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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Clifton Newman, Circuit Court Judge

Appellate Case No. 2022-001051

Wilmington Savings Fund Society.....Plaintiff

V.

Alice Swope Thompson.....Defendant

RECORD ON APPEAL

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Charleston, SC

February 9, 2023

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wilmington Savings Fund Society, FSB,
solely as trustee for Invictus Residential
Pooler Trust 2A, and not in its individual
capacity,

Plaintiff,

vs.

Alice Swope Thompson,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2021-CP-10-03055

**ORDER ON PLAINTIFF'S MOTION TO
STRIKE DEFENDANT'S JURY TRIAL
DEMAND**

(File No. 4035.01121)

This matter came before the Court on January 27, 2022, for a hearing on Plaintiff's Motion to Strike Defendant's Jury Trial Demand.

For the reasons set forth below, Plaintiff's Motion to Strike is GRANTED, and this civil action shall be placed on the nonjury docket.

FACTUAL AND PROCEDURAL BACKGROUND

This is a mortgage foreclosure action. Plaintiff filed a Summons and Complaint on July 6, 2021. Plaintiff alleges Defendant executed a note on January 25, 2019, secured by a mortgage covering real property in Charleston County. The mortgage was recorded on January 30, 2019. Plaintiff alleges Defendant defaulted on the note and mortgage as of April 1, 2020. Plaintiff seeks a judgment of foreclosure for the amount due upon the note and mortgage.

Defendant filed an Answer and asserted a counterclaim for trespass. The counterclaim alleges Plaintiff intentionally entered the property and proximately caused damages to Plaintiff by changing the locks and turning off the utilities. Defendant alleges these actions were taken while a forbearance was in place and interfered with Defendant's ability to lease the property. Defendant demanded a jury trial.

Plaintiff filed a motion to strike Defendant's jury trial demand.

CONCLUSIONS OF LAW

“Whether a party is entitled to a jury trial is a question of law.” *Wachovia Bank, NA v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 441 (2014). “[T]here is no right to trial by jury for equitable actions.” *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). Mortgage foreclosure actions are equitable in nature. *See Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997) (“A mortgage foreclosure is an action in equity.”) “If the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury trial.” *Blackburn*, 407 S.C. at 330, 755 S.E.2d at 441.

Defendant is entitled to a jury trial in this equitable action “only if the counterclaims are legal and compulsory.” *Carolina First Bank v. BADD, L.L.C.*, 414 S.C. 289, 295, 778 S.E.2d 106, 109 (2015). Plaintiff concedes that Defendant’s counterclaim is at law. Therefore, the only question is whether the counterclaim is permissive or compulsory.

A counterclaim is compulsory “if it arises out of the transaction or occurrence that is the subject matter of the opposing party’s claim” Rule 13(a), SCRCP. South Carolina has adopted the “logical relationship” test to determine whether counterclaims arise out of the same transaction or occurrence as the opposing party’s claim. *N.C. Fed. Sav. & Loan Ass’n v. DAV Corp.*, 298 S.C. 514, 519, 381 S.E.2d 903, 906 (1989).

“Under this test, the logical relationship determination is made by asking whether the counterclaim would affect the lender’s right to enforce the note and foreclose the mortgage.” *Blackburn*, 407 S.C. at 330 n. 7, 755 S.E.2d at 442 n. 7 (internal quotations omitted). “If the defendant’s prevailing on his counterclaim would affect the bank’s right to enforce the note and foreclose the mortgage, there is a logical relationship between the counterclaim and the underlying suit, and the counterclaim is therefore compulsory.” *Id.*

Defendant is not entitled to a jury trial on her counterclaim because Plaintiff's ability to enforce the note and mortgage would not be affected by Defendant's success on the counterclaim. Defendant's counterclaim pertains to alleged actions by Plaintiff in securing and winterizing the property long after the note and mortgage were executed. The resolution of the counterclaim would not affect the existence of the debt or the enforceability of the note and mortgage. *See BADD*, 414 S.C. at 295, 778 S.E.2d at 109 (finding the execution of a guaranty agreement was the applicable transaction or occurrence and the civil conspiracy counterclaim did not have any logical relationship to the execution of enforceability of the agreement).¹

CONCLUSION

For the reasons set forth above, Plaintiff's Motion to Strike is granted and this matter shall be transferred to the nonjury docket.

IT IS SO ORDERED.

SIGNATURE BLOCK APPEARS ON FOLLOWING PAGE

¹ Our courts have found counterclaims in mortgage foreclosure actions to be compulsory where it is alleged that the lender made and broke oral promises to modify loans. *See, e.g., N.C. Fed. Sav. & Loan Ass'n v. DAV Corp.*, 298 S.C. 514, 381 S.E.2d 903 (1989); *S.C. Community Bank v. Salon Proz, LLC*, 420 S.C. 89, 800 S.E.2d 488 (Ct. App. 2017). This situation is not alleged in the counterclaim.



Charleston Common Pleas

Case Caption: Wilmington Savings Fund Society Fsb , plaintiff, et al VS Alice Swope Thompson
Case Number: 2021CP1003055
Type: Order/Other

So Ordered

s/ Clifton B. Newman, 2127

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

WILMINGTON SAVINGS FUND
SOCIETY, FSB, solely trustee for
Invictus Residential Pooler Trust 2A,
and not in its individual capacity,

PLANTIFF,

v.

ALICE SWOPE THOMPSON,

RESPONDENT.

IN THE COURT OF COMMON PLEAS

CASE #: 2021-CP-10-03055

ORDER DENYING MOTION
FOR RECONSIDERATION

This matter is before the Court on a motion of the Defendant for reconsideration.

Having fully considered the motion, it is hereby denied.

AND IT IS SO ORDERED.

Columbia, South Carolina

June 22, 2022

Clifton Newman
Presiding Judge



Charleston Common Pleas

Case Caption: Wilmington Savings Fund Society Fsb , plaintiff, et al VS Alice Swope Thompson
Case Number: 2021CP1003055
Type: Motion/Reconsider

So Ordered

s/ Clifton B. Newman, 2127

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wilmington Savings Fund Society, FSB,
solely as trustee for Invictus Residential
Pooler Trust 2A, and not in its individual
capacity,

Plaintiff,

vs.

Alice Swope Thompson,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2021-CP-10

SUMMONS AND NOTICE

(File No. 4035.01121)

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer on the subscribers at their offices, 2838 Devine Street, Columbia, South Carolina 29205, within thirty (30) days after the service hereof, exclusive of the day of such service; except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the complaint.

TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDES, AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY:

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by Plaintiff.

YOU WILL ALSO TAKE NOTICE that should you fail to answer the foregoing Summons, the Plaintiff will move for a general Order of Reference of this cause to the Master-in-Equity or a Special Referee for the aforesaid County, which Order shall, pursuant to Rule 53, SCRCF, specifically provide that the said Master or Special Referee is authorized and empowered, to enter a final judgment in this case and any appeal from the final judgment entered herein to be made directly to the Supreme Court.

YOU WILL ALSO TAKE NOTICE that under the provisions of S.C. Code Ann. §29-3-100, effective June 16, 1993, any collateral assignment of rents contained in the attached mortgage is perfected and Plaintiff hereby gives notice that all rents shall be payable directly to it by delivery to its undersigned attorneys from the date of default. In the alternative Plaintiff will move before a Judge of this Circuit on the 10th day after service hereof, or as soon thereafter as counsel may be heard, for an Order enforcing the assignment of rents, if any, and compelling payment of all rents covered by such assignment directly to the Plaintiff, which motion is to be based upon the original note and mortgage which is the subject of this action and the Complaint attached hereto.

THIS COMMUNICATION IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION GAINED WILL BE USED FOR THAT PURPOSE.

RILEY POPE & LANEY, LLC

s/ Stephanie M. Huggins
Stephanie M. Huggins, SC Bar #101757
2838 Devine Street
Columbia, South Carolina 29205
(803) 799-9993
Attorneys for Plaintiff

July 6, 2021
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wilmington Savings Fund Society, FSB,
solely as trustee for Invictus Residential
Pooler Trust 2A, and not in its individual
capacity,

Plaintiff,

vs,

Alice Swope Thompson,

Defendant.

(File No. 4035.01121)

IN THE COURT OF COMMON PLEAS

C/A NO.: 2021-CP-10

COMPLAINT

FOR A FIRST CAUSE OF ACTION
Foreclosure of Real Estate Mortgage

(Non-Jury)

The Plaintiff above-named, complaining of the Defendant above named, herein alleges:

GENERAL ALLEGATIONS

1. This is an action for the foreclosure of a mortgage upon real estate in Charleston County, South Carolina.
2. The Plaintiff is a corporation or other legal entity duly organized and existing under and by virtue of the laws of one of the States of The United States of America and is authorized to transact business in the State of South Carolina.
3. Plaintiff, directly or through an agent, has possession of the promissory note. The promissory note is either made payable to Plaintiff or has been duly endorsed. Plaintiff is either the original mortgagee, beneficiary, or the assignee of the security instrument for the subject loan. Plaintiff has the right to foreclose the subject note and security instrument.
4. Some lien on or right, title, or interest in the real estate, the subject of this action, may be claimed by the Defendant herein.
5. Based upon a search of the public records of Charleston County, all persons or entities having an interest or lien or possible claim in or upon the mortgaged premises subordinate to the lien of the Plaintiff as of the date and time of the filing of the Lis Pendens herein have been made a Defendant.
6. The Defendant herein described, if any, as judgment creditors, have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of S.C. Code Ann. §15-35-840.
7. On or about January 25, 2019, Alice Swope Thompson made, executed and delivered unto Family First Funding, LLC a certain Note ("Note") in the principal sum of Two Hundred Sixty Thousand and 00/100 (\$260,000.00) Dollars, with an interest rate of 8.685% per annum, payable in monthly

installments of principal and interest of \$2,033.36 beginning March 1, 2019, a copy of which is attached hereto as Exhibit "A" and made a part hereof by reference.

8. In order to secure the payment of the Note according to the terms and conditions thereof, Alice Swope Thompson made, executed and delivered unto Mortgage Electronic Registration Systems, Inc., as mortgagee, as nominee for Family First Funding, LLC a certain real estate mortgage ("Mortgage") covering the following described property:

All that lot, piece or parcel of land, situate, lying and being in Avondale, a section of West Charleston, in St. Andrews Parish, in the County of Charleston, State aforesaid, known and designated as Lot 83, on the Plat of Avondale made by W.L. Gailliard, Surveyor, dated February 1944, and recorded in the RMC Office for Charleston County in Plat Book F, Page 179; measuring and containing 75' on the northwest line, by the same on the southeast line, by 150' on the northeast and southwest lines, the said dimensions more or less; butting and bounding to the northwest on Riverdale Drive, to the northeast on Lot 84 on said plat, to the southeast on lands of V-Housing Corporation, and to the southwest on Lot 82 on said plat.

Being the same property conveyed unto Alice Swope Thompson by deed from Jay Ministries, LLC, dated November 1, 2004 and recorded December 2, 2004 in Deed Book U517 at Page 508 in the ROD Office for Charleston County, South Carolina.

TMS No. 4181400066

Property Address: 29 Riverdale Drive, Charleston, SC 29407

9. The Mortgage was signed, witnessed and probated; thereafter the Mortgage was recorded in the public records of Charleston County on January 30, 2019, in Book 774 at Page 958. Thereafter, the Mortgage was assigned unto the Plaintiff herein which assignment is to be recorded in the county ROD Office. A copy of the Plaintiff's Mortgage is attached hereto as Exhibit "B" and made a part hereof by reference.

10. The Mortgage evidences and secures the repayment of money advanced by the Plaintiff, or its predecessor in interest, to, or on behalf of, the mortgagor and constitutes a first mortgage lien on the mortgaged premises.

FOR A FIRST CAUSE OF ACTION
(Foreclosure of Mortgage)

11. The Plaintiff incorporates the allegations of the preceding Paragraphs as if repeated verbatim.

12. With regard to the Note and/or Mortgage which are the subject matter of this suit, Plaintiff and its attorney have provided all applicable notices and rights to cure as required and otherwise have

complied with all applicable Federal, State, and local statutes, laws, rules, regulations, orders or other government directives.

13. The installments of principal and interest which became due on April 1, 2020 have not been paid although demand for the payment thereof has been made and the Plaintiff, as the holder of the Note and Mortgage, elects to and does declare the entire balance of said principal and interest due and payable at once, and that there is now due and owing and unpaid upon the said Note and Mortgage the sum of Two Hundred Fifty Seven Thousand Nine Hundred Forty One and 16/100 (\$257,941.16) Dollars as of April 1, 2020, with a current interest rate of 8.6850% per annum from March 1, 2020, together with reasonable attorney's fees and the costs and disbursements of this action, plus all moneys, if any, advanced by the Plaintiff under the terms of the Note and Mortgage for the payment of ad valorem taxes and/or insurance premiums, property maintenance, and securing thereof or otherwise.

