

CITY OF BENSON CITY COUNCIL January 16, 2018 – 7:00 P.M. SPECIAL MEETING

A SPECIAL MEETING OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
WILL BE HELD ON JANUARY 16, 2018 AT 7:00 P.M.,
AT BENSON CITY HALL,
120 W. 6TH STREET, BENSON, ARIZONA

Vicki L. Vivian, CMC, City Clerk

AGENDA

The Council may discuss, direct, consider and take possible action as indicated below pertaining to the following:

CALL TO ORDER: The Call to Order will consist of the Mayor or the City Clerk calling the Council to order. The Mayor or his designee shall then lead those present in the pledge of allegiance before introducing the invocation speaker, who will offer the invocation.

ROLL CALL: The City Clerk shall call the roll of the members, and the names of those present shall be entered in the minutes.

EXECUTIVE SESSION: Executive session pursuant to A.R.S. section 38-431.03(A)(1), (3) and (4) regarding City Manager Stephens' recent resignation, existing contract, and relevant terms thereof for the remainder of his tenure. – **Mayor Toney King***

NEW BUSINESS

1. Discussion and possible action regarding an agreement between GMAC Mortgage, LLC, and the City of Benson to address and settle ongoing litigation filed in the Cochise County Superior Court under Cause No. CV 2016-530.

ADJOURNMENT

POSTED this 12th of January, 2018

Material related to the City Council meeting is available for public review the day before and the day of the meeting, during office hours, at the City Clerk's Office located at 120 W. 6th Street, Benson, Arizona, 520-586-2245 x 2011.

All facilities are handicapped accessible. If you have a special accessibility need, please contact Vicki L. Vivian, City Clerk, at (520) 586-2245 or TDD: (520) 586-3624, no later than eight (8) hours before the scheduled meeting time.

Any invocation that may be offered before the start of regular Council business shall be the voluntary offering of a private citizen, for the benefit of the Council and the citizens present. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the Council, and the Council does not endorse the religious beliefs or views of this, or any other speaker.

Executive Sessions – Upon a vote of the majority of the City Council, the council may enter into Executive Sessions pursuant to Arizona Revised Statutes §38-431.03 (A)(3) to obtain legal advice on matters listed on the Agenda.

* Denotes an Exhibit in addition to the Council Communication

** Call to the Public

Arizona Revised Statutes §38-431.01(H) provides that “A public body may make an open call to the public during a public meeting, subject to reasonable time, place and manner restrictions to allow individuals to address the public body on any issue within the jurisdiction of the public body. At the conclusion of an open call to the public, individual members of the public body may respond to criticism made by those who have addressed the public body, may ask staff to review a matter or may ask that a matter be put on a future agenda. However, members of the public body shall not discuss or take legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action.” As such, a Call to the Public, if on the agenda, is provided as a courtesy.

In order to speak during the Call to the Public, please complete the Call to the Public form requesting to do so.

*** Consent Agenda

The Consent Agenda will be the first item under New Business and shall list separately distinct items requiring action by the City Council that are generally routine items not requiring Council discussion. A single motion will approve all items on the Consent Agenda, including any resolutions or ordinances, or claims/invoices that are of a routine nature. A Councilmember may remove any issue from the Consent Agenda, and that issue will be discussed and voted upon separately, immediately following the Consent Agenda under its proper regular category of New Business.

NOTICE TO PARENTS: Parents and legal guardians have the right (with certain exceptions) to consent before the City of Benson makes a video or voice recording of a minor child. A.R.S. §1-602(A)(9). Regular and Special Meetings of the Mayor and Council for the City of Benson are recorded, and that recording is usually posted on the City's website. If you permit your child to participate in a Regular or Special Meeting of the Mayor and Council for the City of Benson, a recording will be made. If your child is seated in the audience your child may be recorded, but you may request that your child be seated in a designated area to avoid recording. Please submit your request to the City Clerk.

