

IN THE CIRCUIT COURT, OF THE FOURTEENTH JUDICIAL CIRCUIT,  
IN AND FOR BAY COUNTY, FLORIDA

**CADENCE BANK, N.A.**  
a national banking association

CASE NO.: 2013 CA-1332  
DIVISION: CIRCUIT CIVIL COURT

Plaintiff,

v.

**JAMES D. HOLSOMBAKE; MARSHA J. HOLSOMBAKE;  
BREAM POND SUBDIVISION, LLC, A FLORIDA LIMITED  
LIABILITY COMPANY; P.D.H. III ENTERPRISES, LLC,  
A FLORIDA LIMITED LIABILITY COMPANY; UNKNOWN  
PARTIES IN POSSESSION #1; UNKNOWN PARTIES IN POSSESSION #2;  
UNKNOWN PARTIES IN POSSESSION #3**

Defendants.

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BILL KINSAUL  
CLERK OF COURT  
BAY COUNTY, FLORIDA

2014 DEC 17 A 10:36

FILED

**AGREED FINAL JUDGMENT OF FORECLOSURE AND REFORMATION**

THIS CAUSE came before the Court on December 17, 2014, upon the Corrected Stipulation and Joint Motion for Entry of Agreed Foreclosure and Reformation Judgment (the “**Stipulation**”) of Plaintiff, Cadence Bank, N.A, (“**Cadence**”), on the one hand, and Defendants: (a) Bream Pond Subdivision, LLC, a Florida Limited Liability Company, (“**Borrower**”); (b) James D. Holsombake, individually; Marsha J. Holsombake, individually; (James and Marsha Holsombake referred to collectively as “**Guarantors**”) [Borrower and Guarantors shall hereinafter be collectively referred to as “**Obligors**”] (c) P.D.H. III Enterprises, LLC (P.D.H. III Enterprises, LLC together with Obligors are referred to collectively as “**Defendants**”), on the other hand; and the Court having reviewed the pleadings and affidavits, including, without limitation, the Stipulation, and being fully advised in the premises and based on the consent of the parties, finds that:

(a) The Court has jurisdiction of the subject matter of this cause and personal jurisdiction of the parties hereto.

(b) There is no genuine issue of material fact in dispute and the equities of this cause are with Cadence and against Defendants.

(c) Cadence is entitled to entry of a final judgment of foreclosure against Defendants pursuant to the relief demanded in its Amended Complaint.

(d) Cadence is entitled to entry of a final judgment reforming the Mortgage<sup>1</sup> to correct a scrivener's error in the legal description of the Property.

(e) The allegations in the Amended Complaint have been proven by substantial competent evidence.

(f) The allegations in the Amended Complaint regarding reformation of the Mortgage have been proven by clear and convincing evidence.

(g) Cadence is the owner and holder of the Loan Documents and is the sole party entitled to enforce same.

(h) The Obligors are in material default under the terms of the Loan Documents and Cadence has declared all amounts to be paid under the Note immediately due.

(i) The Mortgage owned and held by Cadence constitutes a lien against all of the Property and further confers a security interest in such real and personal property prior and superior in dignity to any and all right, title, claim, lien, or interest of the Defendants and of all legal persons claiming by, through or under Defendants.

(j) The Mortgage owned and held by Cadence contains a scrivener's error and the correct legal description of the Property is contained in paragraph 35 of the Amended Complaint,

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<sup>1</sup> All capitalized terms (unless for grammatical purposes) not otherwise defined herein shall have the same meaning as provided in the Amended Complaint.

less and excepting Lots: 2, 14, 15, 16, 17, 19, 20, 29, 32, Bream Pond according to the plat thereof recorded in Plat Book 22, pages 80 through 85, Public Records of Bay County, Florida.

Accordingly, it is

ORDERED AND ADJUDGED that:

**Final Judgment of Foreclosure**

1. Under the terms of the Note, Mortgage, and the Loan Documents, Cadence is due, as of and through and including **October 22, 2014**, the following:

Principal	\$1,218,724.00
Accrued interest	\$ 112,731.97

Costs and expenses recoverable as provided by the Loan Documents:

(a) Late Fees	\$ 63,414.24
(b) Miscellaneous Fees	
Legal Fees	\$ 46,954.36
Appraisal Fees	\$ 11,000.00
Filing Fees	\$ 1,966.00
Title Search Fee	\$ 350.00
Service of Process	\$ 184.56

<b><u>TOTAL SUM:</u></b>	<b><u>\$ 1,455,325.13</u></b>
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2. Cadence holds a lien for the total sum set forth in paragraph 2 (the “**Total Sum**”<sup>2</sup>) plus: (a) interest accruing on said Total Sum at the rate prescribed by the law from and after the date of this Agreed Final Judgment of Foreclosure and Reformation (this “**Judgment**”); (b) all subsequent and additional costs and expenses advanced or incurred by Cadence under the

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<sup>2</sup> The Total Sum reflected herein is current through October \_\_, 2014 and does not contain all interest, costs, attorneys’ fees, and other charges permitted by the Loan Documents. Cadence shall have the sole and unfettered discretion to update the accrued and accruing amounts at any time upon application to the Court.

provisions of, and from and after the date of, this Judgment (“**Cadence’s Subsequent Costs**”); and (c) interest accruing on Cadence’s Subsequent Costs at the rate prescribed by law from the date each item thereof is actually advanced or incurred by Cadence.

3. To secure the payment to Cadence of the Total Sum, Cadence’s Subsequent Costs, and interest thereon at the statutory rate as permitted by law, Cadence has a valid first lien and a valid prior security interest against the Property and any other collateral described herein or in the Amended Complaint. Said lien of Cadence is prior, paramount and superior to all rights, claims, liens, interests, encumbrances, pledges, security interests, judgments, and equities of Defendants, and their successors and assigns (including any successors in title to all or any part, portion or item of any such real or personal property) and any and all legal persons claiming by, through or under said Defendants, including without limitation, each of the other defendants joined in this cause; and that the Property and all other collateral described in the Amended Complaint will be sold free and clear of any claims of defendants joined in this cause and all parties claiming interest by, though, under, or against any of the defendants as specifically set forth below.

4. If the Total Sum due Cadence together with: (a) interest which has accrued thereon at the rate prescribed by law from and after the date of this Judgment; (b) Cadence’s Subsequent Costs described above which include specifically: (i) Cadence’s additional advances for the costs and expenses of this action; (ii) Cadence’s additional advances for its attorneys’ fees for the prosecution of this action; (iii) Cadence’s additional advances for costs and expenses incurred in connection with the operation, maintenance, preservation and protection of the Property; and (iv) Cadence’s additional advances for real and personal property taxes and assessments and other applicable ad valorem, sales and use, and similar taxes; and (c) interest

which has accrued on Cadence's Subsequent Costs from the date each item thereof is actually advanced or incurred by Cadence at the rate prescribed by law, are not paid to Cadence, the Clerk of this Court shall sell all of the Property and all other collateral described herein or in the Amended Complaint in one combined offering at public sale on January 30, 2015, at 11:00 am Central time at [www.bay.realforeclose.com](http://www.bay.realforeclose.com) in accordance with Chapter 45, Florida Statutes. The Clerk of this Court shall sell the property described in this Judgment to the highest and best bidder in accordance with the deposit and payment procedures described at [www.bay.realforeclose.com](http://www.bay.realforeclose.com), except as set forth in Paragraph 5 below, after having given notice as required by Section 45.031, Florida Statutes.

5. Cadence may, but shall not be required or obligated to, advance all subsequent costs and expenses of this action, including, but not limited to, its attorneys' fees and such additional sums deemed by it to be necessary to: (a) maintain, operate, preserve and protect the Property or particular portions thereof; and (b) pay taxes levied against the Property or particular portions thereof, and Cadence shall be reimbursed for any and all of such advances (defined and described above as Cadence's Subsequent Costs) by the Clerk if Cadence is not the purchaser of the Property at the sale. If Cadence is the purchaser, the Clerk shall credit Cadence's bid with: (a) the Total Sum due Cadence set forth in paragraph 1 above together with interest accrued thereon at the rate prescribed by law from the date of this Judgment to the date of the judicial sale of the Property; and (b) all of Cadence's Subsequent Costs together with interest accrued thereon at the rate prescribed by law from the date each item thereof was actually advanced or incurred by Cadence to the date of the judicial sale of the Property, or such part of the foregoing as is necessary to pay Cadence's bid in full. If Cadence is not the successful bidder at said sale, the Clerk shall collect his fee and costs from the purchaser at the sale and shall further collect from

said purchaser the sums due for State of Florida documentary stamps and any applicable local or County surtax stamps to be affixed to the certificate(s), including the Certificate of Title to the Property.

6. On filing the Certificate of Title, the Clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying:

- (a) All of Cadence's costs;
- (b) Documentary stamps affixed to the certificate of title;
- (c) Cadence's attorneys' fees;
- (d) The Total Sum due Cadence, less the items paid, plus the interest at the rate of 4.75 Percent from the date of this judgment through the date of the sale; and
- (e) Any remaining amounts shall be retained by the Clerk of this Court pending further order of this Court.

7. On the issuance of the Certificate of Title, Borrower, all other named defendants to this action, and all persons, entities, firms or corporations claiming under or against them since the filing of the Notice of Lis Pendens shall be foreclosed of all estate or claim in the Property and the purchaser at the sale shall be let into possession of the Property forthwith.

8. Cadence may assign this Judgment prior to the Clerk's conduct of the foreclosure sale and the assignee hereof shall succeed to and enjoy all of the rights and obligations of Cadence hereunder. Should Cadence be the successful bidder at said sale, it may also freely assign its successful bid prior to the filing of the Certificate of Title by the Clerk, and, in the event of such assignment, Cadence shall provide the Clerk with a copy of the written instrument of assignment whereupon the Clerk shall issue the Certificate of Title to the assignee named therein.

9. If for any reason Cadence, in its sole discretion, subsequently determines that it does not desire the sale to be conducted as directed herein, Cadence, its attorney, or assigns may cancel or postpone the sale by submitting to the Clerk a Notice of Cancellation of Foreclosure Sale no later than the day of the scheduled sale. The Notice of Cancellation of Foreclosure Sale must be filed with the Clerk and a copy may be transmitted to the Clerk via facsimile sent to the Clerk prior to the sale being conducted. Any such cancellation or postponement shall have no effect upon the rights and obligations as between the parties and as set forth in the Settlement Agreement entered into between the parties.

10. The purchaser at the foreclosure sale, or those claiming through the purchaser, shall be placed in immediate possession of the Property. In the event Borrower, anyone claiming through Borrower (other than tenants not named in the Amended Complaint), or anyone who obtained an interest in the Property after the Notice of Lis Pendens in this action was recorded in the public records of Bay County, Florida, fails to vacate said Property within five (5) days after the date of issuance of the Certificate of Title, the Clerk shall issue upon request from the purchaser's or Cadence's counsel, a Writ of Possession to purchaser without the necessity of any further Court order.

11. Cadence, or the successful bidder at any foreclosure sale of the Property, may apply to the Court upon the issuance of a Certificate of Sale for an order putting the successful bidder at sale into possession of the Property, effective upon issuance of a Certificate of Title to the Property.

12. Pursuant to Section 45.031, Florida Statutes:

**IF THE PROPERTY IS SOLD AT PUBLIC AUCTION, THERE  
MAY BE ADDITIONAL MONEY FROM THE SALE AFTER  
PAYMENT OF PERSONS AND/OR ENTITIES WHO ARE**

**ENTITLED TO BE PAID FROM THE SALE PROCEEDS  
PURSUANT TO THIS SUMMARY JUDGMENT.**

**IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A  
RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST  
FILE A CLAIM WITH THE CLERK OF COURT NO LATER  
THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A  
CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING  
FUNDS.**

13. This Court expressly retains and reserves unlimited jurisdiction of the parties hereto and the subject matter hereof to settle and adjudicate all other matters arising under the pleadings or hereunder, including without limitation: (a) an award of reasonable attorneys' fees and costs incurred by Cadence; (b) the foreclosure of other liens or encumbrances that are subordinate to the liens that form the basis for the relief claimed by Cadence herein; and (c) entry of orders authorizing writs of possession; (d) amendments to this Judgment to reflect any additional sums permitted at law or in equity; and (e) such other legal or equitable matters as the Court shall deem appropriate under the circumstances, provided that all such matters shall be subject to the terms of the Settlement Agreement entered into between the parties.

**Judgment of Reformation**

14. The Mortgage made between Borrower and Cadence's predecessor in interest, through error or inadvertence, incorrectly identified the Property, in part, as:

BEGINNING AT THE NORTHEAST CORNER OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 1 SOUTH, RANGE 14 WEST, BAY COUNTY, FLORIDA; THENCE N00°40'54"E, FOR 2.98 FEET TO THE SOUTH RIGHT OF WAY LINE OF BREAM POND ROAD; THENCE N89°15'26"W, ALONG SAID SOUTH RIGHT OF WAY LINE FOR 669.70 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTH, HAVING A RADIUS OF 50.00 FEET, CENTRAL ANGLE OF 106°21'16", AND BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N89°18'52"W FOR 80.05 FEET; THENCE NORTHWESTERLY ALONG SAID SOUTH RIGHT OF WAY LINE FOR AN ARC DISTANCE OF 92.81 FEET TO THE POINT OF TANGENCY; THENCE N89°16'14"W, ALONG SAID SOUTH RIGHT OF WAY FOR **55.24** FEET; THENCE LEAVING SAID SOUTH RIGHT OF WAY LINE RUN S34°32'49"W FOR



23.02 FEET; THENCE S86°39'21"W FOR 336.11 FEET; THENCE S64°19'43"W FOR 135.40 FEET; THENCE N89°16'14"W, FOR 271.27 FEET; THENCE N15°34'40"W, FOR 455.26 FEET; THENCE S58°36'49"W, FOR 633.40 FEET TO THE NORTH LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 1 SOUTH, RANGE 14 WEST; THENCE N89°16'14"W, ALONG SAID NORTH LINE FOR 100.00 FEET; THENCE LEAVING SAID NORTH LINE RUN S00°44'17"W, FOR 1489.01 FEET; THENCE S89°21'01"E, FOR 848.81 FEET; THENCE S00°43'19"W, FOR 165.74 FEET TO THE NORTHWEST CORNER OF THE NORTH 200 FEET OF THE SOUTH HALF OF THE NORTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 7; THENCE S00°45'09"W, ALONG THE WEST LINE OF SAID NORTH 200 FEET OF THE SOUTH HALF OF THE NORTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER FOR 200.01 FEET TO THE SOUTHWEST CORNER OF SAID NORTH 200 FEET OF THE SOUTH HALF OF THE NORTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER; THENCE S89°21'50"E, ALONG THE SOUTH LINE OF SAID NORTH 200 FEET OF THE SOUTH HALF OF THE NORTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER FOR 1297.60 FEET TO THE SOUTHEAST CORNER OF SAID NORTH 200 FEET OF THE SOUTH HALF OF THE NORTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER; THENCE S89°36'39"E, FOR 660.33 FEET; THENCE N00°40'54"E, FOR 1847.48 FEET TO THE POINT OF BEGINNING.