14. Pursuant to the terms of the Mortgage, Plaintiff has employed counsel to prosecute this action, and under the terms of the Note and Mortgage, Plaintiff's counsel is entitled to reasonable attorney's fees and costs of this action.

15. Plaintiff may be forced to pay sums for taxes, insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.

16. Plaintiff's right to a personal or deficiency judgment pursuant to S.C. Code Ann. §29-3-650 and §29-3-660 is expressly demanded against Alice Swope Thompson.

WHEREFORE, having fully set forth its Complaint, Plaintiff prays that this Honorable Court inquire into the matters as set forth herein and:

(1) Ascertain and determine the amount due upon the Note and Mortgage held or being enforced by Plaintiff together with attorney's fees and costs of this action.

(2) Declare Plaintiff's Mortgage a first mortgage lien on the subject property, and render judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees, the costs of maintaining the property or securing and inspecting the property, if any, incurred as a result of this delinquency, and for the costs of this action.

(3) If necessary, appoint a Receiver to collect the rents, issues, profits or designated sums from the mortgagor, and/or the grantee(s) of the mortgagor, and/or tenant(s) occupying or exercising control over the mortgaged premises and hold the same subject to the further order of this Court.

(4) Sell the mortgaged premises, bar any equity of redemption, and apply the proceeds of sale as follows:

First, to the costs and expenses of the within action and sale;

Second, to the payment and discharge of the amount due on the Note and Mortgage, together with attorney's fees as aforesaid; and

Third, to the distribution of any surplus pursuant to Rule 71, SCRPC.

(5) Issue an order directing the Sheriff of Charleston County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary.

(6) Grant judgment against the Defendant Alice Swope Thompson pursuant to S.C. Code Ann. §29-3-650 and §29-3-660.

(7) Order such other and further relief as may be just and proper.

RILEY POPE & LANEY, LLC

s/ Stephanie M. Huggins

Stephanie M. Huggins, SC Bar #101757

2838 Devine Street

Columbia, South Carolina 29205

(803) 799-9993

Attorneys for Plaintiff

July 6, 2021
Columbia, South Carolina

**NOTICE REQUIRED BY THE FAIR DEBT
COLLECTION PRACTICES ACT
15 U.S.C. Section 1601, As Amended**

Alice Swope Thompson
29 Riverdale Drive, Charleston, SC 29407
File No. 4035.01121

1. Wilmington Savings Fund Society, FSB, solely as trustee for Invictus Residential Pooler Trust 2A, and not in its individual capacity is the Creditor to whom the debt is owed. Creditor has retained the law firm of Riley Pope & Laney, LLC, to collect the owed debt. Any written requests should be addressed to Riley Pope & Laney, LLC, Post Office Box 11412, Columbia, SC, 29211, (803) 799-9993 (Phone), (803) 239-1414 (Fax).
2. As of July 2, 2021, the total debt you owe is \$305,221.99. Because interest, late charges, attorney's fees and costs, and other charges as allowed by the Note and Mortgage continue to accrue from the date set forth above, the amount due on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which event we will inform you before depositing the check for collection. For further information, write or call as directed in Paragraph One (1) of this Notice.
3. Unless you, the Consumer, either orally or in writing within thirty (30) days after the receipt of this Notice, disputes the debt or any portion of the debt set forth in Paragraph Two (2) of this Notice and further described in the Complaint attached hereto, the validity of the debt will be assumed to be valid by the Creditor's law firm, Riley Pope & Laney, LLC.
4. If you, the Consumer, notify Riley Pope & Laney, LLC, at the address set forth in Paragraph One (1) of this Notice in writing within thirty (30) days of the receipt of this Notice that the debt or any portion thereof is disputed, Riley Pope & Laney, LLC, will obtain a verification of the debt, and a copy of the verification will be mailed to the Consumer by Riley Pope & Laney, LLC.
5. If you, the Consumer, make a written request to Riley Pope & Laney, LLC within thirty (30) days of the receipt of this Notice, Riley Pope & Laney, LLC, will provide you, the Consumer, the name and address of the original Creditor, if different from the current Creditor.
6. This notice should not be construed as a thirty (30) day grace period. Creditor may pursue collection efforts immediately and not wait thirty (30) days.
7. Please be advised that the time period in which you, the Consumer, have to dispute the amount of your debt and request additional information does not alter or affect the time period set forth in the South Carolina Rules of Civil Procedure for the filing of an answer or other responsive pleading to the Complaint.
8. Military service members on "active duty" or "active service," or a dependent of such a service member may be entitled to certain legal protections pursuant to the Servicemembers' Civil Relief Act, 50 U.S.C. §3901 et seq. If you believe that you may be entitled to such protection, please contact our office immediately.
9. If you have been discharged in a bankruptcy proceeding, we are not seeking personal liability against you, but are pursuing the rights against the property as provided in the security agreements.

**THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL
BE USED FOR THAT PURPOSE**

NOTE

January 25, 2019
[Date]

Toms River,
[City]

New Jersey
[State]

29 Riverdale Dr, Charleston, SC 29407
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. **\$260,000.00** (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is **Family First Funding, LLC, a Limited Liability Corporation.**

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

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

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of **8.685 %**.

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

3. PAYMENTS**(A) Time and Place of Payments**

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

I will make my monthly payment on the **1st** day of each month beginning on **March 1, 2019**. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on **February 1, 2049**, 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 **215 Main Street, #2A**
Toms River, NJ 08753

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

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. **\$2,033.36**.

4. BORROWER'S RIGHT TO PREPAY

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

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes. **THIS SECTION IS SUPERSEDED BY THE ADDENDUM ATTACHED HERETO AND MADE A PART HEREOF.**

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any

Initials: PST

sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

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

(C) Notice of Default

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

(D) No Waiver By Note Holder

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

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

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

7. GIVING OF NOTICES

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

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

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

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

9. WAIVERS

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

10. UNIFORM SECURED NOTE

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

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

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which

Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

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

THE PROVISIONS CONTAINED IN THE "ADDENDUM TO NOTE", SIGNED BY ALL BORROWERS NAMED HEREIN, ARE HEREBY INCORPORATED INTO AND SHALL AMEND AND SUPPLEMENT THIS NOTE.

Alice Swope Thompson (Seal)
ALICE SWOPE THOMPSON

Lender: Family First Funding, LLC
NMLS ID:
Loan Originator: Gabriel Franklin Gillen
NMLS ID:

[Sign Original Only]

Initials: AST

PREPAYMENT ADDENDUM TO NOTE (Multi-State)

This Prepayment Addendum to Note ("Addendum") is made this 25th day of January, 2019 and is incorporated into and shall be deemed to amend and supplement the Note of the same date (the "Note") given by the undersigned (the "Borrower") to evidence Borrower's indebtedness to **Family First Funding, LLC, a Limited Liability Corporation**

(the "Lender"), which indebtedness is secured by a Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date and covering the property described in the Security Instrument and located at **29 Riverdale Dr, Charleston, SC 29407**

(the "Property").

ADDITIONAL COVENANTS. Notwithstanding anything to the contrary set forth in the Note or Security Instrument, Borrower and Lender further covenant, and agree, that the provisions of the section of the Note titled **BORROWER'S RIGHT TO PREPAY** are amended to read as follows:

Subject to the prepayment charge provided below, 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." A "full prepayment" is the prepayment of the entire unpaid principal due under the Note. A payment of only part of the unpaid principal is known as a "partial prepayment." When I make a prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a prepayment if I have not made all the monthly payments due under the Note.

If, within the first 36 month(s) beginning with the date I execute the Note (the "Penalty Period"), I make a full prepayment, or partial prepayment in any twelve (12)-month period that exceeds 20% of the original principal loan amount, I will pay a prepayment charge as consideration for the Note Holder's acceptance of such prepayment. The prepayment charge will equal the amount of interest that would accrue during a six (6)-month period on the amount prepaid that exceeds 20% of the original principal balance of the Note, calculated at the rate of interest in effect under the terms of the Note at the time of the prepayment, unless otherwise prohibited by applicable law or regulation. No prepayment charge will be assessed for any prepayment occurring after the Penalty Period.

Notwithstanding the foregoing, in the event of a full prepayment concurrent with a bona fide sale of the Property to an unrelated third party, after the first 36 month(s) of the Note, no prepayment charge will be assessed. In the event of a bona fide sale, I agree to provide the Note Holder with evidence acceptable to the Note Holder of such sale.

The Note Holder will apply all prepayments to reduce the amount of principal that I owe under the Note. However, the Note Holder may apply my prepayment to the accrued and unpaid interest on the prepayment amount, before applying my prepayment to reduce the principal amount of the Note. If I make a partial prepayment, there will be no change in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes.

If my Note is an Adjustable Rate Note, partial prepayments may reduce the amount of my monthly payment after the first interest rate Change Date following the partial prepayment. However, any reduction due to my partial prepayment may be offset by an interest rate increase.

The Note Holder's failure to collect a prepayment charge at the time a prepayment is received shall not be deemed a waiver of such charge. Any prepayment charge not collected at the time the prepayment is received shall be payable on demand.

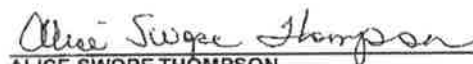
All other provisions of the Note are unchanged by this Addendum and remain in full force and effect.

LOAN #

NOTICE TO BORROWER

Do not sign this Addendum before you read it. This Addendum provides for the payment of a prepayment charge if you wish to repay the loan prior to the date provided for repayment in the Note.

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


ALICE SWOPE THOMPSON (Seal)

ALLONGE TO NOTE

DATE OF NOTE: 01/25/2019

MORTGAGOR (S): Alice Swope Thompson

PROPERTY ADDRESS: 29 Riverdale Dr
Charleston, SC 29407

LOAN NUMBER:

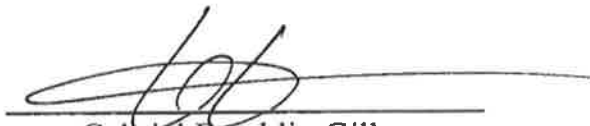
LOAN AMOUNT: 260,000.00

PAY TO THE ORDER OF

Sprout Mortgage Asset Trust

WITHOUT RECOURSE

FAMILY FIRST FUNDING, LLC A LIMITED LIABILITY CORPORATION



Gabriel Franklin Gillen
President

ALLONGE

Investor Loan Number:

Borrower Name(s): Alice Swope Thompson

Property Address: 29 RIVERDALE DR, CHARLESTON, SC, 29407

Loan Amount: 260,000.00

Note Date: 01/25/2019

Pay to the order of:

Without Recourse

Sprout Mortgage Asset Trust

By: SPROUT MORTGAGE CORPORATION,
not in its individual capacity but solely as an
administrator for Sprout Mortgage Asset Trust

By: 

David Akre
EVP Capital Markets

When recorded, return to:
 Family First Funding, LLC
 ATTN: Final Document Department
 215 Main Street, #2A
 Toms River, NJ 08753

This document was prepared by:
 Family First Funding, LLC
 215 Main Street, #2A
 Toms River, NJ 08753
 732-505-4600

PGS:

27

LOAN:

[Space Above This Line For Recording Data]

MORTGAGE

DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated **January 25, 2019**, together with all Riders to this document.

(B) "Borrower" is **ALICE SWOPE THOMPSON**

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, Michigan 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is **Family First Funding, LLC**.

Lender is a **Limited Liability Corporation**,
New Jersey,
River, NJ 08753

organized and existing under the laws of
 Lender's address is **215 Main Street, #2A, Toms**

(E) "Note" means the promissory note signed by Borrower and dated **January 25, 2019**. The Note states that Borrower owes Lender **TWO HUNDRED SIXTYTHOUSAND AND NO/100*** Dollars (U.S. **\$260,000.00**) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **February 1, 2049**.

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|--|---|--|
| ☐ Adjustable Rate Rider | ☐ Condominium Rider | ☐ Second Home Rider |
| ☐ Balloon Rider | ☐ Planned Unit Development Rider | ☒ Other(s) [specify] |
| ☒ 1-4 Family Rider | ☐ Biweekly Payment Rider | Prepayment Rider, SFR Security |
| ☐ V.A. Rider | | Instrument Rider, SFR Vacant |
| | | Property 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) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (12 C.F.R. Part 1024), 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 Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

TRANSFER OF RIGHTS IN THE PROPERTY

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

[Name of Recording Jurisdiction]:

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS "EXHIBIT A".