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement and its Exhibits (collectively, "Agreement") is made and entered into as of the last day set forth on the signature page ("Effective Date") by and between GMAC Mortgage, LLC ("GMACM") and the City of Benson, Arizona ("Benson") (individually, a "Party," and collectively, the "Parties") for the purpose of resolving by compromise and settlement of all claims, controversies, alleged liabilities, and disputes between them.

RECITALS

This Agreement is entered into with reference to the following facts:

- A. GMACM holds title to real property commonly known as 185 W. 4th Street, Benson, Arizona ("Property"). The Property is more specifically described as follows:

LOT 10 THROUGH 14 INCLUSIVE, BLOCK 1, BRYAN'S ADDITION TO THE TOWN OF BENSON, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF COCHISE COUNTY, ARIZONA IN BOOK 1 OF MAPS, PAGE 24.

TOGETHER WITH THE ABANDONED PORTION OF ADAMS AVENUE LYING ALONG THE EAST LINE OF LOT 10, BLOCK 1, BRYAN'S ADDITION TO THE TOWN OF BENSON, ABANDONED BY RESOLUTION NO. 55-85 DATED NOVEMBER 20, 1985, RECORDED NOVEMBER 26, 1985, AS INSTRUMENT NO. 8511-23695, RECORDS OF COCHISE COUNTY, ARIZONA.

- B. On May 14, 2012, Residential Capital, LLC and certain of its direct and indirect subsidiaries (collectively, the "ResCap Debtors"), including GMACM, filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). The Debtors' Chapter 11 cases are being jointly administered and under case number 12-12020 (MG) (the "ResCap Bankruptcy Case").
- C. On December 11, 2013, the Bankruptcy Court entered an *Order Confirming Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC et al. and the Official Committee of Unsecured Creditors* approving the terms of a Chapter 11 plan in the ResCap Bankruptcy Case (the "Plan") [Docket No. 6065]. On December 17, 2013, the Plan went effective.
- D. Article IX of the Plan provides for certain injunctive provisions relating to the assertion of claims against the ResCap Debtors (the "Injunctive Plan Provisions").
- E. Certain disputes have arisen between Benson and GMACM regarding the Property. Those disputes are more fully set forth in the pleadings filed in the Superior Court for the State of Arizona, in and for Cochise County entitled – *City of Benson v. GMAC Mortgage, LLC* bearing Case Number 2016-00530 (the "Action.")

- F. On June 27, 2017, GMACM filed a Notice of Pending Bankruptcy Proceeding in the Action. On June 28, 2017, the Superior Court for the State of Arizona, in and for Cochise County, entered an order staying the Action until Benson obtained relief from the bankruptcy stay in the ResCap Bankruptcy Case.
- G. On January 3, 2018, Benson filed a Request for Order that the Automatic Stay and the Plan Injunction Do Not Apply to the City of Benson in the ResCap Bankruptcy Case.
- H. Each Party to this Agreement is fully apprised of the facts set forth in these Recitals and of the facts and contentions raised in the Action, and in all other aspects of the dispute between or among the Parties, whether pleaded or not, and possibilities of each action and matter described herein.
- I. Each Party denies all allegations, claims and defenses made by the other Party in the Action.
- J. Notwithstanding the above, solely in order to avoid the cost, delay and uncertainty of further litigation, the Parties desire to compromise and settle all disputes and claims which exist or which may exist between and among them arising out of the facts, matters, and events set forth above, without admitting any liability.

