monthly Payment was due on the Mortgage Loan and (B) if such date is not consistent with the Due Date currently in effect, such Due Date;

(x) the stated maturity date;

(xi) the amount of the Monthly Payment at origination;

(xii) the amount of the Monthly Payment due on the first Due Date after the Cut-off Date;

(xiii) the last Due Date on which a Monthly Payment was actually applied to the unpaid Stated Principal Balance;

(xiv) the original principal amount of the Mortgage Loan;

(xv) the Stated Principal Balance of the Mortgage Loan as of the close of business on the Cut-off Date;

(xvi) with respect to each Adjustable-Rate Mortgage Loan, the Adjustment Dates, the Gross Margin, the Maximum Mortgage Rate, the Minimum Mortgage Rate, the Periodic Rate Cap, the maximum first Adjustment Date Mortgage Rate adjustment, the first Adjustment Date immediately following the origination date and the rounding code (i.e., nearest 0.125%, next highest 0.125%);

(xvii) a code indicating the purpose of the Mortgage Loan (i.e., purchase financing, Rate/Term Refinancing, Cash-Out Refinancing);

(xviii) the Mortgage Rate at origination;

(xix) a code indicating the documentation program (i.e., Full Documentation, Limited Documentation, Stated Income Documentation);

(xx) the risk grade;

(xxi) the Value of the Mortgaged Property;

(xxii) the sale price of the Mortgaged Property, if applicable;

(xxiii) the actual unpaid principal balance of the Mortgage Loan as of the Cut-off Date;

(xxiv) the type and term of the related Prepayment Charge;

(xxv) the program code; and

(xxvi) the total amount of points and fees charged such Mortgage Loan.

The Mortgage Loan Schedule shall set forth the following information with respect to the Mortgage Loans in the aggregate as of the Cut-off Date:

(1) the number of Mortgage Loans;

(2) the current Stated Principal Balance of the Mortgage Loans;

(3) the weighted average Mortgage Rate of the Mortgage Loans and

(4) weighted average maturity of the Mortgage Loans.

The Mortgage Loan Schedule shall be amended from time to time by the Depositor in accordance with the provisions of this Agreement. With respect to any Qualified Substitute Mortgage Loan, the Cut-off Date shall refer to the related Cut-off Date for such Mortgage Loan, determined in accordance with the definition of Cut-off Date herein.

"Mortgage Note": The original executed note or other evidence of the indebtedness of a Mortgagor under a Mortgage Loan.

"Mortgage Pool": The pool of Mortgage Loans, identified on Schedule 1 and existing from time to time thereafter, and any REO Properties acquired in respect thereof.

"Mortgage Rate": With respect to each Mortgage Loan, the annual rate at which interest accrues on such Mortgage Loan from time to time in accordance with the provisions of the related Mortgage Note, which rate (i) with respect to each Fixed-Rate Mortgage Loan shall remain constant at the rate set forth in the Mortgage Loan Schedule as the Mortgage Rate in effect immediately following the Cut-off Date and (ii) with respect to the Adjustable-Rate Mortgage Loans, (A) as of any date of determination until the first Adjustment Date following the Cut-off Date shall be the rate set forth in the Mortgage Loan Schedule as the Mortgage Rate in effect immediately following the Cut-off Date and (B) as of any date of determination thereafter shall be the rate as adjusted on the most recent Adjustment Date equal to the sum, rounded as provided in the Mortgage Note, of the Index, as most recently available as of a date prior to the Adjustment Date as set forth in the related Mortgage Note, *plus* the related Gross Margin; provided that the Mortgage Rate on such Adjustable-Rate Mortgage Loan on any Adjustment Date shall never be more than the lesser of (i) the sum of the Mortgage Rate in effect immediately prior to the Adjustment Date *plus* the related Periodic Rate Cap, if any, and (ii) the related Maximum Mortgage Rate, and shall never be less than the greater of (i) the Mortgage Rate in effect immediately prior to the Adjustment Date less the Periodic Rate Cap, if any, and (ii) the related Minimum Mortgage Rate. With respect to each Mortgage Loan that becomes an REO Property, as of any date of determination, the annual rate determined in accordance with the immediately preceding sentence as of the date such Mortgage Loan became an REO Property.

"Mortgaged Property": The underlying property securing a Mortgage Loan, including any REO Property, consisting of a fee simple estate in a parcel of land improved by a Residential Dwelling.

"Mortgagor": The obligor on a Mortgage Note.

"Net Monthly Excess Cashflow": With respect to any Distribution Date, the sum of (i) any Overcollateralization Reduction Amount and (ii) the excess of (x) the Available Distribution Amount for such Distribution Date over (y) the sum for such Distribution Date of (A) the Senior Interest Distribution Amount distributable to the holders of the Class A Certificates, (B) the Interest Distribution Amount distributable to the holders of the Mezzanine Certificates and (C) the Principal Remittance Amount.

"Net Swap Payment": With respect to each Distribution Date, the net payment required to be made pursuant to the terms of the Swap Agreement by either the Swap Counterparty or the Trustee, on behalf of the Trust, which net payment shall not take into account any Swap Termination Payment.

"Net WAC Pass-Through Rate": With respect to the Class A Certificates and the Mezzanine Certificates and any Distribution Date, a rate per annum (which will not be less than zero) equal to the excess, if any, of (a) the product of (i) a per annum rate equal to the weighted average of the Expense Adjusted Mortgage Rates of the then outstanding Mortgage Loans, weighted on the basis of the respective Stated Principal Balances of the Mortgage Loans as of the first day of the related Due Period and (ii) a fraction expressed as a percentage, the numerator of which is 30 and the denominator of which is the actual number of days in the related Interest Accrual Period, over (b) the product of (i) a fraction expressed as a percentage the numerator of which is the amount of any Net Swap Payments owed to the Swap Counterparty or Swap Termination Payment owed to the Swap Counterparty not due to a Swap Counterparty Trigger Event, and the denominator of which is equal to the Stated Principal Balance of the outstanding Mortgage Loans as of first day of the related Due Period and (ii) a fraction expressed as a percentage, the numerator of which is 360 and the denominator of which is the actual number of days in the related Interest Accrual Period. For federal income tax purposes, however, the foregoing shall be expressed as a per annum rate equal to the weighted average of the REMIC I Remittance Rates on the REMIC I Regular Interests, weighted on the basis of the Uncertificated Balance of each such REMIC I Regular Interests.

"Net WAC Rate Carryover Amount": With respect to any Class of the Class A Certificates and the Mezzanine Certificates and any Distribution Date, the sum of (A) the positive excess of (i) the amount of interest that would have accrued on such Class of Certificates for such Distribution Date had the Pass-Through Rate been calculated at the related Formula Rate (not to exceed 12.50% per annum) over (ii) the amount of interest accrued on such Class of Certificates at the Net WAC Pass-Through Rate for such Distribution Date and (B) the related Net WAC Rate Carryover Amount for the previous Distribution Date not previously distributed, together with interest thereon at a rate equal to the related Formula Rate (not to exceed 12.50% per annum) for such Class of Certificates for such Distribution Date.

"New Lease": Any lease of REO Property entered into on behalf of REMIC I, including any lease renewed or extended on behalf of REMIC I, if REMIC I has the right to renegotiate the terms of such lease.

"Nonrecoverable Advance": Any Advance previously made or proposed to be made in respect of a Mortgage Loan or REO Property that, in the good faith business judgment of the Servicer, will not or, in the case of a proposed Advance, would not be ultimately recoverable from related Late Collections, Insurance Proceeds or Liquidation Proceeds on such Mortgage Loan or REO Property as provided herein.

"Nonrecoverable Servicing Advance": Any Servicing Advance previously made or proposed to be made in respect of a Mortgage Loan or REO Property that, in the good faith business judgment of the Servicer, will not or, in the case of a proposed Servicing Advance,

would not be ultimately recoverable from related Late Collections, Insurance Proceeds or Liquidation Proceeds on such Mortgage Loan or REO Property as provided herein.

"Non-United States Person": Any Person other than a United States Person.

"Notional Amount": With respect to the Class CE Certificates and any Distribution Date, the aggregate Uncertificated Balance of the REMIC I Regular Interests for such Distribution Date.

"Officers' Certificate": A certificate signed by the Chairman of the Board, the Vice Chairman of the Board, the President or a vice president (however denominated), and by the Treasurer, the Secretary, or one of the assistant treasurers or assistant secretaries of the Servicer, the Seller or the Depositor, as applicable.

"One-Month LIBOR": With respect to the Class A Certificates, the Mezzanine Certificates and for purposes of the Marker Rate and Maximum I-LTZZ Uncertificated Interest Deferral Amount, REMIC I Regular Interest I-LTA1, REMIC I Regular Interest I-LTA2, REMIC I Regular Interest I-LTA3, REMIC I Regular Interest I-LTA4, REMIC I Regular Interest I-LTM1, REMIC I Regular Interest I-LTM2, REMIC I Regular Interest I-LTM3, REMIC I Regular Interest I-LTM4, REMIC I Regular Interest I-LTM5, REMIC I Regular Interest I-LTM6, REMIC I Regular Interest I-LTM7, REMIC I Regular Interest I-LTM8, REMIC I Regular Interest I-LTM9 and REMIC I Regular Interest I-LTM10 and any Interest Accrual Period therefor, the rate determined by the Trustee on the related Interest Determination Date on the basis of the offered rate for one-month U.S. dollar deposits, as such rate appears on Telerate Page 3750 as of 11:00 a.m. (London time) on such Interest Determination Date; provided that if such rate does not appear on Telerate Page 3750, the rate for such date will be determined on the basis of the offered rates of the Reference Banks for one-month U.S. dollar deposits, as of 11:00 a.m. (London time) on such Interest Determination Date. In such event, the Trustee will request the principal London office of each of the Reference Banks to provide a quotation of its rate. If on such Interest Determination Date, two or more Reference Banks provide such offered quotations, One-Month LIBOR for the related Interest Accrual Period shall be the arithmetic mean of such offered quotations (rounded upwards if necessary to the nearest whole multiple of 1/16%). If on such Interest Determination Date, fewer than two Reference Banks provide such offered quotations, One-Month LIBOR for the related Interest Accrual Period shall be the higher of (i) LIBOR as determined on the previous Interest Determination Date and (ii) the Reserve Interest Rate. Notwithstanding the foregoing, if, under the priorities described above, LIBOR for an Interest Determination Date would be based on LIBOR for the previous Interest Determination Date for the third consecutive Interest Determination Date, the Trustee, after consultation with the Depositor, shall select an alternative comparable index (over which the Trustee has no control), used for determining one-month Eurodollar lending rates that is calculated and published (or otherwise made available) by an independent party. The establishment of One-Month LIBOR by the Trustee and the Trustee's subsequent calculation of the interest rates applicable to the Certificates for the relevant Interest Accrual Period, in the absence of manifest error, shall be final and binding.

EXHIBIT 5

"Opinion of Counsel": A written opinion of counsel, who may, without limitation, be salaried counsel for the Depositor or the Servicer, acceptable to the Trustee, if such opinion is delivered to the Trustee, except that any opinion of counsel relating to (a) the qualification of any Trust REMIC as a REMIC or (b) compliance with the REMIC Provisions must be an opinion of Independent counsel.

"Original Mortgage Loan": Any of the Mortgage Loans included in REMIC I as of the Closing Date.

"Originator": New Century Mortgage Corporation, a California corporation, or its successor in interest, or Home123 Corporation, a California Corporation, or its successor in interest, as applicable.

"Overcollateralization Amount": With respect to any Distribution Date, the excess, if any, of (a) the aggregate Stated Principal Balances of the Mortgage Loans and REO Properties as of the last day of the related Due Period over (b) the sum of the aggregate Certificate Principal Balance of the Class A Certificates, the Mezzanine Certificates and the Class P Certificates, after giving effect to distributions to be made on such Distribution Date.

"Overcollateralization Deficiency Amount": With respect to any Distribution Date, the excess, if any, of (a) the Overcollateralization Target Amount applicable to such Distribution Date over (b) the Overcollateralization Amount applicable to such Distribution Date (calculated for this purpose only after assuming that 100% of the Principal Remittance Amount on such Distribution Date has been distributed).

"Overcollateralization Floor Amount": With respect to any Distribution Date, the amount equal to 0.50% of the aggregate Stated Principal Balance of the Mortgage Loans as of the Cut-off Date.

"Overcollateralization Increase Amount": With respect to any Distribution Date, the lesser of (a) the Overcollateralization Deficiency Amount as of such Distribution Date (calculated for this purpose only after assuming that 100% of the Principal Remittance Amount on such Distribution Date has been distributed) and (b) the sum of (i) the Net Monthly Excess Cash Flow for such Distribution Date and (ii) payments made by the Swap Counterparty and available for distribution pursuant to Section 4.07(a)(G).

"Overcollateralization Reduction Amount": With respect to any Distribution Date, an amount equal to the lesser of (a) the Principal Remittance Amount on such Distribution Date and (b) the Excess Overcollateralized Amount.

"Overcollateralization Target Amount": With respect to any Distribution Date, (i) prior to the Stepdown Date, an amount equal to 2.50% of the aggregate outstanding Stated Principal Balance of the Mortgage Loans as of the Cut-off Date, (ii) on or after the Stepdown Date provided a Trigger Event is not in effect, the greater of (x) 5.00% of the then current aggregate outstanding Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period and (y) the Overcollateralization Floor Amount, or (iii) on or after the Stepdown Date and if a Trigger Event is in effect, the Overcollateralization Target Amount for the immediately

preceding Distribution Date. Notwithstanding the foregoing, on and after any Distribution Date following the reduction of the aggregate Certificate Principal Balance of the Class A Certificates, the Mezzanine Certificates and the Class P Certificates to zero, the Overcollateralization Target Amount shall be zero.

"Ownership Interest": As to any Certificate, any ownership or security interest in such Certificate, including any interest in such Certificate as the Holder thereof and any other interest therein, whether direct or indirect, legal or beneficial, as owner or as pledgee.

"Pass-Through Rate": With respect to the Class A Certificates and the Mezzanine Certificates and any Distribution Date, the least of (x) the related Formula Rate for such Distribution Date, (y) the Net WAC Pass-Through Rate for such Distribution Date and (z) 12.50%. With respect to the Class CE Certificates and any Distribution Date, (i) a per annum rate equal to the percentage equivalent of a fraction, the numerator of which is (x) the interest on the Uncertificated Balance of each REMIC I Regular Interest described in clause (y) below computed at a rate equal to the related REMIC I Remittance Rate *minus* the Marker Rate and the denominator of which is (y) the aggregate Uncertificated Balance of REMIC I Regular Interest I-LTAA, I-LTA1, I-LTA2, I-LTA3, I-LTA4, I-LTM1, I-LTM2, I-LTM3, I-LTM4, I-LTM5, I-LTM6, I-LTM7, I-LTM8, I-LTM9, I-LTM10 and I-LTZZ and (ii) 100% of the interest on REMIC I Regular Interest I-LTP, expressed as a per annum rate.

"Percentage Interest": With respect to any Class of Certificates (other than the Residual Certificates), the undivided percentage ownership in such Class evidenced by such Certificate, expressed as a percentage, the numerator of which is the initial Certificate Principal Balance or Notional Amount represented by such Certificate and the denominator of which is the aggregate initial Certificate Principal Balance or initial Notional Amount of all of the Certificates of such Class. The Class A Certificates and the Class M-1 Certificates are issuable only in minimum Percentage Interests corresponding to minimum initial Certificate Principal Balances of $100,000 and integral multiples of $1.00 in excess thereof. The Mezzanine Certificates (other than the Class M-1 Certificates) are issuable only in minimum Percentage Interests corresponding to minimum initial Certificate Principal Balances of $250,000 and integral multiples of $1 in excess thereof. The Class P Certificates are issuable only in Percentage Interests corresponding to initial Certificate Principal Balances of $20 and integral multiples thereof. The Class CE Certificates are issuable only in minimum Percentage Interests corresponding to minimum initial Certificate Principal Balances of $100,000 and integral multiples of $1.00 in excess thereof; provided, however, that a single Certificate of each such Class of Certificates may be issued having a Percentage Interest corresponding to the remainder of the aggregate initial Certificate Principal Balance or Notional Amount of such Class or to an otherwise authorized denomination for such Class *plus* such remainder. With respect to any Residual Certificate, the undivided percentage ownership in such Class evidenced by such Certificate, as set forth on the face of such Certificate. The Residual Certificates are issuable in Percentage Interests of 20% and multiples thereof.

"Perfection Representations": The representations, warranties and covenants set forth in Schedule 3 attached hereto.

"Periodic Rate Cap": With respect to each Adjustable-Rate Mortgage Loan and any Adjustment Date therefor, the fixed percentage set forth in the related Mortgage Note, which is the maximum amount by which the Mortgage Rate for such Mortgage Loan may increase or decrease (without regard to the Maximum Mortgage Rate or the Minimum Mortgage Rate) on such Adjustment Date from the Mortgage Rate in effect immediately prior to such Adjustment Date.

"Permitted Investments": Any one or more of the following obligations or securities acquired at a purchase price of not greater than par, regardless of whether issued or managed by the Depositor, the Servicer, the Trustee or any of their respective Affiliates:

(i) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided such obligations are backed by the full faith and credit of the United States;

(ii) demand and time deposits in, certificates of deposit of, or bankers' acceptances issued by, any Depository Institution;

(iii) repurchase obligations with respect to any security described in clause (i) above entered into with a Depository Institution (acting as principal);

(iv) securities bearing interest or sold at a discount that are issued by any corporation incorporated under the laws of the United States of America or any state thereof and that are rated by each Rating Agency that rates such securities in its highest long-term unsecured rating categories at the time of such investment or contractual commitment providing for such investment, which securities mature in 365 days or less;

(v) commercial paper (including both non-interest-bearing discount obligations and interest-bearing obligations payable on demand or on a specified date not more than 30 days after the date of acquisition thereof) that is rated by each Rating Agency that rates such securities in its highest short-term unsecured debt rating available at the time of such investment;

(vi) units of money market funds, including those managed or advised by the Trustee or its Affiliates, that have been rated "AAA" by Fitch (if rated by Fitch) and "AAAm" or "AAAm-G" by S&P and "Aaa" by Moody's; and

(vii) if previously confirmed in writing to the Trustee, any other demand, money market or time deposit, or any other obligation, security or investment, as may be acceptable to the Rating Agencies as a permitted investment of funds backing securities having ratings equivalent to its highest initial rating of the Class A Certificates;

provided, however, that no instrument described hereunder shall evidence either the right to receive (a) only interest with respect to the obligations underlying such instrument or (b) both principal and interest payments derived from obligations underlying such instrument and the interest and principal payments with respect to such instrument provide a yield to maturity at par greater than 120% of the yield to maturity at par of the underlying obligations.

EXHIBIT 5

"Permitted Transferee": Any Transferee of a Residual Certificate other than a Disqualified Organization or Non-United States Person.

"Person": Any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Plan": Any "employee benefit plan" as defined in Section 3(3) of ERISA that is subject to Title I of ERISA, any "plan" as defined in Section 4975(e)(1) of the Code that is subject to Section 4975 of the Code or any entity deemed to hold plan assets of any of the foregoing.

"Prepayment Assumption": As defined in the Prospectus Supplement.

"Prepayment Charge": With respect to any Prepayment Period, any prepayment premium, penalty or charge payable by a Mortgagor in connection with any Principal Prepayment on a Mortgage Loan pursuant to the terms of the related Mortgage Note (other than any Servicer Prepayment Charge Payment Amount).

"Prepayment Charge Schedule": As of any date, the list of Prepayment Charges included in the Trust Fund on such date, attached hereto as Schedule 2 (including the prepayment charge summary attached thereto). The Prepayment Charge Schedule shall set forth the following information with respect to each Prepayment Charge:

(i) the Mortgage Loan identifying number;

(ii) a code indicating the type of Prepayment Charge;

(iii) the date on which the first Monthly Payment was due on the related Mortgage Loan;

(iv) the term of the related Prepayment Charge;

(v) the original Stated Principal Balance of the related Mortgage Loan; and

(vi) remaining prepayment term in months.

"Prepayment Interest Shortfall": With respect to any Principal Prepayments in full on the Mortgage Loans and any Distribution Date, any interest shortfall resulting from Principal Prepayments occurring between the first day of the related Prepayment Period and the last day of the prior calendar month. The obligations of the Servicer in respect of any Prepayment Interest Shortfall are set forth in Section 3.24.

"Prepayment Period": With respect to any Distribution Date the calendar month immediately preceding the calendar month in which such Distribution Date occurs.

"Principal Distribution Amount": With respect to any Distribution Date, an amount, not less than zero, equal to the sum of:

(i) the principal portion of each Monthly Payment on the Mortgage Loans due during the related Due Period, actually received on or prior to the related Determination Date or Advanced on or prior to the related Distribution Date;

(ii) the Stated Principal Balance of any Mortgage Loan that was purchased during the related Prepayment Period pursuant to or as contemplated by Section 2.03, Section 3.16(c) or Section 9.01 and the amount of any shortfall deposited in the Custodial Account in connection with the substitution of a Deleted Mortgage Loan pursuant to Section 2.03 during the related Prepayment Period;

(iii) the principal portion of all other unscheduled collections (including, without limitation, Principal Prepayments, Insurance Proceeds, Liquidation Proceeds, Subsequent Recoveries and REO Principal Amortization) received during the related Prepayment Period, net of any portion thereof that represents a recovery of principal for which an Advance was made by the Servicer pursuant to Section 4.03 in respect of a preceding Distribution Date; and

(iv) the amount of any Overcollateralization Increase Amount for such Distribution Date; *minus*

(v) the amount of any Overcollateralization Reduction Amount for such Distribution Date; and

(vi) any Net Swap Payment owed to the Swap Counterparty or Swap Termination Payment not due to a Swap Counterparty Trigger Event owed to the Swap Counterparty to the extent not covered by that portion of the Available Distribution Amount (without giving effect to any Net Swap Payment owed to the Swap Counterparty or any Swap Termination Payment owed to the Swap Counterparty not due to a Swap Counterparty Trigger Event) for that Distribution Date that represents interest received or advanced on the Mortgage Loans.

"Principal Prepayment": Any payment of principal made by the Mortgagor on a Mortgage Loan which is received in advance of its scheduled Due Date and which is not accompanied by an amount of interest representing the full amount of scheduled interest due on any Due Date in any month or months subsequent to the month of prepayment.

"Principal Remittance Amount": With respect to any Distribution Date, the sum of the amounts set forth in (i) through (iii) of the definition of Principal Distribution Amount.

"Private Certificates": As defined in Section 5.02(b).

"Prospectus Supplement": The Prospectus Supplement, dated August 7, 2006, relating to the public offering of the Class A Certificates and the Mezzanine Certificates (other than the Class M-10 Certificates).

"PTCE": A Prohibited Transaction Class Exemption issued by the United States Department of Labor which provides that exemptive relief is available to any party to any transaction which satisfies the conditions of the exemption.

"Purchase Price": With respect to any Mortgage Loan or REO Property to be purchased pursuant to or as contemplated by Section 2.03, Section 3.16(c) or Section 9.01, and as confirmed by a certification from a Servicing Officer to the Trustee, an amount equal to the sum of (i) 100% of the Stated Principal Balance thereof as of the date of purchase (or such other price as provided in Section 9.01), (ii) in the case of (x) a Mortgage Loan, accrued interest on such Stated Principal Balance at the applicable Expense Adjusted Mortgage Rate in effect from time to time from the Due Date as to which interest was last covered by a payment by the Mortgagor or an Advance by the Servicer, which payment or Advance had as of the date of purchase been distributed pursuant to Section 4.01, through the end of the calendar month in which the purchase is to be effected *plus* and (y) an REO Property, the sum of (1) accrued interest on such Stated Principal Balance at the applicable Expense Adjusted Mortgage Rate in effect from time to time from the Due Date as to which interest was last covered by a payment by the Mortgagor or an Advance by the Servicer through the end of the calendar month immediately preceding the calendar month in which such REO Property was acquired, *plus* (2) REO Imputed Interest for such REO Property for each calendar month commencing with the calendar month in which such REO Property was acquired and ending with the calendar month in which such purchase is to be effected, net of the total of all net rental income, Insurance Proceeds, Liquidation Proceeds and Advances that as of the date of purchase had been distributed as or to cover REO Imputed Interest pursuant to Section 4.01, (iii) any unreimbursed Servicing Advances and Advances (including Nonrecoverable Advances and Nonrecoverable Servicing Advances) and any unpaid Servicing Fees allocable to such Mortgage Loan or REO Property, (iv) any amounts previously withdrawn from the Custodial Account in respect of such Mortgage Loan or REO Property pursuant to Section 3.11(a)(ix) and Section 3.16(b), and (v) in the case of a Mortgage Loan required to be purchased pursuant to Section 2.03, expenses reasonably incurred or to be incurred by the Servicer or the Trustee in respect of the breach or defect giving rise to the purchase obligation including any costs and damages incurred by the Trust Fund in connection with any violation by such loan of any predatory or abusive lending law.

"Qualified Correspondent": Any Person from which the Servicer purchased Mortgage Loans, provided that the following conditions are satisfied: (i) such Mortgage Loans were originated pursuant to an agreement between the Servicer and such Person that contemplated that such Person would underwrite mortgage loans from time to time, for sale to the Servicer, in accordance with underwriting guidelines designated by the Servicer ("Designated Guidelines") or guidelines that do not vary materially from such Designated Guidelines; (ii) such Mortgage Loans were in fact underwritten as described in clause (i) above and were acquired by the Servicer within 180 days after origination; (iii) either (x) the Designated Guidelines were, at the time such Mortgage Loans were originated, used by the Servicer in origination of mortgage loans of the same type as the Mortgage Loans for the Servicer's own account or (y) the Designated Guidelines were, at the time such Mortgage Loans were underwritten, designated by the Servicer on a consistent basis for use by lenders in originating mortgage loans to be purchased by the Servicer; and (iv) the Servicer employed, at the time such Mortgage Loans were acquired by the Servicer, pre-purchase or post-purchase quality assurance procedures (which may involve,

EXHIBIT 5

among other things, review of a sample of mortgage loans purchased during a particular time period or through particular channels) designed to ensure that Persons from which it purchased mortgage loans properly applied the underwriting criteria designated by the Servicer.

"Qualified Substitute Mortgage Loan": A mortgage loan substituted for a Deleted Mortgage Loan pursuant to the terms of this Agreement which must, on the date of such substitution, (i) have an outstanding Stated Principal Balance, after application of all scheduled payments of principal and interest due during or prior to the month of substitution, not in excess of the Stated Principal Balance of the Deleted Mortgage Loan as of the Due Date in the calendar month during which the substitution occurs, (ii) have a Mortgage Rate not less than (and not more than one percentage point in excess of) the Mortgage Rate of the Deleted Mortgage Loan, (iii) with respect to any Adjustable-Rate Mortgage Loan, have a Maximum Mortgage Rate not less than the Maximum Mortgage Rate on the Deleted Mortgage Loan, (iv) with respect to any Adjustable-Rate Mortgage Loan, have a Minimum Mortgage Rate not less than the Minimum Mortgage Rate of the Deleted Mortgage Loan, (v) with respect to any Adjustable-Rate Mortgage Loan, have a Gross Margin equal to the Gross Margin of the Deleted Mortgage Loan, (vi) with respect to any Adjustable-Rate Mortgage Loan, have a next Adjustment Date not more than two months later than the next Adjustment Date on the Deleted Mortgage Loan, (vii) have a remaining term to maturity not greater than (and not more than one year less than) that of the Deleted Mortgage Loan, (viii) have the same Due Date as the Due Date on the Deleted Mortgage Loan, (ix) have a Loan-to-Value Ratio as of the date of substitution equal to or lower than the Loan-to-Value Ratio of the Deleted Mortgage Loan as of such date, (x) have a risk grading determined by the Originator at least equal to the risk grading assigned on the Deleted Mortgage Loan and (xi) conform to each representation and warranty set forth in Section 6 of the Mortgage Loan Purchase Agreement applicable to the Deleted Mortgage Loan. In the event that one or more mortgage loans are substituted for one or more Deleted Mortgage Loans, the amounts described in clause (i) hereof shall be determined on the basis of aggregate principal balances, the Mortgage Rates described in clause (ii) hereof shall be determined on the basis of weighted average Mortgage Rates, the terms described in clause (vii) hereof shall be determined on the basis of weighted average remaining term to maturity, the Loan-to-Value Ratios described in clause (ix) hereof shall be satisfied as to each such mortgage loan, the risk gradings described in clause (x) hereof shall be satisfied as to each such mortgage loan and, except to the extent otherwise provided in this sentence, the representations and warranties described in clause (xi) hereof must be satisfied as to each Qualified Substitute Mortgage Loan or in the aggregate, as the case may be.

"Rate/Term Refinancing": A Refinanced Mortgage Loan, the proceeds of which are not more than a nominal amount in excess of the existing first mortgage loan and any subordinate mortgage loan on the related Mortgaged Property and related closing costs, and were used exclusively (except for such nominal amount) to satisfy the then existing first mortgage loan and any subordinate mortgage loan of the Mortgagor on the related Mortgaged Property and to pay related closing costs.

"Rating Agency or Rating Agencies": Fitch, Moody's and S&P or their successors. If such agencies or their successors are no longer in existence, "Rating Agencies" shall be such

nationally recognized statistical rating agencies, or other comparable Persons, designated by the Depositor, notice of which designation shall be given to the Trustee and the Servicer.

"Realized Loss": With respect to each Mortgage Loan as to which a Final Recovery Determination has been made, an amount (not less than zero) equal to (i) the unpaid principal balance of such Mortgage Loan as of the commencement of the calendar month in which the Final Recovery Determination was made, *plus* (ii) accrued interest from the Due Date as to which interest was last paid by the Mortgagor through the end of the calendar month in which such Final Recovery Determination was made, calculated in the case of each calendar month during such period (A) at an annual rate equal to the annual rate at which interest was then accruing on such Mortgage Loan and (B) on a principal amount equal to the Stated Principal Balance of such Mortgage Loan as of the close of business on the Distribution Date during such calendar month, *plus* (iii) any amounts previously withdrawn from the Custodial Account in respect of such Mortgage Loan pursuant to Section 3.11(a)(ix) and Section 3.16(b), *minus* (iv) the proceeds, if any, received in respect of such Mortgage Loan during the calendar month in which such Final Recovery Determination was made, net of amounts that are payable therefrom to the Servicer with respect to such Mortgage Loan pursuant to Section 3.11(a)(iii).

With respect to any REO Property as to which a Final Recovery Determination has been made, an amount (not less than zero) equal to (i) the unpaid principal balance of the related Mortgage Loan as of the date of acquisition of such REO Property on behalf of REMIC I, *plus* (ii) accrued interest from the Due Date as to which interest was last paid by the Mortgagor in respect of the related Mortgage Loan through the end of the calendar month immediately preceding the calendar month in which such REO Property was acquired, calculated in the case of each calendar month during such period (A) at an annual rate equal to the annual rate at which interest was then accruing on the related Mortgage Loan and (B) on a principal amount equal to the Stated Principal Balance of the related Mortgage Loan as of the close of business on the Distribution Date during such calendar month, *plus* (iii) REO Imputed Interest for such REO Property for each calendar month commencing with the calendar month in which such REO Property was acquired and ending with the calendar month in which such Final Recovery Determination was made, *plus* (iv) any amounts previously withdrawn from the Custodial Account in respect of the related Mortgage Loan pursuant to Section 3.11(a)(ix) and Section 3.16(b), *minus* (v) the aggregate of all Advances and Servicing Advances (in the case of Servicing Advances, without duplication of amounts netted out of the rental income, Insurance Proceeds and Liquidation Proceeds described in clause (vi) below) made by the Servicer in respect of such REO Property or the related Mortgage Loan for which the Servicer has been or, in connection with such Final Recovery Determination, will be reimbursed pursuant to Section 3.23 out of rental income, Insurance Proceeds and Liquidation Proceeds received in respect of such REO Property, *minus* (vi) the total of all net rental income, Insurance Proceeds and Liquidation Proceeds received in respect of such REO Property that has been, or in connection with such Final Recovery Determination, will be transferred to the Certificate Account pursuant to Section 3.23.

With respect to each Mortgage Loan which has become the subject of a Deficient Valuation, the difference between the principal balance of the Mortgage Loan outstanding

immediately prior to such Deficient Valuation and the principal balance of the Mortgage Loan as reduced by the Deficient Valuation.

With respect to each Mortgage Loan which has become the subject of a Debt Service Reduction, the portion, if any, of the reduction in each affected Monthly Payment attributable to a reduction in the Mortgage Rate imposed by a court of competent jurisdiction. Each such Realized Loss shall be deemed to have been incurred on the Due Date for each affected Monthly Payment.

If the Servicer receives Subsequent Recoveries with respect to any Mortgage Loan, the amount of the Realized Loss with respect to that Mortgage Loan will be reduced to the extent such recoveries are applied to principal distributions on any Distribution Date.

Realized Losses allocated to the Class CE Certificates shall be allocated first to the REMIC II Regular Interest CE-IO in reduction of the accrued but unpaid interest thereon until such accrued and unpaid interest shall have been reduced to zero and then to the REMIC II Regular Interest CE-PO in reduction of the Principal Balance thereof.

"Record Date": With respect to each Distribution Date and any Book-Entry Certificate, the Business Day immediately preceding such Distribution Date. With respect to each Distribution Date and any other Certificates, including any Definitive Certificates, the last Business Day of the month immediately preceding the month in which such Distribution Date occurs, except in the case of the first Record Date which shall be the Closing Date.

"Reference Banks": Deutsche Bank AG, Barclays' Bank PLC, The Tokyo Mitsubishi Bank and National Westminster Bank PLC and their successors in interest; provided, however, that if any of the foregoing banks are not suitable to serve as a Reference Bank, then any leading banks selected by the Trustee, after consultation with the Depositor, which are engaged in transactions in Eurodollar deposits in the international Eurocurrency market (i) with an established place of business in London and (ii) not controlling, under the control of or under common control with the Depositor or any Affiliate thereof.

"Refinanced Mortgage Loan": A Mortgage Loan the proceeds of which were not used to purchase the related Mortgaged Property.

"Regular Certificate": Any Class A Certificate, Mezzanine Certificate, Class CE Certificate or Class P Certificate.

"Regular Interest": A "regular interest" in a REMIC within the meaning of Section 860G(a)(1) of the Code.

"Regulation AB": Subpart 229.1100 – Asset Backed Securities (Regulation AB), 17 C.F.R. §§229.1100-229.1123, as such may be amended from time to time, and subject to such clarification and interpretation as have been provided by the Commission in the adopting release (Asset-Backed Securities, Securities Act Release No. 33-8518, 70 Fed. Reg. 1,506, 1,531 (Jan. 7, 2005)) or by the staff of the Commission, or as may be provided by the Commission or its staff from time to time.

EXHIBIT 5

"Relief Act": The Servicemembers Civil Relief Act.

"Relief Act Interest Shortfall": With respect to any Distribution Date and any Mortgage Loan, any reduction in the amount of interest collectible on such Mortgage Loan for the most recently ended calendar month as a result of the application of the Relief Act.

"REMIC": A "real estate mortgage investment conduit" within the meaning of Section 860D of the Code.

"REMIC I": The segregated pool of assets subject hereto (exclusive of the Swap Account and the Swap Agreement, each of which is not an asset of any REMIC), constituting the primary trust created hereby and to be administered hereunder, with respect to which a REMIC election is to be made, consisting of: (i) such Mortgage Loans and Prepayment Charges related thereto as from time to time are subject to this Agreement, together with the Mortgage Files relating thereto, and together with all collections thereon and proceeds thereof; (ii) any REO Property, together with all collections thereon and proceeds thereof; (iii) the Trustee's rights with respect to the Mortgage Loans under all insurance policies required to be maintained pursuant to this Agreement and any proceeds thereof; (iv) the Depositor's rights under the Mortgage Loan Purchase Agreement (including any security interest created thereby); and (v) the Custodial Account (other than any amounts representing any Servicer Prepayment Charge Payment Amount), the Certificate Account (other than any amounts representing any Servicer Prepayment Charge Payment Amount) and any REO Account, and such assets that are deposited therein from time to time and any investments thereof, together with any and all income, proceeds and payments with respect thereto. Notwithstanding the foregoing, however, REMIC I specifically excludes all payments and other collections of principal and interest due on the Mortgage Loans on or before the Cut-off Date and all Prepayment Charges payable in connection with Principal Prepayments on the Mortgage Loans made before the Cut-off Date.

"REMIC I Interest Loss Allocation Amount": With respect to any Distribution Date, an amount equal to (a) the product of (i) the aggregate Stated Principal Balance of the Mortgage Loans and REO Properties then outstanding and (ii) the REMIC I Remittance Rate for REMIC I Regular Interest I-LTAA *minus* the Marker Rate, divided by (b) 12.

"REMIC I Overcollateralized Amount": With respect to any date of determination, (i) 1% of the aggregate Uncertificated Balance of the REMIC I Regular Interests (other than REMIC I Regular Interest I-LTP) *minus* (ii) the aggregate Uncertificated Balance of REMIC I Regular Interest I-LTA1, REMIC I Regular Interest I-LTA2, REMIC I Regular Interest I-LTA3, REMIC I Regular Interest I-LTA4, REMIC I Regular Interest I-LTM1, REMIC I Regular Interest I-LTM2, REMIC I Regular Interest I-LTM3, REMIC I Regular Interest I-LTM4, REMIC I Regular Interest I-LTM5, REMIC I Regular Interest I-LTM6, REMIC I Regular Interest I-LTM7, REMIC I Regular Interest I-LTM8, REMIC I Regular Interest I-LTM9, REMIC I Regular Interest I-LTM10, in each case as of such date of determination.

"REMIC I Principal Loss Allocation Amount": With respect to any Distribution Date, an amount equal to the product of (i) the aggregate Stated Principal Balance of the Mortgage Loans and REO Properties then outstanding and (ii) 1 *minus* a fraction, the numerator of which is two

times the aggregate Uncertificated Balance of REMIC I Regular Interest I-LTA1, REMIC I Regular Interest I-LTA2, REMIC I Regular Interest I-LTA3, REMIC I Regular Interest I-LTA4, REMIC I Regular Interest I-LTM1, REMIC I Regular Interest I-LTM2, REMIC I Regular Interest I-LTM3, REMIC I Regular Interest I-LTM4, REMIC I Regular Interest I-LTM5, REMIC I Regular Interest I-LTM6, REMIC I Regular Interest I-LTM7, REMIC I Regular Interest I-LTM8, REMIC I Regular Interest I-LTM9 and REMIC I Regular Interest I-LTM10 and the denominator of which is the aggregate Uncertificated Balance of REMIC I Regular Interest I-LTA1, REMIC I Regular Interest I-LTA2, REMIC I Regular Interest I-LTA3, REMIC I Regular Interest I-LTM1, REMIC I Regular Interest I-LTM2, REMIC I Regular Interest I-LTM3, REMIC I Regular Interest I-LTM4, REMIC I Regular Interest I-LTM5, REMIC I Regular Interest I-LTM6, REMIC I Regular Interest I-LTM7, REMIC I Regular Interest I-LTM8, REMIC I Regular Interest I-LTM9, REMIC I Regular Interest I-LTM10 and REMIC I Regular Interest I-LTZZ.

"REMIC I Regular Interest": Any of the separate non-certificated beneficial ownership interests in REMIC I issued hereunder and designated as a "regular interest" in REMIC I. Each REMIC I Regular Interest shall accrue interest at the related REMIC I Remittance Rate in effect from time to time or shall otherwise be entitled to interest as set forth herein, and shall be entitled to distributions of principal, subject to the terms and conditions hereof, in an aggregate amount equal to its initial Uncertificated Balance as set forth in the Preliminary Statement hereto. The REMIC I Regular Interests are as follows: REMIC I Regular Interest I-LTAA, REMIC I Regular Interest I-LTA1, REMIC I Regular Interest I-LTA2, REMIC I Regular Interest I-LTA3, REMIC I Regular Interest I-LTA4, REMIC I Regular Interest I-LTM1, REMIC I Regular Interest I-LTM2, REMIC I Regular Interest I-LTM3, REMIC I Regular Interest I-LTM4, REMIC I Regular Interest I-LTM5, REMIC I Regular Interest I-LTM6, REMIC I Regular Interest I-LTM7, REMIC I Regular Interest I-LTM8, REMIC I Regular Interest I-LTM9, REMIC I Regular Interest I-LTM10, REMIC I Regular Interest I-LTZZ and REMIC I Regular Interest I-LTP.

"REMIC I Remittance Rate": With respect to each REMIC I Regular Interest and any Distribution Date, the weighted average of the Expense Adjusted Mortgage Rates of the Mortgage Loans, weighted based on their Stated Principal Balances as of the first day of the related Due Period.

"REMIC I Required Overcollateralized Amount": 1% of the Overcollateralization Target Amount.

"REMIC II": The segregated pool of assets consisting of all of the REMIC I Regular Interests conveyed in trust to the Trustee, for the benefit of the Class A Certificates, the Mezzanine Certificates, the Class CE Certificates, the Class P Certificates and the Class R-II Interest and all amounts deposited therein, with respect to which a separate REMIC election is to be made.

"REMIC II Regular Interests": Any Regular Interest issued by REMIC II, the ownership of which is evidenced by a Class A Certificate, Class M Certificate or Class CE Certificate.

"REMIC II Regular Interest CE-IO": A separate non-certificated regular interest of REMIC II designated as a REMIC II Regular Interest. REMIC II Regular Interest CE-IO shall have no entitlement to principal and shall be entitled to distributions of interest subject to the terms and conditions hereof, in an aggregate amount equal to interest distributable with respect to the Class CE Certificates pursuant to the terms and conditions hereof.

"REMIC II Regular Interest CE-PO": A separate non-certificated regular interest of REMIC II designated as a REMIC II Regular Interest. REMIC II Regular Interest CE-PO shall have no entitlement to interest and shall be entitled to distributions of principal subject to the terms and conditions hereof, in an aggregate amount equal to principal distributable with respect to the Class CE Certificates pursuant to the terms and conditions hereof.

"REMIC Provisions": Provisions of the federal income tax law relating to real estate mortgage investment conduits, which appear at Section 860A through 860G of the Code, and related provisions, and proposed, temporary and final regulations and published rulings, notices and announcements promulgated thereunder, as the foregoing may be in effect from time to time.

"Remittance Report": A report in form and substance acceptable to the Trustee on an electronic data file or tape prepared by the Servicer pursuant to Section 4.03 containing the data elements specified on Schedule 4, hereto, with such additions, deletions and modifications as agreed to by the Trustee and the Servicer.

"Rents from Real Property": With respect to any REO Property, gross income of the character described in Section 856(d) of the Code as being included in the term "rents from real property."

"REO Account": The account or accounts maintained, or caused to be maintained, by the Servicer in respect of an REO Property pursuant to Section 3.23.

"REO Disposition": The sale or other disposition of an REO Property on behalf of REMIC I.

"REO Imputed Interest": As to any REO Property, for any calendar month during which such REO Property was at any time part of REMIC I, one month's interest at the applicable Expense Adjusted Mortgage Rate on the Stated Principal Balance of such REO Property (or, in the case of the first such calendar month, of the related Mortgage Loan, if appropriate) as of the close of business on the Distribution Date in such calendar month.

"REO Principal Amortization": With respect to any REO Property, for any calendar month, the excess, if any, of (a) the aggregate of all amounts received in respect of such REO Property during such calendar month, whether in the form of rental income, sale proceeds (including, without limitation, that portion of the Termination Price paid in connection with a purchase of all of the Mortgage Loans and REO Properties pursuant to Section 9.01 that is allocable to such REO Property) or otherwise, net of any portion of such amounts (i) payable pursuant to Section 3.23(c) in respect of the proper operation, management and maintenance of such REO Property or (ii) payable or reimbursable to the Servicer pursuant to Section 3.23(d) for unpaid Servicing Fees in respect of the related Mortgage Loan and unreimbursed Servicing

Advances and Advances in respect of such REO Property or the related Mortgage Loan, over (b) the REO Imputed Interest in respect of such REO Property for such calendar month.

"REO Property": A Mortgaged Property acquired by the Servicer on behalf of REMIC I through foreclosure or deed-in-lieu of foreclosure, as described in Section 3.23.

"Request for Release": A release signed by a Servicing Officer, in the form of Exhibit 3 to the Custodial Agreement.

"Reserve Interest Rate": With respect to any Interest Determination Date, the rate per annum that the Trustee determines to be either (i) the arithmetic mean (rounded upwards if necessary to the nearest whole multiple of 1/16%) of the one-month U.S. dollar lending rates which New York City banks selected by the Trustee, after consultation with the Depositor, are quoting on the relevant Interest Determination Date to the principal London offices of leading banks in the London interbank market or (ii) in the event that the Trustee can determine no such arithmetic mean, the lowest one-month U.S. dollar lending rate which New York City banks selected by the Trustee, after consultation with the Depositor, are quoting on such Interest Determination Date to leading European banks.

"Residential Dwelling": Any one of the following: (i) an attached, detached or semi-detached one-family dwelling, (ii) an attached, detached or semi-detached two-to four-family dwelling, (iii) a one-family dwelling unit in a Fannie Mae eligible condominium project, or (iv) an attached, detached or semi-detached one-family dwelling in a planned unit development, none of which is a co-operative or mobile home (as defined in 42 United States Code, Section 5402(6)).

"Residual Certificates": The Class R Certificates.

"Residual Interest": The sole class of "residual interests" in a REMIC within the meaning of Section 860G(a)(2) of the Code.

"Responsible Officer": When used with respect to the Trustee, any vice president, managing director, director, any assistant vice president, the Secretary, any assistant secretary, the Treasurer, any assistant treasurer, any associate, any trust officer or assistant trust officer or any other officer of the Trustee having direct responsibility over this Agreement or otherwise engaged in performing functions similar to those performed by any of the above designated officers and, with respect to a particular matter, to whom such matter is referred because of such officer's knowledge of and familiarity with the particular subject.

"Responsible Party": NC Capital Corporation, a California corporation, or its successor in interest, in its capacity as responsible party under the Mortgage Loan Purchase Agreement.

"Rolling Three-Month Delinquency Average": With respect to any Distribution Date, the average aggregate unpaid principal balance of the Mortgage Loans delinquent 60 days or more for each of the three (or one and two, in the case of the Distribution Dates in September 2006 and October 2006, respectively) immediately preceding months.

"S&P": Standard & Poor's Ratings Services, a division of the McGraw-Hill Companies, Inc., or its successor in interest.

"Sarbanes Certification": As defined in Section 12.05(a)(iv).

"Securitization Transaction": Any transaction involving either (1) a sale or other transfer of some or all of the Mortgage Loans directly or indirectly to an issuing entity in connection with an issuance of publicly offered or privately placed, rated or unrated mortgage-backed securities or (2) an issuance of publicly offered or privately placed, rated or unrated securities, the payments on which are determined primarily by reference to one or more portfolios of residential mortgage loans consisting, in whole or in part, of some or all of the Mortgage Loans.

"Seller": Carrington Securities, LP, a Delaware limited partnership, or its successor in interest, in its capacity as seller under the Mortgage Loan Purchase Agreement.

"Senior Interest Distribution Amount": With respect to any Distribution Date, an amount equal to the sum of (i) the Interest Distribution Amount for such Distribution Date for the Class A Certificates and (ii) the Interest Carry Forward Amount, if any, for such Distribution Date for the Class A Certificates.

"Servicer": New Century Mortgage Corporation, a California corporation, or any successor servicer appointed as herein provided, in its capacity as Servicer hereunder.

"Servicer Event of Default": One or more of the events described in Section 7.01.

"Servicer Information": As defined in Section 12.07(a)(i).

"Servicer Prepayment Charge Payment Amount": The amounts payable by the Servicer in respect of any waived Prepayment Charges pursuant to Section 3.01.

"Servicer Remittance Date": With respect to any Distribution Date, by 1:00 p.m. New York time on the Business Day preceding the related Distribution Date.

"Servicer Termination Test": The Servicer Termination Test will be failed with respect to any Distribution Date if the aggregate amount of Realized Losses incurred since the Cut-off Date through the last day of the related Due Period (reduced by the aggregate amount of Subsequent Recoveries received from the Cut-off Date through the last day of the related Due Period) divided by aggregate Stated Principal Balance of the Mortgage Loans as of the Cut-off Date exceeds the applicable percentages set forth below with respect to such Distribution Date:

Distribution Date Occurring In	Percentage
September 2009 through August 2010	3.05% for the first distribution date of this period, plus an additional 1/12th of 1.75% for each distribution date thereafter
September 2010 through August 2011	4.80% for the first distribution date of this period, plus an additional 1/12th of 1.40% for each distribution date thereafter
September 2011 through August 2012	6.20% for the first distribution date of this

EXHIBIT 5

	period, plus an additional 1/12th of 0.75% for each distribution date thereafte
September 2012 and thereafter	6.95%

"Servicing Account": The account or accounts created and maintained pursuant to Section 3.09.

"Servicing Advances": The reasonable "out-of-pocket" costs and expenses (including legal fees) incurred by the Servicer in connection with a default, delinquency or other unanticipated event by the Servicer in the performance of its servicing obligations, including, but not limited to, the cost of (i) the preservation, restoration, inspection and protection of a Mortgaged Property, (ii) any enforcement or judicial proceedings, including but not limited to foreclosures and litigation, in respect of a particular Mortgage Loan, (iii) the management (including reasonable fees in connection therewith) and liquidation of any REO Property and (iv) the performance of its obligations under Section 3.01, Section 3.09, Section 3.14, Section 3.16 and Section 3.23. The Servicer shall not be required to make any Nonrecoverable Servicing Advances.

"Servicing Criteria": The "servicing criteria" set forth in Item 1122(d) of Regulation AB, as such may be amended from time to time.

"Servicing Fee": With respect to each Mortgage Loan and for any calendar month, an amount equal to the Servicing Fee Rate accrued for one month (or in the event of any payment of interest which accompanies a Principal Prepayment in full made by the Mortgagor during such calendar month, interest for the number of days covered by such payment of interest) on the same principal amount on which interest on such Mortgage Loan accrues for such calendar month, calculated on the basis of a 360-day year consisting of twelve 30-day months. A portion of such Servicing Fee may be retained by any Sub-Servicer as its servicing compensation.

"Servicing Fee Rate": 0.500% per annum.

"Servicing Officer": Any officer of the Servicer involved in, or responsible for, the administration and servicing of Mortgage Loans, whose name and specimen signature appear on a list of Servicing Officers furnished by the Servicer to the Trustee and the Depositor on the Closing Date, as such list may from time to time be amended.

"Servicing Transfer Costs": Shall mean all reasonable costs and expenses incurred by the Trustee in connection with the transfer of servicing from a predecessor servicer, including, without limitation, any reasonable costs or expenses associated with the complete transfer of all servicing data and the completion, correction or manipulation of such servicing data as may be required by the Trustee to correct any errors or insufficiencies in the servicing data or otherwise to enable the Trustee (or any successor servicer appointed pursuant to Section 7.02) to service the Mortgage Loans properly and effectively.

"Single Certificate": With respect to any Class of Certificates (other than the Class P Certificates and the Residual Certificates), a hypothetical Certificate of such Class evidencing a Percentage Interest for such Class corresponding to an initial Certificate Principal Balance of

$1,000. With respect to the Class P Certificates and the Residual Certificates, a hypothetical Certificate of such Class evidencing a 100% Percentage Interest in such Class.

"Startup Day": With respect to each Trust REMIC, the day designated as such pursuant to Section 10.01(b) hereof.

"Stated Principal Balance": With respect to any Mortgage Loan: (a) as of any date of determination up to but not including the Distribution Date on which the proceeds, if any, of a Liquidation Event with respect to such Mortgage Loan would be distributed, the principal balance of such Mortgage Loan as of the Cut-off Date, as shown on the Mortgage Loan Schedule, *minus* the sum of (i) the principal portion of each Monthly Payment due on a Due Date subsequent to the Cut-off Date, to the extent received from the Mortgagor or advanced by the Servicer and distributed pursuant to Section 4.01 on or before such date of determination, (ii) all Principal Prepayments received after the Cut-off Date, to the extent distributed pursuant to Section 4.01 on or before such date of determination, (iii) all Liquidation Proceeds and Insurance Proceeds applied by the Servicer as recoveries of principal in accordance with the provisions of Section 3.16, to the extent distributed pursuant to Section 4.01 on or before such date of determination, and (iv) any Realized Loss incurred with respect thereto as a result of a Deficient Valuation made during or prior to the Prepayment Period for the most recent Distribution Date coinciding with or preceding such date of determination; and (b) as of any date of determination coinciding with or subsequent to the Distribution Date on which the proceeds, if any, of a Liquidation Event with respect to such Mortgage Loan would be distributed, zero. With respect to any REO Property: (a) as of any date of determination up to but not including the Distribution Date on which the proceeds, if any, of a Liquidation Event with respect to such REO Property would be distributed, an amount (not less than zero) equal to the Stated Principal Balance of the related Mortgage Loan as of the date on which such REO Property was acquired on behalf of REMIC I, *minus* the sum of (i) if such REO Property was acquired before the Distribution Date in any calendar month, the principal portion of the Monthly Payment due on the Due Date in the calendar month of acquisition, to the extent advanced by the Servicer and distributed pursuant to Section 4.01 on or before such date of determination, and (ii) the aggregate amount of REO Principal Amortization in respect of such REO Property for all previously ended calendar months, to the extent distributed pursuant to Section 4.01 on or before such date of determination; and (b) as of any date of determination coinciding with or subsequent to the Distribution Date on which the proceeds, if any, of a Liquidation Event with respect to such REO Property would be distributed, zero.

"Stepdown Date": The later to occur of (a) the Distribution Date occurring in September 2009 and (b) the first Distribution Date on which the Credit Enhancement Percentage with respect to the Class A Certificates (calculated for this purpose only prior to any distribution of the Principal Distribution Amount to the holders of the Certificates then entitled to distributions of principal on such Distribution Date) is equal to or greater than 51.70%.

"Subcontractor": Any vendor, subcontractor or other Person (but not including the Trustee, except to the extent described in Article XI) that is not responsible for the overall servicing (as "servicing" is commonly understood by participants in the mortgage-backed securities market) of Mortgage Loans but performs one or more discrete functions identified in

Item 1122(d) of Regulation AB with respect to Mortgage Loans under the direction or authority of the Servicer or a Sub-Servicer.

"Subordination Percentage": With respect to each class of Class A and Mezzanine Certificates, the applicable approximate percentage set forth in the table below.

Class	Percentage	Class	Percentage
A	48.30%	M-6	85.00%
M-1	59.60%	M-7	87.90%
M-2	70.00%	M-8	90.00%
M-3	73.10%	M-9	92.70%
M-4	78.30%	M-10	95.00%
M-5	82.10		

"Sub-Servicer": Any Person with which the Servicer has entered into a Sub-Servicing Agreement and which meets the qualifications of a Sub-Servicer pursuant to Section 3.02.

"Sub-Servicing Account": As defined in Section 3.08.

"Sub-Servicing Agreement": The written contract between the Servicer and a Sub-Servicer relating to servicing and administration of certain Mortgage Loans as provided in Section 3.02.

"Subsequent Recoveries": As of any Distribution Date, unexpected amounts received by the Servicer (net of any related expenses permitted to be reimbursed to the Servicer) specifically related to a Mortgage Loan that was the subject of a liquidation or an REO Disposition prior to the related Prepayment Period that resulted in a Realized Loss. If Subsequent Recoveries are received, they will be included as part of the Principal Remittance Amount for the following Distribution Date. In addition, after giving effect to all distributions on a Distribution Date, the amount of such Subsequent Recoveries will increase the Certificate Principal Balance first, of the Class A Certificates then outstanding, if a Realized Loss had been allocated to the Class A Certificates, on a *pro rata* basis by the amount of such Subsequent Recoveries, and second, of the class of Mezzanine Certificates then outstanding with the highest distribution priority to which a Realized Loss was allocated. Thereafter, such class of Class A and Mezzanine Certificates will accrue interest on the increased Certificate Principal Balance.

"Substitution Shortfall Amount": As defined in Section 2.03(b).

"Swap Account": The separate trust account created and maintained by the Trustee.

"Swap Agreement": The interest rate swap agreement between the Swap Counterparty and the Trustee, on behalf of the Trust, which agreement provides for Net Swap Payments and Swap Termination Payments to be paid, as provided therein, together with any schedules, confirmations or other agreements relating thereto, attached hereto as Exhibit K-1.

"Swap Agreement Notional Balance": As to the Swap Agreement and each "Floating Rate Payer Payment Date" (as defined in the Swap Agreement), the amount set forth on Exhibit K-2 hereto for such Floating Rate Payer Payment Date.

"Swap Counterparty": The swap counterparty under the Swap Agreement either (a) entitled to receive payments from the Trustee from amounts payable by the Trust Fund under this Agreement or (b) required to make payments to the Trustee for payment to the Trust Fund, in either case pursuant to the terms of the Swap Agreement, and any successor in interest or assign. Initially, the Swap Counterparty shall be Swiss Re Financial Corporation.

"Swap LIBOR": LIBOR as determined pursuant to the Swap Agreement.

"Swap Counterparty Trigger Event": With respect to any Distribution Date, (i) an "Event of Default" (as defined in the Swap Agreement) with respect to which the Swap Counterparty is a "Defaulting Party" (as defined in the Swap Agreement) or a "Termination Event" (as defined in the Swap Agreement) (including an "Additional Termination Event" (as defined in the Swap Agreement)) under the Swap Agreement with respect to which the Swap Counterparty is the sole "Affected Party" (as defined in the Swap Agreement).

"Swap Termination Payment": Upon the designation of an "Early Termination Date" (as defined in the Swap Agreement), the payment to be made by the Trustee on behalf of the Trust to the Swap Counterparty from payments from the Trust Fund, or by the Swap Counterparty to the Trustee for payment to the Trust Fund, as applicable, pursuant to the terms of the Swap Agreement.

"Tax Returns": The federal income tax return on Internal Revenue Service Form 1066, U.S. Real Estate Mortgage Investment Conduit Income Tax Return, including Schedule Q thereto, Quarterly Notice to Residual Interest Holders of REMIC Taxable Income or Net Loss Allocation, or any successor forms, to be filed on behalf of the Trust Fund due to the classification of portions thereof as REMICs under the REMIC Provisions, together with any and all other information reports or returns that may be required to be furnished to the Certificateholders or filed with the Internal Revenue Service or any other governmental taxing authority under any applicable provisions of federal, state or local tax laws.

"Telerate Page 3750": The display designated as page "3750" on the Dow Jones Telerate Capital Markets Report (or such other page as may replace page 3750 on that report for the purpose of displaying London interbank offered rates of major banks).

"Termination Price": As defined in Section 9.01.

"Terminator": As defined in Section 9.01.

"Third-Party Originator": Each Person, other than a Qualified Correspondent, that originated Mortgage Loans acquired by the Servicer.

"Transaction Party": As defined in Section 11.02.

"Transfer": Any direct or indirect transfer, sale, pledge, hypothecation, or other form of assignment of any Ownership Interest in a Certificate.

EXHIBIT 5

"Transferee": Any Person who is acquiring by Transfer any Ownership Interest in a Certificate.

"Transferor": Any Person who is disposing by Transfer of any Ownership Interest in a Certificate.

"Trigger Event": A Trigger Event is in effect on any Distribution Date on or after the Stepdown Date if:

(a) the Delinquency Percentage exceeds 34.00% of the then current Credit Enhancement Percentage with respect to the Class A Certificates for the prior Distribution Date; or

(b) the aggregate amount of Realized Losses incurred since the Cut-off Date through the last day of the related Due Period (after giving effect to scheduled payments of principal due during the related Due Period, to the extent received or advanced, and unscheduled collections of principal received during the related Prepayment Period, reduced by the aggregate amount of Subsequent Recoveries received since the Cut-off Date through the last day of the related Due Period) divided by aggregate Stated Principal Balance of the Mortgage Loans as of the Cut-off Date exceeds the applicable percentages set forth below with respect to such Distribution Date:

Distribution Date Occurring In	Percentage
September 2009 through August 2010	3.05% for the first distribution date of this period, plus an additional 1/12th of 1.75% for each distribution date thereafter
September 2010 through August 2011	4.80% for the first distribution date of this period, plus an additional 1/12th of 1.40% for each distribution date thereafter
September 2011 through August 2012	6.20% for the first distribution date of this period, plus an additional 1/12th of 0.75% for each distribution date thereafte
September 2012 and thereafter	6.95%

"Trust Fund": Collectively, all of the assets of each Trust REMIC, the Swap Account, the Swap Agreement and the other assets conveyed by the Depositor to the Trustee pursuant to Section 2.01.

"Trust REMIC": Any of REMIC I or REMIC II.

"Trustee": Wells Fargo Bank, N.A., a national banking association, or its successor in interest, or any successor trustee appointed as herein provided.

"Trustee Information": As defined in Section 11.05.

"Trustee Fee": The amount payable to the Trustee on each Distribution Date pursuant to Section 8.05 as compensation for all services rendered by it in the execution of the trust hereby created and in the exercise and performance of any of the powers and duties of the Trustee hereunder, which amount shall equal the Trustee Fee Rate accrued for one month on the

aggregate Stated Principal Balance of the Mortgage Loans and any REO Properties as of the first day of the related Due Period (or, in the case of the initial Distribution Date, as of the Cut-off Date), calculated on the basis of a 360-day year consisting of twelve 30-day months.

"Trustee Fee Rate": 0.0025% per annum.

"Uncertificated Balance": The amount of any REMIC I Regular Interest outstanding as of any date of determination. As of the Closing Date, the Uncertificated Balance of each REMIC I Regular Interest shall equal the amount set forth in the Preliminary Statement hereto as its initial uncertificated balance. On each Distribution Date, the Uncertificated Balance of each REMIC I Regular Interest shall be reduced by all distributions of principal made on such REMIC I Regular Interest on such Distribution Date pursuant to Section 4.01 and, if and to the extent necessary and appropriate, shall be further reduced on such Distribution Date by Realized Losses as provided in Section 4.04. The Uncertificated Balance of REMIC I Regular Interest I-LTZZ shall be increased by interest deferrals as provided in Section 4.01(a)(1)(i)(A). The Uncertificated Balance of each REMIC I Regular Interest shall never be less than zero.

"Uncertificated Interest": With respect to any REMIC I Regular Interest for any Distribution Date, one month's interest at the REMIC I Remittance Rate applicable to such REMIC I Regular Interest for such Distribution Date, accrued on the Uncertificated Balance thereof immediately prior to such Distribution Date. Uncertificated Interest in respect of any REMIC I Regular Interest shall accrue on the basis of a 360-day year consisting of twelve 30-day months. Uncertificated Interest with respect to each Distribution Date, as to any REMIC I Regular Interest, shall be reduced by an amount equal to the sum of (a) the aggregate Prepayment Interest Shortfall, if any, for such Distribution Date to the extent not covered by payments pursuant to Section 3.24 and (b) the aggregate amount of any Relief Act Interest Shortfall, if any allocated, in each case, to such REMIC I Regular Interest pursuant to Section 1.02. In addition, Uncertificated Interest with respect to each Distribution Date, as to any REMIC I Regular Interest shall be reduced by Realized Losses, if any, allocated to such REMIC I Regular Interest pursuant to Section 1.02 and Section 4.04.

"Underwriters' Exemption": An individual exemption issued by the United States Department of Labor, Prohibited Transaction Exemption 90-30 (55 Fed. Reg. 21461, May 24, 1990), as amended, to Bear, Stearns & Co. Inc., for specific offerings in which Bear, Stearns & Co. Inc. or any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Bear, Stearns & Co. Inc. is an underwriter, placement agent or a manager or co-manager of the underwriting syndicate or selling group where the trust and the offered certificates meet specified conditions. The Underwriters' Exemption, as amended, provides a partial exemption for transactions involving certificates representing a beneficial interest in a trust and entitling the holder to pass-through payments of principal, interest and/or other payments with respect to the trust's assets.

"Uninsured Cause": Any cause of damage to a Mortgaged Property such that the complete restoration of such property is not fully reimbursable by the hazard insurance policies required to be maintained pursuant to Section 3.14.

"United States Person": A citizen or resident of the United States, a corporation, partnership (or other entity treated as a corporation or partnership for United States federal income tax purposes) created or organized in, or under the laws of, the United States, any state thereof, or the District of Columbia (except in the case of a partnership, to the extent provided in Treasury regulations) provided that, for purposes solely of the restrictions on the transfer of Class R Certificates, no partnership or other entity treated as a partnership for United States federal income tax purposes shall be treated as a United States Person unless all persons that own an interest in such partnership either directly or through any entity that is not a corporation for United States federal income tax purposes are required by the applicable operative agreement to be United States Persons, or an estate the income of which from sources without the United States is includible in gross income for United States federal income tax purposes regardless of its connection with the conduct of a trade or business within the United States, or a trust if a court within the United States is able to exercise primary supervision over the administration of the trust and one or more United States persons have authority to control all substantial decisions of the trust. The term "United States" shall have the meaning set forth in Section 7701 of the Code or successor provisions.

"Value": With respect to any Mortgaged Property, the lesser of (i) the lesser of (a) the value thereof as determined by an appraisal made for the Originator of the Mortgage Loan at the time of origination of the Mortgage Loan by an appraiser who met the minimum requirements of Fannie Mae and Freddie Mac and (b) the value thereof as determined by a review appraisal conducted by the Originator in accordance with the Originator's underwriting guidelines, and (ii) the purchase price paid for the related Mortgaged Property by the Mortgagor with the proceeds of the Mortgage Loan; provided, however, (A) in the case of a Refinanced Mortgage Loan, such value of the Mortgaged Property is based solely upon the lesser of (1) the value determined by an appraisal made for the Originator of such Refinanced Mortgage Loan at the time of origination of such Refinanced Mortgage Loan by an appraiser who met the minimum requirements of Fannie Mae and Freddie Mac and (2) the value thereof as determined by a review appraisal conducted by the Originator in accordance with the Originator's underwriting guidelines, and (B) in the case of a Mortgage Loan originated in connection with a "lease-option purchase," such value of the Mortgaged Property is based on the lower of the value determined by an appraisal made for the Originator of such Mortgage Loan at the time of origination or the sale price of such Mortgaged Property if the "lease option purchase price" was set less than 12 months prior to origination, and is based on the value determined by an appraisal made for the Originator of such Mortgage Loan at the time of origination if the "lease option purchase price" was set 12 months or more prior to origination.

"Voting Rights": The portion of the voting rights of all of the Certificates which is allocated to any Certificate. With respect to any date of determination, 98% of all Voting Rights will be allocated among the holders of the Class A Certificates, the Mezzanine Certificates and the Class CE Certificates in proportion to the then outstanding Certificate Principal Balances of their respective Certificates, 1% of all Voting Rights will be allocated to the holders of the Class P Certificates and 1% of all Voting Rights will be allocated among the holders of the Residual Certificates. The Voting Rights allocated to each Class of Certificate shall be allocated among Holders of each such Class in accordance with their respective Percentage Interests as of the most recent Record Date.

SECTION 1.02 Allocation of Certain Interest Shortfalls. For purposes of calculating the amount of Accrued Certificate Interest and the amount of the Interest Distribution Amount for the Class A Certificates, the Mezzanine Certificates and the Class CE Certificates for any Distribution Date, (1) the aggregate amount of any Prepayment Interest Shortfalls (to the extent not covered by payments by the Servicer pursuant to Section 3.24) and any Relief Act Interest Shortfall incurred in respect of the Mortgage Loans for any Distribution Date shall be allocated first, to the Class CE Certificates based on, and to the extent of, one month's interest at the then applicable Pass-Through Rate on the Notional Amount of the Class CE Certificates and, thereafter, among the Class A Certificates and the Mezzanine Certificates on a *pro rata* basis based on, and to the extent of, one month's interest at the then applicable respective Pass-Through Rate on the respective Certificate Principal Balance of each such Certificate and (2) the aggregate amount of any Realized Losses incurred for any Distribution Date shall be allocated to the Class CE Certificates based on, and to the extent of, one month's interest at the then applicable Pass-Through Rate on the Notional Amount of the Class CE Certificates.

For purposes of calculating the amount of Uncertificated Interest for the REMIC I Regular Interests for any Distribution Date, the aggregate amount of any Prepayment Interest Shortfalls (to the extent not covered by payments by the Servicer pursuant to Section 3.24) and any Relief Act Interest Shortfalls incurred in respect of the Mortgage Loans for any Distribution Date shall be allocated among REMIC I Regular Interest I-LTAA, REMIC I Regular Interest I-LTA1, REMIC I Regular Interest I-LTA2, REMIC I Regular Interest I-LTA3, REMIC I Regular Interest I-LTA4, REMIC I Regular Interest I-LTM1, REMIC I Regular Interest I-LTM2, REMIC I Regular Interest I-LTM3, REMIC I Regular Interest I-LTM4, REMIC I Regular Interest I-LTM5, REMIC I Regular Interest I-LTM6, REMIC I Regular Interest I-LTM7, REMIC I Regular Interest I-LTM8, REMIC I Regular Interest I-LTM9, REMIC I Regular Interest I-LTM10 and REMIC I Regular Interest I-LTZZ *pro rata* based on, and to the extent of, one month's interest at the then applicable respective Pass-Through Rate on the respective Uncertificated Balance of each such REMIC I Regular Interest.