APN #: 418-14-00-066

which currently has the address of 29 Riverdale Dr, Charleston,

[Street] [City]

South Carolina 29407

("Property Address"):

[Zip Code]

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

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

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

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

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received

by Lender's payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

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

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

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

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the

mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

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

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

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

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

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

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

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

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

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

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

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

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits

under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

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

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

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

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

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

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

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

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

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

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

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

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

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

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

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. 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 foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

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

24. Homestead Waiver. Borrower waives all rights of homestead exemption in the Property to the extent allowed by Applicable Law.

25. Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY

APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. This waiver shall not apply so long as the Property is used as a dwelling place as defined in § 12-37-250 of the South Carolina Code of Laws.

26. Future Advances. The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to 150% of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

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.

Signed, sealed and delivered in the presence of:

W. C. Haynes
Witness

Rebecca Chandler
Witness

Alice Swope Thompson 1-25-19 (Seal)
ALICE SWOPE THOMPSON DATE

State of SOUTH CAROLINA
County of Orangeburg

The foregoing instrument was acknowledged before me this 1-25-19 (date)
by ALICE SWOPE THOMPSON (name of person acknowledged).



W. C. Haynes
Signature of Person Taking Acknowledgement

W. Chris Haynes
Printed Name of Person Taking Acknowledgement

Notary
Title or Rank

7-22-24
My commission expires:

Lender: Family First Funding, LLC
NMLS ID:
Loan Originator: Gabriel Franklin Gillen
NMLS ID:

EXHIBIT "A"

ALL that lot, piece or parcel of land, situate, lying and being in Avondale, a section of West Charleston, in St. Andrews Parish, in the County of Charleston, State aforesaid, known and designated as Lot 83, on the Plat of Avondale made by W. L. Gailliard, Surveyor, dated February 1944, and recorded in the RMC Office for Charleston County in Plat Book F, Page 179; measuring and containing 75' on the northwest line, by the same on the southeast line, by 150' on the northeast and southwest lines, the said dimensions more or less; butting and bounding to the northwest on Riverdale Drive, to the northeast on Lot 84 on said plat, to the southeast on lands of V-Housing Corporation, and to the southwest on Lot 82 on said plat.

BEING the same property conveyed to Alice Swope Thompson by deed from Jay Ministries, LLC dated November 1, 2004 and recorded December 2, 2004 in Book U517 at Page 508 in the Office of the Register of Deeds for Charleston County, SC.

TMS: 418-14-00-066

**1-4 FAMILY RIDER
(Assignment of Rents)**

THIS 1-4 FAMILY RIDER is made this 25th day of January, 2019 and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to Family First Funding, LLC, a Limited Liability Corporation

(the "Lender")

of the same date and covering the Property described in the Security Instrument and located at: 29 Riverdale Dr
Charleston, SC 29407

1-4 FAMILY COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. ADDITIONAL PROPERTY SUBJECT TO THE SECURITY INSTRUMENT. In addition to the Property described in Security Instrument, the following items now or hereafter attached to the Property to the extent they are fixtures are added to the Property description, and shall also constitute the Property covered by the Security Instrument: building materials, appliances and goods of every nature whatsoever now or hereafter located in, on, or used, or intended to be used in connection with the Property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, attached mirrors, cabinets, paneling and attached floor coverings, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Property covered by the Security Instrument. All of the foregoing together with the Property described in the Security Instrument (or the leasehold estate if the Security Instrument is on a leasehold) are referred to in this 1-4 Family Rider and the Security Instrument as the "Property."

B. USE OF PROPERTY; COMPLIANCE WITH LAW. Borrower shall not seek, agree to or make a change in the use of the Property or its zoning classification, unless Lender has agreed in writing to the change. Borrower shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property.

C. SUBORDINATE LIENS. Except as permitted by federal law, Borrower shall not allow any lien inferior to the Security Instrument to be perfected against the Property without Lender's prior written permission.

D. RENT LOSS INSURANCE. Borrower shall maintain insurance against rent loss in addition to the other hazards for which insurance is required by Section 5

E. "BORROWER'S RIGHT TO REINSTATE" DELETED. Section 19 is deleted.

F. BORROWER'S OCCUPANCY. Unless Lender and Borrower otherwise agree in writing, Section 6 concerning Borrower's occupancy of the Property is deleted.

G. ASSIGNMENT OF LEASES. Upon Lender's request after default, Borrower shall assign to Lender all leases of the Property and all security deposits made in connection with leases of the Property. Upon the assignment, Lender shall have the right to modify, extend or terminate the existing leases and to execute new leases, in Lender's sole discretion. As used in this paragraph G, the word "lease" shall mean "sublease" if the Security Instrument is on a leasehold.

H. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION. Borrower absolutely and unconditionally assigns and transfers to Lender all the rents and revenues ("Rents") of the Property, regardless of to whom the Rents of the Property are payable. Borrower authorizes Lender or Lender's agents to collect the Rents, and agrees that each tenant of the Property shall pay the Rents to Lender or Lender's agents. However, Borrower shall receive the Rents until (i) Lender has given Borrower notice of default pursuant to Section 22 of the Security Instrument and (ii) Lender has given notice to the tenant(s) that the Rents are to be paid to Lender or Lender's agent. This assignment of Rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of default to Borrower: (i) all Rents received by Borrower shall be held by Borrower as trustee for the benefit of Lender only, to be applied to the sums secured by the Security Instrument; (ii) Lender shall be entitled to collect and receive all of the Rents of the Property; (iii) Borrower agrees that each tenant of the Property shall pay all Rents due and unpaid to Lender or Lender's agents upon Lender's written demand to the tenant; (iv) unless applicable law provides otherwise, all Rents collected by Lender or Lender's agents shall be applied first to the costs of taking control of and managing the Property and collecting the Rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, repair and maintenance costs, insurance premiums, taxes, assessments and other charges on the Property, and then to the sums secured by the Security Instrument; (v) Lender, Lender's agents or any judicially appointed receiver shall be liable to account for only those Rents actually received; and (vi) Lender shall be entitled to have a receiver appointed to take possession of and manage the Property and collect the Rents and profits derived from the Property without any showing as to the inadequacy of the Property as security.

If the Rents of the Property are not sufficient to cover the costs of taking control of and managing the Property and of collecting the Rents any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by the Security Instrument pursuant to Section 9.

Borrower represents and warrants that Borrower has not executed any prior assignment of the Rents and has not performed, and will not perform, any act that would prevent Lender from exercising its rights under this paragraph.

Lender, or Lender's agents or a judicially appointed receiver, shall not be required to enter upon, take control of or maintain the Property before or after giving notice of default to Borrower. However, Lender, or Lender's agents or a judicially appointed receiver, may do so at any time when a default occurs. Any application of Rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of Rents of the Property shall terminate when all the sums secured by the Security Instrument are paid in full.

I. CROSS-DEFAULT PROVISION. Borrower's default or breach under any note or agreement in which Lender has an interest shall be a breach under the Security Instrument and Lender may invoke any of the remedies permitted by the Security Instrument.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this 1-4 Family Rider.

Alice Swope Thompson
ALICE SWOPE THOMPSON

1-25-19 (Seal)
DATE

MULTISTATE 1-4 FAMILY RIDER--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
Elle Mae, Inc.
Lender NMLS ID

Page 3 of 3

Initials: AST
Form 3170 1/01
F3170RDU 0307
F3170RLU (CLS)
01/24/2018 06:58 AM PST

PREPAYMENT RIDER

THIS PREPAYMENT RIDER is made this 25th day of January, 2019 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 Note (the "Note") to Family First Funding, LLC, a Limited Liability Corporation

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at: 29 Riverdale Dr
Charleston, SC 29407

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

Subject to the prepayment charge provided below, Borrower has the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." A "full prepayment" is the prepayment of the entire unpaid principal due under the Note. A payment of only part of the unpaid principal is known as a "partial prepayment." When Borrower makes a prepayment, Borrower will tell the Note Holder (as defined in the Note) in writing that Borrower is doing so. Borrower may not designate a payment as a prepayment if Borrower has not made all the monthly payments due under the Note.

If, within the first 36 month(s) beginning with the date Borrower executes the Note (the "Penalty Period"), Borrower makes a full prepayment, or partial prepayment in any twelve (12)-month period that exceeds 20% of the original principal loan amount, Borrower will pay a prepayment charge as consideration for the Note Holder's acceptance of such prepayment. The prepayment charge will equal the amount of interest that would accrue during a six (6)-month period on the amount prepaid that exceeds 20% of the original principal balance of the Note, calculated at the rate of interest in effect under the terms of the Note at the time of the prepayment, unless otherwise prohibited by applicable law or regulation. No prepayment charge will be assessed for any prepayment occurring after the Penalty Period.

No prepayment charge will be assessed for any prepayment made after the Prepayment Penalty Period or if the prepayment is concurrent with the bona fide sale of the Property to an unrelated third party after the first 36 month(s) of the Note. In the event of a bona fide sale, Borrower agrees to provide the Note Holder with evidence acceptable to the Note Holder of such sale.

The Note Holder will apply all prepayments to reduce the amount of principal that Borrower owes under the Note. However, the Note Holder may apply Borrower's prepayment to the accrued and unpaid interest on the prepayment amount, before applying Borrower's prepayment to reduce the principal amount of the Note. If Borrower makes a partial prepayment, there will be no change in the due dates of Borrower's monthly payments unless the Note Holder agrees in writing to those changes.

If the Note is an Adjustable Rate Note, partial prepayments may reduce the amount of Borrower's monthly payment after the first interest rate Change Date (as defined in the Note) following the partial prepayment. However, any reduction due to Borrower's partial prepayment may be offset by an interest rate increase.

The Note Holder's failure to collect a prepayment charge at the time a prepayment is received shall not be deemed a waiver of such charge and any such charge calculated in accordance with this section shall be payable on demand.

All other provisions of the Security Instrument are unchanged by this Rider and remain in full force and effect.

NOTICE TO BORROWER

DO NOT SIGN THIS PREPAYMENT RIDER BEFORE YOU READ IT. THIS PREPAYMENT RIDER PROVIDES FOR THE PAYMENT OF A CHARGE IF YOU WISH TO REPAY THE LOAN PRIOR TO THE DATE PROVIDED FOR REPAYMENT.

Multistate Prepayment Rider
Ellie Mae, Inc.
Lender NMLS ID

Page 1 of 2

Initials: ASJ
GPFRDU 0413
GPFRLU (CLS)
01/24/2019 08:56 AM PST

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this Prepayment Rider.

Alice Swope Thompson 1-25-21 (Seal)
ALICE SWOPE THOMPSON DATE

Multistate Prepayment Rider
Ellie Mae, Inc.
Lender NMLS ID#:

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Family First Funding, LLC, a Limited Liability Corporation

SFR SECURITY INSTRUMENT RIDER

This SFR Security Instrument Rider (this "Security Instrument Rider") is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed by the undersigned (the "Borrower") in favor of Family First Funding, LLC, a Limited Liability Corporation

("Lender") dated the same date as the date hereof (the "Security Instrument") relating to the property located at the address set forth on the signature page hereto (the "Property"). This Security Instrument Rider, together with the Security Instrument and the related Note and all other riders, certificates and ancillary documents given by Borrower in connection with the Loan and any related Guaranty, are collectively referred to herein as the "Loan Documents". All capitalized terms used herein but not defined shall have the meanings ascribed to them in the other Loan Documents. In the event of any conflict or inconsistency between this Security Instrument Rider and the Security Instrument or any other Loan Document, the terms of this Security Instrument Rider shall control.

1. Representations, Warranties and Covenants. Borrower represents, warrants and covenants to Lender as follows:

(a) **Compliance with Laws, Etc.** The Property and the ownership, leasing, management, maintenance and operation of the Property are in compliance, in all material respects, with Applicable Law, including without limitation laws pertaining to zoning, construction of improvements on the Property, fair housing, and requirements for equal opportunity, anti-discrimination. Borrower shall cause the Property and the ownership, leasing, management, maintenance and operation of the Property to comply, in all material respects, with Applicable Laws. The Property has not been purchased with proceeds of any illegal activity. There has not been committed by Borrower or by any other person or entity in occupancy of or involved with the operation, use or leasing of the Property any act or omission affording any governmental authority the right of forfeiture as against the Property or any part thereof. To Borrower's knowledge, there is no evidence of any illegal activities on the Property and Borrower shall take reasonable measures to prevent any illegal activities from occurring at the Property. Borrower is not in default or violation of and shall comply with any order, writ, injunction, decree or demand of any court or other governmental authority applicable to Borrower or the Property.

(b) **Licenses and Permits.** Borrower maintains in full force and effect all certifications, permits, licenses, consents, authorizations and approvals required for the legal leasing, use, occupancy and operation of the Property as a residential rental property (collectively, "Permits"). Borrower has not failed to comply, in any material respect, with any term or condition of any such Permit. Borrower shall keep in full force and effect and shall comply all such Permits in all material respects.

(c) **Condition of the Property.** The Property is in a good, safe and habitable condition and repair, and free of and clear of any material damage or waste, and Borrower shall keep and maintain the Property in such condition. Borrower shall not make (or permit any tenant to make) any structural alterations to the Property (including, without limitation, any alterations to the roof of the Property) that would reasonably be expected to have a material adverse effect on the use, leasing, operation, value or marketability of the Property (a "Material Adverse Effect"). Borrower shall not abandon the property nor take any action that would reasonably be expected to invalidate any insurance coverage required by the Loan Documents (and Borrower shall promptly correct any such actions of which Borrower becomes aware).

(d) **Operation of the Property.** Borrower at all times has and shall continuously (i) engage in the businesses of ownership, leasing, maintenance, management and

operation of the Property, (ii) operate the Property as a residential rental property, and (iii) own or lease all equipment, fixtures and personal property that are necessary to operate the Property. Borrower agrees that (A) the purpose of the Loan is for business and/or commercial purposes only, (B) the Loan is not for personal, family or household use, (C) the Property is not used nor will be used as a residence or second home of (1) Borrower, (2) any affiliate of Borrower, (3) any holder of a direct or indirect equity interest in Borrower or any such affiliate, (4) any officer, director, executive employee or manager of any person or entity described in the foregoing clauses (1) – (3) or (5) any family member (including spouse, siblings, ancestors and lineal descendants) of any person or entity described in the foregoing clauses (1) – (4) (the persons and entities referred to in the foregoing clauses (1) – (5) are collectively referred to herein as "Prohibited Persons") and (D) the Property is an investment to be held for future appreciation and will be a rental property. Borrower shall not (I) convert any individual dwelling units or common areas to commercial use, or convert any common area or commercial use to individual dwelling units, (II) initiate or acquiesce in a change in the zoning classification of the Property, (III) establish any condominium or cooperative regime with respect to the Property or (IV) subdivide the Property, in each case unless Lender has agreed thereto in writing. Section 6 of the Security Instrument is hereby deleted in its entirety.

(e) **Compliance with Agreements and Property Documents.** The Property is not subject to, and Borrower shall not agree or consent to, any agreement, instrument or restriction which would reasonably be expected to have a Material Adverse Effect. Borrower is not in default, in any material respect, in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument relating to the Property and binding on Borrower or the Property, including without limitation any reciprocal easement agreement, declaration of covenants, conditions and restrictions and any condominium or home owner's association governing documents, rules and regulations (collectively, "Property Documents"). Borrower shall continue to observe and perform, in all material respects, each and every term to be observed or performed by Borrower pursuant to the terms of each Property Document. Borrower shall enforce in a commercially reasonable manner the performance and observance of each Property Document, shall do all things reasonably necessary to preserve and to keep unimpaired its material rights thereunder and cause the Property to be operated in accordance therewith in all material respects.

(f) **Leases.** The Property or, if the Property consists of more than one rental unit, each such rental unit, is subject to a written lease that (i) has a rental rate and terms consistent with existing local market rates and terms, (ii) as of the date the lease was executed, had a term of at least twelve months and not more than three years except where such lease is pursuant to Section 8 of the Housing Act of 1937 (42 U.S.C. § 1437f) ("Section 8", in which case the lease must conform to the requirements of Section 8), (iii) as of the date hereof, has a remaining term of not less than three months, (iv) complies with all Applicable Law in all material respects and includes all disclosures required by applicable law and (v) covers 100% of the square footage of the applicable Property, or a unit therein, as applicable (an "Eligible Lease"). Borrower has delivered to Lender copies of each lease for the Property, each such lease is in full force and effect and not in default in any material respect and there are no oral agreements relating to any such lease. Borrower is the lessor under each Eligible Lease. Borrower shall not enter into any lease (including any renewal or extension of any existing lease) for the Property or a rental unit therein that is not an Eligible Lease.

(g) **Tenants.** Each Eligible Lease for the Property, or a unit therein, is with a bona fide third-party lessee who satisfies each of the following criteria (an "Eligible Tenant"): (i) Borrower has verified, based on bona fide written documentation, that the tenant has sufficient financial resources to satisfy its obligations under such lease, (ii) the tenant is not subject to an ongoing bankruptcy or other insolvency proceeding as such date of initial screening of the tenant prior to its execution of the lease (or if not so initially screened, as of the date hereof) and (iii) the tenant is not a Prohibited Person. No person or entity (other than Borrower) has any possessory interest in the Property or any unit therein or right to occupy the same except for Eligible Tenants under and pursuant to Eligible Leases. Borrower

shall not enter into any lease (including any renewal or extension of any existing lease) for the Property or a rental unit therein with any person or entity that is not an Eligible Tenant.

(h) **Security Deposits.** Borrower maintains and shall continue to maintain security deposits for the Property in accordance with Applicable Law in all material respects. Upon Lender's written request during a default or upon any foreclosure of the Property or transfer in lieu thereof, Borrower shall deliver (or cause to be delivered) all security deposits to Lender for safe-keeping, and not for application against the Loan; provided, that to the extent any security deposits are forfeited by the applicable tenant pursuant to the terms of the applicable lease, Lender may apply such amounts against Borrower's obligations under the Loan Documents.

(i) **Property Taxes, Insurance, Etc.** Borrower is not delinquent and shall remain, at all times, current in the payment of any taxes, assessments, charges, fines, impositions, Community Association Dues, Fees, and Assessments or insurance premiums attributable to the Property.

(j) **Utilities and Public Access.** The Property has, and Borrower shall take all steps necessary to ensure that the Property continues to have rights of access to public ways and is served by electricity, water, sewer or septic system and storm drain facilities adequate to service the Property for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Property are located either in the public right-of-way abutting the Property (which are connected so as to serve the Property without passing over other property) or in recorded easements serving the Property, and all roads necessary for the use of the Property for its intended purposes have been completed and dedicated to public use and accepted by the applicable governmental authorities.

(k) **Ground Lease.** Borrower owns fee simple title to the Property and the Property is not subject to any ground lease.

(l) **Litigation.** Except as disclosed in writing to Lender, there are no orders, injunctions, decrees, judgments, actions, suits or proceedings (including proceedings regarding fair housing, anti-discrimination, or equal opportunity) at law or in equity by or before any court or other governmental authority pending or, to Borrower's knowledge, threatened, against or affecting Borrower, any guarantor of the Loan (a "Guarantor") or the Property. All information with respect to the same that has been provided to Lender by Borrower is true and complete.

(m) **Bankruptcy.** Neither Borrower nor any Guarantor is (i) the subject of or a party to any pending bankruptcy, reorganization, receivership or other insolvency proceeding or any dissolution or liquidation; (ii) preparing or intending to be the subject of any such proceeding or dissolution or liquidation; (iii) the subject of any judgment unsatisfied of record or docketed in any court; or (iv) insolvent.

(n) **Further Assurances.** Promptly following request by Lender, Borrower shall, at its sole cost and expense: (i) execute and deliver, or cause to be executed and delivered, such documents, instruments, certificates, assignments and other writings, and do such other acts as Lender may request, to correct any defects or omissions in the Loan Documents, and to grant, evidence, preserve, perfect and protect the Property and Lender's liens thereupon and the priority thereof; and (ii) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of the Loan Documents, as Lender may reasonably require from time to time.

(o) **Charges; Liens.** Borrower shall promptly discharge any lien that attaches to the Property (other than a lien for property taxes not yet due and payable) 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 or (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. If Lender determines that any part of the Property is subject to a lien (other than a lien for property taxes not yet due and payable), 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 1(s). The second paragraph of Section 4 of the Security Instrument is hereby deleted in its entirety.

(p) **No Joint Assessment.** Borrower shall not suffer, permit or initiate the joint assessment of the Property with (i) any other real property constituting a tax lot separate from the Property, or (ii) any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes and assessments payable in respect of the Property or any penalties, interest or fees with respect thereto (collectively, "Taxes") which may be levied against any such real or personal property shall be assessed or levied or charged to the Property.

(q) **Reporting Covenants.** Borrower shall furnish or cause to be furnished to Lender the following reports, notices and other documents:

(i) **Reporting on Adverse Effects.** Within seven (7) days after Borrower obtains knowledge of the occurrence of any event or circumstance that has or would reasonably be expected to have a Material Adverse Effect, written notice thereof that includes the details of such event or circumstance and the action that Borrower is taking or proposes to take with respect thereto.

(ii) **Default.** Within seven (7) days after Borrower obtains knowledge of any default under the Loan Documents, written notice setting forth the details of such default and the action that Borrower is taking or proposes to take to cure such default.

(iii) **Property Taxes, Community Association Charges and Insurance.** Within seven (7) days of Lender's request therefor, copies of (a) any bills, statements or invoices for taxes, assessments, charges, fines, impositions, Community Association Dues, Fees, and Assessments or insurance premiums attributable to the Property and (b) evidence satisfactory to Lender of payment of any of the foregoing.

(iv) **Other Reports.** As soon as reasonably practicable after request by Lender, furnish or cause to be furnished to Lender in such manner and in such detail as may be reasonably requested by Lender, such evidence of compliance with the Loan Documents and such additional information, documents, records or reports as may be reasonably requested with respect to the Property or the conditions or operations, financial or otherwise, of Borrower and any Guarantor.

2. Additional Property Subject to the Security Instrument. In addition to the Property described in the Security Instrument or any rider thereto, the following items now or hereafter attached to the Property to the extent they are fixtures are added to the Property description, and shall also constitute the Property covered by the Security Instrument: building materials, appliances and goods of every nature whatsoever now or hereafter located in, on, or used, or intended to be used in connection with the Property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, attached mirrors, cabinets, paneling and attached floor coverings, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Property covered by the Security Instrument. All of the foregoing together with the Property described in the Security Instrument and each rider thereto shall together constitute the "Property" for purposes of the Security Instrument, this Security Instrument Rider and each other rider to the Security Instrument.

3. Assignment of Leases and Rents; Appointment of Receiver; Lender in Possession.

(a) **Collateral Assignment of Leases.** In addition to the Property described in Section 2 above, the following items are added to the Property description, and shall also constitute the Property covered by the Security Instrument: all leases, lettings, licenses, concessions or other agreements (whether written or oral and whether now or hereafter in effect) pursuant to which any person or entity is granted a possessory interest in, or right to use or occupy all or any portion of the Property, and every modification, amendment or other agreement relating to such leases or other agreements

entered into in connection with such leases or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "Bankruptcy Code") (collectively, the "Leases"), together with any extension, renewal or replacement of same, and all right, title and interest of Borrower, its successors and assigns, therein and thereunder, together with all rights, powers, privileges, options and other benefits of Borrower as lessor under the Leases, to perform all other necessary or appropriate acts with respect to such Leases as agent and attorney-in-fact for Borrower, and the right to make all waivers and agreements, to give and receive all notices, consents and releases, to take such action upon the happening of a default under any lease, including the commencement, conduct and consummation of proceedings at law or in equity as shall be permitted under any provision of any Lease or by any law, and to do any and all other things whatsoever which Borrower is or may become entitled to do under any such Leases, and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the rents to the payment and performance of the obligations under the Loan Documents. If Lender gives notice of default to Borrower Lender shall have the right to modify, extend or terminate the existing leases and to execute new leases, in Lender's sole discretion.

(b) **Assignment of Rents.** Borrower absolutely and unconditionally assigns and transfers to Lender all the rents and revenues ("Rents"), paid or accruing, of the Property, regardless of to whom the Rents of the Property are payable. Borrower authorizes Lender or Lender's agents to collect the Rents, and agrees that each tenant of the Property shall pay the Rents to Lender or Lender's agents, provided, however, Borrower shall receive the Rents until (i) Lender has given Borrower notice of default and (ii) Lender has given notice to the tenant(s) that the Rents are to be paid to Lender or Lender's agent. This assignment of Rents constitutes an absolute assignment and not an assignment for additional security only.

(c) **Collection of Rents.** If Lender gives notice of default to Borrower: (i) all Rents received by Borrower shall be held by Borrower as trustee for the benefit of Lender only, to be applied to the sums secured by the Security Instrument; (ii) Lender shall be entitled to collect and receive all of the Rents of the Property; (iii) Borrower agrees that each tenant of the Property shall pay all Rents due and unpaid to Lender or Lender's agents upon Lender's written demand to the tenant; (iv) unless applicable law provides otherwise, all Rents collected by Lender or Lender's agents shall be applied first to the costs of taking control of and managing the Property and collecting the Rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, repair and maintenance costs, insurance premiums, taxes, assessments and other charges on the Property, and then to the sums secured by the Security Instrument; (v) Lender, Lender's agents or any judicially appointed receiver shall be liable to account for only those Rents actually received; and (vi) Lender shall be entitled to have a receiver appointed to take possession of and manage the Property and collect the Rents and profits derived from the Property without any showing as to the inadequacy of the Property as security.

(d) **Tenant Direction Letters.** In furtherance of Section 3(c), if Lender gives notice of default to Borrower, Lender may, in addition to all other rights and remedies available to Lender, (i) require that Borrower notify and advise each current and future tenant via an instruction letter in a form satisfactory to Lender (a "Tenant Direction Letter") to send all payments of rent (whether by cash, check or other electronic means) directly to Lender and (ii) require Borrower to deliver to Lender all payments of rents (whether by cash, check or other electronic means) received by Borrower, in which event all such rents shall be delivered to such account within four (4) days of receipt thereof. Without the written consent of Lender, Borrower shall not terminate, amend, revoke or modify any Tenant Direction Letter in any manner other than as provided in such Tenant Direction Letter, whether or not a default is continuing. Borrower hereby grants to Lender an irrevocable power of attorney, coupled with an interest, to execute and deliver to tenants such Tenant Direction Letters.

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(e) **Lender Expenses.** If the Rents of the Property are not sufficient to cover the costs of taking control of and managing the Property and of collecting the Rents any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by the Security Instrument pursuant to Section 9 of the Security Instrument.

(f) **No Prior Assignment.** Borrower represents and warrants that Borrower has not executed any prior assignment of the Rents and has not performed, and will not perform, any act that would prevent Lender from exercising its rights under this Section 3.

(g) **Possession, Control and Maintenance of the Property.** Lender, or Lender's agents or a judicially appointed receiver, shall not be required to enter upon, take control of or maintain the Property before or after giving notice of default to Borrower. However, Lender, or Lender's agents or a judicially appointed receiver, may do so at any time when a default occurs. Any application of Rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of Rents of the Property shall terminate when all the sums secured by the Security Instrument are paid in full.

4. Additional Provisions Regarding Insurance.

(a) **Rental Loss Insurance.** Borrower shall maintain insurance against rent loss in addition to the other hazards for which insurance is required by Section 5 of the Security Instrument and in such amounts, with such maximum deductibles and for such periods required by Lender. Currently, Lender's rental loss insurance requirements include business income or rental loss insurance, written on an "Actual Loss Sustained Basis" (i) with loss payable to Lender; (ii) covering all risks required to be covered by the insurance provided for in the "all risk" property insurance policy required by Lender and (iii) in an amount equal to one hundred percent (100%) of the aggregate projected gross income less non-continuing expense from the operation of the Property for a period of at least six (6) months after the date of the casualty.

(b) **Acknowledgement of Lender's Insurance Requirements.** Borrower acknowledges that Lender's insurance requirements contained in the Security Instrument and herein may change from time to time. All insurance policies and renewals of insurance policies required by the Loan Documents shall be (i) in the form and with the terms required by Lender; (ii) in such amounts, with such maximum deductibles and for such periods required by Lender; and (iii) issued by insurance companies satisfactory to Lender.

5. **Partial Payments.** The following sentence in the second paragraph of Section 1 of the Security Instrument is hereby deleted in its entirety: "If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds." Such sentence shall be replaced with the following: "Lender need not pay interest on any unapplied funds."

6. **Defaults.** The occurrence of any one or more of the following shall constitute a default under the Loan Documents:

(a) any failure by Borrower to pay when due principal or interest on the Loan or any Funds and such default shall continue for a period of three (3) days;

(b) any failure by Borrower or any Guarantor to pay when due any amount (other than as set forth in the foregoing clause (a)) required to be paid by it under any Loan Document;

(c) if Borrower or any Guarantor fails to perform any of its non-monetary obligations under any Loan Document;

(d) any failure by Borrower to maintain the insurance coverage required by Lender;

(e) if any certification, representation or warranty made by Borrower or any Guarantor in any Loan Document is false, incorrect or misleading in any material respect;

(f) fraud, gross negligence, willful misconduct, material misrepresentation or material omission by or on behalf of Borrower or any Guarantor in connection with the loan application process, any Loan Document or the performance of Borrower's duties or obligations thereunder (material representations include, but are not limited to, representations concerning Borrower operation of the Property as a rental property as required by Section 1(g) above);

(g) if any proceeding for bankruptcy, reorganization, receivership or other insolvency proceeding or any dissolution or liquidation shall commence with respect to Borrower or any Guarantor;

(h) if any Loan Document or any lien granted thereunder shall (except in accordance with its terms or pursuant to Lender's written consent), in whole or in part, terminate, cease to be effective or cease to be the legally valid, binding and enforceable obligation of the parties thereto;

(i) the commencement of a forfeiture action or other similar proceeding, whether civil or criminal, which, in Lender's reasonable judgment, could result in a forfeiture of the Property or otherwise materially impair the lien created by the Security Instrument or Lender's interest in, or the value or operation of, the Property;

(j) any other default specified in the Loan Documents; or

(k) if Borrower breaches or defaults under any note, instrument or agreement relating to a loan owned by Note Holder, then such breach or default shall be a default under the Loan Documents.

Section 8 of the Security Instrument is hereby deleted in its entirety.

7. Remedies.

(a) **Acceleration and Remedies.** Notwithstanding anything to the contrary in the Security Instrument, including any requirement to provide notice to Borrower or any cure period provided for in the Security Instrument (including but not limited to such notice requirements and cure periods set forth in Sections 18, 20 and 22 of the Security Instrument) or any requirement under Applicable Law for any demand, (which notice and demand Borrower hereby expressly waives), (i) the Loan shall be accelerated and shall become immediately due and payable automatically upon the occurrence of any default described in clause (g) of Section 6 above and (ii) the Loan shall be accelerated and shall become immediately due and payable at the election of Lender at any time upon or after the occurrence of any other default (and also as to any default described in clause (i) of this Section 7(a) to the extent that automatic acceleration is prevented by any lawful stay). Upon and at all times following the occurrence of any default Lender shall have all rights and remedies available to it pursuant to the Loan Documents, and pursuant to Applicable Law, and Lender may take any action, without notice or demand that Lender elects to protect and enforce its rights against Borrower or any Guarantor and in and to the Property and other collateral for the Loan.

(b) **Remedies Cumulative.** Each of the rights, powers and remedies of Lender under the Loan Documents and Applicable Law and at equity shall be cumulative and not exclusive of any other such right, power or remedy. Lender's rights, powers and remedies may be pursued independently, singly, successively, together or otherwise, at such times and from time to time and as often and in such order as Lender may determine, to the fullest extent permitted by Applicable Law, without impairing or otherwise affecting any of the other such rights, powers and remedies of Lender.

(c) **Reinstatement.** Section 19 of the Security Instrument is hereby deleted in its entirety. Notwithstanding any references in the Security Instrument to Section 19 thereof, or to Borrower's right of reinstatement, Borrower hereby waives any and all rights of reinstatement to the fullest extent permitted by Applicable Law. Consistent with the foregoing and notwithstanding anything to the contrary in the Security Instrument, any notice of acceleration need not inform Borrower of the right of reinstatement.

8. **RESPA.** Borrower acknowledges and agrees that the Loan is not a "federally related mortgage loan" and is not subject to RESPA. Notwithstanding the foregoing, Lender will follow RESPA in connection with (i) the administration of escrows under the Loan to the extent provided in the second, third and fourth paragraphs of Section 3 of the Security Instrument and (ii) as provided in Section 20 of the Security Instrument.

9. **REMIC Compliance.** For purposes of determining the fair market value of the Property pursuant to Section 11 of the Security Instrument, no value shall be given to any personal property or nonpermanent fixtures.

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

Date: January 25, 2019

Property Address: 29 Riverdale Dr
Charleston, SC 29407

Alice Swope Thompson 1-25-19 (Seal)
ALICE SWOPETHOMPSON DATE

Borrower's Notice Address:
1811 Wilshire Drive
Charleston, SC 29407
Email: aliceswopethompson@carolinaone.com

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Family First Funding, LLC, a Limited Liability Corporation

SFR VACANT PROPERTY RIDER

This SFR Vacant Property Rider (this "Vacancy Rider") is made by the undersigned (the "Borrower"), and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed by the Borrower in favor of Family First Funding, LLC, a Limited Liability Corporation

("Lender") dated the same date as the date hereof (the "Security Instrument") relating to the property located at the address set forth on the signature page hereto (the "Property"). This Vacancy Rider, together with the related Note by the Borrower in favor of Lender, the Security Instrument, the SFR Security Instrument Rider and all other riders, certificates and ancillary documents given by Borrower and any related Guaranty, are collectively referred to herein as the "Loan Documents". All capitalized terms used herein but not defined shall have the meanings ascribed to them in the other Loan Documents. In the event of any conflict or inconsistency between this Vacancy Rider and the Note or the other Loan Documents, the terms of this Vacancy Rider shall control.

1. **Representation Regarding Vacancy.** Borrower hereby represents that, as of the date hereof, the Property is vacant and there is no lease in effect with respect to the Property.
2. **Acceleration of Loan Maturity.** It shall be a default under the Loan Documents if the Lease Conditions (as defined below) have not been satisfied in full (as determined by Lender) on or before the date that is 90 days from and including the date hereof.
3. **Lease Conditions.** The "Lease Conditions" means the following:
 - (a) Borrower shall have entered into an Eligible Lease for the Property with an Eligible Tenant and delivered to Lender a fully-executed copy of such Eligible Lease;
 - (b) The monthly rental payment under such Eligible Lease shall be consistent with monthly rental rates for similar properties in the local market where the Property is located, as reported by a third party rental rate data provider selected by Lender; and
 - (c) Borrower shall have delivered to Lender written evidence, satisfactory to Lender, of payment of the first month rent under such Eligible Lease. A cancelled rent check that has cleared the tenant's bank account constitutes satisfactory evidence of payment.

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

Date: January 25, 2019
Property Address: 29 Riverdale Dr
Charleston, SC 29407

Alice Swope Thompson
ALICE SWOPE THOMPSON

1-25-19 (Seal)
DATE

Borrower's Notice Address:
1811 Wilshire Drive
Charleston, SC 29407
Email: aliceswopethompson@carolinaone.com

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State of SOUTH CAROLINA
County of Charleston

The foregoing Instrument was acknowledged before me this
1-25-19 (date) by ALICE SWOPE THOMPSON (name of person
acknowledged).



[Signature]
Signature of Person Taking Acknowledgement

W. Chris Haynes
Printed Name of Person Taking

Notary
Title or Rank

7-22-2024
My commission expires:

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RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



Filed By:

WEEKS & IRVINE LLC

RECORDED

Date: January 30, 2019

Time: 1:55:56 PM

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Michael Miller, Register
Charleston County, SC

MAKER:

THOMPSON ALICE S

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wilmington Savings Fund Society, FSB, solely
as trustee for Invictus Residential Pooler Trust
2A, and not in its individual capacity,

Plaintiff,

vs.

Alice Swope Thompson,

Defendant.

(File No. 4035.01121)

IN THE COURT OF COMMON PLEAS

C/A NO.: 2021-CP-10

LIS PENDENS

NOTICE IS HEREBY GIVEN THAT an action has been or will be commenced and is now or will be pending in this Court upon complaint of the above-named Plaintiff against the above-named Defendant for the foreclosure of a certain mortgage of real estate given by Alice Swope Thompson to Mortgage Electronic Registration Systems, Inc., as mortgagee, as nominee for Family First Funding, LLC dated January 25, 2019, and recorded in the public records of Charleston County on January 30, 2019, in Book 774 at Page 958. Thereafter, the Mortgage was assigned unto the Plaintiff herein which assignment is to be recorded in the county ROD Office. The premises covered and affected by the Plaintiff's mortgage and the foreclosure thereof, were, at the time of the making thereof, and at the time of the filing of this notice, described as follows:

All that lot, piece or parcel of land, situate, lying and being in Avondale, a section of West Charleston, in St. Andrews Parish, in the County of Charleston, State aforesaid, known and designated as Lot 83, on the Plat of Avondale made by W.L. Gailliard, Surveyor, dated February 1944, and recorded in the RMC Office for Charleston County in Plat Book F, Page 179; measuring and containing 75' on the northwest line, by the same on the southeast line, by 150' on the northeast and southwest lines, the said dimensions more or less; butting and bounding to the northwest on Riverdale Drive, to the northeast on Lot 84 on said plat, to the southeast on lands of V-Housing Corporation, and to the southwest on Lot 82 on said plat.

Being the same property conveyed unto Alice Swope Thompson by deed from Jay Ministries, LLC, dated November 1, 2004 and recorded December 2, 2004 in Deed Book U517 at Page 508 in the ROD Office for Charleston County, South Carolina.

TMS No. 4181400066

Property Address: 29 Riverdale Drive, Charleston, SC 29407

RILEY POPE & LANEY, LLC

s/ Stephanie M. Huggins

Stephanie M. Huggins, SC Bar #101757

2838 Devine Street

Columbia, South Carolina 29205

(803) 799-9993

Attorneys for Plaintiff

July 6, 2021

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
C/A NO.: 21-CP-10-03055

WILMINGTON SAVINGS FUND)
SOCIETY, FSB, solely trustee for)
Invictus Residential Pooler Trust 2A,)
and not in its individual capacity,)

PLAINTIFF,)

VERSUS)

ALICE SWOPE THOMPSON,)

DEFENDANT.)

ANSWER and COUNTERCLAIM
(JURY TRIAL DEMANDED)

TO: STEPHANIE M. HUGGINS, ESQUIRE, Riley, Pope & Laney, LLC, attorney for Plaintiff

Comes now the above-named Defendant, by and through undersigned counsel, answering or otherwise pleading to the Plaintiff's complaint as follows.

1. That each and every allegation not specifically admitted herein is to be deemed denied and strict proof thereof is hereby demanded.
2. The Defendant lacks sufficient information with which to admit or deny the allegations contained in paragraphs 1, 2, 3, 6, 7, 8, 10, 12, 13, 14, 15 and 16 of the Plaintiff's complaint, and therefore demands strict proof thereof.
3. The Defendant admits the allegations contained in paragraphs 4, 5 and 9 of the Plaintiff's complaint.
4. That upon information and belief the Defendant is not required to respond to paragraph 11 of the Plaintiff's complaint, but if so required, denies the allegations contained therein, and therefore demands strict proof thereof.

FOR A FIRST AFFIRMATIVE DEFENSE - PURSUANT TO SCRPC RULE 12(b)(6)

5. That the responses contained in paragraphs 1 through the preceding paragraph are repeated, realleged and reiterated as if set forth herein fully verbatim.

6. That upon information and belief the Plaintiff's complaint fails to state a claim upon which relief may be granted.

FOR A SECOND AFFIRMATIVE DEFENSE - UNCLEAN HANDS

7. That the responses contained in paragraphs 1 through the preceding paragraph are repeated, realleged and reiterated as if set forth herein fully verbatim.
8. That upon information and belief the Plaintiff created an expectation of cooperation in dealing with the challenges presented by the Covid-19 pandemic.
9. These included reduction in payments and payment holidays.
10. That upon information and belief this cooperation vanished the moment the S.C. Courts became available to commence foreclosure proceedings.
11. That upon information and belief this was further buttressed by the following.
 - A. The Defendant has requested loss mitigation from the servicer for Plaintiff for her loan;
 - B. Since early in 2021, the Defendant employed Roosevelt Law Group to negotiate loss mitigation for each of the six (6) notes;
 - C. That upon information and belief the Plaintiff has refused to discuss the issues with this or any other of the outstanding Notes with Roosevelt Law Group or Defendant's counsel;
 - D. That through prior financial disclosures to the Plaintiff and its predecessor, the Plaintiff is aware that the Defendants' income is largely derived from residential rental income, which has been substantially curtailed by Covid-19 federal regulations preventing her from evicting non-paying tenants; and/or
 - E. That the Plaintiff is aware that the subject real property has substantial equity, obviating the need for Plaintiff's claim for a personal deficiency judgment.
 - F. That the Plaintiff's agent(s) have repeatedly entered the leasehold and "winterized" it by turning off the utilities.

- G. That after the first time such was done, Defendant contacted Plaintiff's servicer to advise that the unit was being rented on a month to month basis.
 - H. Later, Defendant informed the Plaintiff's servicer that the unit was being prepared to be utilized as an AirBNB.
 - I. The trespass into the unit was repeated upon information and belief two (2) more times.
12. That upon information and belief the foregoing constitutes "unclean hands" precluding the Plaintiff from foreclosing the subject property.

**FOR A THIRD AFFIRMATIVE DEFENSE - BY WAY OF COUNTERCLAIM FOR
TRESPASS/TRESPASS TO CHATTEL**

- 13. That the responses contained in paragraphs 1 through the preceding paragraph are repeated, realleged and reiterated as if set forth herein fully verbatim.
- 14. That upon information and belief the Plaintiff's agent intentionally entered the improvement to the real property which forms the gravamen of the issues herein presented.
- 15. That upon information and belief the Plaintiff's agent directly and proximately caused damage to the improvements to the real property by:
 - A. Changing the locks;
 - B. Publicly posting no trespassing signs without authorization;
 - C. Turning off the breakers in the breaker box without authority, creating the potential for mold growth;
 - D. Turning off the water supply to the improvements to the real property;
 - E. "Winterizing" the plumbing system of the improvement to the real property;
 - F. Doing all of the foregoing with no prior notice to the Defendant, while granting forbearance due to Covid restrictions, and months before actually filing this foreclosure action;
 - G. Interfering with the Defendant's ability to let the premises to generate income to make the payments Plaintiff's claims are due.

16. That upon information and belief the Defendant has been actually damaged in an appropriate amount to be determined by the trier of fact herein. Further, that upon information and belief the Plaintiff is entitled to punitive damages in an appropriate amount to be determined by the trier of fact herein.
17. That the Defendant has required the services of legal counsel to represent her interests herein and is upon information and belief entitled to reimbursement for same.

**FOR A FOURTH AFFIRMATIVE DEFENSE - FAILURE TO
MITIGATE DAMAGES**

18. That the responses contained in paragraphs 1 through the preceding paragraph are repeated, realleged and reiterated as if set forth herein fully verbatim.
19. That the Plaintiff has a duty to mitigate its damages under S.C. common law, and has instead created additional damages for which it is now seeking recompense.

WHEREFORE, having fully answered and otherwise pleaded to the Plaintiff's complaint, the above-named Defendant, by and through undersigned counsel, respectfully demands this Honorable Court issue its Order (1) dismissing the Plaintiff's complaint with prejudice, (2) granting the Defendant the costs and expenses of her defense, together with reasonable attorneys' fees incurred (3) granting the Defendant actual damages on her counterclaim in an appropriate amount to be determined by the trier of fact herein, (4) granting the Defendant punitive damages on her counterclaim in an appropriate amount to be determined by the trier of fact herein, together with

reasonable attorneys' fees incurred herein and (5) for such other and further relief as this Honorable Court shall deem just and proper.

Respectfully submitted,

S/ William K. Swope

SC Bar #: 15168

1525 Sam Rittenberg Blvd.

Suite 208

Charleston, SC 29407

Ph.: (843) 852-4925

Fax: (843) 576-4654

Email: swopelawfirm@comcast.net

Charleston, SC

September 11, 2021

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wilmington Savings Fund Society, FSB,
solely as trustee for Invictus Residential
Pooler Trust 2A, and not in its individual
capacity,

Plaintiff,

vs.

Alice Swope Thompson,

Defendant.

(File No. 4035.01121)

IN THE COURT OF COMMON PLEAS

C/A NO.: 2021-CP-10-03055

**PLAINTIFF'S REPLY TO
DEFENDANT'S ANSWER AND
COUNTERCLAIM**

Replying to the counterclaim of Defendant Alice Swope Thompson (Thompson), Plaintiff, Wilmington Savings Fund Society, FSB, solely as trustee for Invictus Residential Pooler Trust 2A, and not in its individual capacity, respectfully shows the following:

FOR A FIRST DEFENSE

1. The allegations in the Complaint are repeated as if set forth herein verbatim.

FOR A SECOND DEFENSE

2. The counterclaim fails to state facts sufficient to constitute any cause of action and should be dismissed pursuant to Rule 12(b)(6), SCRPC.

FOR A THIRD DEFENSE

3. Every allegation of the counterclaim is denied unless otherwise admitted.

FOR A FOURTH DEFENSE

4. Paragraph 13 is denied to the extent it asserts factual allegations against Plaintiff.
5. Plaintiff lacks sufficient knowledge or information with which to admit or deny the allegations contained in Paragraph 14 and 15, including all sub-paragraphs A – G, and therefore denies the same and demand strict proof.
6. Paragraph 16 is denied.

7. Responding to Paragraph 17, Plaintiff admits Defendant has retained legal counsel. The remaining allegations of this paragraph are denied.

FOR A FIFTH DEFENSE

8. Plaintiff's motion to strike is repeated as if set forth herein verbatim.

FOR A SIXTH DEFENSE

9. That Defendant's counterclaim is permissive in nature and, therefore, the request for a jury trial should be stricken as this mortgage foreclosure action sounds in equity.

FOR A SEVENTH DEFENSE

10. That the Plaintiff pleads the terms of the contract (Note and Mortgage) as a complete bar to the Defendant's counterclaim.

FOR AN EIGHTH DEFENSE

11. That the Plaintiff pleads permission as a complete defense and bar to the Defendant's counterclaim.

FOR A NINTH DEFENSE

12. That the Plaintiff pleads legal authorization as a complete defense and bar to the Defendant's counterclaim.

Wherefore, having replied to Thompson's counterclaim, Plaintiff respectfully requests it be granted the relief sought in the Complaint, the counterclaim be dismissed, with costs, and the Court grant Plaintiff such other and further relief as the Court may deem just and proper.

SIGNATURE BLOCK APPEARS ON FOLLOWING PAGE

RILEY POPE & LANEY, LLC

s/Peter M. Balthazor

Peter M. Balthazor, SC Bar No. 68244

Post Office Box 11412

Columbia, South Carolina 29211

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Attorneys for Plaintiff

September 27, 2021
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2021-CP-10-3055
	)	
	)	
WILMINGTON SAVINGS FUND	)	
SOCIETY FSB	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
ALICE SWOPE THOMPSON	)	
	)	
Defendant	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

January 27, 2022
Charleston, South Carolina

B E F O R E:

THE HONORABLE CLIFTON NEWMAN, JUDGE

A P P E A R A N C E S:

PETER M. BALTHAZOR, ESQ.
Attorney for the Plaintiff

WILLIAM KOATESWORTH SWOPE, ESQ.
Attorney for the Defendant

JOYCE C. RUEGER,
Certified Verbatim Reporter-Master
Circuit Court Reporter

[Certified Transcript Provided to: William K. Swope, Esq.]

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PROCEEDINGS

THE COURT: 93, okay. Wilmington Savings v. Thompson.

MR. BALTHAZOR: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. BALTHAZOR: May it please the Court if everybody is ready to go.

THE COURT: Yes, sir.

MR. BALTHAZOR: My name is Pete Balthazor. I'm with Riley, Pope and Laney law firm in Columbia. I'm here today on behalf of the plaintiff in this mortgage foreclosure case.

This is the plaintiff's motion to strike the defendant's jury trial demand. We filed this foreclosure action I guess it was back in July of -- and I'm sorry Your Honor, I just walked in; I want to get a little bit organized here.

[Whereupon, Mr. Balthazor reviews documents]

MR. BALTHAZOR: I guess it was in July of 2021 that we filed this foreclosure action. And the defendant filed an Answer and within that Answer there was a general denial of those claims. There was also an equitable defense raised of unclean hands. Then there was a Counterclaim for trespass which included the request for a jury trial. And in the facts of that

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1 Counterclaim for trespass it was alleged that an agent of
2 the lender entered the property and changed the locks,
3 turned off utilities; things of that nature. And then by
4 doing that, this property is not the residence of the
5 borrower in this case. This is a rental property.

6 And so it is alleged that by going in and changing
7 the locks and securing the property as lenders do from
8 time to time as authorized under the mortgage that that
9 interfered with the borrower's ability to lease the
10 property.

11 So, it is our position that the Counterclaim is
12 alleged is a permissible Counterclaim and therefore it is
13 not entitled to a jury trial. Here the Complaint is in
14 equity. It is only asking for a mortgage foreclosure.
15 So, under the scheme that has been set forth by the
16 Supreme Court if a Counterclaim is legal and permissible
17 like I said there is no right to a jury trial.

18 Under Rule 13(a) a Counterclaim is compulsory and
19 would be entitled to a jury if it arises out of the same
20 transaction or occurrence. And in foreclosure cases the
21 Court has come up with sort of its own test for what is
22 the same transaction or occurrence. In foreclosure cases
23 this means there has to be some logical relationship
24 between the Counterclaim and the enforceability of the
25 agreement; here meaning the agreement being the Note and

Wilmington Savings Fund Society Fsb vs. Alice Swope Thompson
Plaintiff's Motion to Strike Defendant's Jury Trial Demand
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1 mortgage. So under that logical relationship test if the
2 Counterclaim, if the claims asserted do not affect the
3 enforceability of the Note then they are permissive
4 Counterclaims. And if they are permissive like I said
5 they are not entitled to a jury claim.

6 So, here we get to sort of the facts of this case
7 and the facts as alleged even if the borrower, Ms. Swope,
8 was able to show that we did in fact trespass on the
9 property, that we didn't have permission to enter the
10 property, we didn't have the right to do so she may be
11 entitled for damages under that, for that trespass.

12 But that doesn't mean that we can't enforce the Note
13 and mortgage as written. That would not affect the
14 enforceability of the Note and mortgage. So, in this
15 case it is the execution of that Note and mortgage, and
16 that was by the way that was done in January of 2019.
17 There was a default on that in April of 2020.

18 But so like I say the transaction or occurrence, and
19 that's the term used in Rule 13(a) that we're dealing
20 with is the execution of the Note and mortgage. In the,
21 I'm calling it the Badd case, it's not a bad case; I
22 think it's a good case for me. But its Carolina First
23 Bank v BADD, LLC from the Supreme Court in 2015. In that
24 case there was an execution of a guarantee agreement by
25 the defendant. And in that, and then there was a civil

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1 conspiracy Counterclaim by that defendant. The Court
2 said it is that execution of that guarantee agreement
3 that was the transaction or occurrence. And then the
4 civil conspiracy claim didn't have any logical
5 relationship to the execution or enforceability of that
6 agreement. So there the Court said that's a permissive
7 Counterclaim and the defendant was not entitled to a jury
8 trial on that, on that Counterclaim.

9 As an example of a compulsory Counterclaim in a
10 foreclosure action, but I'm pointing this out; I don't
11 think this applies here but here's an example of where
12 one would be compulsory. In the Salon Proz case, that
13 was from the Court of Appeals in 2017 in ---

14 THE COURT REPORTER: --- what's the name of it
15 again, Salon?

16 MR. BALTHAZOR: Yes, ma'am. It was South Carolina
17 Community Bank v. Salon, like a hair salon, and then
18 Proz, P-R-O-Z. In that case that's a foreclosure case;
19 the defendant counterclaimed on a UTPA claim alleging the
20 bank had a pattern of breaking promises to modify loans.

21 So there, there was some allegation that the
22 original loan should have been modified or could have
23 been modified. And the Court there said with that if
24 there was some promise at some point to modify the loan
25 that could affect the loan's enforceability. So that was

Wilmington Savings Fund Society Fsb vs. Alice Swope Thompson
Plaintiff's Motion to Strike Defendant's Jury Trial Demand
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1 under that logical relationship test that was the same
2 transaction or occurrence and therefore that Counterclaim
3 could be heard by a jury. There is one other example, in
4 the North Carolina Federal Savings v. DAV Corporation.
5 This is from the Supreme Court in 1989.

6 The question there was also whether the borrower, if
7 the borrower prevailed on her Counterclaim would that
8 affect the bank's right to enforce the Note. And the
9 Court in that DAV case answered the question no.

10 Well, in that case -- let me back up a little bit.
11 The question that I just asked does the borrower
12 prevailing on her Counterclaim in this case affect the
13 bank's right to enforce the Note. It is our proposition
14 that no, it does not.

15 But in DAV, which is another example of some
16 Counterclaim being compulsory that was one where the
17 bank's right, it was alleged that the bank's right to
18 bring suit on the Note was modified by some oral
19 agreements to provide some additional funding.

20 So again, there were allegations in that suit that
21 there was some other agreement which would have affected
22 the enforceability of the agreement. Here we're just
23 talking about a trespass on the property. It's our
24 position that that does not affect anything dealing with
25 the enforceability of the Note, doesn't deal with the

Wilmington Savings Fund Society Fsb vs. Alice Swope Thompson
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1 execution of the Note therefore there is no logical
2 relationship there, which that logical relationship test
3 has to be met here in South Carolina.

4 So, the trespass claim does not arise out of the
5 same transaction or occurrence under Rule 13(a) so this
6 would be a permissible Counterclaim. And because this is
7 an equitable action all of the claims would need to be
8 heard by the Court rather than by a jury.

9 Unless the Court has any questions that is our, that
10 is our argument in this matter.

11 THE COURT: All right. Yes, sir?

12 MR. SWOPE: May it please the Court, Your Honor?
13 William Swope here on behalf of the defendant, Alice
14 Swope Thompson. Your Honor, I agree that the right to a
15 jury trial under Rule 38 is dependent upon whether the
16 Court finds this is a compulsory or a permissive
17 Counterclaim. If it is compulsory we're entitled to the
18 jury trial; if it is permissive we are not.

19 What he, with all due respect to opposing counsel
20 what he glossed over is an essential element of their
21 case. It's not just the execution of the document but
22 the default. And at the time that -- the loan was
23 entered into in January of '19; covid struck in February
24 of '20. There was no way as a practical matter for my
25 client who was in the process of taking that property

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1 from an annual rental to a month to month, or excuse me,
2 to an Airbnb status for her to accomplish that during
3 Covid. She filed the application with the county and she
4 was trying to meet the requirements but the council, the
5 Board that has to approve that was not meeting because of
6 Covid.

7 We obtained a forbearance from the lender, from the
8 loan servicer. So during that forbearance period my
9 client is not in default. She is in forbearance. During
10 that forbearance period is when they send the agent over
11 who goes in and changes the locks, posts no trespassing
12 signs, turns off the water, puts tape over the commodes
13 and the sink and turns off the power; all with no notice
14 to my client.

15 We're in forbearance thinking everything is okay.
16 We'll start paying and we'll get some sort of loss
17 mitigation at some point perhaps. Perhaps we'll be able
18 to get a loan through one of the federal programs where
19 we can pay this. But in the meantime they go in and they
20 damage the property and they post those signs.

21 Well now all the neighbors see all that. So if we
22 try to have someone come in there and live we've got all
23 these signs. We got to go in and against their no
24 trespassing signs we've got to change the locks so we can
25 get access to our own property. We got a tenant who

Wilmington Savings Fund Society Fsb vs. Alice Swope Thompson
Plaintiff's Motion to Strike Defendant's Jury Trial Demand
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1 moved in and lived there for one month. And we had to
2 make everything right. We had to pay to accomplish that.
3 And that was the initial trespass and that was bad
4 enough. But then that tenant moves out in May and the
5 agent comes back and does it again.

6 We've communicated with the lender that we're trying
7 to generate rents that we are required under the terms of
8 the mortgage to pay to you. They have an assignment of
9 rents and profits and we're trying to generate the money
10 to pay them and they're fighting us.

11 They are creating damages on the property that we
12 now have to go into pocket. Understand during Covid
13 we're operating at 40 percent of our normal revenues. We
14 can't evict tenants whether they pay or not; whether
15 they're able to pay or not.

16 And so I would feel I was on worst ground if they
17 hadn't done it until after the foreclosure was filed.
18 But because they went in the first time before the
19 foreclosure was filed and they've been in it twice more
20 since then they're creating their own damages, which they
21 can't do.

22 And we'd ask under that North Carolina under DAV
23 court case from 1989 there is the logical relationship
24 because they have to prove the execution of the documents
25 and the default. We were not in default when they

Wilmington Savings Fund Society Fsb vs. Alice Swope Thompson
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1 breached the contract by going in and trespassing on the
2 property. And so that's the basis of why I believe this
3 is a compulsory legal Counterclaim that entitles us to a
4 jury trial under Rule 38.

5 And the North Carolina Savings and Loan Association
6 case v DAV Corp I graduated from law school in 1990 and
7 I've argued that case all my legal career. And sometimes
8 it goes my way and sometimes it goes the bank's way. But
9 I believe there is a basis for us to stay here with a
10 jury trial proceeding.

11 The only prejudice that they suffer is that the jury
12 trial has to occur first before they can move to the
13 foreclosure. And I've had many cases over the course of
14 my career where that is exactly what we've done. We've
15 tried the case in front of the jury.

16 When that case was resolved if there were
17 insufficient funds awarded to the plaintiff -- to the
18 defendant on the Counterclaim then we went and did the
19 foreclosure proceeding. Sometimes it's been done by the
20 Circuit Court judge; more often it has been referred to
21 the Master to do the non-jury portion of the trial.

22 And Your Honor I'm simply asking for my client's
23 jury trial right to be recognized. Thank you.

24 THE COURT: All right. Is there a response?

25 MR. BALTHAZOR: Yes, Your Honor, very briefly.

Wilmington Savings Fund Society Fsb vs. Alice Swope Thompson
Plaintiff's Motion to Strike Defendant's Jury Trial Demand
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1 Even if all of this is true which Mr. Swope goes
2 into and talks about the Board not being able to meet to
3 change it to an Airbnb which is very generally alleged,
4 if alleged at all, in the Answer and Counterclaim.

5 And I mean if all of this is true as to the timing
6 of when the alleged trespass occurred and that the lender
7 went in and winterized anything or shut off the utilities
8 or anything even if all of that is true, which I said
9 earlier that may entitle the borrower to a great trespass
10 claim and there may be some damages incurred by the
11 borrower because she couldn't rent the property and
12 didn't have that rental income at the time.

13 But the test that the logical relationship looks at
14 is not whether there was when the default occurred; it's
15 whether the Counterclaim affects the execution of the
16 Note and mortgage, which it doesn't here. The execution
17 of the Note -- there is nothing alleged that any of this
18 trespass affected any of the execution or the validity of
19 the execution of the Note and mortgage.

20 The other part of it is whether it affects the
21 enforceability of the Note and mortgage. There is
22 nothing here that affects the enforceability of that. My
23 client can still enforce the Note and mortgage just like
24 it always has been. There may be some defenses to what
25 our damages may be or what our, you know the amount of

Wilmington Savings Fund Society Fsb vs. Alice Swope Thompson
Plaintiff's Motion to Strike Defendant's Jury Trial Demand
January 27, 2022

1 judgment might be. And there might be some damages based
2 on that trespass claim if we entered the property too
3 early or entered the property wrongly. But it still
4 doesn't affect the enforceability of the Note and
5 mortgage and that's what we've got to look at here.

6 The cases, those examples that I gave where
7 something did affect the enforceability of the Note and
8 mortgage was where there was some promise to do something
9 different and make the Note, make the terms of the Note
10 and mortgage different than they were. And there is
11 nothing like that alleged here so there is nothing that
12 would affect the enforceability of the Note and mortgage.

13 And then there was some mention of prejudice to us
14 whether there would be any prejudice. I don't even think
15 that is a consideration for the Court here. It's really
16 just whether there is a logical relationship which would
17 lead to it being the same transaction or occurrence.

18 Here it's clearly not the same transaction or
19 occurrence. Just the -- the allegations of entering the
20 property on a few occasions and winterizing the property
21 would not be the same transaction or occurrence as the
22 execution or enforceability of the Note and mortgage.

23 Thank you, Your Honor.

24 THE COURT: Anything further?

25 MR. SWOPE: May it please the Court, Your Honor?

Wilmington Savings Fund Society Fsb vs. Alice Swope Thompson
Plaintiff's Motion to Strike Defendant's Jury Trial Demand
January 27, 2022

1 If a forbearance is not an amendment of the Note and
2 mortgage I don't know what is. And it was during this
3 forbearance period that this injury occurred to my
4 client. And the injury was to the property itself.

5 And we're entitled for the trier of fact to
6 determine when it happened, what the amount of damages
7 is, and whether or not the Note is enforceable because
8 they've created their own damages. Are they entitled to
9 enforce part of the Note? Are they entitled to enforce
10 all of the Note? Are they entitled to proceed with their
11 foreclosure subsequent to the jury making an award?

12 Your Honor, it is central because of the timing.
13 And the allegation in the Complaint, this is a motion to
14 strike, which is akin to a motion to dismiss based on the
15 pleadings. And in the pleadings it's alleged that the
16 entry took place before, months before the foreclosure
17 was filed is the exact language.

18 And so that's our position, Your Honor.

19 THE COURT: All right. I find that the
20 Counterclaim here is permissive and there is no right to
21 jury trial. It must be litigated with the foreclosure
22 court. Well there is no right to jury trial I guess a
23 separate litigation can take place or I'm not sure where
24 it goes as far as do you have the trial with the
25 foreclosure trial. But you just don't get a jury trial.

Wilmington Savings Fund Society Fsb vs. Alice Swope Thompson
Plaintiff's Motion to Strike Defendant's Jury Trial Demand
January 27, 2022

1 When is it litigated, the Counterclaim?

2 MR. BALTHAZOR: Well that's a good question. I
3 think there is a process set for in one of these cases.
4 It might even be in that DAV court. I think that's just
5 something that the equity judge would determine at a
6 later time whether they get tried together or whether
7 there is a separate, whether there is a severing of the
8 two.

9 THE COURT: Judge Scarborough is eminently
10 qualified to figure that out.

11 MR. BALTHAZOR: I believe so.

12 THE COURT: All right. If you will do an e-File
13 order and share it with counsel.

14 MR. BALTHAZOR: Yes, Your Honor.

15 THE COURT: All right. Anything further?

16 MR. SWOPE: No, Your Honor.

17 THE COURT: All right. Thank you all.

18 MR. SWOPE: Thank you.

19 MR. BALTHAZOR: Nothing further from the plaintiff.
20 Thank you.

21 *****END OF TRANSCRIPT OF RECORD*****
22
23
24
25

Wilmington Savings Fund Society Fsb vs. Alice Swope Thompson
Certificate of the Court Reporter
January 27, 2022

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of Common Pleas for Charleston County, South
Carolina on the 27th day of January, 2022.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

August 20, 2022

Joyce C. Rueger, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wilmington Savings Fund Society, FSB,
solely as trustee for Invictus Residential
Pooler Trust 2A, and not in its individual
capacity,

Plaintiff,

vs.

Alice Swope Thompson,

Defendant.

(File No. 4035.01121)

IN THE COURT OF COMMON PLEAS

C/A NO.: 2021-CP-10-03055

**NOTICE OF MOTION AND
PLAINTIFF'S MOTION TO STRIKE
JURY TRIAL DEMAND**

YOU WILL PLEASE TAKE NOTICE that Plaintiff, Wilmington Savings Fund Society, FSB, solely as trustee for Invictus Residential Pooler Trust 2A, and not in its individual capacity Wilmington Savings Fund Society, FSB, solely as trustee for Invictus Residential Pooler Trust 2A, and not in its individual capacity, by and through its undersigned counsel, will move ten (10) days after service hereof, or soon thereafter as counsel may be heard, pursuant to Rule 12(f), SCRCF, for an Order Striking Defendant Alice Swope Thompson's demand for a jury trial on the following ground: this action is a mortgage foreclosure action, which is equitable in nature. See *Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.Ed. 472, 475 (1997) ("A mortgage foreclosure is an action in equity.").

BACKGROUND

This case is an action for the foreclosure of a mortgage of real property located in Charleston County. A Lis Pendens, Summons and Complaint were filed on January 5, 2021. Defendant filed an Answer and asserted a counterclaim for trespass. The counterclaim arises out of Plaintiff's alleged actions in recently entering the vacant property. Plaintiff now brings this Motion to Strike Jury Trial Demand.

STANDARD

“Whether a party is entitled to a jury trial is a question of law...” *Wachovia Bank, NA. v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 441 (2014). In equity actions the parties are not entitled, as a matter of right, to a trial by jury.” *Williford v. Downs*, 265 S.C. 319, 321, 218 S.E.2d 242, 243 (1975). “[T]here is no right to trial by jury for equitable actions.” *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). Mortgage foreclosure actions are equitable in nature. See *Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997) (“A mortgage foreclosure is an action in equity.”) “If the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury trial.” *Blackburn*, 407 S.C. at 330, 755 S.E.2d at 441.

APPLICABLE LAW AND APPLICATION

Defendant is not entitled to a jury trial because the counterclaim is not compulsory. A counterclaim is compulsory only if it arises out of the same transaction or occurrence as the opposing party’s claim. Rule 13(a), SCRPC. When a defendant brings permissive counterclaims in an equitable matter, he waives his right to a jury trial. South Carolina has adopted the “logical relationship” test to determine whether claims arise out of the same transaction or occurrence as the opposing party’s claim. See *N.C. Fed. Sav. & Loan Assn. v. DAV Corp.*, 298 S.C. 514, 519, 381 S.E.2d 903, 906 (1989). Under the logical relationship test, when the alleged occurrences affect the enforceability of the note, then the claims arise from the same transaction or occurrence and are compulsory; if the claims do not affect the enforceability of the note, then they do not arise from the same transaction or occurrence. *Id.*

Also important to the analysis on this issue is our Supreme Court’s holding and analysis in *Blackburn*. Though in *Blackburn* the court dealt primarily with the issue of valid jury trial waivers,

not an issue at bar, the court's reasoning and rationale is informative. Wachovia extended a loan to Blackburn secured by a mortgage encumbering real property. *Blackburn* at 325, 755 S.E.2d at 439. Blackburn had purchased the property through a sales lottery. Wachovia subsequently commenced foreclosure alleging Blackburn defaulted on the loan by failing to make the required monthly payments; Blackburn answered and asserted counterclaims, crossclaims, and third-party claims. *Id.* Blackburn's claims included negligent misrepresentation, breach of contract, breach of fiduciary duty, fraud, civil conspiracy, and SCUTPA violations. *Id.* at 326, 755 S.E.2d at 439-40. The alleged wrongs against Wachovia arose out of the lottery sales transaction, not the loan transaction. *Id.* at 331, 755 S.E.2d at 442. Blackburn demanded a jury trial. *Id.* at 326-27, 755 S.E.2d at 440. To reach its conclusion that a jury trial was not required, the Supreme Court reasoned that treating the sales transaction separate from the loan transactions renders Blackburn's claims permissive by definition, thereby resulting in a jury trial waiver because the Plaintiff's action was equitable.

Defendant is not entitled to a jury trial on her claim because the Note and Mortgage would remain enforceable even if the Defendant prevailed on the counterclaim. "If the defendant's prevailing on his counterclaim would affect the bank's right to enforce the note and foreclose the mortgage, there is a logical relationship between the counterclaim and the underlying suit, and the counterclaim is therefore compulsory." *Blackburn*, 407 S.C. at 330, n.7, 755 S.E.2d at 442, n.7 (citation omitted). "[T]here is no constitutional right to a jury trial for a non-compulsory counterclaim for damages asserted in an equitable action." *Crewe v. Blackmon*, 289 S.C. 229, 233, 345 S.E.2d 754, 757 (Ct. App. 1986) (citation omitted). Defendant's counterclaim pertains to alleged actions occurring many years after the Note and Mortgage were executed and not the enforceability of the Note and Mortgage. None of the allegations would nullify or cancel the Note

and Mortgage. Accordingly, Defendant has no right to a jury trial and this matter should remain under the jurisdiction of this Court.

CONCLUSION

For the reasons and arguments set forth above, Plaintiff requests that this Court deny Defendant's request for a jury trial and strike it from the Answer.¹

RILEY POPE & LANEY, LLC

s/Peter M. Balthazor

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Attorneys for Plaintiff

September 27, 2021
Columbia, South Carolina

¹ Plaintiff's counsel certifies it communicated via email with opposing counsel in a good faith attempt to resolve the matter contained in this motion prior to filing this motion.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON) IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT
 C/A No.: 2021-CP-10-03055

WILMINGTON SAVINGS FUND)
 SOCIETY, FSB, solely trustee for)
 Invictus Residential Pooler Trust 2A,)
 and not in its individual capacity,)

PLAINTIFF,)

VERSUS)

ALICE SWOPE THOMPSON,)

DEFENDANT.)

MOTION TO RECONSIDER

TO: PETER M. BALTHAZOUR, ESQUIRE, of Riley, Pope & Laney, LLC, Attorneys for Plaintiff

YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through undersigned counsel, will move before the Hon. Clifton B. Newman, Presiding Judge of the Ninth Judicial Circuit for an order to reconsider his Order on Plaintiff's Motion to Strike Defendant's Jury Trial Demand issued February 2, 2022 pursuant to SCRCP Rule 59. The basis for this motion is contained in a Memorandum to be filed contemporaneously herewith. At issue is the Defendant's right to a jury trial pursuant to SCRCP Rule 38, which is a fundamental constitutional right.

Respectfully submitted,

S/William K. Swope

WILLIAM K. SWOPE, ESQUIRE

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Attorney for Defendant

Charleston, South Carolina

February 14, 2022

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
C/A No.: 2021-CP-10-03055

WILMINGTON SAVINGS FUND
SOCIETY, FSB, solely trustee for
Invictus Residential Pooler Trust 2A,
and not in its individual capacity,

PLAINTIFF,

VERSUS

ALICE SWOPE THOMPSON,

DEFENDANT.

MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION TO RECONSIDER
(SCRCP RULE 59)

This matter came before this Honorable Court on Plaintiff's Motion to Strike the Defendant's Jury Trial Demand, as set forth on the face of the Defendant's Answer and Counterclaim timely filed September 13, 2021. Plaintiff filed its Motion to Strike on September 27, 2021. The matter was heard January 27, 2022 at 11:30am before the Hon. Clifton D. Newman presiding in Charleston County. His order granting Plaintiff's Motion was filed on February 2, 2022.

As this matter concerns Defendant's fundamental right to a jury trial enshrined in SCRCP Rule 38(a), (b) and © with the Defendant has complied. Further, the Court's denial of Defendant's jury trial right has a fundamental effect on the trial procedure to which this case or controversy is subject.

The Plaintiff's complaint is at its heart a breach of contract action, and the Plaintiff is seeking the equitable remedy of foreclosure for that breach. The Defendant's answer and counterclaim asserts a prior breach of the contract by the Plaintiff, specifically in paragraphs 8 through 11, which are incorporated by reference in paragraph 13, and further set forth in paragraphs 14 through 16. At issue is the invasion of the subject property by an agent of the Plaintiff as et forth specifically in paragraph 15:

- A. Changing the locks;
- B. Publicly posting no trespassing signs without authorization;
- C. Turning off the breakers in the breaker box without authority, creating the potential for mold growth;
- D. Turning off the water supply to the improvements of the real property;
- E. "Winterizing" the plumbing system of the improvement to the real property;
- F. Doing all of the foregoing with no prior notice to the Defendant, while granting forbearance due to Covid restrictions, and months before actually filing this foreclosure filing; [and]
- G. Interfering with the Defendant's ability to let the premises to generate income to make the payments Plaintiff's claims are due....

As this is a Motion based upon the pleadings, the party seeking a jury trial should need only to assert allegations necessary to support its right to a jury trial. Here the Defendant has clearly pleaded averments setting forth a breach of the contract by the Plaintiff during the forbearance granted because of Covid. Noteworthy is the simultaneous federal prohibition of foreclosure and eviction during much of the period commencing the alleged breach by the Defendant. Despite these federal prohibitions, the Plaintiff's agent undertook these overly aggressive invasions of the real property. These are issues for a trier of fact herein.

The seminal case on issues of this type is *North Carolina Federal Sav. and Loan Ass'n v. DAV Corp.*, 381 S.E.2d 903, 298 S.C. 514 (S.C. 1989). "A party does not waive its right to a jury trial on a counterclaim asserted in an equity action if the counterclaim is legal and compulsory in nature". *North Carolina Federal Sav. And Loan Ass'n* at 904. That Court set forth an initial inquiry of whether the Defendant's counterclaim was indeed legal, and not equitable in nature. "Next, it must be determined that the counterclaims are compulsory.... SCRCF Rule 13(a), which is a four factor test:

- 1) Are the issues of fact and law largely the same?
- 2) Would res judicata bar a subsequent suit on the counterclaims?

3) Does substantially the same evidence apply?

4) Is there any logical relationship between the claim and the counterclaim?

South Carolina has adopted the fourth test. (See *Wachovia Bank, N.A. v. Blackburn*, 407 S.C. 321, 755 S.E.2d 437 (S.C. 2014) and *Carolina First Bank v. Badd, LLC*, 381 S.E.2d 903, 298 S.C. 514 (S.C. 2015).

Here, there is a logical relationship between the parties' respective alleged breaches of the same contract. Defendant alleges that Plaintiff created and exacerbated its own damages by sending its agent to invade the property, commit trespass to chattel in furtherance of his perceived duties to his master or was acting outside the scope of his instructions. These are all issues intertwined with the Defendant's nonpayment of the Note. Again, these are inferences reasonably drawn from the pleadings to which this Court is confined in addressing the Defendant's jury trial right. The Defendant should need not prove his case to be entitled to a jury trial. While it may be inconvenient or even inefficient to afford the Defendant her jury trial right, she is nonetheless entitled to it if her legal counterclaim is compulsory. Here, the averments set forth in the answer and counterclaim are a compulsory counterclaim.

Respectfully submitted,

S/William K. Swope

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Attorney for Defendant

Charleston, South Carolina

February 14, 2022

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Feb 09 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Clifton Newman, Circuit Court Judge

Appellate Case No. 2022-001051

Wilmington Savings Fund Society.....Plaintiff

V.

Alice Swope Thompson.....Defendant

APPELLANT'S CERTIFICATION OF THE RECORD ON APPEAL

Appellant's counsel does hereby certify that all documents to be included in the Record on Appeal are included herein, and that no extraneous matter is included.

Respectfully submitted,

S/ William K. Swope

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February 9, 2023