AGREEMENTS, RELEASES, AND PROMISES

THEREFORE, in consideration of the facts and general releases and promises contained herein, and for other good and valuable consideration, the sufficiency and receipt of which is acknowledged by each Party hereto, the Parties promise and agree as follows:

1. **Stipulation for Relief From Automatic Stay and Plan Injunctive Provisions:** GMACM and Benson agree to execute a stipulation that the Action is not stayed by the automatic stay provision of 11 U.S.C. § 362(a) or the Plan Injunctive Provisions in the ResCap Bankruptcy Case in the form attached hereto as **Exhibit A** (the “Stay Stipulation”). GMACM and Benson further agree that the Stay Stipulation shall be filed in the ResCap Bankruptcy Case on or before January 19, 2018.
2. **Stipulation for Entry of Judgment:** GMACM and Benson agree to execute a stipulation for entry of judgment in the Action in favor of Benson and against GMACM in the form attached hereto as **Exhibit B** (the “Judgment”).
3. **Execution of Judgment:** Upon entry of the Judgment, Benson shall be permitted to record the Judgment in Cochise County, Arizona, as a lien on the Property and commence an action to judicially foreclose on the Property in full satisfaction of the Judgment (the “Foreclosure Action”). Benson covenants and agrees not to execute upon the Judgment in any other manner, including, but not limited to, attempting to collect monetary amounts from GMACM through the ResCap Bankruptcy Case or otherwise. GMACM and Benson agree that the execution described in this section is intended to be the sole method of executing on the Judgment available to Benson and Benson shall not be permitted to execute on the Judgment in any other manner, including, but not limited to, garnishment, attachment, or conducting debtor’s examinations.

4. **Waiver of Claims for Damages:** Subject to the stipulation for entry of the Judgment as described in section 2 above, Benson waives any and all claims for monetary relief against GMACM for claims alleged, or which could have been alleged, in the Action, as well as any claims related to the Property, including, but not be limited to, actual, special, or punitive damages, attorneys' fees, or costs. Benson's waiver of monetary relief includes a waiver of any and all damages, costs, or attorneys' fees that might otherwise be recoverable in the Foreclosure Action.
5. **Agreement Not to Contest:** Subject to Benson's waiver of claims for damages described in paragraph 4 of this Agreement, GMACM agrees not to contest, defend, or otherwise oppose the Foreclosure Action.
6. **Attorneys' Fees:** Each Party shall bear their own attorneys' fees and costs incurred. If any Party hereto commences any action arising out of this Agreement, including, without limitation, any action to enforce or interpret this Agreement, the prevailing party or parties in such action shall be entitled to recover its reasonable attorney's fees and other expenses incurred in such action. Any award of attorney's fees hereunder shall not be computed according to any court schedule, but, instead, shall be in such amount as to fully reimburse all attorney's fees actually incurred in good faith, regardless of the size of the judgment, since it is the intention of all Parties to compensate fully the prevailing party for all attorney's fees paid or incurred in good faith.
7. **Release by Benson:** Except for the obligations and rights expressly set forth and reserved in this Agreement, in consideration of the recitals, covenants and agreements set forth in this Agreement, and other good and valuable consideration, receipt of which is hereby acknowledged, upon the Effective Date of this Agreement, Benson, on its own behalf and on the behalf of any and all other persons who could claim through it (collectively, the "Releasers") hereby unconditionally, irrevocably, forever and fully releases, acquits, and forever discharges GMACM and its predecessors, principals, parents, heirs, successors, assigns, subsidiaries, affiliates, commonly controlled entities, companies, enterprises, ventures, partners, insurers, investors, attorneys, officers, shareholders, directors, agents, representatives employees, clients, administrators, executors, personal representatives, the beneficiary and investor in the Loan and their predecessors, heirs or successors in interest and assigns, and each of them (the "Releasees"), of and from any and all claims, demands, actions, causes of action, suits, liens, debts, obligations, promises, agreements, costs, damages, liabilities, and judgments of any kind, nature, or amount whether in law or equity, whether known or unknown, anticipated or unanticipated, liquidated or unliquidated, including any and all claimed or unclaimed compensatory damages, consequential damages, interest, costs, expenses and fees (including reasonable or actual attorneys' fees) which were or could have been raised in, arise out of, relate to, or in any way, directly or indirectly, involve the Action or the Property.
8. **Release of Unknown Claims:** Benson acknowledges and agrees that it may hereafter discover facts different from, or in addition to, those facts known to him or which it now believes to be true with respect to any and all of the claims, demands, actions, causes of action, suits, liens, debts, obligations, damages, liabilities, judgments, costs, expenses, and