ARTICLE II

CONVEYANCE OF MORTGAGE LOANS; ORIGINAL ISSUANCE OF CERTIFICATES

SECTION 2.01 Conveyance of the Mortgage Loans. On the Closing Date, the Depositor will transfer, assign, set over and otherwise convey to the Trustee without recourse, for the benefit of the Certificateholders, all the right, title and interest of the Depositor, including any security interest therein for the benefit of the Depositor, in and to the Mortgage Loans identified on the Mortgage Loan Schedule, the rights of the Depositor under the Mortgage Loan Purchase Agreement, and all other assets included or to be included in REMIC I. Such assignment includes all interest and principal received by the Depositor or the Servicer on or with respect to the Mortgage Loans (other than payments of principal and interest due on such Mortgage Loans on or before the Cut-off Date). The Depositor herewith delivers to the Trustee an executed copy of the Mortgage Loan Purchase Agreement. In addition, on the Closing Date, the Trustee is hereby directed to enter into the Swap Agreement on behalf of the Trust Fund with the Swap Counterparty.

In connection with such transfer and assignment, the Depositor shall deliver to and deposit with the Custodian on behalf of the Trustee the following documents or instruments with respect to each Mortgage Loan so transferred and assigned (in each case, a "Mortgage File"):

(i) the original Mortgage Note, endorsed in blank or in the following form "Pay to the order of Wells Fargo Bank, N.A., as Trustee under the applicable agreement, without recourse," with all prior and intervening endorsements showing a complete chain of endorsement from the originator to the Person so endorsing to the Trustee;

(ii) the original Mortgage with evidence of recording thereon, and the original recorded power of attorney, if the Mortgage was executed pursuant to a power of attorney, with evidence of recording thereon;

(iii) an original Assignment in blank;

(iv) the original recorded Assignment or Assignments showing a complete chain of assignment from the originator to the Person assigning the Mortgage to the Trustee as contemplated by the immediately preceding clause (iii);

(v) the original or copies of each assumption, modification or substitution agreement, if any; and

(vi) the original lender's title insurance policy or, if the original title policy has not been issued, the irrevocable commitment to issue the same.

With respect to a maximum of approximately 2.0% of the Original Mortgage Loans by outstanding Stated Principal Balance of the Original Mortgage Loans as of the Cut-off Date, if any original Mortgage Note referred to in Section 2.01(i) above cannot be located, the obligations of the Depositor to deliver such documents shall be deemed to be satisfied upon delivery to the Custodian on behalf of the Trustee of a photocopy of such Mortgage Note, if available, with a lost note affidavit substantially in the form of Exhibit H attached hereto. If any of the original Mortgage Notes for which a lost note affidavit was delivered to the Custodian on behalf of the Trustee is subsequently located, such original Mortgage Note shall be delivered to the Custodian on behalf of the Trustee within three Business Days.

If any of the documents referred to in Sections 2.01(ii), (iii) or (iv) above has, as of the Closing Date, been submitted for recording but either (x) has not been returned from the applicable public recording office or (y) has been lost or such public recording office has retained the original of such document, the obligations of the Depositor to deliver such documents shall be deemed to be satisfied upon (1) delivery to the Custodian on behalf of the Trustee of a copy of each such document certified by the Originator in the case of (x) above or the applicable public recording office in the case of (y) above to be a true and complete copy of the original that was submitted for recording and (2) if such copy is certified by the Originator, delivery to the Custodian on behalf of the Trustee, promptly upon receipt thereof of either the original or a copy of such document certified by the applicable public recording office to be a true and complete copy of the original. Notice shall be provided to the Trustee and the Rating Agencies by the Depositor if delivery pursuant to clause (2) above will be made more than 180

EXHIBIT 5

days after the Closing Date. If the original lender's title insurance policy was not delivered pursuant to Section 2.01(vi) above, the Depositor shall deliver or cause to be delivered to the Custodian on behalf of the Trustee, promptly after receipt thereof, the original lender's title insurance policy. The Depositor shall deliver or cause to be delivered to the Custodian on behalf of the Trustee promptly upon receipt thereof any other original documents constituting a part of a Mortgage File received with respect to any Mortgage Loan, including, but not limited to, any original documents evidencing an assumption or modification of any Mortgage Loan.

The Trustee shall enforce the obligations of the Seller under the Mortgage Loan Purchase Agreement to promptly (within sixty Business Days following the later of the Closing Date and the date of receipt by the Trustee of the recording information for a Mortgage, but in no event later than ninety days following the Closing Date) submit or cause to be submitted for recording, at the expense of the Responsible Party and at no expense to the Trust Fund, the Trustee or the Depositor, in the appropriate public office for real property records, each Assignment referred to in Sections 2.01(iii) and (iv) above and the Depositor shall execute each original Assignment or cause each original Assignment to be executed in the following form: "Wells Fargo Bank, N.A., as Trustee under the applicable agreement." In the event that any such Assignment is lost or returned unrecorded because of a defect therein, the Seller shall promptly prepare or cause to be prepared (at the expense of the Responsible Party) a substitute Assignment or cure or cause to be cured such defect, as the case may be, and thereafter cause each such Assignment to be duly recorded. If the Responsible Party is unable to pay the cost of recording the Assignments, such expense will be paid by the Trustee and shall be reimbursable to the Trustee as an Extraordinary Trust Fund Expense. Notwithstanding the foregoing, the Trustee shall not be responsible for determining whether any Assignment delivered by the Depositor hereunder is in recordable form.

Notwithstanding the foregoing, however, for administrative convenience and facilitation of servicing and to reduce closing costs, the Assignments shall not be required to be submitted for recording (except with respect to any Mortgage Loan located in Maryland) unless the Trustee or the Depositor receives written notice that failure to record would result in a withdrawal or a downgrading by any Rating Agency of the rating on any Class of Certificates; provided, however, the Trustee shall enforce the obligations of the Seller under the Mortgage Loan Purchase Agreement to submit or cause to be submitted each Assignment for recording in the manner described above, at no expense to the Trust Fund or the Trustee, upon the earliest to occur of: (i) reasonable direction by Holders of Certificates entitled to at least 25% of the Voting Rights, (ii) the occurrence of a Servicer Event of Default, (iii) the occurrence of a bankruptcy, insolvency or foreclosure relating to the Servicer, (iv) the occurrence of a servicing transfer as described in Section 7.02 hereof, (v) with respect to any one Assignment, the occurrence of a bankruptcy, insolvency or foreclosure relating to the Mortgagor under the related Mortgage and (vi) any Mortgage Loan that is 90 days or more delinquent. Upon receipt of written notice by the Trustee from the Servicer that recording of the Assignments is required pursuant to one or more of the conditions set forth in the preceding sentence, the Depositor shall be required to deliver such Assignments or shall cause such Assignments to be delivered within 30 days following receipt of such notice.

All original documents relating to the Mortgage Loans that are not delivered to the Custodian on behalf of the Trustee are and shall be held by or on behalf of the Seller, the Depositor or the Servicer, as the case may be, in trust for the benefit of the Trustee on behalf of the Certificateholders. In the event that any such original document is required pursuant to the terms of this Section 2.01 to be a part of a Mortgage File, such document shall be delivered promptly to the Custodian on behalf of the Trustee. Any such original document delivered to or held by the Depositor that is not required pursuant to the terms of this Section to be a part of a Mortgage File, shall be delivered promptly to the Servicer.

The parties hereto understand and agree that it is not intended that any Mortgage Loans be included in the Trust that are (a) "high cost" loans under the Home Ownership and Equity Protection Act of 1994 or (b) "high cost," "threshold," "covered" or "predatory" loans under any other applicable federal, state or local law (including without limitation any regulation or ordinance) (or a similarly classified loan using different terminology under a law imposing heightened regulatory scrutiny or additional legal liability for residential mortgage loans having high interest rates, points and/or fees).

SECTION 2.02 Acceptance of REMIC I by Trustee. The Trustee acknowledges receipt by the Custodian subject to the provisions of Section 2.01 above and subject to any exceptions noted on the exception report described in the next paragraph below, of the documents referred to in Section 2.01 (other than such documents described in Section 2.01(v)) and all other assets included in the definition of "REMIC I" under clauses (i), (iii), (iv) and (v) (to the extent of amounts attributable thereto deposited into the Certificate Account) and declares that it holds and will hold such documents and the other documents delivered to it constituting a Mortgage File, and that it holds or will hold all such assets and such other assets included in the definition of "REMIC I" in trust for the exclusive use and benefit of all present and future Certificateholders.

The Trustee, for the benefit of the Certificateholders, shall cause the Custodian to review each Mortgage File in accordance with the Custodial Agreement, on or before the Closing Date, and the Trustee shall cause the Custodian to certify in substantially the form attached to the Custodial Agreement as Exhibit 1 that, as to each Mortgage Loan listed in the Mortgage Loan Schedule (other than any Mortgage Loan paid in full or any Mortgage Loan specifically identified in the exception report annexed thereto as not being covered by such certification), (i) all documents constituting part of such Mortgage File (other than such documents described in Section 2.01(v)) required to be delivered to it pursuant to this Agreement are in its possession, (ii) such documents have been reviewed by the Custodian and appear regular on their face and relate to such Mortgage Loan and (iii) based on the Custodian's examination and only as to the foregoing, the information set forth in the Mortgage Loan Schedule that corresponds to items (i), (ii), (x), (xi) and (xiv) of the definition of "Mortgage Loan Schedule" accurately reflects information set forth in the Mortgage File. It is herein acknowledged that, in conducting such review, the Trustee (or the Custodian, as applicable) is under no duty or obligation (i) to inspect, review or examine any such documents, instruments, certificates or other papers to determine whether they are genuine, enforceable, valid, legally binding, effective or appropriate for the represented purpose or whether they have actually been recorded or are in recordable form or that they are other than what they purport to be on their face, (ii) to determine whether any Mortgage File should include any of the documents specified in clause (v) of Section 2.01 or (iii)

EXHIBIT 5

to determine the perfection or priority of any security interest in any such documents or instruments. Notwithstanding the foregoing, in conducting the review described in this Section 2.02, the Trustee (or the Custodian, if applicable, shall not be responsible for determining (i) if an Assignment is sufficient under the laws of the jurisdiction wherein the related Mortgaged Property is located to reflect of record the sale of the Mortgage or (ii) if a Mortgage creates a first or second lien on, or first or second priority security interest in, a Mortgaged Property.

Prior to the first anniversary date of this Agreement, the Trustee shall cause the Custodian to deliver as required under the Custodial Agreement to the Depositor, the Trustee and the Servicer a final certification in the form attached to the Custodial Agreement as Exhibit 2 evidencing the completeness of the Mortgage Files, with any applicable exceptions noted thereon, and the Servicer shall forward a copy thereof to any Sub-Servicer.

If in the process of reviewing the Mortgage Files and making or preparing, as the case may be, the certifications referred to above, the Custodian, on behalf of the Trustee, finds any document or documents constituting a part of a Mortgage File to be missing or defective in any material respect, at the conclusion of its review the Custodian, on behalf of the Trustee, shall so notify the Depositor and the Servicer. In addition, upon the discovery by the Depositor, the Servicer, the Custodian or the Trustee of a breach of any of the representations and warranties made by either the Responsible Party or the Seller in the related Mortgage Loan Purchase Agreement in respect of any Mortgage Loan which materially adversely affects such Mortgage Loan or the interests of the Certificateholders in such Mortgage Loan, the party discovering such breach shall give prompt written notice to the other parties.

The Trustee shall, at the written request and expense of any Certificateholder, cause the Custodian to provide a written report to the Trustee for forwarding to such Certificateholder of all Mortgage Files released to the Servicer for servicing purposes.

The Depositor and the Trustee intend that the assignment and transfer herein contemplated is absolute and constitutes a sale of the Mortgage Loans, the related Mortgage Notes and the related documents, conveying good title thereto free and clear of any liens and encumbrances, from the Depositor to the Trustee in trust for the benefit of the Certificateholders and that such property not be part of the Depositor's estate or property of the Depositor in the event of any insolvency by the Depositor. In the event that such conveyance is deemed to be, or to be made as security for, a loan, the parties intend that the Depositor shall be deemed to have granted and does hereby grant to the Trustee a first priority perfected security interest in all of the Depositor's right, title and interest in and to the Mortgage Loans, the related Mortgage Notes and the related documents, and that this Agreement shall constitute a security agreement under applicable law.

SECTION 2.03 Repurchase or Substitution of Mortgage Loans by the Responsible Party and the Seller. (a) Upon discovery or receipt of notice of any materially defective document in, or that a document is missing from, a Mortgage File or of the breach by the Responsible Party or the Seller of any representation, warranty or covenant under the Mortgage Loan Purchase Agreement in respect of any Mortgage Loan that materially adversely affects the value of such Mortgage Loan or the interest therein of the Certificateholders, the Trustee shall promptly notify

the Seller, the Responsible Party and the Servicer of such defect, missing document or breach and request that the Responsible Party or the Seller, as applicable, deliver such missing document or cure such defect or breach within 60 days from the date the Responsible Party or the Seller, as applicable, was notified of such missing document, defect or breach, and if the Responsible Party or the Seller, as applicable, does not deliver such missing document or cure such defect or breach in all material respects during such period, the Trustee shall enforce the obligations of the Responsible Party or the Seller, as applicable, under the Mortgage Loan Purchase Agreement to repurchase such Mortgage Loan from REMIC I at the Purchase Price within 90 days after the date on which the Responsible Party or the Seller, as applicable, was notified (subject to Section 2.03(c)) of such missing document, defect or breach, if and to the extent that the Responsible Party or the Seller, as applicable, is obligated to do so under the Mortgage Loan Purchase Agreement. The Purchase Price for the repurchased Mortgage Loan shall be remitted to the Servicer for deposit in the Custodial Account and the Trustee, or the Custodian on behalf of the Trustee, upon receipt of written certification from the Servicer of such deposit, shall release to the Responsible Party or the Seller, as applicable, the related Mortgage File and the Trustee shall execute and deliver such instruments of transfer or assignment, in each case without recourse, as the Responsible Party or the Seller, as applicable, shall furnish to it and as shall be necessary to vest in the Responsible Party or the Seller, as applicable, any Mortgage Loan released pursuant hereto. The Trustee shall not have any further responsibility with regard to such Mortgage File. In lieu of repurchasing any such Mortgage Loan as provided above, if so provided in the Mortgage Loan Purchase Agreement, the Responsible Party or the Seller, as applicable, may cause such Mortgage Loan to be removed from REMIC I (in which case it shall become a Deleted Mortgage Loan) and substitute one or more Qualified Substitute Mortgage Loans in the manner and subject to the limitations set forth in Section 2.03(b); provided, however, the Responsible Party may not substitute a Qualified Substitute Mortgage Loan for any Deleted Mortgage Loan that violates any predatory or abusive lending law. It is understood and agreed that the obligation of the Responsible Party and the Seller to cure or to repurchase (or to substitute for) any Mortgage Loan as to which a document is missing, a material defect in a constituent document exists or as to which such a breach has occurred and is continuing shall constitute the sole remedy respecting such omission, defect or breach available to the Trustee and the Certificateholders.

(b) Any substitution of Qualified Substitute Mortgage Loans for Deleted Mortgage Loans made pursuant to Section 2.03(a) must be effected prior to the date which is two years after the Startup Day for REMIC I.

As to any Deleted Mortgage Loan for which the Responsible Party or the Seller, as applicable, substitutes a Qualified Substitute Mortgage Loan or Loans, such substitution shall be effected by the Responsible Party or the Seller, as applicable, delivering to the Custodian, on behalf of the Trustee, for such Qualified Substitute Mortgage Loan or Loans, the Mortgage Note, the Mortgage, the Assignment to the Trustee, and such other documents and agreements, with all necessary endorsements thereon, as are required by Section 2.01, together with an Officers' Certificate providing that each such Qualified Substitute Mortgage Loan satisfies the definition thereof and specifying the Substitution Shortfall Amount (as described below), if any, in connection with such substitution. In accordance with the Custodial Agreement, the Trustee shall cause the Custodian to acknowledge receipt for such Qualified Substitute Mortgage Loan or

Loans and, within ten Business Days thereafter, shall review such documents as specified in Section 2.02 and cause the Custodian to deliver to the Depositor, the Trustee and the Servicer, with respect to such Qualified Substitute Mortgage Loan or Loans, a certification substantially in the form attached to the Custodial Agreement as Exhibit 1, with any applicable exceptions noted thereon. Within one year of the date of substitution, in accordance with the Custodial Agreement, the Trustee shall cause the Custodian to deliver to the Depositor, the Trustee and the Servicer a certification substantially in the form attached to the Custodial Agreement as Exhibit 2 with respect to such Qualified Substitute Mortgage Loan or Loans, with any applicable exceptions noted thereon. Monthly Payments due with respect to Qualified Substitute Mortgage Loans in the month of substitution are not part of REMIC I and will be retained by the Responsible Party or the Seller, as applicable. For the month of substitution, distributions to Certificateholders will reflect the Monthly Payment due on such Deleted Mortgage Loan on or before the Due Date in the month of substitution, and the Responsible Party or the Seller, as applicable, shall thereafter be entitled to retain all amounts subsequently received in respect of such Deleted Mortgage Loan. The Depositor shall give or cause to be given written notice to the Certificateholders that such substitution has taken place, shall amend the Mortgage Loan Schedule to reflect the removal of such Deleted Mortgage Loan from the terms of this Agreement and the substitution of the Qualified Substitute Mortgage Loan or Loans and shall deliver a copy of such amended Mortgage Loan Schedule to the Trustee and the Custodian. Upon such substitution, such Qualified Substitute Mortgage Loan or Loans shall constitute part of the Mortgage Pool and shall be subject in all respects to the terms of this Agreement and the Mortgage Loan Purchase Agreement, including, all applicable representations and warranties thereof included in the Mortgage Loan Purchase Agreement.

For any month in which the Responsible Party or the Seller, as applicable, substitutes one or more Qualified Substitute Mortgage Loans for one or more Deleted Mortgage Loans, the Servicer will determine the amount (the "Substitution Shortfall Amount"), if any, by which the aggregate Purchase Price of all such Deleted Mortgage Loans exceeds the aggregate of, as to each such Qualified Substitute Mortgage Loan, the Stated Principal Balance thereof as of the date of substitution, together with one month's interest on such Stated Principal Balance at the applicable Expense Adjusted Mortgage Rate, *plus* all outstanding Advances and Servicing Advances (including Nonrecoverable Advances and Nonrecoverable Servicing Advances) related thereto. On the date of such substitution, the Responsible Party or the Seller, as applicable, will deliver or cause to be delivered to the Servicer for deposit in the Custodial Account an amount equal to the Substitution Shortfall Amount, if any, and upon receipt by the Custodian, on behalf of the Trustee, of the related Qualified Substitute Mortgage Loan or Loans and certification by the Servicer to the Trustee of such deposit, the Trustee shall cause the Custodian to release, as required by the Custodial Agreement, to the Responsible Party or the Seller, as applicable, the related Mortgage File or Files and the Trustee shall execute and deliver such instruments of transfer or assignment, in each case without recourse, the Responsible Party or the Seller, as applicable, shall deliver to it and as shall be necessary to vest therein any Deleted Mortgage Loan released pursuant hereto.

In addition, the Responsible Party or the Seller, as applicable, shall obtain at its own expense and deliver to the Trustee an Opinion of Counsel to the effect that such substitution will not cause (a) any federal tax to be imposed on any Trust REMIC, including without limitation,

any federal tax imposed on "prohibited transactions" under Section 860F(a)(1) of the Code or on "contributions after the startup date" under Section 860G(d)(1) of the Code, or (b) any Trust REMIC to fail to qualify as a REMIC at any time that any Certificate is outstanding.

(c) Upon discovery by the Depositor, the Servicer or the Trustee that any Mortgage Loan does not constitute a "qualified mortgage" within the meaning of Section 860G(a)(3) of the Code, the party discovering such fact shall within two Business Days give written notice thereof to the other parties. In connection therewith, the Responsible Party shall repurchase or, subject to the limitations set forth in Section 2.03(b), substitute one or more Qualified Substitute Mortgage Loans for the affected Mortgage Loan within 90 days of the earlier of discovery or receipt of such notice with respect to such affected Mortgage Loan. Such repurchase or substitution shall be made by (i) the Responsible Party or the Seller, as the case may be, if the affected Mortgage Loan's status as a non-qualified mortgage is or results from a breach of any representation, warranty or covenant made by the Responsible Party or the Seller, as the case may be, under the Mortgage Loan Purchase Agreement, or (ii) the Depositor, if the affected Mortgage Loan's status as a non-qualified mortgage is a breach of no representation or warranty. Any such repurchase or substitution shall be made in the same manner as set forth in Section 2.03(a). The Trustee shall reconvey to the Responsible Party the Mortgage Loan to be released pursuant hereto in the same manner, and on the same terms and conditions, as it would a Mortgage Loan repurchased for breach of a representation or warranty.

SECTION 2.04 [Reserved].

SECTION 2.05 Representations, Warranties and Covenants of the Servicer. The Servicer hereby represents, warrants and covenants to the Trustee, for the benefit of the Certificateholders and to the Depositor that as of the Closing Date or as of such date specifically provided herein:

(i) The Servicer is a corporation duly organized and validly existing under the laws of the State of California and is duly authorized and qualified to transact any and all business contemplated by this Agreement to be conducted by the Servicer in any state in which a Mortgaged Property is located or is otherwise not required under applicable law to effect such qualification and, in any event, is in compliance with the doing business laws of any such State, to the extent necessary to ensure its ability to enforce each Mortgage Loan and to service the Mortgage Loans in accordance with the terms of this Agreement;

(ii) The Servicer has the full power and authority to conduct its business as presently conducted by it and to execute, deliver and perform, and to enter into and consummate, all transactions contemplated by this Agreement. The Servicer has duly authorized the execution, delivery and performance of this Agreement, has duly executed and delivered this Agreement, and this Agreement, assuming due authorization, execution and delivery by the Depositor and the Trustee, constitutes a legal, valid and binding obligation of the Servicer, enforceable against it in accordance with its terms except as the enforceability thereof may be limited by bankruptcy, insolvency,

EXHIBIT 5

reorganization or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity;

(iii) The execution and delivery of this Agreement by the Servicer, the servicing of the Mortgage Loans by the Servicer hereunder, the consummation by the Servicer of any other of the transactions herein contemplated, and the fulfillment of or compliance with the terms hereof are in the ordinary course of business of the Servicer and will not (A) result in a breach of any term or provision of the charter or by-laws of the Servicer or (B) conflict with, result in a breach, violation or acceleration of, or result in a default under, the terms of any other material agreement or instrument to which the Servicer is a party or by which it may be bound, or any statute, order or regulation applicable to the Servicer of any court, regulatory body, administrative agency or governmental body having jurisdiction over the Servicer; and the Servicer is not a party to, bound by, or in breach or violation of any indenture or other agreement or instrument, or subject to or in violation of any statute, order or regulation of any court, regulatory body, administrative agency or governmental body having jurisdiction over it, which materially and adversely affects or, to the Servicer's knowledge, would in the future materially and adversely affect, (x) the ability of the Servicer to perform its obligations under this Agreement or (y) the business, operations, financial condition, properties or assets of the Servicer taken as a whole;

(iv) The Servicer is a HUD-approved servicer. No event has occurred, including but not limited to a change in insurance coverage, that would make the Servicer unable to comply with HUD eligibility requirements or that would require notification to HUD;

(v) The Servicer does not believe, nor does it have any reason or cause to believe, that it cannot perform each and every covenant made by it and contained in this Agreement;

(vi) No litigation is pending against the Servicer that would materially and adversely affect the execution, delivery or enforceability of this Agreement or the ability of the Servicer to service the Mortgage Loans or to perform any of its other obligations hereunder in accordance with the terms hereof;

(vii) There are no actions or proceedings against, or investigations known to it of, the Servicer before any court, administrative or other tribunal (A) that might prohibit its entering into this Agreement, (B) seeking to prevent the consummation of the transactions contemplated by this Agreement or (C) that might prohibit or materially and adversely affect the performance by the Servicer of its obligations under, or validity or enforceability of, this Agreement;

(viii) No consent, approval, authorization or order of or registration or filing with or notice to any court or governmental agency or body is required for the execution, delivery and performance by the Servicer of, or compliance by the Servicer with, this Agreement or the consummation by it of the transactions contemplated by this

Agreement, except for such consents, approvals, authorizations or orders, if any, that have been obtained prior to the Closing Date;

(ix) The Servicer will not waive any Prepayment Charge unless it is waived in accordance with the standard set forth in Section 3.01;

(x) The Servicer has fully furnished and will continue to fully furnish, in accordance with the Fair Credit Reporting Act and its implementing regulations, accurate and complete information (e.g., favorable and unfavorable) on its borrower credit files to Equifax, Experian and Trans Union Credit Information Company or their successors on a monthly basis; and

(xi) No information, certificate of an officer, statement furnished or to be furnished in writing or report delivered to the Depositor, any Affiliate of the Depositor or the Trustee by the Servicer will, to the knowledge of the Servicer, contain any untrue statement of a material fact or omit a material fact necessary to make the information, certificate, statement or report not misleading.

It is understood and agreed that the representations, warranties and covenants set forth in this Section 2.05 shall survive delivery of the Mortgage Files to the Trustee and shall inure to the benefit of the Trustee, the Depositor and the Certificateholders. Upon discovery by any of the Depositor, the Servicer or the Trustee of a breach of any of the foregoing representations, warranties and covenants which materially and adversely affects the value of any Mortgage Loan or the interests therein of the Certificateholders, the party discovering such breach shall give prompt written notice (but in no event later than two Business Days following such discovery) to the Trustee. Subject to Section 7.01, unless such breach shall not be susceptible of cure within 90 days, the obligation of the Servicer set forth in this Section 2.05 to cure breaches shall constitute the sole remedy against the Servicer available to the Certificateholders, the Depositor and the Trustee on behalf of the Certificateholders respecting a breach of the representations, warranties and covenants contained in this Section 2.05. Notwithstanding the foregoing, within 90 days of the earlier of discovery by the Servicer or receipt of notice by the Servicer of the breach of the representation or covenant of the Servicer set forth in Section 2.05(ix) above, which breach materially and adversely affects the interests of the Holders of the Class P Certificates in any Prepayment Charge, the Servicer shall pay the amount of such waived Prepayment Charge, for the benefit of the Holders of the Class P Certificates, by depositing such amount into the Custodial Account.

SECTION 2.06 Issuance of the REMIC I Regular Interests and the Class R-I Interest. The Trustee acknowledges the assignment to it of the Mortgage Loans and the delivery to it of the Mortgage Files, subject to the provisions of Section 2.01 and Section 2.02, together with the assignment to it of all other assets included in REMIC I, the receipt of which is hereby acknowledged. Concurrently with such assignment and delivery and in exchange therefor, the Trustee, pursuant to the written request of the Depositor executed by an officer of the Depositor, has executed, authenticated and delivered to or upon the order of the Depositor, the Class R Certificates (in respect of the Class R-I Interest) in authorized denominations. The interests evidenced by the Class R-I Interest, together with the REMIC I Regular Interests, constitute the

entire beneficial ownership interest in REMIC I. The rights of the Class R-I Interest and REMIC II (as holder of the REMIC I Regular Interest) to receive distributions from the proceeds of REMIC I in respect of the Class R-I Interest and the REMIC I Regular Interests, and all ownership interests evidenced or constituted by the Class R-I Interest and the REMIC I Regular Interests, shall be as set forth in this Agreement.

SECTION 2.07 Conveyance of the REMIC I Regular Interests; Acceptance of REMIC II by the Trustee. The Depositor, concurrently with the execution and delivery hereof, does hereby transfer, assign, set over and otherwise convey to the Trustee, without recourse all the right, title and interest of the Depositor in and to the REMIC I Regular Interests for the benefit of the Class R-II Interest and REMIC II (as holder of the REMIC I Regular Interests). The Trustee acknowledges receipt of the REMIC I Regular Interests and declares that it holds and will hold the same in trust for the exclusive use and benefit of all present and future holders of the Class R-II Interest and REMIC II (as holder of the REMIC I Regular Interests). The rights of the holders of the Class R-II Interest and REMIC II (as holder of the REMIC I Regular Interests) to receive distributions from the proceeds of REMIC II in respect of the Class R-II Interest and REMIC II Regular Interests, respectively, and all ownership interests evidenced or constituted by the Class R-II Interest and the REMIC II Regular Interests, shall be as set forth in this Agreement.

SECTION 2.08 Issuance of Class R Certificates. The Trustee acknowledges the assignment to it of the REMIC Regular Interests and, concurrently therewith and in exchange therefor, pursuant to the written request of the Depositor executed by an officer of the Depositor, the Trustee has executed, authenticated and delivered to or upon the order of the Depositor, the Class R Certificates in authorized denominations.

ARTICLE III

ADMINISTRATION AND SERVICING OF THE MORTGAGE LOANS

SECTION 3.01 Servicer to Act as Servicer. The Servicer shall service and administer the Mortgage Loans on behalf of the Trust Fund and in the best interests of and for the benefit of the Certificateholders (as determined by the Servicer in its reasonable judgment) in accordance with the terms of this Agreement and the respective Mortgage Loans and, to the extent consistent with such terms, in the same manner in which it services and administers similar mortgage loans for its own portfolio, and in accordance with all applicable laws and customary and usual standards of practice of mortgage lenders and loan servicers administering similar mortgage loans but without regard to:

(i) any relationship that the Servicer, any Sub-Servicer or any Affiliate of the Servicer or any Sub-Servicer may have with the related Mortgagor;

(ii) the ownership or non-ownership of any Certificate by the Servicer or any Affiliate of the Servicer;

EXHIBIT 5

also may take the form of benchmark comparisons that identify and interpret the Servicer's strengths and weaknesses relative to similar, unidentified servicers in the industry.

(c) In all cases where the Class CE Certificateholder makes directions to the Servicer, the Class CE Certificateholder will protect the confidentiality of the Servicer and other servicers in the industry whose work is monitored by the Class CE Certificateholder. Under no circumstances will the Class CE Certificateholder divulge any materials confidential of the Servicer, whether a party to this Agreement or not, or the details of any Servicer's proprietary system or approaches.

(d) All advice offered to the Servicer by the Class CE Certificateholder will be kept confidential by the Class CE Certificateholder, except as disclosed as a finding in the Class CE Certificateholder's review and evaluation of the Servicer, as discussed in Section 13.01(e), or in reports to the Depositor.

(e) The Servicer's obligations under this Article XIV shall terminate upon the termination of the Trust Fund pursuant to Section 9.01.

(f) Neither the Servicer nor the Class CE Certificateholder nor any of their respective directors, officers, employees or agents shall be under any liability for any action taken or for refraining from the taking of any action in good faith pursuant to this Article XIV or for errors in judgment; provided, however, that this provision shall not protect the Servicer or the Class CE Certificateholder or any such Person against any liability which would otherwise be imposed by reason of willful malfeasance or bad faith. The Servicer and the Class CE Certificateholder and any director, officer, employee or agent thereof may rely in good faith on any document of any kind prima facie properly executed and submitted by any Person respecting any matters arising hereunder.

(g) The Servicer or the Class CE Certificateholder, as applicable, ("Indemnitor") shall indemnify, defend and hold harmless the other ("Indemnitee") and its officers, directors, agents and employees from and against all claims, losses, expenses, fees (including attorneys' and expert witnesses' fees), costs and judgments involving the rights and obligations of this Article XIV that may be asserted against Indemnitee (a) that result from the acts or omissions of the Indemnitor (including, without limitation, any advice or directions provided pursuant to this Section 14.02), or (b) result from third party claims of intellectual property infringement.

(h) The Class CE Certificateholder agrees that all information supplied by or on behalf of the Servicer shall be used by the Class CE Certificateholder only for the benefit of the Certificateholders of the Trust Fund. Notwithstanding anything to the contrary in this Agreement, the Class CE Certificateholder shall be entitled to retain all records or other information supplied to Class CE Certificateholder pursuant to this Agreement.

[Signatures follow]

IN WITNESS WHEREOF, the Depositor, the Servicer and the Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized, in each case as of the day and year first above written.

STANWICH ASSET ACCEPTANCE COMPANY L.L.C., as Depositor

By: _____
Name:
Title:

NEW CENTURY MORTGAGE CORPORATION, as Servicer

By: _____
Name: KEVIN CLOYD
Title: EXECUTIVE VICE PRESIDENT

WELLS FARGO BANK, N.A., as Trustee

By: _____
Name:
Title:

EXHIBIT 5

STATE OF CA)
) ss.:
COUNTY OF ORANGE)

On the 4th day of August 2006, before me, a notary public in and for said State, personally appeared Kevin Cloyd, known to me to be a EVP of New Century Mortgage Corporation, one of the entities that executed the within instrument, and also known to me to be the person who executed it on behalf of said entity, and acknowledged to me that such entity executed the within instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Tiffany A. Nelson
Notary Public

EXHIBIT 5

IN WITNESS WHEREOF, the Depositor, the Servicer and the Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized, in each case as of the day and year first above written.

STANWICH ASSET ACCEPTANCE COMPANY L.L.C., as Depositor

By: _____
Name: Bruce M Rose
Title: President

NEW CENTURY MORTGAGE CORPORATION, as Servicer

By: _____
Name:
Title:

WELLS FARGO BANK, N.A., as Trustee

By: _____
Name:
Title:

EXHIBIT 5

STATE OF CONNECTICUT)
) ss.:
COUNTY OF FAIRFIELD)

On the 7 day of August, 2006, before me, a notary public in and for said State, personally appeared Bruce M. Rose, known to me to be President of Stanwich Asset Acceptance Company, L.L.C., one of the entities that executed the within instrument, and also known to me to be the person who executed it on behalf of said entity, and acknowledged to me that such entity executed the within instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public

[Notarial Seal]

EXHIBIT 5

IN WITNESS WHEREOF, the Depositor, the Servicer and the Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized, in each case as of the day and year first above written.

STANWICH ASSET ACCEPTANCE COMPANY L.L.C., as Depositor

By: _____
Name:
Title:

NEW CENTURY MORTGAGE CORPORATION, as Servicer

By: _____
Name:
Title:

WELLS FARGO BANK, N.A., as Trustee

By: _____
Name: Darron C. Woodus
Title: Assistant Vice President

EXHIBIT 5

STATE OF MARYLAND)
) ss.:
COUNTY OF HOWARD)

On the 10th day of August, 2006 before me, a notary public in and for said State, personally appeared Darron C. Woodus known to me to be a Assistant Vice President of Wells Fargo Bank, N.A., one of the corporations that executed the within instrument, and also known to me to be the person who executed it on behalf of such corporation, and acknowledged to me that such corporation executed the within instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public

[SEAL]

GRAHAM M. OGLESBY
NOTARY PUBLIC
BALTIMORE CITY
MARYLAND
MY COMMISSION EXPIRES JANUARY 7 2009

EXHIBIT 5

ASSGN
I

20090478521
10/20/2009 ER $20.00

09-008559

TRANSFER OF LIEN

Date: To Be Effective 9/30/09

Holder of Note and Lien:

New Century Mortgage Corporation

Holder's Mailing Address:

1610 E. St. Andrews Pl, #B150
Santa Ana, CA 92705

Transferee:

Wells Fargo Bank N.A., as Trustee, for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates 2EE

Transferee's Mailing Address:

1610 E. St. Andrews Pl, #B150
Santa Ana, CA 92705

Note

Date: June 15, 2006

Original Amount: $400,000.00

Maker: Mary Ellen Wolf and David Wolf, Wife and Husband

Payee: New Century Mortgage Corporation

Note and Lien are described in the following documents recorded in:

Deed of Trust recorded under Clerk's File/Instrument Number Z394249/ 023-61-0071, Deed of Trust Records, Harris County, Texas.

Property (including any improvements) Subject to Lien:

THE SOUTH 1/2 OF LOT SIX (6), BLOCK THIRTY (30) OF WEST UNIVERSITY PLACE, AN ADDITION IN HARRIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 9, PAGE 13, OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS D

ER 014 - 09 - 0900

EXHIBIT 6

CARRINGTON-00437

Prior Lien(s) (including recording information):

For value received Holder of the note and lien transfers them to Transferee, warrants that the lien is valid against the property in the priority indicated, and represents that the unpaid principal and interest on the note are correctly stated.

When the context requires, singular nouns and pronouns include the plural.

1OR

New Century Mortgage Corporation

BY: TOM CROFT
ITS: VICE PRESIDENT OF REO

(Corporate Acknowledgement)

State of California
County of Orange

On Oct 15 2009, before me, N. Deeter a Notary Public in and for said county, personally appeared Tom Croft who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and Acknowledged to me that he executed the same in his authorized capacity, and that by his signature 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 California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

N. DEETER
COMM. # 1712322
NOTARY PUBLIC-CALIFORNIA
ORANGE COUNTY
My Comm. Exp. Dec. 23, 2010

Signature _____(seal)_____

AFTER RECORDING, PLEASE RETURN TO:
BAXTER, SCHWARTZ & SHAPIRO LLP
5450 Northwest Central Dr. #307
Houston, TX 77092
/JY
CARRINGTON MORTGAGE SERVICES
Mortgagor: WOLF, DAVID ELLEN AND MARY

ER 014 - 09 - 0901

EXHIBIT 6

ER 014-09-0902

20090478521
Pages 3
10/20/2009 13:48:00 PM
e-Filed & e-Recorded in the
Official Public Records of
HARRIS COUNTY
BEVERLY KAUFMAN
COUNTY CLERK
Fees 20.00

RECORDERS MEMORANDUM
This instrument was received and recorded electronically and any blackouts, additions or changes were present at the time the instrument was filed and recorded.

Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under federal law.
THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas.

COUNTY CLERK
HARRIS COUNTY, TEXAS

EXHIBIT 6

MORTGAGE LOAN PURCHASE AGREEMENT

This is a Mortgage Loan Purchase Agreement (this "Agreement"), dated August 10, 2006, among NC CAPITAL CORPORATION, a California corporation (the "Responsible Party"), CARRINGTON SECURITIES, LP, a Delaware limited partnership (the "Seller") and STANWICH ASSET ACCEPTANCE COMPANY, L.L.C., a Delaware limited liability company (the "Purchaser").

Preliminary Statement

The Seller intends to sell the Mortgage Loans (as hereinafter identified) to the Purchaser on the terms and subject to the conditions set forth in this Agreement. The Purchaser intends to deposit the Mortgage Loans into a mortgage pool comprising the Trust Fund. The Trust Fund will be evidenced by a single series of mortgage pass-through certificates designated as Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates (the "Certificates"). The Certificates will consist of eighteen classes of certificates and will be issued pursuant to a Pooling and Servicing Agreement, dated as of August 1, 2006 (the "Pooling and Servicing Agreement"), among the Depositor as depositor, New Century Mortgage Corporation as servicer (the "Servicer") and Wells Fargo Bank, N.A. as trustee (the "Trustee"). Capitalized terms used but not defined herein shall have the meanings set forth in the Pooling and Servicing Agreement.

The parties hereto agree as follows:

SECTION 1 Agreement to Purchase. The Seller agrees to sell and the Purchaser agrees to purchase, on or before August 10, 2006 (the "Closing Date"), certain adjustable-rate and fixed-rate, interest-only and fully-amortizing, first lien and second lien, one-to four-family residential mortgage loans purchased by the Seller from the Responsible Party (the "Mortgage Loans"), having an aggregate principal balance as of the close of business on August 1, 2006 (the "Cut-off Date") of $1,620,590,236 (the "Closing Balance"), after giving effect to all payments due on the Mortgage Loans on or before the Cut-off Date, whether or not received including the right to any Prepayment Charges payable by the related Mortgagors in connection with any Principal Prepayments on the Mortgage Loans, on an Originator servicing-retained basis.

SECTION 2 Mortgage Loan Schedule. The Purchaser and the Seller have agreed upon which of the Mortgage Loans are to be purchased by the Purchaser pursuant to this Agreement and the Seller will prepare or cause to be prepared on or prior to the Closing Date a final schedule (the "Closing Schedule") that shall describe such Mortgage Loans and set forth all of the Mortgage Loans to be purchased under this Agreement, including the Prepayment Charges. The Closing Schedule will conform to the requirements set forth in this Agreement and, with respect to the Mortgage Loans subject to this Agreement, to the definition of "Mortgage Loan Schedule" under the Pooling and Servicing Agreement. The Closing Schedule shall be used as part of the Mortgage Loan Schedule under the Pooling and Servicing Agreement and shall be based on information provided by the Originator.

EXHIBIT 7

SECTION 3 Consideration.

(a) In consideration for the Mortgage Loans to be purchased hereunder the Purchaser shall, as described in Section 8, pay to or upon the order of the Seller in immediately available funds an amount (the "Aggregate Purchase Price") equal to (i) the net sale proceeds of the Class A Certificates and the Mezzanine Certificates and (ii) the Class CE Certificates and the Class P Certificates.

(b) The Purchaser or any assignee, transferee or designee of the Purchaser shall be entitled to all scheduled payments of principal due after the Cut-off Date, all other payments of principal due and collected after the Cut-off Date, and all payments of interest on the Mortgage Loans allocable to the period after the Cut-off Date. All scheduled payments of principal and interest due on or before the Cut-off Date and collected after the Cut-off Date shall belong to the Seller.

(c) Pursuant to the Pooling and Servicing Agreement, the Purchaser will assign all of its right, title and interest in and to the Mortgage Loans, together with its rights under this Agreement, to the Trustee for the benefit of the Certificateholders.

SECTION 4 Transfer of the Mortgage Loans.

(a) Possession of Mortgage Files. The Seller does hereby sell, and in connection therewith hereby assigns, to the Purchaser, effective as of the Closing Date, without recourse but subject to the terms of this Agreement, all of its right, title and interest in, to and under the Mortgage Loans, including the related Prepayment Charges. The contents of each Mortgage File not delivered to the Purchaser or to any assignee, transferee or designee of the Purchaser on or prior to the Closing Date are and shall be held in trust by the Seller for the benefit of the Purchaser or any assignee, transferee or designee of the Purchaser. Upon the sale of the Mortgage Loans, the ownership of each Mortgage Note, the related Mortgage and the other contents of the related Mortgage File is vested in the Purchaser and the ownership of all records and documents with respect to the related Mortgage Loan prepared by or that come into the possession of the Seller on or after the Closing Date shall immediately vest in the Purchaser and shall be delivered immediately to the Purchaser or as otherwise directed by the Purchaser.

(b) Delivery of Mortgage Loan Documents. The Seller will, on or prior to the Closing Date, deliver or cause to be delivered to the Purchaser or any assignee, transferee or designee of the Purchaser each of the following documents for each Mortgage Loan:

(i) the original Mortgage Note, endorsed in blank or in the following form "Pay to the order of Wells Fargo Bank, N.A., as Trustee under the applicable agreement, without recourse," with all prior and intervening endorsements showing a complete chain of endorsement from the originator to the Person so endorsing to the Trustee;

(ii) the original Mortgage with evidence of recording thereon, and the original recorded power of attorney, if the Mortgage was executed pursuant to a power of attorney, with evidence of recording thereon;

(iii) an original Assignment in blank;

(iv) the original recorded Assignment or Assignments showing a complete chain of assignment from the originator to the Person assigning the Mortgage to the Trustee as contemplated by the immediately preceding clause (iii);

(v) the original or copies of each assumption, modification or substitution agreement, if any; and

(vi) the original lender's title insurance policy or, if the original title policy has not been issued, the irrevocable commitment to issue the same.

With respect to a maximum of approximately 2.0% of the Original Mortgage Loans, by outstanding principal balance of the Original Mortgage Loans as of the Cut-off Date, if any original Mortgage Note referred to in Section 4(b)(i) above cannot be located, the obligations of the Seller to deliver such documents shall be deemed to be satisfied upon delivery to the Purchaser of a photocopy of such Mortgage Note, if available, with a lost note affidavit substantially in the form of Exhibit I attached to the Pooling and Servicing Agreement. If any of the original Mortgage Notes for which a lost note affidavit was delivered to the Purchaser is subsequently located, such original Mortgage Note shall be delivered to the Purchaser within three Business Days.

If any of the documents referred to in Sections 4(b)(ii), (iii) or (iv) above has, as of the Closing Date, been submitted for recording but either (x) has not been returned from the applicable public recording office or (y) has been lost or such public recording office has retained the original of such document, the obligations of the Seller to deliver such documents shall be deemed to be satisfied upon (1) delivery to the Purchaser of a copy of each such document certified by the Originator in the case of (x) above or the applicable public recording office in the case of (y) above to be a true and complete copy of the original that was submitted for recording and (2) if such copy is certified by the Originator, delivery to the Purchaser promptly upon receipt thereof of either the original or a copy of such document certified by the applicable public recording office to be a true and complete copy of the original. Notice shall be provided to the Purchaser, the Trustee and the Rating Agencies by the Seller if delivery pursuant to clause (2) above will be made more than 180 days after the Closing Date. If the original lender's title insurance policy was not delivered pursuant to Section 4(b)(vi) above, the Seller shall deliver or cause to be delivered to the Purchaser, promptly after receipt thereof, the original lender's title insurance policy. The Seller shall deliver or cause to be delivered to the Purchaser promptly upon receipt thereof any other original documents constituting a part of a Mortgage File received with respect to any Mortgage Loan, including, but not limited to, any original documents evidencing an assumption or modification of any Mortgage Loan.

The Seller shall (at the expense of the Responsible Party) promptly (within sixty Business Days following the later of the Closing Date and the date of receipt by the Seller of the recording information for a Mortgage, but in no event later than ninety days following the Closing Date) submit or cause to be submitted for recording, at no expense to the Trust Fund, the Trustee or the Purchaser, in the appropriate public office for real property records, each Assignment referred to in Sections 4(b)(iii) and (iv) above and the Seller shall execute each original Assignment or cause each original Assignment to be executed in the following form: "Wells Fargo Bank, N.A., as Trustee under the applicable agreement." In the event that any such

Assignment is lost or returned unrecorded because of a defect therein, the Seller shall promptly prepare or cause to be prepared a substitute Assignment or cure or cause to be cured such defect, as the case may be, and thereafter cause each such Assignment to be duly recorded.

Notwithstanding the foregoing, however, for administrative convenience and facilitation of servicing and to reduce closing costs, the Assignments shall not be required to be submitted for recording (except with respect to any Mortgage Loan located in Maryland) unless the Trustee or the Purchaser receives notice that such failure to record would result in a withdrawal or a downgrading by any Rating Agency of the rating on any Class of Certificates; provided, however, the Seller shall submit or cause to be submitted each Assignment for recording in the manner described above, at the expense of the Responsible Party and at no expense to the Trust Fund or the Trustee, upon the earliest to occur of: (i) reasonable direction by Holders of Certificates entitled to at least 25% of the Voting Rights, (ii) the occurrence of a Servicer Event of Default, (iii) the occurrence of a bankruptcy, insolvency or foreclosure relating to the Servicer, (iv) the occurrence of a servicing transfer as described in Section 7.02 of the Pooling and Servicing Agreement, (v) with respect to any one Assignment, the occurrence of a bankruptcy, insolvency or foreclosure relating to the Mortgagor under the related Mortgage and (vi) any Mortgage Loan that is 90 days or more delinquent. Upon receipt of written notice that recording of the Assignments is required pursuant to one or more of the conditions set forth in the preceding sentence, the Seller shall be required to deliver such Assignments or shall cause such Assignments to be delivered within 30 days following receipt of such notice.

Each original document relating to a Mortgage Loan which is not delivered to the Purchaser or its assignee, transferee or designee, if held by the Seller, shall be so held for the benefit of the Purchaser, its assignee, transferee or designee.

(c) Acceptance of Mortgage Loans. The documents delivered pursuant to Section 4(b) hereof shall be reviewed by the Purchaser or any assignee, transferee or designee of the Purchaser at any time before or after the Closing Date (and with respect to each document permitted to be delivered after the Closing Date, within seven days of its delivery) to ascertain that all required documents have been executed and received and that such documents relate to the Mortgage Loans identified on the Mortgage Loan Schedule.

(d) Transfer of Interest in Agreements. The Purchaser has the right to assign its interest under this Agreement, in whole or in part, to the Trustee, as may be required to effect the purposes of the Pooling and Servicing Agreement, without the consent of the Seller or the Responsible Party, and the assignee shall succeed to the rights and obligations hereunder of the Purchaser. Any expense reasonably incurred by or on behalf of the Purchaser or the Trustee in connection with enforcing any obligations of the Seller or the Responsible Party under this Agreement will be promptly reimbursed by the Seller or the Responsible Party, as applicable.

(e) Examination of Mortgage Files. Prior to the Closing Date, the Seller shall either (i) deliver in escrow to the Purchaser, or to any assignee, transferee or designee of the Purchaser for examination, the Mortgage File pertaining to each Mortgage Loan or (ii) make such Mortgage Files available to the Purchaser or to any assignee, transferee or designee of the Purchaser for examination. Such examination may be made by the Purchaser or the Trustee, and their respective designees, upon reasonable notice to the Seller during normal business hours

before the Closing Date and within 60 days after the Closing Date. If any such person makes such examination prior to the Closing Date and identifies any Mortgage Loans that do not conform to the requirements of the Purchaser as described in this Agreement, such Mortgage Loans shall be deleted from the Closing Schedule. The Purchaser may, at its option and without notice to the Seller, purchase all or part of the Mortgage Loans without conducting any partial or complete examination. The fact that the Purchaser or any person has conducted or has failed to conduct any partial or complete examination of the Mortgage Files shall not affect the rights of the Purchaser or any assignee, transferee or designee of the Purchaser to demand repurchase or other relief as provided herein or under the Pooling and Servicing Agreement.

SECTION 5 Representations, Warranties and Covenants of the Responsible Party and the Seller.

(a) The Responsible Party hereby represents and warrants to the Seller and the Purchaser, as of the date hereof and as of the Closing Date, and covenants, that:

(i) The Responsible Party is duly organized, validly existing and in good standing under the laws of the state of California and is and will remain in compliance with the laws of each state in which any Mortgaged Property is located to the extent necessary to ensure the enforceability of each Mortgage Loan;

(ii) The Responsible Party has the full power and authority to execute, deliver and perform, and to enter into and consummate, all transactions contemplated by this Agreement. The Responsible Party has duly authorized the execution, delivery and performance of this Agreement, has duly executed and delivered this Agreement, and this Agreement, assuming due authorization, execution and delivery by the Seller and the Purchaser, constitutes a legal, valid and binding obligation of the Responsible Party, enforceable against it in accordance with its terms except as the enforceability thereof may be limited by bankruptcy, insolvency or reorganization;

(iii) The execution and delivery of this Agreement by the Responsible Party and the performance of and compliance with the terms of this Agreement which are applicable to the Responsible Party will not violate the Responsible Party's limited partnership agreement or constitute a default under or result in a breach or acceleration of, any material contract, agreement or other instrument to which the Responsible Party is a party or which may be applicable to the Responsible Party or its assets;

(iv) The Responsible Party is not in violation of, and the execution and delivery of this Agreement by the Responsible Party and its performance and compliance with the terms of this Agreement will not constitute a violation with respect to, any order or decree of any court or any order or regulation of any federal, state, municipal or governmental agency having jurisdiction over the Responsible Party or its assets, which violation might have consequences that would materially and adversely affect the condition (financial or otherwise) or the operation of the Responsible Party or its assets or might have consequences that would materially and adversely affect the enforceability of the Mortgage Loans or this Agreement or the performance of its obligations and duties hereunder;

(v) The Responsible Party does not believe, nor does it have any reason or cause to believe, that it cannot perform each and every covenant of the Responsible Party contained in this Agreement;

(vi) There are no actions or proceedings against, or investigations of, the Responsible Party before any court, administrative or other tribunal (A) that might prohibit its entering into this Agreement, (B) seeking to prevent the consummation of the transactions contemplated by this Agreement or (C) that might prohibit or materially and adversely affect the performance by the Responsible Party of its obligations under, or the validity or enforceability of, this Agreement

(vii) No consent, approval, authorization or order of any court or governmental agency or body is required for the execution, delivery and performance by the Responsible Party of, or compliance by the Responsible Party with, this Agreement or the consummation of the transactions contemplated by this Agreement, except for such consents, approvals, authorizations or orders, if any, that have been obtained prior to the Closing Date;

(viii) The consummation of the transactions contemplated by this Agreement are in the ordinary course of business of the Responsible Party; and

(ix) Neither this Agreement nor any written statement, report or other document prepared and furnished by the Responsible Party pursuant to this Agreement or in connection with the transactions contemplated hereby contains any untrue statement of material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading.

(b) The Seller hereby represents and warrants to the Responsible Party and the Purchaser, as of the date hereof and as of the Closing Date, and covenants, that:

(i) The Seller is duly organized, validly existing and in good standing as a limited partnership under the laws of the State of Delaware with full limited partnership power and authority to conduct its business as presently conducted by it to the extent material to the consummation of the transactions contemplated herein. The Seller has the full limited partnership power and authority to own the Mortgage Loans and to transfer and convey the Mortgage Loans to the Purchaser and has the full limited partnership power and authority to execute and deliver, engage in the transactions contemplated by, and perform and observe the terms and conditions of this Agreement.

(ii) The Seller has duly authorized the execution, delivery and performance of this Agreement, has duly executed and delivered this Agreement, and this Agreement, assuming due authorization, execution and delivery by the Responsible Party and the Purchaser, constitutes a legal, valid and binding obligation of the Seller, enforceable against it in accordance with its terms except as the enforceability thereof may be limited by bankruptcy, insolvency or reorganization.

(iii) The execution, delivery and performance of this Agreement by the Seller (x) does not conflict and will not conflict with, does not breach and will not result in a

breach of and does not constitute and will not constitute a default (or an event, which with notice or lapse of time or both, would constitute a default) under (A) any terms or provisions of the certificate of formation or limited partnership agreement of the Seller, (B) any term or provision of any material agreement, contract, instrument or indenture, to which the Seller is a party or by which the Seller or any of its property is bound or (C) any law, rule, regulation, order, judgment, writ, injunction or decree of any court or governmental authority having jurisdiction over the Seller or any of its property and (y) does not create or impose and will not result in the creation or imposition of any lien, charge or encumbrance which would have a material adverse effect upon the Mortgage Loans or any documents or instruments evidencing or securing the Mortgage Loans.

(iv) No consent, approval, authorization or order of, registration or filing with, or notice on behalf of the Seller to any governmental authority or court is required, under federal laws or the laws of the State of Delaware, for the execution, delivery and performance by the Seller of, or compliance by the Seller with, this Agreement or the consummation by the Seller of any other transaction contemplated hereby; provided, however, that the Seller makes no representation or warranty regarding federal or state securities laws in connection with the sale or distribution of the Certificates.

(v) This Agreement does not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements contained herein not misleading. The written statements, reports and other documents furnished by the Seller pursuant to this Agreement or in connection with the transactions contemplated hereby taken in the aggregate do not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements contained therein not misleading.

(vi) The Seller is not in violation of, and the execution and delivery of this Agreement by the Seller and its performance and compliance with the terms of this Agreement will not constitute a violation with respect to, any order or decree of any court or any order or regulation of any federal, state, municipal or governmental agency having jurisdiction over the Seller or its assets, which violation might have consequences that would materially and adversely affect the condition (financial or otherwise) or the operation of the Seller or its assets or might have consequences that would materially and adversely affect the performance of its obligations and duties hereunder.

(vii) The Seller does not believe, nor does it have any reason or cause to believe, that it cannot perform each and every covenant contained in this Agreement.

(viii) Immediately prior to the sale of the Mortgage Loans to the Purchaser as herein contemplated, the Seller will be the owner of the related Mortgage and the indebtedness evidenced by the related Mortgage Note, and, upon the payment to the Seller of the Aggregate Purchase Price, in the event that the Seller retains or has retained record title, the Seller shall retain such record title to each Mortgage, each related Mortgage Note and the related Mortgage Files with respect thereto in trust for the Purchaser as the owner thereof from and after the date hereof.

(ix) There are no actions or proceedings against, or investigations known to it of, the Seller before any court, administrative or other tribunal (A) that might prohibit its entering into this Agreement, (B) seeking to prevent the sale of the Mortgage Loans by the Seller or the consummation of the transactions contemplated by this Agreement or (C) that might prohibit or materially and adversely affect the performance by the Seller of its obligations under, or validity or enforceability of, this Agreement.

(x) The consummation of the transactions contemplated by this Agreement are in the ordinary course of business of the Seller, and the transfer, assignment and conveyance of the Mortgage Notes and the Mortgages by the Seller are not subject to the bulk transfer or any similar statutory provisions.

(xi) The Seller has not dealt with any broker, investment banker, agent or other person, except for the Purchaser or any of its affiliates, that may be entitled to any commission or compensation in connection with the sale of the Mortgage Loans.

(xii) There is no litigation currently pending or, to the best of the Seller's knowledge without independent investigation, threatened against the Seller that would reasonably be expected to adversely affect the transfer of the Mortgage Loans, the issuance of the Certificates or the execution, delivery, performance or enforceability of this Agreement, or that would result in a material adverse change in the financial condition of the Seller.

(xiii) The Seller is solvent and will not be rendered insolvent by the consummation of the transactions contemplated hereby. The Seller is not transferring any Mortgage loan with any intent to hinder, delay or defraud any of its creditors.

(xiv) The Seller makes each of the additional representations and warranties set forth on Schedule I hereto.

SECTION 6 Representations and Warranties of the Responsible Party Relating to the Mortgage Loans.

The Responsible Party hereby represents and warrants to the Seller and the Purchaser that as to each Mortgage Loan as of the Closing Date or as of such other date as specified herein:

(1) The information set forth in the Mortgage Loan Schedule, the historical delinquency information provided in conformity with Item 1100(b) of Regulation AB and the Prepayment Charge Schedule with respect to the Mortgage Loans is complete, true and correct as of the Cut-off Date;

(2) Each document or instrument in the related Mortgage File is in a form generally acceptable to prudent mortgage lenders that regularly originate or purchase mortgage loans comparable to the Mortgage Loans for sale to prudent investors in the secondary market that invest in mortgage loans such as the Mortgage Loans;

(3) All payments required to be made up to the close of business on the Business Day prior to the Cut-off Date for each Mortgage Loan under the terms of the Mortgage Note have been made. Except for payments in the nature of Escrow Payments, including without limitation, taxes and insurance payments, the Originator has not advanced funds, or induced, solicited or knowingly received any advance of funds from a party other than the owner of the related Mortgaged Property, directly or indirectly, for the payment of any amount required by the Mortgage Note or Mortgage, except for interest accruing from the date of the Mortgage Note or the date of disbursement of the Mortgage proceeds, whichever is greater, to the day which precedes by one month the Due Date of the first installment of principal and interest. No payment under the Mortgage Loan is more than sixty (60) days past due, nor has any payment under the Mortgage Loan been more than sixty (60) days past due at any time since origination. The first Monthly Payment was or shall be made with respect to the Mortgage Loan on its Due Date or within the grace period, all in accordance with the terms of the related Mortgage Note;

(4) There are no delinquent taxes, ground rents, water and municipal charges, sewer rents, assessments, primary insurance policy premiums, fire and hazard insurance premiums, leasehold payments, including assessments payable in future installments or other outstanding charges affecting the related Mortgaged Property;

(5) The terms of the Mortgage Note and the Mortgage have not been impaired, waived, altered or modified in any respect, except by written instruments, recorded, or in the process of being recorded, in the applicable public recording office if necessary to maintain the lien priority of the Mortgage, and which have been delivered or will be delivered to the Custodian on behalf of the Purchaser; the substance of any such waiver, alteration or modification has been approved by the insurer under any primary insurance policy or lender-paid primary insurance policy, if any, and the title insurer, to the extent required by the related policy, and is reflected on the Mortgage Loan Schedule. No instrument of waiver, alteration or modification has been executed, and no Mortgagor has been released, in whole or in part, except in connection with an assumption agreement approved by the insurer under the primary insurance policy or lender-paid primary insurance policy, if any, and the title insurer, to the extent required by the policy, and which assumption agreement has been delivered to the Purchaser and the terms of which are reflected in the Mortgage Loan Schedule;

(6) The Mortgage Note and the Mortgage are not subject to any right of rescission, set-off, counterclaim or defense, including, without limitation, the defense of usury, nor will the operation of any of the terms of the Mortgage Note and/or the Mortgage, or the exercise of any right thereunder, render the Mortgage Note or the Mortgage unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury and no such right of rescission, set-off, counterclaim or defense has been asserted with respect thereto and no Mortgagor was a debtor in any state or federal bankruptcy or insolvency proceeding at the time the Mortgage Loan was originated;

(7) All buildings or other improvements upon the Mortgaged Property are insured by an insurer acceptable to Fannie Mae and Freddie Mac against loss by fire, hazards of extended coverage and such other hazards as are customary in the area where the Mortgaged Property is located, pursuant to insurance policies conforming to the requirements of the Pooling and Servicing Agreement. All such insurance policies contain a standard mortgagee clause

naming New Century Mortgage Corporation, its successors and assigns as mortgagee and all premiums thereon have been paid. If the Mortgaged Property is in an area identified on a flood hazard map or flood insurance rate map issued by the Federal Emergency Management Agency as having special flood hazards (and such flood insurance has been made available), a flood insurance policy meeting the requirements of the current guidelines of the Federal Insurance Administration with a generally acceptable insurance carrier, in the amount described in the Pooling and Servicing Agreement (and to the extent required in the Pooling and Servicing Agreement) is in effect, which policy conforms to the requirements of Fannie Mae and Freddie Mac. The Mortgage obligates the Mortgagor thereunder to obtain and maintain all such insurance at the Mortgagor's cost and expense, and on the Mortgagor's failure to do so, authorizes the holder of the Mortgage to obtain and maintain such insurance at Mortgagor's cost and expense and to seek reimbursement therefor from the Mortgagor. The hazard insurance policy is the valid and binding obligation of the insurer, is in full force and effect, and will be in full force and effect and inure to the benefit of the Servicer upon the consummation of the transactions contemplated by this Agreement. The Originator has not engaged in, and has no knowledge of the Mortgagor's having engaged in, any act or omission which would impair the coverage of any such policy, the benefits of the endorsement provided for herein, or the validity and binding effect of either, including, without limitation, no unlawful fee, commission, kickback or other unlawful compensation or value of any kind has been or will be received, retained or realized by any attorney, firm or other person or entity, and no such unlawful items have been received, retained or realized by the Originator;

(8) Any and all requirements of any federal, state or local law including, without limitation, all applicable predatory and abusive lending laws, usury, truth in lending, real estate settlement procedures, consumer credit protection, equal credit opportunity, fair housing or disclosure laws applicable to the origination and servicing of mortgage loans of a type similar to the Mortgage Loans have been complied with and the consummation of the transactions contemplated hereby will not involve the violation of any such laws or regulations, and the Originator shall maintain in its possession, available for the Purchaser's inspection, and shall deliver to the Purchaser upon demand, evidence of compliance with all such requirements;

(9) The Mortgage has not been satisfied, cancelled, subordinated or rescinded, in whole or in part, and the Mortgaged Property has not been released from the lien of the Mortgage, in whole or in part, nor has any instrument been executed that would effect any such satisfaction, cancellation, subordination, rescission or release. Neither the Originator nor the Servicer has waived the performance by the Mortgagor of any action, if the Mortgagor's failure to perform such action would cause the Mortgage Loan to be in default, nor has the Originator or the Servicer waived any default resulting from any action or inaction by the Mortgagor;

(10) The related Mortgage is properly recorded and is a valid, existing and enforceable (A) first lien and first priority security interest with respect to each Mortgage Loan which is indicated by to be a first lien (as reflected on the Mortgage Loan Schedule), or (B) second lien and second priority security interest with respect to each Mortgage Loan which is indicated by the Servicer to be a second lien Mortgage Loan (as reflected on the Mortgage Loan Schedule), in either case, on the Mortgaged Property, including all buildings and improvements on the Mortgaged Property and all installations and mechanical, electrical, plumbing, heating and air conditioning systems located in or annexed to such buildings, and all additions, alterations

and replacements made at any time with respect to the foregoing. The lien of the Mortgage is subject only to (a) the lien of current real property taxes and assessments not yet due and payable, (b) covenants, conditions and restrictions, rights of way, easements and other matters of the public record as of the date of recording being acceptable to prudent mortgage lending institutions generally and specifically referred to in the lender's title insurance policy delivered to the Responsible Party by the Originator and which do not adversely affect the Value of the Mortgaged Property, (c) other matters to which like properties are commonly subject which do not materially interfere with the benefits of the security intended to be provided by the Mortgage or the use, enjoyment, value or marketability of the related Mortgaged Property and (d) a first lien on the Mortgaged Property with respect to each Mortgage Loan which is indicated by the Servicer to be a first lien (as reflected on the Mortgage Loan Schedule) or a second lien on the Mortgaged Property with respect to each Mortgage Loan which is indicated by the Servicer to be a second lien (as reflected on the Mortgage Loan Schedule). Any security agreement, chattel mortgage or equivalent document related to and delivered in connection with the Mortgage Loan establishes and creates a valid, existing and enforceable (A) first lien and first priority security interest with respect to each Mortgage Loan which is indicated to be a first lien (as reflected on the Mortgage Loan Schedule), or (B) second lien and second priority security interest with respect to each Mortgage Loan which is indicated by the Servicer to be a second lien Mortgage Loan (as reflected on the Mortgage Loan Schedule), in either case, on the property described therein and the Responsible Party had full right to sell and assign the same to the Seller. The Mortgaged Property was not, as of the date of origination of the Mortgage Loan, subject to a mortgage, deed of trust, deed to secure debt or other security instrument creating a lien subordinate to the lien of the Mortgage;

(11) The Mortgage Note and the related Mortgage are genuine and each is the legal, valid and binding obligation of the Mortgagor and enforceable by the Purchaser against such Mortgagor in accordance with its terms, except only as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by law;

(12) All parties to the Mortgage Note, the Mortgage and any other related agreement had legal capacity to enter into the Mortgage Loan, to execute and deliver the Mortgage Note, the Mortgage and any other related agreement and to pledge, grant or convey the interest therein purported to be conveyed, and the Mortgage Note, the Mortgage and any other related agreement have been duly and properly executed by such parties. The Mortgagor is a natural person;

(13) The proceeds of the Mortgage Loan have been fully disbursed to or for the account of the Mortgagor and there is no obligation for the Mortgagee to advance additional funds thereunder and any and all requirements as to completion of any on-site or off-site improvement and as to disbursements of any escrow funds therefor have been complied with. All costs, fees and expenses incurred in making or closing the Mortgage Loan and the recording of the Mortgage have been paid, and the Mortgagor is not entitled to any refund of any amounts paid or due to the Mortgagee pursuant to the Mortgage Note or Mortgage;

(14) No proceeds from any Mortgage Loan were used to purchase single-premium credit insurance policies;

(15) All parties which have had any interest in the Mortgage Loan, whether as originator, mortgagee, assignee, pledgee or otherwise, are (or, during the period in which they held and disposed of such interest, were): (A) organized under the laws of such state, or (B) qualified to do business in such state, or (C) federal savings and loan associations or national banks having principal offices in such state, or (D) not doing business in such state so as to require qualification or licensing, or (E) not otherwise required to be licensed in such state. All parties which have had any interest in the Mortgage Loan were in compliance with any and all applicable "doing business" and licensing requirements of the laws of the state wherein the Mortgaged Property is located or were not required to be licensed in such state;

(16) On the date of its origination and on the Closing Date, the Mortgage Loan was and is covered by an American Land Title Association ("ALTA") lender's title insurance policy (which, in the case of an Adjustable-Rate Mortgage Loan has an adjustable rate mortgage endorsement in the form of ALTA 6.0 or 6.1) acceptable to Fannie Mae and Freddie Mac, issued by a title insurer acceptable to Fannie Mae and Freddie Mac and qualified to do business in the jurisdiction where the Mortgaged Property is located, insuring (subject to the exceptions contained above in Section (10)(a),(b) and (d)) the Servicer, its successors and assigns as to the first priority lien or second priority lien, as the case may be, of the Mortgage in the original principal amount of the Mortgage Loan and, with respect to any Adjustable-Rate Mortgage Loan, against any loss by reason of the invalidity or unenforceability of the lien resulting from the provisions of the Mortgage providing for adjustment in the Mortgage Rate and Monthly Payment. Additionally, such lender's title insurance policy affirmatively insures ingress and egress to and from the Mortgaged Property, and against encroachments by or upon the Mortgaged Property or any interest therein. The Servicer is the sole insured of such lender's title insurance policy, and such lender's title insurance policy is valid and remains in full force and effect and will be in full force and effect upon the consummation of the transactions contemplated by this Agreement. No claims have been made under such lender's title insurance policy, and no prior holder of the related Mortgage, including the Originator, has done, by act or omission, anything which would impair the coverage of such lender's title insurance policy including, without limitation, no unlawful fee, commission, kickback or other unlawful compensation or value of any kind has been or will be received, retained or realized by any attorney, firm or other person or entity, and no such unlawful items have been received, retained or realized by the Originator;

(17) There is no default, breach, violation or event of acceleration existing under the Mortgage or the Mortgage Note and no event which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a default, breach, violation or event of acceleration, and neither the Originator nor the Servicer nor any other entity involved in originating or servicing a Mortgage Loan has waived any default, breach, violation or event of acceleration or received a written notice of default of any senior mortgage related to the Mortgage Property which has not been cured. With respect to each Mortgage Loan which is indicated by the Servicer to be a second lien Mortgage Loan (as reflected on the Mortgage Loan Schedule) (i) the first lien is in full force and effect, (ii) there is no default, breach, violation or event of acceleration existing under such first lien mortgage or the related mortgage note, (iii) no event which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a default, breach, violation or event of acceleration thereunder, and either (A) the first lien mortgage contains a provision which allows or (B) applicable law

requires, the mortgagee under the second lien Mortgage Loan to receive notice of any default and affords such mortgagee an opportunity to cure any default by payment in full or otherwise under the first lien mortgage;

(18) There are no mechanics' or similar liens or claims which have been filed for work, labor or material (and no rights are outstanding that under law could give rise to such lien) affecting the related Mortgaged Property which are or may be liens prior to, or equal or coordinate with, the lien of the related Mortgage;

(19) As of the date of origination of the Mortgage Loan, all improvements which were considered in determining the Value of the related Mortgaged Property lay wholly within the boundaries and building restriction lines of the Mortgaged Property, and no improvements on adjoining properties encroach upon the Mortgaged Property;

(20) The Mortgage Loan was originated by New Century Mortgage Corporation or by a savings and loan association, a savings bank, a commercial bank or similar banking institution which is supervised and examined by a federal or state authority, or by a mortgagee approved as such by the Secretary of HUD. The documents, instruments and agreements submitted for loan underwriting were not falsified and contain no untrue statement of material fact or omit to state a material fact required to be stated therein or necessary to make the information and statements therein not misleading;

(21) Principal payments on the Mortgage Loan commenced no more than sixty days after the proceeds of the Mortgage Loan were disbursed. The Mortgage Loan bears interest at the Mortgage Rate. With respect to each Mortgage Loan, the Mortgage Note is payable on the first day of each month in Monthly Payments, which, in the case of a Fixed Rate Mortgage Loans, are sufficient to fully amortize the original principal balance over the original term thereof, of not more than 30 years, and to pay interest at the related Mortgage Rate, and, in the case of an Adjustable Rate Mortgage Loan, are changed on each Adjustment Date, and in any case, are sufficient to fully amortize the original principal balance over the original term thereof and to pay interest at the related Mortgage Rate. The Index for each Adjustable-Rate Mortgage Loan is as defined in the Mortgage Loan Schedule. The Mortgage Note does not permit negative amortization. No Mortgage Loan is a convertible Mortgage Loan;

(22) The origination practices used by the Originator and collection practices used by the Servicer with respect to each Mortgage Note and Mortgage have been in all respects legal, proper, prudent and customary in the mortgage origination and servicing industry. The Mortgage Loan has been serviced by the Servicer and any predecessor servicer in accordance with the terms of the Mortgage Note. With respect to escrow deposits and Escrow Payments (other than with respect to each Mortgage Loan which is indicated by the Servicer to be a second lien Mortgage Loan and of which the mortgagee under the first lien is collecting Escrow Payments (as reflected on the Mortgage Loan Schedule)), if any, all such payments are in the possession of, or under the control of, the Servicer and there exist no deficiencies in connection therewith for which customary arrangements for repayment thereof have not been made. An escrow of funds is not prohibited by applicable law with respect to any Mortgage Loan for which such escrow of funds has been established. All Mortgage Rate adjustments have been made in strict compliance with state and federal law and the terms of the related Mortgage Note. If,

EXHIBIT 7

pursuant to the terms of the Mortgage Note, another index was selected for determining the Mortgage Rate, the same index was used with respect to each Mortgage Note which required a new index to be selected, and such selection did not conflict with the terms of the related Mortgage Note. The Originator or an Affiliate executed and delivered any and all notices required under applicable law and the terms of the related Mortgage Note and Mortgage regarding the Mortgage Rate and the monthly payment adjustments. Any interest required to be paid pursuant to state, federal and local law has been properly paid and credited. No escrow deposits or Escrow Payments or other charges or payments due the Servicer have been capitalized under any Mortgage or the related Mortgage Note and no such escrow deposits or Escrow Payments are being held by the Servicer for any work on a Mortgaged Property which has not been completed;

(23) The Mortgaged Property is undamaged by waste, earthquake or earth movement, windstorm, flood, tornado or other casualty, so as to affect adversely the value of the Mortgaged Property as security for the Mortgage Loan or the use for which the premises were intended and there is no proceeding pending or threatened for the total or partial condemnation thereof nor is such a proceeding currently occurring;

(24) The Mortgage and related Mortgage Note contain customary and enforceable provisions such as to render the rights and remedies of the holder thereof adequate for the realization against the Mortgaged Property of the benefits of the security provided thereby, including, (a) in the case of a Mortgage designated as a deed of trust, by trustee's sale, and (b) otherwise by judicial or non-judicial foreclosure. Upon default by a Mortgagor on a Mortgage Loan and foreclosure on, or trustee's sale of, the Mortgaged Property pursuant to the proper procedures, the holder of the Mortgage Loan will be able to deliver good and merchantable title to the Mortgaged Property. The Mortgaged Property has not been subject to any bankruptcy proceeding or foreclosure proceeding and the Mortgagor has not filed for protection under applicable bankruptcy laws. There is no homestead or other exemption available to the Mortgagor which would materially interfere with the right to sell the Mortgaged Property at a trustee's sale or the right to foreclose the Mortgage subject to applicable federal and state laws and judicial precedent with respect to bankruptcy and rights of redemption. The Mortgagor has not notified the Originator or the Servicer and neither the Originator nor the Servicer has any knowledge of any relief requested or allowed to the Mortgagor under the Servicemembers Civil Relief Act;

(25) The Mortgage Loan was underwritten in accordance with the underwriting guidelines of New Century Mortgage Corporation in effect at the time the Mortgage Loan was originated; and the Mortgage Note and Mortgage are on forms acceptable to prudent mortgage lending institutions in the secondary market;

(26) The Mortgage Note is not and has not been secured by any collateral except the lien of the corresponding Mortgage on the Mortgaged Property and the security interest of any applicable security interest or chattel mortgage referred to in (10) above;

(27) The Mortgage Note is comprised of one original promissory note and each such promissory note constitutes an "instrument" for purposes of Section 102(a)(47) of the Uniform Commercial Code;

(28) The Mortgage File contains an appraisal of the related Mortgaged Property which (A) satisfied the standards of Fannie Mae and Freddie Mac, (B) was conducted generally in accordance with the New Century Mortgage Corporation's underwriting guidelines and included an assessment of the fair market value of the related Mortgaged Property at the time of such appraisal, and (C) was made and signed, prior to the approval of the Mortgage Loan application, by a qualified appraiser, duly appointed by the Originator or the Servicer, who had no interest, direct or indirect in the Mortgaged Property or in any loan made on the security thereof, whose compensation is not affected by the approval or disapproval of the Mortgage Loan and who met the minimum qualifications of Fannie Mae and Freddie Mac. Each appraisal of the Mortgage Loan was made in accordance with the relevant provisions of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989;

(29) In the event the Mortgage constitutes a deed of trust, a trustee, duly qualified under applicable law to serve as such, has been properly designated and currently so serves and is named in the Mortgage, and no fees or expenses are or will become payable by the Purchaser to the trustee under the deed of trust, except in connection with a trustee's sale after default by the Mortgagor;

(30) No Mortgage Loan contains provisions pursuant to which Monthly Payments are (a) paid or partially paid with funds deposited in any separate account established by the Originator, the Servicer, the Mortgagor, or anyone on behalf of the Mortgagor, (b) paid by any source other than the Mortgagor or (c) contains any other similar provisions which may constitute a "buydown" provision. The Mortgage Loan is not a graduated payment mortgage loan and the Mortgage Loan does not have a shared appreciation or other contingent interest feature;

(31) The Mortgagor has executed a statement to the effect that the Mortgagor has received all disclosure materials required by and the Originator has complied with all applicable law with respect to the making of fixed rate mortgage loans in the case of Fixed Rate Mortgage Loans and adjustable rate mortgage loans in the case of Adjustable-Rate Mortgage Loans and rescission materials with respect to Refinanced Mortgage Loans, and such statement is and will remain in the Mortgage File;

(32) No Mortgage Loan was made in connection with (a) the construction or rehabilitation of a Mortgaged Property or (b) facilitating the trade-in or exchange of a Mortgaged Property;

(33) The Mortgaged Property is lawfully occupied under applicable law; all inspections, licenses and certificates required to be made or issued with respect to all occupied portions of the Mortgaged Property and, with respect to the use and occupancy of the same, including but not limited to certificates of occupancy and fire underwriting certificates, have been made or obtained from the appropriate authorities. No improvement located on or being part of any Mortgaged Property is in violation of any applicable zoning law or regulation. To the best of the Responsible Party's knowledge and with respect to each Mortgage Loan that is covered by a primary mortgage insurance policy, the improvement(s) located on or being part of the related Mortgaged Property were constructed in accordance with the specifications set forth in the original construction plans;

EXHIBIT 7

(34) No error, omission, misrepresentation, negligence, fraud or similar occurrence with respect to the origination, modification or amendment of any Mortgage Loan has taken place on the part of any person, including without limitation the Mortgagor, any appraiser, any builder or developer, or any other party involved in the origination of the Mortgage Loan or in the application of any insurance in relation to such Mortgage Loan; provided, however, that the Responsible Party shall not be responsible for facts or circumstances pursuant to this subsection in the event that the Purchaser does not notify the Responsible Party of such instance within five (5) years of the Closing Date. The Originator has reviewed all of the documents constituting the Mortgage File and has made such inquiries as it deems necessary to make and confirm the accuracy of the representations set forth herein;

(35) Each original Mortgage was recorded and all subsequent assignments of the original Mortgage (other than the assignment to the Purchaser or the Purchaser's designee) have been recorded, or are in the process of being recorded, in the appropriate jurisdictions wherein such recordation is necessary to perfect the lien thereof as against creditors of the Originator. The Assignment of Mortgage is in recordable form and is acceptable for recording under the laws of the jurisdiction in which the Mortgaged Property is located;

(36) Any principal advances made to the Mortgagor after the date of origination of a Mortgage Loan but prior to the Cut-off Date have been consolidated with the outstanding principal amount secured by the Mortgage, and the secured principal amount, as consolidated, bears a single interest rate and single repayment term reflected on the Mortgage Loan Schedule. The lien of the Mortgage securing the consolidated principal amount is expressly insured as having (A) first lien priority with respect to each Mortgage Loan which is indicated to be a first lien Mortgage Loan (as reflected on the Mortgage Loan Schedule) or (B) second lien priority with respect to each Mortgage Loan which is indicated by the Servicer to be a second lien Mortgage Loan (as reflected on the Mortgage Loan Schedule), in either case, by a title insurance policy, an endorsement to the policy insuring the mortgagee's consolidated interest or by other title evidence acceptable to Fannie Mae and Freddie Mac. The consolidated principal amount does not exceed the original principal amount of the related Mortgage Loan;

(37) Approximately 50.56% of the Mortgage Loans are subject to a balloon payment feature;

(38) Each Mortgaged Property consists of a fee simple interest in a single parcel of real property improved by a Residential Dwelling. If the Residential Dwelling on the Mortgaged Property is a condominium unit or a unit in a planned unit development (other than a *de minimis* planned unit development) such condominium or planned unit development project meets the eligibility requirements of Fannie Mae and Freddie Mac;

(39) With respect to each Mortgage Loan secured by a manufactured home: (A) the manufactured home is permanently affixed to a foundation which is suitable for the soil conditions of the site; (B) all foundations, both perimeter and interior, have footings that are located below the frost line; (C) any wheels, axles and trailer hitches are removed from such manufactured home; and (D) the related Mortgage Loan is covered under a standard real estate title insurance policy that identifies the manufactured home as part of the real property and

EXHIBIT 7

insures or indemnifies against any loss if the manufactured home is determined not to be part of the real property;

(40) Each Mortgage Loan originated in the state of Texas pursuant to Article XVI, Section 50(a)(6) of the Texas Constitution (a "Texas Refinance Loan") has been originated in compliance with the provisions of Article XVI, Section 50(a)(6) of the Texas Constitution, Texas Civil Statutes and the Texas Finance Code. With respect to each Texas Refinance Loan that is a Cash-Out Refinancing, the related Mortgage Loan Documents state that the Mortgagor may prepay such Texas Refinance Loan in whole or in part without incurring a Prepayment Charge. The Originator does not collect any such Prepayment Charges in connection with any such Texas Refinance Loan;

(41) Interest on each Mortgage Loan is calculated on the basis of a 360-day year consisting of twelve 30-day months;

(42) There is no pending action or proceeding directly involving the Mortgaged Property in which compliance with any environmental law, rule or regulation is an issue; there is no violation of any environmental law, rule or regulation with respect to the Mortgaged Property; and nothing further remains to be done to satisfy in full all requirements of each such law, rule or regulation constituting a prerequisite to use and enjoyment of said property;

(43) The Originator shall, at its own expense, cause each Mortgage Loan to be covered by a "life of loan" tax service contract which is assignable to the Purchaser or its designee at no cost to the Purchaser or its designee; provided, however, that if the Originator fails to purchase such tax service contract, the Originator shall be required to reimburse the Purchaser for all costs and expenses incurred by the Purchaser in connection with the purchase of any such tax service contract;

(44) Each Mortgage Loan is covered by a "life of loan" flood zone service contract which is assignable to the Purchaser or its designee at no cost to the Purchaser or its designee or, for each Mortgage Loan not covered by such flood zone service contract, the Originator has agreed to purchase such flood zone service contract;

(45) None of the Mortgage Loans are classified as (a) "high cost" loans under the Home Ownership and Equity Protection Act of 1994 or (b) "high cost," "threshold," "covered" or "predatory" loans under any other applicable federal, state or local law (including without limitation any regulation or ordinance) (or a similarly classified loan using different terminology under a law imposing heightened regulatory scrutiny or additional legal liability for residential mortgage loans having high interest rates, points and/or fees);

(46) The Responsible Party has no knowledge of any circumstances or condition with respect to the Mortgage, the Mortgaged Property, the Mortgagor or the Mortgagor's credit standing that can reasonably be expected to cause the Mortgage Loan to be an unacceptable investment, cause the Mortgage Loan to become delinquent, adversely affect the value of the Mortgage Loan or to cause any Mortgage Loan to prepay during any period materially faster or slower than similar mortgage loans held by the Responsible Party generally secured by properties in the same geographic area as the related Mortgaged Property;

EXHIBIT 7

(47) The Servicer and any predecessor servicer with respect to a Mortgage Loan has fully furnished, in accordance with the Fair Credit Reporting Act and its implementing regulations, accurate and complete information (e.g., favorable and unfavorable) on its borrower credit files to Equifax, Experian and Trans Union Credit Information Company (three of the credit repositories), on a monthly basis;

(48) Each first lien Mortgage Loan identified on the Mortgage Loan Schedule as subject to a primary mortgage insurance policy will be subject to a primary mortgage insurance policy, issued by a qualified insurer, which insures that portion of the Mortgage Loan in excess of the portion of the Value of the Mortgaged Property required by Fannie Mae. All provisions of such primary mortgage insurance policy have been and are being complied with, such policy is in full force and effect, and all premiums due thereunder have been paid. Any first lien Mortgage subject to any such primary mortgage insurance policy obligates the Mortgagor thereunder to maintain such insurance and to pay all premiums and charges in connection therewith. The Mortgage Rate for the Mortgage Loan does not include any such insurance premium;

(49) The source of the down payment with respect to each Mortgage Loan has been fully verified by the Originator;

(50) With respect to any first lien Mortgage Loan, the Loan-to-Value Ratio of such Mortgage Loan at origination was not more than 100% and with respect to any Mortgage Loan, the combined Loan-to-Value Ratio of such Mortgage Loan at origination was not more than 100%;

(51) Each Mortgage Loan constitutes a "qualified mortgage" under Section 860G(a)(3)(A) of the Code and Treasury Regulation Section 1.860G-2(a)(1);

(52) Each Mortgage Loan has a valid and original credit score of not less than 500;

(53) No Mortgage Loan had an original term to maturity of more than thirty (30) years, unless otherwise set forth in the Mortgage Loan Schedule;

(54) No Mortgagor is the obligor on more than two Mortgage Notes;

(55) Each Mortgagor has a debt-to-income ratio of less than or equal to 60%, unless otherwise set forth in the Mortgage Loan Schedule;

(56) Each Mortgage contains a provision for the acceleration of the payment of the unpaid principal balance of the related Mortgage Loan in the event the related Mortgaged Property is sold without the prior consent of the mortgagee thereunder and to the best of the Responsible Party's knowledge, such provision is enforceable;

(57) With respect to each Mortgage Loan which is a second lien, (i) the related first lien does not provide for negative amortization and (ii) either no consent for the Mortgage Loan is required by the holder of the first lien or such consent has been obtained and is contained in the Mortgage File;

EXHIBIT 7

(58) No Mortgage Loan secured by a second lien had an original Stated Principal Balance obligation in excess of 50% of Freddie Mac's on family residence mortgage amount limitation for first lien mortgages as set forth in Freddie Mac's Seller/Servicer Guide in effect as of the Cut-Off Date;

(59) The pool of Mortgage Loans being sold and transferred to the Purchaser does not contain the first and second lien mortgage loans relating to a single Mortgaged Property if the aggregate original principal balance of such mortgage loans exceeds the loan limits set forth by Freddie Mac's Seller/Servicer Guide;

(60) No Mortgage Loan is a "Specifically Designated National and Blocked Person" as designated by the Office of Foreign Assets Control or as a person designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism;

(61) Each Mortgage Loan that qualifies as an "alternative mortgage transaction" within the meaning of the Alternative Mortgage Transaction Parity Act of 1982, as amended (each such Mortgage Loan, a "Parity Act State Mortgage Loan") was originated and is serviced in conformity with the regulations promulgated by the Office of Thrift Supervision pursuant to the Parity Act;

(62) No Mortgage Loan has a prepayment penalty longer than three years after its origination. Any prepayment penalty is in an amount equal to or less than the lesser of (a) the maximum amount permitted under applicable state law, and (b) if the Mortgaged Property is secured by residential real property located in a state other than Arizona, Maine, Massachusetts, New York, South Carolina or Wisconsin, six months interest on the related prepaid amount;

(63) The Mortgage Loan documents with respect to each Mortgage Loan subject to Prepayment Charges specifically authorizes such Prepayment Charges to be collected and such Prepayment Charges are permissible and enforceable in accordance with the terms of the related Mortgage Loan documents and applicable law (except to the extent that the enforceability thereof may be limited by bankruptcy, insolvency, moratorium, receivership and other similar laws relating to creditors' rights generally or the collectability thereof may be limited due to acceleration in connection with a foreclosure);

(64) Any Parity Act State Mortgage Loan originated before July 1, 2003 (i) secured by a Mortgaged Property located in the State of Maine, New York or South Carolina or the Commonwealth of Massachusetts, (ii) with an original principal balance of less than $10,000 and secured by a Mortgaged Property located in the State of Arizona or (iii) with an original principal balance of $150,000 or less and secured by a first lien on a Mortgaged Property located in the State of North Carolina, complies with all applicable state laws, rules and regulations regarding prepayment charges;

(65) The representations and warranties in this Section 6 are applicable to such second lien Mortgage Loans to the extent that the New Century Mortgage Corporation's underwriting guidelines and/or procedures related to such representations and warranties;

EXHIBIT 7

(66) All Parity Act State Mortgage Loans originated on or after July 1, 2003 comply with all applicable state laws, rules and regulations regarding prepayment charges set forth in the Mortgage Loan documents are enforceable under applicable state laws and regulations;

(67) The Mortgaged Property is located in the state identified in the Mortgage Loan Schedule and consists of a single parcel of real property with a detached single family residence erected thereon, or a two- to four-family dwelling, or an individual condominium unit in a low rise condominium project, or an individual unit in a planned unit development or a *de minimis* planned unit development which is in each case four stories or less; provided, however, that any condominium unit, planned unit development, mobile home (double wide only) or manufactured dwelling shall conform with the applicable Fannie Mae and Freddie Mac requirements regarding such dwellings and that no Mortgage Loan is secured by a single parcel of real property with a cooperative housing corporation, a log home or, except as specified on the Mortgage Loan Schedule, a mobile home erected thereon or by a mixed use property, a property in excess of 10 acres or other unique property types. As of the date of origination, no portion of the Mortgaged Property was used for commercial purposes, and since the date of origination, no portion of the Mortgaged Property has been used for commercial purposes; provided, that Mortgaged Properties which contain a home office shall not be considered as being used for commercial purposes as long as the Mortgaged Property has not been altered for commercial purposes and is not storing any chemicals or raw materials other than those commonly used for homeowner repair, maintenance and/or household purposes;

(68) With respect to Adjustable-Rate Mortgage Loans, the Index set forth in the Mortgage Note is one-month or six-month LIBOR, unless otherwise set forth in the Mortgage Loan Schedule;

(69) With respect to each Adjustable-Rate Mortgage Loan, the Mortgage Loan documents provide that after the related first Adjustment Date, a related Mortgage Loan may only be assumed if the party assuming such Mortgage Loan meets certain credit requirements stated in the Mortgage Loan documents;

(70) To the best of the Responsible Party's knowledge, no action, inaction or event has occurred and no state of facts exists or has existed that has resulted or will result in the exclusion from, denial of, or defense to coverage under any insurance policy or bankruptcy bond related to the Mortgage Loans, irrespective of the cause of such failure of coverage. In connection with the placement of any such insurance, no commission, fee, or other compensation has been or will be received by the Originator or by any officer, director, or employee of the Originator or any designee of the Originator or any corporation in which the Originator or any officer, director, or employee had a financial interest at the time of placement of such insurance;

(71) To the best of the Responsible Party's knowledge, no action has been taken or failed to be taken, no event has occurred and no state of facts exists or has existed on or prior to the Closing Date (whether or not known to the Responsible Party on or prior to such date) which has resulted or will result in an exclusion from, denial of, or defense to coverage under any primary mortgage insurance (including, without limitation, any exclusions, denials or defenses which would limit or reduce the availability of the timely payment of the full amount of

EXHIBIT 7

the loss otherwise due thereunder to the insured) whether arising out of actions, representations, errors, omissions, negligence, or fraud of the Originator, the related Mortgagor or any party involved in the application for such coverage, including the appraisal, plans and specifications and other exhibits or documents submitted therewith to the insurer under such insurance policy, or for any other reason under such coverage, but not including the failure of such insurer to pay by reason of such insurer's breach of such insurance policy or such insurer's financial inability to pay;

(72) With respect to each Mortgage, the Originator or its Affiliate has within the last twelve months (unless such Mortgage was originated within such twelve month period) analyzed the required Escrow Payments for each Mortgage and adjusted the amount of such payments so that, assuming all required payments are timely made, any deficiency will be eliminated on or before the first anniversary of such analysis, or any overage will be refunded to the Mortgagor, in accordance with RESPA and any other applicable law;

(73) As to each consumer report (as defined in the Fair Credit Reporting Act, Public Law 91-508) or other credit information furnished by the Originator to the Purchaser, that the Originator has full right and authority and is not precluded by law or contract from furnishing such information to the Purchaser;

(74) If the Mortgage Loan is secured by a long-term residential lease, (1) the lessor under the lease holds a fee simple interest in the land; (2) the terms of such lease expressly permit the mortgaging of the leasehold estate, the assignment of the lease without the lessor's consent and the acquisition by the holder of the Mortgage of the rights of the lessee upon foreclosure or assignment in lieu of foreclosure or provide the holder of the Mortgage with substantially similar protections; (3) the terms of such lease do not (a) allow the termination thereof upon the lessee's default without the holder of the Mortgage being entitled to receive written notice of, and opportunity to cure, such default, (b) allow the termination of the lease in the event of damage or destruction as long as the Mortgage is in existence, (c) prohibit the holder of the Mortgage from being insured (or receiving proceeds of insurance) under the hazard insurance policy or policies relating to the Mortgaged Property or (d) permit any increase in rent other than pre-established increases set forth in the lease; (4) the original term of such lease is not less than 15 years; (5) the term of such lease does not terminate earlier than five years after the maturity date of the Mortgage Note; and (6) the Mortgaged Property is located in a jurisdiction in which the use of leasehold estates in transferring ownership in residential properties is a generally accepted practice;

(75) The Mortgage Note and Mortgage are on forms acceptable to Freddie Mac or Fannie Mae, if available, and neither the Originator nor any Affiliate has made any representations to a Mortgagor that are inconsistent with the mortgage instruments used;

(76) In connection with the origination of any Mortgage Loan, no proceeds from any Mortgage Loan were used to finance a single-premium credit life insurance policy;

(77) Each of the Originator and its Affiliates has complied with all applicable anti-money laundering laws and regulations, including, without limitation, the USA Patriot Act of 2001;

EXHIBIT 7

(78) No Mortgage Loan is a High Cost Loan or Covered Loan, as applicable (as such terms are defined in the then current Standard & Poor's LEVELS® Glossary which is now Version 5.7, Appendix E attached hereto as Exhibit 1).

(79) No mortgage loan originated on or after October 1, 2002 through March 6, 2003 is governed by the Georgia Fair Lending Act.

SECTION 7 Repurchase Obligation for Defective Documentation and for Breach of Representation and Warranty.

(a) The representations and warranties contained in Section 6 shall not be impaired by any review and examination of Mortgage Files or any failure on the part of the Seller or the Purchaser to review or examine such documents and shall inure to the benefit of any assignee, transferee or designee of the Purchaser, including the Trustee for the benefit of holders of the Certificates. With respect to the representations and warranties contained herein that are made to the knowledge or the best knowledge of the Responsible Party or as to which the Responsible Party has no knowledge, if it is discovered that the substance of any such representation and warranty is inaccurate and the inaccuracy materially and adversely affects the value of the related Mortgage Loan, or the interest therein of the Purchaser or the Purchaser's assignee, designee or transferee, then notwithstanding the Responsible Party's lack of knowledge with respect to the substance of such representation and warranty being inaccurate at the time the representation and warranty was made, such inaccuracy shall be deemed a breach of the applicable representation and warranty and the Responsible Party shall take such action described in the following paragraphs in respect of such Mortgage Loan.

Upon discovery by the Seller, the Purchaser or any assignee, transferee or designee of the Purchaser of any materially defective document in, or that any material document was not transferred by or at the direction of the Seller (as listed on the Trustee's Preliminary Exception Report) as part of any Mortgage File, or of a breach of any of the representations and warranties contained in Section 6 that materially and adversely affects the value of any Mortgage Loan or the interest therein of the Purchaser or the Purchaser's assignee, transferee or designee, the party discovering such breach shall give prompt written notice to the Seller (in the case of a missing document) or the Responsible Party and the Seller (in the case of a breach of any of the representations and warranties contained in Section 6). Within sixty (60) days of its discovery or its receipt of notice of any such missing documentation that was not transferred to the Purchaser as described above, or of materially defective documentation, or of any such breach of a representation and warranty, the Responsible Party or the Seller (or their related designee), as applicable, promptly shall deliver such missing document or cure such defect or breach in all material respects or, in the event the Responsible Party or the Seller (or their related designee) cannot deliver such missing document or cannot cure such defect or breach, the Responsible Party or the Seller, as applicable, shall, within ninety (90) days of its discovery or receipt of notice, either (i) repurchase the affected Mortgage Loan at the Purchase Price or (ii) pursuant to the provisions of the Pooling and Servicing Agreement, cause the removal of such Mortgage Loan from the Trust Fund and substitute one or more Qualified Substitute Mortgage Loans. The Responsible Party or the Seller, as applicable, shall amend the Closing Schedule to reflect the withdrawal of such Mortgage Loan from the terms of this Agreement and the Pooling and Servicing Agreement. The Responsible Party or the Seller, as applicable, shall deliver to the

EXHIBIT 7

Purchaser such amended Closing Schedule and shall deliver such other documents as are required by this Agreement or the Pooling and Servicing Agreement within five (5) days of any such amendment. Any repurchase pursuant to this Section 7(a) shall be accomplished by transfer to an account designated by the Purchaser of the amount of the Purchase Price in accordance with Section 2.03 of the Pooling and Servicing Agreement. Any repurchase required by this Section shall be made in a manner consistent with Section 2.03 of the Pooling and Servicing Agreement.

Notwithstanding the foregoing, within 90 days of the earlier of discovery by the Responsible Party or receipt of notice by the Responsible Party of the breach of the representation of the Responsible Party set forth in Section 6(63) above which materially and adversely affects the interests of the Holders of the Class P Certificates in any Prepayment Charge, the Responsible Party shall pay the amount of the scheduled Prepayment Charge, for the benefit of the Holders of the Class P Certificates by remitting such amount to the Servicer for deposit into the Custodial Account, net of any amount previously collected by the Servicer or paid by the Servicer, for the benefit of the Holders of the Class P Certificates in respect of such Prepayment Charge.

(b) Notwithstanding the foregoing, with respect to an alleged breach of a representation and warranty which breach is covered by a title insurance policy, the Purchaser shall use reasonable efforts to enforce the provisions of any related title insurance policy prior to seeking a remedy against the Responsible Party or the Seller hereunder.

(c) It is understood and agreed that the obligations of the Responsible Party or the Seller set forth in this Section 7 to cure or repurchase a defective Mortgage Loan constitute the sole remedies of the Purchaser against the Responsible Party or the Seller respecting a missing document or a breach of the representations and warranties contained in Section 6.

SECTION 8 Closing; Payment for the Mortgage Loans. The closing of the purchase and sale of the Mortgage Loans shall be held at the New York City office of Mayer, Brown, Rowe & Maw LLP at 10:00 a.m. New York City time on the Closing Date.

The closing shall be subject to each of the following conditions:

(a) All of the representations and warranties of the Seller and the Responsible Party under this Agreement shall be true and correct in all material respects as of the date as of which they are made and no event shall have occurred which, with notice or the passage of time, would constitute a default under this Agreement;

(b) The Purchaser shall have received, or the attorneys of the Purchaser shall have received in escrow (to be released from escrow at the time of closing), all Closing Documents as specified in Section 9 of this Agreement, in such forms as are agreed upon and acceptable to the Purchaser, duly executed by all signatories other than the Purchaser as required pursuant to the respective terms thereof;

(c) The Seller shall have delivered or caused to be delivered and released to the Purchaser or to its designee, all documents (including without limitation, the Mortgage

Loans) required to be so delivered by the Purchaser pursuant to Section 2.01 of the Pooling and Servicing Agreement; and

(d) All other terms and conditions of this Agreement and the Pooling and Servicing Agreement shall have been complied with.

Subject to the foregoing conditions, the Purchaser shall deliver or cause to be delivered to the Seller on the Closing Date, against delivery and release by the Seller to the Trustee of all documents required pursuant to the Pooling and Servicing Agreement, the consideration for the Mortgage Loans as specified in Section 3 of this Agreement, by delivery to the Seller of the Aggregate Purchase Price.

SECTION 9 Closing Documents. Without limiting the generality of Section 8 hereof, the closing shall be subject to delivery of each of the following documents:

(a) An Officer's Certificate of the Seller, dated the Closing Date, in form satisfactory to and upon which the Purchaser and Bear, Stearns & Co. Inc. (the "Representative") may rely, and attached thereto copies of the certificate of formation, limited liability company agreement and certificate of good standing of the Seller;

(b) An Opinion of Counsel of the Seller, dated the Closing Date, in form satisfactory to and addressed to the Purchaser and the Representative;

(c) An Officer's Certificate of the Responsible Party, dated the Closing Date, in form satisfactory to and upon which the Purchaser and the Representative may rely, and attached thereto copies of the certificate of incorporation, by-laws and certificate of good standing of the Responsible Party;

(d) An Opinion of Counsel of the Responsible Party, dated the Closing Date, in form satisfactory to and addressed to the Purchaser and the Representative;

(e) Such opinions of counsel as the Rating Agencies or the Trustee may request in connection with the sale of the Mortgage Loans by the Seller to the Purchaser or the Seller's execution and delivery of, or performance under, this Agreement;

(f) A letter from Deloitte & Touche LLP, certified public accountants, to the effect that they have performed certain specified procedures as a result of which they determined that certain information of an accounting, financial or statistical nature set forth in the Purchaser's prospectus supplement for Series 2006-NC3, dated August 7, 2006 (the "Prospectus Supplement") relating to the Offered Certificates contained under the captions "Summary—The Mortgage Pool," "Legal Proceedings," "Risk Factors," (to the extent of information concerning the Mortgage Loans contained therein) and "Description of the Mortgage Pool" agrees with the records of the Originator; and

(g) Such further information, certificates, opinions and documents as the Purchaser or the Representative may reasonably request.

SECTION 10 Costs. The Seller shall pay (or shall reimburse the Purchaser or any other Person to the extent that the Purchaser or such other Person shall pay) all costs and expenses incurred in connection with the transfer and delivery of the Mortgage Loans, including without limitation, recording fees, fees for title policy endorsements and continuations and, except as set forth in Section 4(b), the fees for recording Assignments.

The Seller shall pay (or shall reimburse the Purchaser or any other Person to the extent that the Purchaser or such other Person shall pay) the fees and expenses of the Seller's accountants and attorneys, the costs and expenses incurred in connection with producing the Servicer's or any Subservicer's loan loss, foreclosure and delinquency experience, the costs and expenses incurred in connection with obtaining the documents referred to in Section 9, the costs and expenses of printing (or otherwise reproducing) and delivering this Agreement, the Pooling and Servicing Agreement, the Certificates, the prospectus and Prospectus Supplement, and any private placement memorandum relating to the Certificates and other related documents, the initial fees, costs and expenses of the Trustee, the fees and expenses of the Purchaser's counsel in connection with the preparation of all documents relating to the securitization of the Mortgage Loans, the filing fee charged by the Securities and Exchange Commission for registration of the Certificates, the cost of outside special counsel that may be required by the Originator and the fees charged by any rating agency to rate the Certificates. All other costs and expenses in connection with the transactions contemplated hereunder shall be borne by the party incurring such expense.

SECTION 11 [Reserved].

SECTION 12 Indemnification. The Responsible Party shall indemnify and hold harmless each of (i) the Purchaser, (ii) the Underwriters, (iii) the Person, if any, to which the Purchaser assigns its rights in and to a Mortgage Loan and each of their respective successors and assigns and (iv) each person, if any, who controls the Purchaser within the meaning of Section 15 of the Securities Act of 1933, as amended (the "1933 Act") ((i) through (iv) collectively, the "Indemnified Party") against any and all losses, claims, expenses, damages or liabilities to which the Indemnified Party may become subject, under the 1933 Act or otherwise, insofar as such losses, claims, expenses, damages or liabilities (or actions in respect thereof) arise out of or are based upon (a) any untrue statement or alleged untrue statement of any material fact contained in the Prospectus Supplement or any private placement memorandum relating to the offering by the Purchaser or an affiliate thereof, of the Class M-10 Certificates, Class CE Certificates or the Class P Certificates, or the omission or the alleged omission to state therein the material fact necessary in order to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with (i) information furnished in writing to the Purchaser or any of its affiliates by the Responsible Party or any of its affiliates specifically for use therein, which shall include, with respect to the Prospectus Supplement, the information set forth under the captions "Summary—The Mortgage Pool," "Legal Proceedings," "Risk Factors" (to the extent of information concerning the Mortgage Loans contained therein), "Description of The Mortgage Pool—The Originator" and "Pooling and Servicing Agreement—The Servicer" and, with respect to any private placement memorandum, any information of a comparable nature, or (ii) the data files containing information with respect to the Mortgage Loans as transmitted by modem to the Purchaser by the

Responsible Party or any of its affiliates (as such transmitted information may have been amended in writing by the Responsible Party or any of its affiliates with the written consent of the Purchaser subsequent to such transmission), (b) any representation, warranty or covenant made by the Responsible Party or any affiliate of the Responsible Party herein or in the Pooling and Servicing Agreement, on which the Purchaser has relied, being, or alleged to be, untrue or incorrect or (c) any updated collateral information provided by any Underwriter to a purchaser of the Certificates derived from the data contained in clause (ii) and the Remittance Report or a current collateral tape obtained from the Responsible Party or an affiliate of the Responsible Party, including the current Stated Principal Balances of the Mortgage Loans; provided, however, that to the extent that any such losses, claims, expenses, damages or liabilities to which the Indemnified Party may become subject arise out of or are based upon both (1) statements, omissions, representations, warranties or covenants of the Seller described in clause (a), (b) or (c) above and (2) any other factual basis, the Seller shall indemnify and hold harmless the Indemnified Party only to the extent that the losses, claims, expenses, damages, or liabilities of the person or persons asserting the claim are determined to rise from or be based upon matters set forth in clause (1) above and do not result from the gross negligence or willful misconduct of such Indemnified Party. This indemnity shall be in addition to any liability that the Seller may otherwise have.

SECTION 13 Intent of the Parties, Mandatory Delivery; Grant of Security Interest. The sale of the Mortgage Loans as contemplated hereby is absolute and is intended by both the Seller and the Purchaser to constitute a sale of the such Mortgage Loans by the Seller to the Purchaser. The sale and delivery on the Closing Date of the Mortgage Loans described on the Mortgage Loan Schedule in accordance with the terms and conditions of this Agreement is mandatory. It is specifically understood and agreed that each Mortgage Loan is unique and identifiable on the date hereof and that an award of money damages would be insufficient to compensate the Purchaser for the losses and damages incurred by the Purchaser in the event of the Seller's failure to deliver the Mortgage Loans on or before the Closing Date. The Seller hereby grants to the Purchaser a lien on and a continuing security interest in the Seller's interest in each Mortgage Loan and each document and instrument evidencing each such Mortgage Loan to secure the performance by the Seller of its obligation hereunder, and the Seller agrees that it holds such Mortgage Loans in custody for the Purchaser, subject to the Purchaser's (i) right, prior to the Closing Date, to reject any Mortgage Loan to the extent permitted by this Agreement, and (ii) obligation to deliver or cause to be delivered the consideration for the Mortgage Loans pursuant to Section 8 hereof. Any Mortgage Loans rejected by the Purchaser shall concurrently therewith be released from the security interest created hereby. All rights and remedies of the Purchaser under this Agreement are distinct from, and cumulative with, any other rights or remedies under this Agreement or afforded by law or equity and all such rights and remedies may be exercised concurrently, independently or successively.

Notwithstanding the foregoing, if on the Closing Date, each of the conditions set forth in Section 8 hereof shall have been satisfied and the Purchaser shall not have paid or caused to be paid the Aggregate Purchase Price, or any such condition shall not have been waived or satisfied and the Purchaser determines not to pay or cause to be paid the Aggregate Purchase Price, the Purchaser shall immediately effect the re-delivery of the Mortgage Loans, if delivery to the Purchaser has occurred, and the security interest created by this Section 13 shall be deemed to have been released.

SECTION 14 Notices. All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered to or mailed by registered mail, postage prepaid, or transmitted by fax and, receipt of which is confirmed by telephone, if to the Purchaser, addressed to Stanwich Asset Acceptance Company, L.L.C., Seven Greenwich Office Park, 599 West Putnam Avenue, Greenwich, Connecticut 06830 (Telecopy: (212-272-7206)), Attention: Darren Fulco; or such other address as may hereafter be furnished to the Responsible Party and the Seller in writing by the Purchaser; if to the Responsible Party, addressed to the Responsible Party at 18400 Von Karman, Suite 1000, Irvine, California 92612, fax (949) 440-7033, or such other address as may hereafter be furnished to the Seller and the Purchaser in writing by the Responsible Party; if to the Seller, addressed to the Seller at Carrington Securities, LP, Seven Greenwich Office Park, 599 West Putnam Avenue, Greenwich, Connecticut 06830 (Telecopy: (212-272-7206)), Attention: Bruce M. Rose, or to such other address as the Seller may designate in writing to the Purchaser and the Responsible Party.

SECTION 15 Severability of Provisions. Any part, provision, representation or warranty of this Agreement that is prohibited or that is held to be void or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof. Any part, provision, representation or warranty of this Agreement that is prohibited or unenforceable or is held to be void or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction as to any Mortgage Loan shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereto waive any provision of law which prohibits or renders void or unenforceable any provision hereof.

SECTION 16 Agreement of Parties. The Seller, the Responsible Party and the Purchaser each agree to execute and deliver such instruments and take such actions as either of the others may, from time to time, reasonably request in order to effectuate the purpose and to carry out the terms of this Agreement and the Pooling and Servicing Agreement.

SECTION 17 Survival. (a) The Seller agrees that the representations, warranties and agreements made by it herein and in any certificate or other instrument delivered pursuant hereto shall be deemed to be relied upon by the Purchaser, notwithstanding any investigation heretofore or hereafter made by the Purchaser or on its behalf, and that the representations, warranties and agreements made by the Seller herein or in any such certificate or other instrument shall survive the delivery of and payment for the Mortgage Loans and shall continue in full force and effect, notwithstanding any restrictive or qualified endorsement on the Mortgage Notes and notwithstanding subsequent termination of this Agreement, the Pooling and Servicing Agreement or the Trust Fund.

(b) The Responsible Party agrees that the representations, warranties and agreements made by it herein and in any certificate or other instrument delivered pursuant hereto shall be deemed to be relied upon by the Seller and the Purchaser, notwithstanding any investigation heretofore or hereafter made by the Seller or the Purchaser or on the behalf of either of them, and that the representations, warranties and agreements made by the Responsible Party herein or in any such certificate or other instrument shall continue in full force and effect,

notwithstanding subsequent termination of this Agreement, the Pooling and Servicing Agreement or the Trust Fund.

SECTION 18 GOVERNING LAW. **THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).**

SECTION 19 Miscellaneous. This Agreement may be executed in two or more counterparts, each of which when so executed and delivered shall be an original, but all of which together shall constitute one and the same instrument. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. This Agreement supersedes all prior agreements and understandings relating to the subject matter hereof. Neither this Agreement nor any term hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought. The headings in this Agreement are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

It is the express intent of the parties hereto that the conveyance of the Mortgage Loans by the Seller to the Purchaser as provided in Section 4 hereof be, and be construed as, a sale of the Mortgage Loans by the Seller to the Purchaser and not as a pledge of the Mortgage Loans by the Seller to the Purchaser to secure a debt or other obligation of the Seller. However, in the event that, notwithstanding the aforementioned intent of the parties, the Mortgage Loans are held to be property of the Seller, then (a) it is the express intent of the parties that such conveyance be deemed a pledge of the Mortgage Loans by the Seller to the Purchaser to secure a debt or other obligation of the Seller and (b) (1) this Agreement shall also be deemed to be a security agreement within the meaning of Articles 8 and 9 of the New York Uniform Commercial Code; (2) the conveyance provided for in Section 4 hereof shall be deemed to be a grant by the Seller to the Purchaser of a security interest in all of the Seller's right, title and interest in and to the Mortgage Loans and all amounts payable to the holders of the Mortgage Loans in accordance with the terms thereof and all proceeds of the conversion, voluntary or involuntary, of the foregoing into cash, instruments, securities or other property, including without limitation all amounts, other than investment earnings, from time to time held or invested in the Custodial Account whether in the form of cash, instruments, securities or other property; (3) the possession by the Purchaser or its agent of Mortgage Notes, the related Mortgages and such other items of property that constitute instruments, money, negotiable documents or chattel paper shall be deemed to be "possession" by the secured party for purposes of perfecting the security interest pursuant to the New York Uniform Commercial Code; and (4) notifications to persons holding such property and acknowledgments, receipts or confirmations from persons holding such property shall be deemed notifications to, or acknowledgments, receipts or confirmations from, financial intermediaries, bailees or agents (as applicable) of the Purchaser for the purpose of perfecting such security interest under applicable law. Any assignment of the interest of the Purchaser pursuant to Section 4(d) hereof shall also be deemed to be an assignment of any security interest created hereby. The Seller and the Purchaser shall, to the extent consistent with this Agreement, take such actions as may be necessary to ensure that,

if this Agreement were deemed to create a security interest in the Mortgage Loans, such security interest would be deemed to be a perfected security interest of first priority under applicable law and will be maintained as such throughout the term of this Agreement and the Pooling and Servicing Agreement.

[Signatures follow]

EXHIBIT 7

IN WITNESS WHEREOF, the Purchaser, the Seller and the Responsible Party have caused their names to be signed by their respective officers thereunto duly authorized as of the date first above written.

STANWICH ASSET ACCEPTANCE COMPANY, L.L.C., as Purchaser

By: _____
Name: Bruce M. Rose
Title: President

CARRINGTON SECURITIES, LP, as Seller
By: Carrington Capital Management, LLC,
as its general partner

By: _____
Name: Bruce M. Rose
Title: President

NC CAPITAL CORPORATION, as Responsible Party

By: _____
Name:
Title:

EXHIBIT 7

IN WITNESS WHEREOF, the Purchaser, the Seller and the Responsible Party have caused their names to be signed by their respective officers thereunto duly authorized as of the date first above written.

STANWICH ASSET ACCEPTANCE COMPANY, L.L.C., as Purchaser

By: _____
Name: Bruce M. Rose
Title: President

CARRINGTON SECURITIES, LP, as Seller
By: Carrington Capital Management, LLC,
as its general partner

By: _____
Name: Bruce M. Rose
Title: President

NC CAPITAL CORPORATION, as Responsible Party

By: _____
Name: Kevin Cloyd
Title: President

EXHIBIT 7

Schedule I

The Seller hereby represents, warrants, and covenants to the Purchaser as follows on the Closing Date and on each Distribution Date thereafter:

General

1. This Agreement creates a valid and continuing security interest (as defined in the applicable Uniform Commercial Code ("UCC")) in the Mortgage Loans in favor of the Purchaser which security interest is prior to all other liens, and is enforceable as such as against creditors of and purchasers from the Seller.

2. The Mortgage Loans constitute "general intangibles" or "instruments" within the meaning of the applicable UCC.

3. The Custodial Account and all subaccounts thereof constitute either a deposit account or a securities account.

4. To the extent that payments and collections received or made with respect to the Mortgage Loans constitute securities entitlements, such payments and collections have been and will have been credited to the Custodial Account. The securities intermediary for the Custodial Account has agreed to treat all assets credited to the Custodial Account as "financial assets" within the meaning of the applicable UCC.

Creation

5. The Seller owns and has good and marketable title to the Mortgage Loans free and clear of any lien, claim or encumbrance of any Person, excepting only liens for taxes, assessments or similar governmental charges or levies incurred in the ordinary course of business that are not yet due and payable or as to which any applicable grace period shall not have expired, or that are being contested in good faith by proper proceedings and for which adequate reserves have been established, but only so long as foreclosure with respect to such a lien is not imminent and the use and value of the property to which the lien attaches is not impaired during the pendency of such proceeding.

6. The Seller has received all consents and approvals to the sale of the Mortgage Loans hereunder to the Purchaser required by the terms of the Mortgage Loans that constitute instruments.

7. To the extent the Custodial Account or subaccounts thereof constitute securities entitlements, certificated securities or uncertificated securities, the Seller has received all consents and approvals required to transfer to the Purchaser its interest and rights in the Custodial Account hereunder.

Perfection

8. The Seller has caused or will have caused, within ten days after the effective date of this Agreement, the filing of all appropriate financing statements in the proper

filing office in the appropriate jurisdictions under applicable law in order to perfect the sale of the Mortgage Loans from the Seller to the Purchaser and the security interest in the Mortgage Loans granted to the Purchaser hereunder.

9. With respect to the Custodial Account and all subaccounts that constitute deposit accounts, either:

(i) the Seller has delivered to the Purchaser a fully-executed agreement pursuant to which the bank maintaining the deposit accounts has agreed to comply with all instructions originated by the Purchaser directing disposition of the funds in the Custodial Account without further consent by the Seller; or

(ii) the Seller has taken all steps necessary to cause the Purchaser to become the account holder of the Custodial Account.

10. With respect to the Custodial Account or subaccounts thereof that constitute securities accounts or securities entitlements, either:

(i) the Seller has caused or will have caused, within ten days after the effective date of this Agreement, the filing of all appropriate financing statements in the proper filing office in the appropriate jurisdictions under applicable law in order to perfect the security interest in the Custodial Account granted by the Seller to the Purchaser; or

(ii) the Seller has delivered to the Purchaser a fully-executed agreement pursuant to which the securities intermediary has agreed to comply with all instructions originated by the Purchaser relating to the Custodial Account without further consent by the Purchaser; or

(iii) the Seller has taken all steps necessary to cause the securities intermediary to identify in its records the Purchaser as the person having a security entitlement against the securities intermediary in the Custodial Account.

Priority

11. Other than the transfer of the Mortgage Loans to the Purchaser pursuant to this Agreement, the Seller has not pledged, assigned, sold, granted a security interest in, or otherwise conveyed any of the Mortgage Loans. The Seller has not authorized the filing of, or is not aware of any financing statements against the Seller that include a description of collateral covering the Mortgage Loans other than any financing statement relating to the security interest granted to the Purchaser hereunder or that has been terminated.

12. The Seller is not aware of any judgment, ERISA or tax lien filings against the Seller.

13. The Trustee has in its possession all original copies of the Mortgage Notes that constitute or evidence the Mortgage Loans. To the Seller's knowledge, none of the instruments that constitute or evidence the Mortgage Loans has any marks or notations indicating

that they have been pledged, assigned or otherwise conveyed to any Person other than the Purchaser or its designee. All financing statements filed or to be filed against the Seller in favor of the Purchaser in connection herewith describing the Mortgage Loans contain a statement to the following effect: "A purchase of or security interest in any collateral described in this financing statement will violate the rights of the Purchaser."

14. Neither the Custodial Account nor any subaccount thereof is in the name of any person other than the Seller or the Purchaser or in the name of its nominee. The Seller has not consented for the securities intermediary of the Custodial Account to comply with entitlement orders of any person other than the Purchaser or its designee.

15. Survival of Perfection Representations. Notwithstanding any other provision of this Agreement or any other transaction document, the Perfection Representations contained in this Schedule shall be continuing, and remain in full force and effect (notwithstanding any replacement of the Servicer or termination of the Servicer's rights to act as such) until such time as all obligations under this Agreement have been finally and fully paid and performed.

16. No Waiver. The parties to this Agreement (i) shall not, without obtaining a confirmation of the then-current rating of the Certificates waive any of the Perfection Representations, and (ii) shall provide the Rating Agencies with prompt written notice of any breach of the Perfection Representations, and shall not, without obtaining a confirmation of the then-current rating of the Certificates (as determined after any adjustment or withdrawal of the ratings following notice of such breach) waive a breach of any of the Perfection Representations.

17. Seller to Maintain Perfection and Priority. The Seller covenants that, in order to evidence the interests of the Seller and the Purchaser under this Agreement, the Seller shall take such action, or execute and deliver such instruments (other than effecting a Filing (as defined below), unless such Filing is effected in accordance with this paragraph) as may be necessary or advisable (including, without limitation, such actions as are requested by the Purchaser) to maintain and perfect, as a first priority interest, the Purchaser's security interest in the Mortgage Loans. The Seller shall, from time to time and within the time limits established by law, prepare and present to the Purchaser or its designee to authorize (based in reliance on the Opinion of Counsel hereinafter provided for) the Seller to file, all financing statements, amendments, continuations, initial financing statements in lieu of a continuation statement, terminations, partial terminations, releases or partial releases, or any other filings necessary or advisable to continue, maintain and perfect the Purchaser's security interest in the Mortgage Loans as a first-priority interest (each a "Filing"). The Seller shall present each such Filing to the Purchaser or its designee together with (x) an Opinion of Counsel to the effect that such Filing is (i) consistent with the grant of the security interest to the Purchaser pursuant to Section 19 of this Agreement, (ii) satisfies all requirements and conditions to such Filing in this Agreement and (iii) satisfies the requirements for a Filing of such type under the Uniform Commercial Code in the applicable jurisdiction (or if the Uniform Commercial Code does not apply, the applicable statute governing the perfection of security interests), and (y) a form of authorization for the Purchaser's signature. Upon receipt of such Opinion of Counsel and form of authorization, the Purchaser shall promptly authorize in writing the Seller to, and the Seller shall, effect such Filing under the UCC without the signature of the Seller or the Purchaser where

EXHIBIT 7

allowed by applicable law. Notwithstanding anything else in the transaction documents to the contrary, the Seller shall not have any authority to effect a Filing without obtaining written authorization from the Purchaser or its designee.

EXHIBIT 7

Exhibit 1

APPENDIX E – Standard & Poor's Anti-Predatory Lending Categorization

REVISED February 07, 2005

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

Standard & Poor's High Cost Loan Categorization

State/Jurisdiction	Name of Anti-Predatory Lending Law/Effective Date	Category under Applicable Anti-Predatory Lending Law
Arkansas	Arkansas Home Loan Protection Act, Ark. Code Ann. §§ 23-53-101 et seq. Effective July 16, 2003	High Cost Home Loan
Cleveland Heights, OH	Ordinance No. 72-2003 (PSH), Mun. Code §§ 757.01 et seq. Effective June 2, 2003	Covered Loan
Colorado	Consumer Equity Protection, Colo. Stat. Ann. §§ 5-3.5-101 et seq. Effective for covered loans offered or entered into on or after January 1, 2003. Other provisions of the Act took effect on June 7, 2002	Covered Loan
Connecticut	Connecticut Abusive Home Loan Lending Practices Act, Conn. Gen. Stat. §§ 36a-746 et seq. Effective October 1, 2001	High Cost Home Loan
District of Columbia	Home Loan Protection Act, D.C. Code §§ 26-1151.01 et seq. Effective for loans closed on or after January 28, 2003	Covered Loan
Florida	Fair Lending Act, Fla. Stat. Ann. §§ 494.0078 et seq. Effective October 2, 2002	High Cost Home Loan

EXHIBIT 7

Standard & Poor's High Cost Loan Categorization

State/Jurisdiction	Name of Anti-Predatory Lending Law/Effective Date	Category under Applicable Anti-Predatory Lending Law
Georgia (Oct. 1, 2002 – Mar. 6, 2003)	Georgia Fair Lending Act, Ga. Code Ann. §§ 7-6A-1 et seq. Effective October 1, 2002 – March 6, 2003	High Cost Home Loan
Georgia as amended (Mar. 7, 2003 – current)	Georgia Fair Lending Act, Ga. Code Ann. §§ 7-6A-1 et seq. Effective for loans closed on or after March 7, 2003	High Cost Home Loan
HOEPA Section 32	Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1639, 12 C.F.R. §§ 226.32 and 226.34 Effective October 1, 1995, amendments October 1, 2002	High Cost Loan
Illinois	High Risk Home Loan Act, Ill. Comp. Stat. tit. 815, §§ 137/5 et seq. Effective January 1, 2004 (prior to this date, regulations under Residential Mortgage License Act effective from May 14, 2001)	High Risk Home Loan
Indiana	Indiana Home Loan Practices Act, Ind. Code Ann. §§ 24-9-1-1 et seq. Effective for loans originated on or after January 1, 2005.	High Cost Home Loan
Kansas	Consumer Credit Code, Kan. Stat. Ann. §§ 16a-1-101 et seq. Sections 16a-1-301 and 16a-3-207 became effective April 14, 1999; Section 16a-3-308a became effective July 1, 1999	High Loan to Value Consumer Loan (id. § 16a-3-207) and; High APR Consumer Loan (id. § 16a-3-308a)
Kentucky	2003 KY H.B. 287 – High Cost Home Loan Act, Ky. Rev. Stat. §§ 360.100 et seq. Effective June 24, 2003	High Cost Home Loan

EXHIBIT 7

Standard & Poor's High Cost Loan Categorization

State/Jurisdiction	Name of Anti-Predatory Lending Law/Effective Date	Category under Applicable Anti-Predatory Lending Law
Maine	Truth in Lending, Me. Rev. Stat. tit. 9-A, §§ 8-101 et seq. Effective September 29, 1995 and as amended from time to time	High Rate High Fee Mortgage
Massachusetts	Part 40 and Part 32, 209 C.M.R. §§ 32.00 et seq. and 209 C.M.R. §§ 40.01 et seq. Effective March 22, 2001 and amended from time to time	High Cost Home Loan
	Massachusetts Predatory Home Loan Practices Act Mass. Gen. Laws ch. 183C, §§ 1 et seq. Effective November 7, 2004	High Cost Home Mortgage Loan
Nevada	Assembly Bill No. 284, Nev. Rev. Stat. §§ 598D.010 et seq. Effective October 1, 2003	Home Loan
New Jersey	New Jersey Home Ownership Security Act of 2002, N.J. Rev. Stat. §§ 46:10B-22 et seq. Effective for loans closed on or after November 27, 2003	High Cost Home Loan
New Mexico	Home Loan Protection Act, N.M. Rev. Stat. §§ 58-21A-1 et seq. Effective as of January 1, 2004; Revised as of February 26, 2004	High Cost Home Loan
New York	N.Y. Banking Law Article 6-l Effective for applications made on or after April 1, 2003	High Cost Home Loan
North Carolina	Restrictions and Limitations on High Cost Home Loans, N.C. Gen. Stat. §§ 24-1.1E et seq. Effective July 1, 2000; amended October 1, 2003 (adding open-end lines of credit)	High Cost Home Loan

EXHIBIT 7

Standard & Poor's High Cost Loan Categorization

State/Jurisdiction	Name of Anti-Predatory Lending Law/Effective Date	Category under Applicable Anti-Predatory Lending Law
Ohio	H.B. 386 (codified in various sections of the Ohio Code), Ohio Rev. Code Ann. §§ 1349.25 et seq. Effective May 24, 2002	Covered Loan
Oklahoma	Consumer Credit Code (codified in various sections of Title 14A) Effective July 1, 2000; amended effective January 1, 2004	Subsection 10 Mortgage
South Carolina	South Carolina High Cost and Consumer Home Loans Act, S.C. Code Ann. §§ 37-23-10 et seq. Effective for loans taken on or after January 1, 2004	High Cost Home Loan
West Virginia	West Virginia Residential Mortgage Lender, Broker and Servicer Act, W. Va. Code Ann. §§ 31-17-1 et seq. Effective June 5, 2002	West Virginia Mortgage Loan Act Loan

Standard & Poor's Covered Loan Categorization

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

EXHIBIT 7

Standard & Poor's Home Loan Categorization

State/Jurisdiction	Name of Anti-Predatory Lending Law/Effective Date	Category under Applicable Anti-Predatory Lending Law
Georgia (Oct. 1, 2002 – Mar. 6, 2003)	Georgia Fair Lending Act, Ga. Code Ann. §§ 7-6A-1 et seq. Effective October 1, 2002 – March 6, 2003	Home Loan
New Jersey	New Jersey Home Ownership Security Act of 2002, N.J. Rev. Stat. §§ 46:10B-22 et seq. Effective for loans closed on or after November 27, 2003	Home Loan
New Mexico	Home Loan Protection Act, N.M. Rev. Stat. §§ 58-21A-1 et seq. Effective as of January 1, 2004; Revised as of February 26, 2004	Home Loan
North Carolina	Restrictions and Limitations on High Cost Home Loans, N.C. Gen. Stat. §§ 24-1.1E et seq. Effective July 1, 2000; amended October 1, 2003 (adding open-end lines of credit)	Consumer Home Loan
South Carolina	South Carolina High Cost and Consumer Home Loans Act, S.C. Code Ann. §§ 37-23-10 et seq. Effective for loans taken on or after January 1, 2004	Consumer Home Loan

EXHIBIT 7

CAUSE NO. 2011-36476

MARY ELLEN WOLF AND DAVID WOLF, on behalf of themselves and all others similarly situated,	§	IN THE DISTRICT COURT OF
v.	§	HARRIS COUNTY, TEXAS
WELLS FARGO BANK, N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST, TOM CROFT, NEW CENTURY MORTGAGE CORPORATION, AND CARRINGTON MORTGAGE SERVICES, LLC.	§	151ST JUDICIAL DISTRICT

AFFIDAVIT OF MARIE MCDONNELL, C.F.E.

COMMONWEALTH OF MASSACHUSETTS §
§
COUNTY OF BARNSTABLE §

Before me, the undersigned notary, on this day personally appeared MARIE MCDONNELL, C.F.E., the affiant, a person whose identity is known to me. After I administered an oath to affiant, affiant testified:

1. "My name is MARIE MCDONNELL, C.F.E., I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. I was retained by counsel for the Plaintiffs Mary Wolf and David Wolf to render an expert opinion in this case. I am a Mortgage Fraud and Forensic Analyst and a credentialed Certified Fraud Examiner ("CFE"). I am the founder and managing member of Truth In Lending Audit & Recovery Services, LLC of Orleans, Massachusetts and have twenty-five years' experience in transactional analysis, mortgage auditing, and mortgage fraud investigation.

3. I received a Certified Exchange Consultant Designation from The Academy of Real Estate, High Honors, in 1989.

4. I've been a Registered Real Estate Broker from February 1988 through the present time.

5. I am also the President of McDonnell Property Analytics, Inc., a litigation support and research firm that provides mortgage-backed securities research services and foreclosure forensics to attorneys nationwide. McDonnell Property Analytics also advises and performs services for county registers of deeds, attorneys general, courts and other governmental agencies.

EXHIBIT 9

6. I am an expert in chain of title, securitization and truth in lending disputes between lenders and homeowners and disputes between governmental bodies and national banks. My experience includes the design, execution and delivery of various company's title and securitization forensic reports to attorneys, consumers, registries of deeds, and other governmental agencies.

7. I've also trained state and federal law enforcement and regulatory agencies regarding detection of invalid assignments, robo-signing, fraud and misrepresentation in mortgage and foreclosure instruments.

8. I've provided litigation support and expert witness services to law firms throughout the country.

9. Throughout my career, I've developed specialized knowledge and implemented protocols to trace the ownership of residential and commercial mortgage loans that had been sold to secondary market investors and private label securitization deals.

10. I've personally audited thousands of residential mortgage loans on behalf of consumers and attorneys who specialize in foreclosure defense.

11. I uncovered a mortgage fraud scheme, orchestrated by The Dime Savings Bank of New York, that led to Attorney General investigations in Massachusetts, New Hampshire and Connecticut and, ultimately, to multi-million dollar settlement awards and relief programs for consumers.

12. In June of 2011, John O'Brien, Register of the Essex Southern District Registry of Deeds, commissioned me to conduct an audit to test the integrity of his registry due to his concern that Mortgage Electronic Registration Systems, Inc. ("MERS") boasts that its members can avoid recording assignments of mortgage if they register their mortgages in the MERS System; and due to the robo-signing scandal featured in a 60 Minutes exposé on the subject.

13. A true and correct copy of my Report entitled *FORENSIC EXAMINATION OF ASSIGNMENTS OF MORTGAGE RECORDED DURING 2010 IN THE ESSEX SOUTHERN DISTRICT REGISTRY OF DEEDS* is attached to the foregoing Plaintiffs' Response to Defendants' Motion for Summary Judgment as Exhibit 8, and incorporated herein by reference for all purposes.

14. I accepted this assignment on a pro bono basis because of its high and urgent value to the public trust, and to educate the 50 Attorneys General who were at the time brokering a settlement with the subject banks in an attempt to resolve fraudulent foreclosure practices. I also wanted to prove the concept that registries of deeds across all counties and jurisdictions in the United States need to have their registries audited in kind. I wanted to give consumers some guidelines as to how they can research the public records to detect invalid documents and gaps in the chain of title that need to be addressed.

EXHIBIT 9

15. I defined the scope of the examination by selecting all assignments of mortgage that were recorded during the year 2010 to and from three of the nation's largest banks: JPMorgan Chase Bank, N.A., Wells Fargo Bank, N.A., and Bank of America, N.A. The sample was not random or arbitrary; we included every assignment that appeared in the Grantor / Grantee index using the registry's online search engine. The study included 147 assignments involving JPMorgan Chase; 278 assignments involving Wells Fargo Bank; and 140 assignments involving Bank of America. A total of 565 assignments were examined.

16. The results, conclusions and findings of the audit I performed for John O'Brien, Register of the Essex Southern District Registry of Deeds include the following:

a. I was able to trace ownership to only 287 of 473 mortgages (60%).
b. 46% and 47% of mortgages were either MERS registered or owned by the Government Sponsored Enterprises (i.e., Fannie Mae, Freddie Mac, Ginnie Mae), respectively. Typically ownership of these mortgages is highly obscure.
c. 37% of mortgages were securitized into public trusts (as opposed to private trusts), which are typically more discoverable through use of forensic tools and high cost, subscription-based databases.
d. Only 16% of all assignments examined are valid.
e. 75% of all assignments examined are invalid and an additional 8.7% are questionable (require more data.)
f. 27% of the invalid assignments are fraudulent, 35% are "robo-signed" and 10% violate the Massachusetts Mortgage Fraud Statute.
g. 683 assignments are missing, translating to approximately $180,000 in lost recording fees per 1,000 mortgages whose current ownership can be traced.

17. I have reviewed the written documents produced by Defendants and Plaintiffs, the pleadings on file, and deposition transcript of Tom Croft in the above-referenced lawsuit at issue in this case, entitled *Mary Ellen Wolf and David Wolf v. Wells Fargo Bank N.A., et al*; Cause No. 2011-36476; In the 151st Judicial District Court of Harris County, Texas.

18. Further, I have conducted my own independent research using: the Bloomberg Professional service, a robust database of Residential Mortgage Backed Securities ("RMBS") that enables me to identify and track individual transactions that were allegedly packaged into RMBS; EDGAR, the Securities and Exchange Commission's official website that contains various Deal Documents filed with the SEC incident to publically offered RMBS; www.SECInfo.com, which provides enhanced viewing options and hyperlinks that make it easier to navigate the documents on file with the SEC; the relevant documents on file with the Harris County Clerk's Office; internet-based public searches; and my own repository of mortgage loan documents issued by New Century Mortgage Corporation.

19. Based on the evidence available as of this writing and with a reasonable degree of probability, it is my expert opinion that:

EXHIBIT 9

a. Defendant Wells Fargo Bank, N.A., is not the current owner and holder of Plaintiffs' Note and Deed of Trust ("Mortgage Loan");

b. Defendant Wells Fargo Bank, N.A., has never been the owner and holder of Plaintiffs' Mortgage Loan;

c. Plaintiffs' Mortgage Loan was never transferred into the 2006-NC3 Trust for which Defendant Wells Fargo Bank, N.A. is Trustee in strict compliance with the Pooling and Servicing Agreement executed on August 1, 2006 between the parties which is governed by the laws of the State of New York;

d. The Plaintiffs' Mortgage Loan was never physically transferred from the originator (New Century Mortgage Corporation) to the Responsible Party (New Century Capital Corporation); or properly conveyed from the Responsible Party to the sponsor (Carrington Securities, LP) of the 2006-NC3 Trust as required by the Mortgage Loan Purchase Agreement executed on August 10, 2006 between the parties;

e. The Plaintiffs' Mortgage Loan was never physically transferred from the sponsor (Carrington Securities, LP) to the depositor (Stanwich Asset Acceptance Company, LLC) of the 2006-NC3 Trust or properly conveyed as required by the Mortgage Loan Purchase Agreement referenced above;

f. The Plaintiffs' Mortgage Loan was never physically transferred from the depositor (Stanwich Asset Acceptance Company, LLC) or properly conveyed to the Trustee for the 2006-NC3 Trust as required by the Pooling and Servicing Agreement dated August 1, 2006 by and between the parties; and

g. The Plaintiffs' Mortgage Loan was never physically transferred from Defendant Wells Fargo Bank, N.A., as Trustee of the 2006-NC3 Trust to the document custodian (Deutsche Bank National Trust Company).

20. The expert opinions I reached above are based on my review and reliance on the documents and information reviewed in this case to date and the reasons underpinning my conclusions will be detailed in my expert report which is yet to be released. I reserve the right to amend and supplement my opinion based on my review of future data.

21. This affidavit is made upon personal knowledge of the affiant, and all facts stated herein are true and correct to the best of my present knowledge.

EXHIBIT 9

Marie McDonnell

MARIE MCDONNELL, C.F.E., Affiant

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF BARNSTABLE, SS

At Brewster, Massachusetts, on this 24th day of September 2012, before me, the undersigned authority, personally appeared MARIE MCDONNELL, proved to me through evidence of identity, to wit: a Massachusetts Driver's License, to be the signer(s) of the attached document, and who swore or affirmed to me, under the penalties of perjury, that the contents of said document are truthful and accurate, to the best of her knowledge and belief.

Subscribed to and sworn before me.

I. Marie Sherman

Notary Public

My Commission expires: 2/14/2014

I. MARIE SHERMAN
Notary Public
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires
February 14, 2014

EXHIBIT 9

CAUSE NO. 2011-36476

MARY ELLEN WOLF and DAVID WOLF, on behalf of themselves and all others similarly situated	)	IN THE DISTRICT COURT OF
vs.	)	HARRIS COUNTY, T E X A S
WELLS FARGO BANK, N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST, TOM CROFT, NEW CENTURY MORTGAGE CORPORATION, AND CARRINGTON MORTGAGE SERVICES, LLC.	)	151ST JUDICIAL DISTRICT

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ORAL VIDEOTAPED DEPOSITION OF

TOM CROFT

JUNE 27, 2012

VOLUME I OF I

****

ORAL VIDEOTAPED DEPOSITION OF TOM CROFT, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on June 27, 2012, from 9:05 a.m. to 1:02 p.m., before Julie M. Silhan, Certified Shorthand Reporter in and for the State of Texas, reported by stenographic means, at the offices of Mr. Peter C. Smart, Crain, Caton & James, 1401 McKinney, Suite 1700, Houston, Texas, pursuant to Notice, the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

Q. Were you affiliated or employed by any other company after July of 2007?

A. I don't understand the question.

Q. You were hired by Carrington Property Services in July of 2007, correct?

A. No.

Q. All right. When were you hired?

A. I was hired July 11th, 2007, by Carrington Mortgage Services.

Q. All right. Let's start over. Who do you currently work for?

A. Carrington Property Services.

Q. Okay. And when did you start working for Carrington Property Services?

A. March 1st, 2012.

Q. Prior to working for Carrington Property Services, where were you employed?

A. Carrington Mortgage Services.

Q. And when did you begin employment with Carrington Mortgage Services?

A. July 11th, 2007.

Q. Okay. Prior to July 11th, 2007, where were you employed?

A. Fremont Investment Loan.

Q. How do you spell that?

EXHIBIT 10

foreclosure bankruptcy processing.

Q. You did that for approximately seven years?

A. Yes.

Q. All right. And then, when you were hired at Carrington Mortgage Services in 2007, what was your first job position?

A. VP of REO.

Q. Just in case the jury does not know, can you explain what REO is?

A. REO stands for real estate owned. It's a property that has been foreclosed on and the lender -- the lienholder takes back the property to liquidate it, sell it to recoup money to pay back the loan.

Q. All right. And you were vice president?

A. Yeah, I was hired as vice president of REO.

Q. Did you interview for the job?

A. Yes.

Q. Do you remember who you interviewed with?

A. Dave Gordon.

Q. Is he still with the company?

A. Yes.

Q. What is his title?

A. Currently?

Q. Yes.

A. He is chief operating officer of Carrington

EXHIBIT 10

second sentence beginning "I am of sound mind" out loud?

A. This is entered as evidence, right?

Q. Yeah. I just want to --

A. Okay.

Q. I want the jury to hear it.

A. Okay. Okay.

Q. All right. Can you please read it out loud?

A. I'm not reading it out loud. Enter it as evidence.

Q. I know. I want the jury to hear it. What if the judge says you can't enter this into evidence?

A. Well, it's signed, so that's my signature. We've already said that, right?

Q. All right. I don't want you to argue with me. I'm asking you to -- can you read?

A. Yes, I can read.

Q. Okay. Read the very first sentence in paragraph one.

A. "My name is Tom Croft. I am of sound mind, capable of making this affidavit, and personally acquainted with the facts stated herein."

Q. All right. Keep going.

A. "I am the attorney in fact of Wells Fargo, as trustee for Carrington Mortgage Loan, Trust Series 2006-NC3 Asset-Backed Pass-Through Certificates."

EXHIBIT 10

with that document?

A. I'm sorry. Can you say the question again?

Q. Yeah, I apologize. I was chewing ice. Are you familiar with this document here?

A. Yes.

Q. Okay.

A. It's a Adjustable Rate Rider.

Q. And have you read this document?

A. I recall reviewing this document, yes.

Q. Okay. What about the document on P0037? Are you familiar with this document?

A. It's a Rider Note. Yes. I'm familiar with it, yes.

Q. And have you had a chance to review and read this document?

A. Yes.

Q. Okay. Let's go back to your affidavit, please. It says in your affidavit that your position is attorney in fact for Wells Fargo, N.A., et cetera. Can you explain what attorney in fact means?

A. Attorney in fact is a term that identifies me as the ability to sign on behalf of the trust.

Q. Well, it says it's your position, true?

A. Yeah. I'm the signer for the Wells Fargo Trust, the Carrington Mortgage Loan Trust.

EXHIBIT 10

Q. Okay. And who gave you that authority or position as attorney in fact?

A. There's a power of attorney granted from the trust.

Q. And we'll get to that, okay. All right. It says you're also the custodian of records.

A. Uh-huh.

Q. Is that true?

A. I am a custodian of records, yes.

Q. You're the custodian of -- that's okay.

THE VIDEOGRAPHER: Off the record at 10:06 a.m.

(Short break.)

THE VIDEOGRAPHER: On the record 10:08 a.m.

Q. (By Mr. Hughes) Okay. I think I was asking you about your position as the custodian of records for Wells Fargo.

A. Uh-huh.

Q. And is that, in fact, your position? Are you a custodian of records for Wells Fargo?

A. I am a custodian of records, yes, one of them.

Q. For Wells Fargo?

A. For the trust. For Wells Fargo Carrington Trust, yes.

EXHIBIT 10

Q. Well, it says in your affidavit, it says for Wells Fargo as trustee for Carrington Mortgage Loan Trust Series 2006-NC3, blah, blah, blah.

A. Uh-huh.

Q. Okay. So that is your position, custodian of records for everything I just said?

A. No. I am a custodian of records.

Q. Okay. I'm just trying to make sure that this is true, that this is correct. And so it would be easier if we could just agree that what is said in here is true.

A. Okay.

Q. Okay. So are you the custodian of records for Wells Fargo, N.A., as trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset-Backed Pass-Through Certificates?

A. I am a custodian of records, yes.

Q. All right. Yes or no?

A. Yes.

Q. You are a -- I understand that you're saying you're a custodian of records.

A. Yeah.

Q. That's clear.

A. Yeah.

Q. But I want to make sure you're the custodian

EXHIBIT 10

A. Yes.

Q. Okay. And is that account number 1007965339?

A. Yes.

Q. Okay. What does that account number reference? Is that a Wells Fargo account number? A loan number? Whose account is that?

A. That's the loan number in our servicing system. That's how we recognize it in our system.

Q. So that's a Carrington Mortgage Services number?

A. It's the loan number.

Q. Issued by who?

A. I think at the time the loan was bought on the system by New Century, that's the number that was issued.

MR. SMART: I think you'll see it on the note.

A. Yeah, it's on the documents, too.

Q. (By Mr. Hughes) Okay. Okay. And this account number is contractually due for the July 1st, 2010 monthly mortgage installment; is that true?

A. Yes.

Q. Okay. All right. Under paragraph six, who's the owner and holder of the note and security instrument relating to this account number 1007965339?

EXHIBIT 10

A. The owner is the trust. The trust owns the note.

Q. The 2006-NC3 trust?

A. Correct.

Q. Okay. And is the trust -- is it okay if when I say the trust we'll both agree that's the 2006-NC3 Asset-backed Pass-Through Certificate, that trust?

A. Agreed.

Q. Okay. And the trust owns this note for the Wolfs as of the date you signed this?

A. Correct.

Q. Okay. And the trust is in possession of both the note and the security instrument as of the day you signed this?

A. Yes.

Q. Okay. And you signed this on February 3rd, 2011, correct?

A. Correct.

Q. Okay. Can you tell me what -- do you remember receiving this file, Mary Ellen Wolf and David Wolf?

A. Receiving it systematically for the foreclosure referral?

Q. When was the first time you were notified, if you can remember, that there was going to be a foreclosure on Mary Ellen Wolf and David Wolf? I'm just

EXHIBIT 10

Q. Okay. Are there any other documents or any other information you review prior to signing these affidavits or is that generally it?

A. That's the process.

Q. Okay. So there's no other documents you need to look at? I just want to make sure I'm not missing anything.

A. Well, if there is -- if there was other information uploaded, you know, prior to bankruptcy filings, things like that, I review it.

Q. Okay. On P0011 in the application, paragraph E at the bottom, see that?

A. P11, yes.

Q. Okay. And it says, "A default exists under the deed of trust or security agreement in that respondents failed to pay the monthly payment which became due on January 1st, 2010." Do you see that?

A. Yes.

Q. So is that true and correct?

A. I believe that is incorrect. I believe they're due for July 2010.

Q. Okay. So which one is correct, your affidavit or the application?

A. I believe the affidavit is correct.

Q. The affidavit is correct, so the application

EXHIBIT 10

is incorrect?

A. I believe so, yes.

Q. Yes?

A. I believe so, yes.

Q. Okay. Is it important to make sure that these types of little facts and details are correct?

A. Yes.

Q. And you understand that mothers and fathers and their children are losing their houses when they're foreclosed on? You understand that, right?

A. Uh-huh.

Q. So you'd agree with me that it's very important to make sure these documents are true and correct --

A. Yes.

Q. -- before they're filed with the court?

A. Yes.

Q. When we first started, I was asking you about the New Century Mortgage Corporation's bankruptcy. Do you recall that?

A. Yes.

Q. And you said you knew they filed for bankruptcy in '07?

A. Yes.

Q. Okay. Do you know anyone that works for New

EXHIBIT 10

Century Mortgage Corporation?

A. I'm sorry. Did I know anyone?

Q. No. Do you know anybody right now sitting here who works for New Century Mortgage Corporation?

A. No.

Q. You've never been -- have you ever been employed by Wells Fargo Bank, N.A.?

A. Are you referring to the trust?

Q. No. Just Wells Fargo Bank. Have you ever been employed there?

A. No.

Q. Have you ever been employed there as Wells Fargo bank as trustee?

A. Have I ever been employed by the trustee?

Q. All right. Let me ask you this. When you were working for Carrington Mortgage Services, would you consider yourself an employee of Wells Fargo Bank as trustee?

A. Yes.

Q. Okay. Who purchased the plaintiffs' mortgage in 2006?

A. I believe it was sold to the trust, to the -- created -- securitized into a trust.

Q. Okay. All right. Who sold it? Who was the seller?

EXHIBIT 10

A. New Century.
Q. New Century?
A. Uh-huh.
Q. Is that New Century Mortgage Corporation?
A. I believe so, yes.
Q. All right. And when was that?
A. I'm sorry?
Q. When did New Century Mortgage Corporation acquire or obtain the plaintiffs' mortgage?
A. I don't recall.
Q. Would it have been in June of 2006?
A. Again, I don't recall.
Q. All right. If you look at Plaintiffs' Exhibit No. 3, under P0037.
A. Okay.
Q. All right. What is this document?
A. This is the -- it's the adjusted rate -- it's the note.
Q. Okay. And who's the lender?
A. New Century.
Q. New Century Mortgage Corporation?
A. Correct.
Q. Okay. And what's the date?
A. June 15th, 2006.
Q. Okay. So in your opinion, would New Century

EXHIBIT 10

agreement. At the top, it says it's dated and effective as of August 1st, 2006. Do you see that?

A. Yes.

Q. Okay. So that would have been approximately a month and a half after New Century obtained the plaintiffs' mortgage, correct?

A. Yeah, I believe so.

Q. Okay. So is it your testimony that the plaintiffs' mortgage was transferred into this trust after August 1st, 2006?

A. I believe it was, yes.

Q. Okay. On the next page 607, see where it says "assignment"? Second paragraph from the bottom.

A. Okay.

Q. Says -- these are the definitions and it says an assignment is an assignment of mortgage, notice of transfer, or equivalent instrument in recordable form, and then it goes on and says more things. Do you see that?

A. Yes.

Q. Would you agree with that statement?

MR. SMART: Objection, form.

Q. (By Mr. Hughes) What is an assignment of mortgage?

A. It's one entity assigning a mortgage to

EXHIBIT 10

A. I can only speculate.

Q. Okay. Well, if you were to speculate, go ahead. Does that mean that Stanwich somehow obtained the plaintiffs' mortgage?

A. I believe that this loan was put into the pool.

Q. You mean the trust pool?

A. Right, yes.

Q. Okay. All right. On the next page Carrington-626, it defines mortgage at the top. Do you see that?

A. Yes.

Q. Would you agree with me that the plaintiffs' mortgage would qualify as a mortgage under this P&S agreement?

A. Yes.

Q. Okay. On the next page, Carrington-644, see where it says seller, fourth item down?

A. Yes.

Q. Okay. And it says the seller is Carrington Securities, L.P. Have you ever worked for Carrington Securities, L.P.?

A. No.

Q. Do you know if the plaintiffs' mortgage was ever in the possession of Carrington Securities, L.P.?

EXHIBIT 10

definition, is the person who is actually giving or transferring the mortgage?

A. Correct.

Q. Okay. And the third from the bottom on this page, it defines trustee as Wells Fargo Bank, N.A. See that?

A. Yes.

Q. Okay. All right. On the next page, Carrington-652.

A. Okay.

Q. Under Article II, it talks about conveyance of mortgage loans. Do you see that?

A. Yes.

Q. And on the first sentence, it says, "On the closing date," which is August of 2006, "the depositor will transfer, assign, set over, and otherwise convey to the trustee without recourse." Do you see that?

A. Yes.

Q. So is that the provision, in your opinion, that transferred the plaintiffs' mortgage into this trust?

A. I don't know.

Q. Okay. When did Carrington Mortgage Corporation -- I'm sorry. When did New Century Mortgage Corporation file for bankruptcy?

EXHIBIT 10

A. I believe it was February 2007.

Q. Okay. That would have been after this Pooling and Service Agreement, because this was in August of 2006.

A. I believe so.

Q. How did that affect this trust, do you know?

A. I don't know.

Q. Have you ever reviewed or seen any documents transferring the plaintiffs' mortgage from the trust to Carrington Mortgage Services?

A. I don't recall seeing any document that transfers the property from the trust into Carrington's name.

(Croft Exhibit No. 5 was marked.)

Q. (By Mr. Hughes) I'm going to mark as Plaintiffs' Exhibit 5 a Transfer of Lien document, and it's Bates labeled Carrington-00437. I think that's what you were referencing earlier, Mr. Croft. Is that -- you made a reference to a transfer?

A. Okay.

Q. Is that -- is this what you were referring to?

MR. SMART: Objection, form.

A. So, yeah, this is the one I was referring to earlier, the document that I saw in the file prior to the deposition, yes.

EXHIBIT 10

to the plaintiffs' mortgage?

MR. SMART: Objection, form.

Q. (By Mr. Hughes) You can answer.

A. This puts the courts -- the title into the trust.

Q. Okay. Here's where I don't quite understand what's going on. You testified earlier that the plaintiffs' mortgage was transferred into the trust within two months of August 2006.

A. Uh-huh.

Q. Then you just said this Transfer of Lien document transferred it to the trust in September of 2009.

A. Yes.

Q. Okay. So which one is it? When was the plaintiffs' mortgage transferred into the trust?

MR. SMART: Objection, form.

A. In 2006.

Q. (By Mr. Hughes) Okay. Then what's -- why did you sign this Transfer of Lien?

A. It's constructive notice of the transfer.

Q. It's over two years after it's already been transferred into the trust.

A. Yes.

Q. Okay. Did someone instruct you to sign or

EXHIBIT 10

A. Uh-huh.

Q. The next line it says, "Date, to be effective 9/30/09." And the next line it says, "Holder of note and lien."

A. Got it.

Q. Okay. Who does it list in this Transfer of Lien document as the holder of the note, the plaintiffs' note and the plaintiffs' lien?

A. New Century Mortgage Corporation.

Q. Okay. And this is in 2009?

A. Correct.

Q. Okay. Your previous testimony you said the plaintiffs' mortgage was owned the note and the lien by the trust.

A. Uh-huh.

Q. Okay. In 2009, you're saying the holder of the note and lien is New Century Mortgage Corporation.

A. The title -- I'm transferring the title out of New Century's name. The owner is the trust.

Q. No. The trust has the title, ownership and possession --

A. Uh-huh.

Q. -- of the plaintiffs' mortgage --

A. Right.

Q. -- in 2006.

EXHIBIT 10

A. Uh-huh, yes.

Q. And in 2009, you're saying that New Century Mortgage Corporation is the holder of plaintiffs' note and lien, true?

A. Correct.

Q. My question to you is, in 2009, who owned the plaintiffs' mortgage?

A. The trust.

Q. Okay. Why doesn't it list the trust as the holder of the note and lien in this Transfer of Lien, then?

A. This is to record it on title, to give constructive notice.

Q. In this Transfer of Lien, do you ever reference the trust?

A. I'm sorry. Yes, as transferee.

Q. Is this Transfer of Lien document referencing specifically the plaintiffs' mortgage and the plaintiffs' real property?

A. Is this document referencing the plaintiffs' lien and property, yes.

Q. Okay. Did you draft this Transfer of Lien prior to signing it?

A. No.

Q. Do you know who did?

EXHIBIT 10

Holdings. So on the advice of our -- Carrington Mortgage Holdings' attorney, they put me in touch with him.

Q. Okay. Are there other lawsuits currently pending where Carrington Mortgage holdings or Carrington Mortgage Services are named as a party to the lawsuit in Houston or Harris County, Texas? Do you know?

A. I'm not aware of any.

Q. Okay. At the top of the Transfer of Lien document, it lists the holder's mailing address as 1610 East St. Andrews Place, Number B150, Santa Ana, California, 92705. Do you see that?

A. Yes.

Q. And the holder you're referencing there is New Century Mortgage Corporation, true?

A. Correct, yes.

Q. And the transferee is Wells Fargo Bank, as trustee, correct?

A. Correct.

Q. And they also have the identical mailing address, correct?

A. Uh-huh.

Q. Okay. And previously you testified that your office is in this building.

A. Correct.

Q. Okay. Why isn't there some type of document in 2006 that shows the transfer of the plaintiffs' mortgage into the trust?

A. I don't know.

Q. Did you -- that never crossed your mind that that should have happened?

A. Well, from my perspective, once, you know, the customer defaults and it comes to my area, that's when we record the transfer of the assignment, whatever the case -- whatever state you're in, to put the property invested in the right trust. From my perspective, the constructive notice issue is, you know, they owe somebody, right?

Q. You remember in the Pooling and Service Agreement those definitions? Do you remember that?

A. Sure.

Q. Do you remember a definition called closing date?

A. Uh-huh.

Q. Okay. That was in August of 2006.

A. Uh-huh.

Q. And according to the P&S agreement, as of the closing date none of the mortgages in the trust can be transferred in or out. Okay. Do you understand that?

A. Sure.

EXHIBIT 10

the vesting of who the lienholder is, right? Okay. So either it's New Century or it's the trust.

Q. You're representing to the public in that document that that transaction occurred in 2009.

A. Uh-huh.

Q. You testified earlier it happened in 2006.

A. Right.

Q. My question is, why didn't you clarify that in the Transfer of Lien document?

A. Didn't.

Q. So that Transfer of Lien document is not 100 percent accurate?

A. This document is accurate.

(Croft Exhibit No. 10 was marked.)

Q. (By Mr. Hughes) Okay. I'm going to attach as -- what are we on? Exhibit 10? Plaintiffs' Exhibit 10. These are documents that we've produced in this litigation. All of them have your signature on them for some reason or another. And I'm not sure if you've seen them yet, so if you want to take a minute and review them, that's fine. I'll wait until you're finished. Have you reviewed it?

A. Yes.

Q. Okay. I want to ask you about some of these notaries.

EXHIBIT 10

MR. SMART: Objection, form.

A. Under your scenario, are they paying -- they quit paying their mortgage lender?

Q. (By Mr. Hughes) Yes, they're in default.

A. Okay. So who -- who's the lender on the property currently, then?

Q. Not Wells Fargo as trustee, because it's not in the trust.

A. Okay. So they've defaulted on the former lender.

Q. Yes.

A. Is the former lender paying -- being paid?

Q. They've defaulted.

A. They defaulted that, okay. Have they initiated a foreclosure action?

Q. All right. I'm not going to answer your questions.

A. I don't understand where you're going with this.

Q. Okay. Why does Wells Fargo Bank as trustee have the right to foreclose on any property?

A. They have the right to foreclose under the terms of the mortgage.

Q. Okay. Does the property at issue have to be in the trust in order for Wells Fargo Bank to foreclose

EXHIBIT 10

on the property?

A. Wells Fargo the trust, yes.

Q. Okay. So is it -- okay. So if a piece of property is not in the trust, Wells Fargo Bank cannot bring a foreclosure action as trustee, true?

A. Why would they?

Q. I'm not asking why would they.

A. Okay. So under your hypothetical --

Q. Don't ask -- don't ask me questions, please. I'm asking you questions.

A. I am asking you to clarify your question --

Q. I'll restate.

A. -- which is hypothetical and has got a lot of holes and I'm having trouble understanding it. That's all. That's all I'm asking, is to understand where you're trying to lead me to. Are you trying to say -- are you asking me -- I'm sorry. I can't ask questions.

Q. No. Proceed.

A. Let me try to clarify. Can Wells Fargo foreclose on something they don't have an interest in?

Q. Exactly.

A. No. My question -- no, they can't.

Q. Okay. In your review of the plaintiffs' file, did you ever find a document transferring the plaintiffs' mortgage from New Century Mortgage

EXHIBIT 10

CAUSE NO. 2011-36476

MARY ELLEN WOLF AND DAVID WOLF, on behalf of themselves and all others similarly situated,	§	IN THE DISTRICT COURT OF P-1 MPSJZ
v.	§	HARRIS COUNTY, TEXAS
WELLS FARGO BANK, N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST, TOM CROFT, NEW CENTURY MORTGAGE CORPORATION, AND CARRINGTON MORTGAGE SERVICES, LLC.	§	151ST JUDICIAL DISTRICT

INTERLOCUTORY ORDER

Defendants, Wells Fargo Bank, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates (for the sake of brevity only, " Wells Fargo"), Carrington Mortgage Services, LIC, (" Carrington") andTom Croft (" Croft") (collectively " Defendants") Traditional Motion for Partial Summary Judgment came before the Court for consideration. After considering the Motion the Response, any argument by counsel, and the pleadings and evidence on file, the Court finds the Motion is ~~not~~ in part meritorious. It is therefore,

ORDERED Defendants' Motion for Summary Judgment is ~~DENIED in its entirety~~.

Signed this _____ day of OCT - 9 2012, 2012.

HONORABLE MIKE ENGELHART

Granted as to Plaintiffs claims for damages based upon Defendants' assertion of the statute of limitations.
The motion is hereby DENIED in all other respects. MS

444 S.W.3d 685
Court of Appeals of Texas,
Houston (14th Dist.).

WELLS FARGO BANK, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006–NC3 Asset Backed Pass–Through Certificates, Tom Croft, New Century Mortgage Corporation, and Carrington Mortgage Services, LLC, Appellants
v.
Mary Ellen WOLF and David Wolf, on behalf of themselves and all others similarly situated, Appellees.

No. 14–13–00435–CV. | Aug. 21, 2014.

Synopsis

Background: Mortgagors brought putative class action against purported lienholder and others, seeking damages and equitable relief arising out of filing of allegedly fraudulent transfer of lien documents. Following grant of summary judgment in favor of defendants on claims for damages based on statute-of-limitations grounds, the 151st District Court, Harris County, Mike Engelhart, J., certified a class consisting of allegedly similarly-situated mortgagors on a statutory claim of damages for filing of allegedly fraudulent transfer of lien documents. Defendants appealed.

[Holding:] The Court of Appeals, Ken Wise, J., held that trial court erred in certifying class of similarly situated mortgagors, as mortgagors did not have live claim for damages.

Reversed and remanded.

Attorneys and Law Firms

***685** Peter C. Smart, Houston, Thomas V. Panoff and Lucia Nale, Chicago, IL, for Appellants.

William Craft Hughes, Houston, Brandy Wingate Voss, McAllen, for Appellees.

Panel consists of Justices McCALLY, BUSBY, and WISE.

***686 OPINION**

KEN WISE, Justice.

Appellants, Wells Fargo Bank, N.A., As Trustee for Carrington Mortgage Loan Trust, Series 2006–NC3 Asset Backed Pass–Through Certificates ("Wells Fargo"), Tom Croft ("Croft"), New Century Mortgage Corporation ("New Century"), and Carrington Mortgage Services, LLC ("Carrington"), appeal an Order Granting Class Certification on behalf of appellees, Mary Ellen Wolf and David Wolf (collectively "the Wolfs"), On Behalf of Themselves and All Others Similarly Situated. In their suit, the Wolfs seek damages and equitable relief, alleging that (1) appellants incorrectly claim Wells Fargo is lienholder relative to the Wolfs' residential mortgage, and (2) appellants executed and filed fraudulent documents to claim that status. The trial court granted appellants' motion for summary judgment on the Wolfs' claims for damages but denied the motion relative to their request for equitable relief. The trial court then certified a class consisting of allegedly similarly-situated mortgagors on a statutory claim for damages. Because we conclude the trial court erred by certifying a class on a claim that had already been disposed of via summary judgment, we reverse the Order Granting Class Certification and remand for further proceedings.

I. BACKGROUND

In June 2006, the Wolfs refinanced their mortgage via a home equity loan of $400,000 from New Century. To memorialize the loan, the Wolfs executed a promissory note and a deed of trust in favor of New Century.

On August 1, 2006, three entities executed a Pooling and Servicing Agreement, creating the Carrington Mortgage Loan Trust, Series 2006–NC3 ("the Trust"): New Century as "Servicer;" Wells Fargo as "Trustee;" and an entity who is not a party to the present case as "Depositor." The purpose of the Trust was that loans conveyed into the Trust would be securitized for sale to investors.

Appellants claim that the Wolfs' loan was conveyed into the Trust and thus assigned to Wells Fargo it in its capacity as trustee. On October 20, 2009, Wells Fargo filed with the Harris County clerk a document entitled "Transfer of Lien,"

EXHIBIT 12

indicating it was executed by Croft as an officer of New Century. The document purported to show a transfer of the Wolfs' note and deed of trust from New Century to Wells Fargo, effective September 30, 2009.

Wells Fargo appointed Carrington (successor in interest to New Century, which had filed bankruptcy) as Wells Fargo's attorney-in-fact, with full authority to take actions relative to the loans securitized into the Trust. In December 2010, Carrington sent the Wolfs a notice of intent to foreclose because they were delinquent on the loan. When the Wolfs failed to cure, Wells Fargo filed an application to proceed with a non-judicial foreclosure. In support, Wells Fargo filed an affidavit of Croft, indicating he was signing as an officer of Carrington and attorney in fact for Wells Fargo.

The Wolfs then filed the present suit, alleging appellants were attempting a wrongful foreclosure and the documents intended to support the foreclosure were fraudulent. Because of the filing of this suit, the separate foreclosure action was abated and dismissed. Appellees have filed a counterclaim in the present suit, requesting permission to proceed with the foreclosure.

The Wolfs amended their petition several times to further define the basis for their claims. The Wolfs alleged that (1) their loan was not properly securitized into ***687** the Trust in the manner required under the Pooling and Servicing Agreement and other pertinent documents and thus Wells Fargo is not owner and holder of the loan instruments, and (2) appellants filed the Transfer of Lien in the Harris County real property records in a fraudulent attempt to cure defects in the original attempt to convey the loan into the Trust.

The Wolfs asserted a claim for violations of Texas Civil Practice and Remedies Code section 12.002, which provides in pertinent part:

> (a) A person may not make, present, or use a document or other record with:
>
> (1) knowledge that the document or other record is a fraudulent court record or a fraudulent lien or claim against real or personal property or an interest in real or personal property;
>
> (2) intent that the document or other record be given the same legal effect as a court record or document of a court created by or established under the constitution or laws of this state or the United States or another entity listed in Section 37.01, Penal Code, evidencing a valid lien or claim against real or personal property or an interest in real or personal property; and
>
> (3) intent to cause another person to suffer:
>
> (A) physical injury;
>
> (B) financial injury; or
>
> (C) mental anguish or emotional distress.
>
> ...
>
> (b) A person who violates Subsection (a) ... is liable to each injured person for:
>
> (1) the greater of:
>
> (A) $10,000; or
>
> (B) the actual damages caused by the violation;
>
> (2) court costs;
>
> (3) reasonable attorney's fees; and
>
> (4) exemplary damages in an amount determined by the court.

Tex. Civ. Prac. & Rem Code Ann. § 12.002 (West Supp. 2014).

According to the Wolfs, Wells Fargo violated section 12.002(a) by filing the Transfer of Lien in the real property records and, therefore, the Wolfs are entitled to the damages prescribed under section 12.002(b). The Wolfs also sought actual and exemplary damages based on claims for negligence, gross negligence, unjust enrichment, and "money had and received." Further, the Wolfs included a request for declaratory relief.

Appellants moved for summary judgment on various grounds, including the statute of limitations. On October 9, 2012, the trial court signed an order granting, in part, and denying, in part, the motion for summary judgment. The trial court granted summary judgment on the Wolfs' claims for damages on the statute-of-limitations ground. The trial court has not signed any order withdrawing that ruling. The trial court denied summary judgment on the Wolfs' equitable claims and denied appellants' motion for reconsideration of that ruling.

EXHIBIT 12

Approximately a month after the summary-judgment order, the Wolfs filed an amended petition—their live petition—continuing to plead both their claims for damages and equitable relief. Several days later, the Wolfs filed a motion for class certification on, inter alia, their section 12.002 claim.[1] They alleged that the putative class members also had mortgages ***688** which were not properly conveyed into the Trust and Wells Fargo filed fraudulent Transfer of Lien documents relative to these mortgages.

[1] In several previous amended petitions, the Wolfs alleged a class action, but they did not move for class certification until after the trial court granted summary judgment on the claim for damages and the Wolfs filed their live petition.

On May 1, 2013, the trial court signed an Order Granting Class Certification. The certified class is defined as:

> All persons and entities with a residential mortgage loan on real property in the State of Texas securitized into [the Trust], with a court record, lien, claim against real property, or claim against an interest in real property filed by Defendants after August 10, 2006 up to and including the date notice is first provided to the Class.

The certified subclass is defined as:

> All persons and entities that lost ownership to real property in the State of Texas resulting from a foreclosure initiated by Wells Fargo ... as Trustee for [the Trust] after August 10, 2006 up to and including the date notice is first provided to the Class.

Appellants now appeal that order. *See* Tex. Civ. Prac. & Rem Code A nn. § 51.014(a)(3) (West Supp. 2014) (authorizing interlocutory appeal of order that certifies a class).

II. ANALYSIS

On appeal, appellants present four issues challenging the class certification order: (1) the order must be reversed because the trial court previously ruled the Wolfs may not maintain the sole claim they assert on behalf of the class; (2) the order rests on erroneous legal conclusions because (a) the putative class members lack standing to allege violations of the Pooling and Servicing Agreement when they were not parties to the agreement, and (b) the Transfer of Lien documents cannot constitute fraudulent liens within the meaning of section 12.002; (3) the trial court abused its discretion by certifying a class without issuing an adequate trial plan; and (4) the trial court abused its discretion by certifying a class that does not satisfy the commonality, predominance, and superiority requirements of Texas Rule of Civil Procedure 42. We agree with appellants' first issue, and thus we need not consider their remaining issues.

[1] We review a class certification order for abuse of discretion. *Bowden v. Phillips Petroleum Co.*, 247 S.W.3d 690, 696 (Tex.2008). A trial court abuses its discretion if it acts arbitrarily, unreasonably, or without reference to any guiding principles. *Id.; Walker v. Packer*, 827 S.W.2d 833, 839 (Tex.1992). A trial court also abuses its discretion if it fails to correctly analyze or apply the law. *In re Cerberus Capital Mgmt., L.P.*, 164 S.W.3d 379, 382 (Tex.2005); *Walker*, 827 S.W.2d at 839–40. In the present case, we conclude the trial court failed to correctly analyze or apply the law.

[2] **[3]** In particular, if a putative class representative has no live individual claim, that individual has no standing to bring suit on behalf of a putative class. *Tex. Commerce Bank v. Grizzle*, 96 S.W.3d 240, 255 (Tex.2002). Accordingly, claims made on behalf of a putative class by such an individual must fail as a matter of law. *Id.* " '[A] plaintiff without a claim cannot be allowed to bring suit by making a class action allegation.' " *Id.* (quoting *Turner v. First Wis. Mortgage Trust*, 454 F.Supp. 899, 913 (E.D.Wis.1978)).

[4] As mentioned above, the trial court granted summary judgment in favor of appellants on all of the Wolfs' claims for damages, including the section 12.002 claim, which had already been pleaded. The trial court never expressly withdrew that ruling, nor did the Wolfs request that the trial court do so. Further, the Wolfs ***689** did not move to sever those claims and appeal the summary judgment. Thus, when the trial court certified the class, the Wolfs had no live claims for damages, including their section 12.002 claim. As appellees acknowledge, the trial court certified the class solely on a section 12.002 claim for damages.[2] Consequently, on May 1, 2013, the trial court certified a class on a cause of action that it had previously disposed of by

EXHIBIT 12

summary judgment against the named plaintiffs on October 9, 2012. [3]

[2] The motion for class certification may be construed as seeking class certification on both the section 12.002 claim for damages and a request for equitable relief enjoining appellants from wrongfully claiming ownership of the mortgages, foreclosing on the class members' real property, and filing fraudulent documents in the real property records. Regardless, the trial court certified a class only on the section 12.002 claim for damages.

[3] In the Statement of Facts section of their brief, appellees note that, after the trial court granted summary judgment on the claims for damages, the Wolfs filed their live petition raising the discovery rule as responsive to appellants' statute-of-limitations defense. Appellees further note that appellants have not addressed this amendment, in either their motion to reconsider denial of summary judgment on the equitable claims or their appellate brief. Contrary to appellees' suggestion, the Wolfs had already pleaded the discovery rule before appellants moved for summary judgment and raised the issue in their summary-judgment response. Nonetheless, appellants had no reason to challenge any new allegations in the amended petition relative to a claim that had already been disposed of via summary judgment. We disagree that amending a petition after summary judgment has been granted to make an allegation that might have defeated entitlement to summary judgment somehow revives the dismissed claim. We also note that the merits of the summary judgment are not before us, and we express no opinion on it.

Appellees do not dispute that the trial court granted summary judgment on the section 12.002 claim on the basis of limitations. Instead, appellees appear to urge that the summary-judgment order does not exist any longer. The crux of appellees' argument on appeal is that the trial court implicitly withdrew the summary judgment by issuing the inconsistent class certification order. We disagree. Appellees cite the principle, undisputed in this case, that a trial court may withdraw an order granting summary judgment if the party who obtained summary judgment has a fair opportunity to present evidence to the jury on the issues reinjected into the case. *See* *Bi–Ed, Ltd. v. Ramsey*, 935 S.W.2d 122, 123–24 (Tex.1996) (citing *Elder Construction, Inc. v. City of Colleyville*, 839 S.W.2d 91, 92 (Tex.1992)); *see also* *Rush v. Barrios*, 56 S.W.3d 88, 98–99 (Tex.App.-Houston [14th Dist.] 2001, pet. denied). Appellees further cite cases holding that a trial court implicitly modifies or withdraws a partial summary judgment if its final findings of fact and conclusions of law are inconsistent with the partial summary judgment. *See, e.g.*, *Fabio v. Ertel*, 226 S.W.3d 557, 561 (Tex.App.-Houston [1st Dist.] 2007, no pet.) (citing *Loy v. Harter*, 128 S.W.3d 397, 409 (Tex.App.-Texarkana 2004, pet. denied)).

Appellees cite no authority, however, applying this principle when a trial court certifies a class on a claim which has already been disposed of via summary judgment. Appellees also cite nothing in the record to suggest that the trial court *sua sponte* reconsidered its grant of summary judgment on limitations. Indeed, the trial court's class certification order includes no plan for trying the statute-of-limitations defense presented by appellants. The absence of such a plan supports our conclusion that the trial court did not reconsider its order granting summary judgment on the Wolfs' claim for damages based on the statute of limitations.

***690** On this record, we cannot foreclose the possibility that the trial court did not intend to withdraw the summary judgment but instead simply erred by certifying a class on the dismissed claim. Accordingly, we cannot construe the class certification order as necessarily withdrawing the summary judgment. Instead, we hold that the trial court erred by certifying the class when the Wolfs had no live claim on the cause of action addressed by the certification order.

In summary, we hold that the trial court erred by certifying a class action. Accordingly, we sustain appellants' first issue, reverse the Order Granting Class Certification, and remand for further proceedings consistent with this opinion.

EXHIBIT 12

CAUSE NO. 2011-36476

MARY ELLEN WOLF AND DAVID WOLF, on behalf of themselves and all others similarly situated,	§	IN THE DISTRICT COURT OF
v.	§	
	§	HARRIS COUNTY, TEXAS
WELLS FARGO BANK, N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST, TOM CROFT, NEW CENTURY MORTGAGE CORPORATION, AND CARRINGTON MORTGAGE SERVICES, LLC.	§	151ST JUDICIAL DISTRICT

ORDER

On this day came to be heard Defendants Second Motion to Reconsider Summary Judgment and Second Motion for Summary Judgment by the Court for consideration. After considering the Defendants' Motion(s) the Response(s), any argument(s) by counsel, and the pleadings and evidence on file, the Court finds the Defendants' Motion is not meritorious.

IT IS THEREFORE, **ORDERED** that Defendants' Second Motion to Reconsider Summary Judgment and Second Motion for Summary Judgment are both **DENIED** in their entirety.

IT IS FURTHER **ORDERED** that Defendants' be sanctioned for filing sensitive documents in the public record containing Plaintiffs' entire social security numbers, entire dates of birth, and financial information. Defendants are hereby ORDERED to pay $_____ to Plaintiffs within twenty (20) days of this Order and, in addition, Defendants are hereby ORDERED to pay for all costs associated with the removal of this information from the public record which must be completed within twenty (20) days of this Order.

SIGNED this _____ day of _____, 2015.

_____
HONORABLE MIKE ENGELHART

7/27/2015 1:05:49 PM
Chris Daniel - District Clerk Harris County
Envelope No. 6233649
By: VERONICA GONZALEZ
Filed: 7/27/2015 1:05:49 PM

CAUSE NO. 2011-36476

MARY ELLEN WOLF AND DAVID WOLF	§	IN THE DISTRICT COURT OF
	§	
	§	
v.	§	
	§	HARRIS COUNTY, TEXAS
WELLS FARGO BANK, N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST, TOM CROFT, NEW CENTURY MORTGAGE CORPORATION, AND CARRINGTON MORTGAGE SERVICES, LLC.	§	151ST JUDICIAL DISTRICT

PLAINTIFFS' FOURTH AMENDED PETITION

TO THE HONORABLE MIKE ENGELHART:

COME NOW Mary Ellen Wolf and David Wolf ("Plaintiffs"), bringing this action against Wells Fargo Bank, N.A., as Trustee for Carrington Mortgage Loan Trust, Tom Croft, New Century Mortgage Corporation, and Carrington Mortgage Services, LLC (collectively "Defendants" or "Wells Fargo") to recover damages and obtain a declaratory judgment against Defendants, and in support respectfully show unto the Court as follows:

I. DISCOVERY CONTROL PLAN LEVEL

1. Plaintiffs intend that discovery be conducted under Discovery Level 3. TEX. R. CIV. P. 190.4.

II. PARTIES

2. Plaintiff MARY ELLEN WOLF is a citizen and resident of the State of Texas, residing in Houston, Harris County, Texas. At all times relevant to this matter, Plaintiff MARY ELLEN WOLF resided and continues to reside in this district.

3. Plaintiff DAVID WOLF is a citizen and resident of the State of Texas, residing in Houston, Harris County, Texas. At all times relevant to this matter, Plaintiff DAVID WOLF resided and continues to reside in this district.

4. Defendant WELLS FARGO BANK, N.A., as Trustee for Carrington Mortgage Loan Trust, Tom Croft, New Century Mortgage Corporation, and Carrington Mortgage Services, LLC is a foreign corporation, whose principal office is located in California. Wells Fargo conducts business in the State of Texas within the meaning of that term as defined by TEX. CIV. PRAC. & REM. CODE § 17.042. Wells Fargo has appeared in this case through its attorney of record Peter C. Smart, and filed an answer and counterclaim to Plaintiffs' Original Petition. In compliance with Rules 21 and 21a of the TEXAS RULES OF CIVIL PROCEDURE, a copy of this Amended Petition will be served on Wells Fargo by serving its attorney of record, Peter C. Smart, CRAIN CATON & JAMES, P.C., Five Houston Center, 17th Floor, 1404 McKinney, Suite 1700, Houston, TX 77010.

5. Whenever in this Petition it is alleged that Wells Fargo committed any act or omission, it is meant that the Wells Fargo's officers, directors, affiliates, subsidiaries, vice-principals, partners, agents, servants, or employees committed such act or omission, individually or as Trustee for Carrington Mortgage Loan Trust, Tom Croft, New Century Mortgage Corporation, and Carrington Mortgage Services, LLC, or both, and that at the time such act or omission was committed, it was done with the full authorization, ratification or approval of Wells Fargo or was done in the routine normal course and scope of their agency and employment as Wells Fargo's officers, directors, affiliates, subsidiaries, vice-principals, partners, agents, servants, employees, or as Trustee for Carrington Mortgage Loan Trust, Tom Croft, New Century Mortgage Corporation, and Carrington Mortgage Services, LLC, or both.

III. JURISDICTION AND VENUE

6. Venue is proper in Harris County, Texas pursuant to Section 15.002(a)(1) of the TEXAS CIVIL PRACTICE & REMEDIES CODE because all or a substantial part of the acts or omissions giving rise to the Plaintiffs' claims occurred within Harris County, Texas.

7. Venue is proper in Harris County, Texas pursuant to TEX. R. CIV. P. 736 because Wells Fargo initiated this proceeding by filing a verified application for expedited foreclosure of a lien under TEX. CONST. ART. XVI, § 50(a)(6)(D), for a home equity loan, or § 50(k)(11), for a reverse mortgage, in Harris County District Court, and all of the real property encumbered by the lien sought to be foreclosed is located in Harris County.

8. Venue is proper in Harris County, Texas pursuant to TEX. R. CIV. P. 736(10) because Plaintiffs' filed their Original Petition contesting the right to foreclose in Harris County District Court while the Defendants' application for expedited foreclosure was pending.

9. The amount in controversy is within the jurisdictional limits of this Court.

10. This Court has personal jurisdiction over all parties.

11. The damages and relief sought are within the jurisdictional limits of this Court.

12. So long as venue is proper against any one Defendant, the Court has venue against either Defendant because Plaintiffs' claims arise out of the same transaction, occurrence, or series of transactions. *See* TEX. CIV. PRAC. & REM. CODE §15.005.

IV. FACTUAL ALLEGATIONS

13. On or about March 24, 2000, Plaintiffs' purchased their current homestead for approximately $283,150.00, located at 6404 Buffalo Speedway, Houston, Texas 77005 ("Property"), and legally described as:

> The South 1/2 of Lot Six (6), Block Thirty (30) of West University Place, a subdivision of Harris County, Texas, according to the Map or Plat thereof recorded in Volume 444, Page 660, of the Deed Records of Harris County, Texas.

14. On or about June 26, 2000, Plaintiffs' executed and filed a Designation of Homestead Affidavit relating to the Property with the Harris County District Clerk's Office.

15. In June 2003, the Plaintiffs allegedly executed a 30–year promissory note with "America's Wholesale Lender, Inc." in the amount of $345,000. However, America's Wholesale Lender, Inc. did not exist in 2006 according to the New York Department of State-Division of Corporations. Therefore, Plaintiffs' promissory note with "America's Wholesale Lender, Inc." is void and invalid.

16. In June 2006, New Century Mortgage Corporation allegedly purchased the Plaintiffs' mortgage, note, and deed of trust from America's Wholesale Lender, Inc., a non-existent entity.

17. In June 2006, the Plaintiffs executed a 30–year promissory note with New Century Mortgage Corporation in the amount of $400,000, with interest payable in monthly installments beginning August 1, 2006. A deed of trust, dated the same day, created a lien on the Plaintiffs' homestead to secure the payment of the promissory note.

18. On or about July 5, 2006, a Release of Lien was filed by Mortgage Electronic Registration Systems ("MERS") relating to the Property.

19. On August 1, 2006, a Pooling and Servicing Agreement was executed by Wells Fargo relating to the Carrington Mortgage Loan Trust, 2006-NC3 Asset Backed Pass-Through Certificates ("2006-NC3 Trust"). The 2006-NC3 Trust originator is New Century Mortgage Corporation, the 2006-NC3 Trust sponsor is Carrington Securities, LP, the 2006-NC3 Trust

depositor is Stanwich Asset Acceptance Company, LLC, and Wells Fargo Bank, N.A. is the Trustee of the 2006-NC3 Trust.

20. The closing date and deadline to convey and transfer the mortgage loans and notes into the 2006-NC3 Trust was August 10, 2006 ("Closing Date"). After the Closing Date, the mortgage loans and notes are owned by the 2006-NC3 Trust, and cannot be transferred out of the 2006-NC3 Trust. Therefore, the 2006-NC3 Trust allegedly owned the Plaintiffs' mortgage loan and note as of the Closing Date on August 10, 2006.

21. The mortgage loans, mortgage liens, mortgage notes, or deeds of trust of Plaintiffs were pooled and securitized into the 2006-NC3 Trust, along with thousands of other mortgage loans and notes. However, the notes and mortgages of Plaintiffs were not properly transferred into the 2006-NC3 Trust. This is a critical issue because:

a. the 2006-NC3 Trust has standing to foreclose if, and only if it is the mortgagee; and

b. the 2006-NC3 Trust is the mortgagee of Plaintiffs if, and only if, a legal and valid chain of title is present from the originator (New Century Mortgage Corporation), to the sponsor (Carrington Securities, LP), to the depositor (Stanwich Asset Acceptance Company, LLC), into the 2006-NC3 Trust.

22. The mortgage loans, mortgage liens, mortgage notes, or deeds of trust of Plaintiffs were *not* properly transferred into the 2006-NC3 Trust, a valid chain of title does *not* exist, and Wells Fargo Bank, N.A., as Trustee of the 2006-NC3 Trust is *not* the mortgagee.

23. Wells Fargo cannot prove a legal and valid chain of title, or the required series of transfers of the notes and the mortgages of Plaintiffs, from the originator (New Century Mortgage Corporation), to the sponsor (Carrington Securities, LP), to the depositor (Stanwich Asset Acceptance Company, LLC), to the 2006-NC3 Trust. Defendants are fully aware of the broken

chain of title, and attempt to fraudulently transfer the notes and mortgages through invalid "Transfers of Lien" and "Assignments" in an effort to legitimize and fix the broken chain of title.

24. For example, on October 20, 2009 approximately three years after the Closing Date of the 2006-NC3 Trust, a "Transfer of Lien" was filed by "Tom Croft" as vice-president of REO for New Century Mortgage Corporation, to Wells Fargo. The effective date of the transfer is backdated twenty days to September 30, 2009, and the mailing address for Wells Fargo is identical to NCMC on the transfer. Wells Fargo contends it is the holder of Plaintiffs' promissory note and deed of trust as a result of NCMC's alleged transfer, but the 2006-NC3 Trust allegedly owned Plaintiffs' mortgage and note at the time of the transfer.

25. According to Wells Fargo, the Plaintiffs failed to pay the monthly installment payments due on and after December 3, 2010, and it accelerated the entire debt due under the note.[1]

26. On February 11, 2011, Wells Fargo filed an application seeking a court order allowing it to proceed with an expedited, non-judicial foreclosure of the mortgage lien.[2] The proceeding was assigned to the 151st District Court.[3] On June 23, 2011, the 151st District Court abated and dismissed the expedited foreclosure proceeding after Plaintiffs filed a separate petition contesting Wells Fargo's right to foreclose (the present case).[4]

[1] *See* Defendants' Amended Answer and Counterclaim (April 17, 2012).

[2] *See* TEX. CONST. ART. XVI, § 50(a)(6), TEX.R. CIV. P. 736(1).

[3] *In re: Order for Foreclosure Concerning Mary Ellen Wolf, David Wolf, and 6404 Buffalo Speedway, Houston, Texas 77005*, No. 2011-08930 (151st Dist. Ct., Harris County, Tex. Feb. 11, 2011).

[4] *See* TEX. R. CIV. P. 736(10) ("A proceeding under Rule 736 is automatically abated if, before the signing of the order, notice is filed with the clerk of the court in which the application is pending that respondent has filed a petition contesting the right to foreclose in a district court in the county where the application is pending. A proceeding that has been abated shall be dismissed.").

27. In support of its application for expedited foreclosure on February 11, 2011, Wells Fargo attached an affidavit of "Tom Croft."[5] This time, "Tom Croft" signed the sworn affidavit as "attorney-in-fact" *for Wells Fargo,* and "custodian of records" *for Wells Fargo,* and vice-president of REO for *Carrington Mortgage Services, LLC.*

A. AFFIDAVITS OF "TOM CROFT" FILED IN HARRIS COUNTY

28. Thousands of foreclosure actions have been filed in Texas by Wells Fargo. The vast majority of foreclosure actions filed by Wells Fargo rely on sworn affidavits of an individual named "Tom Croft."

29. There are twenty-four separate Harris County District Courts. During the past three years, the sworn affidavit of "Tom Croft" has been filed in all twenty-four Harris County District Courts in support of numerous foreclosure actions by Wells Fargo:

a. 11th District Court of Harris County; Cause No. 2011-70173 (Affidavit filed 11/18/2011); Cause No. 2012-11647 (Affidavit filed 02/24/2012).

b. 55th District Court of Harris County; Cause No. 2011-74223 (Affidavit filed 12/09/2011).

c. 61st District Court of Harris County; Cause No. 2010-07930 (Affidavit filed 11/22/2010); Cause No. 2011-21332 (Affidavit filed 04/06/2011).

d. 80th District Court of Harris County; Cause No. 2011-45972 (Affidavit filed 08/04/2011).

e. 113th District Court of Harris County; Cause No. 2011-21307 (Affidavit filed 04/06/2011); Cause No. 2011-70004 (Affidavit filed 11/17/2011).

f. 125th District Court of Harris County; Cause No. 2011-18502 (Affidavit filed 03/25/2011).

[5] *See* Verification and Affidavit of Tom Croft dated February 3, 2011 (filed February 11, 2011).

g. 127th District Court of Harris County; Cause No. 2011-08798 (Affidavit filed 02/10/2011).

h. 129th District Court of Harris County; Cause No. 2011-65951 (Affidavit filed 10/31/2011).

i. 133rd District Court of Harris County; Cause No. 2011-65953 (Affidavit filed 10/31/2011).

j. 151st District Court of Harris County; Cause No. 2011-50536 (Affidavit filed 08/25/2011); Cause No. 2011-74416 (Affidavit filed 12/12/2011).

k. 152nd District Court of Harris County; Cause No. 2011-48472 (Affidavit filed 08/17/2011); Cause No. 2011-70018 (Affidavit filed 11/17/2011).

l. 157th District Court of Harris County; Cause No. 2010-57159 (Affidavit filed 09/09/2010); Cause No. 2011-50499 (Affidavit filed 08/25/2011).

m. 164th District Court of Harris County; Cause No. 2010-83196 (Affidavit filed 12/27/2010); Cause No. 2011-29297 (Affidavit filed 05/16/2011).

n. 165th District Court of Harris County; Cause No. 2011-52812 (Affidavit filed 09/02/2011).

o. 189th District Court of Harris County; Cause No. 2011-21344 (Affidavit filed 04/06/2011).

p. 190th District Court of Harris County; Cause No. 2011-65952 (Affidavit filed 10/31/2011).

q. 234th District Court of Harris County; Cause No. 2011-08804 (Affidavit filed 02/10/2011).

r. 269th District Court of Harris County; Cause No. 2011-12823 (Affidavit filed 03/01/2011); Cause No. 2011-46015 (Affidavit filed 08/04/2011); Cause No. 2011-66292 (Affidavit filed 11/01/2011).

s. 270th District Court of Harris County; Cause No. 2009-33093 (Affidavit filed 05/27/2009).

t. 281st District Court of Harris County; Cause No. 2011-21348 (Affidavit filed 04/06/2011).

u. 295th District Court of Harris County; Cause No. 2011-29305 (Affidavit filed 05/16/2011).

v. 333rd District Court of Harris County; Cause No. 2011-69841 (Affidavit filed 11/17/2011).

w. 334th District Court of Harris County; Cause No. 2010-59868 (Affidavit filed 09/14/2010).

30. In each affidavit, "Tom Croft" swears he has personal knowledge about specific facts relating to each foreclosure, is the attorney-in-fact for the applicant, is the vice president for several different entities, is the business records custodian for several different entities, personally reviewed all foreclosure documents relating to each foreclosure action, and swears the applicant is the owner and holder of the note and security instrument and is in possession of both.

31. This is a pattern and practice of Wells Fargo common and uniform across the State of Texas.

B. AFFIDAVITS FILED WITHOUT PERSONAL KNOWLEDGE

32. Affidavits need to be based on personal knowledge to have any evidentiary effect; absent personal knowledge an affidavit is hearsay and therefore generally inadmissible as evidence. Accordingly, affidavits attest to personal knowledge of the facts alleged therein.

33. The most common type of affidavit is an attestation about the existence and status of the loan, namely that the homeowner owes a debt, how much is currently owed, and that the homeowner has defaulted on the loan. Such an affidavit is typically sworn out by an employee of a servicer (or sometimes by a law firm working for a servicer). Personal knowledge for such an affidavit would involve, at the very least, examining the payment history for a loan in the servicer's computer system and checking it against the facts alleged in a complaint.

34. The problem with affidavits filed in many foreclosure cases is that the affiant lacks any personal knowledge of the facts alleged whatsoever. Many servicers, including Bank of America, Citibank, JPMorgan Chase, Wells Fargo, and GMAC, employ professional affiants, some of whom appear to have no other duties than to sign affidavits. These employees cannot possibly have personal knowledge of the facts in their affidavits. One GMAC employee, Jeffrey Stephan, stated in a deposition that he signed perhaps 10,000 affidavits in a month, or approximately 1 a minute for a 40-hour work week.[6] For a servicer's employee to ascertain payment histories in a high volume of individual cases is simply impossible.

35. When a servicer files an affidavit that claims to be based on personal knowledge, but is not in fact based on personal knowledge, the servicer is committing a fraud on the court, and quite possibly perjury. The existence of foreclosures based on fraudulent pleadings raises the question of the validity of foreclosure judgments and therefore title on properties, particularly if they are still in real estate owned (REO).

C. U.S. OFFICE OF INSPECTOR GENERAL'S MEMORANDUM OF REVIEW: WELLS FARGO BANK FORECLOSURE AND CLAIMS PROCESS

36. On or about March 12, 2012, the Office of Inspector General ("OIG") released Memorandum No. 2012-AT-1801 entitled "Wells Fargo Bank Foreclosure and Claims Process Review." On page 4 of the Memo, the OIG listed the results of its review as follows:

> Wells Fargo did not establish effective control over its foreclosure process. This failure permitted a control environment in which:
>
> - The affiants routinely signed and certified that they had personal knowledge of the contents of documents, including affidavits, without the benefit of supporting documentation and without

[6] *See* Deposition of Jeffrey Stephan, *GMAC Mortgage LLC v. Ann M. Neu a/k/a Ann Michelle Perez,* No. 50 2008 CA 040805XXXX MB, (15th Judicial Circuit, Florida, Dec. 10, 2009) at 7 (stating that Jeffrey Stephan, a GMAC employee, signed approximately 10,000 affidavits a month for foreclosure cases).

> reviewing the source documents referred to in the affidavits and verifying the accuracy of the foreclosure information stated in the affidavits. A number of affidavit signers admitted having signed up to 600 documents per day.
>
> - A number of employees engaged as robosigners had little or no education beyond high school and little or no experience in banking or real estate.
>
> - Work histories (when available) showed a lack of qualifications to hold the titles held by affiants; for example, vice president of loan documentation. Moreover, interviews disclosed that the titles were given for the sole purpose of allowing the individual to sign documents and came with no other duties or authority. Employees who notarized documents, including affidavits, routinely did not witness the signature of the documents and notarized up to 1,000 documents per day.

37. On page 8 of the Memo, the OIG states its conclusion of the investigation into Wells Fargo's foreclosure process as follows:

> Wells Fargo did not establish an effective control environment to ensure the integrity of its foreclosure process. Because it failed to establish proper policies and procedures to ensure compliance with laws and regulations, its affiants robosigned foreclosure documents, and its notaries failed to authenticate signatures. As a result of its flawed control environment, Wells Fargo engaged in improper practices by not fully complying with applicable foreclosure procedures when processing foreclosures on FHA-insured loans. This flawed control environment resulted in Wells Fargo's filing improper legal documents, thereby misrepresenting its claims to HUD.
>
> During the period October 1, 2008, through September 30, 2010, Wells Fargo submitted 14,420 conveyance claims for payment in the 23 States and jurisdictions totaling about $1.7 Billion. DOJ used our review and analysis in negotiating the settlement agreement.

D. DEMAND LETTER FROM THE ATTORNEY GENERAL OF TEXAS

38. On or about October 4, 2010, the Texas Attorney General's Office ("TAGO") sent a warning letter to Bank of America with a copy to Defendant Wells Fargo demanding they immediately suspend all foreclosures, all sales of properties previously foreclosed upon, and all

evictions of persons residing in previously foreclosed upon properties. The TAGO expressed its concern about "robosigners" executing thousands of documents used in Texas foreclosures.

39. According to the TAGO letter, the robosigners were:

a. Signing thousands of documents per month without reading them;

b. Signing affidavits which falsely claim personal knowledge of facts;

c. Signing affidavits which falsely claim the affiant reviewed the attached documents;

d. Notarizing documents prior to signing by the signer;

e. Notarizing documents when the signer was not present before the notary; and

f. Filing documents with records attached that did not correctly reflect loan payments, charges and advances.

40. Affidavits and other documents, such as assignments of deeds of trust and appointment of substitute trustees, are invalid if created by robosigners using the practices described above. All foreclosure sales are likewise invalid if a robosigner document was used in connection with the foreclosure sale.

E. THE U.S. MORTGAGE SYSTEM

41. In the most common residential lending scenario, there are two parties to a real property mortgage – the mortgagee, *i.e.*, a lender, and the mortgagor, *i.e.*, a borrower. When a mortgage lender loans money to a home buyer, it obtains two documents: (1) a promissory note in the form of a negotiable instrument from the borrower and (2) a "mortgage" or "deed of trust"[7]

[7] The law of the state in which property is located generally will determine whether a "mortgage" or a "deed of trust" is used to pledge real property as security on a note. In lien theory states such as Texas, a "deed of trust" is often used and only creates a lien on the property — the title remains with the borrower. The lien is removed when all the payments have been made. *See Taylor v. Brennan*, 621 S.W.2d 592, 593

granting the mortgage lender a security interest in the property as collateral to repay the note. The mortgage, as distinguished from the note, establishes the lien on the property securing repayment of the loan. For the lien to be perfected and inoculate the property against subsequent efforts by the mortgagor to sell the property or borrow against it, however, the mortgage instrument must be filed in the deed records of the county in which the property is located.

42. Mortgage recordation in Texas is governed by Chapter 12 of the TEXAS PROPERTY CODE. Section 12.001 of the Property Code provides, in part, "An instrument concerning real or personal property may be recorded if it has been acknowledged, sworn to with a proper jurat, or proved according to law." Although recordation of a security instrument in real property is not mandatory, once a security interest is recorded, "[t]o release, transfer, assign, or take another action relating to an instrument that is filed, registered, or recorded in the office of the county clerk, a person must file, register, or record another instrument relating to the action in the same manner as the original instrument was required to be filed, registered, or recorded."[8]

43. Once properly filed, a mortgage is "notice to all persons of the existence of the instrument," protects the mortgagee's (lender's) security interest against creditors of the mortgagor, and places subsequent purchasers on notice that the property is encumbered by a mortgage lien. Unless the mortgage is recorded, the "mortgage or deed of trust is void as to a creditor or to a subsequent purchaser for a valuable consideration without notice."[9]

(Tex. 1981). In title theory states, a "mortgage" is generally used, and it conveys ownership to the lender. A clause in the mortgage provides that title reverts back to the borrower when the loan is paid. In common parlance, the term "mortgage" is generally used to refer to the instrument creating the security interest, whether formally denominated as a "mortgage" or a "deed of trust." Unless noted, the terms "mortgage" and "deed of trust" are used interchangeably herein.

[8] TEX. LOC. GOV'T CODE § 192.007.

[9] TEX. PROP. CODE § 13.001(a).

44. Until recently, when a loan secured by a mortgage was sold, the assignee would record the assignment of the mortgage to protect the security interest. If a servicing company serviced the loan and the servicing rights were sold—an event that could occur multiple times during the life of a mortgage loan—multiple assignments were recorded to ensure that the proper servicer and/or note-holder appeared in the land records in the County Clerk's office.[10] This basic model has been followed throughout the United States for over three hundred years to provide the public with notice of the ownership of, and liens encumbering, real property throughout the United States. Defendants and others similarly situated have changed all of this and collapsed the public recordation system throughout Texas and the United States.

F. THE COMMODITIZATION OF MORTGAGES

45. In the decades leading up to the early 1970s, the housing finance system was relatively simple: banks and savings and loan associations made mortgage loans to households and held them until they were repaid. Deposits provided the major source of funding for these lenders, as most were depository institutions.

46. In the 1970s, the housing finance system began to shift from depository-based funding to capital markets-based funding. By 1998, 64 percent of originated mortgage loans were sold by originators to large financial institutions that package bundles of mortgages and sell the right to receive borrowers' payments of principal and interest directly to investors. Key to this shift to capital markets-based funding of mortgage lending were Fannie Mae and Freddie Mac, the government-sponsored enterprises ("***GSEs***"), created by the federal government to develop a secondary mortgage market. The GSEs did this in two ways:

[10] Some sources estimate that mortgage loans or servicing rights are transferred an average of five times or more during the life of a mortgage — transfers which would necessitate recordation.

a. by issuing debt to raise capital and using those funds to purchase mortgages to hold in their portfolios; and

b. by securitizing mortgages, that is, by selling to investors the rights to the principal and interest payments made by borrowers on pools of mortgages through what is referred to as mortgage-backed securities ("***MBSs***").

47. MBSs are securities that give the holders the right to receive the principal and interest payments from borrowers on a particular pool of mortgage loans. The GSEs purchase mortgages to hold in portfolios and to securitize into MBSs that the GSEs guarantee against default. MBSs issued by the GSEs or Ginnie Mae are referred to as agency MBSs.

48. Fannie Mae and Freddie Mac provide a guarantee that investors in their MBSs will receive timely payments of principal and interest. If the borrower for one of the underlying mortgages fails to make his payments, the GSE that issued the MBSs will pay to the trust the scheduled principal and interest payments. In return for providing this guarantee, Fannie Mae and Freddie Mac deduct an ongoing guarantee fee, which is charged by setting the pass-through annual interest rate (*i.e.*, the interest rate received by holders of the MBSs) about 20-25 basis points (*i.e.*, 0.20 - 0.25 percentage points) below the weighted average interest rate of the mortgages in the pool. MBSs issued by GSEs were generally thought by investors to be implicitly backed by the federal government, thereby removing their credit risk.

49. Other financial institutions also create MBSs, referred to as non-agency MBSs, which have a structure similar to agency MBSs but typically have no guarantee against default risk. In a non-agency securitization, the sponsor of the securitization, which could be an investment bank, commercial bank, thrift, or mortgage bank, first acquires a set of mortgages, either by originating them or by buying them from an originator. The sponsor then creates a new entity, a "special purpose vehicle" ("***SPV***"), and transfers the mortgages to the SPV.

50. The principal and interest payments on the pool of mortgages provide the underlying set of cash flows for the SPV. The SPV may then enter into contracts in order to manage the risk it faces. For example, to reduce interest rate-related risks, the SPV may enter into interest rate swap agreements that provided floating interest rate-based payments to the SPV in exchange for a fixed set of payments from the SPV. The SPV will then issue various classes of mortgage-backed securities that give investors who are holders of the securities rights to the cash flows available to the SPV.

51. Two features of MBSs, in particular, boost their value relative to other investment options: bankruptcy-remoteness and favorable tax treatment as a real estate mortgage investment conduit ("REMIC") under the INTERNAL REVENUE CODE. Bankruptcy remoteness means both that the trust that issues the mortgage-backed securities cannot file for bankruptcy and that the trust's assets cannot be brought into the bankruptcy estate of other entities in the mortgage loans' chain of title. These features have the effect of isolating the cash flows on the mortgages from claimants other than the MBSs' investors and the trustee, which thereby reduces the risks investors assume on the securities. REMIC status ensures that only the investors, who hold certificates issued by the trusts entitling them to payment, and not the trusts, are taxed.

52. Generally, investors in a Subchapter C corporation (under the INTERNAL REVENUE CODE) are subject to double taxation because the corporation is taxed directly on its earnings, and then the investors are taxed on any distributions from the corporation. If the trust qualifies as a REMIC, however, it is treated as a "pass-through" entity for federal tax purposes, so there is only a single layer of taxation.

53. In order for trusts to enjoy the benefits of bankruptcy remoteness and pass-through tax status, they must be formed in a particular way, and their assets must be transferred to them in

a particular manner. There are two documents in particular that need to be properly transferred to the trust – the promissory note and the mortgage or deed of trust. Possession of a note without a mortgage amounts to possession of unsecured debt and will ordinarily disqualify the issuer from enjoying REMIC status. The term "mortgage loan" generally refers to the mortgage and note together, although colloquially the term "mortgage" is also often used to refer to both the mortgage and the note.

54. The mortgage securitization process is often structured in a complex and detailed way to ensure that bankruptcy-remoteness and REMIC tax status are achieved. One form for the structure might be as follows. First, securitization of mortgage loans begins with origination of a loan by one of the types of lenders discussed above. Second, a sponsor or seller assembles a pool of mortgage loans that it originated and/or purchased from unaffiliated third-party originating lenders. Third, the pool of loans is sold by the sponsor to an SPV subsidiary—the "depositor" that has no other assets or liabilities. This step is executed to segregate the mortgage loans from the sponsor's assets and liabilities. Fourth, the depositor sells the loans to the trust SPV which issues pass-through securities certificates to investors entitling them to payment from performance of the underlying mortgage loans.

55. These trusts are usually formed pursuant to, and governed by, contracts called Pooling and Servicing Agreements ("***PSAs***"), which are crafted to ensure that the benefits of mortgage securitization flow to the trusts. In order for a trust to be bankruptcy-remote, there must be a "true sale" of the mortgage loans, which means that all rights to the mortgage loan are transferred to the trust so that no other entity in the chain of title could claim control of the assets in the event of bankruptcy. True sale status also leads to MBS trusts attaining higher ratings from rating agencies than they otherwise would, which, in turn, means that the trust can charge a higher

issuing price for the securities relative to the interest rate paid on the securities. The heightened value of the trust enables the Trustee to charge premium prices to investors.

56. Each class of securities in an MBS offering is referred to as a tranche. Unlike agency MBSs, non-agency MBSs are not typically guaranteed against credit loss. A crucial goal of the capital structure of the SPV was to create some tranches that were deemed low risk and could receive investment-grade ratings, such as AAA, from the rating agencies. Credit enhancements were used to achieve this goal.

57. One key credit-enhancement tool was subordination. The classes of securities issued by the SPV were ordered according to their priority in receiving distributions from the SPV. The structure was set up to operate like a waterfall, with the holders of the more senior tranches being paid prior to the more junior (or subordinate) tranches. The most senior set of tranches—referred to simply as senior securities—represented the lowest risk and consequently paid the lowest interest rate. They were set up to be paid prior to any of the classes below and were typically rated AAA. The next most senior tranches were the mezzanine tranches. These carried higher risk and paid a correspondingly higher interest rate. The most junior tranche in the structure was called the equity or residual tranche and was set up to receive whatever cash flow was left over after all other tranches had been paid. These tranches, which were typically not rated, suffered the first losses on any defaults of mortgages in the pool.

58. The payments of principal and interest by borrowers flow first to make the promised payments to the AAA senior bondholders, then down to pay the AA bonds, and so forth. If there is any money left over after all bondholders have been paid, it flows to the residual tranche of securities.

59. An example of a typical subprime MBS in which cumulative losses on mortgages in the SPV were expected to amount to 4 percent of the total principal amount is as follows. Assume that AAA senior bonds make up 92 percent of the principal amount of debt issued by the SPV, AA bonds account for 3 percent, mezzanine BBB bonds make up 4 percent, and the residual tranche amounts to 1 percent. If the MBS does indeed experience such a 4 percent loss on its mortgage assets, then 4 percent of the total principal amount on its bonds would default. Because of the SPV's subordination structure, these losses would first be applied to the residual tranche. The residual tranche, which accounts for 1 percent of the principal amount of the SPV's bonds, would fully default, paying nothing. That would leave 3 percent more of the total principal amount in losses to apply to the next most junior tranche, the mezzanine BBB tranche. Since the mezzanine BBB tranche totals 4 percent of the deal, the 3 percent left in losses would reduce its actual payments to 1 percent, meaning that 75 percent of the BBB bonds' principal value would be lost. The AA and AAA bonds, however, would pay their holders in full. In this simple example, the junior tranches below the AA and AAA bonds would be large enough to fully absorb the expected loss on the SPV's mortgages.

60. Another credit enhancement technique was overcollateralization. The principal balance of the underlying mortgages often exceeded the principal balance of the debt securities issued by the SPV. Thus, some underlying mortgages could default without any of the MBS bonds defaulting on their promised payments to investors.

61. Similarly, the weighted average coupon interest rate on the underlying mortgage pool would typically exceed the weighted average coupon interest rate paid on the SPV's debt securities by an amount sufficient to provide a further buffer before the debt tranches incur losses. In essence, the SPV received a higher interest rate from mortgage borrowers than it paid to

investors in its bonds. The resulting excess spread gave the SPV extra cash flow to pay its bond holders, further insulating the MBSs from credit risk in the underlying mortgages.

62. With both over-collateralization and excess spread, the total amount of cash that had been promised to be paid to the SPV by mortgage borrowers was greater than the total amount of cash that the SPV had promised to pay out to investors. This gave the SPV a cushion in case some of the mortgage borrowers defaulted on their promised payments.

63. The prospectus for an MBS would include a description of the mortgages held by the SPV, such as information about the distribution of borrowers' credit scores and loan-to-value ratios, and the geographic distribution of the homes that serve as collateral for the mortgages. The underwriting practices used by the originators usually would also be described. For example, Goldman Sachs disclosed the following about the underwriting standards used by the originator - New Century Mortgage - of the mortgages it packaged in a 2006 MBS offering:

> The mortgage loans will have been originated in accordance with the underwriting guidelines established by New Century. On a case-by-case basis, exceptions to the New Century Underwriting Guidelines are made where compensating factors exist. It is expected that a substantial portion of the mortgage loans will represent these exceptions. All of the mortgage loans were also underwritten with a view toward the resale of the mortgage loans in the secondary mortgage market. As a result of New Century's underwriting criteria, changes in the values of [homes securing the mortgage loans] may have a greater effect on the delinquency, foreclosure and loss experience on the mortgage loans than these changes would be expected to have on mortgage loans that are originated in a more traditional manner.

64. The originators of the mortgages also generally made representations and warranties to the SPV, described in the prospectus, regarding the nature of the mortgages in the pool. For example, they typically represented that the mortgages had never been delinquent and that they complied with all national and state laws in their origination practices. Moreover, in the

event that any of the representations and warranties were breached, or if any of the mortgages defaulted early (within some fixed period after being transferred to the SPV), the originator typically agreed to repurchase the mortgage from the SPV.

65. The SPV would contract with a firm to service the mortgages in the pool, i.e., to collect payments from borrowers. The mortgage servicer would also handle defaults in the mortgage pool, including negotiating modifications and settlements with the borrowers and initiating foreclosure proceedings. In exchange, the mortgage servicer would get an ongoing servicing fee from the flow of interest payments from borrowers of typically between 25 and 50 basis points, or 0.25 and 0.50 percentage points, at an annual rate.

66. Servicers also typically would retain late fees charged to delinquent borrowers and would be reimbursed for expenses related to foreclosing on a loan. The borrowers would be informed by the originator or the new servicer when servicing rights to their mortgages were transferred so that they knew how to make payments to the new servicer.

67. The sponsor of an MBS typically approached Fitch, Standard & Poor's, or Moody's to obtain credit ratings on the classes of debt securities issued in the deal. The credit rating agencies analyzed the probability distribution of cash flows associated with each tranche using proprietary models based on historical data and assigned a credit rating to each debt tranche. These ratings were intended to represent the riskiness of the securities and were used by investors to inform their decision whether to invest in the security. Sponsors of MBSs typically structured them to produce as many bonds with the highest credit rating (*e.g.* AAA) while offering attractive yields. AAA-rated bonds were in demand by investors who required low-risk assets in their portfolio. The internal credit enhancements used in non-agency securitizations, discussed above, enabled the

transformation of mortgages, including relatively risky mortgages to borrowers with low credit scores or with little equity, into bonds that were considered to be low risk but relatively high yield.

68. The junior tranches of an MBS typically received lower ratings because they were more likely to default than the senior tranches. This is because, as discussed above, senior securities would be paid before the junior securities would be paid, so that the more junior a tranche, the more likely it would be to bear losses if the underlying mortgages defaulted.

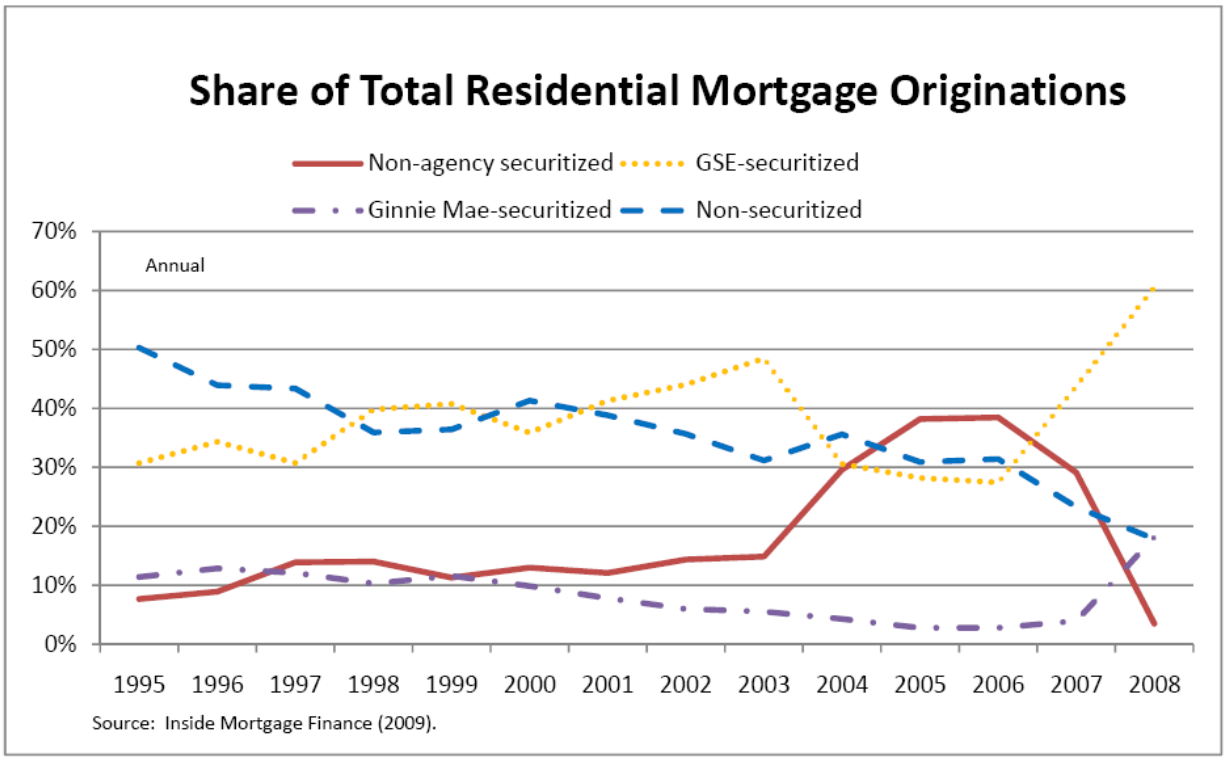
69. The same credit-enhancement techniques that produced highly rated tranches out of a pool of mortgages were used to create highly rated securities out of pools of junior tranches of MBSs. This was done using a product known as a collateralized debt obligation ("CDO").

70. The sponsor of such a CDO assembled a pool of junior tranches from many different MBSs, for example mezzanine tranches rated BBB, transferred them to an SPV, and using the same tools of subordination, over-collateralization, and excess spreads issued AAA-rated senior securities from that SPV, along with junior tranches and a first-loss residual tranche.

71. A credit default swap ("CDS") was used to protect against the risk of an MBS defaulting. In a CDS, the buyer agreed to pay the seller a fixed stream of payments. In return, the seller agreed to pay the buyer a fixed amount if the "reference entity" of the CDS experienced a "credit event," which was typically some sort of default. For MBS-based and CDO-based CDSs, the reference entity was the trust that issued the MBS or CDO security. CDSs were used by holders of MBSs and CDOs for the purpose of reducing their exposure to credit risk of MBSs and CDOs.

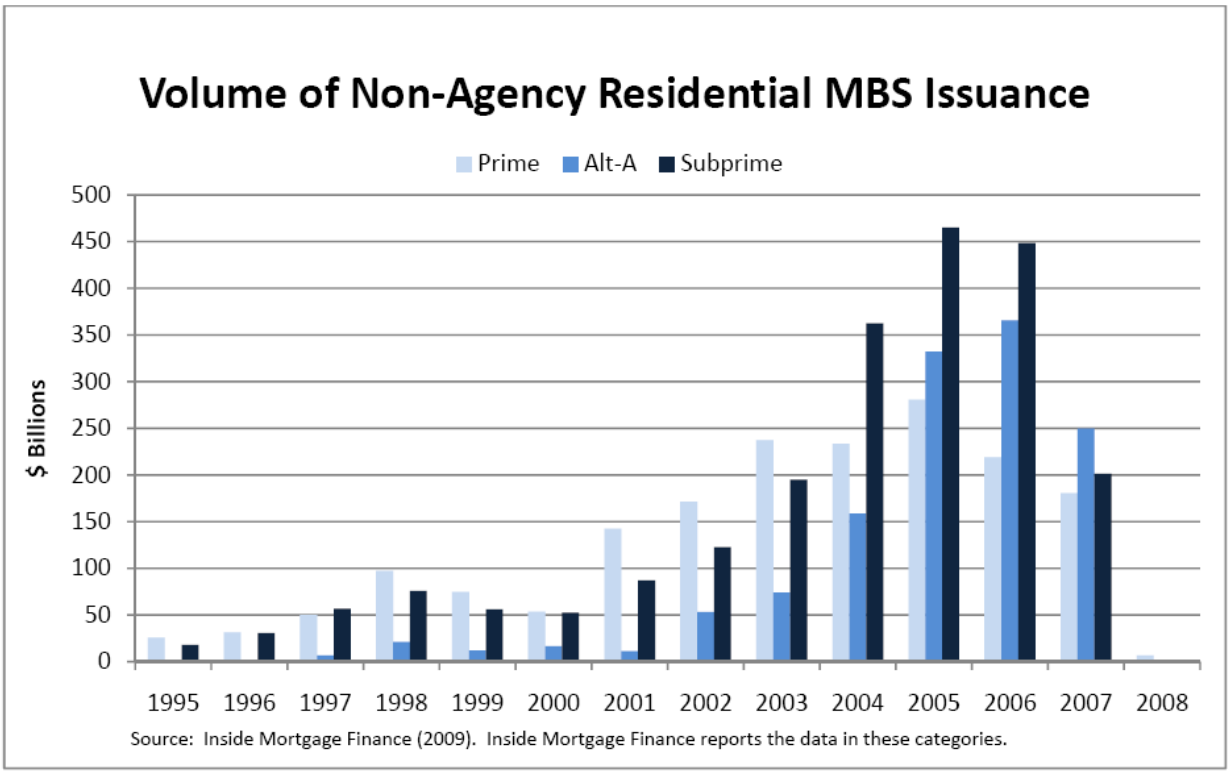
72. The following chart demonstrates that the 2000s saw a large increase in the market share of non-agency securitization. It shows the fraction of total residential mortgage originations in each year that were securitized into non-agency MBSs, GSE MBSs, and Ginnie Mae MBSs, as

well as the fraction nonsecuritized (*i.e.*, held as whole loans by banks, thrifts, the GSEs, and other institutions).



73. Four trends are notable. Non-securitized mortgage originations declined steadily from half the market in 1995 to under 20 percent in 2008. Non-agency MBSs hovered between 8 and 12 percent until 2003; non-agency MBSs then more than trebled in market share to a peak of 38 percent in 2006. During the growth years for non-agency MBSs, Ginnie Mae's market share dropped considerably. Finally, both GSEs and Ginnie Mae rapidly escalated their market share as nonagency securitization dropped in 2008.

74. The following chart plots the volume of prime, subprime,[11] and alt-A[12] (self-identified as such by the sponsors) non-agency MBSs issued from 1995-2008.



75. This chart reveals that early in the period covered, the prime nonagency MBSs, which contained largely jumbo mortgages, were the biggest of the three types of non-agency MBSs. But by 2006 the subprime and alt-A non-agency MBSs had each surpassed prime non-agency MBSs in volume. In particular, subprime non-agency MBSs showed a dramatic increase

[11] The term "subprime" refers to mortgage loans made to borrowers without credit histories or with relatively poor credit histories. These loans are therefore riskier than prime loans, which are made to borrowers with stronger credit. The marketing, underwriting, and servicing of subprime loans is different than that of prime loans.

[12] The term "alt-A" generally refers to loans made to borrowers with strong credit scores but which have other characteristics that make the loans riskier than prime loans. For example, the loan may have no or limited documentation of the borrower's income, a high loan-to-value ratio ("LTV"), or may be for an investor-owned property.

from 2003 to 2005. Alt-A non-agency MBSs saw their largest jump in volume in 2005. Notably, the non-agency MBSs market was nearly nonexistent in 2008.

G. BACKGROUND ON MORTGAGE-PASS THROUGH CERTIFICATES AND CARRINGTON MORTGAGE LOAN TRUST, 2006-NC3

76. Mortgage pass-through certificates ("Certificates") are securities that entitle the holder to receive payments based on the principal and interest payments made by borrowers in an underlying pool of mortgage loans.

77. Certificates are created and sold to investors by the following process. First, a depositor acquires an inventory of mortgage loans that were either originated by the depositor or purchased from other loan originators. The depositor then securitizes the pool of loans so that rights to the loan revenues can be sold to investors. At this stage, the offerings are divided into grades, each of which carries a different level of risk and reward. The least risky loans are given a "AAA" rating, a grade that signifies the highest-quality investment. After the offerings are rated, the depositor passes the Certificates to various underwriters, who sell the Certificates to investors.

78. On August 1, 2006, a Pooling and Servicing Agreement was executed by Wells Fargo relating to the Carrington Mortgage Loan Trust, 2006-NC3 Asset Backed Pass-Through Certificates ("2006-NC3 Trust"). Plaintiffs' mortgage loan and note were pooled and securitized into the 2006-NC3 Trust, along with thousands of other mortgage loans and notes.

79. The closing date and deadline to convey and transfer the mortgage loans and notes into the 2006-NC3 Trust was August 10, 2006 ("Closing Date"). After the Closing Date, the mortgage loans and notes are owned by the 2006-NC3 Trust, and cannot be transferred out of the 2006-NC3 Trust. Therefore, the 2006-NC3 Trust owned the Plaintiffs' mortgage loan and note as of the Closing Date on August 10, 2006.

80. On October 20, 2009, approximately three years after the Closing Date of the 2006-NC3 Trust, a "Transfer of Lien" was filed by "Tom Croft" as vice-president of REO for New Century Mortgage Corporation, to Wells Fargo. Wells Fargo contends, incorrectly, it is the legal holder of Plaintiffs' promissory note and deed of trust as a result of NCMC's alleged transfer on October 20, 2009.

81. However, the 2006-NC3 Trust owned Plaintiffs' promissory note and deed of trust since August 10, 2006. The "Transfer of Lien" filed by "Tom Croft" on October 20, 2009 was fraudulent, invalid, and void because NCMC did not own Plaintiffs' promissory note and deed of trust.

82. Plaintiffs' note and mortgage loan were not properly transferred into the 2006-NC3 Trust. This is a critical issue because the 2006-NC3 Trust has standing to foreclose if, and only if it is the mortgagee. If the notes and mortgages were not transferred to the 2006-NC3 Trust, then the 2006-NC3 Trust lacks standing to foreclose.

H. THE COLLAPSE

83. By 2004, commercial banks, thrifts, and investment banks caught up with Fannie Mae and Freddie Mac in securitizing home loans. By 2005, they had taken the lead. The two government-sponsored enterprises maintained their monopoly on securitizing prime mortgages below their loan limits, but the wave of home refinancing by prime borrowers spurred by very low, steady interest rates petered out. Meanwhile, Wall Street focused on the higher-yield loans that the GSEs could not purchase and securitize—loans too large, called jumbo loans, and nonprime loans that did not meet the GSEs' standards. The nonprime loans soon became the biggest part of the market "subprime" loans for borrowers with weak credit and "Alt-A" loans, with characteristics riskier than prime loans, to borrowers with strong credit.

84. By 2005 and 2006, Wall Street was securitizing one-third more loans than Fannie and Freddie. In just two years, private-label mortgage-backed securities had grown more than 30 percent, reaching 1.15 trillion in 2006; 71 percent were subprime or Alt-A.

85. To feed the MBS demand, Wall Street's system made virtually unlimited funds available to unqualified buyers. More buyers in the market caused housing prices to rise thereby creating a housing bubble. Pretty soon, there were not enough buyers, qualified or not, to sustain the model, and the entire system collapsed. "Securitization could be seen as a factory line," former Citigroup CEO Charles Prince told the FCIC. "As more and more and more of these subprime mortgages were created as raw material for the securitization process, not surprisingly in hindsight, more and more of it was of lower and lower quality. And at the end of that process, the raw material going into it was actually bad quality, it was toxic quality, and that is what ended up coming out the other end of the pipeline. Wall Street obviously participated in that flow of activity." One theory for the demand Wall Street was so intent on satisfying pointed to foreign money.

86. Developing countries were booming and, due to past financial vulnerabilities, strongly encouraged saving. Investors in these countries placed their savings in apparently safe and high-yield securities in the United States. Federal Reserve Board Chairman Ben Bernanke called it a "global savings glut." As the United States ran a large current account deficit, flows into the country were unprecedented. Over six years from 2000 to 2006, U.S. Treasury debt held by foreign official public entities rose from $600 billion to $1.43 trillion; as a percentage of U.S. debt held by the public, these holdings increased from 18.2 to 28.8 percent.

87. 76. According to Frederic Mishkin, former member (governor) of the Board of Governors of the Federal Reserve System:

> You had a huge inflow of liquidity. A very unique kind of situation where poor countries like China were shipping money to advanced

> countries because their financial systems were so weak that they [were] better off shipping [money] to countries like the United States rather than keeping it in their own countries.

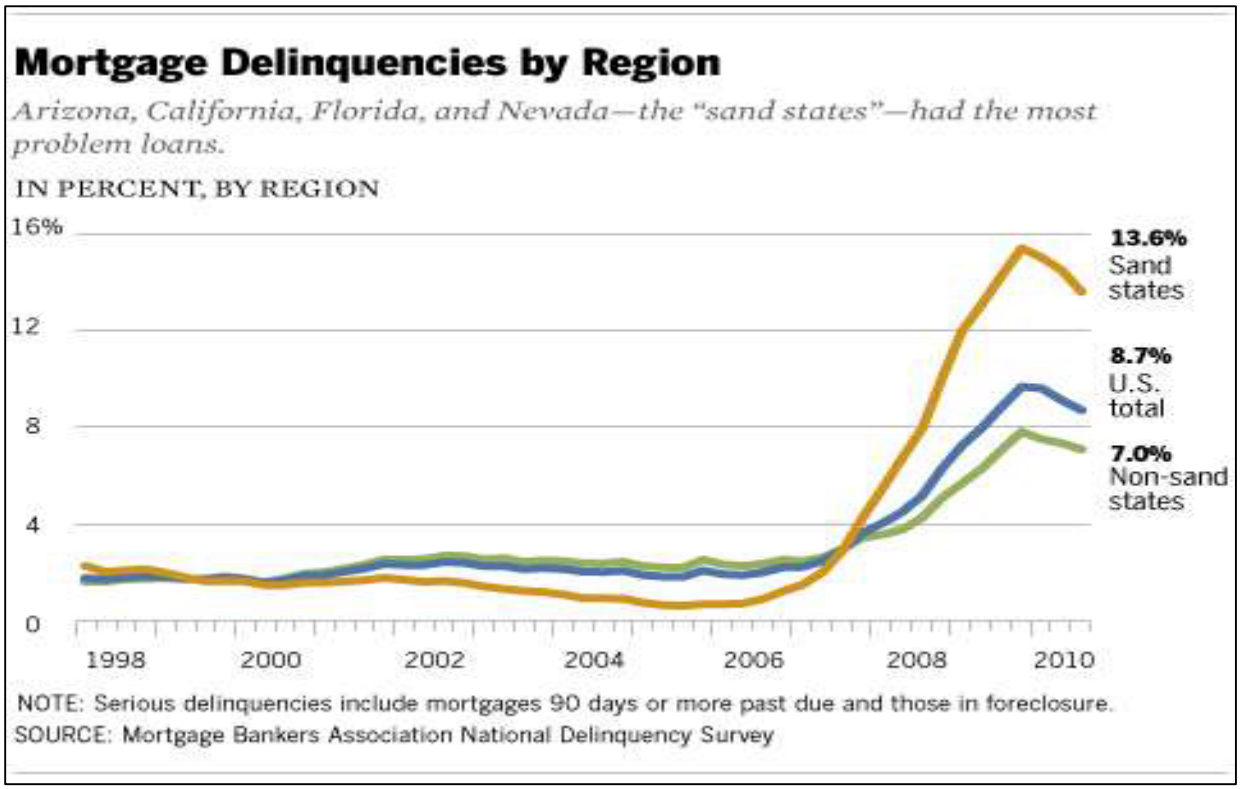
The demand for what was perceived to be the safety of MBSs created a surplus in liquidity, thereby helping to lower long-term interest rates and providing easy money to mortgage originators. According to Paul Krugman, an economist at Princeton University:

> It's hard to envisage us having had this crisis without considering international monetary capital movements. The U.S. housing bubble was financed by large capital inflows. So were Spanish and Irish and Baltic bubbles. It's a combination of, in the narrow sense, of a less regulated financial system and a world that was increasingly wide open for big international capital movements.

88. As more and more foreign capital became available, underwriting standards were lowered to extend credit to borrowers who represented a new risk paradigm. Predictably, borrowers who had been extended credit without having been adequately qualified began to default on their loans in escalating numbers beginning in late 2006. As 2007 went on, increasing mortgage delinquencies and defaults compelled the ratings agencies to downgrade first mortgage-backed securities, then CDOs.

89. As a result of the instability in the MBS market which began in late 2006, the summer of 2007 saw a near halt in many securitization markets, including the market for non-agency mortgage securitizations. For example, a total of $75 billion in subprime securitizations were issued in the second quarter of 2007 (already down from prior quarters). That figure dropped precipitously to $27 billion in the third quarter and to only $12 billion in the fourth quarter of 2007. Alt-A issuance topped $100 billion in the second quarter but fell to $13 billion in the fourth quarter of 2007. Once-booming markets were now gone—only $14 billion in subprime or Alt-A mortgage-backed securities were issued in the first half of 2008, and almost none after that.

90. Alarmed investors sent prices plummeting. Hedge funds faced with margin calls from their repo lenders were forced to sell at distressed prices; many would shut down. Banks wrote down the value of their holdings by tens of billions of dollars. As demonstrated by the following chart, defaults peaked in 2010.



91. The ease with which non-agency MBSs were created, and mortgages transferred into them, would not have been possible without the MERS System—a shadow recording system created by Wall Street to facilitate the commoditization the American mortgage and issuance of MBSs.

I. TEXAS COUNTY DEED RECORDS

92. Section 11.004 of the TEXAS PROPERTY CODE requires that county clerks in the State of Texas: (1) correctly record, as required by law, within a reasonable time after delivery, any instrument authorized or required to be recorded in that clerk's office that is proved, acknowledged, or sworn to according to law; (2) give a receipt, as required by law, for an instrument delivered for recording; (3) record instruments relating to the same property in the order the instruments are filed; and (4) provide and keep in the clerk's office the indexes required by law.

93. Section 193.003 of the TEXAS LOCAL GOVERNMENT CODE requires that a county clerk maintain "a well-bound alphabetical index to all recorded deeds, powers of attorney, mortgages, and other instruments relating to real property" with "a cross-index that contains the names of the grantors and grantees in alphabetical order." Under policies in effect for many years, employees of the County Clerk's Offices in Texas record as a "Grantee" any person identified as a "lender," "beneficiary," or "grantee" in a deed of trust.

94. For over 100 years, Texas law has provided that the grantee or beneficiary of a deed of trust is the lender on the note secured by the deed of trust.[13] So long as a debt exists, the "security will follow the debt," and the assignment of the debt carries with it the rights created by the deed of trust securing the note.[14]

95. Deed records in Texas were created to provide public notice of the identity of the person whose interest is protected by a deed of trust. Once properly filed, a deed of trust is "notice

[13] *See Lawson v. Gibbs,* 591 S.W.2d 292, 294 (Tex. Civ. App.—Houston [1st. Dist.] 1979, writ ref'd n.r.e.).

[14] A deed of trust in Texas creates a lien in favor of the lender; it does not operate as a transfer of title. This has been the law in Texas for more than a century. *See McLane v. Paschal,* 47 Tex. 365, 369 (1877); *see also Johnson v. Snell,* 504 S.W.2d 397, 399 (Tex. 1973).

to all persons of the existence of the instrument," protects the lender's security interest against creditors of the grantor, and places subsequent purchasers on notice that the property is encumbered by a security interest.

96. In order to be shown in deed records in Texas as a "grantee," and therefore a party whose interest is protected by recording, one must ordinarily be identified in a deed of trust as a "lender," "mortgagee," "grantee," or "beneficiary" of the deed of trust.

97. Upon information and belief, Wells Fargo Bank, N.A., as Trustee for the 2006-NC3 Trust appears falsely as "Lender" in thousands of transfers and assignments filed in the deed records of counties throughout the State of Texas.

98. As demonstrated by the criminal and civil penalties for filing false or deceptive real estate liens, Texas public policy favors a reliable functioning public recordation system to avoid destructive breaks in title, confusion as to the true identity of the holder of a note, fraudulent foreclosures, and uncertainty as to title when a home is sold.

J. CHAIN OF TITLE PROBLEMS INTO THE 2006-NC3 TRUST

99. A more serious problem relating to standing to foreclose is the issue of chain of title in mortgage securitizations. Securitization involves a series of transfers of both the note and the mortgage (1) from the originator (2) to the sponsor (3) to the depositor (4) to the trust. This particular chain of transfers is necessary to ensure that the loans are "bankruptcy remote" once they have been placed in the trust, meaning that if any of the upstream transferors were to file for bankruptcy, the bankruptcy estate could not lay claim to the loans in the trust by arguing that the transaction was not a true sale, but actually a secured loan. Bankruptcy remoteness is an essential component of private-label mortgage securitization deals, as investors want to assume the credit

risk solely of the mortgages, not of the mortgages' originators or securitization sponsors. Absent bankruptcy remoteness, the economics of mortgage securitization do not work in most cases.

100. Recently, arguments have been raised in foreclosure litigation about whether the notes and mortgages were in fact properly transferred to the securitization trusts. This is a critical issue because the trust has standing to foreclose if, and only if it is the mortgagee. If the notes and mortgages were not transferred to the trust, *then the trust lacks standing to foreclose.*

101. There are several ways to transfer mortgages, including the assignment of a mortgage, which requires a document of assignment or transfer of lien. In the present case, Wells Fargo cannot prove a legal and valid chain of title, or the required series of transfers of both the note and the mortgage of Plaintiffs, from the originator (New Century Mortgage Corporation), to the sponsor (Carrington Securities, LP), to the depositor (Stanwich Asset Acceptance Company, LLC), to the 2006-NC3 Trust. Defendants attempt to transfer the mortgages through fraudulent "Transfers of Lien" and "Assignments" in an effort to legitimize and fix the broken chain of title.

102. A homeowner who defaults on a mortgage doesn't have a right to stay in the home if the *proper* mortgagee forecloses, but any old stranger cannot take the law into his own hands and kick a family out of its home. That right is reserved solely for the *proven mortgagee.* Wells Fargo is not the proper mortgagee, cannot establish a valid chain of title into the 2006-NC3 Trust, and is not the owner or holder of the mortgages and notes of Plaintiffs.

103. Irrespective of whether a debt is owed, there are rules and laws about who can collect that debt and how. Defendants in the present case are not exempt. The rules of real estate transfers and foreclosures have some of the oldest pedigrees of any laws. They are the product of centuries of common law wisdom, balancing equities between borrowers and lenders, ensuring procedural fairness and protecting against fraud.

104. The most basic rule of real estate law is that only the mortgagee may foreclose. Evidence and process in foreclosures are not mere technicalities. They are a paid-for part of the bargain between banks and homeowners. Banks and homeowners bargained for legal process, and our legal system demands the deal be honored.

105. Ultimately the "No Harm, No Foul," argument is a claim that rules of law should yield to banks' convenience. To argue that problems in the foreclosure process are irrelevant because the homeowner owes someone a debt is to declare that banks are above the law.

V. CAUSES OF ACTION

A. VIOLATIONS OF § 12 OF THE TEXAS CIVIL PRACTICE & REMEDIES CODE

106. Plaintiffs hereby adopt by reference each and every paragraph of the Facts and allegations stated in this Amended Petition as if fully and completely set forth herein.

107. Section 12.002 of the TEXAS CIVIL PRACTICE & REMEDIES CODE ("CPRC") provides:

> (a) A person may not make, present, or use a document or other record with:
>
> (1) knowledge that the document or other record is a fraudulent court record or a fraudulent lien or claim against real or personal property or an interest in real or personal property;
>
> (2) intent that the document or other record be given the same legal effect as a court record or document of a court created by or established under the constitution or laws of this state or the United States or another entity listed in Section 37.01, Penal Code, evidencing a valid lien or claim against real or personal property or an interest in real or personal property; and
>
> (3) intent to cause another person to suffer:
>
> (A) physical injury;

(B) financial injury; or

(C) mental anguish or emotional distress.

(b) A person who violates Subsection (a) or (a-1) is liable to each injured person for:

(1) the greater of:

(A) $10,000; or

(B) the actual damages caused by the violation;

(2) court costs;

(3) reasonable attorney's fees; and

(4) exemplary damages in an amount determined by the court.

TEX. CIV. PRAC. & REM. CODE § 12.002.

108. On or about October 15, 2009, Defendants made, presented, or used a document or other record with knowledge that the document or other record is a fraudulent court record or a fraudulent lien or claim against real property or an interest in real property.

109. Defendants made, presented, or used a document or other record with intent that the document or other record be given the same legal effect as a court record or document of a court created by or established under the Texas constitution or laws of the State of Texas, evidencing a valid lien or claim against real property or an interest in real property.

110. The documents or records filed or caused to be filed by Defendants, falsely represent Defendants' interest in the real property that is the subject of such instruments, causing damages and injuries to Plaintiffs.

111. Defendants knew at the time of such filing the instruments falsely represented Defendants' interest in the real property that is the subject of such instruments.

112. Defendants made, presented, or used a document or other record with intent to cause Plaintiffs to suffer financial injury, mental anguish, or emotional distress.

113. Defendants' conduct and actions violated TEX. CIV. PRAC. & REM. CODE § 12.002 on or after September 1, 1999, for which Plaintiffs seek judgment against Defendants, jointly and severally, equal to the greater amount of $10,000 per violation, or actual damages caused by each violation, together with attorney's fees, court costs, and exemplary damages in an amount determined by the Court.

114. Plaintiffs plead the discovery rule, which tolls the Texas statute of limitations applicable to claims brought under TEX. CIV. PRAC. & REM. CODE § 12.002. Although Plaintiffs exercised reasonable diligence in attempting to discover liens on their property, their legal injury was inherently un-discoverable due to Defendants' conduct, and application of the discovery rule would not disserve public policy.

B. NEGLIGENCE PER SE

115. Plaintiffs hereby adopt by reference each and every paragraph of the Facts and allegations stated in this Amended Petition as if fully and completely set forth herein.

116. Defendants were negligent per se in the misconduct alleged herein. Such negligence per se included, but was and is not limited to:

a. violation of section 12.002 of the TEXAS CIVIL PRACTICE & REMEDIES CODE by filing false and deceptive records in the deed records of Texas on or about October 15, 2009; and

b. violation of section 192.007 of the TEXAS LOCAL GOVERNMENT CODE by failing to properly record all releases, transfers, assignments, or other actions relating to instruments Defendant filed or caused to be filed, registered, or recorded in the deed records of Texas in the same manner as the original instrument was required to be filed, registered, or recorded.

117. The negligence per se of Defendants set forth herein was a proximate cause of damages to Plaintiffs for which they seek judgment of the Court.

118. Plaintiffs plead the discovery rule, which tolls the Texas statute of limitations applicable to claims. Although Plaintiffs exercised reasonable diligence in attempting to discover liens on their property, their legal injury was inherently un-discoverable due to Defendants' conduct, and application of the discovery rule would not disserve public policy.

C. GROSS NEGLIGENCE PER SE

119. Plaintiffs hereby adopt by reference each and every paragraph of the Facts and allegations stated in this Amended Petition as if fully and completely set forth herein.

120. Defendants were grossly negligent per se in the misconduct alleged herein. Such gross negligence per se included, but was and is not limited to:

a. violation of section 12.002 of the TEXAS CIVIL PRACTICE & REMEDIES CODE by filing false and deceptive records in the deed records of Texas on or about October 15, 2009; and

b. violation of section 192.007 of the TEXAS LOCAL GOVERNMENT CODE by failing to properly record all releases, transfers, assignments, or other actions relating to instruments Defendant filed or caused to be filed, registered, or recorded in the deed records of Texas in the same manner as the original instrument was required to be filed, registered, or recorded.

121. The gross negligence per se of Defendants set forth herein was a proximate cause of damages to Plaintiffs for which they seek judgment of the Court.

122. Plaintiffs plead the discovery rule, which tolls the Texas statute of limitations applicable to claims. Although Plaintiffs exercised reasonable diligence in attempting to discover liens on their property, their legal injury was inherently un-discoverable due to Defendants' conduct, and application of the discovery rule would not disserve public policy.

D. DECLARATORY JUDGMENT

123. Plaintiffs hereby adopt by reference each and every paragraph of the Facts and allegations stated in this Amended Petition as if fully and completely set forth herein.

124. On or about October 15, 2009, Defendants made, presented, or used a document or other record with knowledge that the document or other record is a fraudulent court record or a fraudulent lien or claim against real property or an interest in real property.

125. Pursuant to TEX. CIV. PRAC. & REM. CODE § 37, Plaintiffs seek a declaratory judgment that all "Transfers of Liens" and "Assignments" of mortgages and notes from New Century Mortgage Corporation to Defendants' after August 10, 2006 are invalid.

126. Pursuant to TEX. CIV. PRAC. & REM. CODE § 37, Plaintiffs seek a declaratory judgment that Wells Fargo Bank, N.A., as Trustee of the 2006-NC3 Trust is not the legal owner or holder of mortgages and notes in the 2006-NC3 Trust.

127. Pursuant to TEX. CIV. PRAC. & REM. CODE § 37, Plaintiffs seek a declaratory judgment that Defendants made, presented, or used a document or other record with knowledge that the document or other record is a fraudulent court record or a fraudulent lien or claim against real property or an interest in real property in violation of TEX. CIV. PRAC. & REM. CODE § 12.002.

128. Pursuant to TEX. CIV. PRAC. & REM. CODE § 37, Plaintiffs seek a declaratory judgment that Defendants made, presented, or used a document or other record with intent that the document or other record be given the same legal effect as a court record or document of a court created by or established under the Texas constitution or laws of the State of Texas, evidencing a valid lien or claim against real property or an interest in real property in violation of TEX. CIV. PRAC. & REM. CODE § 12.002.

129. Pursuant to TEX. CIV. PRAC. & REM. CODE § 37, Plaintiffs seek a declaratory judgment that documents or records filed or caused to be filed by Defendants, falsely represent Defendants' interest in the real property that is the subject of such instruments in violation of TEX. CIV. PRAC. & REM. CODE § 12.002.

130. Pursuant to TEX. CIV. PRAC. & REM. CODE § 37, Plaintiffs seek a declaratory judgment that Defendants are liable for having failed to properly record all releases, transfers, assignments, or other actions relating to instruments Defendants filed or caused to be filed, registered, or recorded in the deed records of Texas in the same manner as the original instrument was required to be filed, registered, or recorded.

131. Pursuant to TEX. CIV. PRAC. & REM. CODE § 37.009, Plaintiffs seek recovery of costs and reasonable attorney's fees.

132. Plaintiffs plead the discovery rule, which tolls the Texas statute of limitations applicable to claims. Although Plaintiffs exercised reasonable diligence in attempting to discover liens on their property, their legal injury was inherently un-discoverable due to Defendants' conduct, and application of the discovery rule would not disserve public policy.

E. UNJUST ENRICHMENT

133. Plaintiffs hereby adopt by reference each and every paragraph of the Facts and allegations stated in this Amended Petition as if fully and completely set forth herein.

134. On or about October 15, 2009, Defendants made, presented, or used a document or other record with knowledge that the document or other record is a fraudulent court record or a fraudulent lien or claim against real property or an interest in real property.

135. Defendants have been unjustly enriched by their conduct described above by receiving mortgage payments from Plaintiffs relating to real property in the State of Texas in which

Defendants were not the legal owner and holder of the mortgage loans, mortgage liens, mortgage notes, or deeds of trust.

136. Damages to Plaintiffs have been proximately caused by Defendants' conduct described herein, for which damages they seek judgment of the Court. Damages are measured by the total amount of mortgage payments received by Defendants from Plaintiffs relating to real property in the State of Texas in which Defendants were not the legal owner and holder of the mortgage loans, mortgage liens, mortgage notes, or deeds of trust.

137. Plaintiffs plead the discovery rule, which tolls the Texas statute of limitations applicable to claims. Although Plaintiffs exercised reasonable diligence in attempting to discover liens on their property, their legal injury was inherently un-discoverable due to Defendants' conduct, and application of the discovery rule would not disserve public policy.

F. MONEY HAD & RECEIVED

138. Plaintiffs hereby adopt by reference each and every paragraph of the Facts and allegations stated in this Amended Petition as if fully and completely set forth herein.

139. On or about October 15, 2009, Defendants made, presented, or used a document or other record with knowledge that the document or other record is a fraudulent court record or a fraudulent lien or claim against real property or an interest in real property.

140. Defendants hold money and property that in equity and good conscience belongs to Plaintiffs. As a result of Defendants' wrongful actions and misrepresentations, Plaintiffs have mistakenly sent monthly mortgage payments to Defendants. Defendants have wrongfully foreclosed on hundreds of properties without the legal right to do so, and are currently attempting to foreclose on Plaintiffs' home. The money and property belong to Plaintiffs in equity and good conscience.

VI. ATTORNEY'S FEES

141. Plaintiffs hereby adopt by reference each and every paragraph of the Facts and allegations stated in this Amended Petition as if fully and completely set forth herein.

142. On or about October 15, 2009, Defendants made, presented, or used a document or other record with knowledge that the document or other record is a fraudulent court record or a fraudulent lien or claim against real property or an interest in real property.

143. In addition, as a result of the acts and omissions of Defendants, as specifically set forth herein, it was necessary for Plaintiffs to secure counsel to present and prosecute this matter on their behalf.

144. Plaintiffs have retained the services of the undersigned counsel of record, and accordingly, Plaintiffs sue for the recovery of reasonable attorney's fees pursuant to TEX. CIV. PRAC. & REM. CODE § 12.002 and TEX. CIV. PRAC. & REM. CODE § 37.009.

VII. EXEMPLARY DAMAGES

145. Plaintiffs hereby adopt by reference each and every paragraph of the Facts and allegations stated in this Amended Petition as if fully and completely set forth herein.

146. On or about October 15, 2009, Defendants made, presented, or used a document or other record with knowledge that the document or other record is a fraudulent court record or a fraudulent lien or claim against real property or an interest in real property.

147. The conduct of Defendants as set forth herein constituted fraud, malice, or gross negligence such that Defendants are liable for exemplary damages for which Plaintiffs seek judgment of the Court.

148. Plaintiffs' injuries and damages resulted from Defendants' gross negligence, malice, or actual fraud, which entitles Plaintiffs to exemplary damages under TEXAS CIVIL

PRACTICE & REMEDIES CODE § 41.003(a), TEX. CIV. PRAC. & REM. CODE § 12.002, and Texas common law.

149. The conduct of Defendants' actions or omissions described above, when viewed from the standpoint of Defendants at the time of the act or omission, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Plaintiffs and others.

150. Defendants had actual, subjective awareness of the risk involved in the above described acts or omissions, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiffs and others.

151. Plaintiffs intend to show that the factors the jury may consider in determining the amount of exemplary damages which should be awarded include:

a. the nature of the wrong committed by Defendants;

b. the character of Defendants' conduct;

c. the degree of culpability of Defendants;

d. the situation and sensibilities of the parties concerned; and

e. the extent to which Defendants' conduct offends a public sense of justice and propriety.

152. Based on the facts stated herein, Plaintiffs requests exemplary damages be awarded to Plaintiffs from Defendant.

VIII. JURY DEMAND

153. Plaintiffs demanded a jury trial and previously tendered the appropriate fee.

IX. CONDITIONS PRECEDENT

154. All conditions precedent have been performed or have occurred pursuant to Rule 54 of the TEXAS RULES OF CIVIL PROCEDURE

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for:

- Judgment in favor of Plaintiffs on all Counts;
- Pre-judgment and post judgment interest on such monetary relief;
- An award of Plaintiffs' reasonable attorney's fees and costs; and
- Such other and further relief as the nature of the case may require or as may be determined to be just, equitable, and proper by this Court

Respectfully Submitted,

HUGHES ELLZEY, LLP

/s/ W. Craft Hughes

W. Craft Hughes
Texas State Bar No. 24046123
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ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

By the execution of my signature below, I certify that a true and correct copy of the foregoing document has been served to the following parties on the 27th day of July, 2015 pursuant to rule 21(a) of the TEXAS RULES OF CIVIL PROCEDURE:

Via E-File
Mr. Peter C. Smart
CRAIN CATON & JAMES, P.C.
Five Houston Center, 17th Floor
1404 McKinney, Suite 1700
Houston, TX 77010
Attorney for Defendants,
Wells Fargo Bank N.A., as Trustee
For Carrington Mortgage Loan Trust,
Tom Croft, New Century Mortgage
Corporation and Carrington
Mortgage Services, LLC

/s/ W. Craft Hughes
W. Craft Hughes

CAUSE NO. 2011-36476

MARY ELLEN WOLF AND DAVID WOLF	§	IN THE DISTRICT COURT OF
	§	
	§	
v.	§	
	§	
WELLS FARGO BANK, N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST, TOM CROFT, NEW CENTURY MORTGAGE CORPORATION, AND CARRINGTON MORTGAGE SERVICES, LLC	§	HARRIS COUNTY, TEXAS
	§	
	§	
	§	
	§	
	§	151ST JUDICIAL DISTRICT

CHARGE OF THE COURT

MEMBERS OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason. I will give you a number where others may contact you in case of an emergency.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.

2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.

3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.

4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.

5. All the questions and answers are important. No one should say that any question or answer is not important.

6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence.

> The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.

9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

10. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

11. The answers to the questions must be based on the decision of at least ten of the twelve jurors. The same ten jurors must agree on every answer. Do not agree to be bound by a vote of anything less than ten jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

A party's conduct includes conduct of others that the party has ratified. Ratification may be express or implied. Implied ratification occurs if a party, though he may have been unaware of unauthorized conduct taken on his behalf at the time it occurred, retains the benefits of the transaction involving the unauthorized conduct after he acquired full knowledge of the unauthorized conduct. Implied ratification results in the ratification of the entire transaction.

DEFINITIONS

"David Wolf" means the plaintiff David Wolf.

"Mary Wolf" means the plaintiff Mary Ellen Wolf.

"Plaintiffs" means the plaintiffs David Wolf and Mary Ellen Wolf.

"Wells Fargo" means defendant Wells Fargo Bank, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates.

"Carrington" means defendant Carrington Mortgage Services, LLC.

"PSA" means the Pooling And Servicing Agreement dated August 1, 2006 between Stanwich Asset Acceptance Company, L.L.C. (Depositor), New Century (Servicer), and Wells Fargo (Trustee).

QUESTION NO. 1

Did any defendant make, present, or use a document with:

(1) knowledge that the document was a fraudulent lien or claim against real property, or an interest in real property; and
(2) the intent that the document be given the same legal effect as a valid lien or claim against real property, or an interest in real property; and
(3) the intent to cause the Plaintiffs to suffer financial injury or mental anguish or emotional distress?

A lien is "fraudulent" if the person who files it has actual knowledge that the lien was not valid at the time it was filed.

"Lien" means a claim in property for the payment of a debt and includes a security interest.

Answer "Yes" or "No" as to the following:

Wells Fargo: Yes

Carrington: Yes

If you answered "Yes" to Question No. 1, then answer the following question. Otherwise, do not answer the following question and skip to Question No. 4.

QUESTION NO. 2

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate the Plaintiffs for their damages, if any, that resulted from such conduct?

Consider the following elements of damages, if any, and none other. Answer separately in dollars and cents for damages, if any.

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be.

Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

"Mental anguish or emotional distress" means a high degree of mental pain and distress that is more than mere worry, anxiety, vexation, embarrassment, or anger that resulted in a substantial disruption of the Plaintiffs' daily routine.

Answer separately in dollars and cents for damages, if any:

a. Financial injury sustained in the past by David Wolf.

ANSWER: $ 75,000.00

b. Financial Injury sustained in the past by Mary Ellen Wolf.

ANSWER: $ 75,000.00

c. Financial injury that, in reasonable probability, will be sustained in the future by David Wolf.

ANSWER: $ 0.00

d. Financial injury that, in reasonable probability, will be sustained in the future by Mary Ellen Wolf.

ANSWER: $ 0,00

e. Mental anguish or emotional distress experienced by David Wolf in the past.

ANSWER: $ 20,000,00 ~~20,000,00~~

f. Mental anguish or emotional distress experienced by Mary Ellen Wolf in the past.

ANSWER: $ 20,000,00

g. Mental anguish or emotional distress that, in reasonable probability, will be sustained by David Wolf in the future.

ANSWER: $ 0,00

h. Mental anguish or emotional distress that, in reasonable probability, will be sustained by Mary Ellen Wolf in the future.

ANSWER: $ 0,00

Only answer Question No. 3 if you awarded damages to Plaintiffs in response to Question No. 2 and unanimously answered "Yes" to Question No. 1 as to any defendant. Otherwise, do not answer the following question.

QUESTION NO. 3

Do you find by clear and convincing evidence that any of the Defendants engaged in the conduct that you found in answering Question No. 1?

> "Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

Answer "Yes" or "No" as to the following:

Wells Fargo: yes

Carrington: yes

To answer "Yes" to Question No. 3, your answer must be unanimous. You may answer "No" to Question 3 only on a vote of ten or more jurors. Otherwise you may not answer Question 3.

QUESTION NO. 4

Were any of the Defendants unjustly enriched by the Plaintiffs?

"Unjustly enriched" means the entity has obtained a benefit from another by fraud, duress, or the taking of an undue advantage.

Answer "Yes" or "No" as to the following:

Wells Fargo: Yes

Carrington: yes

If you answered "Yes" as to any part of Question No. 4, then answer the following question. Otherwise, do not answer the following question and skip to Question No. 6.

QUESTION NO. 5

How much money, if any, did the Defendant(s) receive from the Plaintiffs as a result of unjust enrichment?

Answer separately in dollars and cents for damages, if any:

Wells Fargo: $ 0,00

Carrington: $ 0,00

QUESTION NO. 6

Do any of the Defendants hold money that, in equity and good conscience, belongs to the Plaintiffs?

Answer "Yes" or "No" as to the following:

Wells Fargo: NO

Carrington: NO

If you answered "Yes" to any part of Question No. 6, then answer the following question. Otherwise, do not answer the following question and skip to Question No. 8.

QUESTION NO. 7

How much money, if any, do the Defendants hold that, in equity and good conscience, belongs to the Plaintiffs?

Answer separately in dollars and cents for damages, if any:

Wells Fargo: $_____

Carrington: $_____

QUESTION NO. 8

Did Plaintiffs fail to comply with the terms of the Texas Home Equity Fixed/Adjustable Rate Note (Defendants' Exhibit 2)?

Answer "Yes" or "No": Yes

If you answered "Yes" to Question No. 8, then answer the following question. Otherwise, do not answer the following question and skip to Question No. 10.

QUESTION NO. 9

How much money, if any, do Plaintiffs owe under the Texas Home Equity Fixed/Adjustable Rate Note (Defendants' Exhibit 2) as of November 6, 2015?

Answer in dollars and cents: $ 655,191.73

QUESTION NO. 10

Is Wells Fargo a Holder of the Texas Home Equity Fixed/Adjustable Rate Note (Defendants' Exhibit 2)?

"Holder" means the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession.

"Bearer" means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, a negotiable tangible document of title, or a certificated security that is payable to bearer or indorsed in blank.

Answer "Yes" or "No": Yes

QUESTION NO. 11

Does Wells Fargo own the Texas Home Equity Fixed/Adjustable Rate Note (Defendants' Exhibit 2) and/or Texas Home Equity Security Instrument (Defendants' Exhibit 3)?

Answer "Yes" or "No" as to each:

Texas Home Equity Fixed/Adjustable Rate Note: NO

Texas Home Equity Security Instrument: NO

QUESTION NO. 12

Was the "Transfer of Lien" (Plaintiffs' Ex. 23) filed on October 20, 2009 from New Century to Wells Fargo void?

"Void" with respect to Question No. 12 means, those documents that are of no effect whatsoever, and those that are an absolute nullity.

Answer "Yes" or "No.":

ANSWER: Yes

QUESTION NO. 13

Did Wells Fargo or Carrington violate the PSA?

Answer "Yes" or "No" as to each:

Wells Fargo: Yes

Carrington: Yes

If you answered "Yes" to Question No. 1, then answer the following question. Otherwise, do not answer the following question.

QUESTION NO. 14

What is a reasonable fee for the necessary services of the Plaintiffs' attorneys in this case, stated in dollars and cents?

Factors to consider in determining a reasonable fee include:

- The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly.
- The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer.
- The fee customarily charged in the locality for similar legal services.
- The amount involved and the results obtained.
- The time limitations imposed by the client or by the circumstances.
- The nature and length of the professional relationship with the client.
- The experience, reputation, and ability of the lawyer or lawyers performing the services.
- Whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Answer with an amount for each of the following:

1. For representation through trial and the completion of proceedings in the trial court.

   ANSWER: $ ~~[illegible]~~ $140,000.00

2. For representation through appeal to the court of appeals.

   ANSWER: $ 30,000

3. For representation at the Supreme Court of Texas.

   ANSWER: $ 20,000

Presiding Juror:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.

2. The presiding juror has these duties:

   a. have the complete charge read aloud if it will be helpful to your deliberations;
   b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
   c. give written questions or comments to the bailiff who will give them to the judge;
   d. write down the answers you agree on;
   e. get the signatures for the verdict certificate; and
   f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate:

1. You may answer the questions on a vote of ten jurors. The same ten jurors must agree on every answer in the charge. This means you may not have one group of ten jurors agree on one answer and a different group of ten jurors agree on another answer.

2. If ten jurors agree on every answer, those ten jurors sign the verdict. If eleven jurors agree on every answer, those eleven jurors sign the verdict. If all twelve of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate on every question. You may end up with all twelve of you agreeing on some answers, while only ten or eleven of you agree on other answers. But when you sign the verdict, only those ten or eleven who agree on every answer will sign the verdict.

4. There are some special instructions before Question No. 3 explaining how to answer this question. Please follow the instructions. If all twelve of you answer this question, you will need to complete a second verdict certificate for this question.

Do you understand these instructions? If you do not, please tell me now.

Judge Mike Engelhart, Presiding

VERDICT CERTIFICATE

Check one:

✓ Our verdict is unanimous. All twelve of us have agreed to each and every answer. The presiding juror has signed the certificate for all twelve of us.

Signature of Presiding Juror

Ryan Hurst
Printed Name of Presiding Juror

_____ Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

_____ Our verdict is not unanimous. Ten of us have agreed to each and every answer and have signed the certificate below.

	SIGNATURE	NAME PRINTED
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		

ADDITIONAL VERDICT CERTIFICATE

I certify that the jury was unanimous in answering the following questions:

Question No. 1

Question No. 3

All twelve of us agreed to the answer. The presiding juror has signed the certificate for all twelve of us.

Signature of Presiding Juror

Ryan Hurst

Printed Name of Presiding Juror

OVERRULED
11/6/15

P.4

CAUSE NO. 2011-36476

MARY ELLEN WOLF and DAVID WOLF	§	CIVIL DISTRICT COURT
v.	§	HARRIS COUNTY, TEXAS
WELLS FARGO BANK, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates, et al	§	151st JUDICIAL DISTRICT

If you answered "Yes" to Question No. 1, then answer the following question. Otherwise, do not answer the following question.

Defendants' Proposed Question No. 2

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate the Wolfs for their damages, if any, that were caused by such conduct?

Consider the following elements of damages, if any, and none other. Answer separately in dollars and cents for damages, if any.[3]

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.[4]

"Mental anguish or emotional distress" means a high degree of mental pain and distress that is more than mere worry, anxiety, vexation, embarrassment, or anger that resulted in a substantial disruption of the Wolfs' daily routine.[5]

The only mental anguish or emotional distress you are permitted to consider is that experienced by the Wolfs as a result of Defendants' conduct. You may not consider mental anguish or emotional distress from other causes, including but not limited to, the health of the Wolfs' children, deaths in the family, or financial difficulties.

---

[3] TEXAS PATTERN JURY CHARGE –Business §115.19 (2014 ed.).
[4] *Id.*
[5] *Parkway Co. v. Woodruff,* 901 S.W.2d 434, 444 (Tex. 1995); *Saenz v. Fidelity & Guar. Ins. Underwriters,* 925 S.W.2d 607, 614 (Tex. 2011); *Hancock v. Variyam,* 400 S.W.3d 59, 68 (Tex. 2013).

Judge Mike Engelhart

a. Financial injury sustained in the past by the David Wolf.[6]

ANSWER: $_____

b. Financial Injury sustained in the past by Mary Ellen Wolf. [7]

ANSWER: $_____

c. Financial injury that, in reasonable probability, will be sustained in the future by David Wolf.[8]

ANSWER: $_____

d. Financial injury that, in reasonable probability, will be sustained in the future by Mary Ellen Wolf.[9]

ANSWER: $_____

e. Mental anguish or emotional distress experienced by David Wolf in the past.[10]

ANSWER: $_____

f. Mental anguish or emotional distress experienced by Mary Ellen Wolf in the past.[11]

ANSWER: $_____

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[6] TEX. CIV. PRAC. & REM. CODE § 12.002; TEXAS PATTERN JURY CHARGE –Business §115.19 (2014 ed.).

[7] TEX. CIV. PRAC. & REM. CODE § 12.002; TEXAS PATTERN JURY CHARGE –Business §115.19 (2014 ed.).

[8] *Id.*

[9] *Id.*

[10] *Id.;* TEXAS PATTERN JURY CHARGE –Business §115.10 (2014 ed.).

[11] *Id.;* TEXAS PATTERN JURY CHARGE –Business §115.10 (2014 ed.).

g. Mental anguish or emotional distress that, in reasonable probability, will be sustained by David Wolf in the future.[12]

ANSWER: $_____

h. Mental anguish or emotional distress that, in reasonable probability, will be sustained by Mary Ellen Wolf in the future.[13]

ANSWER: $_____

[12] *Id.; Lubbock County v. Strube,* 953 S.W.2d 847, 857 (Tex.App.—Austin 1997, pet. denied).
[13] *Id.; Lubbock County v. Strube,* 953 S.W.2d 847, 857 (Tex.App.—Austin 1997, pet. denied).

No. 2011-36476

151st D.C

QUESTION NO. 10

Is Wells Fargo a Holder of the Texas Home Equity Fixed Adjustable Rate Note?

"Holder" means the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession.

"Bearer" means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, a negotiable tangible document of title, or a certificated security that is payable to bearer or indorsed in blank.

When a promissory note is indorsed "in blank" by the original note Holder, the entity that has possession of the original promissory note becomes the Holder of that promissory note.

Answer "Yes" or "No": _____

FILED
Chris Daniel
District Clerk
NOV - 6 2015
Time: _____
Harris County, Texas
By _____
Deputy

Rejected

11/6/15

Judge Mike Engelhart

1/7/2016 8:33:38 AM
Chris Daniel - District Clerk Harris County
Envelope No. 8492593
By: JIMMY RODRIGUEZ
Filed: 1/7/2016 8:33:38 AM

CAUSE NO. 2011-36476

MARY ELLEN WOLF AND DAVID WOLF	§	IN THE DISTRICT COURT OF
	§	
	§	
v.	§	
	§	HARRIS COUNTY, TEXAS
WELLS FARGO BANK, N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST, TOM CROFT, NEW CENTURY MORTGAGE CORPORATION, AND CARRINGTON MORTGAGE SERVICES, LLC.	§	151ST JUDICIAL DISTRICT

PLAINTIFFS' AMENDED MOTION TO DISREGARD JURY FINDINGS AND MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutions

Statutes

Rules

COME NOW Mary Ellen Wolf and David Wolf ("Plaintiffs"), by and through their undersigned attorneys, and file this their Amended Motion to Disregard Jury Findings and Motion for Judgment Notwithstanding the Verdict. Plaintiffs respectfully show:

I. INTRODUCTION

1. On December 21, 2015, Defendants Wells Fargo Bank, N.A., as Trustee for Carrington Mortgage Loan Trust ("Wells Fargo) and Carrington Mortgage Services, LLC ("Carrington", and collectively "Defendants") moved for judgment notwithstanding the verdict (hereinafter "JNOV motion") and filed a proposed judgment. Plaintiffs will respond separately to the JNOV motion. Plaintiffs, however, likewise move to disregard and for judgment notwithstanding the verdict as to certain findings by the jury, and object to Defendants' proposed judgment.

2. Defendants have asked the Court to disregard and set aside all of the jury's findings, with the exception of the findings that Wells Fargo is a holder of the note in Question 10, and that Plaintiffs failed to comply with the terms of the Texas Home Equity Fixed/Adjustable Rate Note (Defendants' Exhibit 2). *See* Jury Verdict at p. 13, 15. Presuming the Court will grant their JNOV motion and based on tired arguments the Court has already rejected, Defendants propose the Court should refuse to award any amount of damages to Plaintiffs and grant their request for judicial foreclosure, ordering that they are entitled to foreclose pursuant to their "Deed of Trust lien (recorded in the Official Real Property Records of Harris County in Libor 006 and Book 0030 as Instrument No. Z394249) against the property located at 6404 Buffalo Speedway in Houston, Texas 77005 . . . ." *See* Defendants' Proposed Judgment at 2.

3. Defendants' JNOV motion is mostly premised on the same worn-out arguments they made during the summary judgment proceedings and as part of their motion for a directed

verdict at trial. There are even more reasons to reject Defendants' "standing or capacity to sue" arguments now, as explained in Plaintiffs' separately-filed response to the JNOV motion.

4. However, as explained below, the Court must disregard these findings or alternatively grant judgment notwithstanding the verdict as to Questions 8, 9, and 10. First, the evidence conclusively established the cause of action for foreclosure accrued on February 5, 2011. *See* DX12. Because the record conclusively establishes the cause of action accrued more than four years prior to Defendants' first pleading requesting judicial, as opposed to non-judicial expedited foreclosure, the Defendants are barred from foreclosing by the statute of limitations. No jury finding was required because the limitations defense was conclusively established.

5. Second, the evidence was legally insufficient to support a finding that Wells Fargo is the holder of the note. The equal inference rule bars this Court's consideration of Wells Fargo's evidence, which gave rise to an equal inference problem and means the evidence is legally insufficient.

6. In any event, even if Defendants are entitled to a judicial foreclosure as the current "holder" of the note, it does not mean Plaintiffs are not entitled to damages for the fraudulent filing in the property records, which caused damages independent of the foreclosure of the note, as found by the jury in Questions 1, 2, 3, 14 and 15. *See* Jury Verdict at 5-8, 19, and Additional Instruction for Bifurcated Trial. Plaintiffs, accordingly, respectfully request the Court grant this motion and render judgment in their favor.

II. THE EVIDENCE AT TRIAL

A. New Century Refinances the Wolfs' Mortgage in 2006

7. On June 15, 2006, the Wolfs refinanced the mortgage on their homestead through a loan from New Century, who loaned the Wolfs $400,000 (the "Note"). DX 2.[1] The Note lists New Century as the lender and provides: "Lender, or anyone who takes this Note by transfer and who is entitled to receive payments under the Note, is called the 'Noteholder.'" *Id.* Thereafter, on June 22, 2006, New Century filed a Deed of Trust in the Harris County Clerk's Office. DX3. The Wolfs have never signed any agreements with Wells Fargo Bank, N.A. 3RR28, 45, 54.

B. The 2006-NC3 Trust

8. On August 1, 2006, Wells Fargo Bank, N.A., New Century, and Stanwich Asset Acceptance Company signed and executed a Pooling and Servicing Agreement ("PSA"). PX13. This PSA created the Carrington Mortgage Loan Trust, Series 2006-NC3 (the "Trust"), with Wells Fargo Bank, N.A. as "Trustee." *Id.*; 4RR83. The PSA identified New Century as the "Servicer" and Stanwich as the "Depositor." PX13; 4RR75-76.

9. According to a Mortgage Loan Purchase Agreement ("MLPA") executed August 10, 2006, between NC Capital Corporation, Carrington Securities, LP, and Stanwich, the loans identified for deposit into the Trust were to be bought, sold, and transferred into the Trust through a specific sequence: *First,* NC Capital would sell the loans to Carrington Securities; *second,* Carrington Securities would sell the loans to Stanwich; *and third,* Stanwich would deposit the loans into the Trust. 4RR75; PX14.

[1] The exhibits at trial will be referred to as DX for Defendants' Exhibits, and PX for Plaintiffs' Exhibits. The transcript will be cited as [vol.]RR[page].

10. In PSA Section 2.01, the parties prescribed the method of conveying mortgage loans into the Trust. PX13. That provision states:

> SECTION 2.01 Conveyance of the Mortgage Loans. On the Closing Date, the Depositor [Stanwich] will transfer, assign, set over and otherwise convey to the Trustee [Wells Fargo Bank, N.A.] without recourse, for the benefit of the Certificateholders, all the right, title and interest of the Depositor, including any security interest therein for the benefit of the Depositor, in and to the Mortgage Loans identified on the Mortgage Loan Schedule, the rights of the Depositor under the Mortgage Loan Purchase Agreement, and all other assets included or to be included in REMIC I. Such assignment includes all interest and principal received by the Depositor or the Servicer on or with respect to the Mortgage Loans (other than payments of principal and interest due on such Mortgage Loans on or before the Cut-off Date). The Depositor herewith delivers to the Trustee an executed copy of the Mortgage Loan Purchase Agreement. In addition, on the Closing Date, the Trustee is hereby directed to enter into the Swap Agreement on behalf of the Trust Fund with the Swap Counterparty.

Id.; 4RR77, 117. The PSA prohibited the transfer of any mortgages into the Trust after the Closing Date. PX13; 4RR77.

11. Pursuant to Section 2.01, along with the transfer and assignment of the Mortgage Loans on the Mortgage Loan Schedule, Stanwich was required to deliver and deposit with Wells Fargo Bank, N.A.'s custodian the documents or instruments with respect to each Mortgage Loan so transferred and assigned (in each case, a "Mortgage File"). *Id*. These included, among other things, the original note endorsed in blank or in the following form "Pay to the order of Wells Fargo Bank, N.A., as Trustee under the applicable agreement, without recourse," with all prior and intervening endorsements showing a complete chain of endorsement from the originator to the person so endorsing to the Trustee and the original recorded assignment or assignments showing a complete chain of assignment from the originator to the person assigning the mortgage to the Trustee. *Id.*

12. Section 2.01 required recording of the assignments within ninety days following the "Closing Date" of August 10, 2006, and Wells Fargo Bank, N.A. was responsible for ensuring compliance:

> The Trustee shall enforce the obligations of the Seller under the Mortgage Loan Purchase Agreement to promptly (within sixty Business Days following the later of the Closing Date and the date of receipt by the Trustee of the recording information for a Mortgage, but in no event later than ninety days following the Closing Date) submit or cause to be submitted for recording, at the expense of the Responsible Party and at no expense to the Trust Fund, the Trustee or the Depositor, in the appropriate public office for real property records, each Assignment referred to in Sections 2.01(iii) and (iv) above and the Depositor shall execute each original Assignment or cause each original Assignment to be executed in the following form: "Wells Fargo Bank, N.A., as Trustee under the applicable agreement."

Id. The deadline for recording the assignments under this provision expired on November 8, 2006. *Id*.

13. There is a very important reason the PSA requires all mortgages to be transferred into the Trust by the Closing Date: to qualify for tax-exempt status as a Real Estate Mortgage Investment Conduit ("REMIC") under the Internal Revenue Code. *See* 26 U.S.C. § 860G(d)(1). The mortgages in the Trust would be securitized as "mortgage-backed securities" and then sold to investors. *See id*. As a REMIC, the Trust could receive preferential tax treatment. And investors would be protected from the risk of loss due to bankruptcies filed on behalf of the Trust or by other entities in the chain of title, but only if the Trust satisfied all requirements to attain "REMIC" status. *See id.*; 4RR80-82, 100-102.

14. The parties to the PSA therefore had a compelling reason to specifically require the mortgages be transferred before the Closing Date. The consequences of transferring a mortgage into the Trust after the Closing Date are substantial—"if any amount is contributed to a REMIC after the startup day, there is hereby imposed a tax for the taxable year of the REMIC in which the contribution is received equal to 100 percent of the amount of such contribution." 26 U.S.C.

§ 860G(d)(1). Any failure to comply with the Internal Revenue Code's requirements for REMICs jeopardizes the Trust's "REMIC" status and thus the loss of the tax benefits. 26 U.S.C. §§ 860A-860G; 4RR79-82; PX13.

C. The Wolfs' Chain of Title Under the PSA

15. On October 20, 2009, a "Transfer of Lien" was filed with the Harris County Clerk's Office concerning the Wolfs' property. PX23. This Transfer of Lien identifies New Century as the "Holder of Note and Lien," "Wells Fargo Bank N.A., as Trustee" for the Trust as the "Transferee," and New Century as the Note payee. *Id.* The Transfer of Lien states it is "To Be Effective 9/30/09." *Id*. It further states it was for "valuable consideration" transferred from "Holder" to the "Transferee," and it is signed by "Tom Croft," as "[VP] of REO" for New Century. *Id.*

D. Evidence supporting the Chapter 12 claim

16. The evidence at trial supported Plaintiffs' Chapter 12 claims. As more fully explained in Plaintiffs' response to Defendants' JNOV motion:

17. *Defendant's corporate representative testified, without objection, that if the Plaintiffs' mortgage loan is not in the trust, then the trust cannot foreclose on the Wolf's home.* 5RR14. *Defendant's corporate representative further testified that he believed that the Plaintiff's note went into the trust between August 1, 2006 and August 10, 2006 "because that's what the trust documents say* ***had to happen****."* 5RR60. But the transactions required for Plaintiffs' note to be transferred into the trust did not occur—late or otherwise. 4RR71, 77-78.

18. First, there was not a sale of the note and a transfer from New Century to NC Capital. 4RR75, 79-80, 89-90; PX14. Second, there was not a sale and transfer from NC Capital to Carrington Securities, LP or to Stanwich, nor a deposit by Stanwich into the Trust. 4RR75, 79-

80, 89-90, 124; PX14. *Defendant's corporate representative agreed this was required to transfer the note into the trust.* 5RR65.

19. Plaintiffs' note was never transferred into the Trust, so as of the closing date of the Trust in August 2006, New Century, one of its later assigns, or another purchaser owned the note. 4RR77, 80-83, 91. This supports the jury's finding that Wells Fargo is not the owner of the note. *See* Jury Verdict at Question 11, pg. 16.

20. New Century went into bankruptcy in April 2007. 4RR95; 3RR52. As part of the bankruptcy, New Century sold its servicing business to Carrington Mortgage Services on May 23, 2007, as reflected by the bankruptcy court's order. DX7; 4RR86, 252; *see also* PX19. New Century divested itself of its assets and ceased to exist as of June 2007. 4RR95.

21. If Carrington merely purchased the servicing business, but New Century still owned the note or the right to service it, then Carrington could collect funds on the note and would be required to turn over the proceeds to the true owner of the note. 5RR55-56. Carrington, however, would not have the authority to transfer the note as a servicer, if that had not already occurred. *See Scott v. U.S. Bank, Nat. Ass'n*, No. 02-12-00230-CV, 2014 WL 3535724, at *4 (Tex. App.—Fort Worth July 17, 2014, no pet.) (mem. op.).[2] The evidence did not show who currently and legally

[2] In *Scott*, the Fort Worth Court of Appeals noted that the transfer of servicing business does not include the right to transfer a note:

owns the note, but it definitely is not Wells Fargo, and as of the end of New Century's existence, could not have been New Century either. 4RR83, 136.

22. New Century ceased to exist and was not in existence as of October 5, 2009, and had already sold its assets and servicing business. 4RR93. Tom Croft nevertheless claims to have signed an assignment of and transfer of lien from New Century, who the transfer of lien recites as the owner and holder of the note, to Wells Fargo on October 5, 2009. 4RR136; PX13. This document states on its face that it is "to be effective September 30, 2009." PX13. In fact, Tom Croft inconsistently testified that (1) the transfer of lien was intended to "put the vesting into the trust" and to "put the mortgage—the vesting into the trust before initiating foreclosure; but (2) claimed that the note had already been securitized. 4RR157.

23. Although Tom Croft admitted he did not work for New Century, he purportedly signed this document representing that at that time, he was "Vice President of REO" for New Century. PX13; 4RR43, 151. On the date reflected in the transfer of lien, in October 2009, Tom Croft was employed by Carrington Mortgage Services. 4RR151. He *never* worked for New Century. 4RR153. In the document, Tom Croft expressly acknowledged and swore that he

---

> But Kaminski's statements in paragraph thirteen regarding the transfer of the loan to U.S. Bank from AHMSI, purportedly as successor-in-interest to Option One, so as to support the copy of the "Assignment of Deed of Trust/Transfer of Lien"4 attached to Kaminski's affidavit as exhibit 1E, are inconsistent with his statements in paragraph twelve that Option One only assigned the assets constituting the residential mortgage servicing business, including the servicing rights related to the loan, to AHMSI. An assignment of the residential mortgage servicing business, however, would not necessarily include assignment of the loan. Because Kaminski's affidavit is internally inconsistent and there is no documentation corroborating Kaminski's assertion that AHMSI is the successor-in-interest to Option One entitled to transfer the loan to U.S. Bank, standing alone, the affidavit fails to establish the chain of title to U.S. Bank as a matter of law.

See Scott v. U.S. Bank, Nat. Ass'n, No. 02-12-00230-CV, 2014 WL 3535724, at *4 (Tex. App.—Fort Worth July 17, 2014, no pet.) (mem. op.).

executed the instrument "in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument." PX13.

24. Thus, Tom Croft misrepresented in a document filed in the Harris County Property records that as of the date of the document,

(1) New Century was the holder and owner of the note, when that entity no longer existed. And if, in fact, the note had been transferred into the Trust in 2006, New Century similarly would not have been the holder and owner of the note in 2009, 4RR95, 100, 136;

(2) he was Vice President of REO for New Century and was acting on behalf of New Century. Tom Croft could not have been the Vice President of REO for New Century because that entity did not exist, and Tom Croft himself admitted he did not work for New Century. 4RR95, 113, 152-53;

(3) that consideration was paid by Wells Fargo to New Century, which Wells Fargo does not even allege and certainly did not prove; and

(4) that the assignment occurred on September 30, 3009, when New Century no longer existed and could not have possibly received any consideration at that time. *See* 5RR20. Moreover, if the Trust were the owner of the note, the transfer would have to have been effective on August 10, 2006. 4RR94-95; PX13.[3]

[3] While Defendants pointed to PX20, a limited power of attorney signed by the New Century Liquidating Trust, granting Carrington the authority to execute and record assignments, Ms. McDonnell testified this document related to the servicing platform for New Century that was sold to Carrington. 4RR111-113; PX20. Ms. McDonnell testified that the limited power of attorney would allow Carrington to do anything that New Century could have done as servicer of the Trust pursuant to the PSA. 4RR113. But if the loan was never sold through the process of securitization, and was never deposited into the trust, the servicer could not act with respect to those loans on behalf of the Trust. 4RR113. Additionally, New Century did not have any ability to make deposits into the Trust; only Stanwich, as depositor under the PSA, had that authority. 4RR122. Finally, the transfer of lien filed in 2009 did not state that Tom Croft was acting on behalf of Carrington, as successor to New Century—it stated that he was acting on behalf of New Century as its VP of REO, which was false. 4RR144; PX23.

25. In 2009, when Plaintiffs began having trouble paying the note, Carrington offered services to help them get back on track. 3RR25, 28-30; PX22**.** Plaintiffs started the application process with Carrington and turned in their forms on October 13, 2009. 3RR30-32, 33; 4RR177; PX22. Almost immediately after Plaintiffs contacted Carrington to start the process, Carrington and Wells Fargo concocted the fraudulent and misleading transfer of lien in an attempt to correct the defect in the chain of title to allow Carrington to foreclose on the loan on behalf of Wells Fargo. 4RR73-74, 132-33, 156, 177-78; PX23. Plaintiffs worked with Carrington for five months. 4RR181. Carrington ultimately rejected the application, telling Plaintiffs it never would have considered providing services. 3RR30, 33; PX22. Then it initiated foreclosure proceedings. 4RR181-82.

26. The evidence showed it was a common practice of some mortgage companies to have "robo-signers," which Plaintiffs' expert—Ms. McDonnell—explained were "low-paid staff, uneducated usually, to just simply sign—sit at a table and sign documents. Often they would not be signed in the presence of a notary." 4RR65. She testified that after one prominent mortgage company was discovered to have had other people aside from the purported signer sign documents, without authorization, and prepared and recorded over a million documents all over the country that were "admitted forgeries." 4RR65. Ms. McDonnell testified that all the major banks, including Wells Fargo, were the subject of a federal investigation that revealed "a widespread systematic pattern of robo-signing and the creation of documents that were not verified and were not accurate." 4RR66. This resulted in a cease and desist order that included Wells Fargo. *Id.* Furthermore, Tom Croft is an identified robo-signer. 4RR95-100.[4] Thus, Wells Fargo's pattern or

[4] In fact, Tom Croft did not recall signing the transfer of lien admitted in evidence. 4RR148.

practice was to have robo-signers sign documents such as these, often without the knowledge or even consent of the purported signor to affix his name to the document. 4RR65-67; *see also* 4RR94 (Ms. McDonnell testifying she found other documents that had been filed by Defendants in county clerks' offices that were fraudulent in Texas and in other states). This establishes the elements of forgery, even despite the foregoing blatant and fraudulent misrepresentations. TEX. R. EVID. 406 ("Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.").

27. Carrington and Wells Fargo have conceded Tom Croft was an employee of Carrington, asserted that Carrington and Croft were agents in fact of Wells Fargo, and asserted they intended that Croft execute this document as their agents. 4RR151. Accordingly, they are liable for the fraudulent filing.

28. Carrington and Wells Fargo used the fraudulently-created and filed documents to establish their claim to Plaintiffs' property, intending to cause and actually causing financial injury. The documents filed by Carrington, who claims to have been acting as attorney in fact for Wells Fargo, caused confusion of the title, which prevented Plaintiffs' attempt to sell the home in 2011 to cure any default on the mortgage (once it was determined who to pay). 3RR37-39. Plaintiffs'

title company refused to open a title policy. 3RR37-39.[5] Additionally, Plaintiffs were required to disclose the foreclosure proceedings to their real estate agent in their listing document, and that the title was in question. 4RR49. The fraudulent lien filings prevent them from doing so. 4RR170. Carrington and Wells Fargo were certainly aware that if Plaintiffs attempted to sell the property, their filings would cause the title to be in question, which raises an inference on their intent. DX2 at p. 4; DX3 at p. 11; PX23. Plaintiffs could have made a profit of $150,000 on the sale of their home; thus, the fraudulent filings have caused them financial injury. 4RR45-46, 48, 175-76.

29. Although *someone* is owed money on the note, and Plaintiffs concede they owe money for the refinance of their home, 3RR22; 4RR32-33, Plaintiffs could have avoided this litigation and would made a substantial profit if it were not for the fraudulent and false filings in the property records, which caused their damages. Moreover, if another company actually owns the note, but Wells Fargo is paid, Plaintiffs could be required to pay the money twice. 3RR25; 4RR32-33.

30. Plaintiffs suffered extreme mental anguish as a result of Carrington and Wells Fargo's fraudulent filing. 3RR58-60, 64-65; 4RR169-73.

[5] While Defendants objected to this testimony and the objection was sustained, the objection came too late. David Wolf had already completely answered the question. 3RR37-38. No request was made to have the jury disregard the testimony; accordingly, no error in admitting the statement has been preserved. 3RR37-38; TEX. R. APP. P. 33.1(a); *Pool v. State Hwy Dep't*, 256 S.W.2d 168, 171 (Tex. Civ. App.—Fort Worth 1953, writ dism'd) ("[T]estimony before the jury before objection thereto is made and sustained is still before them until they are instructed not to consider it."); *see also In re G.C.F.*, No. 02-06-00282-CV, 2007 WL 1018570, at *8 (Tex. App.—Fort Worth Apr. 5, 2007, no pet.) (mem. op.) (holding that appellant failed to obtain an adverse ruling as to objectionable questioning by the State by failing to request an instruction to disregard).

E. Who holds the note?

31. The evidence was unclear as to who is the true "holder" of the note and was entitled to foreclose.

32. Ms. McDonnell testified at trial that even though she had been retained as an expert in 2012, she had never seen the original note. 4RR83. She testified that under New York law, the note had to be negotiated according to the PSA; otherwise, Wells Fargo could not legally possess the note. 4RR85. She testified that for the Trust to possess the note, and therefore be the "holder" of the note, physical delivery was required prior to the closing date. 4RR138. She testified that never happened. 4RR138. Ms. McDonnell explained that to establish proof of delivery, the evidence would have to come from Deutsche Bank National Trust Company, who is the document custodian for the Trust. 4RR138. She opined that Deutsche would have a log of when the note was placed into custody, who had signed it out, and notation of a request for a release from Deutsche Bank's vault. 4RR139. Additionally, Ms. McDonnell testified that when she asked counsel for Defendants how he received the note, he told her that Carrington delivered it to him. 4RR126.

33. Clayton Gordon appeared as a corporate representative for both Carrington and Wells Fargo. 4RR216, 43. He testified that he is employed by Carrington. 4RR219. Gordon testified that the original note from Plaintiffs to New Century was endorsed in blank. 4RR221. Gordon also testified the deed of trust was endorsed in blank. 4RR229.

34. Gordon testified that the original notes, deeds of trust, assignments, and original title policies are kept in what's called the "collateral file." 4RR225; 5RR35. While he testified he had seen it and it was present in the courtroom, 4RR225, he was unable to clearly tell the jury how the note came to be in the possession of Defense counsel, who represented both Carrington and Wells Fargo.

35. Gordon first testified that the original documents came from the "document custodian," Deutsche Bank. 5RR22. He testified it would have been delivered to "our office" and then FedExed to "our counsel" in Texas. 5RR22. He did not have a FedEx tracking number or the purported "customer notes," which could have proved who requested and received the original collateral file from the document custodian. 5RR23. He did not know who contacted Deutsche Bank, or who was contacted at Deutsche Bank. 5RR23.

36. While Gordon said the originals of these documents were in "our collateral file," he did not identify on whose behalf he was speaking or in what capacity. 5RR23. While Gordon later testified Wells Fargo had the right to foreclose the note because Wells Fargo has the original note, indeed, the evidence raised the possibility Carrington actually is in possession of the note, someone else actually owns the note, and Carrington was servicing it for someone else as a result of its purchase of New Century's servicing business. 5RR47, 61, 72. Gordon's testimony was confusing, at best: when asked if the note was transferred into the trust, he stated: "We wouldn't have the collateral file here today if Wells Fargo Bank, as trustee for this loan trust, had ownership of it and it was stored at the collateral file offices of Deutsche Bank." 5RR50.

III. APPLICABLE LAW

37. Texas Rule of Civil Procedure 301 provides:

> The judgment of the court shall conform to the pleadings, the nature of the case proved and the verdict, if any, and shall be so framed as to give the party all the relief to which he may be entitled either in law or equity. Provided, that upon motion and reasonable notice the court may render judgment non obstante veredicto if a directed verdict would have been proper, and provided further that the court may, upon like motion and notice, disregard any jury finding on a question that has no support in the evidence. . . .

TEX. R. CIV. P. 301.

38. A trial court may disregard jury findings, and substitute its own finding, if the answers are immaterial, are not supported by legally sufficient evidence, or if the evidence

establishes a contrary finding. *Id.*; *City of Keller v. Wilson*, 168 S.W.3d 802, 817 (Tex. 2005); *Green Int'l, Inc. v. Solis*, 951 S.W.2d 384, 389 (Tex. 1997); *Eubanks v. Winn*, 420 S.W.2d 698, 701 (Tex. 1967). A jury finding is immaterial if the question "should not have been submitted" to the jury, or if the question, although "properly submitted[, was] rendered immaterial by other findings." *Spencer v. Eagle Star Ins. Co. of Am.*, 876 S.W.2d 154, 157 (Tex. 1994).

A. This Court can disregard the findings in Questions 8, 9, and 10 because the evidence conclusively showed that Defendants' request for judicial foreclosure is barred by limitations

39. "Upon appeal all independent grounds of recovery or of defense not conclusively established under the evidence and no element of which is submitted or requested are waived." TEX. R. CIV. P. 279. "When, as here, the jury was not asked to determine when the cause of action accrued for purposes of supporting a limitations defense, the defense is waived unless the date of accrual was conclusively established under the evidence." *Prestige Ford Garland Ltd. P'ship v. Morales*, 336 S.W.3d 833, 836 (Tex. App.—Dallas 2011, no pet.).

40. Under Texas law, a real property lien and the power of sale to enforce it become void if a mortgagee does not seek to foreclose under a deed of trust within four years of the date the cause of action accrues. TEX. CIV. PRAC. & REM. CODE § 16.035(d); *Holy Cross Church of God in Christ v. Wolf*, 44 S.W.3d 562, 566 (Tex. 2001). A foreclosure action accrues when the note is accelerated. *See, e.g.*, *Holy Cross Church of God in Christ*, 44 S.W.3d at 566. "Effective acceleration requires two acts: (1) notice of intent to accelerate, and (2) notice of acceleration." *Id.* "Notice of intent to accelerate is necessary in order to provide the debtor an opportunity to cure his default prior to harsh consequences of acceleration and foreclosure." *Ogden v. Gibraltar Sav. Ass'n*, 640 S.W.2d 232, 234 (Tex. 1982).

41. In the present case, Defendants submitted the Notice of Acceleration on February 3, 2011, and Plaintiffs' received the Notice of Acceleration on February 5, 2011. *See* DX12. Therefore, the statute of limitations deadline was February 5, 2015.

42. Although most foreclosures in Texas are nonjudicial, the Texas Constitution requires that a court issue a foreclosure order before foreclosure of a home equity loan may occur. *See* TEX. CONST. art. XVI, § 50(a)(6)(D). "A party may seek a court order permitting the foreclosure of a lien by filing a verified application in the district court in any county where all or any part of the real property encumbered by the lien is located or in a probate court with jurisdiction over proceedings involving the property." *In re OneWest Bank, FSB*, 430 S.W.3d 573, 576 (Tex. App.—Corpus Christi 2014, orig. proceeding) (citing TEX. R. CIV. P. 736.1(a)). The expedited foreclosure proceeding is automatically stayed if a respondent files a separate, independent, original proceeding that puts in issue any matter related to the origination, servicing, or enforcement of the loan agreement, contract, or lien sought to be foreclosed before 5:00 p.m. on the Monday before the scheduled foreclosure sale. *See* TEX. R. CIV. P. 736.11(a); *see also* TEX. R. CIV. P. 736.11(d) (any foreclosure sale of property while stay is in effect is void).

43. There is authority, however, holding that acceleration "may not be abandoned unilaterally where the borrower has detrimentally relied upon the acceleration." *In re Rosas*, No. 13-52402-CAG, 2014 WL 1779437, at *10 (Bkrtcy. S.D. Tex. May 5, 2014); *see also Callan v. Deutsche Bank Trust Co. Americas*, No. 4:13–CV–247, 2014 WL 1314831, at *7 (S.D. Tex. Mar. 27, 2014) (holding lender may not unilaterally rescind an optional acceleration where debtor acted in reliance on the acceleration); *In re Rosas*, 520 B.R. 534, 543 (W.D. Tex. 2014) ("Texas law and the principles of equity also do not recognize unilateral abandonment to circumvent the statute of limitations when the borrower detrimentally relied on the acceleration."); *Swoboda v. Wilshire Credit Corp.*, 975 S.W.2d 770, 776-77 (Tex. App.—Corpus Christi 1998, pet. denied),

disapproved on other grounds by Holy Cross Church of God in Christ, 44 S.W.3d at 566 ("Even if a creditor exercises the option to accelerate and makes a declaration to that effect, the election to accelerate can be revoked or withdrawn at any time, so long as the debtor has not detrimentally relied on the acceleration.").

44. One way "lenders have sought to show abandonment in the absence of express notice is dismissal of an initial application for foreclosure, either voluntary…or involuntary for want of prosecution." *Callan*, 2015 WL 1296330, at *9. But an application for expedited foreclosure that is dismissed on procedural grounds, not at the lender's election, has been found insufficient to abandon acceleration. *See Burney v. Citigroup Global Mkts. Realty Corp.*, 244 S.W.3d 900, 903 (Tex. App.—Dallas 2008, no pet.). "[T]here is a difference between intentional litigation conduct that evidences a lender's intent to abandon acceleration of the debt, and mere litigation procedure that does not commit the lender to abandonment of acceleration." *Deutsche Bank Nat. Trust Co. v. Ra Surasak Ketmayura*, No. A-14-CV-00931-LY-ML, 2015 WL 3899050, at *6-8 (W.D. Tex. June 11, 2015) (holding that automatic dismissal of expedited foreclosure action when borrowers filed independent lawsuit was not sufficient to indicate that the lender was abandoning acceleration).

45. On February 11, 2011, Defendants in the present case filed their original expedited foreclosure proceeding under Rule 736 against Plaintiffs in Cause No. 2011-08930, *In Re: Order For Foreclosure Concerning Mary Ellen Wolf David Wolf 6404 Buffalo Speedway, Houston, Texas 77005* ("Original Foreclosure Action"); PX26. On June 19, 2011, Plaintiffs filed their Original Petition in the present case, and also filed a notice with the clerk of their contemporaneously filed Petition contesting the Defendants' right to foreclose under Rule 736. *See* Plaintiffs' Original Petition, filed June 19, 2011, *on file.* On June 23, 2011, in accordance with Rule 736.11, Defendants' Original Foreclosure Action was dismissed without prejudice pursuant

to Defendants' nonsuit, but such dismissal was automatically required. TEX. R. CIV. P. 736.11; *see* Exhibit A, attached. Therefore, the automatic dismissal of Defendants' Original Foreclosure Action is insufficient to indicate that Defendants were abandoning acceleration.

46. On July 7, 2011, Defendants filed their Original Answer but did not include a counterclaim to foreclose on Plaintiffs' property. On April 17, 2012, Defendants filed their First Amended Answer & Counterclaim seeking a non-judicial sale (expedited foreclosure) of the Plaintiffs' property pursuant to Rules 735 and 736 of the Texas Rules of Civil Procedure and Section 50(a)(6), Article XVI of the Texas Constitution. On June 12, 2012, Defendants filed their Second Amended Answer & First Amended Counterclaim seeking a non-judicial sale (expedited foreclosure) of the Plaintiffs' property pursuant to Rules 735 and 736 of the Texas Rules of Civil Procedure. On July 12, 2012, Defendants filed their Third Amended Answer & Second Amended Counterclaim seeking a non-judicial sale (expedited foreclosure) of the Plaintiffs' property pursuant to Rules 735 and 736 of the Texas Rules of Civil Procedure. **On February 5, 2015, the statute of limitations expired**. On August 27, 2015, Defendants filed their Fourth Amended Answer & Third Amended Counterclaim, after the SOL expired, attempting to fix their counterclaim by amending and revising the counterclaim to seek a judicial foreclosure (unlike the previous three counterclaims seeking a non-judicial sale and expedited foreclosure). However, Defendants' last attempt to amend their counterclaim was too late, after the expiration of the statute of limitations.

47. Accordingly, regardless of the findings that Plaintiffs failed to comply with the note, owed money on the note, and that Wells Fargo holds the note, Wells Fargo is not entitled to an order of judicial foreclosure because its claim is barred by the Plaintiffs' conclusive evidence establishing its cause of action accrued more than four years prior to its first request for judicial foreclosure.

B. This Court can disregard the findings in Questions 8, 9, and 10 because the answer to Question 10 is not supported by legally sufficient evidence, and that renders the findings in Questions 8 and 9 immaterial

48. As shown above, the evidence regarding Wells Fargo's status as the holder of the note was supported by only circumstantial evidence, which gave rise to several equal inferences, none of which can support the jury's finding in Question 10.

49. "In claims or defenses supported only by meager circumstantial evidence, the evidence does not rise above a scintilla (and thus is legally insufficient) if jurors would have to guess whether a vital fact exists." *City of Keller*, 168 S.W.3d at 813. "When the circumstances are equally consistent with either of two facts, neither fact may be inferred." *Id.* In such cases, we must "view each piece of circumstantial evidence, not in isolation, but in light of all the known circumstances." *Id.* at 814.

50. While Gordon testified that Wells Fargo was the in possession of the note, it was just as likely Carrington was in possession of the note and servicing it for someone else. Gordon could not confirm who requested the "collateral file" from Deutsche Bank and had no proof other than his surmise that someone at either Carrington or Wells Fargo requested it.

51. In fact, the evidence raised yet another very real possibility: If Wells Fargo, in its capacity as Trustee, did not own the note as trustee of the trust, because the assignments failed to comply with the PSA, but Wells Fargo is in fact in possession of the note endorsed in blank, it's possible that Wells Fargo in its *individual capacity* is the current holder of the note. However, Wells Fargo did not file suit in its individual capacity or submit a question to the jury as to that possibility, and limited the jury questions to its capacity as trustee. *See* Jury Verdict at p. 4 (Definitions), and p. 15.

52. Moreover, Ms. McDonnell testified that Wells Fargo could not be in possession of the note as trustee legally under New York law, because there was no assignment or delivery of the note. *See* N.Y. U.C.C. LAW § 3-202(1) (Negotiation is the transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order it is negotiated by delivery with any necessary indorsement; if payable to bearer it is negotiated by delivery."); *U.S. Bank Nat. Ass'n v. Weinman*, 123 A.D.3d 1108, 1109 (N.Y. App. Div. 2014) ("The affidavit of the plaintiff's servicing agent, which did not give any factual details of a physical delivery of the note, failed to establish that the plaintiff had physical possession of the note prior to commencing this action."). Gordon could not really testify otherwise, but only assumed that the transactions occurred because the PSA required it.[6]

53. Ms. McDonnell testified the required transactions to transfer the note into the trust did *not occur*. 4RR138. Accordingly, a mere notation or writing reflecting an assignment, "holding" of an asset by the Trustee does not mean the Trust is the "bearer" of the note under New York law. Ms. McDonnell explained that to establish proof of delivery, the evidence would have to come from Deutsche Bank National Trust Company, who is the document custodian for the Trust. 4RR138. She testified that under New York law, the note had to be negotiated according to the PSA; otherwise, Wells Fargo could not legally possess the note. 4RR85.

54. Under these circumstances, because the evidence did not show that Wells Fargo as opposed to another entity was in possession of the note at the time the foreclosure suit was filed,

[6] *Cf.* N.Y. EST. POWERS & TRUSTS LAW § 7-1.18 (emphasis added). Under this provision, in "lifetime trusts," it is not enough to merely recite an "assignment, holding or receipt" in the trust instrument, and a trust is only "valid" as to that asset "to the extent the assets have been transferred into the trust." *Id.*; *see Bishop v. Maurer*, 73 A.D.3d 455, 455 (N.Y. App. Div. 2010); *see In re Becker*, 800 N.Y.S.2d 342, 2004 WL 3118691, at *3 (N.Y. Sur. 2004) (unreported but may be considered persuasive) ("In essence, the aforementioned statute provides that all lifetime trusts created on or after December 25, 1997 are valid 'only in regard to assets actually transferred to the trust[s].'").

legally insufficient evidence supports the finding that Wells Fargo was the "holder" of the note and entitled to foreclose. Accordingly, the jury finding in Question 10 should be disregarded.

55. Because the answer to Question 10 is not supported by legally sufficient evidence, the answers to Questions 8 and 9 are immaterial and can have no bearing on the judgment in this case. *Spencer*, 876 S.W.2d at 157. Because there is no Defendant in this lawsuit that has been proven to be a legal holder or owner of the note, it is immaterial whether Plaintiffs complied with the note or owe money on the note, because no Defendant can obtain relief based on those findings.

C. Even if the Court does not disregard the findings in Questions 8, 9, and 10, Plaintiffs can still recover for the fraudulent lien filing.

56. As discussed above, the evidence showed numerous misrepresentations and false statements in the transfer of lien filed by Carrington and Wells Fargo. The elements of a Chapter 12 claim have clearly been established, as will be more fully discussed in Plaintiffs forthcoming response to Defendants' JNOV motion.

57. As shown above, the damages sought for the fraudulent lien filing are wholly independent of the loss of their home through a foreclosure; instead, they are based on the problems they encountered when attempting to sell the property.

IV. CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully request that this Court grant this amended motion and render judgment for Plaintiffs. Plaintiffs pray for all further relief to which they may be entitled.

Respectfully Submitted,

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

By the execution of my signature below, I certify a true and correct copy of the attached document has been served to all counsel of record pursuant to Rule 21 of the TEXAS RULES OF CIVIL PROCEDURE on January 7, 2016.

/s/ W. Craft Hughes
W. Craft Hughes

EXHIBIT A

CAUSE NO. 2011-08930

P-14 NCA

IN RE: ORDER FOR FORECLOSURE CONCERNING	§	**IN THE DISTRICT COURT OF**
	§	
	§	
MARY ELLEN WOLF	§	**HARRIS COUNTY, TEXAS**
DAVID WOLF	§	
6404 BUFFALO SPEEDWAY	§	
HOUSTON, TEXAS 77005	§	**151ST JUDICIAL DISTRICT**

FINAL **ORDER GRANTING NON-SUIT**

On _____, 2011, the Court considered the Notice of Non-suit filed by **Wells Fargo Bank N.A., as Trustee, for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates**, Applicant in the above-styled and numbered cause. The Court having reviewed the pleadings on file and having examined the Notice and is of the opinion that the Notice is well taken and should be in all things granted. It is therefore:

ORDERED that Applicant, **Wells Fargo Bank N.A., as Trustee, for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates**'s, Notice of Non-suit is granted, without prejudice, as to Defendant(s), **Mary Ellen Wolf and David Wolf and 6404 Buffalo Speedway, Houston, Texas 77005.**

SIGNED on JUN 23 2011, 2011.

JUDGE PRESIDING

W:\Clients\FMC\Wolf 609413\HE 2011\NOTICE AND ORDER OF NONSUIT.wpd

X1

Plaintiffs' Original Answer, Special Exceptions, and Motion to Strike Defendants' Counterclaim, filed May 3, 2012

CAUSE NO. 2011-36476

MARY ELLEN WOLF AND DAVID WOLF	§	IN THE DISTRICT COURT OF
v.	§	
WELLS FARGO BANK, N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST, TOM CROFT NEW CENTURY MORTGAGE CORPORATION AND CARRINGTON MORTGAGE SERVICES, LLC	§	HARRIS COUNTY, TEXAS
	§	151ST JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL ANSWER, SPECIAL EXCEPTIONS, AND MOTION TO STRIKE DEFENDANTS' COUNTERCLAIM

TO THE HONORABLE MIKE ENGELHART:

COME NOW, MARY ELLEN WOLF and DAVID WOLF ("Counter-Defendants") in the above-entitled matter and numbered cause, and file this Original Answer, Special Exceptions, and Motion to Strike in response to the counterclaim filed by Wells Fargo Bank, N.A., as Trustee for Carrington Mortgage Loan Trust, Tom Croft, New Century Mortgage Corporation, and Carrington Mortgage Services, LLC ("Counter-Plaintiffs"), and would show unto the Court and Jury the following:

I.
GENERAL DENIAL

1. Pursuant to Rule 92 of the TEXAS RULES OF CIVIL PROCEDURE, Counter-Defendants deny each and every, all and singular, the material allegations contained in Counter-Plaintiffs' counterclaim, and any supplements or amendments thereto, and demands strict proof of each and every allegation.

II.
SPECIFIC DENIALS

2. Counter-Defendants deny that all conditions precedent to Counter-Plaintiffs' recovery have been performed, have occurred, or have been waived.

3. Counter-Defendants deny that Counter-Plaintiffs have complied with the statutory requirements of TEX. R. CIV. P. 735-736.

III.
AFFIRMATIVE DEFENSES

4. Counter-Defendants state the following affirmative defenses to Counter-Plaintiffs' counterclaim (and any supplements or amendments thereto), but do not assume the burden of proof on any such defenses, except as otherwise required by law. Counter-Defendants reserve the right to assert additional defenses and to otherwise supplement or amend their Answer. Each of the following affirmative defenses are pled in the alternative, as all liability is denied.

5. Counter-Plaintiffs' counterclaim is barred by TEX. R. CIV. P. 736 because they already brought an original proceeding and it was abated and dismissed. TEX. R. CIV. P. 736(10); *Huston v. U.S. Bank Nat. Ass'n,* 359 S.W.3d 679 (Tex.App.–Houston [1st Dist.] 2011).

6. On February 11, 2011, Counter-Plaintiffs' filed their original expedited foreclosure proceeding under Rule 736 against Counter-Defendants in Cause No. 2011-08930, *In Re: Order For Foreclosure Concerning Mary Ellen Wolf David Wolf 6404 Buffalo Speedway, Houston, Texas 77005* ("Original Foreclosure Action").

7. On June 19, 2011, Counter-Defendants' filed their Original Petition in the present case, and filed a notice with the clerk of their contemporaneously filed Petition contesting the Counter-Plaintiffs' right to foreclose under Rule 736.

8. On June 19, 2011, Counter-Plaintiffs' Original Foreclosure Action was automatically abated and dismissed pursuant to Rule 736(10). TEX. R. CIV. P. 736(10).[1]

9. Counter-Plaintiffs' counterclaim is barred by TEX. R. CIV. P. 736(1) because they failed to file a verified application with the Court.

10. Counter-Plaintiffs' counterclaim is barred by TEX. R. CIV. P. 736(2) because they failed to serve notice on Counter-Defendants *via* certified and first class mail.

11. Counter-Defendants assert that the sole proximate cause, or a proximate cause of damages alleged by Counter-Plaintiffs, if any, were caused by the actions or omissions of persons and entities other than Counter-Defendants, over whom Counter-Defendants had no control, including the acts and omissions of Counter-Plaintiffs.

12. Counter-Plaintiffs' claims are barred, in whole or in part, by Counter-Plaintiffs' failure to mitigate its damages, if any.

13. Counter-Plaintiffs' own acts or omissions caused or contributed to the Counter-Plaintiffs' alleged injuries and damages, if any.

14. Counter-Plaintiffs' alleged damages, if any, were caused or solely caused by the act or acts and conduct of persons and/or entities not a party to this lawsuit.

15. Counter-Plaintiffs' claims are barred by the applicable statute of limitations.

16. Counter-Plaintiffs' claims are barred by the doctrine of waiver.

17. Counter-Plaintiffs' claims are barred by the doctrine of estoppel.

18. Counter-Plaintiffs' claims for damages are too speculative to form the basis of recovery.

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[1] A proceeding under rule 736 must be "automatically abated if, before the signing of the order, notice is filed with the clerk of the court in which the application is pending that respondent has filed a petition contesting the right to foreclose in a district court in the county where the application is pending. A proceeding that has been abated shall be dismissed." TEX. R. CIV. P. 736(10); *Huston v. U.S. Bank Nat. Ass'n,* 359 S.W.3d 679 (Tex.App.–Houston [1st Dist.] 2011).

19. Counter-Defendants plead TEX. CIV. PRAC. & REM. CODE Chapter 32 and Chapter 33, and ask the Court and Jury to consider the relative damages and conduct of the parties and all tortfeasors, and accord Counter-Defendants the full benefit of Chapters 32 and 33 and their subparts. Said Counter-Defendants are entitled to contribution and/or a percentage reduction based upon a determination of the relative fault of all persons, responsible parties, and joint tortfeasors.

IV.
SPECIAL EXCEPTIONS

20. Counter-Defendants specially except to Counter-Plaintiffs' counterclaim and respectfully request the Court order Counter-Plaintiffs to replead and cure its pleading defects as follows:

21. Counter-Defendants specially excepts and objects to paragraphs V and VI of Counter-Plaintiffs' counterclaim because it incorporates documents and exhibits by reference which are prohibited. TEX. R. CIV. P. 59. Counter-Defendants hereby respectfully request the Court order Counter-Plaintiffs to replead without reference to documents and exhibits prohibited by the Texas Rules.

22. Counter-Defendants specially excepts and objects to paragraphs V and VI of Counter-Plaintiffs' counterclaim because it does not give Counter-Defendants fair and adequate notice of the facts upon which Counter-Plaintiffs base their claim for damages. TEX. R. CIV. P. 47(a) (action must be sufficient to give fair notice of claim). Counter-Plaintiffs failed to allege, specify, or identify the cause of action on which they rely. Counter-Plaintiffs' counterclaim is barred by TEX. R. CIV. P. 736(1) because they failed to file a verified application with the Court. Counter-Plaintiffs' counterclaim is barred by TEX. R. CIV. P. 736(2) because they failed to serve notice on Counter-Defendants *via* certified and first class mail. Counter-Defendants are unable

to prepare a defense because Counter-Plaintiffs failed to allege, specify, or identify the cause of action on which they rely. Counter-Defendants hereby respectfully request the Court order Counter-Plaintiffs to replead and specifically identify the cause of action on which they base their claim for damages.

23. Counter-Defendants specially excepts and objects to paragraphs V, VI, and VIII of Counter-Plaintiffs' counterclaim because Counter-Plaintiffs failed to specifically plead the maximum amount of damages claimed, as is required under Rule 47 of the TEXAS RULES OF CIVIL PROCEDURE. *See* TEX. R. CIV. P. 47. Counter-Defendants hereby respectfully request the Court order Counter-Plaintiffs to replead and specifically allege the total amount of damages they seek to recover on their claim.

24. Counter-Defendants specially excepts and objects to paragraph V, VI, and VIII of Counter-Plaintiffs' counterclaim because Counter-Plaintiffs failed to specifically plead the maximum amount of economic damages claimed, as is required under Rule 47 of the TEXAS RULES OF CIVIL PROCEDURE. *See* TEX. R. CIV. P. 47. Counter-Defendants hereby respectfully request the Court order Counter-Plaintiffs to replead and specifically allege the total amount of economic damages they seek to recover.

25. Counter-Defendants specially excepts and objects to paragraph VI, VII, and VIII of Counter-Plaintiffs' counterclaim because Counter-Plaintiffs request a judgment for reasonable and necessary attorney's fees but do not specify the statute or legal authority on which Counter-Plaintiffs rely for recovery of their attorney's fees. Counter-Defendants hereby respectfully request the Court order Counter-Plaintiffs to replead and specifically allege the statute or legal authority on which Counter-Plaintiffs rely for recovery of their attorney's fees.

26. Counter-Defendants specially excepts and objects to paragraph VI and VIII of Counter-Plaintiffs' counterclaim because Counter-Plaintiffs request a judgment for postjudgment interest but does not specify the statute or legal authority on which Counter-Plaintiffs relies for recovery of postjudgment interest. Counter-Defendants hereby respectfully request the Court order Counter-Plaintiffs to replead and specifically allege the statute or legal authority on which Counter-Plaintiffs rely for recovery of postjudgment interest.

27. Counter-Defendants specially excepts and objects to paragraph VII and VIII of Counter-Plaintiffs' counterclaim because Counter-Plaintiffs request a judgment for the costs and expenses of suit but do not specify the statute or legal authority on which Counter-Plaintiffs rely for recovery of the costs and expenses. Counter-Defendants hereby respectfully request the Court order Counter-Plaintiffs to replead and specifically allege the statute or legal authority on which Counter-Plaintiffs rely for recovery of the costs and expenses.

V.
JURY DEMAND

28. Counter-Defendants respectfully request a trial by jury and previously tendered the appropriate fee.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Counter-Defendants pray that Counter-Plaintiffs be required to replead and file an amended counterclaim specifically alleging the issues identified herein, that Counter-Plaintiffs' counterclaim be stricken, that Counter-Defendants go hence with their costs, and for such other and further relief as the Court may deem proper.

Respectfully Submitted,

HUGHES ELLZEY, LLP

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2700 Post Oak Blvd., Suite 1120
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Houston, TX 77056
Telephone (888) 350-3931
Facsimile (888) 995-3335
Email: craft@crafthugheslaw.com

ATTORNEY FOR COUNTER-DEFENDANTS

CERTIFICATE OF SERVICE

By the execution of my signature below, I certify that a true and correct copy of the foregoing document has been served to the following parties on the 3rd day of May, 2012 pursuant to rule 21(a) of the TEXAS RULES OF CIVIL PROCEDURE:

Mr. Thomas D. Pruyn
PRUYN LAW FIRM, PLLC
2616 South Loop West, Ste. 590
Houston, TX 77054
Phone (713) 667-2700
Fax (713) 667-2702
Attorney for Defendants, Wells Fargo Bank N.A., as Trustee For Carrington Mortgage Loan Trust, Tom Croft New Century Mortgage Corporation and Carrington Mortgage Services, LLC

Via Facsimile (713) 667-2702

W. Craft Hughes
E-Mail: craft@crafthugheslaw.com

X2

Defendants' Second Amended Answer & First Amended Counterclaim, filed June 12, 2012

CAUSE NO. 2011-36476

MARY ELLEN WOLF and DAVID WOLF	§	**CIVIL DISTRICT COURT**
	§	
v.	§	**HARRIS COUNTY, TEXAS**
	§	
WELLS FARGO BANK, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates, et al	§	**151st JUDICIAL DISTRICT**

DEFENDANTS' SECOND AMENDED ANSWER AND FIRST AMENDED COUNTERCLAIM

TO THE HONORABLE JUDGE OF SAID COURT:

Come now Defendants, Wells Fargo Bank, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates (for sake of brevity only, "Wells Fargo"), Carrington Mortgage Services, LLC, ("Carrington")[1] and Tom Croft ("Croft") (collectively, "Defendants") and respectfully show as follows:

1.

Defendants generally deny Plaintiffs' material allegations pursuant to Rule 92 of the Texas Rules of Civil Procedure. Defendants also assert the defenses discussed below.

2.

Plaintiffs, Mary Ellen Wolf and David Wolf, ("Plaintiffs") applied for a home equity loan from New Century Mortgage Corporation ("New Century") in 2006.

3.

New Century agreed to loan Plaintiffs $400,000. That $400,000 loan is memorialized by an instrument entitled Texas Home Equity Fixed/Adjustable Rate Note (the "Note" – copy

[1] Wells Fargo and Carrington are also Counter-Plaintiffs.

attached and incorporated as Exhibit 1) in the amount of $400,000 and an instrument entitled Texas Home Equity Security Instrument (the "Deed of Trust" – copy attached and incorporated herein as Exhibit 2). The Deed of Trust provides New Century and its assigns with a first lien on the Plaintiffs' homestead located at 6404 Buffalo Speedway, Houston, Texas 77005, which is more particularly described as:

> The South ½ of Lot Six (6), Block Thirty (30) of West University Place, an addition in Harris County, Texas, according to the Map or Plat thereof recorded in volume 9, Page 13, of the Map Records of Harris County, Texas (together, with the improvements thereon, referred to as the "Property").

4.

Plaintiffs executed and delivered the Note and Deed of Trust to New Century on or about June 15, 2006. The Deed of Trust was filed of record in the Harris County real property records under Clerk's file number Z394249 shortly thereafter.

5.

New Century endorsed the Note in blank (See Exhibit 1) pursuant to Section 3.205(b) of the Texas Business & Commerce Code shortly after the closing of the loan and provided (i.e. assigned) the Note to Wells Fargo, thereby assigning the subject home equity mortgage (including the Note and Deed of Trust) to Wells Fargo, which has been the owner and holder of the Note since that time. At that point, Wells Fargo and its agents had the power to enforce the Deed of Trust and foreclose on the Property because, "... under Texas law, the ability to foreclose on a deed of trust is transferred when the note is transferred, not when an assignment of deed of trust is either prepared or recorded." *Darocy v. Chase Home Finance, LLC,* 2012 WL 840909 *10 (N.D. Tex. 2012) citing *Bittinger v. Wells Fargo Bank NA,* 744 F. Supp. 2d 619, 625 (S.D. Tex. 2010) citing *JWD, Inc. v. Federal Ins. Co.,* 806 S.W.2d 327, 329-30 (Tex. App.—

Austin 1991, no writ); *See also Campbell v. MERS,* 2012 WL 1839357 (Tex. App.- Austin May 18, 2012). Moreover, Texas law does not even require that an assignment of deed of trust be recorded. *See Bittinger,* 744 F. Supp. 2d at 625. As held by the court in *Bittinger:*

> Under Texas law, there is no requirement that the deed of trust assignment be recorded. And under Texas law, the ability to foreclose on a deed of trust is transferred when the note is transferred, not when an assignment of deed of trust is either prepared or recorded. *Bittinger,* 744 F. Supp.2d at 625.

6.

New Century, which retained servicing rights to the Note after it was assigned, subsequently filed for bankruptcy in the United States Bankruptcy Court for the District of Delaware on April 2, 2007 under Case No. 07-10419. Two days later, the Delaware court signed an order providing for the joint administration of 15 related bankruptcies, including New Century, under Case No. 07-10416. A little over a month later, on May 23, 2007, the Delaware bankruptcy court signed an order approving the sale of New Century's servicing business to Carrington Mortgage Services, LLC ("Carrington") and authorized New Century to execute any and all documents, instruments and papers to effectuate the sale to Carrington. New Century subsequently executed a Limited Power of Attorney appointing Carrington as its attorney in fact and authorizing Carrington to execute deeds of trust/mortgage note endorsements, assignments of deed of trust/mortgage, and to do any other act or complete any other document in the normal course of servicing. Wells Fargo also executed a limited power of attorney appointing and authorizing Carrington to act as its attorney-in-fact as to the Note and Deed of Trust.

7.

The transfer of the Deed of Trust to Wells Fargo was subsequently memorialized via an instrument entitled Transfer of Lien and filed in the Harris County real property records under

clerk's file number 20090478521. Plaintiffs allege that the mortgage (and right to foreclose for default) was extinguished/lost because the Note was assigned several years before the Transfer of Lien was executed and filed of record. That contention, sometimes referred to as either a "split the note" or "bifurcation of note and deed of trust" theory, has no merit. *See Campbell v. MERS,* 2012 WL 1839357 (Tex. App.—Austin May 18, 2012).

8.

In *Campbell,* the plaintiffs borrowed $137,837 from AMNET Mortgage. The plaintiffs executed a note payable to AMNET Mortgage and a deed of trust naming MERS as AMNET Mortgage's nominee. The note was endorsed to Wells Fargo in 2004, but the assignment of deed of trust (assigning the deed of trust to Wells Fargo) was not executed or filed until 2008, 4 years later. The plaintiffs in *Campbell* argued (as do Plaintiffs in this case) that the lapse in the assignment of the note and deed of trust acted as a bifurcation of the note and deed of trust rendering the foreclosure provision in the deed of trust unenforceable. The Austin Court of Appeals affirmed a summary judgment for Wells Fargo, holding:

> First, no "bifurcation" of the note and the deed of trust resulted from AMNET's assignment of the note to Wells Fargo. When a mortgage note is transferred, the mortgage or deed of trust is automatically transferred to the note holder by virtue of the common-law rule that "the mortgage follows the note." (citations omitted) ... Therefore, when AMNET transferred the note to Wells Fargo, that transfer also served to transfer the deed of trust to Wells Fargo. *Campbell *4.*

9.

Essentially, Plaintiffs contend that the securitization of loans renders the deeds of trust securing those loans unenforceable, a claim sometimes referred to as the "split the note" theory. That claim/argument has been routinely rejected by virtually every court that has ruled on the issue. *See Cruz v. CitiMortgage, Inc.* 2012 WL 1836095 (N.D. Tex. May 21, 2012); *Bell v. Bank*

of America Home Loan Servicing, LP, 2012 WL 568755 (S.D. Tex. February 21, 2012); *Spositi v. Federal Nat'l Mortgage Ass'n*, 2011 WL 5977319 (E.D. Tex. November 2, 2011); *Leone v. Citigroup, Inc.*, 2012 WL 1564698 (E.D. Mich. May 2, 2012); *In re Williams*, 395 B.R. 33, 47 (S.D. Ohio) (securitization of indebtedness irrelevant to validity of mortgage); *Kuc v. Bank of America*, 2012 WL 1268126 (D. Ariz. April 16, 2012); *Mansour v. Cal-Western Reconveyance Corp.*, 618 F. Supp. 2nd 1178, 1181 (D. Ariz. 2009); *Utah County Recorder v. Lexington Mortgage, Inc.*, 2012 WL 1188460 (D. Utah April 9, 2012); *Federal National Mortgage Assoc. v. Kamakau*, 2012 WL 622169 (D. Hawaii February 23, 2012); *Birkland v. Countrywide Home Loans, Inc.*, 2012 WL 83773 (D. Nev. January 11, 2012); *Ramirez-Alveraez v. Aurora Loan Services, LLC*, 2010 WL 2934473 (E.D. Va. July 21, 2010).

10.

Moreover, Plaintiffs do not have standing to complain or allege that the Note or Deed of Trust were not assigned correctly, timely or appropriately because they were not a party to the assignment or to any pooling and servicing agreement. *See Edwards v. Ocwen Loan Servicing, LLC*, 2012 WL 844396 *5 (E.D. Tex. 2012) citing *Eskridge v. Federal Home Loan Mortgage Corporation, et al*, 2011 WL 2163989 (W.D. Texas, 2011); *McAllister v. BAC Home Loans Servicing, L.P.*, 2011 WL 2200672 (E.D. Tex. 2011); *Allen v. Chase Home Finance, LLC, et al*, Civil Action No. 4:11CV223 (E.D. Tex. June 10, 2011); *Foster, et al, v. Ocwen Servicing, LLC, et al*, Civil Action No. 3:10CV1058 (N.D. Tex. Jul. 26. 2011) *see also Anderson v. Countrywide Home Loans*, 2011 WL 1627945, at *4 (D. Minn. April 8, 2011) and *DeFranceschi v. Wells Fargo Bank, N.A.*, 2011 WL 3875338, at *4 (N.D. Tex. August 31, 2011).

11.

As held by the Eastern District of Texas in *Edwards:*

> ... a mortgagor does not have standing to challenge various assignments of the note or pooling and service agreements because the mortgagor is not a party to the assignments or agreement. *Edwards,* 2012 WL 844396 *5.

12.

In *Anderson,* the plaintiff made the same argument that Plaintiffs make herein (i.e. assignment not in compliance with terms of PSA makes assignment of mortgage invalid). The court in *Anderson* dismissed that claim/argument based on the following reasoning:

> Plaintiffs have cited no authority that an assignment made in contravention of a PSA is invalid. Moreover, Plaintiffs do not have standing to challenge the validity of the assignment to the Trust because they are not parties to the PSA. *See Anderson,* at *4.

13.

In other words, the Note and Deed of Trust were assigned appropriately and validly pursuant to Texas law and pursuant to the terms of any pooling and service agreement that may apply, but (even if they had not been) Plaintiffs have no standing to challenge the timeliness or appropriateness of the assignment(s) because they were not a party to the assignment or the pooling and service agreement.

14.

Plaintiffs defaulted on the Note. Rather than foreclose, Carrington allowed Plaintiffs to enter into a loan modification agreement (the "Loan Mod") that capitalized the past due debt to make the Note current, but left most of the terms the same. The Plaintiffs' execution of the Loan Mod ratified the existence and enforceability of the Deed of Trust.

15.

Plaintiffs defaulted again and, in addition to owing principal and interest, have a severe negative escrow balance. Wells Fargo initiated an expedited foreclosure proceeding pursuant to

Rule 736 of the Texas Rules of Civil Procedure. Plaintiffs filed this suit, so Wells Fargo (per the then existing versions of Rules 735 & 736) filed a counterclaim (discussed in more detail below).

16.

Plaintiffs seek equitable relief. Texas law is well settled that one who seeks equitable relief must do equity and come to Court with clean hands. Plaintiffs have not done so. Plaintiffs have not attempted to pay off their past due amount. Therefore, Plaintiffs are not entitled to equitable relief.

17.

Plaintiffs are not entitled to have a class certified because they cannot meet the prerequisites/elements of either Rule 42(a) or 42(b) of the Texas Rules of Civil Procedure. The differences among various borrowers' alleged claims predominate over any similarities that may exist. Whether or not a note/mortgage was assigned/endorsed (i.e. whether or not Defendants own the note/mortgage for each borrower) are fact specific and based on different facts for each borrower. Moreover, to the extent there are similarities, they are based on the securitization allegations that (as discussed above) Plaintiffs do not have standing to contest. This may be a classic example of a potential "fail safe" class, which is not allowed. In addition, some of the defenses (such as unclean hands) may not be available as to all borrowers.

18.

In short: (i) Wells Fargo owns the Note and Deed of Trust; (ii) Wells Fargo has possession of the original Note; (iii) Plaintiffs have no standing to complain of the assignments of either the Note or Deed of Trust; (iv) Plaintiffs have not come to Court with clean hands and, therefore, are not entitled to equitable relief; and (v) Plaintiffs are not entitled to have a class certified.

First Amended Counterclaim

19.

Wells Fargo and Carrington are Counter-Plaintiffs. Mary Ellen Wolf and David Wolf are Counter-Defendants. Wells Fargo and Carrington incorporate Paragraphs 1-18 herein. Wells Fargo and Carrington seek permission to foreclose pursuant to Rules 735 & 736 of the Texas Rules of Civil Procedure. Alternatively, Wells Fargo and Carrington seek a judicial foreclosure.

20.

As discussed above: (i) Plaintiffs executed the Note and Deed of Trust; (ii) Wells Fargo owns the Note and Deed of Trust; and (iii) Plaintiffs are in default of the Note and Deed of Trust.

21.

Wells Fargo and Carrington provided notice of the default and an opportunity to cure. Plaintiffs did not do so. Wells Fargo and Carrington gave notice of acceleration and accelerated the Note.

22.

All conditions precedent to Counter-Plaintiffs' right to recovery of all relief requested in this proceeding have been performed or occurred prior to the filing of this counter-claim.

Wherefore, Defendants ask that the Court refrain from certifying a class, and, upon final hearing hereof, deny all relief sought by Plaintiffs and adjudge that Plaintiffs take nothing by way of this suit. In addition, Wells Fargo and Carrington ask that the Court enter an Order pursuant to Texas Rules of Civil Procedure 735 and 736 allowing Wells Fargo and Carrington to proceed with a non-judicial foreclosure and sell the Property in accordance with Texas Property Code

Section 51.002. Alternatively, Wells Fargo and Carrington seek a judicial foreclosure of the Property. Defendants seek their costs of Court and all other relief to which they are entitled.

Respectfully submitted,

CRAIN, CATON & JAMES, P.C.

By: 

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Attorneys for Wells Fargo Bank, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates, Carrington Mortgage Services, LLC, and Tom Croft

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served on the following via certified mail, return receipt requested this 12 day of June 2012.

W. Craft Hughes
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2700 Post Oak Blvd., Suite 1120
Galleria Tower I
Houston, Texas 77056
Fax - 888-995-3335

Peter C. Smart

X3

Defendants' Third Amended Answer & Second Amended Counterclaim, filed July 12, 2012

CAUSE NO. 2011-36476

MARY ELLEN WOLF and DAVID WOLF	§	**CIVIL DISTRICT COURT**
	§	
v.	§	**HARRIS COUNTY, TEXAS**
	§	
WELLS FARGO BANK, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates, et al	§	**151st JUDICIAL DISTRICT**

DEFENDANTS' THIRD AMENDED ANSWER AND SECOND AMENDED COUNTERCLAIM

TO THE HONORABLE JUDGE OF SAID COURT:

Come now Defendants, Wells Fargo Bank, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates (for sake of brevity only, "Wells Fargo"), Carrington Mortgage Services, LLC, ("Carrington")[1] and Tom Croft ("Croft") (collectively, "Defendants") and respectfully show as follows:

1.

Defendants generally deny Plaintiffs' material allegations pursuant to Rule 92 of the Texas Rules of Civil Procedure. Defendants also assert the defenses discussed below.

2.

Plaintiffs, Mary Ellen Wolf and David Wolf, ("Plaintiffs") applied for a home equity loan from New Century Mortgage Corporation ("New Century") in 2006.

3.

New Century agreed to loan Plaintiffs $400,000. That $400,000 loan is memorialized by an instrument entitled Texas Home Equity Fixed/Adjustable Rate Note (the "Note" – copy

[1] Wells Fargo and Carrington are also Counter-Plaintiffs.

attached and incorporated as Exhibit 1) in the amount of $400,000 and an instrument entitled Texas Home Equity Security Instrument (the "Deed of Trust" – copy attached and incorporated herein as Exhibit 2). The Deed of Trust provides New Century and its assigns with a first lien on the Plaintiffs' homestead located at 6404 Buffalo Speedway, Houston, Texas 77005, which is more particularly described as:

> The South ½ of Lot Six (6), Block Thirty (30) of West University Place, an addition in Harris County, Texas, according to the Map or Plat thereof recorded in volume 9, Page 13, of the Map Records of Harris County, Texas (together, with the improvements thereon, referred to as the "Property").

4.

Plaintiffs executed and delivered the Note and Deed of Trust to New Century on or about June 15, 2006. The Deed of Trust was filed of record in the Harris County real property records under Clerk's file number Z394249 shortly thereafter.

5.

New Century endorsed the Note in blank (See Exhibit 1) pursuant to Section 3.205(b) of the Texas Business & Commerce Code shortly after the closing of the loan and provided (i.e. assigned) the Note to Wells Fargo, thereby assigning the subject home equity mortgage (including the Note and Deed of Trust) to Wells Fargo, which has been the owner and holder of the Note since that time. At that point, Wells Fargo and its agents had the power to enforce the Deed of Trust and foreclose on the Property because, "... under Texas law, the ability to foreclose on a deed of trust is transferred when the note is transferred, not when an assignment of deed of trust is either prepared or recorded." *Darocy v. Chase Home Finance, LLC,* 2012 WL 840909 *10 (N.D. Tex. 2012) citing *Bittinger v. Wells Fargo Bank NA,* 744 F. Supp. 2d 619, 625 (S.D. Tex. 2010) citing *JWD, Inc. v. Federal Ins. Co.,* 806 S.W.2d 327, 329-30 (Tex. App.—

Austin 1991, no writ); *See also Campbell v. MERS,* 2012 WL 1839357 (Tex. App.- Austin May 18, 2012). Moreover, Texas law does not even require that an assignment of deed of trust be recorded. *See Bittinger,* 744 F. Supp. 2d at 625. As held by the court in *Bittinger:*

> Under Texas law, there is no requirement that the deed of trust assignment be recorded. And under Texas law, the ability to foreclose on a deed of trust is transferred when the note is transferred, not when an assignment of deed of trust is either prepared or recorded. *Bittinger,* 744 F. Supp.2d at 625.

6.

New Century, which retained servicing rights to the Note after it was assigned, subsequently filed for bankruptcy in the United States Bankruptcy Court for the District of Delaware on April 2, 2007 under Case No. 07-10419. Two days later, the Delaware court signed an order providing for the joint administration of 15 related bankruptcies, including New Century, under Case No. 07-10416. A little over a month later, on May 23, 2007, the Delaware bankruptcy court signed an order approving the sale of New Century's servicing business to Carrington Mortgage Services, LLC ("Carrington") and authorized New Century to execute any and all documents, instruments and papers to effectuate the sale to Carrington. New Century subsequently executed a Limited Power of Attorney appointing Carrington as its attorney in fact and authorizing Carrington to execute deeds of trust/mortgage note endorsements, assignments of deed of trust/mortgage, and to do any other act or complete any other document in the normal course of servicing. Wells Fargo also executed a limited power of attorney appointing and authorizing Carrington to act as its attorney-in-fact as to the Note and Deed of Trust.

7.

The transfer of the Deed of Trust to Wells Fargo was subsequently memorialized via an instrument entitled Transfer of Lien and filed in the Harris County real property records under

clerk's file number 20090478521. Plaintiffs allege that the mortgage (and right to foreclose for default) was extinguished/lost because the Note was assigned several years before the Transfer of Lien was executed and filed of record. That contention, sometimes referred to as either a "split the note" or "bifurcation of note and deed of trust" theory, has no merit. *See Campbell v. MERS,* 2012 WL 1839357 (Tex. App.—Austin May 18, 2012).

8.

In *Campbell,* the plaintiffs borrowed $137,837 from AMNET Mortgage. The plaintiffs executed a note payable to AMNET Mortgage and a deed of trust naming MERS as AMNET Mortgage's nominee. The note was endorsed to Wells Fargo in 2004, but the assignment of deed of trust (assigning the deed of trust to Wells Fargo) was not executed or filed until 2008, 4 years later. The plaintiffs in *Campbell* argued (as do Plaintiffs in this case) that the lapse in the assignment of the note and deed of trust acted as a bifurcation of the note and deed of trust rendering the foreclosure provision in the deed of trust unenforceable. The Austin Court of Appeals affirmed a summary judgment for Wells Fargo, holding:

> First, no "bifurcation" of the note and the deed of trust resulted from AMNET's assignment of the note to Wells Fargo. When a mortgage note is transferred, the mortgage or deed of trust is automatically transferred to the note holder by virtue of the common-law rule that "the mortgage follows the note." (citations omitted) ... Therefore, when AMNET transferred the note to Wells Fargo, that transfer also served to transfer the deed of trust to Wells Fargo. *Campbell *4.*

9.

Essentially, Plaintiffs contend that the securitization of loans renders the deeds of trust securing those loans unenforceable, a claim sometimes referred to as the "split the note" theory. That claim/argument has been routinely rejected by virtually every court that has ruled on the issue. *See Cruz v. CitiMortgage, Inc.* 2012 WL 1836095 (N.D. Tex. May 21, 2012); *Bell v. Bank*

of America Home Loan Servicing, LP, 2012 WL 568755 (S.D. Tex. February 21, 2012); *Spositi v. Federal Nat'l Mortgage Ass'n*, 2011 WL 5977319 (E.D. Tex. November 2, 2011); *Leone v. Citigroup, Inc.*, 2012 WL 1564698 (E.D. Mich. May 2, 2012); *In re Williams*, 395 B.R. 33, 47 (S.D. Ohio) (securitization of indebtedness irrelevant to validity of mortgage); *Kuc v. Bank of America*, 2012 WL 1268126 (D. Ariz. April 16, 2012); *Mansour v. Cal-Western Reconveyance Corp.*, 618 F. Supp. 2nd 1178, 1181 (D. Ariz. 2009); *Utah County Recorder v. Lexington Mortgage, Inc.*, 2012 WL 1188460 (D. Utah April 9, 2012); *Federal National Mortgage Assoc. v. Kamakau*, 2012 WL 622169 (D. Hawaii February 23, 2012); *Birkland v. Countrywide Home Loans, Inc.*, 2012 WL 83773 (D. Nev. January 11, 2012); *Ramirez-Alveraez v. Aurora Loan Services, LLC*, 2010 WL 2934473 (E.D. Va. July 21, 2010).

10.

Moreover, Plaintiffs do not have standing to complain or allege that the Note or Deed of Trust were not assigned correctly, timely or appropriately because they were not a party to the assignment or to any pooling and servicing agreement. *See Edwards v. Ocwen Loan Servicing, LLC*, 2012 WL 844396 *5 (E.D. Tex. 2012) citing *Eskridge v. Federal Home Loan Mortgage Corporation, et al*, 2011 WL 2163989 (W.D. Texas, 2011); *McAllister v. BAC Home Loans Servicing, L.P.*, 2011 WL 2200672 (E.D. Tex. 2011); *Allen v. Chase Home Finance, LLC, et al*, Civil Action No. 4:11CV223 (E.D. Tex. June 10, 2011); *Foster, et al, v. Ocwen Servicing, LLC, et al*, Civil Action No. 3:10CV1058 (N.D. Tex. Jul. 26. 2011) *see also Anderson v. Countrywide Home Loans*, 2011 WL 1627945, at *4 (D. Minn. April 8, 2011) and *DeFranceschi v. Wells Fargo Bank, N.A.*, 2011 WL 3875338, at *4 (N.D. Tex. August 31, 2011).

11.

As held by the Eastern District of Texas in *Edwards:*

> ... a mortgagor does not have standing to challenge various assignments of the note or pooling and service agreements because the mortgagor is not a party to the assignments or agreement. *Edwards,* 2012 WL 844396 *5.

12.

In *Anderson,* the plaintiff made the same argument that Plaintiffs make herein (i.e. assignment not in compliance with terms of PSA makes assignment of mortgage invalid). The court in *Anderson* dismissed that claim/argument based on the following reasoning:

> Plaintiffs have cited no authority that an assignment made in contravention of a PSA is invalid. Moreover, Plaintiffs do not have standing to challenge the validity of the assignment to the Trust because they are not parties to the PSA. *See Anderson,* at *4.

13.

In other words, the Note and Deed of Trust were assigned appropriately and validly pursuant to Texas law and pursuant to the terms of any pooling and service agreement that may apply, but (even if they had not been) Plaintiffs have no standing to challenge the timeliness or appropriateness of the assignment(s) because they were not a party to the assignment or the pooling and service agreement.

14.

Plaintiffs defaulted on the Note. Plaintiffs have not made a payment on the Note in several years and, in addition to owing principal and interest, have a severe negative escrow balance. Wells Fargo Carrington and Wells Fargo provided notice of default, an opportunity to cure and accelerated the Note. Wells Fargo initiated an expedited foreclosure proceeding pursuant to Rule 736 of the Texas Rules of Civil Procedure. Plaintiffs filed this suit, so Wells Fargo (per the then existing versions of Rules 735 & 736) filed a counterclaim (discussed in more detail below).

15.

Plaintiffs seek equitable relief. Texas law is well settled that one who seeks equitable relief must do equity and come to Court with clean hands. Plaintiffs have not done so. Plaintiffs have not attempted to pay off their past due amount. Therefore, Plaintiffs are not entitled to equitable relief.

16.

The Note and Deed of Trust were executed on June 15, 2006. Plaintiffs filed this suit on June 19, 2011, more than 5 years later. Plaintiffs' claims are barred by the statute of limitations.

17.

Plaintiffs are not entitled to have a class certified because they cannot meet the prerequisites/elements of either Rule 42(a) or 42(b) of the Texas Rules of Civil Procedure. The differences among various borrowers' alleged claims predominate over any similarities that may exist. Whether or not a note/mortgage was assigned/endorsed (i.e. whether or not Defendants own the note/mortgage for each borrower) are fact specific and based on different facts for each borrower. Moreover, to the extent there are similarities, they are based on the securitization allegations that (as discussed above) Plaintiffs do not have standing to contest. This may be a classic example of a potential "fail safe" class, which is not allowed. In addition, some of the defenses (such as unclean hands) may not be available as to all borrowers.

18.

In short: (i) Wells Fargo owns the Note and Deed of Trust; (ii) Wells Fargo has possession of the original Note; (iii) Plaintiffs have no standing to complain of the assignments of either the Note or Deed of Trust; (iv) Plaintiffs have not come to Court with clean hands and,

therefore, are not entitled to equitable relief; and (v) Plaintiffs are not entitled to have a class certified.

Second Amended Counterclaim

19.

Wells Fargo and Carrington are Counter-Plaintiffs. Mary Ellen Wolf and David Wolf are Counter-Defendants. Wells Fargo and Carrington incorporate Paragraphs 1-18 herein. Wells Fargo and Carrington seek permission to foreclose pursuant to Rules 735 & 736 of the Texas Rules of Civil Procedure. Alternatively, Wells Fargo and Carrington seek an final judgment pursuant Rule 735 allowing Wells Fargo and Carrington to foreclosure under the Deed of Trust and pursuant to Texas Property Code §51.002. Alternatively, Wells Fargo and Carrington seek a judicial foreclosure.

20.

As discussed above: (i) Plaintiffs executed the Note and Deed of Trust; (ii) Wells Fargo owns the Note and Deed of Trust; and (iii) Plaintiffs are in default of the Note and Deed of Trust.

21.

Wells Fargo and Carrington provided notice of the default and an opportunity to cure. Plaintiffs did not do so. Wells Fargo and Carrington gave notice of acceleration and accelerated the Note.

22.

All conditions precedent to Counter-Plaintiffs' right to recovery of all relief requested in this proceeding have been performed or occurred prior to the filing of this counter-claim.

Wherefore, Defendants ask that the Court refrain from certifying a class, and, upon final hearing hereof, deny all relief sought by Plaintiffs and adjudge that Plaintiffs take nothing by way of this suit. In addition, Wells Fargo and Carrington ask that the Court enter an Order pursuant to Texas Rules of Civil Procedure 735 and 736 allowing Wells Fargo and Carrington to proceed with a non-judicial foreclosure and sell the Property in accordance with Texas Property Code Section 51.002. Alternatively, Wells Fargo and Carrington seek a judicial foreclosure of the Property. Defendants seek their costs of Court and all other relief to which they are entitled.

Respectfully submitted,

CRAIN, CATON & JAMES, P.C.

By: 

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served on the following via certified mail, return receipt requested this 11 day of July 2012.

W. Craft Hughes
Hughes Ellzey, LLP
2700 Post Oak Blvd., Suite 1120
Galleria Tower I
Houston, Texas 77056
Fax - 888-995-3335

Peter C. Smart

X4

Excerpts of Trial Transcripts, Volume 6

REPORTER'S RECORD

VOLUME 6 OF 11 VOLUMES

CAUSE NO. 2011-36476

MARY ELLEN WOLF and DAVID WOLF, *Plaintiffs,*	)	IN THE DISTRICT COURT
VS.	)	HARRIS COUNTY, TEXAS
WELLS FARGO BANK, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates, et al, *Defendants.*	)	151ST JUDICIAL DISTRICT

****

TRIAL ON THE MERITS

****

On the 10th day of November, 2015, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Mike Engelhart, Judge Presiding, held in Houston, Harris County, Texas.

Proceedings reported by Certified Shorthand Reporter and Machine Shorthand/Computer-Aided Transcription.

(Jury exits courtroom)

THE COURT: Okay. Well, that's an outcome. That's an outcome.

Well, all right. So like I said, we'll set you for four or five weeks. We'll send out the notice. If you have anything to be heard at that time, if you can't work something out in the interim, then feel free to file it and serve and notice the Court and all parties of your post verdict motions, et cetera.

And please file them far enough in advance so that the other side can meaningfully respond to them so we can have a meaningful hearing on that date and time, if necessary. Okay?

MR. SMART: So the Court will send us notice of a hearing date?

THE COURT: And time. And then you will in response, if you have anything to be heard post verdict, motion for entry of judgment, JNOV, et cetera, you would set it for that date and time and notice the Court and all parties of the hearing at that date and time on that motion. Got it?

MR. HUGHES: Got it.

THE COURT: But like I said, file them sufficiently in advance, please, so that we can take them up and actually rule on them at that time and I'll

have had a chance to review them carefully.

Okay. Anything else?

MR. SMART: No, Your Honor.

MR. HUGHES: That's it, Your Honor.

THE COURT: Good job. I guess we're just getting started on this, then.

MR. HUGHES: That's right, we are. Thank you, Your Honor.

THE COURT: All right. I don't know who to congratulate, honestly. To be honest with you, I really don't. But you both did an excellent job for your clients.

MR. HUGHES: Thank you.

MR. ELLZEY: Thank you.

THE COURT: And I know it's early, but if anybody thinks that mediation now would be valuable, either agree to do that -- and I can appoint somebody if you can't agree. Or one side or the other let me know and I will certainly consider a Motion to Compel mediation as well. Okay?

MR. ELLZEY: Thanks, Judge.

MR. HUGHES: Thank you, Your Honor.

THE COURT: Good luck to you-all.

(Recessed)

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CAUSE NO. 2011-36476

MARY ELLEN WOLF AND DAVID WOLF	§	IN THE DISTRICT COURT OF
	§	
	§	
v.	§	
	§	HARRIS COUNTY, TEXAS
WELLS FARGO BANK, N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST, TOM CROFT, NEW CENTURY MORTGAGE CORPORATION, AND CARRINGTON MORTGAGE SERVICES, LLC.	§	151ST JUDICIAL DISTRICT

PLAINTIFFS' RESPONSE TO DEFENDANTS/COUNTER-PLAINTIFFS' MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND MEMORANDUM OF LAW IN SUPPORT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

RULES

COME NOW Mary Ellen Wolf and David Wolf ("Plaintiffs" or "Wolfs"), by and through their undersigned attorneys, and file this Response to Defendants/Counter-Plaintiffs' Motion for Judgment Notwithstanding the Verdict and Memorandum of Law in Support ("Defendants' Motion"). Plaintiffs respectfully show:

I. INTRODUCTION

Defendants raise the same unsuccessful arguments they've raised over and over again, which have repeatedly been rejected by the Court. The jury's verdict in favor of Plaintiffs should be upheld. Plaintiffs proved their right to relief, and many of the Defendants' objections and arguments have been waived as a matter of law. Plaintiffs request the Court deny Defendants' Motion, grant Plaintiffs' Amended Motion to Disregard Jury Findings and Motion for Judgment Notwithstanding the Verdict, and render judgment in Plaintiffs' favor.

II. BACKGROUND

A. New Century Refinances the Wolfs' Mortgage in 2006

1. On June 15, 2006, the Wolfs refinanced the mortgage on their homestead through a loan from New Century, who loaned the Wolfs $400,000 (the "Note"). DX 2.[1] The Note lists New Century as the lender and provides: "Lender, or anyone who takes this Note by transfer and who is entitled to receive payments under the Note, is called the 'Noteholder.'" *Id.* Thereafter, on June 22, 2006, New Century filed a Deed of Trust in the Harris County Clerk's Office. DX3. The Wolfs have never signed any agreements with Wells Fargo Bank, N.A.[2] 3RR28, 45, 54.

[1] The exhibits at trial will be referred to as DX for Defendants' Exhibits, and PX for Plaintiffs' Exhibits. The transcript will be cited as [vol.]RR[page].

[2] References herein to "Wells Fargo" means Wells Fargo Bank, N.A., as trustee of the Trust unless otherwise specified.

B. The 2006-NC3 Trust

2. On August 1, 2006, Wells Fargo Bank, N.A., New Century, and Stanwich Asset Acceptance Company signed and executed a Pooling and Servicing Agreement ("PSA"). PX13. This PSA created the Carrington Mortgage Loan Trust, Series 2006-NC3 (the "Trust"), with Wells Fargo Bank, N.A. as "Trustee." *Id.*; 4RR83. The PSA identified New Century as the "Servicer" and Stanwich as the "Depositor." PX13; 4RR75-76.

3. According to a Mortgage Loan Purchase Agreement ("MLPA") executed August 10, 2006, between NC Capital Corporation, Carrington Securities, LP, and Stanwich, the loans identified for deposit into the Trust were to be bought, sold, and transferred into the Trust through a specific sequence: *First,* NC Capital would sell the loans to Carrington Securities; *second,* Carrington Securities would sell the loans to Stanwich; *and third,* Stanwich would deposit the loans into the Trust. 4RR75; PX14. No evidence, documents, or testimony showed the Wolfs' mortgage loan as being listed or identified in the MLPA.

4. In PSA Section 2.01, the parties prescribed the method of conveying mortgage loans into the Trust. PX13. That provision states:

> SECTION 2.01 Conveyance of the Mortgage Loans. On the Closing Date, the Depositor [Stanwich] will transfer, assign, set over and otherwise convey to the Trustee [Wells Fargo Bank, N.A.] without recourse, for the benefit of the Certificateholders, all the right, title and interest of the Depositor, including any security interest therein for the benefit of the Depositor, in and to the Mortgage Loans identified on the Mortgage Loan Schedule, the rights of the Depositor under the Mortgage Loan Purchase Agreement, and all other assets included or to be included in REMIC I. Such assignment includes all interest and principal received by the Depositor or the Servicer on or with respect to the Mortgage Loans (other than payments of principal and interest due on such Mortgage Loans on or before the Cut-off Date). The Depositor herewith delivers to the Trustee an executed copy of the Mortgage Loan Purchase Agreement. In addition, on the Closing Date, the Trustee is hereby directed to enter into the Swap Agreement on behalf of the Trust Fund with the Swap Counterparty.

Id.; 4RR77, 117. The PSA prohibited the transfer of any mortgages into the Trust after the Closing Date. PX13; 4RR77.

5. Pursuant to Section 2.01, along with the transfer and assignment of the Mortgage Loans on the Mortgage Loan Schedule, Stanwich was required to deliver and deposit with Wells Fargo Bank, N.A.'s custodian the documents or instruments with respect to each Mortgage Loan so transferred and assigned (in each case, a "Mortgage File"). *Id*. These included, among other things, the original note endorsed in blank or in the following form "Pay to the order of Wells Fargo Bank, N.A., as Trustee under the applicable agreement, without recourse," with all prior and intervening endorsements showing a complete chain of endorsement from the originator to the person so endorsing to the Trustee and the original recorded assignment or assignments showing a complete chain of assignment from the originator to the person assigning the mortgage to the Trustee. *Id.*

6. Section 2.01 required recording of the assignments within ninety days following the "Closing Date" of August 10, 2006, and Wells Fargo Bank, N.A. was responsible for ensuring compliance:

> The Trustee shall enforce the obligations of the Seller under the Mortgage Loan Purchase Agreement to promptly (within sixty Business Days following the later of the Closing Date and the date of receipt by the Trustee of the recording information for a Mortgage, but in no event later than ninety days following the Closing Date) submit or cause to be submitted for recording, at the expense of the Responsible Party and at no expense to the Trust Fund, the Trustee or the Depositor, in the appropriate public office for real property records, each Assignment referred to in Sections 2.01(iii) and (iv) above and the Depositor shall execute each original Assignment or cause each original Assignment to be executed in the following form: "Wells Fargo Bank, N.A., as Trustee under the applicable agreement."

Id. The deadline for recording the assignments under this provision expired November 8, 2006. *Id*.

7. There is a very important reason the PSA requires all mortgages to be transferred into the Trust by the Closing Date: to qualify for tax-exempt status as a Real Estate Mortgage

Investment Conduit ("REMIC") under the Internal Revenue Code. *See* 26 U.S.C. § 860G(d)(1). The mortgages in the Trust would be securitized as "mortgage-backed securities" and then sold to investors. *See id*. As a REMIC, the Trust could receive preferential tax treatment. And investors would be protected from the risk of loss due to bankruptcies filed on behalf of the Trust or by other entities in the chain of title, but only if the Trust satisfied all requirements to attain "REMIC" status. *See id.*; 4RR80-82, 100-102.

8. The parties to the PSA therefore had a compelling reason to specifically require the mortgages be transferred before the Closing Date. The consequences of transferring a mortgage into the Trust after the Closing Date are substantial—"if any amount is contributed to a REMIC after the startup day, there is hereby imposed a tax for the taxable year of the REMIC in which the contribution is received equal to 100 percent of the amount of such contribution." 26 U.S.C. § 860G(d)(1). Any failure to comply with the Internal Revenue Code's requirements for REMICs jeopardizes the Trust's "REMIC" status and thus the loss of the tax benefits. 26 U.S.C. §§ 860A-860G; 4RR79-82; PX13.

C. The Wolfs' Chain of Title Under the PSA

9. On October 20, 2009, a "Transfer of Lien" was filed with the Harris County Clerk's Office concerning the Wolfs' property. PX23. This Transfer of Lien identifies New Century as the "Holder of Note and Lien," "Wells Fargo Bank N.A., as Trustee" for the Trust as the "Transferee," and New Century as the Note payee. *Id.* The Transfer of Lien states it is "To Be Effective 9/30/09." *Id*. It further states it was for "valuable consideration" transferred from "Holder" to the "Transferee," and it is signed by "Tom Croft," as "[VP] of REO" for New Century. *Id.*

D. Evidence supporting the Chapter 12 claim

10. The evidence at trial supported Plaintiffs' Chapter 12 claims.

11. *Defendants' corporate representative (Clayton Gordon) testified, without objection, that if the Plaintiffs' mortgage loan is not in the Trust, then the Trust cannot foreclose on the Wolfs' home.* 5RR14. *Defendants' corporate representative further testified that he believed that the Plaintiffs' note went into the Trust between August 1, 2006 and August 10, 2006 "because that's what the Trust documents say* ***had to happen****."* 5RR60. But the transactions required for Plaintiffs' note to be transferred into the Trust did not occur—late or otherwise. 4RR71, 77-78.

12. First, there was not a sale of the note and a transfer from New Century to NC Capital. 4RR75, 79-80, 89-90; PX14. Second, there was not a sale and transfer from NC Capital to Carrington Securities, LP or to Stanwich, nor a deposit by Stanwich into the Trust. 4RR75, 79-80, 89-90, 124; PX14. *Defendants' corporate representative agreed this was required to transfer the note into the Trust.* 5RR65.

13. Plaintiffs' note was never transferred into the Trust, so as of the closing date of the Trust in August 2006, New Century, one of its later assigns, or another purchaser owned the note. 4RR77, 80-83, 91. This supports the jury's finding that Wells Fargo is not the owner of the note. *See* Jury Verdict at Question 11, pg. 16.

14. New Century went into bankruptcy in April 2007. 4RR95; 3RR52. As part of the bankruptcy, New Century sold its servicing business to Carrington Mortgage Services on May 23, 2007, as reflected by the bankruptcy court's order. DX7; 4RR86, 252; *see also* PX19. New Century divested itself of its assets and ceased to exist as of June 2007. 4RR95.

15. If Carrington merely purchased the servicing business, but New Century still owned the note or the right to service it, then Carrington could collect funds on the note and would be required to turn over the proceeds to the true owner of the note. 5RR55-56. Carrington, however, would not have the authority to transfer the note as a servicer, if that had not already occurred. *See Scott v. U.S. Bank, Nat. Ass'n*, No. 02-12-00230-CV, 2014 WL 3535724, at *4 (Tex. App.—Fort

Worth July 17, 2014, no pet.) (mem. op.).[3] The evidence did not show who currently and legally owns the note, but it definitely is not Wells Fargo, and as of the end of New Century's existence, could not have been New Century either. 4RR83, 136.

16. New Century ceased to exist and was not in existence as of October 5, 2009, and had already sold its assets and servicing business. 4RR93. Tom Croft nevertheless claims to have signed an assignment of and transfer of lien from New Century, who the transfer of lien recites as the owner and holder of the note, to Wells Fargo on October 5, 2009. 4RR136; PX13. This document states on its face that it is "to be effective September 30, 2009." PX13. In fact, Tom Croft inconsistently testified that (1) the transfer of lien was intended to "put the vesting into the Trust" and to "put the mortgage—the vesting into the Trust before initiating foreclosure; but (2) claimed that the note had already been securitized. 4RR157.

17. Although Tom Croft admitted he did not work for New Century, he purportedly signed this document representing that at that time, he was "Vice President of REO" for New Century. PX13; 4RR43, 151. On the date reflected in the transfer of lien, in October 2009, Tom Croft was employed by Carrington Mortgage Services. 4RR151. He *never* worked for New

[3] In *Scott*, the Fort Worth Court of Appeals noted that the transfer of servicing business does not include the right to transfer a note:

> But Kaminski's statements in paragraph thirteen regarding the transfer of the loan to U.S. Bank from AHMSI, purportedly as successor-in-interest to Option One, so as to support the copy of the "Assignment of Deed of Trust/Transfer of Lien"4 attached to Kaminski's affidavit as exhibit 1E, are inconsistent with his statements in paragraph twelve that Option One only assigned the assets constituting the residential mortgage servicing business, including the servicing rights related to the loan, to AHMSI. An assignment of the residential mortgage servicing business, however, would not necessarily include assignment of the loan. Because Kaminski's affidavit is internally inconsistent and there is no documentation corroborating Kaminski's assertion that AHMSI is the successor-in-interest to Option One entitled to transfer the loan to U.S. Bank, standing alone, the affidavit fails to establish the chain of title to U.S. Bank as a matter of law.

See Scott v. U.S. Bank, Nat. Ass'n, No. 02-12-00230-CV, 2014 WL 3535724, at *4 (Tex. App.—Fort Worth July 17, 2014, no pet.) (mem. op.).

Century. 4RR153. In the document, Tom Croft expressly acknowledged and swore that he executed the instrument "in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument." PX13.

18. Thus, Tom Croft presented and filed a document in the Harris County Property records with knowledge that as of the date of the document,

(1) New Century was the holder and owner of the note, when that entity no longer existed. And if, in fact, the note had been transferred into the Trust in 2006, New Century similarly would not have been the holder and owner of the note in 2009, 4RR95, 100, 136; Wells Fargo (as Trustee) should have been the holder and owner of the note in 2009;

(2) he was Vice President of REO for New Century and was acting on behalf of New Century. Tom Croft could not have been the Vice President of REO for New Century because that entity did not exist, and Tom Croft himself admitted he did not work for New Century. 4RR95, 113, 152-53;

(3) that consideration was paid by Wells Fargo to New Century, which Wells Fargo does not even allege and certainly did not prove; and

(4) that the assignment occurred on September 30, 3009, when New Century no longer existed and could not have possibly received any consideration at that time. *See* 5RR20. Moreover, if the Trust were truly he owner of the note, the transfer must

have been effective after August 1, 2006 and before August 10, 2006. 4RR94-95; PX13.[4]

19. In 2009, when Plaintiffs began having trouble paying the note, Carrington offered services to help them get back on track. 3RR25, 28-30; PX22**.** Plaintiffs started the application process with Carrington and turned in their forms on October 13, 2009. 3RR30-32, 33; 4RR177; PX22. Almost immediately after Plaintiffs contacted Carrington to start the process, Carrington and Wells Fargo concocted the fraudulent and misleading transfer of lien in an attempt to correct the defect in the chain of title to allow Wells Fargo to foreclose on the mortgage loan on behalf of the Trust. 4RR73-74, 132-33, 156, 177-78; PX23. Plaintiffs worked with Carrington for five months. 4RR181. Carrington ultimately rejected the application, telling Plaintiffs it never would have considered providing services. 3RR30, 33; PX22. Then it initiated foreclosure proceedings with Wells Fargo. 4RR181-82.

20. The evidence showed it was a common practice of some mortgage companies to have "robo-signers," which Plaintiffs' expert—Marie McDonnell ("McDonnell")—explained were "low-paid staff, uneducated usually, to just simply sign—sit at a table and sign documents. Often they would not be signed in the presence of a notary." 4RR65. She testified that one prominent mortgage company was discovered to have had other people aside from the purported signer sign documents, without authorization, and prepared and recorded over a million documents

[4] While Defendants pointed to PX20, a limited power of attorney signed by the New Century Liquidating Trust, granting Carrington the authority to execute and record assignments, McDonnell testified this document related to the servicing platform for New Century that was sold to Carrington. 4RR111-113; PX20. McDonnell testified that the limited power of attorney would allow Carrington to do anything that New Century could have done as servicer of the Trust pursuant to the PSA. 4RR113. But if the loan was never sold through the process of securitization, and was never deposited into the Trust, the servicer could not act with respect to those loans on behalf of the Trust. 4RR113. Additionally, New Century did not have any ability to make deposits into the Trust; only Stanwich, as depositor under the PSA, had that authority. 4RR122. Finally, the transfer of lien filed in 2009 did not state that Tom Croft was acting on behalf of Carrington, as successor to New Century—it stated that he was acting on behalf of New Century as its VP of REO, which was false. 4RR144; PX23.

all over the country that were "admitted forgeries." 4RR65. McDonnell testified that all the major banks, including Wells Fargo, were the subject of a federal investigation that revealed "a widespread systematic pattern of robo-signing and the creation of documents that were not verified and were not accurate." 4RR66. This resulted in a cease and desist order that included Wells Fargo. *Id.* Furthermore, Tom Croft is an identified robo-signer. 4RR95-100.[5] Thus, Wells Fargo's pattern or practice was to have robo-signers sign documents such as these, often without the knowledge or even consent of the purported signor to affix his name to the document. 4RR65-67; *see also* 4RR94 (McDonnell testifying she found other documents that had been filed by Defendants in county clerks' offices that were fraudulent in Texas and in other states). This establishes the elements of forgery, in addition to the blatant and fraudulent misrepresentations. TEX. R. EVID. 406 ("Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.").

21. Carrington and Wells Fargo conceded Tom Croft was an employee of Carrington, asserted that Carrington and Croft were agents in fact of Wells Fargo, and asserted they intended that Croft execute this document as their agents. 4RR151. Accordingly, they are liable for the fraudulent filing.

22. Carrington and Wells Fargo used the fraudulently-created and filed documents to establish their claim to Plaintiffs' real property, intending to cause and actually causing financial injury. 4RR45-46, 48, 175-76. The document allegedly filed by Carrington, who claims to have been acting as attorney in fact for Wells Fargo, caused confusion of the title, which prevented

[5] Tom Croft did not recall signing the transfer of lien admitted in evidence. 4RR148.

Plaintiffs from selling the home in 2011 and curing any default on the mortgage (once it was determined who to pay). 3RR37-39. Plaintiffs' title company refused to open a title policy. 3RR37-39.[6] Additionally, Plaintiffs were required to disclose the foreclosure proceedings to their real estate agent in their listing document, and that the title was in question. 4RR49. The fraudulent lien filings prevent them from selling their home. 4RR170. Carrington and Wells Fargo were certainly aware that if Plaintiffs attempted to sell the property, their filings would cause the title to be in question, which raises an inference on their intent. DX2 at p. 4; DX3 at p. 11; PX23. Plaintiffs could have made a net profit of $150,000 on the sale of their home; thus, the fraudulent filings caused them financial injury. 4RR45-46, 48, 175-76.

23. Although *someone* is owed money on the note, and Plaintiffs concede they owe money for the refinance of their home, 3RR22; 4RR32-33, Plaintiffs could have avoided this litigation and would made a substantial profit if it were not for Defendants' fraudulent and false filings in the property records, which caused Plaintiffs' damages. Moreover, if another company actually owns the note, but Wells Fargo is paid, Plaintiffs could be required to pay the money twice. 3RR25; 4RR32-33.

24. Plaintiffs suffered extreme mental anguish as a result of Carrington and Wells Fargo's fraudulent filing, and the jury agreed. 3RR58-60, 64-65; 4RR169-73.

[6] While Defendants objected to this testimony and the objection was sustained, the objection came too late. David Wolf had already completely answered the question. 3RR37-38. No request was made to have the jury disregard the testimony; accordingly, no error in admitting the statement has been preserved. 3RR37-38; TEX. R. APP. P. 33.1(a); *Pool v. State Hwy Dep't*, 256 S.W.2d 168, 171 (Tex. Civ. App.—Fort Worth 1953, writ dism'd) ("[T]estimony before the jury before objection thereto is made and sustained is still before them until they are instructed not to consider it."); *see also In re G.C.F.*, No. 02-06-00282-CV, 2007 WL 1018570, at *8 (Tex. App.—Fort Worth Apr. 5, 2007, no pet.) (mem. op.) (holding that appellant failed to obtain an adverse ruling as to objectionable questioning by the State by failing to request an instruction to disregard).

E. Who holds the note?

25. The evidence was unclear as to who is the true "holder" of the note and who was entitled to foreclose.

26. McDonnell testified that even though she had been retained as an expert in 2012, she had never seen the original note. 4RR83. She testified that under New York law, the note had to be negotiated according to the PSA; otherwise, Wells Fargo could not legally possess the note. 4RR85. She testified that for the Trust to possess the note, and therefore be the "holder" of the note, physical delivery was required prior to the closing date. 4RR138. She testified that never happened. 4RR138. McDonnell explained that to establish proof of delivery, the evidence would have to come from Deutsche Bank National Trust Company ("Deutsche Bank"), who is the document custodian for the Trust. 4RR138. She opined that Deutsche Bank would have a log of when the note was placed into custody, who had signed it out, and notation of a request for a release from Deutsche Bank's vault. 4RR139. Additionally, McDonnell testified that when she asked counsel for Defendants how he received the note, he told her that Carrington delivered it to him. 4RR126.

27. Clayton Gordon ("Gordon") appeared as a corporate representative for both Carrington and Wells Fargo. 4RR216, 43. Gordon testified that he is employed by Carrington, 4RR219, and that the original note from Plaintiffs to New Century was endorsed in blank. 4RR221. Gordon also testified the deed of trust was endorsed in blank. 4RR229.

28. Gordon testified that the original notes, deeds of trust, assignments, and original title policies are kept in what's called the "collateral file." 4RR225; 5RR35. While he testified he had seen it and it was present in the courtroom, 4RR225, he was unable to clearly tell the jury how the note came to be in the possession of Defense counsel, who represented both Carrington and Wells Fargo.

29. Gordon first testified that the original documents came from the "document custodian," Deutsche Bank. 5RR22. He testified it would have been delivered to "our office" and then sent *via* FedEx to "our counsel" in Texas. 5RR22. He did not have a FedEx tracking number or the purported "customer notes," which could have proved who requested and received the original collateral file from the document custodian. 5RR23. He did not know who contacted Deutsche Bank, or who was contacted at Deutsche Bank. 5RR23.

30. While Gordon said the originals of these documents were in "our collateral file," he did not identify on whose behalf he was speaking or in what capacity. 5RR23. While Gordon later testified Wells Fargo had the right to foreclose the note because Wells Fargo has the original note, indeed, the evidence raised the possibility Carrington was actually in possession of the note, someone else actually owns the note, and Carrington was servicing it for someone else as a result of its purchase of New Century's servicing business. 5RR47, 61, 72. Gordon's testimony was confusing, at best: when asked if the note was transferred into the Trust, he stated: "We wouldn't have the collateral file here today if Wells Fargo Bank, as trustee for this loan Trust, had ownership of it and it was stored at the collateral file offices of Deutsche Bank." 5RR50.

III. ARGUMENT

31. Defendants go to great lengths attempting to defeat Plaintiffs' ability to recover, recycling and rehashing the same arguments this Court has repeatedly rejected. This Court can make short shrift of their arguments. Plaintiffs will not repeat all the reasons that Defendants are wrong, as the Court has heard those all before.[7] Plaintiffs will attempt to address any new

[7] Plaintiffs incorporate the legal arguments made in Plaintiffs' Response to Defendants' Motion for Summary Judgment and Plaintiffs' Objections and Motion to Strike Defendants' Summary Judgment Evidence filed September 24, 2012; Plaintiffs' Response to Defendants' Motion to Reconsider Defendants' Motion for Summary Judgment filed December 9, 2012. Plaintiffs urge the Court to adopt the logic of its reasoned decision on March 22, 2013, in its Order on Defendants' Motion to Reconsider Defendants' Motion For Summary Judgment.

arguments raised by Defendants and additional reasons for upholding the jury's verdict that arose in the course of the trial.

A. Plaintiffs are entitled to assert violations of the PSA, not as a cause of action, but solely as evidentiary support to prove the fraudulent nature of Defendants' filings.

32. Defendants first contend, as they have numerous times before, that Plaintiffs lack "standing" to assert violations of the PSA and that therefore, the Transfer of Lien Defendants filed in October 2009 does not violate Chapter 12. *See* Defendants' JNOV motion at 10-14. Now, however, Defendants contend that the "standing" they are challenging is not "standing in the jurisdictional sense," but "capacity." *Id.* at 11 ("As a result, a party seeking to enforce a contract must show 'both' that it has jurisdictional 'standing' and that it has the 'capacity' to allege violations of the contract."). Defendants claim that (1) Plaintiffs lack capacity to challenge the violations of the PSA because they are not parties or third-party beneficiaries, and any claims raising violations of the PSA belong only to the parties or third-party beneficiaries, *id.* at 11; and (2) Plaintiffs lack capacity to challenge the validity of the assignments because only the parties to an assignment have that right. *Id.* at 12.

33. There are two glaring problems with this new characterization of their arguments: Defendants did not file a verified denial under Texas Rule of Civil Procedure 93(2), and further did not object to the lack of or request a jury question on "capacity." Accordingly, they have waived their argument.

34. Nevertheless, Defendants' contention that New York law has changed and is no longer in Plaintiffs' favor is incorrect—while the Superior Court's decision in *Erobobo* was reversed, the holding of the appeals court on which Defendants' rely was not a holding at all, but dicta. Accordingly, under New York law, Plaintiffs *do* have both jurisdictional standing and "capacity" to challenge the violations of the PSA. And in any event, Plaintiffs have proven that

any assignment was void, and obtained a jury finding in that regard. *See* Jury Verdict at 17 (Question 12).

35. Moreover, it is beyond dispute that Plaintiffs have jurisdictional standing, as many courts have held, as even the "barest competing claim to real property" can cause a sufficiently concrete injury to support jurisdictional standing. *Vazquez v. Deutsche Bank Nat. Trust Co.*, 441 S.W.3d 783, 786-87 (Tex. App.—Houston [1st Dist.] 2014, no pet.). Under all the applicable legal theories, Plaintiffs are entitled to recover under Chapter 12.

1. Defendants waived their "capacity" argument.

36. Defendants waived their argument as to Plaintiffs' capacity to recover by failing to file a verified denial. Specifically, Rule 93 requires certain pleadings to be verified by affidavit:

> A pleading setting up any of the following matters, unless the truth of such matters appear of record, shall be verified by affidavit.
>
> . . . .
>
> (2) That the plaintiff is not entitled to recover in the capacity in which he sues, or that the defendant is not liable in the capacity in which he is sued.

TEX. R. CIV. P. 93(2) (emphasis added). This rule is not limited to a challenge to a party's purported ability to represent another party—"The rule means just what it says." *Pledger v. Schoellkopf*, 762 S.W.2d 145, 146 (Tex. 1988).

37. Defendants' live pleading is their Fourth Amended Answer and Counterclaim ("Defendants' Answer") filed on August 27, 2015. *See* Exhibit A. Defendants' Answer contains a general denial, counterclaim, and numerous affirmative defenses asserting the Plaintiffs cannot recover in their capacity of borrowers. *See* Exhibit A at pp. 5-6.

38. In Defendants' Answer, they claim the Plaintiffs cannot recover in their capacity of borrowers because Plaintiffs "are not a party to, or third-party beneficiary of, the PSA or any other documents creating the mortgage trust" and "only the assignor would have standing to complain."

See Exhibit A at pp. 5-6. However, Defendants failed to comply with Rule 93 because they never filed a verified answer denying the Plaintiffs can recover in their capacity of borrowers. Therefore, Defendants waived their right to raise the capacity issue post-verdict and in any appeal that might ensue because they failed to file the requisite verified pleading. *See* TEX. R. CIV. P. 93(2); *Lutich v. Puett*, 694 S.W.2d 452, 453 (Tex. App.—Eastland 1985, no writ).[8]

39. A challenge to capacity must be raised by verified pleading in the trial court. TEX. R. CIV. P. 93(2); *see Sixth RMA Partners, LP v. Sibley*, 111 S.W.3d 46, 56 (Tex. 2003). "[I]f a verified denial is filed, the issue of the plaintiff's capacity to sue is controverted, and the plaintiff bears the burden of proving at trial that he is entitled to recover in the capacity in which he has filed suit." *See Republic Petroleum LLC v. Dynamic Offshore Res. NS LLC,* No. 01-14-00370-CV, 2015 WL 5076700, at *5 (Tex. App.—Houston [1st Dist.] Aug. 27, 2015, pet. filed); *Damian v. Bell Helicopter Textron, Inc.*, 352 S.W.3d 124, 141 (Tex. App.—Fort Worth 2011, pet. denied).

40. However, if a Defendant *does not* verify a denial of the Plaintiffs' capacity to recover, in its answer, the plaintiffs' right to recover in the capacity in which he has filed suit is established and any objection or complaint is waived. *Pledger*, 762 S.W.2d at 146 ("We hold that Pledger is entitled to recover in this case because of the failure of Schoellkopf and Hunt to comply with Rule 93(2). Schoellkopf and Hunt thereby waive their right to complain."); *Nguyen v. Zanowiak*, No. 14-96-00904-CV, 1998 WL 285982, at *3 (Tex. App.—Houston [14th Dist.] June

[8] Defendants verified their answer, however, they did not verify the paragraphs asserting the Plaintiffs' lack of capacity to recover as borrowers. Exhibit A at 13. The verification, signed by Defendants' Counsel, refers to "section 32," which states in a single paragraph:

> Therefore, to the extent Plaintiffs' claims are based on servicing issues, Wells Fargo, as Trustee of the Mortgage Trust, contends that it is not liable in the capacity in which it is being sued.

Id. at 10. This paragraph refers to Wells Fargo's lack of servicing of the note, not Plaintiffs' capacity as a borrower. Accordingly, the verification is ineffective to put Plaintiffs' capacity in issue.

4, 1998, pet. denied) (not designed for publication) ("Moreover, even if Nguyen had failed to include any claims for personal property, Zanowiak's assertion in his summary judgment motion that the cause of action brought by Nguyen is owned by another party was waived at trial and on appeal. . . . Here, Zanowiak failed to file a verified denial of Nguyen's capacity to bring suit as part of his answer."); *Nine Greenway Ltd. v. Heard, Goggan, Blair & Williams*, 875 S.W.2d 784, 787 (Tex. App.—Houston [1st Dist. 1994, writ denied). It does not matter if the issue is raised or pleaded in an answer or otherwise; the verification must be present and it must verify a denial of the specific disputed issue in the answer. *See, e.g., Lutich*, 694 S.W.2d at 453; *Barcroft v. Apex Holdings, Ltd.*, No. 05-95-01453-CV, 1996 WL 743626, at *4-5 (Tex. App.—Dallas Dec. 31, 1996, no pet.) (not designated for publication).[9] There can be no dispute that Defendants failed to comply with Rule 93. Their challenge to "capacity" was waived.

[9] Plaintiffs expect, however, that Defendants will claim that whether a denial of a plaintiffs' third-party beneficiary status must be verified is not settled, and will cite *Basic Capital Mgmt., Inc. v. Dynex Commercial, Inc.*, 348 S.W.3d 894, 899 & n.11 (Tex. 2011). Notably, the Supreme Court did not have to reach the issue because it was tried by consent during summary judgment proceedings, resulting in a ruling that actually preserved the error—the plaintiff in that case filed a motion for partial summary judgment asserting it had capacity to sue as a third-party beneficiary, and the trial court granted that motion pretrial. *Id.* at 897-99. The trial court then precluded any mention at trial of the capacity issue at trial, but later granted a judgment notwithstanding the verdict for defendants. *Id.* The Supreme Court held that the adverse ruling on the summary judgment preserved the issue, where plaintiffs did not object to the lack of verification during the summary judgment proceeding, and tried the issue by consent to a favorable ruling that completely precluded the issue from being raised at trial. *Id.*

That is not what happened here. While summary judgment was filed by Defendants, there was no ruling that prevented the issue from being properly raised by Defendants at trial. A denial of a summary judgment preserves nothing for appeal. Thus, *Basic Capital* has no bearing on this Court's decision.

Moreover, as the Texas Supreme Court noted in *Basic Capital*, "[t]he purpose of requiring that certain matters be denied by verified pleadings or waived is to eliminate from trial issues not seriously contested." *Schoellkopf v. Pledger*, 739 S.W.2d 914, 921 (Tex. App.—Dallas 1987), *rev'd*, 762 S.W.2d 145 (Tex. 1988). Interestingly, as noted previously, Defendants' corporate representative testified, without objection, that if the Plaintiffs' mortgage loan is not in the Trust, then the Trust cannot foreclose on the Wolfs' home. 5RR14. Thus while Defense counsel may have intended to contest the issue, his own corporate representative testified that Wells Fargo had to comply with the PSA to be able to enforce the note and foreclose was not actually disputed. 5RR14.

41. Even if a verified denial is filed, however, the issue can be waived at trial by the Defendants' failure to object or request findings on that issue in the jury charge. If the questions submitted to the jury assume the plaintiff has capacity and the defendant does not object to the absence of any questions, definitions, or instructions on capacity, the defendant waives its right to appellate review of the issue. *Damian*, 352 S.W.3d at 141-42.

42. Had a verified denial been filed, the capacity issue in the present case would be similar to the recent case of *Republic Petroleum* out of the 1st Court of Appeals. *Republic Petroleum LLC*, 2015 WL 5076700, at *5. In *Republic Petroleum*, court found that the defendants "verified their pleading alleging that Republic LLC lacked the capacity to sue under the PHA, and therefore, complied with this requirement." *Id.* The jury charge contained questions that assumed Republic LLC's capacity to sue under a Production Handling Agreement on behalf of working interest owners, and to which Republic itself was no longer a party, and did not contain a question that specifically asked or instructed the jury about Republic LLC's capacity to bring suit. *Id.* at *5-6 (emphasis added). The platform owners neither objected to the absence of a question regarding capacity nor proffered one of their own. *Id.* at *6. Accordingly, the First Court of Appeals held that the platform owners waived their challenge to the lack of an independent finding regarding capacity. *Id*. (emphasis added).

43. In the present case, Question 1 of the Jury Charge *assumed* Plaintiffs had the capacity to recover damages under Chapter 12 although they asserted violations of the PSA as the basis for that statutory claim. *See* Jury's Verdict at p. 5. Defendants neither objected to the absence of a question regarding capacity to recover nor proffered one of their own. *See* Exhibit B, Transcript of the Charge Conference. Rather, Defendants merely objected that the evidence was legally insufficient to support the finding that Defendants violated Chapter 12, which is not sufficient. *Id.*

2. Plaintiffs have "standing" and "capacity" to recover under Chapter 12, even if they challenge Defendants' failure to comply with the PSA in the process.

44. It cannot be emphasized enough: Plaintiffs are not suing for damages for breach of the PSA. Plaintiffs' claims are for violations of Chapter 12's prohibition on making, presenting, and filing a document with knowledge that the document is a fraudulent lien or claim against real property or an interest in real property. TEX. CIV. PRAC. & REM. CODE § 12.002(a). The violations of the PSA are merely evidence of why the documents were patently false on their face, and the damages caused by the fraudulent filings are independent of the foreclosure, as explained more fully below.[10] Plaintiffs are not trying to escape paying for their home, but the fraudulent filings in the deed records have caused confusion as to who owns and is entitled to payment under the note, and who is entitled to enforce the note. This, in turn, has prevented Plaintiffs from selling their home to avoid foreclosure and *this lengthy litigation*, and has caused emotional distress and the expenditure of attorney fees.[11]

45. Nevertheless, Defendants are simply wrong. "Standing exists for challenges that contend that the assigning party never possessed legal title and, as a result, no valid transferable interest ever exchanged hands." *Woods v. Wells Fargo Bank, N.A.*, 733 F.3d 349, 354 (1st Cir. 2013).[12] That is exactly what Plaintiffs proved. At the time of the purported assignment, New

[10] *See Aurora Loan Servs. LLC v. Scheller*, No. 2009–22839, 2014 WL 2134576, at *3-4 (N.Y. Sup. Ct. 2014).

[11] It is not hard to imagine the problems that have arisen from the fraudulent filings, which David Wolf testified he experienced when attempting to sell the property. Plaintiffs' title company refused to open a title policy. 3RR37-39. Additionally, Plaintiffs were required to disclose the foreclosure proceedings to their real estate agent in their listing document, and that the title was in question. 4RR49. *See* TEX. PROP. CODE ANN. §§ 13.001-13.002 (providing the effects of recording). Because of the fraudulent filings, a diligent title company would not be able to determine the chain of title of the note or the deed of trust: it would not be able to accurately determine who owned the note, who would be servicing the note, who the debt would ultimately be owed to, and who could later bring suit to collect for a deficiency in the payments regardless of the filings. *Aurora*, 2014 WL 2134576, at *4.

[12] Defendants argue that Plaintiffs did not obtain a specific fact finding that the note was not properly

Century did not and could not have been the owner of the note because it was in bankruptcy. Moreover, no deposit could have ever been made into the Trust because New Century did not transfer the note to NC Capital, who then never transferred the note to Stanwich.

46. At the very least, Plaintiffs are entitled to challenge an assignment that is void. New York law governs the PSA and the terms of Wells Fargo's acquisition, possession, and *ability to acquire and possess* the note and deed of trust. *See* PX13 at § 13.04. Contrary to Defendants' argument, the New York state courts have *not decided* conclusively that an assignment to a trust in violation of the trust agreement is voidable only, under "materially identical" circumstances. *See* Defendants' JNOV at 13 & n.7.[13] And Defendants' string-cite of cases *are not* in the context

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assigned into the Trust. *See* Defendants' JNOV motion at 14 n. 9. They claim that the finding in Question 13 that Defendants violated the PSA is too vague and indefinite to support any recovery. However, Defendants did not object to Question 13 during the charge conference, did not request any additional instructions, and did not propose any additional jury questions. 5RR92-93. Accordingly, their challenge to the lack of an instruction or question on assignment and to the form of the question is waived. TEX. R. CIV. P. 278 ("Failure to submit a question shall not be deemed a ground for reversal of the judgment, unless its submission, in substantially correct wording, has been requested in writing and tendered by the party complaining of the judgment; provided, however, that objection to such failure shall suffice in such respect if the question is one relied upon by the opposing party. Failure to submit a definition or instruction shall not be deemed a ground for reversal of the judgment unless a substantially correct definition or instruction has been requested in writing and tendered by the party complaining of the judgment.").

[13] In *Bank of New York Mellon v. Gales*, 116 A.D.3d 723 (N.Y. Sup. Ct. App. Div. 2014), the Bank of New York Mellon filed a mortgage foreclosure action against defendants Traci Gale and Germaine Gales. The trial court granted the bank's motion for summary judgment and defendants appealed. The appellate court reversed, stating the bank "did not submit sufficient evidence to demonstrate that it [the bank] had standing to commence this action." *Id.* at 724. Specifically, the appellate court held that "the evidence submitted by the plaintiff [bank] in support of its motion did not demonstrate that the note was physically delivered to it prior to the commencement of the action, and the plaintiff [bank] similarly failed to submit a written assignment of the note. *Id.* at 724-25. The court also affirmed denial of defendants' motion to dismiss the complaint because defendants "did not have standing to assert noncompliance with the subject lender's PSA." *Id.* at 725.

In *Bravo v. MERSCORP, Inc.*, No. 1:12–CV–884, 2013 WL 4851697 (E.D.N.Y. Sept. 10, 2013), the federal court dismissed a *pro se* plaintiff's claim under the Fair Debt Collection Practices Act ("FDCPA"). This case is inapplicable and unrelated to the present case. None of the claims, defenses, or issues in the *Bravo* case are the same. The only remotely relevant part of the opinion in *Bravo* is an obscure footnote (6) relating to an exception in the legislative history of the FDCPA.

In *Tamir v. Bank of New York Mellon*, No. 12–CV–4780, 2013 WL 4522926 (E.D.N.Y. Aug. 27, 2013),

of a *jury verdict* under Chapter 12; most, if not all, are motions to dismiss based on the pleadings—a remedy that Texas only recently provided. *See* TEX. R. CIV. P. 91a.

47. In reality, the federal cases Defendants cite are made by various courts *guessing* as to what the New York Court of Appeals will say is New York law, and are *directly contrary* to the plain and unambiguous text of the New York Estates, Powers, and Trusts statutes. Moreover, in this case, the evidence showed not just a failure to document a transfer, but a complete failure to transfer a note into the Trust. But more importantly, the Chapter 12 claim is based on *misrepresentations* in the documents that were filed, which caused damages independent of the obligation to pay the note. That fact distinguishes this case from all the cases cited by Wells Fargo—if Wells Fargo does not own the note *at all* because it was *never* transferred into the Trust, then there is a break in the chain of title that Plaintiffs are absolutely entitled to raise to demonstrate that the liens purporting to cure that chain of title are fraudulent under Chapter 12. *Woods*, 733 F.3d at 354.

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the plaintiff filed an action seeking cancellation of her mortgage and alleging violations of the Truth in Lending Act ("TILA"). Plaintiffs in the present case did not seek cancellation of their mortgage and did not file any claims for violations of TILA. In *Tamir*, the court found that "plaintiff's allegations attempt to transform hypothetical defenses to a foreclosure action into substantive claims for relief, even though no foreclosure proceeding has been commenced or threatened." *Tamir v. Bank of New York Mellon*, 2013 WL 4522926, at *4 (E.D.N.Y. Aug. 27, 2013). Conversely, the present case began when Defendants commenced foreclosure proceedings against Plaintiffs.

In *Karamath v. U.S. Bank, N.A.*, No. 11–CV–1557, 2012 WL 4327613 (E.D.N.Y. Aug. 29, 2012), the plaintiff alleged she was the victim of a predatory lending scheme and sought damages related to the solicitation, origination, processing, underwriting, closing and funding of two mortgage loans and notes. *Id.* at *1. The plaintiff also sought to have the assignment of her mortgage set aside. *Id.* at *7. Plaintiffs in the present case make no such allegations and are not seeking to have an assignment of their mortgage "set aside."

In *U.S. Bank, N.A. v. Madero*, 2012 WL 5893625 (N.Y. Sup. Ct. 2012), U.S. Bank filed a mortgage foreclosure action against defendants Miguel and Martha Madero. The trial court granted the U.S. Bank's motion for summary judgment, and defendants appealed. The appellate court reversed because U.S. Bank relied on hearsay evidence in support of its motion for summary judgment. The court reasoned that "Since the motion [of U.S. Bank] was predicated on evidence that was not in admissible form, the plaintiff [U.S. Bank] failed to establish its prima facie entitlement to judgment as a matter of law." The *Madero* case is not even remotely on point with the claims, defenses, and issues in the present case.

a. New York Law expressly precludes and holds as void sales, conveyances, or other acts by a Trustee in contravention of a Trust.

48. Despite all Defendants' protestations, Plaintiffs at the very least have the right to challenge an assignment of their note and deed of trust if it is void. *Vazquez*, 441 S.W.3d at 786-87; *see also Reinagel v. Deutsche Bank Nat. Trust Co.*, 735 F.3d 220, 225 (5th Cir. 2013).[14] Under New York law, the transfers were void, and the trustee had no ability to own or be the "holder" of the note.[15]

49. New York Estate Powers and Trusts Law Section 7-2.4 specifically states that: "[i]f the trust is expressed in the instrument creating the estate of the trustee, every sale, conveyance or other act of the trustee in contravention of the trust, except as authorized by this article and by any other provision of law, is void." N.Y. EST. POWERS & TRUSTS LAW § 7-2.4.[16] Interestingly, under

[14] Defendants make the ludicrous argument that while a person *defending* a foreclosure action by an assignee can raise a void assignment as a defense, a person *bringing claims* against a purported assignee cannot challenge even a void assignment. Defendants' Motion for JNOV at 17. If that were true, it would render Chapter 12 meaningless. Under that logic, a person could file as many fraudulent assignments of a note or lien as it wanted, causing substantial financial harm to the property owner. But that person would be effectively immune from liability unless he or she filed a foreclosure suit or sued on the instrument. Seeking to foreclose on the document filed in the property records is not a requirement of Chapter 12. *See* TEX. CV. PRAC. & REM. CODE § 12.002. And, the First Court of Appeals has rejected this argument. *Vazquez v. Deutsche Bank Nat. Trust Co.*, 441 S.W.3d 783, 787 (Tex. App.—Houston [1st Dist.] 2014, no pet.) (citing *Reinagel v. Deutsche Bank Nat. Trust Co.*, 735 F.3d 220, 225 (5th Cir. 2013) ("A contrary rule would lead to the odd result that Deutsche Bank could foreclose on the Reinagels' property though it is not a valid party to the deed of trust or promissory note, which, by Deutsche Bank's reasoning, should mean that it lacks "standing" to foreclose.").

[15] New York law governs the PSA and the terms of Wells Fargo's acquisition, possession, and *ability to acquire and possess* the note and deed of trust. *See* PX13 at § 13.04 (providing "THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE SUBSTANTIVE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED IN THE STATE OF NEW YORK AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HERETO AND THE CERTIFICATEHOLDERS SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF (OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAWS).")

[16] Like Texas, New York determines legislative intent from a statute's plain language, construing the language "according to its natural and most obvious sense, without resorting to an artificial or forced construction." MCKINNEY'S STATUTES § 94; *see Samiento v. World Yacht Inc.*, 854 N.Y.S.2d 83, 86-87

the Texas Trust Code, a court has the authority to "void" an act of a trustee that was done in breach of the trust. TEX. PROP. CODE ANN. § 114.008(9).

50. Defendants string cite numerous cases from other jurisdictions purporting to hold that only a party to the trust agreement has "standing" to raise the voidness of a trustee's act. However, that creates completely circular logic in this case. Defendants claim that Plaintiffs have capacity to challenge an assignment only if it's void, but in the same breath claim that Plaintiffs don't have standing to assert voidness of the trustee's actions relating to an assignment because they are not parties to the contract. Defendants cannot have it both ways. New York statutory law clearly voids the acts of a trustee in contravention of a trust, and that is all that is required for Plaintiffs to challenge the assignment.

51. At least one court in New York, applying New York law to nearly identical facts, has agreed with this analysis. And contrary to Defendants' claims, that holding has not been overruled.

52. In *Wells Fargo Bank, N.A. v. Erobobo*, Wells Fargo brought a suit to foreclose on a note that was allegedly securitized into a trust in 2006 (as here). *Wells Fargo Bank, N.A. v. Erobobo*, No. 31648/2009, 2013 WL 1831799, at *2, 7-8 (N.Y. Sup. Ct. App. Div. 2013) *rev'd*, 127 A.D.3d 1176 (N.Y. App. Div. 2015) ("*Erobobo I*"). Wells Fargo, as trustee of the Trust, moved for summary judgment because it was "in possession of the note and mortgage at the time the action was filed." *Id.* at *2. The facts were similar: the PSA in that case required transfer of mortgages into the trust by the Depositor and be delivered to the trustee before a closing date, and

(N.Y. Ct. App. 2008). In Section 7-2.4, the New York Legislature used the broadly inclusive phrase "every act" to describe actions that would be void if not made in accordance with the trust. N.Y. EST. POWERS & TRUSTS LAW § 7-2.4. In the most obvious sense, receiving an assignment and holding an asset is an "act," and would be included in the broad phrase "every act." *See Wells Fargo Bank, N.A. v. Erobobo*, 2013 WL 1831799, at *2, 7-8 (N.Y. Sup. Ct. 2013) *rev'd*, 127 A.D.3d 1176 (N.Y. App. Div. 2015).

the evidence showed that the assignment to the trustee was executed by the Servicer well after the closing date. *Id.* at *1. Erobobo, the homeowner, filed a general denial to the claims and did not specifically contest that Wells Fargo was entitled to foreclose. *Id.* at *2. Wells Fargo asserted this meant that Erobobo could not contest its right to foreclose. *Id.*

53. The Supreme Court of Kings County New York held, first, there is a distinction between capacity and standing, and noted that capacity could be waived while "standing" is jurisdictional. *Id.* at *3-4. The court held that whether Wells Fargo had the right to foreclose was not a "capacity" issue, and therefore, was not waived by Erobobo's general denial. *Id.* It further held that the "standing" that Erobobo challenged was not in a jurisdictional sense, which in New York could also be waived, but rather a mere allegation that Wells Fargo had not proven the elements of its claim. *Id.* at *5. Because Wells Fargo had the burden to prove that it owned the note and mortgage and had the right to foreclose, Erobobo put those matters in issue by filing a general denial. *Id.* at *5-6.

54. In Erobobo's response to Wells Fargo's motion for summary judgment, he argued that Wells Fargo was not entitled to summary judgment because it did "own the note and mortgage, because the purported transfer to Plaintiff was void as it violated the terms of the PSA which governs acquisitions by the Trust." *Id.* at *7. The court held that the trust was a REMIC trust under the Internal Revenue Code, and the terms of the trust specifically prohibited the trustee from jeopardizing the trust's tax-exempt status. *Id.* It also held that the PSA required the Depositor (in that case, Asset Backed Funding Corporation, to have "transferred all of the interest in the mortgage notes to the Trustee on behalf of the trust as of the closing date." *Id.* However, the assignment was dated almost two years after the closing date. *Id.* The court further noted that the trust "specifically prohibits the acquisition of any asset for a REMIC part of the fund after the closing date unless the party permitting the acquisition and the NIMS (net interest margin

securities) Insurer have received an Opinion letter from counsel, at the party's expense, that the acceptance of the asset will not affect the REMIC's status," but "[n]o such letter has been provided to show compliance with the requirements of the PSA." *Id.* Thus, the court concluded that the trustee violated the terms of the PSA. *Id.*

55. The court then cited New York Estate Powers and Trusts Law Section 7-2.4 and held that "the acceptance of the note and mortgage by the trustee after the date the trust closed, would be void." *Id.* at *8. The court, however, went further. *Id.* Erobobo argued that Wells Fargo, as trustee, also failed to comply with the PSA because it acquired the mortgage and deed of trust directly from the servicer instead of the depositor. *Id.* The court noted that the PSA required the depositor to deliver and deposit with the Trustee the original note, the original mortgage and an assignment. *Id.* The trustee is then supposed to provide an acknowledgment of receipt before the closing date. *Id.*

56. The court explained the purpose of this requirement:

> The rationale behind this requirement is to provide at least two intermediate levels of transfer to ensure the assets are protected from the possible bankruptcy by the originator which permits the security to be provided with the rating required for the securitization to be saleable. Deconstructing the Black Magic of Securitized Trusts, Roy D. Oppenheim Jacquelyn K. Trask–Rahn 41 Stetson L.Rev. 745 STETSON LAW REVIEW (Spring 2012).

Id. Thus, Wells Fargo also violated the PSA by accepting an assignment directly from the servicer instead of the depositor. *Id.* at *9. For these reasons, the court denied Wells Fargo's summary judgment. *Id.*

57. The facts are almost the same here, and the reason behind requiring the depositor to make a transfer into the trust is exemplified by this case. *See* Part II, *supra*. Here, the evidence showed there was no transfer from New Century to NC Capital, and further no transfer from NC Capital to Stanwich—these are the two steps in the process that the *Erobobo I* court referenced as

necessary to securitize a note into a REMIC trust. *Id.* at *8. These are required to prevent exactly what happened here—the originator goes into bankruptcy, it becomes unclear who owns the note, the investors do not get the benefit of their investment in the trust, and the homeowner does not know who to pay.

58. Contrary to Wells Fargo's argument here, the holding regarding whether the trustee's actions were void was not overruled when the appellate court later reversed. *See* Defendants' JNOV Motion at 13. On appeal to the Supreme Court, Second Division, Wells Fargo again asserted that, at the outset, Erobobo had waived his right to contest its ability to foreclose by failing to specifically deny the issue in his answer. *Wells Fargo Bank, N.A. v. Erobobo*, 127 A.D.3d 1176, 1177 (N.Y. Sup. Ct. App. Div.) ("*Erobobo II*"), *leave to appeal dismissed*, 25 N.Y.3d 1221 (2015).[17] The court of appeals held, *first*, that Erobobo waived the issue:

> In opposition, Erobobo failed to raise a triable issue of fact. Even affording a liberal reading to Erobobo's pro se answer there is no language in the answer from which it could be inferred that he sought to assert the defense of lack of standing. Nor did Erobobo raise this defense in a pre-answer motion to dismiss the complaint. Accordingly, the defendant waived the defense of lack of standing, and could not raise that defense for the first time in opposition to the plaintiff's motion for summary judgment.

Id. at 1177-78. This holding was sufficient to dispose of the case and is the ground on which the Superior Court's judgment was reversed.[18]

59. The language that followed this holding, on which Wells Fargo relies in this case, was not a holding but was mere dicta. "It is a general principle of law that statements made by a

[17] The New York Court of Appeals—the highest court in the state judiciary—declined to review the Appellate Division's decision because "the order sought to be appealed from does not finally determine the action within the meaning of the Constitution." *Wells Fargo Bank, N.A. v. Erobobo*, 25 N.Y.3d 1221 (2015).

[18] Interestingly, as argued above, the tables have turned. In this case, Wells Fargo is in the exact same position as *Erobobo*—Wells Fargo failed to verify its denial of Plaintiffs' capacity to recover as a borrower asserting violations of the PSA, and this Court, like the *Erobobo* appellate court, can dispose of these arguments on that basis without deciding the merits of the issue. The phrase "poetic justice" comes to mind.

court in an opinion which are unnecessary to the holding are dicta; such statements do not have the force of judicial authority and usually are not followed as authority even though they deal precisely with the point before the court." *Chiasson v. New York City Dep't of Consumer Affairs*, 138 Misc. 2d 394, 396 (N.Y. Sup. Ct. 1988); *see also J.A. Preston Corp. v. Fabrication Enters., Inc.*, 502 N.E.2d 197, 202 (N.Y. Ct. App. 1986); *Hogan v. Bd. of Educ. of City of New York*, 93 N.E. 951, 952 (N.Y. Ct. App. 1911).

60. The text of the opinion shows that the language on which Wells Fargo relies here is dicta. *Erobobo II*, 127 A.D.3d 1176, 1178 ("*In any event*, Erobobo, as a mortgagor whose loan is owned by a trust, does not have standing to challenge the plaintiff's possession or status as assignee of the note and mortgage based on purported noncompliance with certain provisions of the PSA." (emphasis added)). Moreover, the Appellate Division cited two cases—one from another Appellate Division decision, and one decided by the Second Circuit, which was making an *Eerie* guess as to how the New York Court of Appeals would decide the question under New York state law, without conducting *any* analysis of the issue. *Id.* (citing *Bank of New York Mellon v. Gales*, 116 A.D.3d 723, 724 (N.Y. Sup. Ct. App. Div. 2014); *Rajamin v. Deutsche Bank Natl. Trust Co.*, 757 F.3d 79, 86–87 (2d Cir. 2014)).

61. In *Gales*, the Appellate Court did not analyze any New York law itself when it held that the homeowners did not have "standing" to challenge violations of the PSA. *Gales*, 116 A.D.3d at 724. Rather, it cited the federal district court's decision in *Rajamin v. Deutsche Bank Nat. Trust Co.*, No. 10 CIV. 7531 LTS, 2013 WL 1285160, at *1 (S.D.N.Y. Mar. 28, 2013), *aff'd*, 757 F.3d 79 (2d Cir. 2014). And the *Rajamin* decision by the Second Circuit is internally inconsistent, not binding, and ultimately distinguishable.

62. In contrast and similar to *Erobobo I*, other Superior Courts have come to the same conclusion as *Erobobo I,* which was emphatically correct. *See, e.g.*, *Aurora*, 2014 WL 2134576, at *3-4.

b. The Second Circuit's decision is internally inconsistent and not binding.

63. In *Rajamin*, the Second Circuit considered *Erobobo I* and criticized it for several reasons that are internally inconsistent. When applied to the facts of this case, it becomes clear that *Erobobo I* should be applied to the facts at issue here.

64. In *Rajamin*, the Second Circuit criticized *Erobobo I* for allowing a non-beneficiary to challenge compliance with the trust, holding that only a trust beneficiary can enforce the terms of a trust. 757 F.3d at 88. Notably, Plaintiffs in the present case are not seeking enforcement of the Trust. Rather, Plaintiffs assert that the Trust provisions illustrate that Defendants' Transfer of Lien filings contained fraudulent misrepresentations that caused Plaintiffs' damages, irrespective of the foreclosure.

65. Second, *Rajamin* additionally held that a violation of a trust by a trustee would not render the trustee's actions void, given that the beneficiaries of the trust could ratify the transaction. *Id.* However, *Rajamin* distinguished a prior case voiding actions by a trustee despite the beneficiaries' ability to ratify. *Id.* (citing *Genet v. Hunt*, 113 N.Y. 158, 21 N.E. 91 (1889)). The *Rajamin* court distinguished that case based on the fact that the beneficiaries could not have possibly ratified the trustee's actions because all the beneficiaries and remaindermen could not be identified when ratification needed to be accomplished. *Id.* Thus, *Rajamin* appears to hold that if no ratification could be accomplished, then the act would be void. *Id. Rajamin* then criticized *Erobobo I* for failing to address the trust's beneficiaries' ability to ratify the void acts. *Id.*

66. In the PSA at issue here, the same provision addressed in *Erobobo I* precluding transfers into the Trust after the closing date appears. *See* PX23 section 2.03(b). These provisions

are designed to ensure compliance with the IRS Code. If a REMIC trust accepts a mortgage into the trust in violation of the timing deadlines, the IRS voids the act through 100% taxation of the contribution—"if any amount is contributed to a REMIC after the startup day, there is hereby imposed a tax for the taxable year of the REMIC in which the contribution is received equal to 100 percent of the amount of such contribution." 26 U.S.C.A. § 860G(d)(1).

67. *Rajamin's* holding that a REMIC trustee's ultra vires acts are not void, because they can be ratified, is internally inconsistent with its distinction of *Genet.* In *Genet*, the trustee's violations could not possibly be ratified by the beneficiaries. Here, the same is true, it would be impossible for the beneficiaries to ratify an improper transfer of a mortgage into the Trust because assets transferred after the closing period would be taxed at 100% by the IRS—nullifying the transaction. *Id.*

c. Plaintiffs also proved that forgery occurred, which renders the assignment void and subject to challenge.

68. A transfer is void if it is a forgery. *Lighthouse Church of Cloverleaf v. Tex. Bank,* 889 S.W.2d 595, 603 (Tex. App.—Houston [1st Dist.] 1994, writ denied). A plaintiff has "capacity" or "standing" to "challenge whether the assignment was invalid due to forgery or lack of authorization." *Routh v. Bank of Am., N.A.*, No. SA-12-CV-244-XR, 2013 WL 427393, at *9 (W.D. Tex. Feb. 4, 2013); *Tyler v. Bank of Am., N.A.*, No. SA-12-CV-00909-DAE, 2013 WL 1821754, at *5-6 (W.D. Tex. Apr. 29, 2013). A homeowner has standing to challenge a forged assignment of the property. *Vazquez*, 441 S.W.3d at 788. "A document is forged if it is signed by one who purports to act as another." *Id.*

69. Wells Fargo utilized "robo-signers" in its attempt to cure the defective transfers into its trusts of hundreds of mortgage loans. 4RR65. The mortgage industry engaged in practices that included having someone other than the purported signer execute documents without

authorization—admitted forgeries. 4RR65. McDonnell testified that all the major banks, including Wells Fargo, were the subject of a federal investigation that revealed "a widespread systematic pattern of robo-signing and the creation of documents that were not verified and were not accurate." 4RR66. This resulted in a cease and desist order that included Wells Fargo. *Id.* Furthermore, Tom Croft is an identified robo-signer. 4RR95-100.

70. Thus, the evidence showed that Wells Fargo's pattern or practice was to have robo-signers sign documents such as these, often without the knowledge or even consent of the purported signor to affix his name to the document. 4RR65-67; *see also* 4RR94 (McDonnell testifying she found other documents that had been filed by Defendants in county clerks' offices that were fraudulent in Texas and in other states). This establishes the elements of forgery, even despite the foregoing blatant and fraudulent misrepresentations. TEX. R. EVID. 406.

71. Finally, Defendants argue that the jury's finding that the transfer of lien is "void" was erroneous as a matter of law because there is no evidence to show the lien is void instead of voidable. However, Plaintiffs have clearly established otherwise. Moreover, to the extent that Defendants claim that the definition of "void" in the jury charge was vague and did not include the definition of that term under relevant New York law, Defendants again waived these arguments by failing to object or request a proper definition during the charge conference. *See* 5RR92. Defendants' only objection was to the legal sufficiency of the evidence, that it was duplicative of a prior question, and that it appears to relate to Plaintiffs' request for declaratory relief. *Id.* Defendants' objections are, *again*, waived. TEX. R. CIV. P. 278.

d. Plaintiffs should not have to prove they are third party beneficiaries entitled to enforce the contract when they are using the contract as a basis to prove that fraudulent filings caused damage independent of the note foreclosure.

72. Plaintiffs are not seeking a recovery for breach of the PSA, but are merely pointing to breaches of the PSA as a basis to support and establish Defendants' statutory violation of Chapter 12. *See, e.g., Nueces Cty., Tex. v. MERSCORP Holdings, Inc.*, No. 2:12-CV-00131, 2013 WL 3353948, at *8 (S.D. Tex. July 3, 2013) (holding plaintiffs stated a claim for relief under Chapter 12 based on MERS's fraudulent filings misrepresenting its interest in property); *Silver Gryphon, L.L.C. v. Bank of Am. NA*, No. 4:13-CV-695, 2013 WL 6195484, at *4 n.1 (S.D. Tex. Nov. 27, 2013) (noting that plaintiff would have standing to assert fraudulent filings based on a lack of authority under a contract to execute a document representing an interest in property). And, Chapter 12 provides statutory standing to the Plaintiffs to bring this claim: a person who has been injured by a violation of section 12.002 has a cause of action for damages. TEX. CIV. PRAC. & REM. CODE ANN. § 12.002(b). The failure to properly assign the note is evidence that the Transfer of Lien contained false statements of fact to establish that Defendants made, presented, and/or used a document or other record with knowledge that the document or other record was a fraudulent claim against real or personal property or an interest in real or personal property, and with intent that the document be given legal effect, and with the intent to cause Plaintiffs to suffer financial injury or mental anguish. *Id.* § 12.002.

73. But even more importantly, Plaintiffs established they were injured independently of the foreclosure action itself, but as a result of the confusion caused by the fraudulent Transfer of Lien. For example, in *Aurora Loan Servs. LLC v. Scheller*, the New York Supreme Court held that parties who suffer the filing of false and erroneous transfers of lien, as a result of a trustee who

is acting *ultra vires*, suffer a unique injury to the marketability of their title. 2014 WL 2134576, at *3-4. The court held:

> For well over one hundred years, it has been the law in New York that where the transfer of a mortgage to a third party is effectuated in a manner that contravenes the express terms of a governing trust, the transfer is *ultra vires* and is void, *Kirsch v. Tozier* 143 NY 390 (1894). Indeed, it follows logically that where the Trustee's acts are *ultra vires*, all successors and subsequent assignees are charged with constructive knowledge of the express terms of the trust and hence cannot claim to be bona fide purchasers thereafter inasmuch as they would either know or would have reason to know that any interest transferred would be subject to the operative terms of the trust, *Smith v. Kidd*, 68 NY 130 (1877), *McPherson v. Rollins* 107 NY 316 (1887).
>
> Plaintiff further claims that Defendants have no standing to challenge or otherwise attack the assignment. This argument, while superficially correct, is likewise untenable. While it is true that third parties do not, under ordinary circumstances, enjoy standing to challenge the assignment of an indebtedness from one obligee to another, *Bank of New York Mellon v. Gales* 116 AD3d 723 (2nd Dept. 2014), in the present matter that assertion is decidedly misplaced. A fair reading of Defendants' proposed Second Amended Answer discloses that Defendants are attempting to challenge the validity of the initial assignment which, it is claimed, has caused them to incur damages respecting the marketability of title to the property herein. Defendants mount their challenge only to the particular transactions respecting the mortgage for which foreclosure is claimed, asserting that the REMIC is a common law trust and that it falls within the narrow purview of EPTL § 7-2.4.
>
> If Defendants' allegations are proven to be factually correct, it is entirely within the realm of reasonable probability that neither Aurora Loan Services LLC, Nationstar Mortgage LLC nor the REMIC have any interest whatsoever in the mortgage sought to be foreclosed. At this juncture, it is the opinion of this Court that based upon all of the foregoing, the true identity of the party in interest with the power to enforce the terms of the mortgage and note is clearly unknown. This level of uncertainty creates a situation where the marketability of Defendants' title is likely to be adversely impacted. Even assuming *arguendo* that fee title to Defendants' property is insurable, any cloud on title would serve to effectively diminish the value of the fee simple absolute interest. Standards for marketable title and insurable title are markedly different, with marketable title being title that is "*…reasonably free from any doubt which would interfere with its market value*." *Voorheesville Rod & Gun Club Inc. v. E. W. Tompkins Co*. 82 NY2d 564 (1993). For title to be insurable, it need only be that which a title insurer would insure, a far lower standard and one which seems elusive at best. It logically follows then that if the REMIC, as real party in interest, did not take title to the note and mortgage in accordance with the express terms and conditions of the trust, then the party Plaintiffs in these actions, as purported successors in interest thereto would be

> without any authority to enforce the same, their assertions to the contrary notwithstanding. This, in turn, leads inexorably to invocation of the ancient maxim of "*Nemo dat quod non habet*" ("You cannot give what you do not have"). The question, to be directed to both Plaintiffs, "What do they have?" cannot be answered to the satisfaction of the Court at this point in time.

Id. at *4.

74. When the Wolfs attempted to sell their home to avoid a foreclosure, Carrington and Wells Fargo used their fraudulently-created and filed documents to establish their claim to Plaintiffs' property, intending to cause and actually causing financial injury. The confusion created by Defendants' misrepresentations about the chain of title prevented Plaintiffs not only from selling the home, but from making a net profit of $150,000. 3RR37-39; 4RR49, 170. Carrington and Wells Fargo were certainly aware that if Plaintiffs attempted to sell the property, their filings would cause the title to be in question, which raises an inference on their intent. DX2 at p. 4; DX3 at p. 11; PX23. Under these circumstances, they are clearly entitled to recover under Chapter 12, regardless of whether they were parties or third party beneficiaries to the assignment or the PSA. *Aurora*, 2014 WL 2134576, at *3-4.

B. Plaintiffs presented evidence of PSA violations to Support their Chapter 12 Claim.

75. Contrary to Defendants' argument, Plaintiffs established a violation of the PSA. Defendants contend that the PSA in section 2.01 constitutes the conveyance of the note into the Trust. Defendants' JNOV motion at 14. Defendants point to the PSA's requirement that Stanwich was sell the notes to the trustee and transfer the notes prior to the closing date, and claim the contract is evidence that the transfer happened. *Id.* at 15. In a nutshell, Defendants argue that: "we proved we complied with the contract because the contract said we had to."

76. Defendants' arguments miss the point entirely: According to a Mortgage Loan Purchase Agreement ("MLPA") executed August 10, 2006, between NC Capital Corporation, Carrington Securities, LP, and Stanwich, the loans identified for deposit into the Trust were to be

bought, sold, and transferred into the Trust through a specific sequence: *First*, NC Capital would sell the loans to Carrington Securities; *second*, Carrington Securities would sell the loans to Stanwich; *and third*, Stanwich would deposit the loans into the Trust. 4RR75; PX14.

77. Defendants' corporate representative (Clayton Gordon) testified, without objection, that if the Plaintiffs' mortgage loan is not in the Trust, then the Trust cannot foreclose on the Plaintiffs' home. 5RR14. Defendants' corporate representative further testified that he believed that Plaintiffs' note went into the Trust between August 1, 2006 and August 10, 2006 "because that's what the Trust documents say **had to happen**." 5RR60. But the transactions required for Plaintiffs' note to be transferred into the Trust did not occur—late or otherwise. 4RR71, 77-78.

78. First, the evidence showed there was not a sale of the Plaintiffs' note and a transfer from New Century to NC Capital. 4RR75, 79-80, 89-90; PX14. Second, there was not a sale and transfer of the Wolfs' note from NC Capital to Carrington Securities, LP or to Stanwich, nor a deposit by Stanwich into the Trust. 4RR75, 79-80, 89-90, 124; PX14. *Defendants' corporate representative agreed this was required to transfer the note into the Trust.* 5RR65.

79. But McDonnell testified that based on her research, Plaintiffs' note was never transferred into the Trust, so as of the closing date of the Trust in August 2006, New Century, one of its later assigns, or another purchaser owned the note. 4RR77, 80-83, 91.[19]

80. Defendants then claim that even if Plaintiffs showed their loan was not transferred into the PSA prior to the closing date, Plaintiffs still could not prove a violation of the PSA because the PSA contemplates the assignment of loans after the Closing Date. Defendants' JNOV Motion at 16. Again, Defendants miss the point: the evidence showed that Stanwich was the depositor

[19] This supports the jury's finding that Wells Fargo is not the owner of the note. *See* Jury Verdict at Question 11, pg. 16.

required to make deposits into the Trust, and it never deposited Plaintiffs' note, before or after the Closing Date, as testified to by McDonnell.

81. Interestingly, Defendants point to this "possibility" of a late transfer under PSA section 2.03, but the language that Defendants summarize does not support their theory. Rather, section 2.03 allows for a "missing or defective" document to be replaced, and it authorizes the "Seller" or the "Responsible Party" to substitute a qualified mortgage in its place. PX13. However, "Seller" under the PSA is Carrington Securities, LP, a different entity than Defendant Carrington Mortgage Securities, and "Responsible Party" is NC Capital Corporation. *Id. Again,* McDonnell testified that New Century never sold the Wolfs' note to NC Capital, and NC Capital never sold it to Carrington Securities, LP.

82. Moreover, to the extent that a mortgage loan is deleted from the Trust and replaced with a qualifying mortgage, any such transfer had to occur within 2 years after the startup day, or August 10, 2008. *Id.* section 2.03(b), 10.19(b). Defendants cannot rely on this provision because (1) the Note was never transferred into the Trust at all; and (2) any transfer would have had to occur before August 10, 2008 (not on September 30, 2009, as reflected on the Transfer of Lien). *Id.*; PX23.

83. Furthermore, if a qualifying mortgage were to be substituted into the Trust, it would have to be accompanied by a letter from counsel verifying that the substitution will not jeopardize the Trust's REMIC status, including violating the prohibition on *transferring assets after the closing date* in the Internal Revenue Code § 860G(d)(1). *See* PX23 section 2.03(b).

84. Regardless, Defendants failed to comply with the PSA by failing to document the complete chain of title of all the transfers required to securitize the note into the Trust. *See* PX13 at section 2.01. Rather, they attempted to close a gap in the chain of title by executing a fraudulent

Transfer of Lien that had a date well beyond the closing date of the Trust, and well after New Century could not possibly have owned the note due to its liquidation in bankruptcy.

85. Moreover, the trustee could not legally possess the note unless it obtained delivery of the note in accordance with the Trust and New York law. McDonnell testified that Wells Fargo could not be in possession of the note as trustee legally under New York law, because there was no assignment or delivery of the note. *See* N.Y. U.C.C. LAW § 3-202(1) (Negotiation is the transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order it is negotiated by delivery with any necessary indorsement; if payable to bearer it is negotiated by delivery."); *U.S. Bank Nat. Ass'n v. Weinman*, 123 A.D.3d 1108, 1109 (N.Y. Sup. Ct. App. Div. 2014) ("The affidavit of the plaintiff's servicing agent, which did not give any factual details of a physical delivery of the note, failed to establish that the plaintiff had physical possession of the note prior to commencing this action."). Gordon could not really testify otherwise, but only assumed that the transactions occurred because the PSA required it.[20]

86. McDonnell testified the required transactions to transfer the note into the Trust did *not occur*. 4RR138. Accordingly, a mere notation or writing reflecting an assignment, or "holding" of an asset by the Trustee does not mean the Trust is the "bearer" of the note under New York law. McDonnell explained that to establish proof of delivery, the evidence would have to come from Deutsche Bank, the document custodian for the Trust. 4RR138. She testified that under New York

[20] *Cf.* N.Y. EST. POWERS & TRUSTS LAW § 7-1.18 (emphasis added). Under this provision, in "lifetime trusts," it is not enough to merely recite an "assignment, holding or receipt" in the trust instrument, and a trust is only "valid" as to that asset "to the extent the assets have been transferred into the trust." *Id.*; *see Bishop v. Maurer*, 73 A.D.3d 455, 455 (N.Y. App. Div. 2010); *see In re Becker*, 800 N.Y.S.2d 342, 2004 WL 3118691, at *3 (N.Y. Sur. 2004) (unreported but may be considered persuasive) ("In essence, the aforementioned statute provides that all lifetime trusts created on or after December 25, 1997 are valid 'only in regard to assets actually transferred to the trust[s].'").

law, the note had to be negotiated according to the PSA; otherwise, Wells Fargo could not legally possess the note. 4RR85.

87. In short, all the preceding violations of the PSA go to show the fraudulent nature of the Transfer of Lien, and that Wells Fargo as trustee is not the owner or holder of the note.

C. A "transfer of lien" can violate Chapter 12.

88. Defendants erroneously argue that an "assignment" cannot violate the fraudulent lien statute as a matter of law. Several courts, however, have held otherwise.

89. Defendants argue that section 12.002 only applies to "fraudulent lien[s] or claim[s] against" "real property . . . or an interest in real . . . property." Defendants' JNOV motion at 19. They define a lien as "a claim in property for the payment of a debt [that] incudes a security interest." *Id.* Defendants reason that an assignment cannot constitute a "lien" because it merely transfers a preexisting property interest instead of purporting to create a new interest. *Id.* Defendants completely ignore the remaining potential sources of liability—that an assignment of a deed of trust can constitute a "lien or claim against property or *an interest in property*." TEX. CIV. PRAC. & REM. CODE ANN. § 12.002(a).

90. Defendants rely heavily on *Marsh v. JPMorgan Chase Bank, N.A.*, a case decided by the Western District of Texas in 2012. 888 F. Supp. 2d 805, 812-14 (W.D. Tex. 2012). Defendants claim that the "overwhelming majority" of courts have held that a deed of trust assignment does not support Chapter 12 liability, and claim that only a few "outlier" opinions holding the opposite of *Marsh.* Defendants' JNOV Motion at 20 & n.12. However, Defendants neglect to disclose the true state of the law.

91. In fact, several courts in the Western District has now disavowed *Marsh.* The only Texas state court to consider a similar document—a Substitution of Trustee—gave rise to Chapter

12 liability. And, the "overwhelming majority" that Defendants' claim exists was instead recently described as merely a "split" of authority by the Fifth Circuit.

92. *Marsh* was decided at a time when Texas state courts had not addressed the issue. 888 F. Supp. at 813. Since then, at least one Texas court has upheld Chapter 12 liability based on a "Substitution of Trustee" document. *See Bernard v. Bank of Am., N.A.,* No. 04-12-00088-CV, 2013 WL 441749, at *4 (Tex. App.—San Antonio Feb. 6, 2013, no pet.) (mem. op.). Based on this Texas state court decision, many of the judges in the Western District have shifted course and disavowed *Marsh. See Howard v. JP Morgan Chase NA*, No. SA-12-CV-00440-DAE, 2013 WL 1694659, at *12 (W.D. Tex. Apr. 18, 2013).

93. The Western District Court in *Howard* concluded that "the *Marsh* court's reading of § 12.002(a) is overly narrow and finds that an assignment of a deed of trust does qualify as a 'claim' under that section. This finding is supported by the plain language of the statute, which by its terms includes not only claims against real property, but also claims against 'an interest in real ... property.'" *Id.* (citing TEX. CIV. PRAC. & REM. CODE ANN. § 12.002(a)(1)). The court held that a "deed of trust is an interest in real property, and the assignment of a deed of trust therefore creates a claim in that interest." *Id.* This holding has been repeated by the judges of the Western District over and over again since then. *See Rodriguez v. Bank of Am., N.A., No. SA-12-CV-00905-DAE,* 2013 WL 1773670, at *11 (W.D. Tex. Apr. 25, 2013), *aff'd*, 577 F. App'x 381 (5th Cir. 2014); *Venegas v. U.S. Bank, Nat. Ass'n*, No. SA-12-CV-1123-XR, 2013 WL 1948118, at *7 (W.D. Tex. May 9, 2013); *Funke v. Deutsche Bank Nat. Trust Co.*, No. 5:14-CV-307, 2014 WL 3778831, at *5 (W.D. Tex. July 31, 2014) (applying Chapter 12 to a fraudulent notice of foreclosure). The Fifth Circuit noted as recently as October 2015 there is a "split" of authority on this issue in the federal district courts, and even within some districts. *Ferguson v. Bank of New York Mellon Corp.*, 802 F.3d 777, 783 n.11 (5th Cir. 2015).

94. This Court is not bound to follow federal precedent, nor is it bound to follow the San Antonio Court of Appeals. However, recognizing that an assignment can be a document that constitutes "a claim against *an interest in property*," is absolutely consistent with the plain language of the statute. *Howard*, 2013 WL 1694659, at *12. To hold otherwise would mean that a person could file as many assignments of a deed of trust in the property records as he wanted, completely confuse the property records and harm the marketability of the property, and have no liability. *See Aurora,* 2014 WL 2134576, at *4. That is not the way the statute was intended.

E. The "Transfer of Lien" is fraudulent.

95. Defendants claim that the PSA violations do not establish that the Transfer of Lien was "fraudulent." Defendants' JNOV motion at 18. They assert that to prove a document is fraudulent, the Defendants must have knowingly misrepresented the truth or concealed a material fact at the time the document was recorded. *Id.* The evidence shows just that.

96. Tom Croft, in the Transfer of Lien, knowingly misrepresented the truth on September 30, 2009 by falsely representing:

(1) New Century was the holder and owner of the note, when that entity no longer existed. Even assuming Wells Fargo is correct that the note was transferred in 2006 before the closing date, this would also be a false statement of fact—New Century likewise would not have been the holder and owner of the note in 2009, 4RR95, 100, 136.

(2) Croft was Vice President of REO for New Century and was acting on behalf of New Century. But Tom Croft could not have been the Vice President of REO for New Century because that entity did not exist, and Croft admitted he did not work for New Century. 4RR95, 113, 152-53.

(3) Consideration was paid by Wells Fargo to New Century, which is not true, even under the terms of the PSA.

(4) The assignment occurred on September 30, 3009, when New Century no longer existed and could not have possibly received any consideration at that time. *See* 5RR20. Moreover, if the Trust were the owner of the note, the transfer would have to have been effective on August 10, 2006 (or, assuming as Defendants argue the note was substituted later, by August 10, 2008). 4RR94-95; PX13.[21]

97. Additionally, forged documents violate Chapter 12. *See Vanderbilt Mortg. & Fin., Inc. v. Flores*, 692 F.3d 358, 363 (5th Cir. 2012). Plaintiffs presented legally sufficient evidence that Tom Croft, Wells Fargo, and Carrington had a habit or routine practice of forging documents to cure defects in the chain of title.

98. Defendants complain that the Transfer of Lien cannot be fraudulent because Plaintiffs failed to prove that the beneficiaries did not "ratify" the violation and breach of the PSA. Defendants' JNOV motion at 18. As explained above, section 2.03(b) in conjunction with 26 U.S.C.A. § 860G make that impossible—ratifying the transfer could not occur because the IRS voids the contribution through 100% taxation.

[21] While Defendants pointed to PX20, a limited power of attorney signed by the New Century Liquidating Trust, granting Carrington the authority to execute and record assignments, McDonnell testified this document related to the servicing platform for New Century that was sold to Carrington. 4RR111-113; PX20. McDonnell testified that the limited power of attorney would allow Carrington to do anything that New Century could have done as servicer of the Trust pursuant to the PSA. 4RR113. But if the loan was never sold through the process of securitization, and was never deposited into the Trust, the servicer could not act with respect to those loans on behalf of the Trust. 4RR113. Additionally, New Century did not have any ability to make deposits into the Trust; only Stanwich, as depositor under the PSA, had that authority. 4RR122. Finally, the transfer of lien filed in 2009 did not state that Tom Croft was acting on behalf of Carrington, as successor to New Century—it stated that he was acting on behalf of New Century as its VP of REO, which was false. 4RR144; PX23.

F. Plaintiffs presented sufficient evidence of knowledge and intent

99. Chapter 12 prohibits the making, presentment, or use of a document or other record "with knowledge that the document or other record" is fraudulent, with intent that the document be given legal effect, and with intent to cause another person to suffer physical injury, financial injury, or emotional distress. TEX. CIV. PRAC. & REM. CODE ANN. § 12.002(a).

100. Defendants claim there was no evidence that (1) they knew the Transfer of Lien was fraudulent; or (2) intended to cause harm. Going further, they claim that the Transfer of Lien did not and could not cause any injury. Defendants' JNOV motion at 21. Defendants ignore the substantial evidence that proved knowledge and intent as required by Chapter 12.

101. Defendants certainly knew the liens contained false representations. The following chart shows the misrepresentation in the Transfer of Lien and the source of the parties' knowledge:

Representation	Knowledge of Falsity
New Century was the holder and owner of the note as of September 30, 2009. PX23.	Defendants knew that New Century was not in existence in 2009 and could not own or hold the note because: • Carrington purchased all of New Century's servicing business through the bankruptcy court. DX7; 5RR53-54; 4RR252. In 2008, New Century's liquidating trust signed a power of attorney to Carrington. PX20. • Wells Fargo objected to certain terms of Carrington's purchase from New Century; DX7 at p. 16. • Wells Fargo and Carrington, thus, participated in the bankruptcy proceedings. • After the sale, Wells Fargo appointed Carrington as its attorney in fact under the PSA, DX9. • If the note had been transferred to the Trust in 2006, as Defendants contended, then it did not own the note in 2009. PX13; PX14.

Representation	Knowledge of Falsity
The assignment occurred on September 30, 3009. PX23.	Defendants knew that was false because: • For the Trust to receive the note, the PSA and MLPA required New Century to sell the note to NC Capital, who then would sell it to Carrington Securities, who then would sell it to Stanwich, who then would deposit it with Wells Fargo. PX13; PX14. All this had to occur before the closing date. PX13. If the Trust were the owner of the note, the transfer would have to have been effective on August 10, 2006 (or, assuming as Defendants argue the note was substituted later, by August 10, 2008). 4RR94-95; PX13.[22] • Wells Fargo as Trustee and Carrington as Servicer under the PSA were responsible for knowing what assets were transferred into the Trust according to the PSA. PX13. Wells Fargo as Trustee and Carrington as Servicer knew the transactions had not occurred to securitize the note into the Trust in 2006. • Defendants knew that New Century did not exist in 2009 and could not have assigned the note then. (see above).
Tom Croft was Vice President of REO for New Century and was acting on behalf of New Century in September 2009. PX23.	Defendants knew this was false because: • Tom Croft was employed by Carrington, who was attorney in fact for Wells Fargo; 4RR151. • Defendants knew New Century did not exist (see above); • Tom Croft admitted he was not employed by New Century. 4RR95, 113, 152-53;

[22] While Defendants pointed to PX20, a limited power of attorney signed by the New Century Liquidating Trust, granting Carrington the authority to execute and record assignments, McDonnell testified this document related to the servicing platform for New Century that was sold to Carrington. 4RR111-113; PX20. McDonnell testified that the limited power of attorney would allow Carrington to do anything that New Century could have done as servicer of the Trust pursuant to the PSA. 4RR113. But if the loan was never sold through the process of securitization, and was never deposited into the Trust, the servicer could not act with respect to those loans on behalf of the Trust. 4RR113. Additionally, New Century did not have any ability to make deposits into the Trust; only Stanwich, as depositor under the PSA, had that authority. 4RR122. Finally, the transfer of lien filed in 2009 did not state that Tom Croft was acting on behalf of Carrington, as successor to New Century—it stated that he was acting on behalf of New Century as its VP of REO, which was false. 4RR144; PX23.

Representation	Knowledge of Falsity
Consideration was paid by Wells Fargo to New Century on September 2009. PX23.	Defendants knew that was false because: • The PSA and Mortgage Loan Purchase Agreement required New Century to sell the note to NC Capital, who then would sell it to Carrington Securities, who then would sell it to Stanwich, who then would deposit it with Wells Fargo. PX13; PX14. • Wells Fargo as Trustee and Carrington as Servicer under the PSA were responsible for knowing what assets were transferred into the Trust according to the PSA. PX13. • Defendants knew that New Century did not exist at that time. (see above).

102. Tom Croft testified he knew the Transfer of Lien would be filed in the clerk's office. 4RR149. He testified that the purpose of the Transfer of Lien was to "put the mortgage—the vesting into the Trust before initiating foreclosure." 4RR157. Thus, Tom Croft, as an agent for Carrington (attorney in fact for Wells Fargo), *intended* that the document have legal effect.

103. The evidence in the above chart shows Defendants knew that the representations in the Transfer of Lien were false and represented a fraudulent claim against an interest in property, which satisfies Chapter 12. *Taylor Elec. Servs., Inc. v. Armstrong Elec. Supply Co.*, 167 S.W.3d 522, 531 (Tex. App.—Fort Worth 2005, no pet.) (filing lien based on incorrect amount owed was sufficient to show Defendant knew lien was fraudulent); *Centurion Planning Corp. v. Seabrook Venture II*, 176 S.W.3d 498, 507 (Tex. App.—Houston [1st Dist.] 2004, no pet.) (holding the filing of a lien while knowing there was no written contract to support the lien supported a finding that Defendant knew the lien was fraudulent)

104. Additionally, with respect to the forgery allegations, Defendant knew that any forged assignments would be fraudulent, and so did Carrington, because of the federal investigation, and the cease and desist order relating to the fraudulent robo-signing, which was a habit or practice of these Defendants. 4RR66, 95-100.

105. The evidence also showed the requisite intent. "Texas courts have interpreted the 'intent' element to require only that the person filing the fraudulent lien be aware of the harmful effect that filing such a lien could have on a landowner." *Kingman Holdings, LLC v. CitiMortgage, Inc*., No. 4:10-CV-619, 2011 WL 1883829, at *5 (E.D. Tex. Apr. 21, 2011), *report and recommendation adopted*, No. 4:10-CV-619, 2011 WL 1878013 (E.D. Tex. May 17, 2011) (citing *Taylor Elec. Services, Inc*., 167 S.W.3d at 531–32).

106. Defendants knew the effect the Transfer of Lien would have. Carrington, who was purportedly acting as Wells Fargo's attorney in fact, knew the Plaintiffs were in default and were trying, in 2009, to obtain assistance to pay their mortgage. In 2009, when Plaintiffs began having trouble paying the note, Carrington offered services to help them get back on track. 3RR25, 28-30; PX22**.** Plaintiffs started the application process with Carrington and turned in their forms on October 13, 2009. 3RR30-32, 33; 4RR177; PX22.

107. In the application, there is a question asking whether the Plaintiffs had their house for sale. PX22. The 2006 Deed of Trust filed in the county property records required notice of a sale or events affecting the lien and the noteholder's rights, but that notice would have gone to New Century, not Carrington or Wells Fargo. DX3.

108. Almost immediately after Plaintiffs contacted Carrington to start the process, Carrington and Wells Fargo concocted the fraudulent and misleading transfer of lien in an attempt to correct the defect in the chain of title to allow Carrington to foreclose on the loan on behalf of Wells Fargo. 4RR73-74, 132-33, 156, 177-78; PX23.

109. Tom Croft testified that the purpose of the Transfer of Lien was to "put the mortgage—the vesting into the Trust before initiating foreclosure." 4RR157. McDonnell testified that if Defendants did not close the gap in the chain of title to the Trust, the failure to comply with the PSA could prevent the Trust from establishing the ability to foreclose. 4RR71, 73-74, 132-33,

156, 177-78; PX23. However, because the transactions necessary to effectuate a transfer into the Trust did not occur and certainly were not documented, it is impossible to determine from the documents who is actually the owner of the note at this time. In fact, if Wells Fargo is wrongfully possessing the note, the true owner could still attempt to enforce it. TEX. BUS. & COMM. CODE ANN. §§ 3.301(iii), 3.309.

110. If Carrington merely purchased the servicing business, but New Century still owned the note or the right to service it, then Carrington could collect funds on the note and would be required to turn over the proceeds to the true owner of the note. 5RR55-56. Carrington, however, would not have the authority to transfer the note as a servicer, if that had not already occurred. *See Scott*, 2014 WL 3535724, at *4. And Defendants knew that the note had not been securitized into the Trust.

111. Defendants recognized that if a Transfer of Lien was not filed, Plaintiffs could potentially sell their home, and Defendants may not get any notice because New Century was the record noteholder and assignee of the record deed of trust. DX2 at p. 4; DX3 at p. 11. And, New Century no longer existed. 4RR93.

112. The evidence showed that Defendants intended to cause Plaintiffs injury. As one New York court opined, when it is possible that one of several entities have the power to enforce the note, and the identity of the true party is unknown, the uncertainty "creates a situation where the marketability of Defendants' title is likely to be adversely impacted." *Aurora*, 2014 WL 2134576, at *3-4. That is exactly what happened here.

113. David Wolf testified he encountered precisely these problems when he attempted to sell the property. Plaintiffs' title company refused to open a title policy. 3RR37-39. The Transfer of Lien was recorded to make it appear the note had been negotiated into the Trust, when it had not. And even though Wells Fargo now argues it is a "holder" because of its possession of the note,

a title company would not necessarily be able to guarantee that a true owner would not file suit to enforce the note. This is particularly true because the transactions necessary to securitize the note into the Trust were not properly documented.

114. Additionally, Plaintiffs were required to disclose the foreclosure proceedings to their real estate agent in their listing document and that the title was in question. 4RR49. *See* TEX. PROP. CODE ANN. §§ 13.001-13.002 (providing the effects of recording). Because of the fraudulent filings, a diligent title company would not be able to determine the chain of title of the note or the deed of trust: it could not conclusively determine who owned the note, who would be servicing the note, who the debt would ultimately be owed to, and who could later bring suit to collect for a deficiency in the payments regardless of the filings. 3RR37-39. Defendants were certainly aware of the effect of their filings. DX2 at p. 4; DX3 at p. 11. Even though the note was never securitized into the Trust, Defendants filed the fraudulent Transfer of Lien in an attempt to cover up the fact that they did not own this note.

115. Defendants argue that there was no intent to cause harm because the assignment did not cause Plaintiffs any injury. Defendants' JNOV motion at 21. Defendants reason that the only effect of the assignment was to change the party who was entitled to receive payments. *Id.* Defendants conclude that because Wells Fargo was the "holder" of the note, and the deed of trust follows the note, the assignment had no effect on the ability to foreclose. *Id.* at 22. Plaintiffs incorporate the arguments in their Amended Motion to Disregard Jury Findings and Motion for Judgment Notwithstanding the Verdict, which shows why the finding that Wells Fargo, as trustee, is the holder of the note should be disregarded.

116. Even if the finding regarding Wells Fargo's possession of the note is not set aside, however, the jury clearly found that Wells Fargo did not prove it is the owner of the note. This finding means the jury believed there is another entity that has an interest in that note.

117. The fraudulent Transfer of Lien caused damage independently of Wells Fargo's ability to foreclose as a potential "holder" of the note, which Plaintiffs dispute, because it confused the chain of title. It purported to transfer the deed of trust from an entity that did not exist on the date of the purported assignment to a Trust that, absent documented transfers years before, could not properly own the note.

118. Plaintiffs attempted to sell their home but could not get a title policy because of these defects. Plaintiffs testified they could have made a net profit of $150,000 on the sale of their home; thus, the fraudulent filings have certainly caused them financial injury. 4RR45-46, 48, 175-76. This is the exact amount of financial damages found by the jury. *See* Jury Verdict at p. 6, Question 2.

119. Additionally, Plaintiffs testified that they suffered mental anguish, and the evidence in that regard was legally sufficient. 3RR58-60, 64-65; 4RR169-73.[23] David and Mary Ellen suffered a substantial disruption of their daily routines from their mental anguish, with Mary Ellen having to be medicated. 3RR58-60, 64-65; 4RR169-73.

[23] Defendants spend five pages of their motion arguing why Plaintiffs' claims for negligence per se, gross negligence per se, unjust enrichment, and money had and received cannot support a recovery. Because Plaintiffs did not obtain findings on these causes of action, Defendants' arguments are unnecessary. However, the factual determinations by the jury do support a declaratory judgment regarding the parties' rights under the Note. The declaratory relief requested will be included in Plaintiffs' proposed judgment. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 37.004(a) ("A person interested under a deed, will, written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder."); *Id.* § 37.007 ("If a proceeding under this chapter involves the determination of an issue of fact, the issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending."). The factual determinations furthermore support an award of attorney fees and costs as are equitable and just, and that award can be rendered even if the Court ultimately determines that Plaintiffs are not entitled to a judgment on their Chapter 12 claim. *Id.* § 37.009; *Barshop v. Medina Cty. Underground Water Conservation Dist.*, 925 S.W.2d 618, 637 (Tex. 1996) ("Despite these arguments, the award of attorney's fees in declaratory judgment actions is clearly within the trial court's discretion and is not dependent on a finding that a party 'substantially prevailed.'").

G. The Court is not required to render judgment for Defendants based on their complaint of contradictory findings

120. Defendants complain that the verdict is contradictory. They assert that the findings that Plaintiffs failed to comply with the Note, that they owe $655,191.73 on the note to someone, and that Wells Fargo is the holder of the note are inconsistent with the finding that Wells Fargo is not the "owner" of the note. Defendants' Motion for JNOV at 33. Even if this issue is preserved, the simplest way to resolve the conflict is to disregard this finding on the grounds asserted in Plaintiffs' Amended Motion to Disregard Jury Findings and Motion for Judgment Notwithstanding the Verdict.

121. Notably, the jury charge did not define the term "owner," and Defendants did not object to the lack of a definition of that term or propose an instruction. 5RR91. Thus, if Defendants believed a negative finding on ownership would potentially conflict with an affirmative finding that Wells Fargo was the "holder" of the note, they should have objected or requested an instruction to prevent the conflict. TEX. R. CIV. P. 278. They did not.

122. Moreover, when the answers were returned by the jury, Defendants had the obligation to object at that time, request any additional instructions, and request that the jury be sent back to resolve the conflict. TEX. R. CIV. P. 295 ("If the purported verdict is defective, the court may direct it to be reformed. If it is incomplete, or not responsive to the questions contained in the court's charge, or the answers to the questions are in conflict, the court shall in writing instruct the jury in open court of the nature of the incompleteness, unresponsiveness, or conflict, provide the jury such additional instructions as may be proper, and retire the jury for further deliberations."). Because Defendants did not object at a time when the Court could have resolved any potential conflict, their argument is waived. *Frazier v. Roden*, No. 2-09-017-CV, 2009 WL 3416507, at *3 (Tex. App.—Fort Worth Oct. 22, 2009, no pet.) (mem. op.); *Schott v. Knight*, No.

01-06-00727-CV, 2007 WL 4465586, at *2 (Tex. App.—Houston [1st Dist.] Dec. 20, 2007, no pet.) (mem. op.) ("Schott did not preserve error when she failed to object to the alleged conflict in the verdict before the trial court discharged the jury.").

123. Nevertheless, this Court has a duty to attempt to reconcile conflicts in the verdict if possible. *Signal Oil & Gas Co. v. Universal Oil Products*, 572 S.W.2d 320, 326 (Tex. 1978). One simple way to do so is to determine that the statute of limitations bars the foreclosure claim, as requested by Plaintiffs in their Amended Motion to Disregard Jury Findings and Motion for Judgment Notwithstanding the Verdict. If the Court so determined, the findings on holder or owner would not support a judgment for foreclosure regardless of the conflict. Another would be to determine that the finding of "holder" was not supported by sufficient evidence. These would render the purportedly conflicting findings immaterial and allow the Court to render judgment on the remaining findings. *Anderson, Greenwood & Co. v. Martin*, 44 S.W.3d 200 (Tex. App.—Houston [14th Dist.] 2001, pet. denied) (trial court may disregard jury's finding on immaterial issue and render judgment based on remaining findings).

124. Defendants argue that because Wells Fargo was found to be the "holder" of the note, the Transfer of Lien cannot be fraudulent or false, and it cannot support a recovery under Chapter 12. Even assuming that Wells Fargo is entitled to foreclose as the "holder of the note," that does not mean that the finding it is not the "owner" of the note is in conflict or that the Chapter 12 findings must be disregarded. Under Texas Business and Commerce Code section 3.301, "a person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is wrongful possession of the instrument." TEX. CIV. PRAC. & REM. CODE ANN. § 3.301. Thus, just because Wells Fargo claims it is entitled to foreclose as a "holder" in possession of the note endorsed in blank, it does not mean Wells Fargo is the "owner" of the note or that it rightfully possesses the note. In fact, if Wells Fargo is wrongfully possessing the note,

the true owner could *still* attempt to enforce it. TEX. BUS. & COMM. CODE ANN. §§ 3.301(iii), 3.309.

125. This Court has a duty to attempt to reconcile conflicts in the verdict if possible. *Signal Oil & Gas Co. v. Universal Oil Products*, 572 S.W.2d 320, 326 (Tex. 1978). One potential method used by courts is to construe the issues as controlled by a different set of facts. *Id.* In this case, regardless of Wells Fargo's current ability, as a potential "holder" of the note, to foreclose, it nevertheless filed documents with knowingly and intentionally false information regarding the method by which it came into possession of the note, confusing the chain of title to the property at a time when Plaintiffs may have been able to sell the home at a profit. Thus, the Chapter 12 claim can exist independently because Plaintiffs have proven damages independent of the "holder's" foreclosure.

H. Defendants challenges to the exemplary damages award should be rejected

126. Defendants raise several arguments challenging the exemplary damage award that can easily be rejected.[24]

1. Defendants cannot complain about the failure to instruct on the elements of gross negligence, fraud, or malice.

127. Defendants argue that Plaintiffs cannot recover exemplary damages because the jury was not instructed on the elements of gross negligence, fraud, or malice. Defendants' Motion for JNOV at 35. But once again, Defendants waived this argument by failing to object to the jury charge at the charge conference. The liability question for exemplary damages was submitted as Question 3. *See* Jury Verdict at p. 8. The question asked whether the jury found by clear and

[24] Defendants' challenges to the sufficiency of the evidence of the underlying liability questions are addressed above and will not be repeated here. With respect to the challenge to damages, however, Plaintiffs point out that even if their damage evidence is legally insufficient, they are at a minimum entitled to the $10,000 statutory penalty, costs and attorney fees. TEX. CIV. PRAC. & REM. CODE ANN. § 12.002.

convincing evidence that Defendants "engaged in the conduct that you found in Question No. 1?" *Id.* Thus, the liability question referred to the fraudulent making, use, or filing of a document under Chapter 12. *Id.*

128. At the charge conference, Defendants affirmatively stated they had "no objection" to Question 3. 5RR87-88. If Defendants believed that the reference to Question 1's finding was inadequate or insufficient to set forth the elements of fraud to support exemplary damages, or that additional instructions were required, they had to object at that time. TEX. R. CIV. P. 278; *Morris v. Morris*, No. 13-05-00297-CV, 2007 WL 2128882, at *6 (Tex. App.—Corpus Christi July 26, 2007, no pet.) (mem. op.). Because they did not, this argument is waived.

2. Section 12.002 does not preclude a jury from determining exemplary damages.

129. Defendants assert that section 12.002 precluded this Court from submitting a jury question on the amount of exemplary damages. Defendants' Motion for JNOV at 35. Again, Defendants did not object to the jury charge in this regard, and affirmatively stated they had no objections. 5RR87-88. Defendants cannot now complain that this Court should not have submitted that question to the jury for factual determination. Defendants do not cite anything but the statutory text, which provides that Plaintiffs can recover ""exemplary damages in an amount determined by the court," to support their argument. They cite nothing for the proposition that this language removes Plaintiffs' right to a jury trial. And it does not.

130. For example, under the Declaratory Judgment statute, the "court" is authorized to award attorney fees and costs, but a jury is empaneled to make the factual determination of reasonableness and necessity. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 37.009; *Stern v. Marshall*, 471 S.W.3d 498, 529 (Tex. App.—Houston [1st Dist.] 2015, no pet.). For the legislature to take away the right to a jury trial, the intent must be made more clear by the statute, and Defendants do not point to any authority for their contention.

3. Defendants are not entitled to a setoff.

131. In one footnote, Defendants claim that because the jury found the Plaintiffs are in default and owe money on the note, they are entitled to a setoff. Defendants did not plead for breach of contract. Defendants JNOV motion at 35 n.18. Defendants *only* sought foreclosure of the note. TEX. R. CIV. P. 301 ("The judgment of the court shall conform to the pleadings, the nature of the case proved and the verdict, if any, and shall be so framed as to give the party all the relief to which he may be entitled either in law or equity."). Under the provisions of Rule 736, Defendants would only be entitled to an order of foreclosure, not an award of damages. *See* TEX. R. CIV. P. 736.8, 736.9.

132. This is because for a lender to foreclose on a person's homestead based on an extension of credit, the noteholder's only recourse can be to recover through a foreclosure sale. TEX. CONST. art. XVI, § 50(a)(6)(C); *see* Ex. 2 at 4 ("I understand that Section 50(a)(6)(C), Article XVI of the Texas Constitution provides that this Note is given without personal liability against each owner of the property described above and against the spouse of each owner unless the owner or spouse obtained this Extension of Credit by actual fraud. This means that, absent such actual fraud, the Note Holder can enforce its rights under this Note solely against the property described above and not personally against any owner of such property or the spouse of an owner.").

133. Allowing Defendants to claim a setoff against their recovery for damages would (1) violate the Constitution, because it would allow a lender to recover on an extension of credit by attaching their personal property other than the homestead; and also (2) would violate the Note. Accordingly, Defendants are not entitled to set off the damages for the Chapter 12 finding—which compensate Plaintiffs for their inability to sell the home at a time when they could have avoided the increasing debt on their note. At most, the jury findings entitle Defendant to an order permitting

the foreclosure and sale of the home, the proceeds of which will go towards any default under the note.

4. After a proper application of the exemplary damage caps, the Court should render judgment for Plaintiffs in the amount of $1,060,000, plus interest and costs, and Due Process is satisfied.

134. Finally, Defendants assert that the exemplary damages are subject to reduction under section 41.008 of the Texas Civil Practice and Remedies Code and Constitutional Due Process. Defendants assert that the statutory cap requires a reduction of the damages to the amount of $340,000. Defendants' Motion for JNOV at 36 n.19. Defendants arrive at this number by combining the economic damages awarded to each plaintiff, doubling that number, and adding the combined economic damages. *Id.* Defendants do not, however, identify which Defendant is liable for what amount or indicate how they think the damages should be apportioned. TEX. CIV. PRAC. & REM. CODE ANN. § 41.006 ("In any action in which there are two or more defendants, an award of exemplary damages must be specific as to a defendant, and each defendant is liable only for the amount of the award made against that defendant.").

135. "Exemplary damages awarded against **a defendant** may not exceed an amount equal to the greater of: (1)(A) two times the amount of economic damages; plus (B) an amount equal to any noneconomic damages found by the jury, not to exceed $750,000; or (2) $200,000." TEX. CIV. PRAC. & REM. CODE ANN. § 41.008(b). The exemplary damages cap applies per defendant, not to the aggregate of all exemplary damages awarded against all defendants. *Id.*

136. In Texas, defendants cannot be jointly and severally liable for exemplary damages, which is why exemplary damage questions require the defendants to be separately identified. *Id.* § 41.006. However, that does not mean that the Defendants cannot be jointly and severally liable for the *damages* awarded, which is what the judgment will be required to provide in this case.

Defendants did not request an apportionment question under Texas Civil Practice and Remedies Code Chapter 33 or object to its absence; thus, they are jointly and severally liable for the damages.

137. Applying the caps on a per defendant basis, and in light of the fact that the Defendants are jointly and severally liable for the economic and non-economic damages, the calculation should be as follows:

Mary Ellen Wolf:

Economic Damages against Defendants jointly and severally .....$ 75,000

Non-Economic Damages against Defendants jointly and severally.....$ 20,000

Recovery against each Defendant for exemplary damages **$200,000**

($75,000 x 2 = $150,000 + $20,000 = $170,000 < $200,000)

Total amount (not including attorney fees) awarded to Mary Ellen Wolf.....**$495,000**

($75,000 joint and several + $20,000 joint and several +

$200,000 Wells Fargo exemplary + $200,000 Carrington exemplary)

Each Defendants' maximum liability to Mary Ellen Wolf.....**$295,000**

($75,000 + $20,000 + $200,000)

David Wolf:

Economic Damages against Defendants jointly and severally .....$ 75,000

Non-Economic Damages against Defendants jointly and severally.....$ 20,000

Recovery against each Defendant for exemplary damages **$200,000**

($75,000 x 2=$150,000 + $20,000 =$170,000 < $200,000)

Total judgment (not including attorney fees) awarded to David Wolf.....**$495,000**

($75,000 joint and several + $20,000 joint and several +

$200,000 Wells Fargo exemplary + $200,000 Carrington exemplary)

Each Defendants' maximum liability to David Wolf **$295,000**

($75,000 + $20,000 + $200,000)

TOTAL AMOUNT OF THE JUDGMENT INCLUDING ATTORNEY FEES:

Damages + attorney fees + exemplary damages.....$990,000 + $140,000 = $1,130,000

Conditional award of appellate fees.....$50,000

COMBINED TOTAL.....$1,180,000

(plus prejudgment interest, post-judgment interest, and costs).

138. Under a Due Process analysis, courts have held that typically, an award within the statutory caps typically satisfies due process. *BMW of N. Am. v. Gore*, 517 U.S. 559, 583, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996); *Rodriguez–Torres v. Caribbean Forms Mfr., Inc*., 399 F.3d 52, 65 (1st Cir. 2005) (citing *Romano v. U–Haul Int'l*, 233 F.3d 655, 673 (1st Cir. 2000). Defendants complain of due process violations only with respect to the jury awards, not the reduced amounts pursuant to the caps.

139. Moreover, because the awards must be specific to each Defendant, were separated in the jury charge, the analysis would not focus on the $5,000,000, and will be reduced due to the damage caps, Defendants' assertion that the exemplary damages award will constitute a 25-to-1 ratio is incorrect. Rather, for each Defendant, the ratio would compare the total amount that could be recovered against that Defendant for each Plaintiff divided by the economic and non-economic damages, or $495,000/$95,000, which is 5.2.

140. Courts routinely reject a due process challenge where the ratio is less than 4 to 1. *Tony Gullo Motors I, L.P. v. Chapa*, 212 S.W.3d 299, 308 (Tex. 2006). But upwards departures are sometimes authorized. *Id.* Given the reprehensibility of the conduct and the evidence that this pattern or practice is widespread among these Defendants, the Court should have no trouble with this ratio. In fact, Defendants have not challenged any of the "signposts" that typically guide a court's discretion in the Due Process context. Nevertheless, Defendants concede that the courts

can consider "financial ruin" as a basis to support a high award of exemplary damages. If Defendants had not violated Chapter 12 and Plaintiffs had been able to sell their home, they could have avoided foreclosure of the note, made a profit, and likely could get another mortgage. Under the circumstances, thus, the reduced awards against each Defendant satisfy Due Process.

I. Defendants' request for judicial foreclosure should be denied.

141. Plaintiffs have requested in their Amended Motion to Disregard Jury Findings and Motion for Judgment Notwithstanding the Verdict for the Court to disregard the findings on which Defendants rely for their claim for judicial foreclosure. Plaintiffs incorporate those arguments by reference and request that the Court refuse and deny Defendants' request for judicial foreclosure.

IV. CONCLUSION AND PRAYER

For all the foregoing reasons, Plaintiffs pray that the Court deny Defendants' motion for judgment notwithstanding the verdict, grant Plaintiffs' Amended Motion to Disregard Jury Findings and Motion for Judgment Notwithstanding the Verdict, and render judgment accordingly.

Respectfully Submitted,

HUGHES ELLZEY, LLP

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

By the execution of my signature below, I certify a true and correct copy of the attached document has been served to all counsel of record pursuant to Rule 21 of the TEXAS RULES OF CIVIL PROCEDURE on January 8, 2015.

/s/ W. Craft Hughes
W. Craft Hughes

8/27/2015 2:39:49 PM
Chris Daniel - District Clerk Harris County
Envelope No. 6684011
By: VERONICA GONZALEZ
Filed: 8/27/2015 2:39:49 PM

CAUSE NO. 2011-36476

MARY ELLEN WOLF and DAVID WOLF	§	**CIVIL DISTRICT COURT**
	§	
v.	§	**HARRIS COUNTY, TEXAS**
	§	
WELLS FARGO BANK, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates, et al	§	**151st JUDICIAL DISTRICT**

DEFENDANTS' FOURTH AMENDED ANSWER AND THIRD AMENDED COUNTERCLAIM

TO THE HONORABLE JUDGE OF SAID COURT:

Come now Defendants, Wells Fargo Bank, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates ("Wells Fargo, as Trustee of the Mortgage Trust"), Carrington Mortgage Services, LLC, ("Carrington") and Tom Croft ("Croft") (collectively, "Defendants") and respectfully show as follows:

1.

Defendants generally deny Plaintiffs' material allegations pursuant to Rule 92 of the Texas Rules of Civil Procedure. Defendants also assert the defenses discussed below.

2.

Plaintiffs, Mary Ellen Wolf and David Wolf, applied for a refinance/home equity loan from New Century Mortgage Corporation ("New Century") in 2006.

3.

New Century agreed to loan Plaintiffs $400,000. The loan (the "Loan") is memorialized by a Texas Home Equity Fixed/Adjustable Rate Note (the "Note") and a Texas Home Equity Security Instrument (the "Deed of Trust"). The Deed of Trust provides New Century and its

EXHIBIT A

assigns with a first lien on Plaintiffs' homestead, which is located at 6404 Buffalo Speedway, Houston, Texas 77005, and which is more particularly described as:

> The South ½ of Lot Six (6), Block Thirty (30) of West University Place, an addition in Harris County, Texas, according to the Map or Plat thereof recorded in volume 9, Page 13, of the Map Records of Harris County, Texas (together, with the improvements thereon, referred to as the "Property").

4.

In addition to signing the Note and Deed of Trust, Plaintiffs also executed a document entitled Texas Home Equity Affidavit and Agreement, wherein Plaintiffs swore under oath that the $400,000 Loan was the "... only loan made pursuant to Section 50(a)(6), Article XVI of the Texas Constitution that will be secured by the Property at the time the (Loan) is funded."

5.

Plaintiffs agreed that more than $354,000 from the proceeds of the Loan would be paid to Countrywide Home Loans. In fact, when the Loan closed, Plaintiffs agreed that $354,777.49 of the proceeds would be paid to "CW," presumably Countrywide in order to pay off their prior loan. Plaintiffs received $22,349.60 in cash at closing.

6.

In short, Plaintiffs borrowed $400,000 from New Century in order to: (i) pay off their prior loan; and (ii) provide Plaintiffs with more than $22,000 in cash.

7.

New Century indorsed the Note "in blank" shortly after the closing of the Loan pursuant to Section 3.205(b) of the Texas Business & Commerce Code, and provided (i.e. assigned) the Note to Wells Fargo, as Trustee of the Mortgage Trust. Contemporaneously therewith, New Century executed an assignment in blank, and provided (i.e. assigned) the Deed of Trust to Wells

EXHIBIT A

Fargo, as Trustee of the Mortgage Trust, which has owned, held and had possession of the Note and Deed of Trust since shortly after the closing of the Loan in 2006.

8.

New Century, which retained servicing rights to the Note after it was assigned, filed for bankruptcy in the United States Bankruptcy Court for the District of Delaware in 2007. Shortly thereafter, the Delaware bankruptcy court signed an order approving the sale of New Century's servicing business to Carrington, and authorized New Century to execute any and all documents, instruments and papers to effectuate the sale to Carrington. Carrington has been servicing the Note and Deed of Trust since then.

9.

New Century executed two limited powers of attorney appointing Carrington as its attorney in fact and authorizing Carrington to execute deeds of trust/mortgage note endorsements, assignments of deed of trust/mortgage, and to assign mortgages and do any other act or complete any other document in the normal course of servicing. Wells Fargo, as Trustee of the Mortgage Trust, also executed a limited power of attorney appointing and authorizing Carrington to act as its attorney-in-fact as to the Note and Deed of Trust.

10.

The assignment of the Note and Deed of Trust to Wells Fargo, as Trustee of the Mortgage Trust, was subsequently memorialized via an instrument entitled "Transfer of Lien" that was filed in the Harris County real property records in October 2009.

11.

Plaintiffs have been in default of the Note and Deed of Trust because they have not made a payment on the Note for several years. In addition, Plaintiffs have built up a negative escrow

EXHIBIT A

account, and owe more than the principal amount of the Note. The Plaintiffs have been provided all pre-foreclosure requisite notices, including notice of default, opportunity to cure and notice of acceleration.

12.

The Note was indorsed "in blank" pursuant to Section 3.205(b) of the Texas Business & Commerce Code, which effectively assigns the Note to whomever has possession of the Note. See Tex. Bus. & Com. Code §3.205(b). Wells Fargo, as Trustee of the Mortgage Trust, has had possession of the original Note since shortly after the closing of the Loan.

13.

The Deed of Trust automatically transferred with the Note. Under Texas law, when a mortgage note is transferred, the mortgage/deed of trust automatically transfers to the note holder by virtue of the common-law rule that "the mortgage follows the note." *See Campbell v. MERS,* 2012 WL 1839357 (Tex. App.—Austin May 18, 2012); citing *J.W.D., Inc. v. Federal Ins. Co.,* 806 S.W. 2d 327, 329-30 (Tex. App. – Austin 1991, no writ); *see also Dempsey v. U.S. Bank,* 2012 WL 2036434, at *4 (E.D. Tex. - June 6, 2012) citing *Kirby Lumber Corp. v. Williams,* 230 F. 2d 330, 332 (5th Cir. 1956).

14.

The right to foreclose on a deed of trust transfers when the note is transferred, not when an assignment of deed of trust is prepared or recorded. *Darocy v. Chase Home Finance, LLC,* 2012 WL 840909 *10 (N.D. Tex. 2012) citing *Bittinger v. Wells Fargo Bank NA,* 744 F. Supp. 2d 619, 625 (S.D. Tex. 2010) citing *JWD, Inc. v. Federal Ins. Co.,* 806 S.W.2d 327, 329-30 (Tex. App.—Austin 1991, no writ). As discussed in the *Bittinger* case:

EXHIBIT A

> Under Texas law ... the ability to foreclose on a deed of trust is transferred when the note is transferred, not when an assignment of deed of trust is either prepared or recorded. *Bittinger,* 744 F. Supp.2d at 625.

15.

Even though no assignment of the Deed of Trust was required, New Century executed an assignment in blank, assigning the Deed of Trust to Wells Fargo, as Trustee of the Mortgage Trust, which has possession of the original assignment and original Deed of Trust.

16.

Plaintiffs do not have standing to contest whether the Note and Deed of Trust were assigned pursuant to the terms of the mortgage trust's pooling and servicing agreement (the "PSA") or any other mortgage trust documents. The Plaintiffs do not have standing to contest whether the Transfer of Lien was signed in a timely manner or whether the person who signed it was authorized to do so. Plaintiffs do not have standing to request that the Court rule on the validity of any deeds of trust to which they are not a party.

17

Plaintiffs do not have standing to contest whether the Note and Deed of Trust were assigned pursuant to the terms of the mortgage trust's pooling and servicing agreement (the "PSA") or any other mortgage trust documents because Plaintiffs are not a party to, or third party beneficiary of, the PSA or any other documents creating the mortgage trust. *See Reinagel v. Deutsche Bank Nation Trust Co.,* 735 F.3d 220 (5th Cir. 2013); *Sigaran v. U.S. Bank National Association,* 560 Fed. Appx. 410 (5th Cir. 2014); and *Svoboda v. Bank of America,* 571 Fed. Appx. 270 (5th Cir. 2014) (per curiam).

EXHIBIT A

18.

In *Reinagel, Sigaran* and *Svoboda,* a borrower filed suit contending that an assignment of a note and deed of trust to a mortgage trust had not been done in compliance with the mortgage trust's PSA and further contended that, therefore, the purported assignment was void. In each case, the Fifth Circuit held that the borrower/plaintiff did not have standing to contest whether an assignment complied with the mortgage trust's PSA. *See Sigaran v. U.S. Bank National Association,* 560 Fed. Appx. 410, 413 (5th Cir. 2014) citing *Reinagel v. Deutsche Bank National Trust Co.,* 735 F. 3d 220, 228 (5th Cir. 2013).

19.

If Plaintiffs' allegations were correct (and they are not) the assignment to Wells Fargo, as Trustee of the Mortgage Trust, would be voidable (as opposed to void) and only the assignor would have standing to complain. *See Sigaran,* 560 Fed. Appx. at 413-414.

20.

Likewise, Plaintiffs do not have standing to contest whether the Transfer of Lien is valid. *See Reinagel,* 735 F. 3d at 226. In *Reinagel*, the United States Fifth Circuit, in discussing that issue, held as follows:

> ... In *Nobles v. Marcus,* the Texas Supreme Court clarified that a contract executed on behalf of a corporation by a person fraudulently purporting to be a corporate officer is, like any other unauthorized contract, not void, but merely voidable at the election of the defrauded principal ... Texas law is settled that the obligors of a claim ... may not defend [against the assignee's effort to enforce the obligation] on any ground which renders the assignment voidable only. (The signator's) lack of authority, even accepted as true, does not furnish the (Plaintiff/borrowers) with a basis to challenge the ... assignment. *Reinagel v. Deutsche Bank National Trust Company,* 722 F.3d 700, 706-707 (5th Cir. 2013).

EXHIBIT A

21.

In other words, even if the signatory of the Transfer of Lien was not authorized to execute it - or executed it in the wrong capacity – or executed it fraudulently - the assignment of the Note and Deed of Trust to Wells Fargo, as Trustee of the Mortgage Trust, would only be voidable at the election of the assignor, New Century. In short, Plaintiffs do not have standing to contest whether the assignment of the Note or the Deed of Trust complied with the terms of the PSA, any other trust documents or whether the Transfer of Lien filed in the real property records is a valid assignment. Moreover, even if Plaintiffs had standing to contest the assignment of the Note or Deed of Trust, the fact that the assignment (if not done correctly) would make it voidable means that any attempt to "void" the allegedly voidable transfer would have to be done within four years of when the assignment should have occurred under the PSA, after which time it becomes valid.

22.

Carrington was authorized to execute the Transfer of Lien and all pre-foreclosure notices. Carrington has been the servicer for the Loan and Note since the summer of 2007. A bankruptcy court approved the sale of New Century's servicing business to Carrington, and authorized New Century to execute all documents, instruments and papers necessary to effectuate the sale of its servicing business to Carrington. New Century and the liquidating trustee in New Century's bankruptcy case each executed a Limited Power of Attorney appointing Carrington as attorney in fact and authorizing Carrington to execute deeds of trust/mortgage note endorsements, assignments of deed of trust/mortgage, assign mortgages and do any other act and complete any other document required in the normal course of servicing.

EXHIBIT A

23.

Plaintiffs allege that Defendants violated Chapter 12 of the Texas Civil Practice & Remedies Code by filing a document entitled Transfer of Lien, which memorializes the assignment of the Note and Deed of Trust to Wells Fargo, as Trustee of the Mortgage Trust. There was nothing wrongful or actionable associated with filing the Transfer of Lien.

24.

Moreover, a mortgage assignment is not "a fraudulent lien or claim" within the meaning of Chapter 12. A mortgage assignment neither enlarges nor extinguishes a borrower's interest in the property, and the assignee holds the same rights and obligations the assignor previously held. *See Twelve Oaks Tower I, Ltd. v. Premier Allergy, Inc.*, 938 S.W.2d 102, 114 (Tex. App.–Houston [14th Dist.] 1996, no pet.). In other words, a deed of trust assignment merely transfers an existing claim from one person to another. An assignment of a deed of trust does not create a claim. It assigns a claim. Therefore, it is not actionable under Chapter 12. *See Marsh v. JP Morgan Chase Bank, N.A.*, 888 F. Supp. 2d 805, 813 (W.D. Tex. 2012); *Perdomo v. Federal National Mortgage Association*, 2013 WL 1123629 *5 (N.D. Tex. 2013); *Willeford v. Wells Fargo Bank, N.A.*, 2012 WL 2864499 *6 (N.D. Tex. 2012); *Garcia v. Bank of New York Mellon*, 2012 WL 692099 *3 (N.D. Tex. 2012); but see *Howard v. JP Morgan Chase*, 2013 WL 1694659 *12 (W.D. Tex. 2013).

25.

The Transfer of Lien was not filed with fraudulent intent or with intent to inflict physical injury, financial injury or mental anguish on Plaintiffs, which are elements of a Chapter 12 claim.

EXHIBIT A

26.

Section 192.007 of the Texas Local Government Code does not provide a private right of action and, therefore, Plaintiffs have no standing to assert any alleged violation of Section 192.007 or have that form the basis of any claim. *See Dallas County, Texas v. Merscorp, Inc.*, 2 F. Supp. 3d 938, 947-949 (N.D. Tex. 2014); citing *Reinagel v. Deutsche Bank Nat. Trust Co.*, 735 F.3d 220, 228 n. 27 (5th Cir. 2013).

27.

It is well-settled that a party seeking an equitable remedy must do equity and come to court with clean hands. *Truly v. Austin, 744 S.W.2d 934, 938 (Tex. 1988); Hammond v. All Wheel Drive Co.*, 707 S.W.2d 734, 737 (Tex. App. – Beaumont, 1986, no writ).

28.

In *Hammond,* a defaulting property owner sued for wrongful foreclosure. The trial court granted summary judgment for the mortgagee. The appellate court affirmed, holding as follows:

> The district court correctly granted summary judgment ... Appellants have never tendered payments of any of the sums due under the five promissory notes ... To obtain a rescission of the substitute trustee's sale and a cancellation and setting aside of the substitute trustee's deed, the Appellants are seeking equitable relief. They must, in turn, do equity. They have not done so. *Hammond,* 707 S.W. 2d at 737.

29.

Plaintiffs have been in default for several years. The Note has been accelerated. Plaintiffs have not attempted to pay off the Note or even the past due amount. Therefore, Plaintiffs are not entitled to equitable relief or to recover on any equitable claim.

EXHIBIT A

30.

Plaintiffs' claims are barred, in whole or in part, by the applicable statute(s) of limitations. Plaintiffs' claims are barred, in whole or in part, by the economic loss doctrine.

31.

Wells Fargo, as Trustee of the Mortgage Trust, has never serviced this Loan or Note.

32.

Therefore, to the extent Plaintiffs' claims are based on servicing issues, Wells Fargo, as Trustee of the Mortgage Trust, contends that it is not liable in the capacity in which it is being sued.

33.

Plaintiffs' declaratory judgment claims are duplicative of other claims.

34.

Plaintiffs are parties to the Note and Deed of Trust. Therefore, Plaintiffs are not entitled to seek a claim for unjust enrichment.

Third Amended Counterclaim

35.

Wells Fargo, as Trustee of the Mortgage Trust, and Carrington are Counter-Plaintiffs. Mary Ellen Wolf and David Wolf are Counter-Defendants. Wells Fargo, as Trustee of the Mortgage Trust, and Carrington incorporate Paragraphs 1-34 herein. Wells Fargo and Carrington seek a judicial foreclosure and an order ordering and authorizing a judicial foreclosure sale. Alternatively, Wells Fargo, as Trustee of the Mortgage Trust, and Carrington seek permission to foreclose pursuant to Rules 735 & 736 of the Texas Rules of Civil Procedure and/or Texas Property Code §51.002.

EXHIBIT A

36.

As discussed above: (i) Plaintiffs executed the Note and Deed of Trust; (ii) Wells Fargo, as Trustee of the Mortgage Trust, holds and owns the Note and Deed of Trust; (iii) Plaintiffs are in default of the Note and Deed of Trust; (iv) Wells Fargo, as Trustee of the Mortgage Trust, and Carrington provided Plaintiffs with notice of the default and an opportunity to cure; (v) Plaintiffs did not cure; (vi) Wells Fargo, as Trustee of the Mortgage Trust, and Carrington gave notice of acceleration and accelerated the Note; and (vii) Plaintiffs remain in default.

37.

All conditions precedent to Counter-Plaintiffs' right to recovery of all relief requested in this proceeding have been performed or occurred.

Wherefore, Defendants ask that, upon final hearing hereof, the Court deny all relief sought by Plaintiffs and adjudge that Plaintiffs take nothing by way of this suit. In addition, Wells Fargo, as Trustee of the Mortgage Trust, and Carrington ask that the Court adjudge and enter an Order ordering and authorizing a judicial foreclosure sale. Alternatively, Wells Fargo, as Trustee of the Mortgage Trust, and Carrington seek permission to foreclose pursuant to Rules 735 & 736 of the Texas Rules of Civil Procedure and/or Texas Property Code §51.002. Defendants seek their costs of Court and all other relief to which they are entitled.

EXHIBIT A

Respectfully submitted,

CRAIN, CATON & JAMES

By: /s/ Peter C. Smart

Peter C. Smart
State Bar No. 00784989
psmart@craincaton.com
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Five Houston Center
Houston, Texas 77010
713-658-2323
713-658-1921 (fax)
Attorneys for Wells Fargo Bank, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates, Carrington Mortgage Services, LLC, and Tom Croft

EXHIBIT A

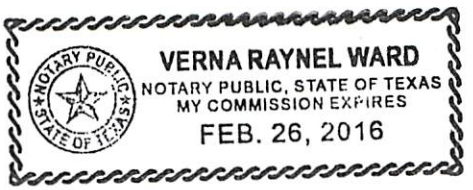
VERIFICATION

STATE OF TEXAS §
§
COUNTY OF HARRIS §

Before me, the undersigned notary public, on this day came personally appeared the undersigned affiant, who, upon being duly sworn under oath, stated he is the attorney of record for Wells Fargo Bank, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates, Carrington Mortgage Services, LLC, and Tom Croft in the above entitled and numbered lawsuit, he has read the foregoing pleading, and the statement in section 32 are true and correct.

Peter C. Smart

Subscribed and sworn to before me this 27 day of August 2015.



Verna Raynel Ward
Notary Public, State of Texas

EXHIBIT A

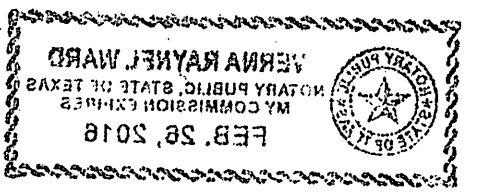

VERNA RAYNEL WARD
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
FEB. 26, 2016

EXHIBIT A

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served on the following through the electronic filing manager and via certified mail, return receipt requested this 27th day of August 2015.

W. Craft Hughes
Jarret L. Ellzey
Hughes Ellzey, LLP
2700 Post Oak Blvd., Suite 1120
Galleria Tower I
Houston, Texas 77056
Fax - 888-995-3335

/s/ Peter C. Smart
Peter C. Smart

EXHIBIT A

THE COURT: All right. We are on the record in 2011-36476. This is the Court's formal charge conference.

What I do is I go back and forth between Plaintiff and Defendant as to the various sections of the charge, first the instructions and then the questions. So starting with -- from the top, the pages 1, 2, and 3, which are instructions and definitions -- I'm sorry, including page 4, instructions and definitions, are there any objections from the Plaintiff?

MR. HUGHES: No objections from Plaintiff as to pages 1 through 4.

THE COURT: All right. From the Defendants?

MR. SMART: No objection.

THE COURT: All right. Question 1 from the Plaintiffs?

MR. HUGHES: No objection.

THE COURT: From the Defendants?

MR. SMART: Yes. Defendants and Counter Plaintiffs object to Question No. 1 being submitted to the jury because there's legally insufficient evidence and as a matter of law should not be submitted to the jury. We do not object to the form of the question but

to it being submitted for legally insufficient evidence.

THE COURT: Okay. Overruled. Turning to Question 2, from the Plaintiffs, any objection?

MR. HUGHES: No objection to Question No. 2.

THE COURT: From the Defendants?

MR. SMART: Yes. Object to the submission for the same reason as the precursor, that there's legally insufficient evidence. Also object to -- and I'm going to hand the Court a version. We think that Sections A, B, C, D, G and H, which are financial injury in the past, financial injury in the future and mental anguish in the future, we think is legally insufficient evidence to support that. And I'm handing the Court the form of the question that the Court's using with those being struck out.

THE COURT: Okay. That's overruled. The Court will mark this as rejected and mark it part of the record and sign and date it.

MR. SMART: Thank you.

THE COURT: All right. Moving on to Question 3 from the Plaintiffs.

MR. HUGHES: No objection to Question 3.

THE COURT: From the Defendant?

MR. SMART: No objection.

THE COURT: Okay. Question 4 from the Plaintiffs?

MR. HUGHES: No objection.

THE COURT: From the Defendant?

MR. SMART: The Defendants object to Question 4 being submitted because it's barred by the statute of limitations and because there's legally insufficient evidence to submit it.

THE COURT: Okay. Overruled.

MR. SMART: And because it's a subject of a document, the note, so -- and it's the subject of a note -- it's the subject of a contract between the parties; so, therefore, you're not entitled to an equitable remedy when there's a contract in place.

THE COURT: Okay. That objection's overruled as well.

Moving on to Question 5 from the Plaintiff.

MR. HUGHES: No objection.

THE COURT: Question 5 from the Defendants?

MR. SMART: Object not to the form but because there's legally insufficient evidence and for the reasons I object to Question 4.

THE COURT: Okay. Overruled.

Question 6 from the Plaintiff?

MR. HUGHES: No objection.

THE COURT: From the Defendants?

MR. SMART: Defendants object to Question 6 because there's legally insufficient evidence to support it, it's barred by the statute of limitations and Plaintiffs are not entitled to equitable remedies that are covered by a contract such as the note and deed of trust.

THE COURT: Okay. Overruled.

Question 7 from the Plaintiff?

MR. HUGHES: No objection.

THE COURT: From the Defendants?

MR. SMART: Defendants object to have Question 7 being submitted for the reasons that Question 6 should not be submitted.

THE COURT: Okay. Overruled.

Question 8.

MR. HUGHES: Plaintiffs object to Question No. 8 being submitted because it is -- well, first of all, it's a mixed question of law and fact in that this is only defining a Texas home equity fixed/adjustable rate note, Defendants' Exhibit 2 when during trial there was testimony and evidence establishing that

other transfers of the Plaintiffs' mortgage loan note and deed of trust would have to take place for -- before Plaintiffs are required to comply with that Defense Exhibit 2.

THE COURT: Okay. Overruled.

From the Defendant?

MR. SMART: No objection.

THE COURT: Okay. That was 8, right?

So 9 from the Plaintiffs.

MR. HUGHES: Plaintiffs object to Question 9 for the same reasons stated in Question 8. If Wells Fargo, as trustee, never obtained the mortgage legally through the correct assignments, then the Plaintiffs are not required to be paying on that note.

THE COURT: All right. Overruled.

From the Defendants?

MR. SMART: No objection to 9.

THE COURT: Question 10.

MR. HUGHES: Plaintiffs object to Question 10. Plaintiffs object to both of the instructions of holder and bearer as improper comments on the evidence.

We also object to Question 10 because it references a holder of the Texas home equity fixed/adjustable rate note and there was no testimony

that I recall in the trial specifically discussing the definition of a holder or a bearer and who that was related to Defense Exhibit 2.

THE COURT: All right. Overruled.

From the Defendants?

MR. SMART: Defendants do not object to what is currently there but think that there should be an additional instruction: When a promissory note is endorsed in blank by the original noteholder, the entity that has possession of the original promissory note becomes the holder of that promissory note.

I'm tendering to the Court the question with that additional instruction in it.

THE COURT: All right. That's overruled. The Court will make that part of the Court's file and sign and date it and mark it rejected.

Question 11 from the Plaintiffs?

MR. HUGHES: Plaintiffs object to Question 11 based on the previous objections made relating to Defense Exhibits 2 and 3 in that the assignments or the previous assignments required by the PSA were not complied with.

THE COURT: That objection's overruled.

Any other objections from the Defendant?

MR. SMART: Not to 11.

THE COURT: All right. Moving on Question 12 from the Plaintiffs.

MR. HUGHES: No objection.

THE COURT: From the Defendants?

MR. SMART: Yes. Defendants object to Question 12. There's legally insufficient evidence to offer it. And this is the second question having to do with the transfer of lien. The first question has to do with that. I think it's duplicative and it appears to be a question as to whether there's a declaratory judgment action as to whether the transfer of lien is void. So we object on those grounds.

THE REPORTER: I didn't hear the last sentence.

THE COURT: The last sentence again, please.

MR. SMART: And -- I forget the last sentence. Never mind. I forget what it was.

THE COURT: All right. That's overruled.

Question 13, from the Plaintiffs?

MR. HUGHES: No objection.

THE COURT: From the Defendants?

MR. SMART: The Defendants object to Question 13 because it is a breach of contract question and the Plaintiffs, the Wolfs, are not parties to the

PSA or third-party beneficiaries to the PSA.

THE COURT: All right. Overruled.

Question 14, the attorney's fees questions, any objection from Plaintiffs.

MR. HUGHES: No objection.

THE COURT: From the Defendants?

MR. SMART: Defendants object to the submission of -- not to the form but to the submission of Question 14 that there's legally insufficient evidence to offer it and that's our objection.

THE COURT: Okay. Overruled.

I'm going to -- Deputy, I'm going to print this one more time and I don't think I made any changes, so you have your copy. So if you would make 12 double-sided copies and then bring the jury in, we'll instruct the jury and we'll -- I'm sorry, we'll charge the jury and have closing arguments.

How much time did y'all want for closing? We've got -- by the time they get in here, it will be -- we'll have about 90 minutes left on the day.

(Discussion off the record)

MR. ELLZEY: Regarding time for closing, I would like 40. I don't think I'm going to use it. But -- I mean, it's a short case but there's a lot of technical stuff.

CAUSE NO. 2011-36476

MARY ELLEN WOLF AND DAVID WOLF	§	IN THE DISTRICT COURT OF
	§	
v.	§	
	§	HARRIS COUNTY, TEXAS
WELLS FARGO BANK, N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST, TOM CROFT, NEW CENTURY MORTGAGE CORPORATION, AND CARRINGTON MORTGAGE SERVICES, LLC.	§	151ST JUDICIAL DISTRICT

ORDER

On this day came to be heard *Defendants/Counter-Plaintiffs' Motion for Judgment Notwithstanding the Verdict and Memorandum of Law in Support* ("Defendants' JNOV Motion"). After considering the Defendants' JNOV Motion, the Plaintiffs' response, arguments of counsel, and the pleadings and evidence of record on file, the Court finds the Defendants' JNOV Motion is not meritorious. It is therefore, **ORDERED** that Defendants' JNOV Motion is **DENIED** in its entirety.

SIGNED this _____ day of _____, 2016.

_____
HONORABLE MIKE ENGELHART

Case No. 201136476

WOLF, MARY ELLEN	*	IN THE DISTRICT COURT OF
vs.	*	
	*	HARRIS COUNTY, TEXAS
WELLS FARGO BANK N A (AS TRUST	*	
	*	151st JUDICIAL DISTRICT

NOTICE OF INTENT TO DISMISS - NO FINAL ORDER

To All Counsel and Pro Se Parties:

Court records indicate that there has been a settlement, verdict, or decision dispositive of the case listed below, but a final order has not been filed. A submission is set on 08-29-2016 at 08:00 AM. on the Court's Intent to **DISMISS FOR WANT OF PROSECUTION**. If a final order of disposition is not filed and approved by the court at or before the time of the hearing, this case will be **DISMISSED FOR WANT OF PROSECUTION.**

If you have any questions regarding this notice, please contact the Court Coordinator, CORINA TENIENTE at (713) 368-6211.

Thank you for your prompt attention to this matter.

MIKE ENGELHART
Judge, 151ST DISTRICT COURT

Generated on: 08/17/2016

WILLIAM CRAFT HUGHES
2700 POST OAK BLVD STE 1120
HOUSTON TX 77056-5767

24046123

JCVF4S
rev.101206

Case No. 201136476

WOLF, MARY ELLEN	*	IN THE DISTRICT COURT OF
vs.	*	
	*	HARRIS COUNTY, TEXAS
WELLS FARGO BANK N A (AS TRUST	*	
	*	151st JUDICIAL DISTRICT

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MIKE ENGELHART
Judge, 151ST DISTRICT COURT

Generated on: 08/17/2016

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PETER C. SMART
1401 MCKINNEY ST STE 1700
HOUSTON TX 77010-4037

JCVF4S
rev.101206

Case No. 201136476

WOLF, MARY ELLEN	*	IN THE DISTRICT COURT OF
vs.	*	
	*	HARRIS COUNTY, TEXAS
WELLS FARGO BANK N A (AS TRUST	*	
	*	151st JUDICIAL DISTRICT

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Thank you for your prompt attention to this matter.

MIKE ENGELHART
Judge, 151ST DISTRICT COURT

Generated on: 08/17/2016

THOMAS DAVID PRUYN
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24031433

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Case No. 201136476

WOLF, MARY ELLEN
vs.
WELLS FARGO BANK N A (AS TRUST

*
*
*
*
*

IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
151st JUDICIAL DISTRICT

NOTICE OF INTENT TO DISMISS - NO FINAL ORDER

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Thank you for your prompt attention to this matter.

MIKE ENGELHART
Judge, 151ST DISTRICT COURT

Generated on: 08/17/2016

BARBARA RADNOFSKY
303 TIMBER TERRACE RD
HOUSTON TX 77024-5602

16457000

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4/28/2017 11:06:30 AM
Chris Daniel - District Clerk Harris County
Envelope No. 16724364
By: VERONICA GONZALEZ
Filed: 4/28/2017 11:06:30 AM
Pgs-2

CAUSE NO. 2011-36476

11B

MARY ELLEN WOLF and DAVID WOLF	§	**CIVIL DISTRICT COURT**
v.	§	
WELLS FARGO BANK, N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST, TOM CROFT, NEW CENTURY MORTGAGE CORPORATION, AND CARRINGTON MORTGAGE SERVICES, LLC	§	**HARRIS COUNTY, TEXAS**
	§	**151st JUDICIAL DISTRICT**

[PROPOSED] AGREED ORDER DISMISSING WITH PREJUDICE ALL CLAIMS AND COUNTERCLAIMS

Plaintiffs Mary Ellen Wolf and David Wolf ("Plaintiffs") and Defendants Wells Fargo Bank, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC3 Asset Backed Pass-Through Certificates ("Wells Fargo") and Carrington Mortgage Services, LLC ("Carrington" and, collectively, "Defendants"), collectively the "Parties," have jointly asked the Court to dismiss all claims and counterclaims with prejudice.

It is therefore, **ORDERED, ADJUDGED** and **DECREED** that this lawsuit, and all claims and counterclaims in this lawsuit, are hereby **DISMISSED WITH PREJUDICE**. This is a final order disposing of all claims in this lawsuit. Each party is to bear its own costs, fees and expenses.

Signed: 4/28/2017

Dated: _____

Judge Mike Engelhart

APPROVED AS TO FORM AND SUBSTANCE:

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