15. The Mortgage is hereby reformed to bear the following, correct legal description, and the terms "Property" and "Mortgaged Property", as used in the Mortgage, Amended Complaint, and herein shall mean the real and personal property described as follows:

BEGINNING AT THE NORTHEAST CORNER OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 1 SOUTH, RANGE 14 WEST, BAY COUNTY, FLORIDA; THENCE N00°40'54"E, FOR 2.98 FEET TO THE SOUTH RIGHT OF WAY LINE OF BREAM POND ROAD; THENCE N89°15'26"W, ALONG SAID SOUTH RIGHT OF WAY LINE FOR 669.70 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTH, HAVING A RADIUS OF 50.00 FEET, CENTRAL ANGLE OF 106°21'16", AND BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N89°18'52"W FOR 80.05 FEET; THENCE NORTHWESTERLY ALONG SAID SOUTH RIGHT OF WAY LINE FOR AN ARC DISTANCE OF 92.81 FEET TO THE POINT OF TANGENCY; THENCE N89°16'14"W, ALONG SAID SOUTH RIGHT OF WAY FOR **550.24 FEET**; THENCE LEAVING SAID SOUTH RIGHT OF WAY LINE RUN S34°32'49"W FOR 23.02 FEET; THENCE S86°39'21"W FOR 336.11 FEET; THENCE S64°19'43"W FOR 135.40 FEET; THENCE N89°16'14"W, FOR 271.27 FEET; THENCE N15°34'40"W, FOR 455.26 FEET; THENCE S58°36'49"W, FOR 633.40 FEET TO THE NORTH LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 1 SOUTH, RANGE 14 WEST; THENCE N89°16'14"W, ALONG SAID NORTH LINE FOR 100.00 FEET; THENCE LEAVING SAID NORTH LINE RUN

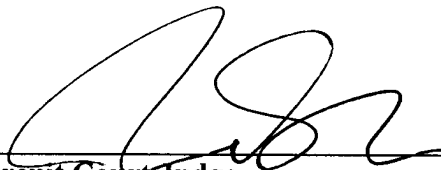
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TOGETHER WITH:

a) all development rights, air rights, water and water rights, and all estates, rights, title, interest, privileges, tenements, hereaditaments and appurtenances belonging or relating to any of said lands, and all reversions, remainders, rents, issues, profits, and all rights, whether arising in law or equity (including any all recoveries in condemnation or inverse condemnation); b) all present and future structures, building and improvements, including (but not limited to) all apparatus, equipment and appliances used in connection with the lands and improvements, such as heating and AC, sewage disposal, refrigeration, utility, and other systems and facilities on the lands; c) all easement and license rights relating or appurtenant to, or used with respect to the lands; d) all rents, profits, proceeds and income from the lands, including (but not limited to) all rights under past, present or future leases or rental agreements (including deposits); e) all proceeds and claims from any of the collateral acting as security (including, but not limited to insurance claims or condemnation proceeds); f) all general intangibles relating to the development, construction on, sale, or use of the lands, including, but not limited to, all contract rights (including retainages) and all governmental permits (or legal or equitable rights to permits) for activities on or use of the lands, all rights to carry on business under the names currently in use or in use in the future, all crop allotments and quotas and entitlements of any kind, and all trademarks and goodwill in any way relating to the lands, and all proceeds of any lease or contract for sale or use; g) all machinery, furniture, fittings, apparatus, equipment and other personal property located upon or under the lands and used in connection with the past, present, or future operation of any business on the lands; h) all materials and supplies used or to be used on construction of any improvements on the lands; i) all standing or harvested timber and all crops on the land; and j) all trade, domestic or ornamental fixtures, appurtenances, or personal property (whether intended to be affixed to the real property or not), including all draperies, carpeting, wall covering, light fixtures and ceiling fans.

Less and excepting Lots: 2, 14, 15, 16, 17, 19, 20, 29 and 32, Bream Pond, according to the plat thereof recorded in Plat Book 22, pages 80 through 85, Public Records of Bay County, Florida.

**DONE AND ORDERED** in Chambers, Bay County, Florida, this 17 day of Dec, 2014.

  
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Circuit Court Judge

Copies to:

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