fees (including reasonable attorney's fees) existing on the effective date of this Agreement, arising out of, relating to, or in any way, directly or indirectly, involving the Action or the Property. Benson nevertheless agrees that the releases set forth herein have been negotiated and agreed upon, notwithstanding such acknowledgment and agreement, and hereby expressly waive any and all rights which it may have under any federal or state statute or common law principle which may provide that a general release does not extend to claims which are not known to exist at the time of execution. Benson understands and acknowledges the significance and consequences of this waiver and assumes full responsibility for any and all damages, losses, costs, and expenses they may incur hereafter as a result of any of the facts, matters, and events referred to in the Recitals set forth above.

9. **Release Limitations:** This Agreement does not release: (1) claims arising out of the failure of either Party to perform in conformity with the terms of this Agreement; (2) any future disputes between Benson and GMACM, including its successors and assigns; and (3) Benson's (including its successors' and assigns') right to foreclose on the Property as described in paragraph 3 of this Agreement.
10. **Warranties and Representations:** The Parties hereto warrant and represent that (a) they are the sole owner of all rights, claims, damages, actions, causes of action, suits and defenses, as the case may be, at law or in equity, they have or may have or that were asserted or could have been asserted in the action, and (b) they have not assigned, transferred, conveyed, or purported to assign, transfer, or convey to any person or entity any right, claim, action, cause of action, suit (at law or in equity), defense, demand, debt, liability, account, or obligation herein released, or any part thereof, or which would, absent such assignment, transfer or conveyance, be subject to the releases set forth in this Agreement.
11. **Acknowledgments:** Each of the Parties acknowledge and agree that:
 - a. This Agreement is entered into and executed voluntarily by each of the Parties hereto and without any duress or undue influence on the part of, or on behalf of, any such Party.
 - b. Each of the Parties hereto has been represented by counsel of its/their own choice, or has had the opportunity to be represented by counsel and to seek advice in connection with the negotiations for, and in the preparation of, this Agreement and that it has read this Agreement and that it is fully aware of its contents and legal effects. All Parties who are representing themselves are warned to obtain the advice of an attorney before signing this Agreement.
 - c. The drafting and negotiation of this Agreement has been undertaken by all Parties hereto and their respective counsel. For all purposes, this Agreement shall be deemed to have been drafted jointly by all of the parties hereto with no presumption in favor of one party over another in the event of any ambiguity.
12. **Tax Consequences:** This Agreement is enforceable regardless of its tax consequences and the Parties expressly agree that they are each solely responsible for any and all taxes, interest and penalties due pursuant to this Agreement, if any.

13. **Compromise of Disputed Claims:** It is understood and agreed that this Agreement is the compromise of disputed claims, and that the terms of settlement contained herein and the releases executed are not intended to be and shall not be construed as admissions of any liability or responsibility whatsoever and each released Party expressly denies any liability or responsibility whatsoever.
14. **Severability:** If any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions shall not be affected thereby.
15. **Binding Effect:** This Agreement shall be binding on, and shall inure to the benefit of, the Parties hereto and their respective administrators, representatives, successors, and assigns.
16. **Governing Law:** This Agreement shall be governed by the laws of the state of Arizona and any question arising hereunder shall be construed or determined according to such law.
17. **Further Assurances:** The Parties agree to do all acts and things and to make, execute, acknowledge and deliver such written documents, instructions and/or instruments in such form as shall from time to time be reasonably required to carry out the terms and provisions of this Agreement, including but not limited to, the execution, filing or recording of any reporting documents, affidavits, deeds or agreements. The Parties further agree to give reasonable cooperation and assistance to any other party or parties hereto in order to enable such other Party or Parties to secure the intended benefits of this Agreement.
18. **Counterparts:** This Agreement may be executed by the Parties in any number of counterparts, including by way of facsimile, and each of which shall be deemed to be an original and all of which, collectively, shall be deemed to be one and the same instrument.
19. **Integration Clause:** This Agreement contains the entire agreement between and among the Parties hereto, and supercedes all prior and contemporaneous discussions, negotiations, understandings and agreements, whether oral or written, express or implied, between or among them relating to the subject matter of this Agreement. This Agreement may not be amended orally, nor shall any purported oral amendment (even if accompanied by partial or complete performance in accordance therewith) be of any legal force or effect or constitute an amendment of this Agreement, but rather this Agreement may be amended only by an agreement in writing signed by the parties.
20. **Time Is Of The Essence:** Time is of the essence with respect to the performance of any and all provisions of this Agreement.
21. **Headings and Captions:** The headings and captions inserted into this Agreement are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

IN WITNESS WHEREOF, each of the Parties hereto has executed this Agreement on the date set forth opposite his, her, or its name below. **The undersigned hereby certify that they have read and fully understand all of the terms, provisions, and conditions of this Agreement and have executed this Agreement voluntarily.**

Dated: January __, 2018

Authorized Representative of GMAC
Mortgage, LLC

Name: _____
Title: _____

Dated: January __, 2018

City

Mayor

ATTEST:

City Clerk

Approved as to Form:

City Attorney

KRAMER LEVIN NAFTALIS & FRANKEL LLP
Kenneth H. Eckstein
Douglas H. Manna
Joseph A. Shifer
1177 Avenue of the Americas
New York, New York 10036
Telephone: (212) 715-9100
Facsimile: (212) 715-8000

Counsel for the ResCap Liquidating Trust

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

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

**STIPULATION AND ORDER BETWEEN THE RESCAP
LIQUIDATING TRUST AND CITY OF BENSON**

This stipulation and order (the "**Stipulation**") is made and entered into by the ResCap Liquidating Trust (the "**Liquidating Trust**") established pursuant to the terms of the Plan (defined below) in the above-captioned chapter 11 cases (the "**Chapter 11 Cases**"), on the one hand, and the City of Benson, Arizona ("**City of Benson**" and together with the Trust, the "**Parties**"), on the other.

RECITALS

WHEREAS, on May 14, 2012 (the "Petition Date"), each of the above-captioned debtors (collectively, the "Debtors"), including GMAC Mortgage, LLC ("GMACM"), filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code");

WHEREAS, on December 11, 2013, the Court entered the *Order Confirming Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC et al. and the Official Committee of Unsecured Creditors* (the "Confirmation Order") approving the terms of the Chapter 11 plan, as amended (the "Plan"), filed in the Chapter 11 Cases [Docket No. 6065]. On December 17, 2013, the effective date of the Plan occurred and, among other things, the Liquidating Trust was established [Docket No. 6137];

WHEREAS, the Plan provides for the creation and implementation of the Liquidating Trust, which, among other things, is responsible for winding down the affairs of the Debtors' estates. *See* Plan, Art. VI.A-D; *see also* Confirmation Order ¶ 22;

WHEREAS, on October 25, 2016, the City of Benson filed a *Verified Complaint and Application for Preliminary Injunction* against GMACM in the Superior Court of the State of Arizona in and for the County of Cochise (the "Arizona Superior Court"), Case No. 2016-00530 (the "Arizona Case"), seeking to compel GMACM to abate a nuisance on property located at 185 W. 4th St., Benson, Arizona (the "Property"), for which GMACM holds title;

WHEREAS, the City of Benson alleges that GMACM failed to abate the nuisance, and following the City of Benson's efforts to abate the nuisance, the City of Benson filed a *Verified Statement of Costs* with the Arizona Superior Court;

WHEREAS, on June 26, 2017, GMAC Mortgage, LLC filed a *Notice of Pending Bankruptcy Proceeding* in the Arizona Case (the “**Notice of Bankruptcy**”), and the Arizona Superior Court entered an order staying the Arizona Case until the City of Benson obtain relief from the bankruptcy stay in the Chapter 11 Cases;

WHEREAS, on January 3, 2018, the City of Benson filed a *Notice of Presentment of Request for Order that the Automatic Stay and the Plan Injunction Do Not Apply to the City of Benson* [Docket No. 10456] (the “**Notice of Presentment**”);

WHEREAS, the Parties have conferred and after good faith, arm’s length negotiations, this Stipulation was agreed upon.

NOW THEREFORE, it is hereby stipulated and agreed as between the Parties to this Stipulation, through their undersigned counsel, as follows:

1. The Liquidating Trust agrees to withdraw the Notice of Bankruptcy in the Arizona Case.
2. The Liquidating Trust does not dispute that GMACM is the current title holder of the Property.
3. The City of Benson agrees to withdraw the Notice of Presentment in the Chapter 11 Cases.
4. The City of Benson may proceed in the Arizona Superior Court but solely to (i) execute a stipulation for entry of judgment in the Arizona case in favor of the City of Benson and against GMACM in the form agreed to by the parties (the “**Judgment**”), and (ii) upon entry of the Judgment, Benson shall be permitted to record the Judgment in Cochise County, Arizona as a lien on the Property and commence an action to judicially foreclose on the Property in full satisfaction of the Judgment.

5. The City of Benson agrees not to: (i) execute upon the Judgment in any other manner, including, but not limited to, attempting to collect any monetary amounts from or against GMACM, any other Debtor, the Liquidating Trust, or the Trustee for the ResCap Liquidating Trust (the "Liquidating Trustee"); (ii) file or assert a claim or cause of action against any Debtor, the Liquidating Trust, or the Liquidating Trustee for any damages alleged to have arisen out of the facts and circumstances to be addressed in the Arizona Case.

6. This Stipulation shall not be deemed to be or constitute a modification of the injunctive provisions of the Plan and Confirmation Order. In all respects, the injunctive provisions of the Plan and Confirmation Order shall remain in full force and effect with respect to any other parties who may be named in, who otherwise intervene in, or become parties to the Arizona Case, to the extent that such provisions are applicable.

7. This Stipulation shall not be modified, altered, amended, or vacated without the prior written consent of all Parties hereto. Any such modification, alteration, amendment, or vacation in whole or part shall be subject to the approval of this Court.

8. This Stipulation is the entire agreement among the Parties in respect of the subject matter hereof.

9. Each person who executes this Stipulation on behalf of a Party hereto represents that he or she is duly authorized to execute this Stipulation on behalf of such Party.

10. This Stipulation may be executed in multiple counterparts, each of which shall be deemed an original but all of which when taken together shall constitute one and the same instrument. Further, electronic signatures or transmissions of an originally signed document by facsimile or PDF shall be as fully binding on the Parties as an original document.

11. The 14-day stay period under Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure is hereby waived and this Stipulation shall be immediately effective upon its entry.

12. This Stipulation shall be of no force or effect unless and until it is approved by the Court.

13. This Court shall retain jurisdiction to resolve all matters relating to the implementation of this Stipulation.

[Signature Page to Follow]

New York, New York
Dated: January __, 2018

KRAMER LEVIN NAFTALIS &
FRANKEL LLP

/s/
Kenneth H. Eckstein
Douglas H. Mannal
Joseph A. Shifer
1177 Avenue of the Americas
New York, NY 10036
Telephone: (212) 715-9100
Facsimile: (212) 715-8000
Counsel for the ResCap Liquidating Trust

/s/
Jeffrey J. Coe
Mesch Clark Rothschild, PC
259 North Meyer Avenue
Tucson, AZ 85701
Telephone: (520) 624-8886
Facsimile: (520) 798-1037
Counsel for City of Benson

Approved and So Ordered
this ___ day of January, 2018 in New York

THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE