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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Shannon M. Phillips, Master-in-Equity

Appellate Case No. 2022-000393

U.S. Bank Trust, N.A. as Trustee for LSF10 Master Participation Trust,……...…….Respondent,

v.

Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually, and as Heir or Devisee of the Estate of Lisa D. Lowery a/k/a Lisa Marie Davis Lowery, Deceased; South Carolina Department of Revenue; The United States of America acting by and through its agency, Department of the Treasury - Internal Revenue Service; and Elizabeth A. Lowery,.……Defendants,

Of whom Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually, and as Heir or Devisee of the Estate of Lisa D. Lowery a/k/a Lisa Marie Davis Lowery, Deceased, is the…….....Appellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG U.S. Bank Trust, N.A. as Trustee for LSF10 Master Participation Trust, PLAINTIFF, VS. Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually; Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually, and as Heir or Devisee of the Estate of Lisa D. Lowery, Deceased; South Carolina Department of Revenue; The United States of America acting by and through its agency, Department of the Treasury – Internal Revenue Service; and Elizabeth A. Lowery, DEFENDANT(S).	IN THE COURT OF COMMON PLEAS CASE NO. 2019-CP-42-02270 **ORDER GRANTING PLAINTIFF PARTIAL SUMMARY JUDGMENT**

This matter came before me for a virtual hearing on January 31, 2022, pursuant to the Plaintiff's US Bank Trust, NA's (Plaintiff or U.S. Bank) motion for summary judgment. Present at the virtual hearing were J. Derrick Jackson and Reginald P. Corley for the Plaintiff and Andrew Radeker for the Defendant Austin Lowery. After carefully considering the pleadings on file, briefs and exhibits for and against the motion, and arguments of counsel, this court concludes that summary judgment should be granted as to the issue of liability for the foreclosure and the Defendant Austin A. Lowery's (Defendant or Lowery) affirmative defenses of unconscionability, res judicata and release. The only issues remaining after this order are the amount of the debt and the amount of Defendant's set off/recoupment.

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FACTUAL/PROCEDURAL BACKGROUND

The parties previously filed cross motions for summary judgment in this case which resulted in two orders by the Honorable Gordon G. Cooper filed May 10, 2021(Denying Defendant's motions for summary judgment on counterclaims and Plaintiff's claim) and May 20, 2021 (Granting Plaintiff's partial motion for summary judgment as to offensive use of the claim of unconscionability and limited use to an affirmative defense and setoff). These orders recite the background facts of this case and are incorporated by reference.

Subsequent to these orders, the matters remaining for this court are Defendant's affirmative defenses of unconscionability, res judicata and release, the Plaintiff's foreclosure and Defendant's counterclaim based on the alleged violation of the attorney preference statute.

STANDARD OF REVIEW

A trial court should grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; *see also Tupper v. Dorchester County*, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997); *Wells v. City of Lynchburg*, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct. App. 1998). In reviewing the grant of a summary judgment motion, this court applies the same standard which governs the trial court: summary judgment is proper when "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; *Baughman v. Am. Tel. & Tel.* Co., 306 S.C. 101, 114-15, 410 S.E.2d 537, 545 (1991). Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Trivelas v. South Carolina Dep't of Transp.*,348 S.C. 125, 130, 558 S.E.2d

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271, 273 (Ct.App.2001). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. Rule 56(c), SCRCP; *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990); *Peterson v. W. Am. Ins. Co.*, 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct.App.1999). *Regions Bank v. Schmauch*, 582 S.E.2d 432, 354 S.C. 648 (S.C. App. 2003).

DEFENDANT'S AFFIRMATIVE DEFENSES

In his answer and in opposition to summary judgment, Lowery raised several affirmative defenses; however, as set forth below, there are no genuine issues of material fact as to these defenses and U.S. Bank is entitled to summary judgment as a matter of law.

RES JUDICATA

Lowery first asserts that the bank is barred from filing the present foreclosure by the doctrine of res judicata. Lowery contends that the court's prior striking of a foreclosure action filed by Household Finance Corporation, II[1] (HFC II) filed July 26, 2013, precludes the bank from bringing the current foreclosure action. This contention lacks merit as can be seen from the face of the Form 4 Order striking the prior foreclosure action. (See Exhibit to Lowery's Brief in Opposition) Under the doctrine of res judicata, a litigant is barred from raising issues previously adjudicated between the parties in a subsequent action. *See Hilton Head Ctr. of S.C., Inc. v. Pub. Serv. Comm'n of S.C.*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987). Res judicata requires three elements: (1) a judgment that is final, valid, and on the merits; (2) the parties in the second action are identical to those in the first; and (3) the subsequent action must involve a subject matter

[1] US Bank's predecessor in title and assignor.

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properly included in the first action. *See Owenby v. Owens Corning Fiberglas*, 313 S.C. 181, 183, 437 S.E.2d 130, 132 (Ct. App. 1993) (citing *Laffitte v. Tucker*, 216 S.C. 201, 57 S.E.2d 255 (1950)). In this case, while it may be debatable whether the parties and the subject matter are identical[2], assuming arguendo these elements are satisfied, there never was an adjudication on the merits or final judgment in the first foreclosure. On its face, the Form 4 order strikes (but does not dismiss) the case pursuant to Rule 40(j) for failure to prosecute. Defendant argues this order is equivalent to an order of dismissal under Rule 41 "for other reasons" because the parties did not consent and therefore was with prejudice and adjudication on the merits. However, it was obvious the court did not intend for the dismissal to be under Rule 41 or with prejudice. The court could have checked the boxes for dismissal and for Rule 41 but did not. More importantly, the order expressly provided for the parties to be able to restore the action when they were ready to proceed. Thus, the order could not have been a final judgment on the merits for res judicata purposes.

RELEASE

Lowery also argues that US Bank's foreclosure action must fail because it released its mortgage. This argument too must fail. On September 24, 2002, Lowery executed a mortgage to HFC II securing the promissory note as part of the closing for refinancing his construction loan with SunTrust Bank. This mortgage was recorded in REM 2782 at Page 874 on September 26, 2002. The legal description of this mortgage mistakenly referenced the entire 53.73-acre tract which was in Lowery's deed acquiring the property, rather than the 5.0-acre parcel subsequently surveyed by Lowery (and which also was mortgaged by SunTrust). Lowery

[2] Arguably, Household Finance Corp, II and US Bank are not identical, although US Bank is a successor by assignment and arguably payments accruing after the case was dismissed are different.

admits this 53.73-acre mortgage was never valid[3] and that he only intended to mortgage the 5.0-acre tract.[4] Upon discovery of the error in the legal description of the recorded mortgage, HFC II requested Lowery to return and sign a mortgage with the correct legal description for the 5.0-acre tract. Lowery did so on September 30, 2002, and this mortgage was recorded on October 4, 2002, in the Office of the Register of Deeds for Spartanburg County in Book 2789 at Page 575.

The court also notes from Exhibit 10 to the Plaintiff's Return to Defendant's Summary Judgment that the tile insurance policy excepted to the first mortgage with an incorrect legal description from coverage in Schedule B and stated it was to be released.

There are no genuine issues of material fact that Lowery intended to and did execute a mortgage on the five-acre tract which is the subject of this foreclosure. Lowery admits that it was always his intent to mortgage the 5.0-acre tract,[5] and Lowery also admits to giving HFC II a mortgage on the 5.0 acres in his answer to the original foreclosure pleadings brought by HFC II (US Bank's predecessor in title).[6]

Having admitted to giving Plaintiff a mortgage on this property, it is incumbent on the Defendant Lowery to prove as an affirmative defense that the 5.0-acre mortgage has been released or satisfied. The only evidence offered by Lowery in response to summary judgment is the recorded release of the prior recorded mortgage which Lowery admits contained an incorrect legal description and was recorded in error.

U.S. Bank recorded a document entitled "RELEASE OF MORTGAGE, Mortgage/Record Book 2782 at Page 874." (Exhibit 9). In that document, US Bank released the

[3] Exhibit 6 to US Bank Return to Summary Judgment, Defendants Answer to Interrogatory 23.
[4] Lowery Affidavit, ¶9.
[5] See Lowery Affidavit, ¶9.
[6] See Lowery Answer to HFC II Amended Complaint paragraphs 3 and 14 and generally US Bank Return to Lowery Motion for Summary Judgment, p. 9

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property from "liens under that certain Mortgage dated September 24, 2002, from Austin A. Lowery, recorded in the office of the ROD/RMC/Clerk of Court for Spartanburg County on September 26, 2002, in Mortgage/Record Book 2782 at Page 874 and assigned to U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust by assignment dated June 26, 2018, and recorded July 3, 2018, in Book 5469 at Page 795." The language used by US Bank is very specific and intentional. This Release by its express language applied to that specific mortgage and no other.

Lowery admits that well prior to this release, Lowery executed another mortgage for 5.0 acres, in accordance with the intent of the parties, which was recorded on October 4, 2002, in the Office of the Register of Deeds for Spartanburg County in Book 2789 at Page 575. (Exhibit 7, 5.0-acre mortgage).

A plain reading of the recorded release shows that it only released the property from the lien of the invalid mortgage dated September 24, 2002, from Austin A. Lowery, recorded in the office of the Register of Deeds for Spartanburg County on September 26, 2002, in Mortgage/Record Book 2782 at Page 874. There is no mention or description of the subsequent mortgage dated September 30, 2002, and recorded on October 4, 2002, in the Office of the Register of Deeds for Spartanburg County in Book 2789 at Page 575 (Exhibit 7, 5.0-acre mortgage), even though it was already filed and of record at the time the release was executed and recorded.

Finally and most importantly, the court notes the comment from Judge Cooper in his order denying Defendant' motion for summary judgment on the grounds of the release, "that there is no genuine issue of material fact as it would, under the facts and circumstances, be inequitable for Defendant to receive $304,040.62 from Plaintiff which funds were in fact used to

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benefit the Defendant and it being clear that Defendant intended to and did give a mortgage to HFC II on the 5.0 acre parcel."

This court concludes that there are no genuine issues of material fact that Lowery intended to and did give Plaintiff a mortgage on the 5.0 tract in consideration of the loan and to secure the promissory note. The court further concludes that Lowery has not provided sufficient facts to create a genuine issue of material fact that this subsequent mortgage for 5.0 acres was released.

UNCONSCIONABILITY

In a prior order, Judge Cooper granted Plaintiff partial summary judgment on the Defendant's claim of unconscionability as it related to the offensive use to the extent the Defendant sought a money judgment and attorney's fees and costs against Plaintiff as assignee from HFC II. Judge Cooper's order was without prejudice to Lowery's right to raise his counterclaim as an equitable and statutory defense for the purpose of setoff or recoupment.

S.C. Code Ann. §37-5-108(c) allows the court to use its equitable powers and discretion if it finds as a matter of law (a) the agreement or transaction to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct. Lowery bases his unconscionability argument on several factors which he argues collectively support a finding of unconscionability.

First, he asserts that the violation of the attorney preference statute is unconscionable conduct.[7] This same argument was raised and rejected in *Lackey v. Green Tree Financial Corp.*, 330 S.C. 388, 498 S.E.2d 898 (S.C. App. 1998). In *Lackey*, the trial court held that an arbitration clause included in a retail installment contract for the purchase of a manufactured home was

[7] This is also the basis of a separate counterclaim for set-off and recoupment which will be addressed later in this order.

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unconscionable and unenforceable, in part, because Green Tree failed to comply with the attorney-preference statute, "thereby denying each buyer the right to consult counsel." *Id.* at 330 S.C. 398. The South Carolina Supreme Court rejected this conclusion and stated, "Contrary to the holding of the trial court in this case, we do not read *First Baptist Church of Timmonsville* to establish a bright line test rendering an arbitration clause unenforceable where a contract somehow prevents a party from consulting a lawyer. But even if it did, there is nothing in the contract which prevented respondents from consulting legal counsel." *Lackey* at 399.

Furthermore, Lowery has failed to point out what provision or provisions in the promissory note or the mortgage which are unconscionable which counsel would have allegedly protected him from. Plaintiff served discovery requesting this information but has received no answer or response.

Lowery also argues that the absence of counsel at the closing is unconscionable conduct. While there is no doubt about the benefits of counsel at a closing, the court is mindful of the distant closing date and the circumstances of a closing which occurred almost twenty years ago. "In determining unconscionability, courts are limited to considering facts and circumstances existing when the contract was executed." *Hardee v. Hardee*, 348 S.C. 84, 95-96, 558 S.E.2d 264, 269-70 (Ct.App.2001) (citing Restatement (Second) of Contracts § 208 (1981)), aff'd as modified, 355 S.C. 382, 585 S.E.2d 501 (2003). During that time, closings did occur without the presence of counsel. *Matrix*[8] was decided almost a decade later, prospectively applying the unclean hands doctrine to potentially preclude equitable remedies to a lender of a loan closed without an attorney. *Id.* 714 S.E.2d at 535. Also, again, Lowery fails to show or allege how the absence of counsel materially prejudiced him in the terms of the note or mortgage.

[8] Matrix Financial Serv. Corp.. v. Frazer, 394 S.C. 134, 714 S.E.2d 532 (S.C. 2011)

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Lowery does claim in his affidavit that HFC II promised he could refinance to a 5% rate if he made his payments for one year. However, the promissory note, which Lowery is charged with reading, provides for a reduction in rate of .50% at the end of the third year (36th month) , fourth year (48th month), and fifth year (60th month) if Lowery makes his payments within 30 days of their due date and does not file bankruptcy. (Exhibit 3, page 2, "Adjustment to Contract Rate.") Lowery did not make it to 36 months and there is no evidence that he requested the refinance or offered payments at the 5% rate.

Lowery also points to the different legal descriptions in the mortgages that were recorded; however, this was quickly corrected and Lowery admits that the 5.0 acre mortgage which is being foreclosed it was he intended and did execute. The other mortgage with the incorrect description was released.

Unconscionability is characterized by the "absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Fanning v. Fritz's Pontiac-Cadillac-Buick Inc.*, 322 S.C. 399, 402, 472 S.E.2d 242, 245 (1996) (emphasis added) (citing *Jones Leasing v. Gene Phillips and Assocs.*, 282 S.C. 327, 318 S.E.2d 31 (Ct.App.1984)).

In this case, Lowery has offered no evidence that he could not have sought a loan elsewhere or that the terms of his loan were "so oppressive that no reasonable person would make them." Lowery admits as much by failing to respond to the Plaintiffs Requests for Admission alleging these same points.[9] Indeed, Lowery made payments for a little over 18

[9] See exhibits attached to Plaintiff's Motion for summary Judgment including Requests for Admission served October 5, 2021.

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months on the promissory note and the mortgage. The HUD-1 Closing Statement reflects that Lowery had several debts paid and walked away from closing with $13,535. (See Plaintiff's Exhibit 4[10]) It would be inequitable to allow Lowery to receive this benefit, fail to make payments since 2004 and then argue his note and mortgage are unenforceable because of unconscionability.

In short, Lowery has failed to come forward with sufficient facts which would create a genuine issues of material fact to lead this court to conclude that the agreement or transaction to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct. Therefore, US Bank is entitled to summary judgment as a matter of law.

FORECLOSURE

Lowery admits to not paying his note and mortgage since 2004. Plaintiff alleges in the Second Amended Complaint that Lowery is due for installments after April 30, 2004. Lowery further admits to giving HFC II (the U.S. Bank's predecessor in title) a mortgage on 5.0 acres of land to secure payment. US Bank filed an affidavit of indebtedness alleging the amount due; however, this affidavit was incomplete. The court agrees with Defendant that additional information needs to be provided to determine the amount of the debt; accordingly, Plaintiff is granted summary judgment as to liability for foreclosure, but Plaintiff must file and serve affidavits regarding the amounts at issue at least three days prior to a final hearing.

ATTORNEY PREFERENCE VIOLATION

The attorney preference provisions of S.C. Code Ann. §37-10-102 require a creditor to ascertain prior to closing the preference of the borrower as to the legal counsel that is employed to represent the debtor in all matters of the transaction relating to the closing of the transaction.

[10] Plaintiff's exhibits filed with the Return in Opposition to Lowery's motion for Summary Judgment as to Plaintiff's claims.

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A creditor can either obtain this information as part of the loan application or in a written notice to the borrower no later than three days after the application is received.

In this case, Lowery signed an attorney preference form (Exhibit to Lowery's Memo in Opposition to Summary Judgment) on the date of closing indicating "None". The form contains a fax stamp of 9/18 but Lowery asserts in his affidavit that it was "among the documents" we signed at closing. Plaintiff, who is an assignee, admits that almost eighteen years after the closing it has no evidence to refute Lowery's claim. The court also notes on the Hud-1 closing statement that the Lender is listed as the settlement agent and that no fees were charged for an attorney.

This court concludes that there is sufficient evidence to support a violation of the attorney's preference statute; however, as indicated in the previous discussion the court does not find that it rises to the level of unconscionability. Lowery may submit by affidavit the amounts for which he contends is entitled by way of set-off or recoupment at least three days prior to a final hearing.

THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

Plaintiff is granted summary judgment as to Defendant's affirmative defenses of res judicata, release and unconscionability.

Plaintiff is granted summary judgment as to Defendant's liability for foreclosure subject to submitting by affidavit appropriate documentation supporting the amount of the debt at least three days prior to a final hearing.

Defendant is granted judgment by way of offset only for an attorney preference violation subject to submitting the amount claimed for the offset by way of affidavit at least three days prior to a final hearing.

IT IS SO ORDERED.

Judge Shannon M. Phillips
Master-In-Equity, Spartanburg County

Spartanburg, South Carolina
Dated:_____

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Spartanburg Common Pleas

Case Caption: Us Bank Trust Na As Trustee For Lsf10 Master Participation T VS Austin A Lowery , defendant, et al

Case Number: 2019CP4202270

Type: Master/Order/Other

IT IS SO ORDERED.

s/ Shannon M. Phillips - 3087

Electronically signed on 2022-02-23 10:44:05 page 13 of 13

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO.: 2019-CP-42-02270

U.S Bank Trust, N.A. as Trustee for LSF10 Master Participation Trust	**Austin A. Lowery**
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: Court	**Attorney for:** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendant's Motion to Reconsider is denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount To be Enrolled (List amount(s) below)**
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

	3087	03/16/2022
Shannon M. Phillips, Master – In – Equity	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on the day of , 2022 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 2022 to attorneys of record or to parties (when appearing pro se) as follows:

Reginald Patrick Corley, Esq. **Scott & Corley, P.A.** **Post Office Box 2065** **Columbia, SC 29202**	**George J. Conits, Esq.** **55 Beattie Place, Ste. 700** **Greenville, SC 29601**
ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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Spartanburg Common Pleas

Case Caption: Us Bank Trust Na As Trustee For Lsf10 Master Participation T VS Austin A Lowery , defendant, et al

Case Number: 2019CP4202270

Type: Master/Order/Form 4

IT IS SO ORDERED.

s/ Shannon M. Phillips - 3087

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Spartanburg
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP4202270

Us Bank Trust Na As Trustee For Lsf10 Master Participation T
PLAINTIFF(S)

Austin A Lowery et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☑ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

See below for additional order information

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☑ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/13/2020 .

Lisa D Lowery
Elizabeth A Lowery

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2020 Feb 13 10:56 AM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

This matter came before the Court on Plaintiff's 12(b)(6) motion to dismiss a counterclaim that asserts a violation of the attorney preference statute that allegedly occurred when the original loan/mortgage was signed by the borrower. Plaintiff claims, as a matter of law, it cannot be held liable for a violation the attorney preference statute because plaintiff is merely an assignee of the loan/mortgage. Considering the arguments presented and after reviewing the submissions of the attorneys, the 12(b)(6) motion is denied. The standard of review for a 12(b)(6) motion requires that the allegation of the compliant be viewed in a light most favorably to the non-moving party. Therefore, the facts asserted in the answer and counter claim are deemed true. Moreover, the historical facts as argued by the defendant during the hearing and as outlined by the defendant in its memorandum are considered as true. Therefore, for purposes of the present motion, the transaction is considered unconscionable. Applying those facts and the inferences therefrom in a light most favorable to the defendant to the statute at issue, the present motion cannot be granted to dismiss the counterclaim. The statute's application to the plaintiff as an assignee, at best, is unclear for purposes of the assertion of a counterclaim.

No further order will be issued on this motion as the motion does not decide any issue in the case on its merits.

The Court appreciated the excellent arguments and briefs.

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Spartanburg Common Pleas

Case Caption: Us Bank Trust Na As Trustee For Lsf10 Master Participation T VS Austin A Lowery , defendant, et al

Case Number: 2019CP4202270

Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

ELECTRONICALLY FILED - 2020 May 28 5:03 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	
U.S. Bank Trust, N.A., as Trustee for LSF 10 Master Participation Trust,	)	Civil Action No. 2019-CP-42-02270
	)	
Plaintiff,	)	
	)	
v.	)	**CONSENT ORDER OF REFERENCE TO MASTER IN EQUITY**
	)	
Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually, and as Heir or Devisee of the Estate of Lisa D. Lowery a/k/a Lisa Marie Davis Lowery, Deceased; South Carolina Department of Revenue; The United States of America acting by and through its agency, Department of the Treasury – Internal Revenue Service; and Elizabeth A. Lowery,	)	
	)	
Defendants.	)	
	)	

IT APPEARS that this is an action in which the Plaintiff seeks mortgage foreclosure.

IT FURTHER APPEARS that the Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF 10 Master Participation Trust and Defendant Austin A. Lowery through their undersigned counsel seek to have this matter referred from the Spartanburg County Court of Common Pleas to the Spartanburg County Master-in-Equity for a final determination of the fact and law with the final judgment appealable to the Court of Appeals of South Carolina.

The two answering Defendants, South Carolina Department of Revenue and The United States of America acting by and through its agency, Department of Treasury – Internal Revenue Service, specifically consented to this matter being referred to the Master-in-Equity within their filed Answers.

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NOW THEREFORE, upon motion of Amanda Cutler, attorney for the Plaintiff and with the consent of Andrew Radeker, attorney for Defendant Austin A. Lowery, it is

ORDERED, that the within action be referred to the Honorable Gordon C. Cooper, Master-in-Equity for Spartanburg County, pursuant to Rule 53, SCRCP, with said master-in-equity to have all the power and authority of a circuit judge sitting in a non-jury case, including, but not limited to, the powers to take the testimony, make his findings of fact and conclusions of law, rule on any and all motions, including, but not limited to, post-judgment motions, and enter a final judgment on the issue as set forth in all matters pertaining to this action, and the final judgment is directly appealable to the Court of Appeals of South Carolina.

_____
Clerk of Court

WE CONSENT:

s/Amanda K. Cutler
Amanda K Cutler
S.C. Bar No. 101052
McGuireWoods LLP
201 N. Tryon St., Suite 3000
Charlotte, NC 28202-2146
Phone: 704-343-2182
E-Mail: acutler@mcguirewoods.com

Counsel for Plaintiff U.S. Bank Trust, N.A., as Trustee for LSF 10 Master Participation Trust

s/Andrew S. Radeker
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S.C. Bar No. 73743
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Counsel for Defendant Austin A. Lowery

ELECTRONICALLY FILED - 2020 May 28 5:03 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

Spartanburg Common Pleas

Case Caption: Us Bank Trust Na As Trustee For Lsf10 Master Participation T VS Austin A Lowery , defendant, et al

Case Number: 2019CP4202270

Type: Order/Referred to Master or Special Referee

IT IS SO ORDERED

s/Amy W Cox, Spartanburg County Clerk of Court by Maribel M Martinez

ELECTRONICALLY FILED - 2021 May 10 8:53 AM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG U.S. Bank Trust, N.A. as Trustee for LSF10 Master Participation Trust, PLAINTIFF, VS. Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, Individually; Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually, and as Heir or Devisee of the Estate of Lisa D. Lowery, Deceased; South Carolina Department of Revenue; The United States of America acting by and through its agency, Department of the Treasury – Internal Revenue Service; and Elizabeth A. Lowery, DEFENDANT(S).	IN THE COURT OF COMMON PLEAS CASE NO. 2019-CP-42-02270 **ORDER DENYING DEFENDANT'S MOTIONS FOR SUMMARY JUDGMENT**

This matter came before the undersigned for a hearing on April 26, 2021, regarding Defendant Austin A. Lowery's ("Lowery") motions for summary judgment as to Plaintiff's claims for foreclosure of its mortgage and Lowery's counterclaim for unconscionability (defensively[1]). Present at the hearing were Reginald P. Corley, J. Derrick Jackson and Brian Calub, attorneys for the Plaintiff U.S. Bank and Trust, N.A. and Drew Radeker, attorney for the Defendant Lowery.

[1] Plaintiff also filed a cross motion for summary judgment as to Defendant's "offensive" use of his counterclaim based on unconscionability and the alleged violation of the attorney preference statute. Mr. Calub represented Plaintiff on this motion which the court granted in a separate order.

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After carefully considering the arguments of counsel, the briefs and exhibits presented, and the filed record in this case, the court denies both of Defendant's motions for summary judgment.

STANDARD OF REVIEW

Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law" and "should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts." *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 362, 563 S.E.2d331, 333 (2002).

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFF'S CLAIMS

Defendant's summary judgment as to Plaintiff's claim is denied in that there is no genuine issue of material fact as it would, under the facts and circumstances, be inequitable for Defendant to receive $304,040.62 from Plaintiff which funds were in fact used to benefit the Defendant and it being clear that Defendant intended to and did give a mortgage to HFC II on the 5.0 acre parcel.

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AS TO COUNTERCLAIM FOR UNCONSIONABILITY

The court denies the motion for summary judgment as to unconscionability, but Defendant will be allowed to plead as an affirmative defense to Plaintiff's foreclosure action the claim of set-off and/or recoupment to be determined at the final hearing in this matter.

DEFENDANT'S MOTIONS FOR SUMMARY JUDGMENT ARE DENIED.

IT IS SO ORDERED.

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ELECTRONICALLY FILED - 2021 May 10 8:53 AM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

Spartanburg Common Pleas

Case Caption: Us Bank Trust Na As Trustee For Lsf10 Master Participation T VS Austin A Lowery , defendant, et al

Case Number: 2019CP4202270

Type: Master/Order/Other

It is So Ordered

s/Judge Gordon G Cooper-3065

ELECTRONICALLY FILED - 2021 May 20 8:42 AM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
U.S. Bank Trust, N.A., as Trustee for LSF 10 Master Participation Trust, Plaintiff, v. Austin A. Lowery, a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually and as Heir or Devisee of the Estate of Lisa D. Lowery a/k/a Lisa Marie Davis Lowery, Deceased; South Carolina Department of Revenue; The United States of America acting by and through its agency, Department of the Treasury – Internal Revenue Service; and Elizabeth A. Lowery, Defendants,	)	CASE NO: 2019-CP-42-02270

ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

THIS MATTER came on for hearing on April 26, 2021 on Plaintiff/Counter-defendant U.S. Bank Trust, N.A., as Trustee for LSF 10 Master Participation Trust's (U.S. Bank") Motion for Partial Summary Judgment. Having reviewed the Complaint, the exhibits thereto, the responsive pleadings to the Complaint, the Motion for Partial Summary Judgment and all related exhibits, as well as the briefs and authorities submitted, and after considering the arguments of counsel and the record herein, the Court finds that there is no genuine issue as to any material fact and U.S. Bank is entitled to judgment as a matter of law on the Counterclaim asserted by Defendant Austin Lowery ("Lowery").

I. BACKGROUND

On September 24, 2002, Defendant and Lisa D. Lowery executed and delivered a promissory note (the "Note") to Household Finance II ("Household Finance") in the amount of

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$304,040.62 to refinance the purchase of certain real property located at 1605 Stewart Road a/k/a 1601 Stewart Road, Woodruff, South Carolina 29388 (the "Property"). Because the Note funded a refinance of a prior mortgage loan that encumbered the Property, ("Household Finance") also provided Defendant with notice of his right to rescind the transaction. According to the HUD-1 Statement for the transaction, the proceeds disbursed from the Note paid off numerous debt obligations of the Defendant and provided him with over $13,000 in funds.

On September 30, 2002, Defendant executed and delivered another mortgage (the "Mortgage", and together with the Note, the "Loan") securing the Note to Household Finance. The Mortgage was recorded on October 4, 2002, in the Office of the Register of Deeds for Spartanburg County in book 2789, page 575. By assignment recorded on December 14, 2018 in Book 5547 at page 516, Household Finance assigned the Mortgage to U.S. Bank, the present lien holder.

Defendant defaulted on his repayment obligations under the Loan, and Plaintiff filed this foreclosure action against Defendant. After several amendments to the foreclosure complaint, Defendant filed the Counterclaim at issue on or about November 1, 2019. In his Counterclaim, Defendant alleges the original creditor, Household Finance, did not comply with the attorney preference or insurance preference provisions of S.C. Code Ann. § 37-10-102. Defendant further alleges that agents of the original creditor closed the mortgage without attorney supervision and that the mortgage was induced by unconscionable conduct arising from the misidentification of the proper acreage for the collateral in the initial mortgage instrument that he signed.

However, for the reasons explained herein, Defendant's Counterclaim fails as a matter of law. Therefore, U.S. Bank is entitled to summary judgment for the Counterclaim alleged and the

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Counterclaim should be limited to an affirmative defense to Plaintiff's foreclosure claim with the limited remedy of set-off and/or recoupment.

II. STANDARD OF REVIEW

Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. *Turner v. Millman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011). When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Fleming v. Rose,* 350 S.C. 488, 493–94, 567 S.E.2d 857, 860 (2002) (citation omitted). In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. *Hancock v. Mid–South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). In cases requiring a heightened burden of proof, the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment. *Id.* at 330–31, 673 S.E.2d at 803.

III. LAW/ANALYSIS

The Attorney Preference Statute, S.C. Code, § 37-10-102, provides:

> Whenever the primary purpose of a loan that is secured in whole or in part by alien on real estate is for a personal, family or household purpose:
>
> (a) The creditor must ascertain prior to closing the preference of the borrower as to the legal counsel that is employed to represent the debtor in all matters of the transaction relatingto the closing of the transaction …
>
> The creditor may comply with this section by:
>
> (1) including the preference information on or with the credit application … or
>
> (2) providing written notice to the borrower of the preference

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> information with the notice being delivered or mailed no later than three business days after the application is received or prepared. … .

The statute of limitations for claims under the Attorney Preference Statute is found in S.C. Code,

§ 37-10-105(A), which provides:

> If a creditor violates a provision of this chapter, the debtor has a cause of action, other than in a class action, to recover actual damages and also a right in an action, other than in a class action, to recover from the person violating this chapter a penalty in an amount determined by the court of not less than one thousand five hundred dollars and not more than seven thousand five hundred dollars. No debtor may bring a class action for a violation of this chapter. No debtor may bring an action for a violation of this chapter more than three years after the violation occurred, except as set forth in subsection (C). The three-year statute of limitations applies to actions commenced after May 2, 1997. No inference should be drawn as to the applicable statute of limitations for any pending actions. This subsection does not bar a debtor from asserting a violation of this chapter in an action to collect a debt which was brought more than three years from the date of the occurrence of the violation as a matter of defense by recoupment or set-off in such action.

(emphasis added).

Lowery alleges that the original creditor did not comply with the attorney preference or insurance preference provisions of S.C. Code Ann. §37-10-102. All of the conduct alleged by Lowery pertains to the original creditor. Lowery has not established any violation of South Carolina's attorney preference statute by the U.S. Bank.

As a matter of law, U.S. Bank cannot be held liable for an alleged violation of the attorney-preference statute by the original lender—Household Finance—because U.S. Bank is only the assignee of the Loan and did not participate in the origination or settlement of the Loan transaction. The assignee of a debt "takes only the benefits, not the burdens of the assigned obligation." *Rosemond v. Campbell*, 288 S.C. 516, 522-523, 343 S.E.2d 641, 645 (S.C. Ct. App. 1986). "Thus, as against the assignee, the obligor can only assert a claim defensively when the assignee seeks to

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enforce the obligation; ***he has no common law right to sue the assignee affirmatively on a claim against the assignor arising from the underlying obligation***." *Id.* (emphasis added). Moreover, the attorney-preference statute specifically provides that a debtor only has a right to recover for an alleged violation of the statute only "***from the person violating this chapter.***" S.C. Code Ann. § 37-10-105(A) (emphasis added). Consistent with South Carolina's common law limitation on assignee liability, the South Carolina Consumer Protection Code ("SCCPC") expressly precludes the assessment of liability for the acts of an assignor to an assignee in its definition of "creditor," which states as follows:

> "Creditor" means the person who grants credit in a credit transaction or, except as otherwise provided, an assignee of a creditor's right to payment, **but use of the term does not in itself impose on an assignee any obligation of his assignor.**"

S.C. Code Ann. § 37-1-301(13) (emphasis added). It is clear that the legislature's limitation of liability for attorney-preference violations to "the person violating this chapter" and express statement that the definition of "creditor" throughout the SCCPC, including § 37-10-102(a) and § 37-10-105(A), establish that as a matter of law, an assignee of a loan cannot be held liable for an alleged violation of the attorney-preference statute by the original lender.

Similarly, SC Code Ann. § 37-10-105(D) only allows for the recovery of attorney's fees in an action where "it is found that a creditor has violated this chapter." As such, Lowery is not entitled to an award of attorney's fees against U.S. Bank.

IV. CONCLUSION

It is undisputed that U.S. Bank is not the original lender and is only the assignee of the Loan and did not participate in the origination or settlement of the Loan transaction. For the foregoing reasons, the Court finds that Lowery cannot sustain an affirmative action against U.S. Bank for an alleged violation of S.C. Code § 37-10-102 based on the plain language of the statute.

Accordingly, it is hereby ORDERED that U.S. Bank's Motion for Partial Summary Judgment is GRANTED, and Lowery's Counterclaim against U.S. Bank is dismissed WITH PREJUDICE to the extent such counterclaim is asserted to secure an award of monetary damages and attorney's fees from U.S. Bank.

This Order is without prejudice to Lowery's right to raise his counterclaim as an equitable and statutory defense for the purpose of setoff or recoupment, or both, and introduce evidence in support thereof, to U.S. Bank's request for foreclosure of the mortgage.

DONE and ORDERED this _____ day of May, 2021.

_____
The Honorable Gordon Cooper

cc: Counsel of Record

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Spartanburg Common Pleas

Case Caption: Us Bank Trust Na As Trustee For Lsf10 Master Participation T VS Austin A Lowery , defendant, et al

Case Number: 2019CP4202270

Type: Master/Order/Other

It is So Ordered

s/Judge Gordon G Cooper-3065

ELECTRONICALLY FILED - 2019 Jun 21 5:52 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust, PLAINTIFF, VS. Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery; Lisa D. Lowery; South Carolina Department of Revenue; The United States of America acting by and through its agency, Department of the Treasury - Internal Revenue Service; and Elizabeth A. Lowery, DEFENDANT(S).	IN THE COURT OF COMMON PLEAS CASE NO. 2019-CP-42 SUMMONS

(171121.00152)

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 2712 Middleburg Drive, Suite 200, Post Office Box 2065, Columbia, South Carolina 29202, 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 the Mortgagee immediately and separately and such application will be deemed absolute and total in the absence of your application for such an appointment within thirty (30) days after the service of the Summons and Complaint upon you.

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YOU WILL ALSO TAKE NOTICE that under the provisions of South Carolina Code § 29-3-100, effective June 16, 1993, any collateral assignment of rents contained in the mortgage identified in the Complaint is hereby perfected and Plaintiff hereby gives further notice that all rents shall be payable directly to it by delivery of the same to its undersigned attorneys from the date of default forward. In the alternative, the Plaintiff will move a Judge of this Circuit Court on the tenth (10th) day after service hereof, or as soon as counsel for Plaintiff may be heard, for an Order enforcing the assignment of rents, if any, and/or profits, if any, compelling payments of all such funds covered by the mortgage and/or by status and/or by common law directly to the undersigned attorneys for the Plaintiff, which Motion is based upon the original Note and Mortgage identified in the Complaint therein and attached hereto as well as any applicable laws, statutes or regulations.

YOU WILL ALSO TAKE NOTICE that should you fail to Answer the foregoing Summons, the Plaintiff will move for an Order of Reference of this cause to the Master-In-Equity or Special Referee in/for this County, which Order shall, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, specifically provide that the said Master In Equity or Special Referee is authorized and empowered to enter a final judgment in this cause with appeal only to the South Carolina Court of Appeals pursuant to Rule 203(d)(1) of the SCACR, effective June 1, 1999.

SCOTT AND CORLEY, P.A.

By: s/Tasha B. Thompson

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June 21, 2019

ELECTRONICALLY FILED - 2019 Jun 21 5:52 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust, PLAINTIFF, VS. Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery; Lisa D. Lowery; South Carolina Department of Revenue; The United States of America acting by and through its agency, Department of the Treasury - Internal Revenue Service; and Elizabeth A. Lowery, DEFENDANT(S).	IN THE COURT OF COMMON PLEAS CASE NO. 2019-CP-42 COMPLAINT Foreclosure – Non-Jury (Deficiency Waived)

(171121.00152)

The Plaintiff above named, complaining of the Defendant(s) herein, alleges that:

1. This is an action for foreclosure of a mortgage upon certain real estate in Spartanburg County, South Carolina.

2. Plaintiff is a corporation or other legal entity securing or collecting debts or enforcing mortgages, security interests or other rights in property securing debts in the State of South Carolina pursuant to § 33-15-101(B)(8) and is the real party in interest under SCRCP 17(a) to enforce the Note and Mortgage described herein.

3. With the formal discontinuance of the Home Affordable Modification Program (HAMP) on December 31, 2016, South Carolina Administrative Order 2009-05-22-01 has expired by operation of law and is no longer applicable.

4. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.

5. The Defendant(s) herein described 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 Section 15-35-840 of the Code of Laws of South Carolina (1976).

6. Heretofore, under date of September 24, 2002, Allen Lowery and Lisa D. Lowery made, executed and delivered to Household Finance Corporation II a certain mortgage note (“Note”) in writing wherein and whereby Allen Lowery and Lisa D. Lowery promised to pay to

ELECTRONICALLY FILED - 2019 Jun 21 5:52 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

Household Finance Corporation II, its successors and assigns, the principal sum of $304,040.62.

7. In order to secure the payment of said Note, the said Austin A. Lowery did on the same date, to-wit, September 24, 2002, make, execute and deliver to Household Finance Corporation II, its successors and assigns, a certain mortgage ("Mortgage") covering real property located in the County and State aforesaid, which said mortgage was recorded in the Office of the Clerk of Court/Register of Deeds for Spartanburg County, on September 26, 2002, in Book 2782 at Page 874; thereafter, said Mortgage was assigned to U.S. Bank Trust, N.A., As Trustee For LSF10 Master Participation Trust by assignment instrument dated June 26, 2018 and recorded July 3, 2018 in Book 5469 at Page 795, and by duplicate assignment instrument dated May 29, 2019 and recorded May 31, 2019 in Book 5619 at Page 753. A purported Release of Mortgage was inadvertently recorded in the real estate public records of Spartanburg County on January 11, 2019, in Book 5558 at Page 222. Pursuant to South Carolina Code Section 29-3-345, this purported Release of Mortgage was erroneous and inadvertently recorded; and therefore, the subject Mortgage recorded in Book 2782 at Page 874, together with any and all Assignments of Mortgage, remain in full force and effect.

The description of the premises as contained in said mortgage is as follows:

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Spartanburg, State of South Carolina, Southeast of Woodruff, on the Southeast side of S-42-448, containing 53.73 acres, more or less and being more fully shown as Lot 3 of the M.C. Hill Estate on a plat prepared by E. Mitchell, RLS dated May 22, 1996 and recorded in Plat Book 134 at Page 9 in the Office for the RMC for Spartanburg County.

This being the same property conveyed to Austin A. Lowery by Deed of Joseph E. Ulmer, II dated May 24, 1996 and recorded June 3, 1996 in Book 64-H at Page 146 in the ROD Office for Spartanburg County.

TMS No. 4 43-00 029.00

Property address: 1605 Stewart Road a/k/a 1601 Stewart Road
Woodruff, SC 29388

8. A copy of the plat cited in the subject Mortgage's legal description and recorded in Plat Book 134 at Page 9 is attached hereto and incorporated herein by reference as Exhibit "A".

FOR A FIRST CAUSE OF ACTION

(Declaratory Judgment that Mobile/Manufactured Home is Subject to the Lien of Plaintiff's Mortgage)

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9. The Plaintiff incorporates the allegations of Paragraphs 1 – 8 herein.

10. Upon information and belief, a 1973 MRN/Norris B3736 Mobile Home, Serial No. B373606011 mobile/manufactured home, sits upon the real property described above. Plaintiff is also informed and believes that the Mortgagor is presently in possession of the mobile/manufactured home and Plaintiff is informed and believes it is entitled to possession and ownership of the mobile/manufactured home as a permanent fixture and/or improvement under the real estate mortgage of Plaintiff as herein identified and the applicable common and statutory laws of South Carolina.

11. Upon information and belief, when Allen Lowery applied for a mortgage loan from Plaintiff or Plaintiff's predecessor-in-interest, Household Finance Corporation II, Allen Lowery represented that they owned or were purchasing all the property which is the subject of this litigation and that they were willing to execute a mortgage upon the entire property, that is the real property described herein and all improvements thereon, including the mobile/manufactured home to secure the mortgage loan.

12. In reliance upon the representations of Allen Lowery, the property, including the mobile/manufactured home, was appraised and, in reliance upon the appraised value of the entire property, a mortgage loan was extended to Allen Lowery with the intent that the loan would be secured by a first mortgage loan upon the real property described herein and all improvements thereon, including the mobile/manufactured home.

13. That, to evidence the parties' intention that the loan would be secured by all of the property owned by Allen Lowery, located at 1605 Stewart Road a/k/a 1601 Stewart Road, Woodruff, SC 29388, including the mobile/manufactured home, on or about September 30, 2002 the defendant(s), Allen Lowery made, executed, and delivered a mortgage to Household Finance Corporation II, which is recorded as described herein.

14. The relationship between Allen Lowery, and Plaintiff or Plaintiff's predecessor in interest, Household Finance Corporation II, Borrowers and Lender, respectively, are such that a reasonable person would expect Household Finance Corporation II, to require that the loan be secured by a mortgage upon all of Allen Lowery property, including the mobile/ manufactured home, and that a reasonable person would expect Allen Lowery, to mortgage all of the property, including the mobile/manufactured home in exchange for receiving the mortgage loan.

15. Because Allen Lowery, and Plaintiff or Plaintiff's predecessor in interest, Household Finance Corporation II, in furtherance of their relationship as Borrowers and Lender, respectively, intended for the mobile/manufactured home to secure the mortgage loan to Allen Lowery, Plaintiff is informed and believes that, pursuant to S.C. Code Ann. Section 15-53-20, et

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seq., it is entitled to a declaratory judgment that the mobile/manufactured home in an improvement to the property which is the subject of this action and that it is subject to the lien of Plaintiff's mortgage.

FOR A SECOND CAUSE OF ACTION
(FORECLOSURE OF MORTGAGE)

16. Plaintiff incorporates the allegations of Paragraphs 1-15 herein.

17. Plaintiff is informed and believes that the Mortgage constitutes a first mortgage lien on the subject real estate and improvements thereon, including any mobile/manufactured home located thereon.

18. Plaintiff and/or its counsel has complied with all of their obligation(s) under the specific terms of the Note and Mortgage being foreclosed as well as all applicable Federal or State statutes or regulations, including, but not limited to, the furnishing of any notices (where applicable), e.g. post referral loss mitigation solicitation letter and/or acceleration warning letter as to default and post acceleration reinstatement, provided to the obligor(s), if or where applicable.

19. Plaintiff's counsel has read the allegations in this pleading and to the best of his/her knowledge, and upon information and belief, there are good grounds to support it. Pursuant to the South Carolina Lis Pendens Statute (S.C. Code Section 15-11-10, et. Seq.), Plaintiff's counsel has accomplished a Report on Title whereby Plaintiff's counsel has, upon information and belief, named all parties who claim or may claim an interest in the subject property. This Report on Title is a recoverable charge, expense, or cost as provided for in the Mortgage and/or Note contracts.

20. According to the business records of Plaintiff, which have been made available to its Counsel and also upon information and belief, neither Plaintiff nor its counsel is aware of any party, who executed the Note and/or Mortgage, currently being on active duty (after mortgage was originated) or recently discharged from the active duty of the United States Military or a State Guard or Reserve Unit. In addition, Counsel for Plaintiff has caused and/or conducted a search of the DOD website for which Counsel, upon information and belief, reports that no party, who executed the Note and/or Mortgage, and, to the best of his/her knowledge, is entitled to SCRA protection. If any party has any information or record of a defendant currently being on active duty or recently discharged, it is requested that you contact counsel for Plaintiff immediately as you may possibly be eligible for protection under the Servicemembers Civil Relief Act (SCRA).

21. According to the business records of Plaintiff, which have been made available to

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its Counsel and upon information and belief, neither Plaintiff nor its counsel is aware of any party to this action currently being in active bankruptcy and under the protection of the United States Bankruptcy Court ("USBK"). In addition, Counsel for Plaintiff has caused and/or has conducted a search of the PACER website for which Counsel, upon information and belief, reports no party, who executed the Note and/or Mortgage, and, to the best of his/her knowledge, is currently eligible for protection of the USBK. If any party has any information or record of a defendant currently being under the bankruptcy protections, it is requested that you notify counsel for Plaintiff immediately. Any demand for a deficiency is not applicable if a party has received a discharge in bankruptcy during the life of the mortgage, or is currently under the active protection of the bankruptcy courts. Moreover, any party to this action who is a discharged borrower to the debt of the Plaintiff shall not be subject to and is specifically excluded from both the calculation and collection of any amounts due and owing to the Plaintiff, as required by Rule 71(a) of the South Carolina Rules of Civil Procedure.

22. In and by the terms of the Note and the Mortgage, it is provided, among other things, that on failure to pay any installment of either principal and interest or any portion thereof when due, or if any of the conditions and requirements in the Mortgage be not complied with, then the whole principal sum and accrued interest shall at the option of the legal holder thereof become at once due and payable without notice, and collectible by foreclosure.

23. In and by the terms of the Note it is further provided that the maker thereof shall pay a reasonable attorney's fee if the Note be placed in the hands of an attorney for collection after default. Any notice or compliance required by the terms of the Mortgage or by state or federal statutes has been given or complied with prior to, or in the commencement of this action and the Defendants shall be forever barred from raising such notice or compliance.

24. Plaintiff, to the best of its knowledge and upon information and belief, alleges that the installments of principal and interest falling due from and after April 30, 2004 have not been paid although demand for the payment thereof has been made, and Plaintiff has and does hereby elect to declare the entire balance of said principal and interest due and payable at once. Pursuant to a review of the business records of Plaintiff or its designated agent, as of June 21, 2019, there is now due and owing and unpaid upon the Note and Mortgage the total amount of $678,781.49, which is itemized as follows: Unpaid Principal Balance of $301,994.94, Interest of $363,757.45 from May 17, 2004 through June 21, 2019, Escrow/Impound Required of $3,476.00, Deferred Amounts of $5,273.34, Recording Fee of $5.00, Exterior Property Inspections of $407.50, Val BPO of $118.50, and Taxes Paid of $3,748.76 plus reasonable attorney's fees for the collection thereof, and all other costs and expenses of this action

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allowable by law, equity, or contracts referenced above, including but not limited to the costs or charges in reporting to this Honorable Court and/or as may be permitted under Rules 54 and 71, South Carolina Rules of Civil Procedure. Pursuant thereto, Plaintiff has employed the undersigned legal counsel to prosecute these actions herein and add the fees, charges and costs of said counsel to the amount of the total debt as provided for in the Note and Mortgage. Interest on the unpaid principal balance will continue to accrue at the contractual interest rate, which is currently 7.980%.

25. A copy of the Residential Broker Price Opinion dated December 9, 2004, and completed after the default of the subject Mortgage and in anticipation of the filing of a future foreclosure of mortgage cause of action, is attached hereto and incorporated by reference as Exhibit “B”. The Residential Broker Price Opinion together with the Plat attached as Exhibit “A” confirms the property used as collateral for the subject mortgage as being 53.73 acres, plus any improvements thereon.

26. Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust, is also owner of a certain mortgage given by Austin A. Lowery to Household Finance Corporation II, dated September 30, 2002, in the original amount of $304,040.82, and recorded on October 04, 2002, in the Office of the Spartanburg County Clerk of Court/Register of Deeds in Book 2789 at Page 575; thereafter, assigned to U.S. Bank Trust, N.A., As Trustee For LSF10 Master Participation Trust by assignment instrument dated December 13, 2018 and recorded December 14, 2018 in Book 5547 at Page 516; U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust in foreclosing its first Mortgage, specifically reserves its rights pursuant to Rule 71(c) SCRCP to petition the Court for any surplus funds resulting from the foreclosure sale conducted in connection with the foreclosure of the first Mortgage, and to bring suit to collect all amounts due under said Note if not paid in full from said surplus funds.

27. Upon information and belief, the Defendant(s) below-named claim or may claim a subordinate lien or junior interest upon or interest in the subject property, including but not limited to the subordinate lien or junior interests specifically described below, and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of such lien claim will be determined at a hearing subsequent to the sale, in accordance with the Circuit Court Rules 53 and/or 71. The subject Defendant(s) is/are further made a party due to the similarity in name(s) to the primary defendant(s) against whom they claim or may claim a lien and in order to clear title to this property as follows:

(a) The Defendant, Elizabeth A. Lowery, by virtue of that certain mortgage from Austin A. Lowery to Elizabeth A. Lowery, dated May 05, 2004, in the original amount of

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$105,900.73, and recorded on May 06, 2004, in the Office of the Spartanburg County Clerk of Court/Register of Deeds in Book 3219 at Page 590.

(b) The Defendant, The United States of America acting by and through its agency, Department of the Treasury - Internal Revenue Service, by virtue of a tax lien against Austin Allen and Lisa Lowery dated July 20, 2010, in the original amount of $130,399.27, and recorded on July 30, 2010, as Serial Number 679936610, in the Office of the Spartanburg County Clerk of Court/Register of Deeds in Lien Book 13, at Page 680.

(c) The Defendant, South Carolina Department of Revenue, by virtue of the following:

I. A tax lien against Austin A. Lowery and Lisa Lowery dated October 12, 2009, in the original amount of $5,298.17, and recorded on October 22, 2009, as Lien Number 3-51077801-4, in the Office of the Spartanburg County Clerk of Court/Register of Deeds in Lien Book S-57, at Page 630.

II. A tax lien against Austin A. Lowery and Lisa Lowery dated October 19, 2009, in the original amount of $6,357.41, and recorded on October 27, 2009, as Lien Number 3-51082080-9, in the Office of the Spartanburg County Clerk of Court/Register of Deeds in Lien Book S-57, at Page 906.

III. A tax lien against Austin A. Lowery and Lisa Lowery dated November 06, 2009, in the original amount of $3,576.75, and recorded on November 30, 2009, as Lien Number 3-51089336-4, in the Office of the Spartanburg County Clerk of Court/Register of Deeds in Lien Book S-58, at Page 541.

28. Plaintiff demands no personal or deficiency judgment and any right to the same is specifically waived.

29. Plaintiff may be forced to pay sums for taxes and 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.

30. In the event the subject property is sold at Judicial Sale and the successful bidder is a third party, neither Plaintiff nor Plaintiff's counsel make any warranties or representations as to the subject property on behalf of the third party bidder.

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

AS TO THE FIRST CAUSE OF ACTION (Declaratory Judgment that Mobile/Manufactured Home is Subject to the Lien of Plaintiff's Mortgage):

2. For an order granting a declaratory judgment to the Plaintiff pursuant to

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S.C. Code Ann. Section 15-53-10, et seq., declaring that the mobile/manufactured home of Defendant(s) is an improvement to the property which is the subject of this action and is therefore subject to the lien of the Plaintiff's mortgage.

3. Pursuant to S.C. Code Ann. Section 15-53-10, et seq., order the South Carolina Department of Motor Vehicles to issue a Certificate of Title to the mobile/manufactured home to the successful purchaser of the subject property at the foreclosure sale herein or its successors or assigns.

AS TO THE SECOND CAUSE OF ACTION (Foreclosure of Mortgage):

1. The amount due upon the Note and the Mortgage be ascertained and determined under the direction of this Court, together with attorney's fees and all of the costs or charges incurred in prosecuting this action.

2. The Mortgage be declared a first mortgage lien and that Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums and/or costs for inspecting and securing the property which may be due or which may be or have been paid by Plaintiff, with reasonable attorney's fees as well as for all of the costs or charges of this action.

3. The mortgaged premises be sold according to law and the practice of this Court, the equity of redemption as to all defendants be barred and the lien or interest claimed by any defendant be extinguished and that the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and said 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, the surplus, if any, be distributed according to law.

4. Appoint a Receiver to collect the rents, issues, profits or designated sums from the mortgagor(s) and/or the grantee(s) of the mortgagor(s) and/or tenants occupying or exercising control over the mortgaged premises and hold said assets or the same subject to further Order of this Court.

5. Issue an order directing the Sheriff of Spartanburg County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary; and issue an order, if necessary, directing the South Carolina Department of Motor Vehicles to issue a Certificate of Title on any mobile/manufactured home collateralized under the security documents of the Plaintiff.

6. For an Order authorizing the South Carolina Department of Motor Vehicles to issue a new Certificate of Title for the mobile/manufactured home which is the

subject of this foreclosure action to the successful bidder at the foreclosure sale, or its successors or assigns, if necessary.

7. For an Order to extinguish the interests of the Defendants Allen Lowery in the mobile/manufactured home, if any.

8. For such other and further equitable and/or legal relief as the Court may deem just and proper.

SCOTT AND CORLEY, P.A.

By: _s/Tasha B. Thompson_____

Ronald C. Scott (rons@scottandcorley.com), SC Bar #4996
Reginald P. Corley (reggiec@scottandcorley.com), SC Bar #69453
Angelia J. Grant (angig@scottandcorley.com), SC Bar #78334
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Tasha B. Thompson (tashat@scottandcorley.com), SC Bar #76415
H. Guyton Murrell (guytonm@scottandcorley.com), SC Bar #64134
Craig T. Smith (craigs@scottandcorley.com), SC Bar #102831
ATTORNEYS FOR THE PLAINTIFF
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
803-252-3340

June 21, 2019

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NOTICE OF DEBT

1. As of June 21, 2019, the amount of the debt is $678,781.49. Pursuant to and in reliance upon a review of the business records of the creditor, or its designated agent, the total debt amount consists of the following: Unpaid Principal Balance of $301,994.94, Interest of $363,757.45 from May 17, 2004 through June 21, 2019, Escrow/Impound Required of $3,476.00, Deferred Amounts of $5,273.34, Recording Fee of $5.00, Exterior Property Inspections of $407.50, Val BPO of $118.50, and Taxes Paid of $3,748.76. Because many of these itemized items may vary from day to day, the amount due on any given day may be greater. Therefore, if you wish to receive figures to reinstate (bring the loan current) or pay off in full the loan through a specific date, please contact Scott and Corley, P.A., attorneys for U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust, by either calling (803) 252-3340 or via email at lossmit@scottandcorley.com.

2. U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust is the creditor ("Creditor") to whom the debt is owed.

3. Unless you, within thirty (30) days after receipt of this notice (the "Thirty Day Period"), dispute the validity of the debt or any portion of it, the debt will be assumed to be valid by the debt collector, which is Scott and Corley, P.A., the attorneys for the Creditor.

4. If you notify debt collector, Scott and Corley, P.A., in writing within the Thirty Day Period that the debt or any portion thereof is disputed, Scott and Corley, P.A. will obtain a verification of the debt, and Scott and Corley, P.A. will mail a copy of that verification to you.

5. If the Creditor named in this notice is different from the original creditor, and if you make a written request to Scott and Corley, P.A. within the Thirty Day Period, the debt collector, Scott and Corley, P.A. will mail to you the name and address of the original creditor.

6. Written requests should be addressed to the attorneys for the Creditor, the debt collector, as follows:

   Scott and Corley, P.A.
   Attention: Loss Mitigation
   P.O. Box 2065
   Columbia, SC 29202

7. This notice pertains to your dealings with the Scott and Corley, P.A. as the debt collector. It does not affect your dealings with the court, and in particular it does not change the time by which you must answer the summons and complaint. Please understand that the summons is a command from the court, not from the Scott and Corley, P.A., and you must follow the instructions on the summons even if you dispute the validity or any portion of the debt. This notice also does not affect Scott and Corley, P.A.'s relations with the court. Scott and Corley, P.A. may file additional legal papers in the court according to the court's rules and the judge's instructions.

THIS FIRM COLLECTS DEBTS FOR MORTGAGE LENDERS AND OTHER CREDITORS. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. HOWEVER, IF YOU HAVE PREVIOUSLY RECEIVED A DISCHARGE IN BANKRUPTCY, THIS MESSAGE IS NOT AND SHOULD NOT BE CONSTRUED AS AN ATTEMPT TO COLLECT A DEBT, BUT ONLY AS AN ATTEMPT TO ENFORCE A LIEN.

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Plat 134/9

PLAT BOOK 134 PAGE 0009

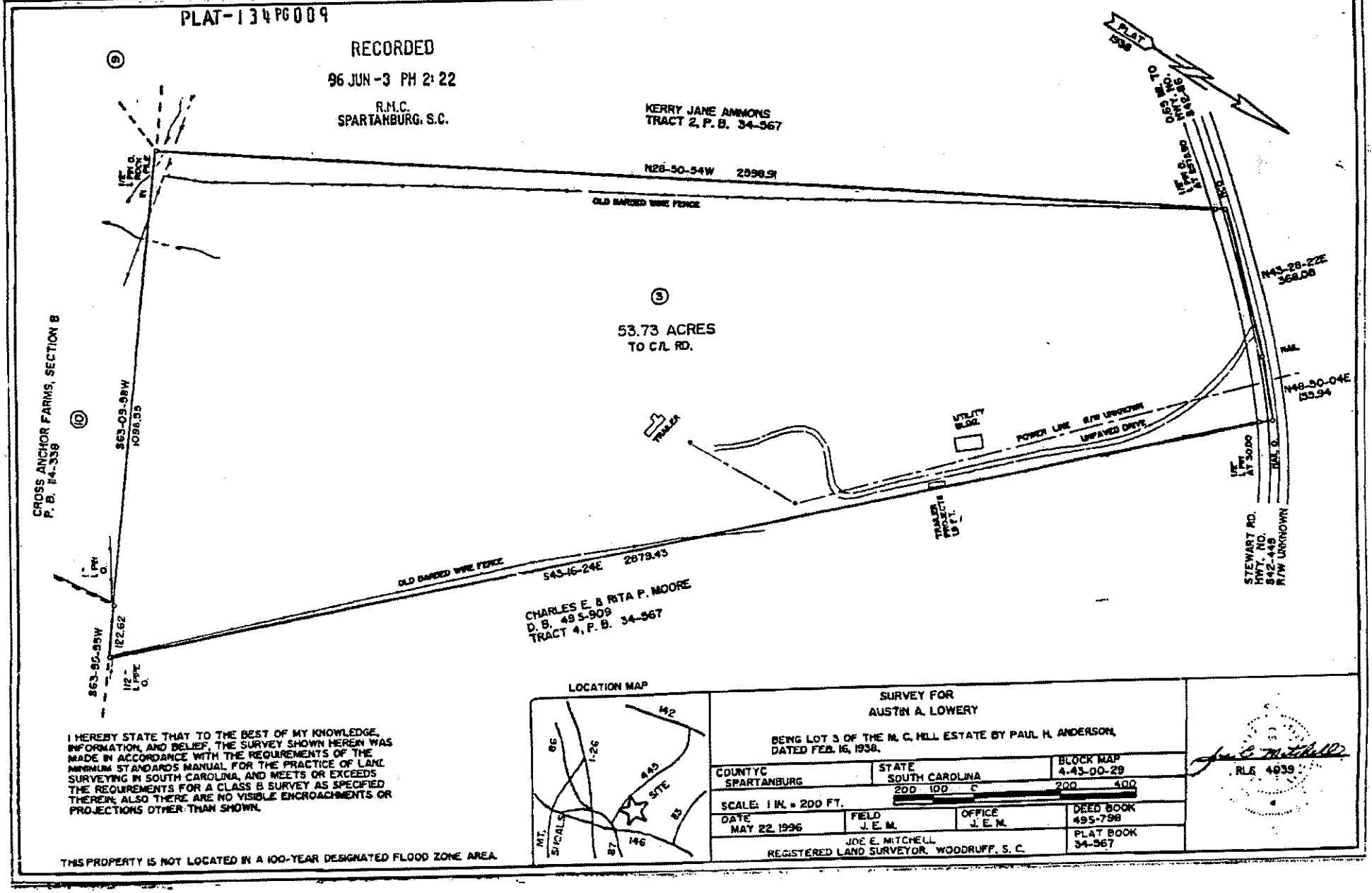
PLT-1996-16206

PLAT-134 PG 009

RECORDED

96 JUN -3 PM 2:22

R.M.C.
SPARTANBURG, S.C.



I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS B SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.

THIS PROPERTY IS NOT LOCATED IN A 100-YEAR DESIGNATED FLOOD ZONE AREA.

LOCATION MAP

SURVEY FOR
AUSTIN A. LOWERY

BEING LOT 3 OF THE M. C. HILL ESTATE BY PAUL H. ANDERSON, DATED FEB. 16, 1938.

COUNTY: SPARTANBURG	STATE: SOUTH CAROLINA	BLOCK MAP: 4-45-00-29
SCALE: 1 IN. = 200 FT.	200 100 0 200 400	
DATE: MAY 22, 1996	FIELD: J. E. M.	OFFICE: J. E. M.
JOE E. MITCHELL, REGISTERED LAND SURVEYOR, WOODRUFF, S. C.		DEED BOOK: 495-798
		PLAT BOOK: 34-567

Joe E. Mitchell
RLS 4939

Record on Appeal R. 047
Exhibit A

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RESIDENTIAL BROKER PRICE OPINION

REO #: This BPO is the ☐ Initial ☐ 2nd Opinion ☐ Updated ☐ Exterior Only DATE 12/9/2004

PROPERTY ADDRESS: 1605 STEWART RD SALES REPRESENTATIVE:

WOODRUFF SC 29388 CLIENT NAME:

FIRM NAME: PRUDENTIAL C DAN JOYNER CO. COMPLETED BY: Jane Gibbs

PHONE NO. (864)901-3403 FAX NO. (864)688-4234

I. GENERAL MARKET CONDITIONS

Current market condition: ☐ Depressed ☐ Slow ☑ Stable ☐ Improving ☐ Excellent

Employment conditions: ☐ Declining ☑ Stable ☐ Increasing

Market price of this type property has: ☐ Decreased 0 % in past 12 months ☐ Increased ☑ Remained stable

Estimated percentages of owner vs. tenants in neighborhood: 95 % owner occupant 5 % tenant

There is a ☑ Normal supply ☐ oversupply ☐ shortage of comparable listings in the neighborhood

Approximate number of comparable units for sale in neighborhood: 4

No. of competing listings in neighborhood that are REO or Corporate owned: 0

No. of boarded or blocked-up homes: 0

II. SUBJECT MARKETABILITY

Range of values in the neighborhood is $ 140,000 to $ 551,000

The subject is an ☐ over improvement ☐ under improvement ☑ Appropriate improvement for the neighborhood.

Normal marketing time in the area is: 180 days.

Are all types of financing available for the property? ☑ Yes ☐ No If no, explain

Has the property been on the market in the last 12 months? ☐ Yes ☑ No If yes, $ list price (include MLS printout)

To the best of your knowledge, why did it not sell?

Unit Type: ☑ single family detached ☐ condo ☐ co-op ☐ mobile home ☐ single family attached ☐ townhouse ☐ modular

If condo or other association exists: Fee $ ☐ monthly ☐ annually Current? ☐ Yes ☐ No Fee delinquent? $

The fee includes: ☐ Insurance ☐ Landscape ☐ Pool ☐ Tennis Other

Association Contact: Name: Phone No.:

III. COMPETITIVE CLOSED SALES

ITEM	SUBJECT	COMPARABLE NUMBER 1		COMPARABLE NUMBER 2		COMPARABLE NUMBER 3	
Address	1605 STEWART RD WOODRUFF SC 29388	422 Walker Laurens SC 29621		220 Simmons Woodruff SC 29388		OWENS RD LAURENS SC 29360	
Proximity to Subject		8 REO/Corp ☐		3 REO/Corp ☐		7 REO/Corp ☐	
Sale Price	$	$ 269,900		$ 275,000		$ 278,000	
Price/Gross Living Area	$ 103 Sq. Ft.	$ 105.63 Sq. Ft.		$ 98.21 Sq. Ft.		$ 115.83 Sq. Ft.	
Sale Date & Days on Market		12/3/2004 149		7/28/2004 65		11/1/2004 483	
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	Adjustment	DESCRIPTION	Adjustment	DESCRIPTION	Adjustment
Sales or Financing Concessions		None	E	None	E	None	E
Location	Rural	Rural	E	Rural	E	Rural	E
Leasehold/Fee Simple	Fee Simple	Fee Simple	E	Fee Simple	E	Fee Simple	E
Site	53.73	28	I	31.2	I	54	E
View	Typ	Sup	E	Typ	E	Typ	E
Design and Appeal	SFD Ranch	SFD Ranch	E	SFD Ranch	E	SFD Ranch	E
Quality of Construction	Average	Average	E	Average	E	Average	E
Age	15	20	E	10	E	20	E
Condition	Good	Good	E	Good	E	Good	E
Above Grade Room Count (Total / Bdrms / Baths)	7 / 3 / 2	7 / 3 / 2	E	7 / 3 / 3.5	E	7 / 3 / 2	E
Gross Living Area	2,670 Sq. Ft.	2,400 Sq. Ft.	I	2,800 Sq. Ft.	E	2,400 Sq. Ft.	E
Basement & Finished Rooms Below Grade	No	No	E	No	E	No	E
Functional Utility	Average	Average	E	Average	E	Average	E
Heating/Cooling	Typical	Typical	E	Typical	E	Typical	E
Energy Efficient Items	None	None	E	None	E	None	E
Garage/Carport	Gar Det 2	Gar Att 2	E	Gar Att 2	E	Gar Att 3	$
Porches, Patio, Deck Fireplace(s), etc.	Porch	Porch,deck	E	Porch	E	Porch,deck	E
Fence, Pool, etc.	Barn,fencing	Barn,fencing,po	E	Fencing,shed,wo	E	Barn,fencing	E
Other	None	Brick	$	Cypress	$	None	E
Net Adj. (total)		$ 5,000		$ 0		$ -2,500	
Adjusted Sales Price of Comparable		$ 274,900		$ 275,000		$ 275,500	

Due the unique qulaity of this houe,53.73 acres and in a very rural location,it was necessary to extend the search area to 20 miles.Comp 1 has less acreage but home is brick ext-Comp 2 has less acreage but cypress.

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Exhibit 13

REO

IV. MARKETING STRATEGY

☑ As-is ☐ Minimal Lender Required Repairs ☐ Repaired Most Likely Buyer: ☑ Owner occupant ☐ Investor

V. REPAIRS

Itemize ALL repairs needed to bring property from its present "as is" condition to average marketable condition for the neighborhood. Check those repairs you recommend that we perform for most successful marketing of the property.

☐	$	☐	$
☐	$	☐	$
☐	$	☐	$
☐	$	☐	$
☐	$	☐	$

GRAND TOTAL FOR ALL REPAIRS $0

VI. COMPETITIVE LISTINGS

ITEM	SUBJECT	COMPARABLE NUMBER 1		COMPARABLE NUMBER 2		COMPARABLE NUMBER 3	
Address	1605 STEWART RD WOODRUFF SC 29388	100 Emu Woodruff SC 29388		148 Franciscan Laurens SC 29323		360 Chapman Laurens SC 29669	
Proximity to Subject		4 REO/Corp ☐		8 REO/Corp ☐		8 REO/Corp ☐	
List Price	$	$ 330,000		$ 345,000		$ 315,000	
Price/Gross Living Area	$ 103 Sq.Ft.	$ 137.5 Sq.Ft.		$ 142. Sq.Ft.		$ 120. Sq.Ft.	
Data and/or Verification Sources		MLS		Public Records		MLS	
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	Adjustment	DESCRIPTION	Adjustment	DESCRIPTION	Adjustment
Sales or Financing Concessions		None	E	None	E	None	E
Days on Market		100	E	30	E	160	E
Location	Rural	Rural	E	Rural	E	Rural	E
Leasehold/Fee Simple	Fee Simple	Fee Simple	E	Fee Simple	E	Fee Simple	E
Site	53.73	25	I	50	E	36	I
View	Typ	Typ	E	Typ	E	Typ	E
Design and Appeal	SFD Ranch	SFD Ranch	E	SFD Ranch	E	SFD Ranch	E
Quality of Construction	Average	Average	E	Average	E	Average	E
Age	15	10	E	15	E	15	E
Condition	Good	Good	E	Good	E	Good	E
Above Grade Room Count	Total 7 Bdrms 3 Baths 2	Total 7 Bdrms 3 Baths 1.5	I	Total 8 Bdrms 4 Baths 2.5	S	Total 8 Bdrms 4 Baths 1	S
Gross Living Area	2,670 Sq. Ft.	2,400 Sq. Ft.	I	2,600 Sq. Ft.	E	2,400 Sq. Ft.	I
Basement & Finished Rooms Below Grade	No	No	E	No	E	No	E
Functional Utility	Average	Good	E	Good	E	Good	E
Heating/Cooling	Typical	Typical	E	Typical	E	Typical	E
Energy Efficient Items	None	None	E	None	E	None	E
Garage/Carport	Gar Det 2	Gar Att 2	E	Gar Att 2	E	None	I
Porches, Patio, Deck Fireplace(s), etc.	Porch	Porches,hot	S	Deck	I	Deck	E
Fence, Pool, etc.	Barn,fencing	Ingr pool	S	Fenced	E	None	I
Other	None	Guest house	S	None	I	None	E
Net Adj. (total)		$ 0		- $ 15,000		$ 15,000	
Adjusted Sales Price of Comparable		$ 330,000		$ 330,000		$ 330,000	

VI. THE MARKET VALUE (The value must fall within the indicated value of the Competitive Closed Sales).

	Market Value	Suggested List Price
AS IS	$ 275,000	$ 315,000
REPAIRED	$ 275,000	$ 315,000

COMMENTS (Include specific positives/negatives, special concerns, encroachments, easements, water rights, environmental concerns, flood zones, etc. Attach addendum if additional space is needed.)

Subj is a very unique property in that it has 50+ acres and is in a very rural area. While the subj is a very attractive property, its appeal will be limited to those who can handle and maintain this property of acreage, barn, etc.

Signature: Jane Gibbs Date: 12/9/2004

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ELECTRONICALLY FILED - 2019 Jun 21 5:52 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

	NUMBER	
NAME lowery, allen	ADDRESS 1605 STEWART RD	CITY, STATE, ZIP WOODRUFF, SC 29388

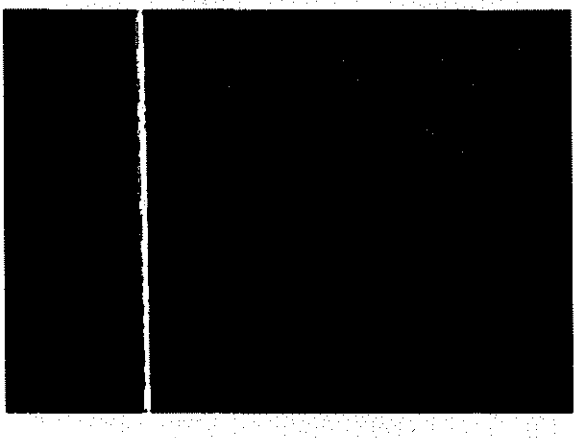
Subject Front

Front



Subject House Number

House number



Subject - Other

Street sign



Account #:

Tracking #:

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	NBER	
NAME lowery, allen	ADDRESS 1605 STEWART RD	CITY, STATE, ZIP WOODRUFF, SC 29388

Street View

Street



Listing 1 (100 Emu)

Emu



Listing 2 (148 Franciscan)

Franciscan



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	TRACKING NUMBER 97358	
NAME lowery, allen	ADDRESS 1605 STEWART RD	CITY, STATE, ZIP WOODRUFF, SC 29388

Listing 3 (360 Chapman)
Chapman



Sold 1 (422 Walker)
Walker



Sold 2 (220 Simmons)
Simmons



Account #: Tracking #:

NAME lowery, allen	ADDRESS 1605 STEWART RD	CITY, STATE, ZIP WOODRUFF, SC 29388

Sold 3 (OWENS RD)

Owens

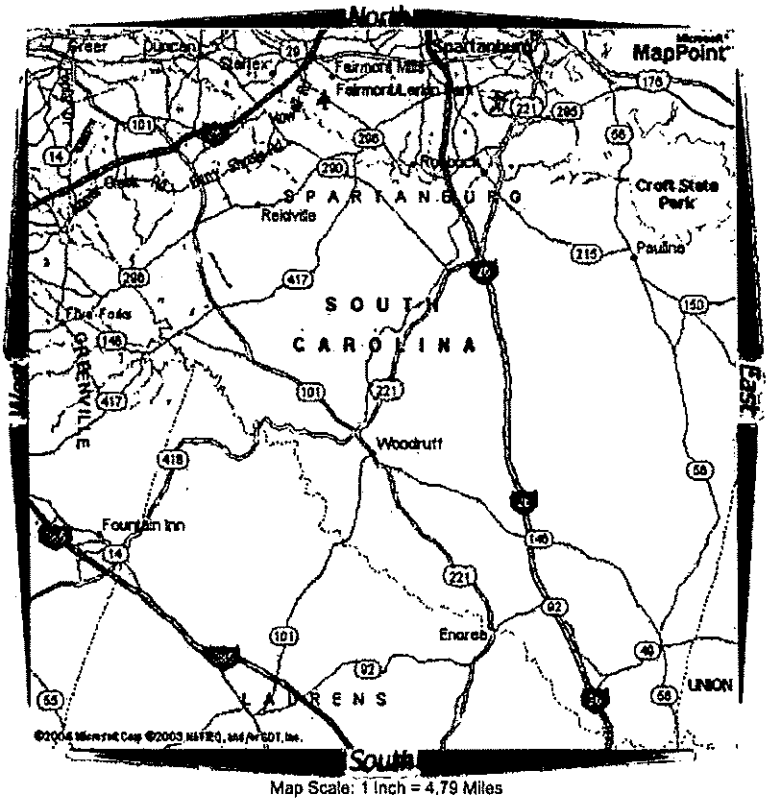


Account #

Tracking #

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NAME lowery, allen	ADDRESS 1605 STEWART RD	CITY, STATE, ZIP WOODRUFF, SC 29388



Map Scale: 1 Inch = 4.79 Miles

Subject Property
1605 STEWART RD
WOODRUFF, SC 29388

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ELECTRONICALLY FILED - 2019 Jul 03 4:32 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust, PLAINTIFF, VS. Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually; Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually, and as Heir or Devisee of the Estate of Lisa D. Lowery a/k/a Lisa Marie Davis Lowery, Deceased; South Carolina Department of Revenue; The United States of America acting by and through its agency, Department of the Treasury - Internal Revenue Service; and Elizabeth A. Lowery, DEFENDANT(S).	IN THE COURT OF COMMON PLEAS CASE NO. 2019-CP-42-02270 AMENDED SUMMONS

(171121.00152)

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 2712 Middleburg Drive, Suite 200, Post Office Box 2065, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service or as otherwise allowed pursuant to the South Carolina Rules of Civil Procedure; 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 the Mortgagee immediately

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and separately and such application will be deemed absolute and total in the absence of your application for such an appointment within thirty (30) days after the service of the Summons and Complaint upon you.

YOU WILL ALSO TAKE NOTICE that under the provisions of South Carolina Code § 29-3-100, effective June 16, 1993, any collateral assignment of rents contained in the mortgage identified in the Complaint is hereby perfected and Plaintiff hereby gives further notice that all rents shall be payable directly to it by delivery of the same to its undersigned attorneys from the date of default forward. In the alternative, the Plaintiff will move a Judge of this Circuit Court on the tenth (10th) day after service hereof, or as soon as counsel for Plaintiff may be heard, for an Order enforcing the assignment of rents, if any, and/or profits, if any, compelling payments of all such funds covered by the mortgage and/or by status and/or by common law directly to the undersigned attorneys for the Plaintiff, which Motion is based upon the original Note and Mortgage identified in the Complaint therein and attached hereto as well as any applicable laws, statutes or regulations.

YOU WILL ALSO TAKE NOTICE that should you fail to Answer the foregoing Summons, the Plaintiff will move for an Order of Reference of this cause to the Master-In-Equity or Special Referee in/for this County, which Order shall, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, specifically provide that the said Master In Equity or Special Referee is authorized and empowered to enter a final judgment in this cause with appeal only to the South Carolina Court of Appeals pursuant to Rule 203(d)(1) of the SCACR, effective June 1, 1999.

SCOTT AND CORLEY, P.A.

By: s/Tasha B. Thompson

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Craig T. Smith (craigs@scottandcorley.com), SC Bar #102831
ATTORNEYS FOR THE PLAINTIFF
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
803-252-3340

July 3, 2019

ELECTRONICALLY FILED - 2019 Jul 03 4:32 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust, PLAINTIFF, VS. Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually; Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually, and as Heir or Devisee of the Estate of Lisa D. Lowery a/k/a Lisa Marie Davis Lowery, Deceased; South Carolina Department of Revenue; The United States of America acting by and through its agency, Department of the Treasury - Internal Revenue Service; and Elizabeth A. Lowery, DEFENDANT(S).	IN THE COURT OF COMMON PLEAS CASE NO. 2019-CP-42-02270 AMENDED COMPLAINT Declaratory Judgment that Mobile/Manufactured Home is Subject to the Lien of Plaintiff's Mortgage and Foreclosure – Non-Jury (Deficiency Waived)

(171121.00152)

The Plaintiff above named, complaining of the Defendant(s) herein, alleges that:

1. This is an action for Declaratory Judgment that Mobile/Manufactured Home is Subject to the Lien of Plaintiff's Mortgage and Foreclosure of a mortgage upon certain real estate in Spartanburg County, South Carolina.

2. Plaintiff is a corporation or other legal entity securing or collecting debts or enforcing mortgages, security interests or other rights in property securing debts in the State of South Carolina pursuant to § 33-15-101(B)(8) and is the real party in interest under SCRCP 17(a) to enforce the Note and Mortgage described herein.

3. With the formal discontinuance of the Home Affordable Modification Program (HAMP) on December 31, 2016, South Carolina Administrative Order 2009-05-22-01 has expired by operation of law and is no longer applicable.

4. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.

5. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process

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under the provisions of Section 15-35-840 of the Code of Laws of South Carolina (1976).

6. Heretofore, under date of September 24, 2002, Allen Lowery and Lisa D. Lowery made, executed and delivered to Household Finance Corporation II a certain mortgage note ("Note") in writing wherein and whereby Allen Lowery and Lisa D. Lowery promised to pay to Household Finance Corporation II, its successors and assigns, the principal sum of $304,040.62.

7. In order to secure the payment of said Note, the said Austin A. Lowery did on the same date, to-wit, September 24, 2002, make, execute and deliver to Household Finance Corporation II, its successors and assigns, a certain mortgage ("Mortgage") covering real property located in the County and State aforesaid, which said mortgage was recorded in the Office of the Clerk of Court/Register of Deeds for Spartanburg County, on September 26, 2002, in Book 2782 at Page 874; thereafter, said Mortgage was assigned to U.S. Bank Trust, N.A., As Trustee For LSF10 Master Participation Trust by assignment instrument dated June 26, 2018 and recorded July 3, 2018 in Book 5469 at Page 795, and by duplicate assignment instrument dated May 29, 2019 and recorded May 31, 2019 in Book 5619 at Page 753. A purported Release of Mortgage was inadvertently recorded in the real estate public records of Spartanburg County on January 11, 2019, in Book 5558 at Page 222. Pursuant to South Carolina Code Section 29-3-345, this purported Release of Mortgage was erroneous and inadvertently recorded; and therefore, the subject Mortgage recorded in Book 2782 at Page 874, together with any and all Assignments of Mortgage, remain in full force and effect.

The description of the premises as contained in said mortgage is as follows:

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Spartanburg, State of South Carolina, Southeast of Woodruff, on the Southeast side of S-42-448, containing 53.73 acres, more or less and being more fully shown as Lot 3 of the M.C. Hill Estate on a plat prepared by E. Mitchell, RLS dated May 22, 1996 and recorded in Plat Book 134 at Page 9 in the Office for the RMC for Spartanburg County.

This being the same property conveyed to Austin A. Lowery by Deed of Joseph E. Ulmer, II dated May 24, 1996 and recorded June 3, 1996 in Book 64-H at Page 146 in the ROD Office for Spartanburg County.

TMS No. 4 43-00 029.00

Property address: 1605 Stewart Road a/k/a 1601 Stewart Road
Woodruff, SC 29388

8. A copy of the plat cited in the subject Mortgage's legal description and recorded in Plat Book 134 at Page 9 is attached hereto and incorporated herein by reference as Exhibit

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"A".

FOR A FIRST CAUSE OF ACTION

(Declaratory Judgment that Mobile/Manufactured Home is Subject to the Lien of Plaintiff's Mortgage)

9. The Plaintiff incorporates the allegations of Paragraphs 1 – 8 herein.

10. Upon information and belief, a 1973 MRN/Norris B3736 Mobile Home, Serial No. B373606011 mobile/manufactured home, sits upon the real property described above. Plaintiff is also informed and believes that the Mortgagor is presently in possession of the mobile/manufactured home and Plaintiff is informed and believes it is entitled to possession and ownership of the mobile/manufactured home as a permanent fixture and/or improvement under the real estate mortgage of Plaintiff as herein identified and the applicable common and statutory laws of South Carolina.

11. Upon information and belief, when Allen Lowery applied for a mortgage loan from Plaintiff or Plaintiff's predecessor-in-interest, Household Finance Corporation II, Allen Lowery represented that they owned or were purchasing all the property which is the subject of this litigation and that they were willing to execute a mortgage upon the entire property, that is the real property described herein and all improvements thereon, including the mobile/manufactured home to secure the mortgage loan.

12. In reliance upon the representations of Allen Lowery, the property, including the mobile/manufactured home, was appraised and, in reliance upon the appraised value of the entire property, a mortgage loan was extended to Allen Lowery with the intent that the loan would be secured by a first mortgage loan upon the real property described herein and all improvements thereon, including the mobile/manufactured home.

13. That, to evidence the parties' intention that the loan would be secured by all of the property owned by Allen Lowery, located at 1605 Stewart Road a/k/a 1601 Stewart Road, Woodruff, SC 29388, including the mobile/manufactured home, on or about September 30, 2002 the defendant(s), Allen Lowery made, executed, and delivered a mortgage to Household Finance Corporation II, which is recorded as described herein.

14. The relationship between Allen Lowery, and Plaintiff or Plaintiff's predecessor in interest, Household Finance Corporation II, Borrowers and Lender, respectively, are such that a reasonable person would expect Household Finance Corporation II, to require that the loan be secured by a mortgage upon all of Allen Lowery property, including the mobile/ manufactured home, and that a reasonable person would expect Allen Lowery, to mortgage all of the property, including the mobile/manufactured home in exchange for receiving the mortgage loan.

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15. Because Allen Lowery, and Plaintiff or Plaintiff's predecessor in interest, Household Finance Corporation II, in furtherance of their relationship as Borrowers and Lender, respectively, intended for the mobile/manufactured home to secure the mortgage loan to Allen Lowery, Plaintiff is informed and believes that, pursuant to S.C. Code Ann. Section 15-53-20, et seq., it is entitled to a declaratory judgment that the mobile/manufactured home in an improvement to the property which is the subject of this action and that it is subject to the lien of Plaintiff's mortgage.

FOR A SECOND CAUSE OF ACTION
(FORECLOSURE OF MORTGAGE)

16. Plaintiff incorporates the allegations of Paragraphs 1-15 herein.

17. Plaintiff is informed and believes that the Mortgage constitutes a first mortgage lien on the subject real estate and improvements thereon, including any mobile/manufactured home located thereon.

18. Subsequently, Lisa D. Lowery a/k/a Lisa Marie Davis Lowery died testate on or about October 28, 2017, leaving the subject property to her devisees, namely Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, as shown in Probate Estate Matter Number 2018-ES-42-00340. The aforementioned Probate Estate Matter remains open as of this date.

19. Plaintiff and/or its counsel has complied with all of their obligation(s) under the specific terms of the Note and Mortgage being foreclosed as well as all applicable Federal or State statutes or regulations, including, but not limited to, the furnishing of any notices (where applicable), e.g. post referral loss mitigation solicitation letter and/or acceleration warning letter as to default and post acceleration reinstatement, provided to the obligor(s), if or where applicable.

20. Plaintiff's counsel has read the allegations in this pleading and to the best of his/her knowledge, and upon information and belief, there are good grounds to support it. Pursuant to the South Carolina Lis Pendens Statute (S.C. Code Section 15-11-10, et. Seq.), Plaintiff's counsel has accomplished a Report on Title whereby Plaintiff's counsel has, upon information and belief, named all parties who claim or may claim an interest in the subject property. This Report on Title is a recoverable charge, expense, or cost as provided for in the Mortgage and/or Note contracts.

21. According to the business records of Plaintiff, which have been made available to its Counsel and also upon information and belief, neither Plaintiff nor its counsel is aware of any party, who executed the Note and/or Mortgage, currently being on active duty (after mortgage

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was originated) or recently discharged from the active duty of the United States Military or a State Guard or Reserve Unit. In addition, Counsel for Plaintiff has caused and/or conducted a search of the DOD website for which Counsel, upon information and belief, reports that no party, who executed the Note and/or Mortgage, and, to the best of his/her knowledge, is entitled to SCRA protection. If any party has any information or record of a defendant currently being on active duty or recently discharged, it is requested that you contact counsel for Plaintiff immediately as you may possibly be eligible for protection under the Servicemembers Civil Relief Act (SCRA).

22. According to the business records of Plaintiff, which have been made available to its Counsel and upon information and belief, neither Plaintiff nor its counsel is aware of any party to this action currently being in active bankruptcy and under the protection of the United States Bankruptcy Court ("USBK"). In addition, Counsel for Plaintiff has caused and/or has conducted a search of the PACER website for which Counsel, upon information and belief, reports no party, who executed the Note and/or Mortgage, and, to the best of his/her knowledge, is currently eligible for protection of the USBK. If any party has any information or record of a defendant currently being under the bankruptcy protections, it is requested that you notify counsel for Plaintiff immediately. Any demand for a deficiency is not applicable if a party has received a discharge in bankruptcy during the life of the mortgage, or is currently under the active protection of the bankruptcy courts. Moreover, any party to this action who is a discharged borrower to the debt of the Plaintiff shall not be subject to and is specifically excluded from both the calculation and collection of any amounts due and owing to the Plaintiff, as required by Rule 71(a) of the South Carolina Rules of Civil Procedure.

23. In and by the terms of the Note and the Mortgage, it is provided, among other things, that on failure to pay any installment of either principal and interest or any portion thereof when due, or if any of the conditions and requirements in the Mortgage be not complied with, then the whole principal sum and accrued interest shall at the option of the legal holder thereof become at once due and payable without notice, and collectible by foreclosure.

24. In and by the terms of the Note it is further provided that the maker thereof shall pay a reasonable attorney's fee if the Note be placed in the hands of an attorney for collection after default. Any notice or compliance required by the terms of the Mortgage or by state or federal statutes has been given or complied with prior to, or in the commencement of this action and the Defendants shall be forever barred from raising such notice or compliance.

25. The installments of principal and interest falling due from and after April 30, 2004 have not been paid although demand for the payment thereof has been made, and Plaintiff has

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and does hereby elect to declare the entire balance of said principal and interest due and payable at once; that there is now due and owing and unpaid upon the Note and Mortgage the full and just principal sum of $301,994.94, together with interest thereon at the rate of 7.980% per annum from May 17, 2004, together with reasonable attorney's fees for the collection thereof, escrow advances, late charges, and all other costs and expenses of this action allowable by law, equity, or contract, including but not limited to the costs or charges in reporting to this Honorable Court and/or as may be permitted under Rules 54 and 71, South Carolina Rules of Civil Procedure. Pursuant thereto, Plaintiff has employed the undersigned legal counsel to prosecute these actions herein and add the fees, charges and costs of said counsel to the amount of the total debt as provided for in the Note and Mortgage.

26. A copy of the Residential Broker Price Opinion dated December 9, 2004, and completed after the default of the subject Mortgage and in anticipation of the filing of a future foreclosure of mortgage cause of action, is attached hereto and incorporated by reference as Exhibit “B”. The Residential Broker Price Opinion together with the Plat attached as Exhibit “A” confirms the property used as collateral for the subject mortgage as being 53.73 acres, plus any improvements thereon. Any other purported plat recordings to release or dilute acreage have not been legally approved or recognized by the Spartanburg County Assessor and/or Treasurer Office.

27. Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust, is also owner of a certain mortgage given by Austin A. Lowery to Household Finance Corporation II, dated September 30, 2002, in the original amount of $304,040.82, and recorded on October 04, 2002, in the Office of the Spartanburg County Clerk of Court/Register of Deeds in Book 2789 at Page 575; thereafter, assigned to U.S. Bank Trust, N.A., As Trustee For LSF10 Master Participation Trust by assignment instrument dated December 13, 2018 and recorded December 14, 2018 in Book 5547 at Page 516; U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust in foreclosing its first Mortgage, specifically reserves its rights pursuant to Rule 71(c) SCRCP to petition the Court for any surplus funds resulting from the foreclosure sale conducted in connection with the foreclosure of the first Mortgage, and to bring suit to collect all amounts due under said Note if not paid in full from said surplus funds.

28. Upon information and belief, the Defendant(s) below-named claim or may claim a subordinate lien or junior interest upon or interest in the subject property, including but not limited to the subordinate lien or junior interests specifically described below, and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of such lien claim will be determined at a hearing subsequent to the sale, in accordance with the Circuit

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Court Rules 53 and/or 71. The subject Defendant(s) is/are further made a party due to the similarity in name(s) to the primary defendant(s) against whom they claim or may claim a lien and in order to clear title to this property as follows:

(a) The Defendant, Elizabeth A. Lowery, by virtue of that certain mortgage from Austin A. Lowery to Elizabeth A. Lowery, dated May 05, 2004, in the original amount of $105,900.73, and recorded on May 06, 2004, in the Office of the Spartanburg County Clerk of Court/Register of Deeds in Book 3219 at Page 590.

(b) The Defendant, The United States of America acting by and through its agency, Department of the Treasury - Internal Revenue Service, by virtue of a tax lien against Austin Allen and Lisa Lowery dated July 20, 2010, in the original amount of $130,399.27, and recorded on July 30, 2010, as Serial Number 679936610, in the Office of the Spartanburg County Clerk of Court/Register of Deeds in Lien Book 13, at Page 680.

(c) The Defendant, South Carolina Department of Revenue, by virtue of the following:

I. A tax lien against Austin A. Lowery and Lisa Lowery dated October 12, 2009, in the original amount of $5,298.17, and recorded on October 22, 2009, as Lien Number 3-51077801-4, in the Office of the Spartanburg County Clerk of Court/Register of Deeds in Lien Book S-57, at Page 630.

II. A tax lien against Austin A. Lowery and Lisa Lowery dated October 19, 2009, in the original amount of $6,357.41, and recorded on October 27, 2009, as Lien Number 3-51082080-9, in the Office of the Spartanburg County Clerk of Court/Register of Deeds in Lien Book S-57, at Page 906.

III. A tax lien against Austin A. Lowery and Lisa Lowery dated November 06, 2009, in the original amount of $3,576.75, and recorded on November 30, 2009, as Lien Number 3-51089336-4, in the Office of the Spartanburg County Clerk of Court/Register of Deeds in Lien Book S-58, at Page 541.

(d) The Defendant, Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually, and as Legal Heir or Devisee of the Estate of Lisa D. Lowery a/k/a Lisa Marie Davis Lowery, Deceased, by virtue of any interest claimed under the law of succession (S.C. Code Ann. Section 62-2-101, et. seq.) or under decedent's will.

29. Plaintiff demands no personal or deficiency judgment and any right to the same is specifically waived.

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

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the amount of the debt.

31. In the event the subject property is sold at Judicial Sale and the successful bidder is a third party, neither Plaintiff nor Plaintiff's counsel make any warranties or representations as to the subject property on behalf of the third party bidder.

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

AS TO THE FIRST CAUSE OF ACTION (Declaratory Judgment that Mobile/Manufactured Home is Subject to the Lien of Plaintiff's Mortgage):

1. For an order granting a declaratory judgment to the Plaintiff pursuant to S.C. Code Ann. Section 15-53-10, et seq., declaring that the mobile/manufactured home of Defendant(s) is an improvement to the property which is the subject of this action and is therefore subject to the lien of the Plaintiff's mortgage.

2. Pursuant to S.C. Code Ann. Section 15-53-10, et seq., order the South Carolina Department of Motor Vehicles to issue a Certificate of Title to the mobile/manufactured home to the successful purchaser of the subject property at the foreclosure sale herein or its successors or assigns.

AS TO THE SECOND CAUSE OF ACTION (Foreclosure of Mortgage):

3. The amount due upon the Note and the Mortgage be ascertained and determined under the direction of this Court, together with attorney's fees and all of the costs or charges incurred in prosecuting this action.

4. The Mortgage be declared a first mortgage lien on all acreage more completely and fully described in Exhibit “A” attached hereto and incorporated herein; that Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums and/or costs for inspecting and securing the property which may be due or which may be or have been paid by Plaintiff, with reasonable attorney's fees as well as for all of the costs or charges of this action.

5. The mortgaged premises be sold according to law and the practice of this Court, the equity of redemption as to all defendants be barred and the lien or interest claimed by any defendant be extinguished and that the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and said 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, the surplus, if any, be distributed according to law.

6. Appoint a Receiver to collect the rents, issues, profits or designated sums

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from the mortgagor(s) and/or the grantee(s) of the mortgagor(s) and/or tenants occupying or exercising control over the mortgaged premises and hold said assets or the same subject to further Order of this Court.

7. Issue an order directing the Sheriff of Spartanburg County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary; and issue an order, if necessary, directing the South Carolina Department of Motor Vehicles to issue a Certificate of Title on any mobile/manufactured home collateralized under the security documents of the Plaintiff.

8. For an Order authorizing the South Carolina Department of Motor Vehicles to issue a new Certificate of Title for the mobile/manufactured home which is the subject of this foreclosure action to the successful bidder at the foreclosure sale, or its successors or assigns, if necessary.

9. For an Order to extinguish the interests of the Defendants Allen Lowery in the mobile/manufactured home, if any.

10. For such other and further equitable and/or legal relief as the Court may deem just and proper.

SCOTT AND CORLEY, P.A.

By: __s/Tasha B. Thompson_____

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Reginald P. Corley (reggiec@scottandcorley.com), SC Bar #69453
Angelia J. Grant (angig@scottandcorley.com), SC Bar #78334
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H. Guyton Murrell (guytonm@scottandcorley.com), SC Bar #64134
Craig T. Smith (craigs@scottandcorley.com), SC Bar #102831
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2712 Middleburg Drive, Suite 200
Columbia, SC 29204
803-252-3340

July 3, 2019

Plat 134/9

PLAT BOOK 134 PAGE 0009

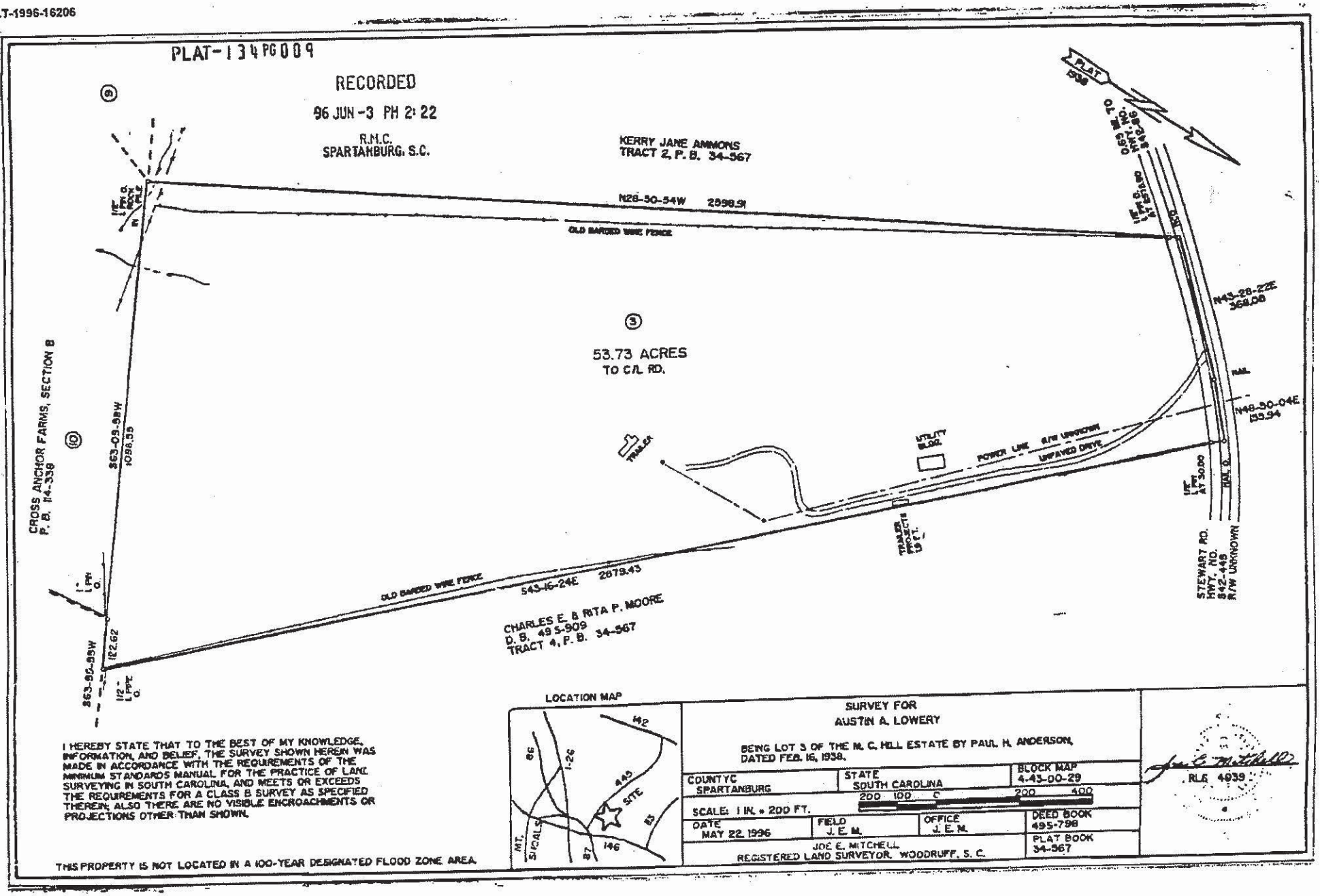
PLT-1996-16206

PLAT-134 PG 009

RECORDED

96 JUN -3 PM 2:22

R.M.C.
SPARTANBURG, S.C.



I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS B SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.

THIS PROPERTY IS NOT LOCATED IN A 100-YEAR DESIGNATED FLOOD ZONE AREA.

LOCATION MAP

SURVEY FOR
AUSTIN A. LOWERY

BEING LOT 3 OF THE M. C. HILL ESTATE BY PAUL H. ANDERSON, DATED FEB. 16, 1938.

COUNTY: SPARTANBURG	STATE: SOUTH CAROLINA	BLOCK MAP: 4-43-00-29
SCALE: 1 IN. = 200 FT.	200 100 0 200 400	
DATE: MAY 22, 1996	FIELD: J. E. M.	OFFICE: J. E. M.
JOE E. MITCHELL, REGISTERED LAND SURVEYOR, WOODRUFF, S. C.		DEED BOOK: 495-798
		PLAT BOOK: 34-567

Joe E. Mitchell
RLS 4939

Record on Appeal R. 066

Exhibit A

ELECTRONICALLY FILED - 2019 Jun 21 5:52 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270
ELECTRONICALLY FILED - 2019 Jul 03 4:32 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

RESIDENTIAL BROKER PRICE OPINION

REO #: This BPO is the ☐ Initial ☐ 2nd Opinion ☐ Updated ☐ Exterior Only DATE 12/9/2004

PROPERTY ADDRESS: 1605 STEWART RD SALES REPRESENTATIVE:

WOODRUFF SC 29388 CLIENT NAME:

FIRM NAME: PRUDENTIAL C DAN JOYNER CO. COMPLETED BY: Jane Gibbs

PHONE NO. (864)901-3403 FAX NO. (864)688-4234

I. GENERAL MARKET CONDITIONS

Current market condition: ☐ Depressed ☐ Slow ☑ Stable ☐ Improving ☐ Excellent

Employment conditions: ☐ Declining ☑ Stable ☐ Increasing

Market price of this type property has: ☐ Decreased 0 % in past 12 months ☐ Increased ☑ Remained stable

Estimated percentages of owner vs. tenants in neighborhood: 95 % owner occupant 5 % tenant

There is a ☑ Normal supply ☐ oversupply ☐ shortage of comparable listings in the neighborhood

Approximate number of comparable units for sale in neighborhood: 4

No. of competing listings in neighborhood that are REO or Corporate owned: 0

No. of boarded or blocked-up homes: 0

II. SUBJECT MARKETABILITY

Range of values in the neighborhood is $ 140,000 to $ 551,000

The subject is an ☐ over improvement ☐ under improvement ☑ Appropriate improvement for the neighborhood.

Normal marketing time in the area is: 180 days.

Are all types of financing available for the property? ☑ Yes ☐ No If no, explain

Has the property been on the market in the last 12 months? ☐ Yes ☑ No If yes, $ list price (include MLS printout)

To the best of your knowledge, why did it not sell?

Unit Type: ☑ single family detached ☐ condo ☐ co-op ☐ mobile home ☐ single family attached ☐ townhouse ☐ modular

If condo or other association exists: Fee $ ☐ monthly ☐ annually Current? ☐ Yes ☐ No Fee delinquent? $

The fee includes: ☐ Insurance ☐ Landscape ☐ Pool ☐ Tennis Other

Association Contact: Name: Phone No.:

III. COMPETITIVE CLOSED SALES

ITEM	SUBJECT	COMPARABLE NUMBER 1		COMPARABLE NUMBER 2		COMPARABLE NUMBER 3	
Address	1605 STEWART RD WOODRUFF SC 29388	422 Walker Laurens SC 29621		220 Simmons Woodruff SC 29388		OWENS RD LAURENS SC 29360	
Proximity to Subject		8 REO/Corp ☐		3 REO/Corp ☐		7 REO/Corp ☐	
Sale Price	$	$ 269,900		$ 275,000		$ 278,000	
Price/Gross Living Area	$ 103 Sq. Ft.	$ 105.63 Sq. Ft.		$ 98.21 Sq. Ft.		$ 115.83 Sq. Ft.	
Sale Date & Days on Market		12/3/2004 149		7/28/2004 65		11/1/2004 483	
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	Adjustment	DESCRIPTION	Adjustment	DESCRIPTION	Adjustment
Sales or Financing Concessions		None	E	None	E	None	E
Location	Rural	Rural	E	Rural	E	Rural	E
Leasehold/Fee Simple	Fee Simple	Fee Simple	E	Fee Simple	E	Fee Simple	E
Site	53.73	28	I	31.2	I	54	E
View	Typ	Sup	E	Typ	E	Typ	E
Design and Appeal	SFD Ranch	SFD Ranch	E	SFD Ranch	E	SFD Ranch	E
Quality of Construction	Average	Average	E	Average	E	Average	E
Age	15	20	E	10	E	20	E
Condition	Good	Good	E	Good	E	Good	E
Above Grade Room Count	Total 7 Bdrms 3 Baths 2	Total 7 Bdrms 3 Baths 2	E	Total 7 Bdrms 3 Baths 3.5	E	Total 7 Bdrms 3 Baths 2	E
Gross Living Area	2,670 Sq. Ft.	2,400 Sq. Ft.	I	2,800 Sq. Ft.	E	2,400 Sq. Ft.	E
Basement & Finished Rooms Below Grade	No	No	E	No	E	No	E
Functional Utility	Average	Average	E	Average	E	Average	E
Heating/Cooling	Typical	Typical	E	Typical	E	Typical	E
Energy Efficient Items	None	None	E	None	E	None	E
Garage/Carport	Gar Det 2	Gar Att 2	E	Gar Att 2	E	Gar Att 3	$
Porches, Patio, Deck Fireplace(s), etc.	Porch	Porch,deck	E	Porch	E	Porch,deck	E
Fence, Pool, etc.	Barn,fencing	Barn,fencing,po	E	Fencing,shed,wo	E	Barn,fencing	E
Other	None	Brick	$	Cypress	$	None	E
Net Adj. (total)		$ 5,000		$ 0		$ -2,500	
Adjusted Sales Price of Comparable		$ 274,900		$ 275,000		$ 275,500	

Due the unique qulaity of this houe,53.73 acres and in a very rural location,it was necessary to extend the search area to 20 miles.Comp 1 has less acreage but home is brick ext-Comp 2 has tess acreage but cypress.

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Exhibit 13

REO

IV. MARKETING STRATEGY

☑ As-is ☐ Minimal Lender Required Repairs ☐ Repaired Most Likely Buyer: ☑ Owner occupant ☐ Investor

V. REPAIRS

Itemize ALL repairs needed to bring property from its present "as is" condition to average marketable condition for the neighborhood. Check those repairs you recommend that we perform for most successful marketing of the property.

☐		$	☐		$
☐		$	☐		$
☐		$	☐		$
☐		$	☐		$
☐		$	☐		$

GRAND TOTAL FOR ALL REPAIRS $0

VI. COMPETITIVE LISTINGS

ITEM	SUBJECT	COMPARABLE NUMBER 1		COMPARABLE NUMBER. 2		COMPARABLE NUMBER. 3	
Address	1605 STEWART RD WOODRUFF SC 29388	100 Emu Woodruff SC 29388		148 Franciscan Laurens SC 29323		360 Chapman Laurens SC 29669	
Proximity to Subject		4 REO/Corp ☐		8 REO/Corp ☐		8 REO/Corp ☐	
List Price	$	$330,000		$345,000		$315,000	
Price/Gross Living Area	$103 Sq.Ft.	$137.5 Sq.Ft.		$142. Sq.Ft.		$120. Sq.Ft.	
Data and/or Verification Sources		MLS		Public Records		MLS	
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	Adjustment	DESCRIPTION	Adjustment	DESCRIPTION	Adjustment
Sales or Financing Concessions		None	E	None	E	None	E
Days on Market		100	E	30	E	160	E
Location	Rural	Rural	E	Rural	E	Rural	E
Leasehold/Fee Simple	Fee Simple	Fee Simple	E	Fee Simple	E	Fee Simple	E
Site	53.73	25	I	50	E	36	I
View	Typ	Typ	E	Typ	E	Typ	E
Design and Appeal	SFD Ranch	SFD Ranch	E	SFD Ranch	E	SFD Ranch	E
Quality of Construction	Average	Average	E	Average	E	Average	E
Age	15	10	E	15	E	15	E
Condition	Good	Good	E	Good	E	Good	E
Above Grade Room Count	Total 7 Bdrms 3 Baths 2	Total 7 Bdrms 3 Baths 1.5	I	Total 8 Bdrms 4 Baths 2.5	S	Total 8 Bdrms 4 Baths 1	S
Gross Living Area	2,670 Sq. Ft.	2,400 Sq. Ft.	I	2,600 Sq. Ft.	E	2,400 Sq. Ft.	I
Basement & Finished Rooms Below Grade	No	No	E	No	E	No	E
Functional Utility	Average	Good	E	Good	E	Good	E
Heating/Cooling	Typical	Typical	E	Typical	E	Typical	E
Energy Efficient Items	None	None	E	None	E	None	E
Garage/Carport	Gar Det 2	Gar Att 2	E	Gar Att 2	E	None	I
Porches, Patio, Deck Fireplace(s), etc.	Porch	Porches,hot	S	Deck	I	Deck	E
Fence, Pool, etc.	Barn,fencing	Ingr pool	S	Fenced	E	None	I
Other	None	Guest house	S	None	I	None	E
Net Adj. (total)		$0		- $-15,000		$15,000	
Adjusted Sales Price of Comparable		$330,000		$330,000		$330,000	

VI. THE MARKET VALUE (The value must fall within the indicated value of the Competitive Closed Sales).

	Market Value	Suggested List Price
AS IS	$275,000	$315,000
REPAIRED	$275,000	$315,000

COMMENTS (Include specific positives/negatives, special concerns, encroachments, easements, water rights, environmental concerns, flood zones, etc. Attach addendum if additional space is needed.)

Subj is a very unique property in that it has 50+ acres and is in a very rural area. While the subj is a very attractive property, its appeal will be limited to those who can handle and maintain this property of acreage, barn, etc.

Signature: Jane Gibbs Date: 12/9/2004

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NAME lowery, allen	ADDRESS 1605 STEWART RD	CITY, STATE, ZIP WOODRUFF, SC 29388

Subject Front

Front



Subject House Number

House number



Subject - Other

Street sign



Account #:

Tracking #:

ELECTRONICALLY FILED - 2019 Jun 03 4:32 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

	NBER	
NAME lowery, allen	ADDRESS 1605 STEWART RD	CITY, STATE, ZIP WOODRUFF, SC 29388

Street View

Street



Listing 1 (100 Emu)

Emu



Listing 2 (148 Franciscan)

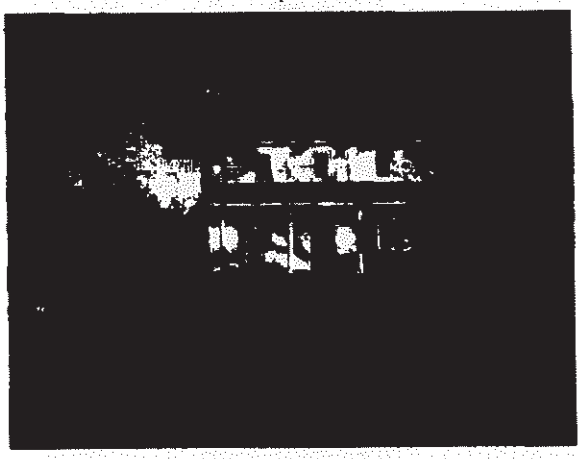
Franciscan



ELECTRONICALLY FILED - 2019 Jun 03 4:32 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

	TRACKING NUMBER 97358	
NAME lowery, allen	ADDRESS 1605 STEWART RD	CITY, STATE, ZIP WOODRUFF, SC 29388

Listing 3 (360 Chapman)
Chapman



Sold 1 (422 Walker)
Walker



Sold 2 (220 Simmons)
Simmons



Account #: Tracking #:

NAME lowery, allen	ADDRESS 1605 STEWART RD	CITY, STATE, ZIP WOODRUFF, SC 29388

Sold 3 (OWENS RD)

Owens

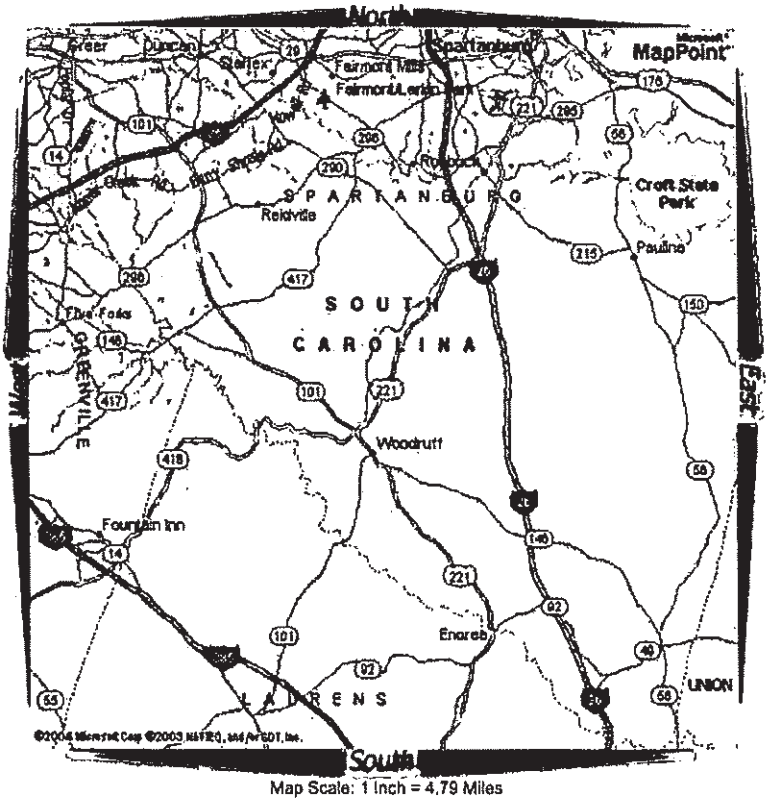


Account #

Tracking #

ELECTRONICALLY FILED - 2019 Jun 03 4:32 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

NAME lowery, allen	ADDRESS 1605 STEWART RD	CITY, STATE, ZIP WOODRUFF, SC 29388



Map Scale: 1 Inch = 4.79 Miles

Subject Property
1605 STEWART RD
WOODRUFF, SC 29388

ELECTRONICALLY FILED - 2019 Jul 03 4:32 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

ELECTRONICALLY FILED - 2019 Jul 19 11:52 AM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	IN THE COURT OF COMMON PLEAS CASE NO. 2019-CP-42-02270
U.S. Bank Trust, N.A., as Trustee for LSF 10 Master Participation Trust, **Plaintiff,** **vs.** **Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, Lisa D. Lowery, South Carolina Department of Revenue, The United States of America acting by and through its agency, Department of the Treasury - Internal Revenue Service, and Elizabeth A. Lowery,** **Defendants.**	**DEFENDANT AUSTIN ALLEN LOWERY'S ANSWER AND COUNTERCLAIM TO AMENDED COMPLAINT**

Defendant Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery (hereinafter "Defendant"), in answer to the Plaintiff's Amended Complaint, answers and alleges as follows:

FOR A FIRST DEFENSE

1. Any allegation of the Amended Complaint not herein admitted, qualified, or explained is denied. Any allegations of the Amended Complaint subject of qualified admissions made herein are denied insofar as the allegations are not qualifiedly admitted, and any allegations of the Amended Complaint subject of any other qualifications or explanations herein are denied insofar as they are not otherwise qualified or explained.

2. Answering the allegations of paragraph 1 of the Amended Complaint, Defendant admits the same only to the extent that the Amended Complaint states those cause of action.

ELECTRONICALLY FILED - 2019 Jul 19 11:52 AM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

3. Answering the allegations of paragraphs 2 and 3 of the Amended Complaint, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the same.

4. Answering the allegations of paragraph 4 of the Amended Complaint, Defendant admits the same as to himself and, upon information and belief, as to Elizabeth A. Lowery.

5. Answering the allegations of paragraph 5 of the Amended Complaint, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the same.

6. Answering the allegations of paragraph 6 of the Amended Complaint, Defendant admits he signed a note.

7. Answering the allegations of paragraph 7 of the Amended Complaint, Defendant admits he signed something styled as a mortgage document; however, the document did not have a description of the property supposedly mortgaged. The property that Defendant contemplated mortgaging in that transaction was five acres, as the lender knew and represented to Defendant was what was being mortgaged. The property description incorrectly stating 53 acres was not part of the document that Defendant signed and was only added later by someone working for the lender. Further, to the extent this document ever constituted a valid mortgage, it has been released. The record release was not an error. The Plaintiff may now regret releasing the mortgage, but the Plaintiff intended to do just that and has done it.

8. Answering the allegations of paragraph 8 of the Amended Complaint, Defendant admits the attachment of the plat to the Amended Complaint.

9. No answer to paragraph 9 of the Amended Complaint is required.

10. Answering the allegations of paragraph 10 of the Amended Complaint, Defendant admits the mobile home is there but denies the remaining allegations of the paragraph.

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11. Answering the allegations of paragraph 11 of the Amended Complaint, Defendant denies the same.

12. Answering the allegations of paragraph 12 of the Amended Complaint, Defendant denies the same.

13. Answering the allegations of paragraph 13 of the Amended Complaint, Defendant denies the same.

14. Answering the allegations of paragraph 14 of the Amended Complaint, Defendant denies the same.

15. Answering the allegations of paragraph 15 of the Amended Complaint, Defendant denies the same.

16. No answer to paragraph 16 of the Amended Complaint is required.

17. Answering the allegations of paragraph 17 of the Amended Complaint, Defendant denies the same.

18. Answering the allegations of paragraph 18 of the Amended Complaint, Defendant admits he inherited Lisa Lowery's interest in the subject property.

19. Answering the allegations of paragraph 19 of the Amended Complaint, Defendant denies the same.

20. Answering the allegations of paragraph 20 of the Amended Complaint, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the same.

21. Answering the allegations of paragraph 21 of the Amended Complaint, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the same.

22. Answering the allegations of paragraph 22 of the Amended Complaint, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the same.

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23. Answering the allegations of paragraph 23 of the Amended Complaint, Defendant denies the same.

24. Answering the allegations of paragraph 24 of the Amended Complaint, Defendant denies the same.

25. Answering the allegations of paragraph 25 of the Amended Complaint, Defendant admits that no payments have been made on the subject debt since before April of 2004. The remaining allegations of the paragraph are denied.

26. Answering the allegations of paragraph 26 of the Amended Complaint, Defendant admits that Exhibit B is attached to the complaint and denies the remaining allegations of the paragraph.

27. Answering the allegations of paragraph 27 of the Amended Complaint, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the same.

28. Answering the allegations of paragraph 28 of the Amended Complaint, Defendant denies the same as written. The Plaintiff has no interest in the subject property.

29. Answering the allegations of paragraph 29 of the Amended Complaint, Defendant admits the same.

30. Answering the allegations of paragraph 30 of the Amended Complaint, Defendant denies the same.

31. Answering the allegations of paragraph 31 of the Amended Complaint, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the same.

FOR A SECOND DEFENSE
(Dismissal – Rule 12(b)(6))

32. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

ELECTRONICALLY FILED - 2019 Jul 19 11:52 AM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

33. The Complaint fails to state facts sufficient to constitute a cause of action, and the Complaint or part thereof should be dismissed.

FOR A THIRD DEFENSE
(Release)

34. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

35. To the extent that the mortgage sought to be enforced in this case ever existed, it has been released.

36. There is a release of mortgage doing so that is recorded in the land records of Spartanburg County in Book 5558 at page 222.

FOR A FOURTH DEFENSE
(Unclean Hands)

37. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

38. The Plaintiff (and/or its predecessor(s) in interest) has engaged in such conduct with respect to the matters subject of his claims as to make its hands unclean with regard to its claims.

39. This conduct includes, but is not necessarily limited to, what is stated in this pleading.

40. This conduct relates directly to the subject matter of this action.

41. This conduct has proximately caused Defendant prejudice and injury.

FOR A FIFTH DEFENSE
(Statute of Limitations)

42. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

43. The debt sought to be sued on is not secured by a mortgage.

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44. The statute of limitations in which a suit on that debt could be brought is three years in length.

45. Any cause of action for default of the subject debt accrued more than three years before the commencement of this action.

FOR A SIXTH DEFENSE
(Res Judicata)

46. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

47. A previous action seeking to foreclosure this mortgage was dismissed for failure to prosecute.

48. That operated as a dismissal with prejudice.

49. Res judicata bars this action.

FOR A FIRST COUNTERCLAIM (AND AS SEVENTH DEFENSE)
(Violation of Attorney Preference Statute with Unconscionability)

50. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

51. With respect to the closing of the mortgage loan subject of this case, the original creditor did not comply with the attorney preference or insurance preference provisions of S.C. Code Ann. § 37-10-102.

52. Agents of the original creditor (a predecessor in interest to the Plaintiff), without the knowledge or permission of Defendant, added a property description to a purported mortgage document signed by Defendant that described far more property than both the lender and the Defendant knew was intended to be mortgaged.

ELECTRONICALLY FILED - 2019 Jul 19 11:52 AM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

53. No attorney licensed to practice law in South Carolina supervised the closing of the mortgage loan.

54. Agents of the original creditor closed this mortgage loan without attorney supervision.

55. The loan subject of the mortgage was induced by unconscionable conduct, such conduct including, but not limited to, the following:

a. The unauthorized practice of law;

b. The deprivation of Defendant's right to choose his own, unconflicted counsel to represent him in the closing of the mortgage loan at issue;

c. Lying to Defendant about the amount of property that would be reflected as mortgaged in the recorded mortgage document;

d. Improper alteration of the purported mortgage document; and

e. Concealment of that alteration from Defendant.

56. For each violation of S.C. Code Ann. § 37-10-102, Defendant is entitled to recover all relief available under S.C. Code Ann. § 37-10-105, including the provided under S.C. Code Ann. § 37-10-105(C), damages, attorney's fees, and penalties as provided in the South Carolina Consumer Protection Code.

WHEREFORE, Defendant prays for the Court to:

(a) Issue an Order dismissing the Amended Complaint with prejudice;

(b) Deny Plaintiff the relief it seeks in this action;

(c) Declare the notes(s) and mortgage(s) subject of this action to be void or unenforceable;

(d) Enter judgment for Defendant for all relief available under S.C. Code Ann. § 37-10-105, including under S.C. Code Ann. § 37-10-105(C);

(e) Enter judgment for Defendant reasonable attorney's fees;

(f) Enter judgment for Defendant for the costs and expenses of this action; and

(g) Grant Defendant such other and further relief as the court deems just and proper.

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
HARRISON, RADEKER & SMITH, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
(803) 779-6700 (facsimile)
drew@harrisonfirm.com (email)
ATTORNEY FOR DEFENDANT
AUSTIN ALLEN LOWERY

Columbia, South Carolina
July 19, 2019

ELECTRONICALLY FILED - 2019 Jul 19 11:52 AM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

ELECTRONICALLY FILED - 2019 Oct 17 11:22 AM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust, PLAINTIFF, VS. Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually, and as Heir or Devisee of the Estate of Lisa D. Lowery a/k/a Lisa Marie Davis Lowery, Deceased; South Carolina Department of Revenue; The United States of America acting by and through its agency, Department of the Treasury - Internal Revenue Service; and Elizabeth A. Lowery, DEFENDANT(S).	IN THE COURT OF COMMON PLEAS CASE NO. 2019-CP-42-02270 SECOND AMENDED SUMMONS

(171121.00152)

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 2712 Middleburg Drive, Suite 200, Post Office Box 2065, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service or as otherwise allowed pursuant to the South Carolina Rules of Civil Procedure; 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 the Mortgagee immediately and separately and such application will be deemed absolute and total in the absence of your

ELECTRONICALLY FILED - 2019 Oct 17 11:22 AM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

application for such an appointment within thirty (30) days after the service of the Summons and Complaint upon you.

YOU WILL ALSO TAKE NOTICE that under the provisions of South Carolina Code § 29-3-100, effective June 16, 1993, any collateral assignment of rents contained in the mortgage identified in the Complaint is hereby perfected and Plaintiff hereby gives further notice that all rents shall be payable directly to it by delivery of the same to its undersigned attorneys from the date of default forward. In the alternative, the Plaintiff will move a Judge of this Circuit Court on the tenth (10th) day after service hereof, or as soon as counsel for Plaintiff may be heard, for an Order enforcing the assignment of rents, if any, and/or profits, if any, compelling payments of all such funds covered by the mortgage and/or by status and/or by common law directly to the undersigned attorneys for the Plaintiff, which Motion is based upon the original Note and Mortgage identified in the Complaint therein and attached hereto as well as any applicable laws, statutes or regulations.

YOU WILL ALSO TAKE NOTICE that should you fail to Answer the foregoing Summons, the Plaintiff will move for an Order of Reference of this cause to the Master-In-Equity or Special Referee in/for this County, which Order shall, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, specifically provide that the said Master In Equity or Special Referee is authorized and empowered to enter a final judgment in this cause with appeal only to the South Carolina Court of Appeals pursuant to Rule 203(d)(1) of the SCACR, effective June 1, 1999.

SCOTT AND CORLEY, P.A.

By: s/H. Guyton Murrell

Ronald C. Scott (rons@scottandcorley.com), SC Bar #4996
Reginald P. Corley (reggiec@scottandcorley.com), SC Bar #69453
Angelia J. Grant (angig@scottandcorley.com), SC Bar #78334
Allison E. Heffernan (allisonh@scottandcorley.com), SC Bar #68530
Matthew E. Rupert (matthewr@scottandcorley.com), SC Bar #100740
Louise M. Johnson (ceasiej@scottandcorley.com), SC Bar #16586
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ATTORNEYS FOR THE PLAINTIFF
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
803-252-3340

October 17, 2019

ELECTRONICALLY FILED - 2019 Oct 17 11:22 AM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust, PLAINTIFF, VS. Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually, and as Heir or Devisee of the Estate of Lisa D. Lowery a/k/a Lisa Marie Davis Lowery, Deceased; South Carolina Department of Revenue; The United States of America acting by and through its agency, Department of the Treasury - Internal Revenue Service; and Elizabeth A. Lowery, DEFENDANT(S).	IN THE COURT OF COMMON PLEAS CASE NO. 2019-CP-42-02270 SECOND AMENDED COMPLAINT Foreclosure – Non-Jury (Deficiency Judgment Waived)

(171121.00152)

Plaintiff above named, complaining of the Defendant(s) herein, alleges that:

1. This is an action for foreclosure of a mortgage upon certain real estate in Spartanburg County, South Carolina.

2. Plaintiff is a corporation or other legal entity securing or collecting debts or enforcing mortgages, security interests or other rights in property securing debts in the State of South Carolina pursuant to § 33-15-101(B)(8) and is the real party in interest under Rule17(a), SCRCP to enforce the Note and Mortgage described herein.

3. With the formal discontinuance of the Home Affordable Modification Program (HAMP) on December 31, 2016, South Carolina Administrative Order 2009-05-22-01 has expired by operation of law and is no longer applicable.

4. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.

5. The Defendant(s) herein described 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 Section 15-35-840 of the Code of Laws of South Carolina (1976).

6. Heretofore, Allen Lowery and Lisa D. Lowery made, executed and delivered to Household Finance Corporation II a certain mortgage note (“Note”) in writing wherein and

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whereby Allen Lowery and Lisa D. Lowery promised to pay to Household Finance Corporation II, its successors and assigns, the principal sum of $304,040.62.

7. In order to secure the payment of said Note, the said Austin A. Lowery did on the same date, to-wit, September 30, 2002, make, execute and deliver to Household Finance Corporation II, its successors and assigns, a certain mortgage ("Mortgage") covering real property located in the County and State aforesaid, which said mortgage was recorded in the Office of the Clerk of Court/Register of Deeds for Spartanburg County, on October 4, 2002, in Book 2789 at Page 575; thereafter, said Mortgage was assigned to U.S. Bank Trust, N.A., As Trustee For LSF10 Master Participation Trust by assignment instrument dated December 13, 2018, and recorded December 14, 2018, in Book 5547 at Page 516.

The description of the premises is as follows:

All that certain piece, parcel or lot of land lying and being in the State of South Carolina, County of Spartanburg, being designated as 5.00 acres, more or less, and shown on a plat made by Austin A. Lowery, by Joe E. Mitchell, dated December 12, 1998, and filed in Plat Book 143, at Page 468.

Please note that the above description has been modified to correct a minor, immaterial clerical error in the legal description regarding the plat date (correcting from "dated May 22, 1998" to "December 12, 1998").

This being of portion of the property conveyed to Austin A. Lowery by Deed of Joseph E. Ulmer, II dated May 24, 1996 and recorded June 3, 1996 in Book 64-H at Page 146 in the ROD Office for Spartanburg County.

TMS No. 4 43-00 029.00 (portion of)

Property address: 1605 Stewart Road a/k/a 1601 Stewart Road
Woodruff, SC 29388

FORECLOSURE OF MORTGAGE CAUSE OF ACTION

8. Plaintiff incorporates the allegations of Paragraphs 1-7 herein.

9. Plaintiff is informed and believes that the Mortgage constitutes a first mortgage lien on the subject real estate and improvements thereon.

10. An updated survey of the property described in Paragraph 7 above was recorded on September 13, 2019, in Plat Book 176 at Page 399. This updated survey is attached hereto and incorporated herein by reference as Exhibit "A".

11. Subsequently, Lisa D. Lowery a/k/a Lisa Marie Davis Lowery died testate on or about October 28, 2017, leaving the subject property to her devisees, namely Austin A. Lowery

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a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, as shown in Probate Estate Matter Number 2018-ES-42-00340. The aforementioned Probate Estate Matter remains open as of this date.

12. Plaintiff and/or its counsel has complied with all of their obligation(s) under the specific terms of the Note and Mortgage being foreclosed as well as all applicable Federal or State statutes or regulations, including, but not limited to, the furnishing of any notices (where applicable), e.g. post referral loss mitigation solicitation letter and/or acceleration warning letter as to default and post acceleration reinstatement, provided to the obligor(s), if or where applicable.

13. Plaintiff's counsel has read the allegations in this pleading and to the best of his/her knowledge, and upon information and belief, there are good grounds to support it. Pursuant to the South Carolina Lis Pendens Statute (S.C. Code Section 15-11-10, et. Seq.), Plaintiff's counsel has accomplished a Report on Title whereby Plaintiff's counsel has, upon information and belief, named all parties who claim or may claim an interest in the subject property. This Report on Title is a recoverable charge, expense, or cost as provided for in the Mortgage and/or Note contracts.

14. According to the business records of Plaintiff, which have been made available to its Counsel and also upon information and belief, neither Plaintiff nor its counsel is aware of any party, who executed the Note and/or Mortgage, currently being on active duty (after mortgage was originated) or recently discharged from the active duty of the United States Military or a State Guard or Reserve Unit. In addition, Counsel for Plaintiff has caused and/or conducted a search of the DOD website for which Counsel, upon information and belief, reports that no party, who executed the Note and/or Mortgage, and, to the best of his/her knowledge, is entitled to SCRA protection. If any party has any information or record of a defendant currently being on active duty or recently discharged, it is requested that you contact counsel for Plaintiff immediately as you may possibly be eligible for protection under the Servicemembers Civil Relief Act (SCRA).

15. According to the business records of Plaintiff, which have been made available to its Counsel and upon information and belief, neither Plaintiff nor its counsel is aware of any party to this action currently being in active bankruptcy and under the protection of the United States Bankruptcy Court (“USBK”). In addition, Counsel for Plaintiff has caused and/or has conducted a search of the PACER website for which Counsel, upon information and belief, reports no party, who executed the Note and/or Mortgage, and, to the best of his/her knowledge, is currently eligible for protection of the USBK. If any party has any information or record of a

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defendant currently being under the bankruptcy protections, it is requested that you notify counsel for Plaintiff immediately. Any demand for a deficiency is not applicable if a party has received a discharge in bankruptcy during the life of the mortgage, or is currently under the active protection of the bankruptcy courts. Moreover, any party to this action who is a discharged borrower to the debt of the Plaintiff shall not be subject to and is specifically excluded from both the calculation and collection of any amounts due and owing to the Plaintiff, as required by Rule 71(a) of the South Carolina Rules of Civil Procedure.

16. In and by the terms of the Note and the Mortgage, it is provided, among other things, that on failure to pay any installment of either principal and interest or any portion thereof when due, or if any of the conditions and requirements in the Mortgage be not complied with, then the whole principal sum and accrued interest shall at the option of the legal holder thereof become at once due and payable without notice, and collectible by foreclosure.

17. In and by the terms of the Note it is further provided that the maker thereof shall pay a reasonable attorney's fee if the Note be placed in the hands of an attorney for collection after default. Any notice or compliance required by the terms of the Mortgage or by state or federal statutes has been given or complied with prior to, or in the commencement of this action and the Defendants shall be forever barred from raising such notice or compliance.

18. Plaintiff, to the best of its knowledge and upon information and belief, alleges that the installments of principal and interest falling due from and after April 30, 2004 have not been paid although demand for the payment thereof has been made, and Plaintiff has and does hereby elect to declare the entire balance of said principal and interest due and payable at once. Pursuant to a review of the business records of Plaintiff or its designated agent, as of October 17, 2019, there is now due and owing and unpaid upon the Note and Mortgage the total amount of $686,622.53, which is itemized as follows: Unpaid Principal Balance of $301,994.94, Interest of $371,548.49 from May 17, 2004 through October 17, 2019, Escrow/Impound Required of $3,476.00, Deferred Amounts of $5,273.34, Recording Fee of $10.00, Exterior Property Inspections of $452.50, Val BPO of $118.50, and Taxes Paid of $3,748.76 plus reasonable attorney's fees for the collection thereof, and all other costs and expenses of this action allowable by law, equity, or contracts referenced above, including but not limited to the costs or charges in reporting to this Honorable Court and/or as may be permitted under Rules 54 and 71, South Carolina Rules of Civil Procedure. Pursuant thereto, Plaintiff has employed the undersigned legal counsel to prosecute these actions herein and add the fees, charges and costs of said counsel to the amount of the total debt as provided for in the Note and Mortgage. Interest on the unpaid principal balance will continue to accrue at the contractual interest rate,

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which is currently 7.980%.

19. Upon information and belief, the Defendant(s) below-named claim or may claim a subordinate lien or junior interest upon or interest in the subject property, including but not limited to the subordinate lien or junior interests specifically described below, and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of such lien claim will be determined at a hearing subsequent to the sale, in accordance with the Circuit Court Rules 53 and/or 71. The subject Defendant(s) is/are further made a party due to the similarity in name(s) to the primary defendant(s) against whom they claim or may claim a lien and in order to clear title to this property as follows:

(a) The Defendant, Elizabeth A. Lowery, by virtue of that certain mortgage from Austin A. Lowery to Elizabeth A. Lowery, dated May 05, 2004, in the original amount of $105,900.73, and recorded on May 06, 2004, in the Office of the Spartanburg County Clerk of Court/Register of Deeds in Book 3219 at Page 590.

(b) The Defendant, The United States of America acting by and through its agency, Department of the Treasury - Internal Revenue Service, by virtue of a tax lien against Austin Allen and Lisa Lowery dated July 20, 2010, in the original amount of $130,399.27, and recorded on July 30, 2010, as Serial Number 679936610, in the Office of the Spartanburg County Clerk of Court/Register of Deeds in Lien Book 13, at Page 680.

(c) The Defendant, South Carolina Department of Revenue, by virtue of the following:

I. A tax lien against Austin A. Lowery and Lisa Lowery dated October 12, 2009, in the original amount of $5,298.17, and recorded on October 22, 2009, as Lien Number 3-51077801-4, in the Office of the Spartanburg County Clerk of Court/Register of Deeds in Lien Book S-57, at Page 630.

II. A tax lien against Austin A. Lowery and Lisa Lowery dated October 19, 2009, in the original amount of $6,357.41, and recorded on October 27, 2009, as Lien Number 3-51082080-9, in the Office of the Spartanburg County Clerk of Court/Register of Deeds in Lien Book S-57, at Page 906.

III. A tax lien against Austin A. Lowery and Lisa Lowery dated November 06, 2009, in the original amount of $3,576.75, and recorded on November 30, 2009, as Lien Number 3-51089336-4, in the Office of the Spartanburg County Clerk of Court/Register of Deeds in Lien Book S-58, at Page 541.

(d) The Defendant, Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually, and as Legal Heir or Devisee of the Estate of Lisa D.

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Lowery a/k/a Lisa Marie Davis Lowery, Deceased, by virtue of any interest claimed under the law of succession (S.C. Code Ann. Section 62-2-101, et. seq.) or under decedent's will.

20. Plaintiff demands no personal or deficiency judgment and any right to the same is specifically waived.

21. Plaintiff may be forced to pay sums for taxes and 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.

22. In the event the subject property is sold at Judicial Sale and the successful bidder is a third party, neither Plaintiff nor Plaintiff's counsel make any warranties or representations as to the subject property on behalf of the third-party bidder.

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

1. The amount due upon the Note and the Mortgage be ascertained and determined under the direction of this Court, together with attorney's fees and all of the costs or charges incurred in prosecuting this action.

2. The Mortgage be declared a first mortgage lien on all acreage more completely and fully described in Exhibit “A” attached hereto and incorporated herein, together with all improvements located on the acreage cited within the Mortgage legal description and subsequent survey attached hereto as Exhibit “A”; that Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums and/or costs for inspecting and securing the property which may be due or which may be or have been paid by Plaintiff, with reasonable attorney's fees as well as for all of the costs or charges of this action.

3. The mortgaged premises be sold according to law and the practice of this Court, the equity of redemption as to all defendants be barred and the lien or interest claimed by any defendant be extinguished and that the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and said 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, the surplus, if any, be distributed according to law.

4. Appoint a Receiver to collect the rents, issues, profits or designated sums from the mortgagor(s) and/or the grantee(s) of the mortgagor(s) and/or tenants occupying or exercising control over the mortgaged premises and hold said assets or the same subject to further Order of this Court.

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

6. For such other and further equitable and/or legal relief as the Court may deem just and proper.

SCOTT AND CORLEY, P.A.

By: s/H. Guyton Murrell

Ronald C. Scott (rons@scottandcorley.com), SC Bar #4996
Reginald P. Corley (reggiec@scottandcorley.com), SC Bar #69453
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NOTICE OF DEBT

1. As of October 17, 2019, the amount of the debt is $686,622.53. Pursuant to and in reliance upon a review of the business records of the creditor, or its designated agent, the total debt amount consists of the following: Unpaid Principal Balance of $301,994.94, Interest of $371,548.49 from May 17, 2004 through October 17, 2019, Escrow/Impound Required of $3,476.00, Deferred Amounts of $5,273.34, Recording Fee of $10.00, Exterior Property Inspections of $452.50, Val BPO of $118.50, and Taxes Paid of $3,748.76. Because many of these itemized items may vary from day to day, the amount due on any given day may be greater. Therefore, if you wish to receive figures to reinstate (bring the loan current) or pay off in full the loan through a specific date, please contact Scott and Corley, P.A., attorneys for U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust, by either calling (803) 252-3340 or via email at lossmit@scottandcorley.com.

2. U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust is the creditor ("Creditor") to whom the debt is owed.

3. Unless you, within thirty (30) days after receipt of this notice (the "Thirty Day Period"), dispute the validity of the debt or any portion of it, the debt will be assumed to be valid by the debt collector, which is Scott and Corley, P.A., the attorneys for the Creditor.

4. If you notify debt collector, Scott and Corley, P.A., in writing within the Thirty Day Period that the debt or any portion thereof is disputed, Scott and Corley, P.A. will obtain a verification of the debt, and Scott and Corley, P.A. will mail a copy of that verification to you.

5. If the Creditor named in this notice is different from the original creditor, and if you make a written request to Scott and Corley, P.A. within the Thirty Day Period, the debt collector, Scott and Corley, P.A. will mail to you the name and address of the original creditor.

6. Written requests should be addressed to the attorneys for the Creditor, the debt collector, as follows:

   Scott and Corley, P.A.
   Attention: Loss Mitigation
   P.O. Box 2065
   Columbia, SC 29202

7. This notice pertains to your dealings with the Scott and Corley, P.A. as the debt collector. It does not affect your dealings with the court, and in particular it does not change the time by which you must answer the summons and complaint. Please understand that the summons is a command from the court, not from the Scott and Corley, P.A., and you must follow the instructions on the summons even if you dispute the validity or any portion of the debt. This notice also does not affect Scott and Corley, P.A.'s relations with the court. Scott and Corley, P.A. may file additional legal papers in the court according to the court's rules and the judge's instructions.

THIS FIRM COLLECTS DEBTS FOR MORTGAGE LENDERS AND OTHER CREDITORS. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. HOWEVER, IF YOU HAVE PREVIOUSLY RECEIVED A DISCHARGE IN BANKRUPTCY, THIS MESSAGE IS NOT AND SHOULD NOT BE CONSTRUED AS AN ATTEMPT TO COLLECT A DEBT, BUT ONLY AS AN ATTEMPT TO ENFORCE A LIEN.

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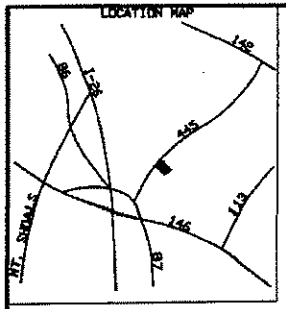
Exhibit "A"

Record on Appeal p. 092

EXEMPT

Plat as shown is exempt from the subdivision approval process pursuant to the SC Code of Laws, Section 6-29-1110 (4). It does not guarantee the right of future permits or future subdivision. All requirements of Spartanburg County's land development and ordinances of date must be met in order to develop the property.

LOCATION MAP



LAWRENCE A. & JANICE S. WHITLOCK
DB 90W PG. 642
PB 34 PG 567

S 43°16'22" E 689.95'

1/2" I. PIN FD.

GRAVEL DRIVE

OVERHEAD POWER LINE

CONCRETE DRIVE

R/W UNKNOWN

METAL SHED

CONCRETE

UTILITY BLDGS.

METAL BLDG.

SHED

11/2 STORY FRAME RES.

BRICK

POOL

5.00 ACRES
TO C/L OF ROAD

317.67'

S 46°48'58" W

AUSTIN A. LOWERY
DB 64H PG 146
PB 134 PG 9

N 48°50'29" E 153.89'

N 43°26'02" E 161.38'

893.7

89.2'

APPROXIMATE SEPTIC TANK LOCATION AND SEPTIC SYSTEM AREA

N 43°16'34" W 674.81'

1/2" I. PIN FD.

1/2" I. PIN FD. NT 30.00

1/2" I. PIN FD. NT 640.2

WATER METER

STEWART ROAD
HWY NO. S42-445
66 FT. R/W

0.7 MI. TO HWY NO. S42-66

PLT-2019-43254

PLT BK 176 PG 399-399

Recorded 1 Pages on 09/13/2019 09:43:24 AM
Recording Fee: $25.00
Office of REGISTER OF DEEDS, SPARTANBURG, S.C.
Dorothy Earle, Register Of Deeds

AUSTIN A. LOWERY
DB 64H PG. 146
PB 134 PG. 9

Before any land disturbing activities occur on any parcel, all applicable grading, encroachment, development, and building permits must be obtained from Spartanburg County prior to the commencement of any construction. Permits may also be required by DHEC and SCDOT.

SPARTANBURG COUNTY PLANNING DEPARTMENT
SEP 13 2019
DATE

NOTES : AREA IS SUBJECT TO ALL RIGHTS OF WAY AND EASEMENTS OF RECORD OR NOT OF RECORD. ALL UNDERGROUND UTILITIES ARE NOT SHOWN AND THEIR LOCATIONS ARE UNKNOWN TO ME.

I HEREBY STATE THAT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARDS OF PRACTICE MANUAL FOR SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS B SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISABLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.

SURVEY FOR

U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF10 MASTER PARTICIPATION TRUST, CALIBER HOME LOANS AS ATTORNEY-IN-FACT

BEING A PORTION OF A 53.73 ACRE TRACT AS SHOWN ON SURVEY FOR AUSTIN A. LOWERY BY JOE E. MITCHELL DATED MAY 22, 1996
BEING A 5.00 ACRE TRACT ON SURVEY FOR AUSTIN A LOWERY BY JOE E. MITCHELL DATED DEC. 18, 1998

COUNTY: SPARTANBURG	STATE: SOUTH CAROLINA	BLOCK MAP: P/O 4-43-00-29
SCALE: 1 IN. =60 FT.	60 30 0 60 120 180	
DATE: AUGUST 29, 2019 REVISED SEPTEMBER 6, 2019	FIELD: A.H. OFFICE: J.E.M.	DEED BOOK: P/O 64H PG. 146
MITCHELL SURVEYING 106 EAST GEORGIA STREET, WOODRUFF S.C. PROFESSIONAL LAND SURVEYORS PHONE: (864) 476-6237		PLAT BOOK: 143 PG. 468 P/O P/O 134 PG 9

SOUTH CAROLINA PROFESSIONAL LAND SURVEYOR NO. 4030 JOE E. MITCHELL

JOB NO. 19AL0828R

ELECTRONICALLY FILED - 2019 Nov 01 8:29 AM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	IN THE COURT OF COMMON PLEAS CASE NO. 2019-CP-42-02270
U.S. Bank Trust, N.A., as Trustee for LSF 10 Master Participation Trust, **Plaintiff,** **vs.** **Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually, and as Heir or Devisee of the Estate of Lisa D. Lowery a/k/a Lisa Marie Davis Lowery, Deceased; South Carolina Department of Revenue; The United States of America acting by and through its agency, Department of the Treasury - Internal Revenue Service; and Elizabeth A. Lowery,** **Defendants.**	**DEFENDANT AUSTIN ALLEN LOWERY'S ANSWER AND COUNTERCLAIM TO SECOND AMENDED COMPLAINT**

Defendant Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually and as heir or devisee of the Estate of Lisa D. Lowery (hereinafter "Defendant"), in answer to the Plaintiff's Second Amended Complaint, answers and alleges as follows:

FOR A FIRST DEFENSE

1. Any allegation of the Second Amended Complaint not herein admitted, qualified, or explained is denied. Any allegations of the Second Amended Complaint subject of qualified admissions made herein are denied insofar as the allegations are not qualifiedly admitted, and any allegations of the Second Amended Complaint subject of any other qualifications or explanations herein are denied insofar as they are not otherwise qualified or explained.

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2. Answering the allegations of paragraph 1 of the Second Amended Complaint, Defendant admits the same only to the extent that the Second Amended Complaint states that cause of action.

3. Answering the allegations of paragraphs 2 and 3 of the Second Amended Complaint, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the same.

4. Answering the allegations of paragraph 4 of the Second Amended Complaint, Defendant admits the same as to himself and, upon information and belief, as to Elizabeth A. Lowery.

5. Answering the allegations of paragraph 5 of the Second Amended Complaint, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the same.

6. Answering the allegations of paragraph 6 of the Second Amended Complaint, Defendant admits he signed a note.

7. Answering the allegations of paragraph 7 of the Second Amended Complaint, Defendant admits he signed something styled as a mortgage document; however, to the extent this document ever constituted a valid mortgage, it has been released. This is the same mortgage as that released mortgage described in the Plaintiff's Amended Complaint in this case, just with a corrected property description. The recording of the release was not an error. The Plaintiff may now regret releasing the mortgage, but the Plaintiff intended to do just that and has done it.

8. No answer to paragraph 8 of the Second Amended Complaint is required.

9. Answering the allegations of paragraph 9 of the Second Amended Complaint, Defendant denies the same.

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10. Answering the allegations of paragraph 10 of the Second Amended Complaint, Defendant admits the attachment of the plat to the Second Amended Complaint.

11. Answering the allegations of paragraph 11 of the Second Amended Complaint, Defendant admits the same.

12. Answering the allegations of paragraph 12 of the Second Amended Complaint, Defendant denies the same.

13. Answering the allegations of paragraph 13 of the Second Amended Complaint, Defendant denies the recoverability of the alleged report on title and, as to the remaining allegations of the paragraph, lacks sufficient knowledge or information to form a belief as to the truth or falsity of the same.

14. Answering the allegations of paragraph 14 of the Second Amended Complaint, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the same.

15. Answering the allegations of paragraph 15 of the Second Amended Complaint, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the same.

16. Answering the allegations of paragraph 16 of the Second Amended Complaint, Defendant denies the same.

17. Answering the allegations of paragraph 17 of the Second Amended Complaint, Defendant denies the same.

18. Answering the allegations of paragraph 18 of the Second Amended Complaint, Defendant admits that no payments have been made on the subject debt since before April of 2004. The remaining allegations of the paragraph are denied.

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19. Answering the allegations of paragraph 19 of the Second Amended Complaint, Defendant denies the same.

20. Answering the allegations of paragraph 20 of the Second Amended Complaint, Defendant admits the same.

21. Answering the allegations of paragraph 21 of the Second Amended Complaint, Defendant denies the same.

22. Answering the allegations of paragraph 22 of the Second Amended Complaint, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the same.

FOR A SECOND DEFENSE
(Dismissal – Rule 12(b)(6))

23. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

24. The Complaint fails to state facts sufficient to constitute a cause of action, and the Complaint or part thereof should be dismissed.

FOR A THIRD DEFENSE
(Release)

25. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

26. To the extent that the mortgage sought to be enforced in this case ever existed, it has been released.

27. There is a release of mortgage doing so that is recorded in the land records of Spartanburg County in Book 5558 at page 222.

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FOR A FOURTH DEFENSE
(Unclean Hands)

28. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

29. The Plaintiff (and/or its predecessor(s) in interest) has engaged in such conduct with respect to the matters subject of his claims as to make its hands unclean with regard to its claims.

30. This conduct includes, but is not necessarily limited to, what is stated in this pleading.

31. This conduct relates directly to the subject matter of this action.

32. This conduct has proximately caused Defendant prejudice and injury.

FOR A FIFTH DEFENSE
(Statute of Limitations)

33. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

34. The debt sought to be sued on is not secured by a mortgage.

35. The statute of limitations in which a suit on that debt could be brought is three years in length.

36. Any cause of action for default of the subject debt accrued more than three years before the commencement of this action.

FOR A SIXTH DEFENSE
(Res Judicata)

37. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

38. A previous action seeking to foreclosure this mortgage was dismissed for failure to prosecute.

39. That operated as a dismissal with prejudice.

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40. Res judicata bars this action.

FOR A SEVENTH DEFENSE
(Laches)

41. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

42. There has been a delay in the bringing of this action.

43. The delay has been unreasonable and unreasonable in length.

44. This unreasonable delay has caused prejudice to the Defendant, such prejudice including, but not necessarily being limited to, the diminishment or impairment of witnesses; memories, witnesses and evidence becoming unavailable or more difficult to find, and the accrual of interest on the debt claimed by the Plaintiff.

FOR A FIRST COUNTERCLAIM (AND AS EIGHTH DEFENSE)
(Violation of Attorney Preference Statute with Unconscionability)

45. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

46. With respect to the closing of the mortgage loan subject of this case, the original creditor did not comply with the attorney preference or insurance preference provisions of S.C. Code Ann. § 37-10-102.

47. Agents of the original creditor (according to the Plaintiff, a predecessor in interest to the Plaintiff), without the knowledge or permission of Defendant, added a property description to a purported mortgage document signed by Defendant that described far more property than both the lender and the Defendant knew was intended to be mortgaged.

48. No attorney licensed to practice law in South Carolina supervised the closing of the mortgage loan.

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49. Agents of the original creditor closed this mortgage loan without attorney supervision.

50. The loan subject of the mortgage was induced by unconscionable conduct, such conduct including, but not limited to, the following:

a. The unauthorized practice of law;

b. The deprivation of Defendant's right to choose his own, unconflicted counsel to represent him in the closing of the mortgage loan at issue;

c. Lying to Defendant about the amount of property that would be reflected as mortgaged in the recorded mortgage document;

d. Improper alteration of the purported mortgage document; and

e. Concealment of that alteration from Defendant.

51. For each violation of S.C. Code Ann. § 37-10-102, Defendant is entitled to recover all relief available under S.C. Code Ann. § 37-10-105, including the provided under S.C. Code Ann. § 37-10-105(C), damages, attorney's fees, and penalties as provided in the South Carolina Consumer Protection Code.

WHEREFORE, Defendant prays for the Court to:

(a) Issue an Order dismissing the Second Amended Complaint with prejudice;

(b) Deny Plaintiff the relief it seeks in this action;

(c) Declare the notes(s) and mortgage(s) subject of this action to be void or unenforceable;

(d) Enter judgment for Defendant for all relief available under S.C. Code Ann. § 37-10-105, including under S.C. Code Ann. § 37-10-105(C);

(e) Enter judgment for Defendant reasonable attorney's fees;

(f) Enter judgment for Defendant for the costs and expenses of this action; and

(g) Grant Defendant such other and further relief as the court deems just and proper.

Respectfully submitted,

/s/ Andrew S. Radeker
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ATTORNEY FOR DEFENDANT
AUSTIN ALLEN LOWERY

Columbia, South Carolina
November 1, 2019

ELECTRONICALLY FILED - 2019 Nov 01 8:29 AM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

ELECTRONICALLY FILED - 2020 Feb 21 3:29 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	
U.S. Bank Trust, N.A., as Trustee for LSF 10 Master Participation Trust,	)	Civil Action No. 2019-CP-42-02270
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, Lisa D. Lowery, South Carolina Department of Revenue, The United States of America acting by and through its agency, Department of the Treasury-Internal Revenue Service, and Elizabeth A. Lowery,	)	
	)	
Defendants.	)	

PLAINTIFF'S REPLY TO COUNTERCLAIM

Plaintiff U.S. Bank Trust, N.A., as Trustee for LSF 10 Master Participation Trust ("U.S. Bank Trust"), replies to the allegations in the answer and counterclaim ("Counterclaim") filed by Defendant Austin Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery ("Lowery"). U.S. Bank Trust reserves all rights and defenses and waives none of them. Finally, U.S. Bank Trust denies every allegation in Lowery's answer and counterclaim not expressly admitted in this reply.

FOR A FIRST DEFENSE

1. To respond to the allegations in paragraphs 1 through 22 of the Counterclaim, U.S. Bank Trust denies that Lowery has any basis to deny the allegations in U.S. Bank Trust's foreclosure complaint.

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2. U.S. Bank Trust denies that Lowery has any basis to assert the affirmative defenses alleged in paragraphs 23 through 44 of the Counterclaim.

3. Paragraph 45 does not require a response from U.S. Bank Trust. To the extent that a response is required, U.S. Bank Trust denies the allegations of this paragraph.

4. U.S. Bank Trust lacks sufficient knowledge or information to make a determination as to the allegations contained in paragraph 46 of the Counterclaim, and therefore, it denies them.

5. U.S. Bank Trust lacks sufficient knowledge or information to make a determination as to the allegations contained in paragraph 47 of the Counterclaim, and therefore, it denies them.

6. U.S. Bank Trust lacks sufficient knowledge or information to make a determination as to the allegations contained in paragraph 48 of the Counterclaim, and therefore, it denies them.

7. U.S. Bank Trust lacks sufficient knowledge or information to make a determination as to the allegations contained in paragraph 49 of the Counterclaim, and therefore, it denies them.

8. U.S. Bank denies the allegations in paragraph 50 of the Counterclaim.

9. U.S. Bank denies the allegations in paragraph 51 of the Counterclaim.

10. U.S. Bank Trust denies that Lowery is entitled to any of the relief sought in the unnumbered paragraph of the Counterclaim beginning with "WHEREFORE."

FOR A SECOND DEFENSE
(Failure to State a Claim)

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11. Lowery has failed to state any claim upon which relief may be granted, and therefore, Lowery's counterclaim should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Terms of Note and Mortgage)

12. U.S. Bank Trust pleads the terms of the note and mortgage that are the subject of this foreclosure action as an absolute defense to Lowery's counterclaim.

FOR A FOURTH DEFENSE
(Prior Material Breach)

13. Lowery's failure to fulfill all obligations under the note and mortgage that are the subject of this foreclosure action constitutes a prior material breach of the note and mortgage, and therefore, Lowery's counterclaim is barred.

FOR AN FIFTH DEFENSE
(Setoff and Recoupment)

14. U.S. Bank Trust would show that Lowery borrowed a sum of money that he promised to repay with interest under the terms of the note and mortgage that he executed, and therefore, Lowery is entitled to setoff or recoup any damages, which Lowery denies, against the outstanding balance that Lowery owes to U.S. Bank Trust under the note and mortgage being foreclosed in this action.

FOR A SIXTH DEFENSE
(Failure to Mitigate Damages)

15. U.S. Bank Trust would show that Lower's failure to mitigate his damages precludes or significantly reduces any purported damages alleged.

FOR A SEVENTH DEFENSE
(Estoppel, Laches, and Waiver)

16. The doctrines of estoppel, laches, and waiver bar Lowery's counterclaims.

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POTENTIAL DEFENSES

17. U.S. Bank Trust reserves the right to assert any additional factual and legal defenses to Lowery's counterclaim as may be justified by information subsequently obtained during the course of this case.

18. WHEREFORE, U.S. Bank Trust has fully answered the allegations in the counterclaim, and it respectfully prays that the Court:

a. Orders that Lowery recover nothing from U.S. Bank Trust;

b. Dismisses the counterclaim with prejudice;

c. Awards U.S. Bank Trust its attorney's fees and costs, if and where appropriate;

d. Awards such other further relief as the court deems just and proper.

Dated this 21st day of February 2020.

Respectfully submitted,

Plaintiff U.S. Bank Trust, N.A., as Trustee for LSF 10 Master Participation Trust
By counsel

s/Amanda K. Cutler
Amanda K. Cutler
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ELECTRONICALLY FILED - 2019 Nov 22 11:33 AM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

U.S. Bank Trust, N.A., as Trustee for LSF 10 Master Participation Trust,

Plaintiff,

v.

Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Austin Lowery, individually, and as Heir or Devisee of the Estate of Lisa D. Lowery, Deceased; South Carolina Department of Revenue; The United States of America acting by and through its agency, Department of the Treasury – Internal Revenue Service; and Elizabeth A. Lowery,

Defendants,

Case No.: 2019-CP-42-02270

PLAINTIFF'S MOTION TO DISMISS

COMES NOW Plaintiff U.S. Bank Trust, N.A., as Trustee for LSF 10 Master Participation Trust ("Plaintiff"), by and through undersigned counsel, and pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, hereby moves the Court to dismiss the Counterclaim filed by Defendant Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery ("Lowery") for failure to state a claim upon which relief can be granted. To this end, Plaintiff respectfully shows this Honorable Court as follows:

1) Lowery fails to state facts sufficient to constitute a cause of action.

2) Lowery's factual allegations and claims for relief demonstrate that no claim for relief can be maintained.

3) This Motion will be supported by the pleadings, a memorandum of law, oral argument, and any other evidence requested or permitted by this Court.

WHEREFORE, Plaintiff prays, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, that this Court dismiss the Counterclaim filed by Defendant Lowery with prejudice.

This the 22nd day of November, 2019.

Respectfully submitted,

s/Amanda K. Cutler
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Attorney for Plaintiff U.S. Bank Trust, N.A., as Trustee for LSF Master Participation Trust

ELECTRONICALLY FILED - 2019 Nov 22 11:33 AM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

ELECTRONICALLY FILED - 2020 Dec 21 2:36 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
U.S. Bank Trust, N.A., as Trustee for LSF 10 Master Participation Trust, Plaintiff, v. Austin A. Lowery, a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually and as Heir or Devisee of the Estate of Lisa D. Lowery a/k/a Lisa Marie Davis Lowery, Deceased; South Carolina Department of Revenue; The United States of America acting by and through its agency, Department of the Treasury – Internal Revenue Service; and Elizabeth A. Lowery, Defendants,	)	CASE NO: 2019-CP-42-02270

U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF 10 MASTER PARTICIPATION TRUST'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure ("SCRCP"), Plaintiff U.S. Bank Trust, N.A., as Trustee for LSF 10 Master Participation Trust ("U.S. Bank"), by and through its undersigned counsel, hereby moves for summary judgment as to the counterclaim asserted by Defendant Austin A. Lowery ("Lowery") as follows:

That U.S. Bank be granted Summary Judgment in its favor, pursuant to SCRCP Rule 56, on the basis that there is no genuine issue as to any material fact and that U.S. Bank is entitled to judgment as a matter of law.

In support of this Motion for Partial Summary Judgment, U.S. Bank relies upon all pleadings, discovery responses, depositions, affidavits, memoranda which may be filed prior to

the hearing, the South Carolina Rules of Civil Procedure, statutes, applicable law, and such evidence as may be accepted by the Court.

WHEREFORE, U.S. Bank prays that the Court enter an Order:

a) Granting summary judgment in favor of U.S. Bank dismissing Lowery's counterclaims with prejudice; and

(b) Granting such other further relief that the Court deems just and proper.

Dated this 21st day of December 2020.

Respectfully submitted,

By Counsel

s/ Amanda K. Cutler
Amanda K. Cutler (S.C. Bar # 101052)
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Attorneys for Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF 10 Master Participation Trust

ELECTRONICALLY FILED - 2020 Dec 21 2:36 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

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CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing Motion for Partial Summary Judgment with the Court's ECF system through which all counsel of record will be served and that I have mailed same by United States Mail to Defendant:

Elizabeth Lowery
106 Medallion Lane
Lyman, SC 29365

This the 21st day of December, 2020

s/ Amanda K. Cutler
Amanda K. Cutler

ELECTRONICALLY FILED - 2021 Mar 19 12:30 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	IN THE COURT OF COMMON PLEAS CASE NO. 2019-CP-42-02270
U.S. Bank Trust, N.A., as Trustee for LSF 10 Master Participation Trust, **Plaintiff,** **vs.** **Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, Lisa D. Lowery, South Carolina Department of Revenue, The United States of America acting by and through its agency, Department of the Treasury - Internal Revenue Service, and Elizabeth A. Lowery,** **Defendants.**	**DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AS TO LIABILITY ON COUNTERCLAIM**

YOU WILL PLEASE TAKE NOTICE that Defendant Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery (hereinafter "Defendant") hereby moves, pursuant to Rule 56, SCRCP, and as well as pursuant to all other applicable law, for an order granting him summary judgment on liability as to his counterclaim in the above-captioned action.

Defendant makes this motion on the following grounds:

1. Upon motion, summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56, SCRCP.

2. The affidavit of Austin Allen Lowery already of record in this case is incorporated herein by reference as if here set forth verbatim.

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3. As a matter of law, the Plaintiff took its present status subject to the claims and defenses Defendant has against its predecessor in interest.

4. The Plaintiff, which pleads in this case and maintains that it is the owner and holder of the subject note and mortgage, cannot now take a contrary position and is, thus, subject to the claims and defenses Defendant has against its predecessor in interest.

5. The only evidence in the record is that there was no compliance with S.C. Code Ann. § 37-10-102 with regard to the subject loan and that no attorney supervised the closing of the subject loan.

6. Further, the only evidence before the court is that the loan was induced not only by the unconscionable conduct of the unauthorized practice of law but also other unconscionable conduct.

7. Accordingly, the Plaintiff is subject to and liable upon Defendant's counterclaim for relief under S.C. Code Ann. § 37-10-105, including S.C. Code Ann. § 37-10-105(C).

8. In any event, in an action in which a party proves a violation of the consumer protection code and/or a violation of S.C. Code Ann. § 37-10-102, that party is entitled to an award of reasonable attorneys' fees and costs.

9. This motion is also based upon all applicable statutory law, case law, common law, and the record in this action.

As this is a motion for summary judgment, no consultation with opposing counsel in advance of making this motion is required.

Respectfully submitted,

/s/ Andrew S. Radeker
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ATTORNEY FOR DEFENDANT
AUSTIN ALLEN LOWERY

Columbia, South Carolina
March 19, 2021

ELECTRONICALLY FILED - 2021 Mar 19 12:30 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

ELECTRONICALLY FILED - 2019 Jul 19 12:00 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

STATE OF SOUTH CAROLINA **COUNTY OF SPARTANBURG**	**IN THE COURT OF COMMON PLEAS** **CASE NO. 2019-CP-42-02270**
U.S. Bank Trust, N.A., as Trustee for LSF 10 Master Participation Trust, **Plaintiff,** **vs.** **Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, Lisa D. Lowery, South Carolina Department of Revenue, The United States of America acting by and through its agency, Department of the Treasury - Internal Revenue Service, and Elizabeth A. Lowery,** **Defendants.**	**MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFF'S CLAIMS**

YOU WILL PLEASE TAKE NOTICE that Defendant Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery (hereinafter "Defendant") hereby moves, pursuant to Rule 56, SCRCP, and as well as pursuant to all other applicable law, for an order granting him summary judgment as to the Plaintiff's claims in the above-captioned action.

Defendant makes this motion on the following grounds:

1. Upon motion, summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56, SCRCP.

2. In accordance with the general principle that in a civil action the plaintiff bears the burden of proof, it is incumbent upon the party seeking foreclosure of a

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mortgage to prove all the elements of its case. See Baugh & Sons Co. v. Graham, 150 S.C. 398, 401, 148 S.E. 220 (1926) (plaintiff bears burden of proof in civil case); Paramount Fund, Inc. v. Cusaac, 282 S.C. 497, 499, 319 S.E.2d 354, 355 (Ct. App. 1984) ("[i]n an action to foreclose a mortgage on real property, the mortgagee has the burden of proving a disputed mortgage by the preponderance of the evidence").

3. This is a contested mortgage foreclosure case. One of the things that the Plaintiff must prove in order to prevail on its claim is that it has a mortgage. "A mortgage and a note are separate securities for the same debt, and a mortgagee who *has a note and a mortgage* to secure a debt has the option to either bring an action on the note or to pursue a foreclosure action." U.S. Bank Natl. Trust Assn. v. Bell, 385 S.C. 364, 684 S.E.2d 199, 204 (Ct. App. 2009) (emphasis added). Plaintiff's declaratory judgment claim similarly depends upon the continued existence of the mortgage.

4. The Plaintiff released the mortgage subject of this case, as shown by the attached recorded release. The mortgage no longer exists.

5. With factual support for this necessary element of the Plaintiff's claims missing, it is impossible for the Plaintiff to prevail on its claims.

6. This motion is also based upon all applicable statutory law, case law, common law, and the record in this action.

As this is a motion for summary judgment, no consultation with opposing counsel in advance of making this motion is required.

Respectfully submitted,

/s/ Andrew S. Radeker
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Columbia, South Carolina
July 19, 2019

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Office of REGISTER OF DEEDS, SPARTANBURG, S.C.
Dorothy Earle, Register Of Deeds

DOCUMENTS PREPARED BY:
SCOTT AND CORLEY, P.A.
2712 MIDDLEBURG DR., STE 200
COLUMBIA, SC 29204

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

RELEASE OF MORTGAGE
Mortgage/Record Book 2782 at Page 874

KNOW ALL MEN that **U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust**, owner of the Mortgage hereinafter referred to, for and in consideration of good and valuable consideration, receipt of which is hereby acknowledged, does forever discharge and release that certain tract of land described as follows, to wit:

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Spartanburg, State of South Carolina, Southeast of Woodruff, on the southeast side of S-42-448, containing 53.73 acres, more or less, and being fully shown as Lot 3 of the M.C. Hill Estate on a plat prepared by E. Mitchell, RLS dated 5/22/96 and recorded in Plat Book 134 at Page 9 in the office of the RMC for Spartanburg County.

Being the same property conveyed from Joseph E. Ulmer, II to Austin A. Lowery by deed recorded 6/3/96 in Book 64-H at Page 146 in the Register's Office of Spartanburg County, South Carolina.

TMS No. 4-43-00-029.00

Property Address: 1605 Stewart Road, Woodruff, SC 29388

from all claims and liens under that certain Mortgage dated **September 24, 2002** from **Austin A. Lowery**, recorded in the office of the ROD/RMC/Clerk of Court for **Spartanburg** County on **September 26, 2002**, in Mortgage/Record **Book 2782 at Page 874** and assigned to **U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust** by assignment dated **June 26, 2018** and recorded **July 3, 2018** in **Book 5469 at Page 795.**

IN ALL OTHER RESPECTS, the aforesaid Mortgage shall remain in full force and effect.

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IN WITNESS WHEREOF, **U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust**, by its duly authorized officer, agent has its hand and seal this 4 day of January, 2019.

Witness #1 Steven Ellison

Witness #2 – Notary Rita Font

U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust ~~as its~~ AIF attorney in fact by Caliber Home Loans, its attorney in fact

By: _____

Print Name: David Roper

Its: Authorized Signatory

STATE OF Texas

COUNTY OF Dallas

ACKNOWLEDGMENT
S.C. § 30-5-30
(Effective January 1, 1995)

I, a Notary Public for the State of Texas, do hereby certify that **U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust** by its duly authorized agent, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

SWORN to before me this 4 day of January, ~~2018~~ 2019.

JIMIL DEMOND BETTS
Notary ID #125383529
My Commission Expires
August 27, 2021

Notary Public
Print Name: Jimil D Betts
My Commission Expires: August 27, 2021

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ELECTRONICALLY FILED - 2021 Dec 21 11:03 AM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG U.S. Bank Trust, N.A. as Trustee for LSF10 Master Participation Trust, PLAINTIFF, VS. Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, Individually; Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually, and as Heir or Devisee of the Estate of Lisa D. Lowery, Deceased; South Carolina Department of Revenue; The United States of America acting by and through its agency, Department of the Treasury – Internal Revenue Service; and Elizabeth A. Lowery, DEFENDANTS.	IN THE COURT OF COMMON PLEAS CASE NO. 2019-CP-42-02270 **PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

TO: **THE DEFENDANT AUSTIN A. LOWERY AND HIS COUNSEL, ANDREW S. RADEKER**

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, U.S. Bank Trust, N.A. as Trustee for LSF10 Master Participation Trust ("US Bank or Trustee"), hereby moves, pursuant to Rule 56, SCRCP, and as well as pursuant to all other applicable law, for an order granting it summary judgment as to the Defendant's affirmative defense as to unconscionability as a defense to the foreclosure action and for an order granting it summary judgment as to its cause of action for foreclosure.

The grounds for this Motion for Summary Judgment are as follows:

The parties previously filed cross motions for summary judgment in this case which resulted in two orders by the Honorable Gordon G. Cooper filed May 10, 2021 (Denying Defendants' motions for summary judgment on his counterclaims and Plaintiff's claim) and May 20, 2021 (Granting Plaintiff's partial motion for summary judgment as to offensive use of the

claim of unconscionability and limited its use to an affirmative defense and setoff). These orders recite the background facts of this case and are incorporated by reference.

Subsequent to the entry of these orders, the only matters left to be heard by this court are the Defendant's affirmative defense of unconscionability, Plaintiff's foreclosure, and the Defendant's counterclaim based on the alleged violation of the attorney preference statute.

As to the foreclosure, the Defendant admits to not paying the mortgage since 2004 and Judge Cooper has determined "that there is no genuine issue of material fact as it would, under the facts and circumstances, be inequitable for Defendant to receive $304,040.62 from Plaintiff which funds were in fact used to benefit the Defendant and it being clear that Defendant intended to and did give a mortgage to HFC II on the 5.0 acre parcel."

As to the alleged violation of the attorney preference statute, Judge Cooper has already granted Plaintiff partial summary judgment as to this claim dismissing the claim with prejudice "to the extent such counterclaim is asserted to secure an award of monetary damages and attorney's fees from U.S. Bank." Judge Cooper did leave open "Lowery's right to raise his counterclaim as an equitable and statutory defense for the purpose of setoff or recoupment, or both, and introduce evidence in support thereof, to U.S. Bank's request for foreclosure of the mortgage."

As a practical matter, this would mean that if Lowery can prove an attorney-preference violation by the loan originator (not U.S. Bank) then he could offset his statutory damage award and attorney's fees for prosecuting the counterclaim against the amount due Plaintiff on its note and mortgage. As alleged in the complaint, "there is now due and owing and unpaid upon the Note and Mortgage the full and just principal sum of $301,994.94, together with interest thereon at the rate of 7.980% per annum from May 17, 2004…" It is not reasonable to believe that Lowery's potential set-off would exceed even a small fraction of current amount due on the note and mortgage. Plaintiff has served discovery and requested this information but has not received a response. (See Exhibit "A" incorporated by reference).

Finally, the only remaining issue is Defendant's affirmative defense of unconscionability. As an affirmative defense, the Defendant bears the burden of proof as to all elements of the

Record on Appeal p. 119

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defense. As set forth below and as argued in Plaintiff's Return to Defendant's Motion for Summary Judgment[1], there are several arguments why summary judgment should be granted.

1. AN ALLEGED VIOLATION OF THE ATTORNEY-PREFERENCE STATUE IS NOT SUFFICIENT TO ESTABLISH UNCONSCIONABILITY.

Lowery claims that Plaintiff's alleged violation of S.C. Code Ann. § 37-10-102 (Attorney and Insurance Preference Statute) is unconscionable conduct rendering his promissory note and mortgage null and void. Lowery did sign an attorney preference form dated September 24, 2002, (the date of the closing) and selected or approved "None" for no attorney preference. The form itself has a fax date of September 18, 2002, and Lowery, at least, claims that he did not see the form prior to closing. It is difficult to affirm or dispute Lowery's belated claim as the closing took place almost twenty years ago.

This same argument was raised and rejected in *Lackey v. Green Tree Financial Corp.*, 330 S.C. 388, 498 S.E.2d 898 (S.C. App. 1998). In *Lackey*, the trial court held that an arbitration clause included in a retail installment contract for the purchase of a manufactured home was unconscionable and unenforceable, in part, because Green Tree failed to comply with the attorney-preference statute, "thereby denying each buyer the right to consult counsel." *Id.* at 330 S.C. 398. The South Carolina Supreme Court rejected this conclusion and stated, "Contrary to the holding of the trial court in this case, we do not read *First Baptist Church of Timmonsville* to establish a bright line test rendering an arbitration clause unenforceable where a contract somehow prevents a party from consulting a lawyer. But even if it did, there is nothing in the contract which prevented respondents from consulting legal counsel." *Lackey* at 399.

Furthermore, Lowery has failed to point out what provision or provisions in the promissory note or the mortgage are unconscionable which counsel would have allegedly protected him from. Plaintiff served discovery requesting this information but has received no answer or response.

This court should not find unconscionability based on the alleged attorney preference violation.

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[1] In that context the arguments were submitted in opposition to the Defendant's motion (Defendant's motion was denied). In this context, the arguments are presented in support of summary judgment along with the deemed admitted responses to the requests for admission served on October 5, 2021 (Exhibit "A").

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2. THE POSSIBLE ABSENCE OF COUNSEL AT CLOSING DOES NOT *PER SE* ESTABLISH UNCONSCIONABILITY.

The previous discussion applies equally here. Lowery claims to have closed his loan without counsel[2]. However, there is no evidence that he was prevented from consulting and being represented by the counsel of his choice. While there is no doubt about the benefits of counsel at a closing, the court should also be mindful of the distant closing date and the circumstances of a closing which occurred almost twenty years ago. "In determining unconscionability, courts are limited to considering facts and circumstances existing when the contract was executed." *Hardee v. Hardee*, 348 S.C. 84, 95-96, 558 S.E.2d 264, 269-70 (Ct.App.2001) (citing Restatement (Second) of Contracts § 208 (1981)), aff'd as modified, 355 S.C. 382, 585 S.E.2d 501 (2003).

As the court knows, during that time, closings did occur without the presence of counsel. *Matrix*[3] was decided almost a decade later, prospectively applying the unclean hands doctrine to potentially preclude equitable remedies to a lender of a loan closed without an attorney. *Id.* 714 S.E.2d at 535. Also, again, Lowery fails to show or allege how the absence of counsel materially prejudiced him in the terms of the note or mortgage. Plaintiff sought this information in the discovery attached as Exhibit "A", but received no response.

This court should conclude that the possible absence of counsel at closing in 2002 does not *per se* render the promissory note and mortgage unenforceable.

3. ANY ERROR IN THE PROPERTY DESCRIPTION WAS QUICKLY CORRECTED AND THE PROPER MORTGAGE FOR THE 5.0 ACRES AS INTENDED BY THE PARTIES WAS RECORDED.

Lowery argues as if there was some grand conspiracy by the originating lender, Household Finance II, over the two mortgages he executed in connection with his loan. However, Lowery admits the first mortgage was invalid because of the legal description. Lowery also admits that he intended to and did give HFC II a mortgage over the 5.0 acres which was recorded. The first, invalid mortgage was released, as required by the terms of the title

---

[2] Plaintiff admits that the HUD-1 Closing Statement shows "Lender" as closing agent and the line for Attorney's Fees 1107 is blank. Plaintiff further admits that it is not aware of any documents or other evidence, at this point in the litigation, which shows that an attorney supervised the closing of the mortgage loan.

[3] Matrix Financial Serv. Corp.. v. Frazer, 394 S.C. 134, 714 S.E.2d 532 (S.C. 2011)

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insurance policy. There is no prejudice to Lowery and there is no basis for him to claim unconscionability or unconscionable conduct.

Furthermore, Judge Cooper has determined "that there is no genuine issue of material fact as it would, under the facts and circumstances, be inequitable for Defendant to receive $304,040.62 from Plaintiff which funds were in fact used to benefit the Defendant and it being clear that Defendant intended to and did give a mortgage to HFC II on the 5.0 acre parcel."[4]

4. LOWERY HAD MEANINGFUL CHOICE AND THE TERMS OF THE PROMISSORY NOTE AND MORTGAGE ARE NOT SO OPPRESSIVE THAT NO REASONABLE PERSON WOULD MAKE THEM AND NO FAIR AND HONEST PERSON WOULD ACCEPT THEM.

Unconscionability, on the other hand, requires a greater showing. Unconscionability is characterized by the "absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Fanning v. Fritz's Pontiac-Cadillac-Buick Inc.*, 322 S.C. 399, 402, 472 S.E.2d 242, 245 (1996) (emphasis added) (citing *Jones Leasing v. Gene Phillips and Assocs.*, 282 S.C. 327, 318 S.E.2d 31 (Ct.App.1984)).

In this case, there is no evidence that Lowery could not have sought a loan elsewhere or that the terms of his loan were "so oppressive that no reasonable person would make them." Indeed, Lowery made payments for a little over 18 months on the promissory note and the mortgage. The HUD-1 Closing Statement reflects that Lowery had several debts paid and walked away from closing with $13,535. (See Plaintiff's Exhibit 4[5])

Lowery claims in his affidavit that there was an agreement to reduce his interest rate if he made payments for a year. (Exhibit 8, paragraph 4.) However, the promissory note, which Lowery is charged with reading, provides for a reduction in rate of .50% at the end of the third year (36th month), fourth year (48th month), and fifth year (60th month) if Lowery makes his payments within 30 days of their due date and does not file bankruptcy. (Exhibit 3, page 2, "Adjustment to Contract Rate.") Lowery did not make it to 36 months. If Lowery had continued to make his payments for these periods, his rate would have been reduced to 9.0%, while certainly very high by today's standards, back when he signed the promissory note, the

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[4] Order filed May 10, 2021.

[5] References to exhibits are in *Plaintiff's Return and Brief in Opposition to Defendant Lowery's Motion for Summary Judgment as to Plaintiff's Claims* filed on April 23, 2021.

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average rate was about 6.0%[6]. Also, the court should keep in mind that Lowery had a very high loan to value ratio of over 96% (cp. loan amount of $304,040 to origination appraisal amount of $317,900). The higher rate bears a reasonable relationship to the business risks. *Lackey v. Green Tree Financial Corp.*, 330 S.C. 388, 401, 498 S.E.2d 898 (S.C. App. 1998).

Furthermore, Plaintiff served the Requests for Admission which are attached as Exhibit "A" and incorporated by reference. Among these requests are the following:

> 8. Admit or Deny that you are in default under the terms of the Plaintiff's Note and Mortgage for failing to make the payments when due.
>
> 9. Admit or Deny that you could have sought a loan elsewhere from another lender.
>
> 10. Admit or Deny that there are no terms in the Plaintiff's Note or Mortgage which are so oppressive no reasonable person would make them.

These requests were served on October 5, 2021[7] and as of the date of this motion (more than 30 days ago), no answers have been received; therefore, the requests are deemed admitted. (Rule 36 SCRCP). Accordingly Lowery has admitted he could have sought a loan elsewhere and that there are no terms in the Plaintiff's note or mortgage which are so oppressive not reasonable person would make them.

Additionally, Plaintiff has established all of the facts necessary to recover on its cause of action for foreclosure.

Summary judgment is appropriate when "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP. With the Plaintiff's initial burden met, the Defendant may not rest upon the mere allegations or denials of their pleadings but must come forward with specific facts showing there is a genuine issue for trial. *Grant v. Mount Vernon Mills, Inc.*, 370 S.C. 138, 142, 634 S.E.2d 15, 17 (Ct. App. 2006).

The mortgage evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagors and constitutes a first lien on the mortgaged premises. Copies of the applicable loan documents are before the court and attached and incorporated by reference in *Plaintiff's Return and Brief in Opposition to Defendant Lowery's Motion for Summary Judgment as to Plaintiff's Claims* filed on April 23, 2021.

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[6] Freddie Mac Primary Mortgage Market Survey (PMMS) extract of relevant period in 2002 (attached).
[7] Proof of service attached hereto as Exhibit "B".

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In and by the terms of the said promissory note and mortgage securing the same, it is provided, among other things, that on failure to pay any installment of either principal or interest or any portion thereof when due, or if any of the conditions and requirements in the mortgage securing the same not be complied with, then the whole principal sum and accrued interest shall, at the option of the legal holder thereof, become at once due and payable without notice, and collectible by foreclosure. In and by the terms of the said note, it is further provided that the maker thereof shall pay all collection costs, including reasonable attorney's fees, if the said note be placed in the hands of an attorney for collection after default.

The installments of principal and interest falling due from and after April 30, 2004, have not been paid, thereby placing the Defendant in default under the terms of the promissory note and mortgage. Although demand for payment thereof has been made, the Defendant has failed to cure the default.

Plaintiff submits an Affidavit of Indebtedness (attached hereto and incorporated herein as Exhibit "C"). Plaintiff's Affidavit clearly establishes the breach of the promissory note and mortgage, and the amount and measures of damages sustained by Plaintiff as a result of the Defendant's breach. Further, Plaintiff is entitled to recover from the Defendant reasonable attorney's fees and court costs incurred in bringing this action, and as evidence of the costs expended by Plaintiff in this action, Plaintiff submits an Affidavit of Attorney's Fees and Costs to the court (attached hereto and incorporated herein as Exhibit "D").

With copies of the applicable loan documents before the court and attached and incorporated by reference in *Plaintiff's Return and Brief in Opposition to Defendant Lowery's Motion for Summary Judgment as to Plaintiff's Claims* filed on April 23, 2021, together with Plaintiff's Affidavits attached hereto and incorporated herein as Exhibits "B" and "C", the essential elements and facts of Plaintiff's cause of action for foreclosure have been established. See *U.S. Bank Trust Nat. Ass'n v. Bell*, 385 S.C. 364, 374-75, 684 S.E.2d 199, 205 (Ct. App. 2009). As such, there are no material issues of fact and summary judgment for foreclosure is appropriate as to the following property:

> All that certain piece, parcel or lot of land lying and being in the State of South Carolina, County of Spartanburg, being designated as 5.00 acres, more or less, and shown on a plat made by Austin A. Lowery, by Joe E. Mitchell, dated December 12, 1998, and filed in Plat Book 143 at Page 468. Also shown on an updated plat filed on September 13, 2019, in Plat Book 176 at Page 399.

This being a portion of the property conveyed to Austin A. Lowery by deed of Joseph Ulmer, II dated May 24, 1996, and recorded June 3, 1996, in Book 64-H at Page 146 in the Register of Deeds Office for Spartanburg County.

TMS#: 4 43-00 029.00 (portion of)

Property address: 1605 Stewart Road
Woodruff, SC 29388

CONCLUSION

For all these reasons, and in the interests of judicial economy, this court should grant Plaintiff's motion for summary judgment as to the Defendant's affirmative defense of unconscionability and as to its action for foreclosure. Additionally, as to Plaintiff's action for foreclosure, Plaintiff further requests the court hold a limited foreclosure hearing with the Defendant serving Plaintiff with the amount and support for his claim of set off for the attorney-preference statute prior to the hearing. In the alternative, Plaintiff moves this court to permit it to withdraw its waiver of a deficiency judgment due to the increased costs, attorney's fees and delay.

Respectfully submitted,

TOBIAS G. WARD, JR., PA

s/J. Derrick Jackson
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SCOTT AND CORLEY, P.A.

s/Reginald P. Corley
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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust, PLAINTIFF, VS. Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually, and as Heir or Devisee of the Estate of Lisa D. Lowery a/k/a Lisa Marie Davis Lowery, Deceased; South Carolina Department of Revenue; The United States of America acting by and through its agency, Department of the Treasury - Internal Revenue Service; and Elizabeth A. Lowery, DEFENDANT(S).	IN THE COURT OF COMMON PLEAS CASE NO. 2019-CP-42-02270 **PLAINTIFF'S SUPPLEMENTAL INTERROGATORIES TO DEFENDANT AUSTIN A. LOWERY A/K/A AUSTIN LOWERY A/K/A AUSTIN ALLEN LOWERY A/K/A ALLEN LOWERY**

(211106.00040)

TO: ANDREW S. RADEKER, ATTORNEY FOR DEFENDANT AUSTIN A. LOWERY A/K/A AUSTIN LOWERY A/K/A AUSTIN ALLEN LOWERY A/K/A ALLEN LOWERY:

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, you are hereby required to answer the following Interrogatories within thirty (30) days.

INTERROGATORIES

1. If you contend that the Note and/or Mortgage are unconscionable for any reason, please explain in reasonable detail as to why.

2. If you contend that any specific provisions in the Note and/or Mortgage are unconscionable, please identify each provision and explain why the provision is unconscionable.

3. If you contend you are entitled to a set-off against the balance due on the Note, please explain the basis for the set-off and how it is calculated.

EXHIBIT "A"

4. If you contend you are due attorney's fees and/or costs, please explain the basis and the amount of attorney's fees and/or costs claimed.

5. If you contend you were prejudiced from the alleged absence of an attorney at closing, please explain how you were prejudiced and what, if anything you expected an attorney would do differently?

These Interrogatories shall be deemed continuing from the time of service until the time of the trial of the case.

SCOTT AND CORLEY, P.A.

s/ Reginald P. Corley

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October 05, 2021

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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust, PLAINTIFF, VS. Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually, and as Heir or Devisee of the Estate of Lisa D. Lowery a/k/a Lisa Marie Davis Lowery, Deceased; South Carolina Department of Revenue; The United States of America acting by and through its agency, Department of the Treasury - Internal Revenue Service; and Elizabeth A. Lowery, DEFENDANT(S).	IN THE COURT OF COMMON PLEAS CASE NO. 2019-CP-42-02270 **PLAINTIFF'S SUPPLEMENTAL REQUEST FOR PRODUCTION TO DEFENDANT AUSTIN A. LOWERY A/K/A AUSTIN LOWERY A/K/A AUSTIN ALLEN LOWERY A/K/A ALLEN LOWERY**

(211106.00040)

TO: ANDREW S. RADEKER, ATTORNEY FOR DEFENDANT AUSTIN A. LOWERY A/K/A AUSTIN LOWERY A/K/A AUSTIN ALLEN LOWERY A/K/A ALLEN LOWERY:

PLEASE TAKE NOTICE that Plaintiff, in the above-entitled action, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, hereby requests that Defendant produce the following documents for inspection and copying within thirty (30) days.

REQUEST FOR PRODUCTION

1. Please provide copies of any documents supporting any claims for costs or reasonable attorney's fees.
2. Please provide copies of any documents to be offered in evidence at trial.
3. Please provide copies of any documents which you contend support any alleged claim of unconscionability.

4. Please provide copies of any documents supporting efforts to refinance.

These Requests shall be deemed continuing from the time of service until the time of the trial of the case.

SCOTT AND CORLEY, P.A.

s/ Reginald P. Corley

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(211106.00040)

TO: ANDREW S. RADEKER, ATTORNEY FOR DEFENDANT AUSTIN A. LOWERY A/K/A AUSTIN LOWERY A/K/A AUSTIN ALLEN LOWERY A/K/A ALLEN LOWERY:

YOU ARE HEREBY REQUESTED, pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, to admit for the purposes of this pending action the truth of the following statements or opinions of fact or the application of law or fact, with your answers being stated separately under oath, within thirty (30) days after service of these requests. The matter is admitted unless, within thirty (30) days after service of the request, you serve upon the undersigned a written answer or objection at the office of Scott and Corley, P.A., 2712 Middleburg Drive, Suite 200, Columbia, SC 29204.

If an objection is made, the reasons therefore shall be stated. An answer shall specifically deny the matter, should a denial be made, or set forth in detail the reason(s) why you cannot truthfully admit or deny the matter. Any denial, whether in whole or in part, must fairly meet the substance of the request and, when good faith requires you to qualify your answer or only deny a part of the matter which is requested, you must admit so much of it as is true and qualify or deny the remainder in detail. You may not give lack of information or knowledge as a reason for a denial unless you have made reasonable inquiry and the information readily available to you is insufficient to enable you to admit or deny the request, and the same is to be expressly certified in your answer.

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These requests are deemed to continue from the time of service until the time of trial of the action pursuant to Rule 26 of the South Carolina Rules of Civil Procedure, and your responses to these requests must be supplemented should any further information sought come to your knowledge or the knowledge of your representative or attorney.

1. Admit or deny that the documents attached hereto and incorporated by reference as **Attachment A** is a true and accurate copy of the Loan Repayment and Security Agreement and Allonge to Notedated September 24, 2002 in connection with the loan that is the subject of this action.
2. Admit or deny that the document attached hereto and incorporated by reference as **Attachment B** is a true and accurate copy of the Mortgage dated September 30, 2002 and recorded in Book 2789 at Page 0575 in connection with the loan that is the subject of this action.
3. Admit or deny that the document attached hereto and incorporated by reference as **Attachment C** is a true and accurate copy of the HUD-1A Settlement Statement dated September 24, 2002 in connection with the loan that is the subject of this action.
4. Admit or deny that the document attached hereto and incorporated by reference as **Attachment D** is a true and accurate copy of the Release of Mortgage dated January 4, 2019 and recorded in Mortgage Book 5558 at Page 0222 on January 11, 2019 in connection with the loan that is the subject of this action.
5. Admit or deny that the document attached hereto and incorporated by reference as **Attachment E** is a true and accurate copy of the Mortgage to SunTrust Mortgage, Inc. dated April 26, 2002 and recorded in Mortgage Book 2699 at Page 269 on May 03, 2002.
6. Admit or deny that the disbursements shown on the Hud-1A Settlement Statement (Attachment C) are true and accurate.
7. Admit or deny that the SunTrust Mortgage, Inc. Mortgage (Attachment E) was a Construction loan and was paid off as part of the proceeds from the September 24, 2002 Note.
8. Admit or Deny that you are in default under the terms of the Plaintiff's Note and Mortgage for failing to make the payments when due.
9. Admit or Deny that you could have sought a loan elsewhere from another lender.
10. Admit or Deny that there are no terms in the Plaintiff's Note or Mortgage which are so oppressive no reasonable person would make them.

Should any of the above Requests for Admissions be denied by you, please state with particularity the reason for said denial.

SCOTT AND CORLEY, P.A.

s/ Reginald P. Corley

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RTR

HSBC RECORDS TO CAPTURE CENTER IMAGE REQUEST FORM

*Mail Team - Deliver to Capture Speciality Team In Bin

PLEASE COMPLETE FORM WITH ALL NECESSARY INFORMATION
FAILURE TO DO SO WILL RESULT IN A DELAY IN YOUR REQUEST OR ITEMS MAY NOT BE PICKED UP

Dept/Team: Record Admin/Reg FCL
Name: Christina Bland / Kordeckl's Team
Date: 1-13-17
Extension: x48518

Priority (Check one)*
- [x] Same Day
- [ ] Next Day
- [ ] No Priority

Please check one*:
- [x] Needs to be imaged in IAW (loan not on image)
- [ ] Imaged incorrectly; Specify error: _____

Please check one*:
- [ ] Store documents according to the Retention Policy
- [ ] Keep documents for 5 business days and then destroy documents
- [ ] Destroy documents immediately
- [x] Return originals to team
- [ ] Other _____

RECEIVED
JAN 18 2017
PREP TEAM
BRANDON, FL

Comments/Other:
ACCT #: [redacted] - Lowery

NAME:
Document Type: Original Note RMG AOM Title Policy
Population: "A" [illegible]

For Capture Center Use Only
Date picked up_____ Initials_____
Date Imaged_____ Initials_____
Date Returned_____ Initials_____

NT

RESTRICTED

EXHIBIT A

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LOAN REPAYMENT AND SECURITY AGREEMENT (Page 1 of 3)

LENDER (called "We", "Us", "Our")

HOUSEHOLD FINANCE CORPORATION II
150 E. BLACKSTOCK RD
STE. E BLKSTOCK PLAZA
SPARTANBURG SC 29301

BORROWERS (called "You", "Your") LOAN NO: [redacted]

LOWERY, ALLEN
SS# [redacted]
LOWERY, LISA D
SS# [redacted]
1805 STEWART RD
WOODRUFF SC 29388

DATE OF LOAN	FIRST PAYMENT DUE DATE	OTHERS	SCHEDULED MATURITY DATE	CONTRACT RATE (per year)
09/24/2002	10/24/2002	SAME DAY OF EACH MONTH	09/24/2032	10.634 %

AMOUNT FINANCED	PRINCIPAL	POINTS
$ 281,997.68	$ 304,040.62	$ 22,042.94

LIFE INS PREMIUM	DISABILITY INS PREMIUM	RELI INS PREMIUM
$ NONE	$ NONE	$ NONE

FIRST INSTALLMENT	MONTHLY INSTALLMENT	TERM PERIOD
$ 2,788.98	$ 2,788.98	360

YOU ARE GIVING US A SECURITY INTEREST IN THE REAL ESTATE LOCATED AT THE ABOVE ADDRESS.

REQUIRED INSURANCE. You must obtain insurance for term of loan covering security for this loan as indicated by the word "YES" below, naming us as Loss Payee:

YES Title insurance on real estate security.
YES Hazard insurance on real estate security.

You may obtain any required insurance from anyone you choose and may assign any other policy of insurance you own to cover the security for this loan.
(See "Security" paragraph above for description of security to be insured.)

NOTICE: THE FOLLOWING PAGES CONTAIN ADDITIONAL CONTRACT TERMS.

07-22-02 RE SI
1ST MTG NO PPP

[redacted]

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LOAN REPAYMENT AND SECURITY AGREEMENT (Page 2 of 3)

PAYMENT. In return for your loan described below, you agree to pay us, the Principal and Interest computed at the Contract Rate (as stated on page one) and any monthly insurance premium, if elected. Principal is Amount Financed, plus Points. You shall pay us monthly payments, at our business address or other address given you. If more than one Borrower is named on page one, we may enforce this Contract against all, or any Borrowers, but not in a combined amount greater than the amount owed. Payments are applied in the following order: late charges, interest at the Contract Rate for the actual time outstanding, principal, and insurance. For any past due amounts, payments will be applied to the most delinquent monthly installment first, in the same order shown above, until all past due monthly installments are paid in full.

DATE ON WHICH INTEREST BEGINS. If you do not cancel this loan, the date on which Interest begins, payment dates, and effective date of insurance purchased are postponed by the number of days from this contract's date to date you receive this loan.

ADJUSTMENT TO CONTRACT RATE. The Contract Rate, as shown on page one, will decrease by one half of one percent (.50%) at the end of the 3rd year (36th month), the 4th year (48th month) and the 5th year (60th month) (collectively the "Rate Reduction"), if all payments are made within 30 days of their due date, and you have not filed a petition under the U.S. Bankruptcy Code during the months preceding the Rate Reduction. The Rate Reduction will take effect no later than the first payment due date following the 36th, 48th, and 60th month anniversary dates from the date of the contract. Even if the rate is decreased, the monthly payment will not be adjusted, thus the total loan amount will be paid in full sooner than the final payment due date shown on page one, assuming all payments are made on their due date. Notwithstanding anything to the contrary in this paragraph, if, before any Rate Reduction, any payment is made more than 30 days after the due date, or you have filed a petition under the U.S. Bankruptcy Code, you will not receive the Rate Reduction following such event.

PAY-OUTS. You agree to pay-outs of Amount Financed as shown on Truth-In-Lending disclosure form. If pay-outs change because loan closing is delayed, (a) you shall pay additional amounts due at closing, or (b) your cash or check will be reduced to cover additional pay-outs.

PREPAYMENT. You may prepay any or all of your loan at any time. If you fully prepay before final due date, the amount you owe will be reduced by unearned credit insurance charges, if any. The points are nonrefundable and fully earned when the loan is made.

LATE CHARGE. We will charge you a Late Charge if you do not pay any payment in full within 10 days after the due date. The Late Charge is equal to 5% of the unpaid monthly payment, up to a maximum of $14.00. The minimum Late Charge is $5.40.

BAD CHECK CHARGE. If you pay by a check which is returned for any reason, you will pay a bad check charge of $25.00.

FAILURE TO PAY. If you don't pay on time, or if permitted in the event of default under the Real Estate Mortgage, (1) we will notify you of your right to bring your account up to date, and (2) if your account is not brought up to date in 20 days, we may sue you for the total amount you owe. If the Amount Financed stated on page one is over $2,800 (or such higher amount as set by the Department of Consumer Affairs' Rules), you will also pay our reasonable attorney fees (not over 15% of amount owed), if the attorney is not our salaried employee.

SECURITY. You agree to give us a security interest in the real estate as described in the Mortgage/Deed of Trust.

PROPERTY INSURANCE:

A. YOUR OBLIGATION TO INSURE. You shall keep the structures located on the real property securing this loan insured against damage caused by fire and other physical hazards, name us as a loss payee and deliver to us a loss payable endorsement. If insurance covering the real property is cancelled or expires while the loan is outstanding and you do not reinstate the coverage, we may obtain, at our option, hazard insurance coverage protecting our interest in the real property as outlined below.

B. LENDER'S RIGHT TO PLACE HAZARD INSURANCE. You authorize us, at our option, to obtain coverage on the Property in an amount not greater than the outstanding balance of principal and interest on the loan or, if known to be less, the replacement value of the Property, in the event that you fail to maintain the required hazard insurance outlined above or fail to provide adequate proof of its existence. You authorize us to charge you for the costs of this insurance and add the insurance charges to your loan. The Insurance charges will be added to the unpaid balance of the loan which accrues interest at the Contract Rate. The addition of the insurance charges due might increase the amount of your final

NOTICE: THE FOLLOWING PAGE CONTAINS ADDITIONAL CONTRACT TERMS.

07-22-02 RE SI
1ST MTG NO PPP

[redacted]

[redacted]

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installment. The cost of Lender placed hazard insurance might be higher than the cost of standard insurance protecting the property. The Lender placed insurance will not insure the contents of the property or provide liability coverage. The insurance might not be the lowest cost coverage of its type available and you agree that we have no obligation to obtain the lowest cost coverage. We or an affiliated company might receive some benefit from the placement of this insurance and you will be charged for the full cost of the premium without reduction for any such benefit. If at any time after we have obtained this insurance, you provide adequate proof that you have subsequently purchased the required coverage, we will cancel the coverage we obtained and credit any unearned premiums to your loan.

CREDIT REPORTING AND CUSTOMER INFORMATION PRACTICES. If you fail to fulfill the terms of your credit obligation, a negative report reflecting on your credit record may be submitted to a Credit Reporting Agency. You agree that the Department of Motor Vehicles (or your state's equivalent of such department) may release your residence address to us, should it become necessary to locate you. You agree that our supervisory personnel may listen to telephone calls between you and our representatives in order to evaluate the quality of our service to you. For more information regarding our privacy practices, please refer to our Privacy Statement, which is included with your loan documents.

INSURANCE. Optional credit insurance and any required insurance disclosures are attached to this Agreement and are incorporated herein by reference.

ALTERNATIVE DISPUTE RESOLUTION AND OTHER RIDERS. The terms of the Arbitration Agreement and any other Riders signed as part of this loan transaction are incorporated into this Agreement by reference.

APPLICABLE LAW. This loan is governed by the South Carolina Consumer Protection Code S.S. CODE ANN. Sections 37-1-101, et. seq.

YOU HAVE RECEIVED A COMPLETE COPY OF THIS AGREEMENT AND THE TRUTH-IN-LENDING DISCLOSURES.

BORROWERS:

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

WITNESS:

_____

07-22-02 RE SI
1ST MTG NO PPP

SCB65283

ALLONGE TO NOTE

Service #:	[redacted]
Control Number:	[redacted]
Allonge to Note Dated:	**9/24/02**
And Executed by:	**ALLEN LOWERY AND LISA D LOWERY**
County of:	**SPARTANBURG**
Property Address:	**1605 STEWART RD, WOODRUFF, SC 29388-0000**
Loan Amount:	**$304,040.62**
Pay to the order of:	**U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF10 MASTER PARTICIPATION TRUST**
Without recourse:	**HOUSEHOLD FINANCE CORPORATION II, BY CALIBER HOME LOANS, INC., AS ATTORNEY IN FACT**
By:	Brandi Coulter
Title:	**Authorized Signatory**

Prepared By: ANTHONY LOZADA - CALIBER

CAALNG

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REM 2789 PAGE 575

MORTGAGE

[redacted]

☐ If box is checked, this mortgage secures future advances.

THIS MORTGAGE is made this 30TH day of SEPTEMBER 20 02, between the Mortgagor, AUSTIN A. LOWERY, NOT STATED

(herein "Borrower"), and Mortgagee HOUSEHOLD FINANCE CORPORATION II a corporation organized and existing under the laws of DELAWARE whose address is 150 E. BLACKSTOCK RD, STE. E BLKSTOCK PLAZA, SPARTANBURG, SC 29301 (herein "Lender").

The following paragraph preceded by a checked box is applicable.

☒ WHEREAS, Borrower is indebted to Lender in the principal sum of $ 304,040.62, evidenced by Borrower's Loan Agreement dated SEPTEMBER 30, 2002 and any extensions or renewals thereof (including those pursuant to any Renegotiable Rate Agreement) (herein "Note"), providing for monthly installments of principal and interest, (including any adjustments in the amount of payments or the contract rate if that rate is variable), with the balance of the indebtedness, if not sooner paid, due and payable on SEPTEMBER 30, 2032;

☐ WHEREAS, Borrower is indebted to Lender in the principal sum of $ _____, or so much thereof as may be advanced pursuant to Borrower's Revolving Loan Agreement dated _____ and extensions and renewals thereof (herein "Note"), providing for monthly installments, and interest at the rate and under the terms specified in the Note, including any adjustments in the interest rate if that rate is variable, and providing for a credit limit stated in the principal sum above and an initial advance of $ _____;

TO SECURE to Lender the repayment of (1) the indebtedness evidenced by the Note, with interest thereon, including any increases if the contract rate is variable; (2) future advances under any Revolving Loan Agreement; (3) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and (4) the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns the following described property located in the County of SPARTANBURG State of South Carolina:

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND LYING AND BEING IN THE STATE OF SOUTH CAROLINA, COUNTY OF SPARTANBURG, BEING DESIGNATED AS 5.00 ACRES, MORE OR LESS, AND SHOWNO N A PLAT MADE FOR AUSTIN A. LOWERY, BY JOE E MITCHELL, DATED 5/22/1999, AND FILLED IN OPLAT BOOK 143, AT PAGE 468.

BEING A PROPERTY OF THAT PROPERTY CONVEYED FORM JOSEPH E ULMER, II TO AUSTIN A. LOWERY BY DEED RECORDED 07/03/96, IN BOOK 64-H, AT PAGE 145, IN THE REGISTER'S OFFICE OF SPARTANBURG COUNTY, SOUTH CAROLINA.

TAX MAP OR PARCEL (NO.): 4-49-10-029-.00

$ 81.00 6200000022 30811

RECORDED
02 OCT -4 PM 1:19
RMC
SPARTANBURG, S.C.

EXHIBIT B

04-16-02 MTB [redacted] SC681251

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TO HAVE AND TO HOLD such property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water rights and stock and all fixtures now or hereafter a part of the property. All replacements and additions shall be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, 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 and Interest. Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note, including any variations resulting from changes in the Contract Rate.

2. Funds for Taxes and Insurance. Subject to applicable law and only if requested in writing by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") equal to one-twelfth of: (a) yearly taxes and assessments which may attain priority over this Security Instrument; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard insurance premiums; and (d) yearly mortgage insurance premiums, if any. These items are called "escrow items." Lender may estimate the Funds due on the basis of current data and reasonable estimates of future escrow items.

The Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay the escrow items. Lender may not charge for holding and applying the Funds, analyzing the account or verifying the escrow items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing that interest shall be paid on the Funds. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Security Instrument.

If the amount of the Funds held by Lender, together with the future monthly payments of Funds payable prior to the due dates of the escrow items, shall exceed the amount required to pay the escrow items when due, the excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly payments of Funds. If the amount of the Funds held by Lender is not sufficient to pay the escrow items when due, Borrower shall pay to Lender any amount necessary to make up the deficiency in one or more payments as required by Lender.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender. If under paragraph 18 the Property is sold or acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Security Instrument.

3. Application of Payments. Unless applicable law or the Note provide otherwise, all payments received by Lender under paragraphs 1 and 2 shall be applied: first, to amounts payable under paragraph 2; second, to interest due; and last to the principal due.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations in the manner provided in paragraph 2, or if not paid in that manner, Borrower shall pay them on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

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; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien or forfeiture of any part of the property; 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 may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

5. Hazard 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 for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that the Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. 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, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is not economically feasible and Lender's security would be lessened. 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 any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

[redacted]

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Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of the payments. If under paragraph 18 the Property is acquired by Lender, Borrower's rights to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

6. Preservation and Maintenance of Property; Leaseholds. Borrower shall not destroy, damage or substantially change the Property, allow the Property to deteriorate or commit waste. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease, and if Borrower acquires fee title to the Property, the leasehold and fee title shall not merge unless Lender agrees to the merger in writing.

7. Protection of Lender's Rights in the Property; Mortgage Insurance. If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorney's fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 7, Lender does not have to do so.

Any amounts disbursed by Lender under this paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

If Lender required mortgage insurance as a condition of making the loan secured by this Security Instrument, Borrower shall pay the premiums required to maintain the insurance in effect until such time as the requirement for the insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

8. Inspection. Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

9. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or 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 proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of such payments.

10. 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 any successor in interest of Borrower shall not operate to release the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor or 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 Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

11. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 16. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. Any Borrower who co-signs this Security Instrument, but does not execute the Note, (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower'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 may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

12. Loan Charges. If the loan secured by this Security Instrument 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 under the Note.

13. Legislation Affecting Lender's Rights. If enactment or expiration of applicable laws has the effect of rendering any provision of the Note or this Security Instrument unenforceable according to its terms, Lender, at its option, may require immediate payment in full of all sums secured by this Security Instrument and may invoke any remedies permitted by paragraph 18. If Lender exercises this option, Lender shall take the steps specified in the second paragraph of paragraph 16.

14. Notices. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Borrower's address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

[redacted]

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15. Governing Law; Severability. The applicable law contained in the Note shall control. Where no applicable law is contained therein, this Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provisions 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. To this end the provisions of this Security Instrument and the Note are declared to be severable.

16. Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

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 delivered or mailed within which Borrower may 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 by this Security Instrument without further notice or demand on Borrower.

17. Borrower's Right to Reinstate. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) 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 had no acceleration 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; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrower's obligations to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the 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 paragraphs 13 or 16.

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

18. 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 paragraphs 13 and 16 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 paragraph 18, including, but not limited to, reasonable attorney's fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

19. Lender in Possession. Upon acceleration under paragraph 18 or abandonment of the Property, Lender (by judicially appointed receiver) shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. Any rents collected by lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Security Instrument.

20. 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 without charge to Borrower. Borrower shall pay any recordation costs.

21. Waivers. Borrower waives all rights of homestead exemption in the property. Borrower waives the right to assert any statute providing appraisal rights which may reduce any deficiency judgment obtained by Lender against Borrower in the event of foreclosure under this Security Instrument.

22. 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 one hundred fifty percent (150%) of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

23. Arbitration Rider to Note. The Arbitration Rider attached to and made a part of the Note is hereby incorporated by reference and made a part of this Mortgage.

04-16-02 MTG

[redacted]

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REQUEST FOR NOTICE OF DEFAULT
AND FORECLOSURE UNDER SUPERIOR
MORTGAGES OR DEEDS OF TRUST

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Mortgage to give Notice to Lender, at Lender's address set forth on page one of this Mortgage, of any default under the superior encumbrance and of any sale or other foreclosure action.

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

Signed, sealed and delivered in the presence of:

_____ -Witness (Seal) -Borrower

_____ -Witness (Seal) -Borrower

ACKNOWLEDGEMENT OF WITNESS

STATE OF SOUTH CAROLINA, Spartanburg County ss:

Before me personally appeared Phil Hembree and made oath that he saw the within named Borrower sign, seal, and as his act and deed, deliver the within written Mortgage; and that he/she with the other witness subscribed above witnessed the execution thereof.

Sworn before me this 30th day of September, 20 02.

_____ (Seal) Notary Public for South Carolina

_____ Witness

My Commission Expires: 5/15/12

JASON A. GEESEY NOTARY PUBLIC SOUTH CAROLINA

(Space Below This Line For Recorder Data)

Return To:
Records Processing Services
577 Lamont Road
Elmhurst, IL 60126

84-15-02 MTG

[redacted]

SC001256

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HUD 1A SETTLEMENT STATEMENT

Customer Name: LOWERY, ALLEN

Account Number: [redacted]

Place the HUD 1A Settlement Statement behind this form.

EXHIBIT C

[redacted]

10-01-99 HUD 1A

SSH6981

[redacted]

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SETTLEMENT STATEMENT
(Page 1 of 2)

NOTICE REGARDING LOAN SETTLEMENT STATEMENT AND LOAN VOUCHER OR TRUTH IN LENDING DISCLOSURE

The actual disbursement amounts, as stated on this Settlement Statement and the Truth in Lending Disclosure given at the time of funding, may reflect changes due to updated payoff figures or the subsequent voluntary purchase of ancillary products provided at the time of funding.

The following statement is only applicable for North Carolina closed-end second mortgages up to $25,000: "The loan is regulated by the provisions of Chapter 24, Article 2 of the General Statutes of North Carolina entitled 'Loans Secured by Secondary or Junior Mortgages'."

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Settlement Statement
Optional Form for
Transactions without Sellers

U.S. Department of Housing and Urban Development (Page 2 of 2)

Name and Address of Borrower:	Name and Address of Lender:
ALLEN LOWERY LISA D LOWERY 1685 STEWART RD WOODRUFF, SC29388	HOUSEHOLD FINANCE CORPORATION II 189 S. BLACKSTOCK RD STE. B BLACKSTOCK PLAZA SPARTANBURG, SC
Property Location (if different than above):	Settlement Agent: (●) Lender ( ) Other Place of Settlement: SPARTANBURG, SC
Loan Number: [redacted]	Settlement Date: 09/24/2002

L. SETTLEMENT CHARGES				K. DISBURSEMENT TO OTHERS	
800. ITEMS PAYABLE IN CONNECTION WITH LOAN:				1501. HFC 81630109 45284	9,866.25
801. Loan Origination Fee/Points ("Closing Costs"):	%			1502. BK OF TRAV	8713.40 2,881.20
802. Loan Discount Fee/Points:	7.25 %		22,042.94		
803. Appraisal Fee To: I.R.E. PROCESSING			350.00	1503. COMMUNITY SUPPL	2508.82
804. Credit Report To:				1504. GECF/SOUTH	11,087.45
805. Inspection Fee To:				1505.	
806. Mortgage Insurance Application Fee To:				1506. KENS INCOME	6,010.30
807. Mortgage Broker Fee To:				1507. BOBBIN'S BUICK	521.14
808. Document Preparation Fee				1508. SEARS	1,271.09
809. Application Fee	%			1509. SUNTRUST	213,448.79
810. Flood Certification				1510. THEO BROTHERS	13,200.00
811.				1511. ZUPAN & SMITH	8,321.78
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE:				1512.	
901. Interest From To @ $ Per Day				1513.	
902. Mortgage Insurance Premium For Months To				1514.	
903. Hazard Insurance Premium For Year(s) To				1515.	
904.				1516.	
1000. RESERVES DEPOSITED WITH LENDER:				1517.	
1001. Hazard Insurance	Months @ $	Per Month		1518.	
1002. Mortgage Insurance	Months @ $	Per Month		1519.	
1003. City Property Taxes	Months @ $	Per Month		1520. TOTAL DISBURSED (Enter On Line 1603)	258,505.83
1004. County Property Taxes	Months @ $	Per Month			
1005. Annual Assessments	Months @ $	Per Month			
1006.	Months @ $	Per Month			
1007.	Months @ $	Per Month			
1008.	Months @ $	Per Month			
1100. TITLE CHARGES:					
1101. Settlement Or Closing Fee ("Escrow Fee") To:					
1102. Abstract Or Title Search To: I.R.E. PROCESSING			250.00		
1103. Title Examination To:					
1104. Title Insurance Binder To:					
1105. Document Preparation To:					
1106. Notary Fees To:					
1107. Attorney's Fees To: (Includes Above Item Numbers:)					
1108. Title Insurance To: I.R.E. PROCESSING (Includes Above Item Numbers:)			633.79		
1109. Lender's Coverage $					
1110. Owner's Coverage $					
1111.					
1112.					
1113.					
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES:					
1201. Recording Fees: Mortgage/Deed of Trust $		Release $	0.00		
1202. City/County Tax/Stamps: $					
1203. State Tax/Stamps $			6.80		
1204.					
1205.					
1300. ADDITIONAL SETTLEMENT CHARGES:					
1301. Survey To:					
1302. Pest Inspection To:					
1303. Architectural/Engineering Services To:					
1304. Building Permit To:					
1305.					
1306.					
1307.					
1400. TOTAL SETTLEMENT CHARGES (Enter On Line 1603)			23,233.53		

L. NET SETTLEMENT	
1600. LOAN AMOUNT Plus Initial Advance (before line 1400) Or Principal Loan Amount	284,040.53
1601. Plus Cash/Check From Borrower	
1602. Minus Total Disbursement (Line 1520)	233,236.89
1603. Minus Total Disbursement To Others (Line 1520)	258,505.83
1604. Equals Disbursement To Borrower (After Expiration Of Any Applicable Rescission Period Required By Law)	[illegible]

Borrower's Signature
Date: Signed from

Borrower's Signature
Date: September 24, 2002

Lender:

09-01-99 HUD - 1A SETTLEMENT STATEMENT - A

95431742

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MTG-2019-1650

MTG BK 5558 PG 222-223
Recorded 2 Pages on 01/11/2019 02:04:42 PM
Recording Fee: $7.00
Office of REGISTER OF DEEDS, SPARTANBURG, S.C.
Dorothy Earle, Register Of Deeds

DOCUMENTS PREPARED BY:
SCOTT AND CORLEY, P.A.
2712 MIDDLEBURG DR., STE 200
COLUMBIA, SC 29204

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

RELEASE OF MORTGAGE
Mortgage/Record Book 2782 at Page 874

KNOW ALL MEN that **U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust**, owner of the Mortgage hereinafter referred to, for and in consideration of good and valuable consideration, receipt of which is hereby acknowledged, does forever discharge and release that certain tract of land described as follows, to wit:

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Spartanburg, State of South Carolina, Southeast of Woodruff, on the southeast side of S-42-448, containing 53.73 acres, more or less, and being fully shown as Lot 3 of the M.C. Hill Estate on a plat prepared by E. Mitchell, RLS dated 5/22/96 and recorded in Plat Book 134 at Page 9 in the office of the RMC for Spartanburg County.

Being the same property conveyed from Joseph E. Ulmer, II to Austin A. Lowery by deed recorded 6/3/96 in Book 64-H at Page 146 in the Register's Office of Spartanburg County, South Carolina.

TMS No. 4-43-00-029.00

Property Address: 1605 Stewart Road, Woodruff, SC 29388

from all claims and liens under that certain Mortgage dated **September 24, 2002** from **Austin A. Lowery**, recorded in the office of the ROD/RMC/Clerk of Court for **Spartanburg** County on **September 26, 2002**, in Mortgage/Record **Book 2782 at Page 874** and assigned to **U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust** by assignment dated **June 26, 2018** and recorded **July 3, 2018** in **Book 5469 at Page 795.**

IN ALL OTHER RESPECTS, the aforesaid Mortgage shall remain in full force and effect.

171121.00152

EXHIBIT D

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IN WITNESS WHEREOF, **U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust**, by its duly authorized officer, agent has its hand and seal this 4 day of January, 2019.

Witness #1 Steven Ellison

Witness #2 – Notary Rita Font

U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust ~~as its~~ AIF attorney in fact by Caliber Home Loans, its

By: _____

Print Name: David Lopez

Its: Authorized Signatory

STATE OF Texas

COUNTY OF Dallas

ACKNOWLEDGMENT
S.C. § 30-5-30
(Effective January 1, 1995)

I, a Notary Public for the State of Texas, do hereby certify that **U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust** by its duly authorized agent, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

SWORN to before me this 4 day of January, 2019.

JIMIL DEMOND BETTS
Notary ID #125383529
My Commission Expires
August 27, 2021

Notary Public
Print Name: Jimil D Betts
My Commission Expires: August 27, 2021

171121.00152

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Return To:
SUNTRUST MORTGAGE, INC.
901 SEMMES AVENUE
RICHMOND, VIRGINIA 23224
ATTN: MTG 1904

RECORDED
02 MAY -3 PM 3:24
R.M.C.
SPARTANBURG, S.C.

Prepared By:

FMSC/C [redacted]

(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 APRIL 26, 2002, together with all Riders to this document.
(B) "Borrower" is
AUSTIN ALLEN LOWERY

Borrower is the mortgagor under this Security Instrument.
(C) "Lender" is SUNTRUST MORTGAGE, INC.

Lender is a CORPORATION
organized and existing under the laws of THE COMMONWEALTH OF VIRGINIA

111RMC 439 5030287775 422.00

EXHIBIT E

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FSC2/[redacted]

Lender's address is 901 SEMMES AVENUE, RICHMOND, VA 23224

Lender is the mortgagee under this Security Instrument.
(D) "Note" means the promissory note signed by Borrower and dated APRIL 26, 2002
The Note states that Borrower owes Lender TWO HUNDRED TEN THOUSAND AND 00/100 Dollars
(U.S. $ 210,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than APRIL 01, 2032 .
(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
(F) "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.
(G) "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	☐ 1-4 Family Rider
☐ VA Rider	☐ Biweekly Payment Rider	☐ Other(s) [specify]

(H) "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.
(I) "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.
(J) "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.
(K) "Escrow Items" means those items that are described in Section 3.
(L) "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.
(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.
(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

Initials: [redacted]

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FSC3/ [redacted]

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

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the 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 Lender and Lender's successors and assigns, the following described property located in the COUNTY [Type of Recording Jurisdiction] of SPARTANBURG [Name of Recording Jurisdiction]:

SEE ATTACH SCHEDULE A

Parcel ID Number: which currently has the address of
1601 STEWART ROAD [Street]
WOODRUFF [City], South Carolina 29388 [Zip Code]
("Property Address"):

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, 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 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

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

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

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

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

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.

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Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

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

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

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

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

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in

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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

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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

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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. 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

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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

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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

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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.

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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

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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.

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F14S/[redacted]

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 Section 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:

_____ (Seal)
-Borrower
AUSTIN ALLEN LOWERY

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

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STATE OF SOUTH CAROLINA,
County of Greenville

Personally appeared before me the undersigned witness and made oath that he/she saw the within named Borrower sign, seal and as his/her/their act and deed, deliver the within written Mortgage; and that he/she with the other witness, witnessed the execution thereof.

Sworn to before me this 26th day of April, 2002

My Commission Expires: 2/24/2008

(Seal)

Notary Public for South Carolina

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COMMITMENT NO.: G9133

SCHEDULE A
LEGAL DESCRIPTION

All that certain piece, parcel or lot of land, lying and being in State of South Carolina, County Spartanburg, being designated as 5.00 acres, more or less and shown on a plat made for Aust A. Lowery, by Joe E. Mitchell, dated May 22, 1996, and filed in Plat Book 143, at Page 468. F a more accurate description, refer to the above referenced plat.

Being a portion of the same property conveyed to Austin A. Lowery by deed from Joseph Ulmer, II, dated 5/24/96, recorded 6/3/96, in Book 64H, at Page 146, in the Official Records f Spartanburg County.

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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust, PLAINTIFF, VS. Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually, and as Heir or Devisee of the Estate of Lisa D. Lowery a/k/a Lisa Marie Davis Lowery, Deceased; South Carolina Department of Revenue; The United States of America acting by and through its agency, Department of the Treasury - Internal Revenue Service; and Elizabeth A. Lowery, DEFENDANT(S).	IN THE COURT OF COMMON PLEAS CASE NO. 2019-CP-42-02270 CERTIFICATE OF SERVICE BY MAIL

(211106.00040)

The undersigned hereby certifies that she is an employee of Scott and Corley, P.A. and is a person of such age and discretion as to be competent to serve papers and that on October 05, 2021, she mailed a copy of Plaintiff's Supplemental Interrogatories, Supplemental Request for Production, and Supplemental Requests for Admissions to Andrew S. Radeker, Esq., Attorney for Defendant Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at the Scott and Corley, P.A. office, 2712 Middleburg Drive, Suite 200, Columbia, SC 29204.

Addressee:

Andrew S. Radeker, Esq.
Post Office Box 50143
Columbia, SC 29250

Rene Bell-Welch, Paralegal
SCOTT AND CORLEY, P.A.
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
803-252-3340

EXHIBIT "B"

ELECTRONICALLY FILED - 2021 Dec 21 11:03 AM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust, PLAINTIFF, VS. Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually, and as Heir or Devisee of the Estate of Lisa D. Lowery a/k/a Lisa Marie Davis Lowery, Deceased; South Carolina Department of Revenue; The United States of America acting by and through its agency, Department of the Treasury - Internal Revenue Service; and Elizabeth A. Lowery, DEFENDANT(S).	IN THE COURT OF COMMON PLEAS CASE NO. 2019-CP-42-02270 **AFFIDAVIT OF INDEBTEDNESS**

(211106.00040)

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I am employed as a Assistant Secretary of Fay Servicing, LLC, and am authorized to make this affidavit on behalf of U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust. I make this affidavit based on personal knowledge of the facts contained herein. My personal knowledge is based on my review of the Servicing Records described below. Fay Servicing, LLC is responsible for servicing this delinquent mortgage account and is authorized to make this affidavit as servicer of this loan.

2. In the regular performance of my job functions, I am familiar with the business records maintained by Fay Servicing, LLC. for the purpose of servicing mortgage loans, collecting payments and pursuing any delinquencies (the 'Servicing Records'). Fay Servicing, LLC's Servicing Records typically include electronic data compilations and imaged documents pertaining to the loans it services.

3. Based on my training and my general knowledge of the process by which they are created and maintained, Fay Servicing, LLC's Servicing Records were made at or near the time by, or from, information provided by, persons with knowledge of the activity and transactions reflected in such records, and are kept in the ordinary course of the business activity regularly conducted by Fay

EXHIBIT "C"

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Servicing, LLC. It is the regular practice of Fay Servicing, LLC's mortgage servicing business to make and update its Servicing Records.

4. My review of the Servicing Records reveals that on September 30, 2002, Austin A. Lowery (the 'Borrower') obtained a mortgage loan from Household Finance Corporation II and signed a promissory note (the 'Note') in the amount of Three Hundred Four Thousand Forty and 62/100 ($304,040.62) dollars, with interest accruing at 10.534% per annum, payable to Household Finance Corporation II, its successors and assigns. A true and accurate copy of the Note is attached and incorporated herein as **Exhibit A.**

5. In order to secure payment of the Note, the Borrower signed and delivered a Mortgage (the 'Mortgage') to Household Finance Corporation II dated September 30, 2002, encumbering the real property which is subject of this action and is commonly known as 1605 Stewart Road, Woodruff, SC 29388. The Mortgage was recorded with the Spartanburg County Register of Deeds on October 4, 2002 in Book 2789 at Page 575. A true and accurate copy of the Mortgage is attached and incorporated herein as **Exhibit B.**

6. Assigned to U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust by assignment instrument dated December 13, 2018 and recorded December 14, 2018 in Book 5547 at Page 516. A true and accurate copy of the Assignment is attached and incorporated herein as **Exhibit C.**

7. I have reviewed the business records of the Borrowers' Loan account and determined that there has been a default in payments required under the Note and Mortgage. I have attached and incorporated hereto a trued and accurate transaction history from the inception of the loan to present (the 'Payment History') that shows how payments were made and applied under the Note and Mortgage as **Exhibit D**. This transaction history shows that the subject Loan is in default since June 17, 2004.

8. My review of the Servicing Records reveals that, despite demand by Fay Servicing, LLC, the subject loan remains delinquent and the loan balance has been accelerated and the entire amount of the loan is due and payable.

9. My review of the Servicing Records reveals that, as of December 31, 2021, the amount of indebtedness is as follows, exclusive of attorney's fees and costs:

(1)	Principal Balance	$307,268.28
(2)	Interest Due from 05/17/2004 to 12/31/2021 at 7.98% per annum	$424,699.10
(3)	Escrow	$7,775.00
(4)	Paid Attorney Fees/Costs	$8,610.02
(5)	Broker's Price Opinion/Appraisals	$118.50

(6)	Property Inspections	$722.50
TOTAL		$749,193.40

The amount of damages is further evidenced by the previously referenced Payment History attached and incorporated as **Exhibit D**.

11. The Servicing Records further reveal that there has not been any extensions, modifications, or agreements between the parties to delay this foreclosure action.

12. As a result of the default on the loan, Plaintiff was forced to retain legal counsel to enforce the terms of the Note and Mortgage and has incurred attorneys' fees and costs.

This document further authorizes the Scott and Corley, P.A., or its associated counsel, to present loan documents into evidence in this proceeding and to also testify on behalf of the Plaintiff in the above foreclosure action as to matters related to their role as attorneys for the Plaintiff.

Fay Servicing, LLC as attorney in fact for U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust

By: _____ Damitria Anderson

Assistant Secretary

Subscribed and sworn to before me
this 16th day of December, 2021.

_____
Notary Public for Texas.
My commission expires: JAN 19 2025

MELISSA TELLEZ
Notary Public, State of Texas
Comm. Expires 01-19-2025
Notary ID 129715174

ELECTRONICALLY FILED - 2021 Dec 21 11:03 AM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

ELECTRONICALLY FILED - 2021 Dec 21 11:03 AM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust, PLAINTIFF, VS. Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually, and as Heir or Devisee of the Estate of Lisa D. Lowery a/k/a Lisa Marie Davis Lowery, Deceased; South Carolina Department of Revenue; The United States of America acting by and through its agency, Department of the Treasury - Internal Revenue Service; and Elizabeth A. Lowery, DEFENDANT(S).	IN THE COURT OF COMMON PLEAS CASE NO. 2019-CP-42-02270 **AFFIDAVIT OF ATTORNEY FEES AND COSTS**

(211106.00040)

PERSONALLY APPEARED BEFORE ME, the undersigned attorney, who, being first duly sworn, deposes and states that (s)he is a member of Scott and Corley, P.A.; that (s)he represents the plaintiff in the above-captioned foreclosure action; and that (s)he to the best of her/his knowledge, herein reports as follows:

The case law on the award of reasonable attorney fees indicates that this trial court must give consideration to only six (6) factors (none of the factors is controlling in the singular) as follows: (1) the nature, extent and difficulty of the legal service rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. *Taylor v. Medenica*, 331 S.C. 575, 503 S.E.2d 458 (1998); *Baron Data Systems v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (S.C. 1989). Moreover, our appellate courts have repeatedly held that any contract for attorney fees that may exist or exists between the lawyer and the client (in addition to not being one of the six (6) fee review factors) is specifically not binding on the trial court in its determination of the reasonableness of the attorney fee. *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750(1997); *Rice v. Multimedia, Inc.*, 318 S.C. 95, 456 S.E.2d 381 (1995); and *Williamson v. Middleton*, 374 S.C. 419, 649 S.E.2d 57 (Ct. App. 2007). Notwithstanding the foregoing case law on the award of reasonable attorney fees, Plaintiff's counsel does herein report that it is billing Plaintiff a minimum of $2,850.00 for all uncontested and routine matters as well as $14,282.50 in additional fees for time and

EXHIBIT "D"

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labor spent on the prosecution of this contested case, which includes services outside of the contemplated routine and services (relating to contested, complex, or difficult matters). Additionally, Plaintiff has incurred $3,164.56 in costs, to date, to prosecute this foreclosure action. With respect to attorney fees and in view of the potential financial liabilities and likely continuing professional obligations inherent in legally prosecuting a real property credit matter, the attendant professional duties and responsibilities, and the size of the mortgage debt, the Court can find that a reasonable attorney's fee in this matter would be $17,132.50 as said attorney fees are consistent with the customary fee in this locality for similar services. Total representation of Plaintiff's interests in this matter have been undertaken (including among many duties the researching of the referral file to serving as custodian of the loan documents to the filing of all pleadings and necessary documents with the court) by Scott and Corley, P.A.

Scott and Corley, P.A. was engaged by Plaintiff to foreclose the mortgage as expeditiously as possible, given the detriment to Plaintiff's equity position as a direct result of increasing losses from the accrual of interest and related adverse economic conditions such as depreciation or possible damage to the collateralized property. In the foregoing regard, counsel for Plaintiff has obtained a beneficial result. Plaintiff and its counsel must also comply with investor requirements, government or private insuring agreements or face monetary penalties and other loan servicing sanctions. Upon receipt of the case file, all parties having or claiming an interest in the subject real estate were identified, and the case file was further reviewed and researched for salient legal questions and issues. Various attorneys as well as experienced paralegal staff have been responsible for (and expended extensive professional time) in the preparation and/or review and analysis of the following pleadings and other documents:

1. Lis Pendens and any amendment thereto
2. Summons and Complaint and any amendment thereto
3. Affidavits and proposed Order of Publication
4. Affidavit of Default
5. Consent(s) to Order of Reference
6. Order of Reference
7. Notice of Hearing
8. Proposed Judgment of Foreclosure and Sale
9. Record of Hearing
10. Notice of Sale
11. Other documents as applicable pertaining to service and finalization of the action

Additionally, counsel for Plaintiff has been responsible for the preparation of all the pleadings and/or review and analysis of the pleadings as well as (1) the service upon each defendant personally or by statutory/substitute service; (2) obtaining reinstatement and payoff figures and payment histories as requested and/or required; and (3) scheduling and participating in the hearing(s) in this matter. More particularly and in the pending matter before the court, counsel for Plaintiff has engaged in legal research as well as filed and/or prepared for and/or argued other motions before the Circuit Court. All

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of the foregoing services satisfy the nature, extent and difficulty of the Legal Services rendered and also in compliance with the *Unauthorized Practice of Law* statutes and case law.

Future responsibilities include forwarding copies of the Decree to appearing defendants, obtaining bidding instructions from Plaintiff or its designee, representing Plaintiff at the sale or arranging for such representation, preparing an Order of Sale or Report on Sale and Disbursements and Order Confirming Sale, and preparing the Foreclosure Deed and any other documents necessary in this particular action.

In addition to the time expended to date in prosecution of this action (which includes attorney preparation, research, and travel roundtrip to this hearing), counsel anticipates expending several hours of professional time after the hearing. Moreover, depending upon the interest shown by defendants, third parties, or counsel for either and the inherent negotiations required thereby, other time may also be committed to the completion of the case. Jurisdiction over the fee award shall be reserved as granted in the Order of Reference with the right to re-visit the question of attorney fees should the action proceed in an unexpected way and/or to facilitate the assessment and payment of any such current or additional professional compensation.

SCOTT AND CORLEY, P.A.

By: _____

Ronald C. Scott (rons@scottandcorley.com), SC Bar #4996
Reginald P. Corley (reggiec@scottandcorley.com), SC Bar #69453
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ATTORNEYS FOR THE PLAINTIFF
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
803-252-3340

SWORN TO before me on this 20th day of December, 2021.

Jason B. Reynolds

Jason B. Reynolds (print name)

Notary Public for South Carolina
My Commission Expires: 8/11/2030

JASON B. REYNOLDS
My Commission Expires
NOTARY PUBLIC
08-11-2030
STATE OF SOUTH CAROLINA

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ELECTRONICALLY FILED - 2022 Mar 07 5:35 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

STATE OF SOUTH CAROLINA **COUNTY OF SPARTANBURG**	**IN THE COURT OF COMMON PLEAS** **CASE NO. 2019-CP-42-02270**
U.S. Bank Trust, N.A., as Trustee for LSF 10 Master Participation Trust, **Plaintiff,** **vs.** **Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, Lisa D. Lowery, South Carolina Department of Revenue, The United States of America acting by and through its agency, Department of the Treasury - Internal Revenue Service, and Elizabeth A. Lowery,** **Defendants.**	**DEFENDANT'S MOTION TO RECONSIDER FEBRUARY 23, 2022, ORDER**

YOU WILL PLEASE TAKE NOTICE that Defendant Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery (hereinafter "Defendant") moves before this court pursuant to Rules 52 and 59, SCRCP, for an order reconsidering, altering, amending, and/or clarifying the order filed February 23, 2022, that partially granted the Plaintiff's motion for summary judgment. The decision to grant summary judgment on liability should be undone. There are at least genuine issues of material fact as to each of Defendant's defenses.

Defendant so moves on the following grounds:

1. All arguments made at the hearing on the aforesaid motion and all the Defendant's filings in this action and argument therein are incorporated herein by reference as if here set forth verbatim.

2. The Defendant further notes the following:

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a. This action is barred by res judicata. The order that ended the previous foreclosure action operated as a dismissal that was not provided for under the South Carolina Rules of Civil Procedure (including one not provided for under Rules 40(j) or 41, SCRCP). As such, it was an adjudication on the merits, since Rule 41 states that "*any dismissal not provided for in this rule*, other than a dismissal for lack of jurisdiction or for improper venue or for failure to join a party under Rule 19, *operates as an adjudication upon the merits*." Rule 41(b), SCRCP (emphasis added). Rule 40(j), SCRCP, makes clear that the striking of a case from the active docket under that rule does *not* function as a dismissal only if and when the conditions of that rule are met. It was certainly a dismissal, as the Plaintiff's behavior shows. If the Plaintiff regarded the previous action is still pending, it would have sought (and would have had to seek) restoration of the previous action. See Rule 12(b)(8), SCRCP. Instead, the Plaintiff brought this new action.

b. The court has, unfortunately, accepted the Plaintiff's position on what a mortgage is, in order to defeat the otherwise damning argument that the mortgage release involved in this case released the mortgage. As noted in previous filings and as borne out by Defendant's affidavit, there has only ever been one mortgage at issue. There may have been two *documents*, but there has only been the one *mortgage*. The mortgage is the legal relationship concerning the real estate at issue. It is not, and never has been, a piece of paper. "A mortgage is a specific lien" and is "a security interest[.]" Lever v. Lighting Galleries, Inc., 374 S.C. 30, 647 S.E.2d 214, 216, 218 (2007); accord Manning

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v. Screven, 56 S.C. 78, 34 S.E. 22, 25 (1899) (mortgage is a lien). The mortgage is the contractual relationship that constitutes a lien on real property. Wallace v. Craig, 27 S.C. 514, 4 S.E. 74, 80 (1887). The mortgage release released the only mortgage – the only lien relationship – that has ever been in existence between the parties.

c. The court accepted the Plaintiff's mischaracterization of Defendant's argument about unconscionable conduct. Defendant has never asserted "that the violation of the attorney preference statute is unconscionable conduct." (Order p. 7.) This is often contended by mortgagees in cases in which they have plainly violated the statute and plainly engaged in unconscionable conduct in the inducement of the mortgage loan, as here. It is a species of straw man argument. See State v. Smith, 298 P.3d 1138 (Kan. App. 2013) ("straw man argument is where the arguer wishes to respond to an argument of his or her choosing and not one that is actually presented"). Defendant plainly laid before the court argument, with supporting evidence (in Defendant's affidavit), of the unconscionable conduct of the Plaintiff's predecessor. Never did Defendant assert that the violation of the attorney preference statute was itself unconscionable conduct.

d. Defendant's affidavit contained all the information sought in Plaintiff's discovery requests.

e. The court failed to address Defendant's laches defense.

f. The court reasoned that closing this mortgage loan without an attorney could not have been unconscionable conduct because, at the time this mortgage loan

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was closed, "closings did occur without the presence of counsel." (Order p. 8.) Mortgage loan closings in South Carolina have been required since 1987 to be supervised by an attorney licensed to practice law in this state. State v. Buyers Service Co., Inc., 292 S.C. 426, 357 S.E.2d 15 (1987). That was well before the mortgage closing at issue in this case. If the law was violated a lot around that time, that does not provide a mortgagee with an excuse or defense.

g. As noted in Defendant's previous filings, he was prejudiced by Plaintiff's predecessor's unconscionable conduct, and not just because of the unauthorized practice of law. Paragraphs 12 and 13 of Defendant's affidavit plainly set forth that he attempted to refinance and how the unconscionable conduct prejudiced him.

h. The order appears to take from Defendant his right to cross-examine Plaintiff's witness(es) at trial, allowing the submission of affidavit testimony. This is wrong. Defendant's right to cross-examination is part of the guarantee of due process. E.g., Moore v. Moore, 376 S.C. 467, 472, 657 S.E.2d 743, 746 (2008).

3. This motion is also based upon all applicable statutory law, case law, common law, and the record in this action.

Pursuant to Rule 11, SCRCP, the undersigned certifies that there would have been no useful purpose in consultation with opposing counsel in an attempt to resolve the matter subject of this motion.

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Sarah M. Larabee
S.C. Bar No. 105298
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ATTORNEYS FOR DEFENDANT
AUSTIN ALLEN LOWERY

Columbia, South Carolina
March 7, 2022

ELECTRONICALLY FILED - 2022 Mar 07 5:35 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

STATE OF SOUTH CAROLINA)	
)	COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)	2019-CP-42-2270
U.S. Bank Trust, N.A., as Trustee for LSF 10 Master Participation Trust,	
Plaintiff(s),	
vs.	**TRANSCRIPT OF RECORD**
Austin A. Lowery a/k/a Austin Lowery aka Austin Allen Lowery a/k/a Allen Lowery, Lisa D. Lowery, South Carolina Department of Revenue, The United States of America acting by and through its agency, Department of the Treasury - Internal Revenue Service, and Elizabeth A. Lowery,	
Defendant(s).	April 26, 2021 Spartanburg, South Carolina

STENOGRAPHER'S NOTE: DUE TO POOR WEBEX CONNECTIONS, PORTIONS OF THE AUDIO CUT OUT THROUGHOUT THE HEARING. THOSE PORTIONS ARE NOTED AS *[WEBEX INAUDIBLE]*.

HELD VIA **WEBEX** BEFORE:

HONORABLE GORDON G. COOPER, Master-in-Equity

ALL APPEARANCES VIA WebEx.

Reginald P. Corley, Esquire
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AND

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Attorney for U. S. Bank and Trust

Andrew S. Radeker, Esquire
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Post Office Box 50143
Columbia, South Carolina 29250

Attorney for Defendant, Austin Allen Lowery

DOROTHY HUNTSINGER
Court Reporter

THE COURT: If we are all ready and all in attendance, we will begin. This is case number 2019-2270, U.S. Bank Trust, N.A., as Trustee for LSF 10 Master Participation Trust versus Austin A. Lowery, et al. We are here on the motions that are pending. I think we've got two on behalf of the Plaintiff and two on behalf of the Defendant. Is that correct, or am I ---

MR. JACKSON: Your Honor, Derrick Jackson on behalf of U.S. Bank and Trust. As I understand it, the Defendant has filed two motions. One motion for summary judgment as to the Plaintiff's claim for foreclosure. Primarily, based on his argument, there has been a release. And then he has a summary judgment motion on his counterclaim for the attorney preference statute.

THE COURT: Alright.

MR. JACKSON: That is the Defendant. And then the Plaintiff, represented by Mr. Calub, has a summary judgment motion on the counterclaim of the Defendant, I guess if it's considering that it's [WebEx inaudible] uses of that.

THE COURT: Alright. I thought there was another one pending from Mr. Calub that was just on the--- But, if -- What we will start with then is the -- Mr. Calub's motion for summary judgment as to the counterclaim of the Defendant.

MR. CALUB: Thank you, Your Honor. Brian Calub for the Plaintiff, U.S. Bank Trust as the foreclosing lender in this foreclosure action. And I just want to confirm what Mr. Jackson stated. My motion--- The motion that was filed by the Plaintiff is a motion for partial summary judgment as to liability only and it really--- The question that you are addressing through our motion for summary judgment is whether, as a matter of law, the Plaintiff, which is only an assignee of the mortgage that was originated by Household Finance Corporation, whether or not it can be liable for damages or any award of attorney's fees under 37-10-105 as a matter of law. Our position is that the Plaintiff

cannot be liable at all for any violation of the attorney preference act because the statute isn't structured that way. Quite frankly, look at the provisions of 37-10-105, you know, what the statute is trying to identify as providing a mechanism for an award of damages is for a borrower or consumer to sue the actual creditor responsible for a violation of the South Carolina Consumer Protection Code. In this case, we don't have it. What we have is a situation where the original lender, Household Finance Corporation, is alleging the attorney preference act. The Plaintiff is merely an assignee of this mortgage loan. It was not present, nor can Mr. Radeker prove at all that U.S. Bank had any [WebEx inaudible] in the origination loan for any violation of the attorney preference act. And, therefore, because of the way -- the structure of 37-10-105 only seeks to assess liability to the actual creditor who violated the act, then the Plaintiff can't be liable for any of the counterclaims alleged as a matter of law. It's a different question, however, if Mr. Radeker, as he noted in his brief in opposition [WebEx inaudible] previously filed motion to dismiss, and he's just trying to prove [WebEx inaudible]. That is a different question. Then I obviously would merely reduce the judgment amount owed to the Plaintiff and that is my question to be addressed as part of the foreclosure action. That is the actual remedy that is generally provided in the last sentence of 37-10-105(A). And as you will see, Your Honor, in support of our motion, you know, we cited the actual definition of creditor in the South Carolina Consumer Protection Code and that definition actually supports our position. In our [WebEx inaudible] right to the provisions of South Carolina Consumer Protection Code 37-1-301(13) which provides the general definition of creditor as [WebEx inaudible] protection code. And although the language does state that, you know, a person can get the credit, the originating lender would be a creditor and if there is an assignee, maybe a creditor as well. The specific language at the end of 37-1-301(13) that states but use of the term, creditor, does not in and of itself impose on an assignee the

obligations of an obligor -- of the assignor, excuse me. The language specifically is but use of the term, creditor, does not in and of itself impose on an assignee an obligation of his assignor. And what the statute is saying is, in particular application with the structure of 37-10-105 is, the definition of creditor wasn't intended to extend creditor violating the code in 37-10-105. That language there, to extend it to an assignee which is [WebEx inaudible]. The obligation of the assignor in this case, the assignor of this mortgage loan is Household Finance Corporation and it had a definite obligation as the originating lender to comply with the attorney preference act. Plaintiff, as an assignee of Household Finance Corporation, does not have the same obligation under the Code and that's because of the structure in the way 37-1-301 (13) is written. And so, what you have, Your Honor, is the [WebEx inaudible] structure of the statute of the South Carolina Consumer Protection Code with respect to the way the Attorney Preference Claim has been alleged and even the unconscionability claim, you have a situation where an assignee of a mortgage loan by an original lender is not going to be liable for the original lender's violations of the South Carolina Consumer Protection Code. And that is supported by the structure of, you know, 37-10-105. And so, in our Brief we cited cases that kind of touched on that. You know, there are federal cases and those would be [WebEx inaudible] but we would note in any case law authority [WebEx inaudible] or otherwise, that actually imposes assignee liability for a violation of the Attorney Preference Act and that is a problem Mr. Radeker has got. Quite frankly, his citation of King versus American General, I mean he gives away the argument because King versus American General, that case only discusses the liability and violation [WebEx inaudible] lender. Because it's pretty clear in that case that the language -- King versus American General Finance that Mr. Radeker circulated the other day, you know, that deals with the actions of an original lender. It does not at all address assignee liability and in fact, when you look at page 2 of the King versus

American General case, you know, the Court clearly said that American General is the original lender by stating King and Sims each closed their loans with American General in 1995. And then it goes on to say undisputedly, Deloris Sims received a loan from American General secured by her real property. We don't have those facts. The only original lender that is at issue here is Household Finance Corporation and quite frankly, if the allegations in the counterclaim have any merit, then the borrower -- Mr. Radeker should have sued Household Financial. They were aware of this issue back in 2008, but they haven't. They raised these issues in a 2019 foreclosure and they could have raised it in a prior foreclosure action in 2008, but that didn't happen. Actually, Mr. Radeker was not counsel for the borrower then. But my point being is, the way that 37-10-105 is written, it is designed to assess liability upon the original lender [WebEx inaudible] and on that point, our primary argument is that as a matter of law, the Plaintiff in this action cannot be liable for the violations of the original lender in this case and therefore, as a matter of law, as to the question of whether or not the Plaintiff is subject to an award of damages or attorney fees, the answer is no. Because the South Carolina Consumer Protection Code does not support that assessment of liability in the way that 37-10-105 is written. I will say, you know, it's a different question if Mr. Radeker wants to raise defensively their defects or, you know, whatever allegations he has got related to the claim of unconscionability and if that issue is to be addressed at all, it would be narrowly addressed in this case only by set-off and recruitment in this matter. And I would go so far to say that quite frankly, with the closing of the loan back in 2004, you know, the attorney preference violation is time barred as to liability. Now, I know in 37-10-105(A), you know the Statute of Limitations stated there states no debtor may bring an action for violation of this chapter more than three years after the violation occurred, except as set forth in subsection (C). So, you have three years and the way I read that and the statute

structure, if you do want to bring an unconscionability claim to rewrite the terms of the mortgage loan as a matter of equity, then you have until the maturity of the underlying loan obligation. That's the way that the statute was written. So, quite frankly, and that ties into the set-off rights which are no time limitation provided under the South Carolina Consumer Protection Code. That is consistent. So, that type of reading, you know, three years for liability cutoff under subsection (C) limited to only dealing with unconscionability and then rewriting the loan, and that fits in nicely with the last sentence of 37-10-105(A) which provides for an unlimited right of seeking set-off and recoupment. And so, under that kind of structure of the [WebEx inaudible] provision of the South Carolina Consumer Protection Code, we have a situation where the Plaintiff cannot be liable for any damages or award of attorney fees as a matter of law. And I would just also point out, when you look at part (D) of 37-10-105, it specifically says in an action in which it is found that a creditor has violated this chapter --- Remember the violating creditor in this instance is Household Financial Corporation. You know, attorney's fees would be awardable against that entity, but not the assignee, in this case. And for those reasons, we just believe that as a matter of law, Plaintiff is entitled to summary judgment on this question of legal liability [WebEx inaudible] the damages award and attorney's fees in this action because it's an assignee and there's no South Carolina law that supports transferring liability from the original lender to the Plaintiff which is an assignee of [WebEx inaudible].

THE COURT: Alright, let's see. Mr. Radeker, your response as to the Plaintiff's motion for summary judgment as to your counterclaim.

MR. RADEKER: Thank you, Your Honor, yes. Drew Radeker here on behalf of Mr. Lowery. I am operating somewhat at a loss on this because the Plaintiff's Motion for Summary Judgment did not comply with Rule 7(b)(1) in that it stated no grounds as to

why it would be granted. The earliest inkling I had of any grounds for the Plaintiff's Motion was when they sent their Memorandum around on Friday, but I'll try to do my best here. I find it interesting that the Plaintiff cites Rosemond versus Campbell in favor of its motion because that statute from the Consumer Protection Code basically just says this definition of creditor doesn't determine whether there's assignee liability, and so assignee liability is just determined by underlying law that exists in normal cases. Obviously, we can raise this issue in this case, as I think the Plaintiff acknowledged, because an attorney preference violation can always be raised from a defensive posture. That's what the last sentence of 37-10-105(A) says. I noted that subsection (D) about attorney fees, that is a separate section and it just says we've just got to prove that a creditor has violated this chapter. We don't have to prove that the Plaintiff is that creditor in order to get attorney's fees, but that's really kind of a side point. The Rosemond case, and it goes along with the principal of which I am sure Your Honor is very aware, is that an assignee of a debt obligation, a mortgage, a note, something like that, is they stand in the shoes of the original obligor and they take subject to claims and defenses. What Rosemond says is that the obligor can assert a claim defensibly against an assignee, which is what we we've done here, when the assignee seeks to enforce the obligation, which is what the Plaintiff is doing here. So, what we are doing is entirely procedurally proper. What the Plaintiff seems to be saying is well, all it means is that like, is that you can in theory, you can achieve, all you can do is wipe out our claim. And I would say that is true, that they simply -- we can't -- other than maybe an attorney's fee award, they said we can't, through success on the counterclaim, make the Plaintiff have to pay us money. If Your Honor were to grant one of the penalties of various kinds of relief that are under subsection (C) of 37-10-105, other than an attorney's fee award, all it would do is wipe out the Plaintiff's obligation if you granted it to probably its fullest extent under that. And

so I would say some of this is -- kind of what we're doing is angels dancing on the head of a pin, is arguing maybe about nomenclature rather than really about substance very much. But in any event, I would just note like it's -- obviously, we are allowed to bring this under Rosemond. I also find it interesting that the Plaintiff is now saying, well this King versus American General Finance case supports our position. King versus American General Finance doesn't speak to the issue of assignee liability under 37-10-105 because American General Finance was the original creditor, so that just wasn't an issue in the case. It doesn't speak to it one way or the other. I mean, I would rely on our Memorandum that we did in opposition to the motion to dismiss largely on this. Basically, from what I'm hearing from the Plaintiff's motion is that I haven't heard them argue a lot of the stuff that was in their memorandum basically saying yes, you know, we complied with the attorney preference statute and you're wrong about the unconscionability for all of these things. I would note that all of the stuff that they have offered that they filed on Friday, it just isn't properly before the Court. I'd cite the case of Hall versus [WebEx inaudible] which I E-mailed around. It says that you can't use inadmissible hearsay to support or oppose a motion for summary judgment, and that is all that the Plaintiff has done, is they've just offered these unauthenticated documents authored by other people with not even an affidavit from some purported subscribing witness attempting to lay some foundation for hearsay. So, I note that certainly they are not entitled to summary judgment. In their memorandum, they note that unconscionability is a fact issue that ought to be explored for trial. Now, I think we are entitled to summary judgment which I will get into on those facts because the only facts that are in the record that are before the Court are what is in Mr. Lowery's affidavit. But in any event, they are certainly not entitled to summary judgment on the counterclaim. Thank you.

THE COURT: Mr. Jackson, anything?

MR. JACKSON: You know, again, I think the problem we have here is we need clarification from Drew whether or not he contends he's able to get a monetary judgment affirmatively or just a set-off against the claims of the Plaintiff. You know, I think if he's trying to get a monetary judgment in excess of what, you know, our claim is on the foreclosure and the note, then that's an offensive use and that would fall under Mr. Calub's argument. If he agrees that his claims are limited to a defensive set-off, then, you know, that's a whole different animal. We just don't have clarification from him which he thinks he's entitled to and so I think we need that, number one. As to the documents which I'll get into in a minute, most of the documents are public records, are attached or already filed. I mean, you can review those. Those were really offered primarily in support and opposition to his claim that the mortgage had been released. And so, I can address those when you are ready for those in a moment. But, in terms of the Plaintiff's motion for judgment, that's primarily Mr. Calub's argument and I think the law we need to figure out there is whether or not Mr. Radeker believes Lowery is entitled to an affirmative judgment against U.S. Bank with some kind of monetary relief beyond as a mere set-off or a defensive use.

MR. RADEKER: I guess to that I would say, except possibly as an award of attorney's fees. If we won, our relief would be limited to off-set against any claim of the Plaintiff. And so, like I said, angels dancing on the head of a pin, maybe. If I had known what the grounds for this motion were at the time it was made, perhaps that could have been cleared up before now. But, I read this motion and all it says is we are entitled to summary judgment on the counterclaims because we are.

THE COURT: Well, does Mr. Radeker's clarification add or detract, or where are we after that statement?

MR. JACKSON: Well, I think that is what Mr. Calub was trying -- was arguing

and that it could only have a defensive use of the attorney preference statute, you know. I'm not quite certain, to be honest, about the attorney's fees issue. I mean, whether he can still claim to get a monetary set-off against our client based on that, or whether it's still just simply a set-off against the amount that it would be due under the note and the mortgage. That is something I would have to research specifically on that. But that is -- other than that, I think we-- I would agree that it can only be defensively used and that is what we've been claiming all along.

THE COURT: Mr. Calub?

MR. CALUB: Your Honor, just to touch on that point by Mr. Jackson. You know, the defensive use of the South Carolina Consumer Protection Code would not in and of itself grant an award of attorney fees. Remember, the whole structure for 37-10-105 is that we are looking to assess liability on the actual violator of the act. In this case, there is no question that the original lender on this loan, same as in American General, is the original lender. And the problem that Mr. Radeker has got with his claim is he's trying to assess liability for its violation to an assignee. Now, I didn't hear any law cited. I didn't hear any code provision cited that counter our [WebEx inaudible]. What the South Carolina Consumer Protection Code said is that look, the violators of the South Carolina Consumer Protection Code are the ones that are subject to liability beyond the debt amount. They are the ones that would be subject to an award of attorney fees, if that is the case. Because of the structure of the Code's design, you can get a remedy that kind of [WebEx inaudible] as to an assignee. Fine. We actually are in agreement on it. The problem that I have with the case is that Mr. Radeker is trying to extend what the South Carolina Consumer Protection Code provides, to provide more than what it says it does, and that is to assess affirmative liability for a violation of the act by an assignee who never violated the act. The only reason, unfortunately for the Plaintiff, it just bought a piece of

paper that is the subject of this dispute, you know. But, it was never there at origination. He can't prove there is [WebEx inaudible] that Mr. Radeker can provide that U.S. Bank somehow had a hand in originating its loan. That is not in dispute. And so, for that reason, Mr. Radeker won't be able to assess attorney fee award against the Plaintiff. Or damages. Now, he can prove damages and set it off against what is owed, but he can't get more than that and that's the problem I have with, kind of, the position, this gray position that Mr. Radeker is kind of arguing, and he's kind of saying, well, you know, Part D said we just have to show it. But, you have to read Part D in the context of everything else in the act and what the act is saying is like we are looking for the creditor that actually violated the provision. And quite frankly, if he really was serious about getting damages and award attorney's fees, you know, and this is maybe not Mr. Radeker, but Mr. Lowery's prior Counsel. If they were serious about this claim, back when there was a 2008 foreclosure on that piece of property, they would have sued -- they would have sued on this theory years ago, not 2019. And quite frankly, if he was serious about Mr. Radeker's client [WebEx inaudible] the moment he was rejected for the re-fi, as he stated in his affidavit, he would have sued somebody. But he didn't. And so, you know, we are kind of stuck with this case where it appears to me, because it is not clear, that what is happening in this case is there is an expansion of the remedy in 37-10-105 from what is clear what the Legislature clearly intended to be the actual violator of the act to an assignee. You just happen to be the unlucky soul to get this mortgage loan assigned to you. And I just don't see that as a matter of law. I don't see that as a remedy that is available. I don't disagree with the point that look, if we are looking for set-off, we're looking to reduce the amount owed. You tack the total amount owed on the obligation for the allegation [WebEx inaudible]. You know, that's a different question and I think, you know, I'm not here to litigate that. The statute clearly provides the right to assert South

Carolina Consumer Protection Code violation as a defense [WebEx inaudible]. But my point is, any assessment in liability to the Plaintiff, whether as an award of attorney fees or actual damages, is beyond the obligation. That is not what can be provided as a remedy as a matter of law and therefore, summary judgment is appropriate to the Plaintiff as to that legal liability question.

THE COURT: Mr. Radeker, anything further?

MR. RADEKER: Thank you. I won't belabor it much further than this. All I am saying is that subsection (D) of 37-10-105, it just says that in an action in which it is found that a creditor, not necessarily the Plaintiff creditor, but a creditor has violated this chapter, the Court shall award to the debtor the costs of the action and to his attorneys their reasonable fees. And so, as to the attorney's fee point, all that I am looking at what it is that that statutory language says.

THE COURT: Mr. Jackson, anything further on this point?

MR. JACKSON: Real briefly. Just what he read though, he said a creditor that violates the statute. Well, obviously if you are an assignee and this was violated by Household Finance, U.S. Bank would not be the creditor that violated the statute.

THE COURT: Alright. Mr. Calub, is that the Plaintiff's argument as to---

MR. CALUB: Correct, Your Honor.

THE COURT: Alright.

MR. CALUB: That is the only motion for summary judgment for the Plaintiff.

THE COURT: Alright. Then we will move on to Mr. Radeker's motions.

MR. RADEKER: Thank you, Your Honor. We have two. One is--- Actually, I will take the more complicated one first. One is our motion for summary judgment on liability as to the attorney preference claim violation. The only evidence that is before the Court is that it was not until the day of the closing of the subject loan that any attorney

preference form was provided to my client and his then-living wife, and that plainly violates the statute. And their affidavit also indicates, unlike the Quicken Loans case, that it's not like anybody ascertained their preference from them before that or anything like that. It is that they never ascertained any preference from them and indeed that Household told them that, you know, they were going to close it without a lawyer and they close without lawyers all the time. So, he shows up at the closing and in the closing documents is the document to sign that says, you know, like, oh, indicate your preference, and they were like yeah, put none there. And you notice that like the handwriting on it isn't even the same as far as the insurance agent. But, if you go look at the statute at 37-10-102, when does it say they have to ascertain the preference of the borrowers for legal counsel to represent them in the closing and that is prior to the closing. Obviously, at the closing doesn't comply. And our Supreme Court has noted that at the closing doesn't comply. King versus American General Finance said it bordered on frivolity to contend that providing them -- getting their preference information at the closing somehow satisfied the statute which is ludicrous for obvious reasons. So, plainly, they violated the statute. Alright. So, then the only evidence is that there was no lawyer at the closing and they were actually kind of denied their ability to have a lawyer at the closing. And that is important as to whether there is unconscionability here. One, it is like, hey, is there a lawyer at the closing? The lawyer is at the closing for the borrower to represent him, to make sure that he is at least in a position to understand what it is that he's getting himself into and what his rights are, and they're taking that away from him. They put him in the position of being ignorant with no ability to get un-ignorant and to learn what is going on. His right to Counsel is a very important right. He has been deprived of that. But there would be unconscionability here even if a lawyer had closed this loan because the way it worked was this, is Household told Mr. Lowery they were setting him up to get a loan

at one interest rate and then told him oh, no, we have to do it at this higher interest rate, but, we will refinance to a lower interest rate later. That was false. They tricked him into getting a loan at the higher interest rate, and they had him sign a piece of paper without a lawyer there to protect him. It said that what he was mortgaging to them was 53 acres instead of five acres, which is what he believed that he was mortgaging. So, there's definitely unconscionability and that's the only evidence in the record about what happened, is Mr. Lowery's affidavit. There is nothing from the Plaintiff saying it didn't happen that way. I was kind of chuckling a little bit when I read their Memorandum saying well, this form has this fax date at the top. It's got a pre-printed date at the top. Nothing indicating that it comes out of a fax machine. But, in any event, the only evidence about what happened is Mr. Lowery's affidavit. Nobody says anything else occurred. It's the classic situation where if they wanted to offer evidence that something happened differently, they have had the opportunity to do that, and they have not done it. They cite this Lackey case for the idea that not having a lawyer there doesn't mean that there was unconscionability. That's not what Lackey says. Lackey stands for the proposition that merely violating the attorney preference statute doesn't equal unconscionability. But that isn't our contention. The only evidence here is that the attorney preference statute was violated by Plaintiff's assignor, and that there is unconscionability here, because there's nothing that they've offered indicating anything different happened from what Mr. Lowery said. Thank you.

THE COURT: Alright. Mr. Caleb or Mr. Jackson?

MR. JACKSON: Your Honor, this would be my wheelhouse on the motions today. Of course, you know, when he talks about evidence, he's talking about who was the person in the closing 20 years ago. So, when he's talking about [WebEx inaudible] the evidence, there was no -- simply no action by him 20 years ago when he said there was no

attorney. And, of course, the Lackey case says is, you know, we don't find a per se violation because he clearly had the opportunity to get his own attorney, you know. And in terms of whether or not the attorney preference statute was violated, you know, the [WebEx inaudible] on the summary judgment motion is all a mere scintilla of evidence and all evidence and inferences thereof need to be viewed in the light most favorable to the nonmoving party. And even if there is no disputed evidence of fact, if clarification of the law and the conclusion that you've drawn from the law, you will better be served by a trial of the merits and summary judgment should be denied. As Mr. Radeker pointed out, there was a fax date, or a date on the attorney preference form which was signed by Mr. Lowery. The statute requires either that you provide the attorney preference statute at the loan application or mail or deliver it within three business days after receipt of the loan application. There is no evidence in the record of what that date may have been, so I would submit that is an issue of fact and introduce it at trial and allow us to put Mr. Lowery on the stand and cross examine him or take his deposition on what is going on. In terms of, you know, the mere absence and the mere violation of the attorney preference statute, in and of itself is not unconscionability. And like we said, the absence of counsel at closing in and of itself is not unconscionability. And Your Honor needs to keep in mind when this took place. This took place back in 2002 and the environment then on how loan closings were handled and what was typical then is completely different than what it is today. The case law is clear. You have to look at the facts and circumstances at the time the document was executed, and at the time the document was executed, unfortunately, it was fairly common to have, you know, closings that were not done with attorneys. And ??Matrix?? said, you know, that can be a basis for upsetting the apple cart was not stopped until another decade after this occurred. And it was for prospective application, not rewinding the clock to do that. The facts are kind

of important here, too, [WebEx inaudible] other summary judgment motion. But Mr. Lowery, you know, surveyed five acres of the land and after that survey, got a mortgage which satisfies the bank for a construction loan and that was for the five acres, and then he came to Household Finance to refinance that obligation. And when he did so, he refinanced it and then he got -- like Mr. Radeker said, he got a mortgage. It did have the erroneous 53 acres that he actually owned, but that was corrected within a week. And, you know, that was corrected. And really, the standard on unconscionability is that it has to be so oppressive that no reasonable person would make them and an honest person accept them. Mr. Radeker has been very good about saying well, he didn't have an attorney and the attorney preference statute was violated, but nowhere has he pointed to any specific provisions in the note or the mortgage that were unconscionable. He talked about the interest rate. Well, Your Honor, I provided my Brief and in the document there is a copy of the note. The interest rate at that time, the average rate was about 6%. He had a chance, an opportunity to bring that rate down to approximately 9% and if you look at the origination documents in the documents that I provided, his loan value was almost 100% -- 90%, so it was a fairly high rate and that explains part of the difference in the interest rates there. But still, even a high interest rate like that would not be so unconscionable that a reasonable person would not accept it. Finally, Your Honor, on unconscionability, that should be determined at a trial on the merits. It's not the kind of claim that is a fact -- very fact specific and shouldn't be decided on a summary judgment motion. Thank you, Your Honor.

MR. CALUB: Your Honor, and just to add a finer point, I know that Mr. Radeker is talking about admissible evidence as part of our submission. I will note that Mr. Jackson's submission, part of the discovery that was provided by Mr. Radeker, matters that are part of discovery are part of the traditional portions to be considered by a Court

on a summary judgment motion. This issue of hearsay is interesting to me that Mr. Radeker raises is one of the [WebEx inaudible] thinking the affidavit is pure hearsay [WebEx inaudible] the Defendant's affidavit is that he is alleging that an officer of Homecomings Financial made a representation to [WebEx inaudible] that was an owner, but that's the quintessential of hearsay that would generally not be considered as part of an evidentiary record, so I just wanted to make a note on that. And then another part is that at least on our motion for summary judgment was the actual notice of right to cancel. One of the things that kind of indicates there was a lack of any kind of procedural unconscionability with relation to the mortgage loan being originated [WebEx inaudible]. Mr. Lowery was provided the opportunity to rescind the mortgage loan [WebEx inaudible]. He didn't do that. So, you know, if there are any presumptions in favor of the plaintiff and if it's really difficult with the evidence that has been presented to kind of show that there's no issues of material fact [WebEx inaudible] issue to award Mr. Radeker's summary judgment.

THE COURT: Mr. Radeker, anything on your first--- Anything further on the first motion?

MR. RADEKER: Just very briefly. I guess I would say, you know, responding to a point that Mr. Calub made, yes, Mr. Lowery's affidavit does contain statements that this Household employee made to him, but they are not offered for the truth of the matter asserted in those statements, but rather for the effect [WebEx inaudible]. That is unlike what the Plaintiff is doing. The Plaintiff is offering all these unauthenticated hearsay documents for the truth for the statements that are in the documents and that's classic hearsay that is inadmissible. As to--- Mr. Jackson made a point. He said, well, you have to look at what was going on in 2002 and the fact that there were lots of closings happening like this. As to whether there were lots of closings happening like this, I'm kid

of reminded of like the old story about speeding. It's like if I get pulled over for going 86 in a 60, I can't get out of it by saying, well, all of these other people were speeding, too. You know, that's not really a defense. Also, it has been the law in South Carolina clearly since State versus [WebEx inaudible] was decided in 1987 that mortgage loans had to be closed under the supervision of an attorney. Anyway, you know, Mr. Jackson says well, you know, we've got to have a trial on this to be decided on this evidence. But, you know, it's like, what evidence? The only evidence is Mr. Lowery's affidavit. There is nothing else. There isn't a scintilla of evidence to the contrary or any other amount of evidence to the contrary. All there is about what happened about the circumstances of the execution of these documents is Mr. Lowery's affidavit. That's it. There isn't anything else. There isn't a scintilla of evidence to the contrary. Thank you.

THE COURT: Alright. Mr. Radeker, on to your second motion.

MR. RADEKER: Thank you, Your Honor. And this, like I said, this one will probably be a little simpler. This is our motion for summary judgment as to the Plaintiff's claim. We supported this motion by filing the Plaintiff's interrogatory responses here and one of the reasons for that is, in the Plaintiff's interrogatory responses that we filed with our motion is they don't even name anyone as a witness who could possibly provide any evidence to the effect that the Plaintiff is like owed some money, much less how much it is. The only people they name as witnesses are my client and the name of a company, Caliber Home Loans Servicing. Now, if they call a person at trial whose first name is Caliber, middle name is Home Loans, and last name is Servicing, I'm not going to object, but I don't think that that's what they are going to try to do. And so, not only have they not put forward any evidence of debt which is an essential element of their claim, under the way discovery currently stands, they can't. They can't offer that. And so, they are missing an essential element and hey, the law of Rule 56 summary judgment motions, it

applies equally to Plaintiff's claims in foreclosure cases just as it does in any other claim on which a party bears the burden of proof, and they are completely missing anything as to this [WebEx inaudible]. Also, for an additional reason, the mortgage has been released. Now, the Plaintiff makes much in its recent filings of the idea that like, well, you know, the whole reason we are trying to foreclose [WebEx inaudible] . There was only one mortgage. What they are talking about is like it's not this first document, it's the second document. But a mortgage is not a document. It is a relationship. It's an arrangement. Documents just memorialize the arrangement. What has happened here is the Plaintiff has released that arrangement with respect to this. It's gone. There is no mortgage to foreclose. And so, for that reason, we are entitled to summary judgment on either one of those reasons. Thank you.

THE COURT: Mr. Jackson or Mr. Calub? Whoever is---

MR. JACKSON: I have a Power Point if I can share the screen. Do I have permission to share the screen? Do you have that capability?

THE COURT: I can't answer that question. You can try it.

MR. JACKSON: Let me try this. I will attempt to share it. If it doesn't work, I will argue without it. How about that?

THE COURT: Alright. Let's see if it shows up.

MR. JACKSON: Thank you, Your Honor. Here we go.

THE COURT: There it is. Okay.

MR. JACKSON: Alright. Now, if I could see it, we would be in business.

THE COURT: I think it is still loading as far as I can see.

MR. JACKSON: Do you see it?

THE COURT: Yes.

MR. JACKSON: Alright, Your Honor. As Mr.--- The Court knows the standard

review. I've already went over and argued about the standard review again, that we all have to show the scintilla of evidence and all. Evidence needs to be viewed in the light most favorable. And his primary element here is that the mortgage has been released, but a plain reading of the release document shows that the mortgage was never released. The only mortgage that was released was the one that had the incorrect legal description. That is a copy of the release of mortgage and the Court can see it identifies the very specific book and page number of the mortgage that gets released, and it's entitled to release that mortgage and identifies the mortgage that got released. And again, when it gets released, the property is released from a specific claim from all claims and liens under that certain mortgage and identifies the mortgages that got released. And again, there is the release and it matches up with the mortgage that got recorded. And so, I'm not sure how he somehow interprets that because if you look at the next mortgage, that mortgage that got released has 53 acres and was filed and recorded on a specific date. Compare it to the mortgage that was intended by all parties, and Lowery admits this was intended to be a mortgage, it's a different book and page number. It's a completely different mortgage. It was recorded on a different date and it describes the five acres which is intended by the parties and it was filed at a separate time. So, there are two separate mortgages. One that was improper and filed and got released, and a mortgage which is the subject of this action which did not get released. Lowery admits that that first mortgage was actually invalid, so it's hard to understand. This is his response to an interrogatory that this mortgage was not valid and how the release of a mortgage that he contends was not valid somehow -- somehow governs and it becomes valid. You know, this is in his affidavit that Mr. Radeker filed in this action. The disputed mortgage the loan was for the five acres that is part of 53 acres, so that shows that that was his intent to mortgage the five acres. This is a copy of the policy that shows it was insured, that the mortgage that was in issue got

properly insured. Schedule B of the [WebEx inaudible] shows that Mr. Lowery's -- the one that -- the improper one, this section down here says to be released. So that was the intent of the parties all along. So, how he can say it's now released is beyond me. He admits the execution of the mortgage to our client. Now, to be clear, this is the 2008 pleadings by Mr. Lowery and his responses. He admits that the mortgage was given to them by the Plaintiff and in the next paragraph 14, that they executed the mortgage on a five-acre tract dated September 30, 2002. And it would also be painfully inequitable if he received a loan of Three hundred four thousand ($304,000.00) Dollars and--- He received a loan of Three hundred four thousand ($304,000.00) Dollars to pay off the SunTrust loan which was on the five acre tract. This is a copy of his HUD statement. You can see all the things that he paid off and admitted he even got--- There is the Two hundred twelve thousand (212,000) payoff of the SunTrust mortgage. Looks like he took home Thirteen thousand (13,000) from that transaction, yet he has not made payments since April of 2004. So, it would be totally inequitable to say that somehow that got released. So, Your Honor--- Let me end that share. So, Your Honor, it's hard for me to understand how he can advocate that a mortgage which is intended by the parties which was recorded separately, which was not mentioned at all in the release document, somehow got released and now cannot be enforced. In terms of his others, we would have a documentary witness. We have his payment history that shows he hasn't made any payments. He has admitted he has not made any payments since April of 2004. That, combined with the mortgage, is in and of itself enough to bring the foreclosure action and recover. So, his summary judgment claims certainly should be denied. Thank you, Your Honor.

THE COURT: Mr. Calub, anything?

MR. CALUB: Nothing from me, Your Honor. Thank you.

THE COURT: Alright. Mr. Radeker, any response?

MR. RADEKER: I guess I would just say this, and I won't say much because I might be repeating myself. A mortgage is an arrangement. It's not a piece of paper. This Plaintiff released this property from the only one mortgage arrangement that it has ever existed between the people who are involved in this. Also, the Plaintiff has offered no affidavit attempting to prove the debt to the extent they have brought up some document or something like that that tends to be a payment history, which I didn't even see in what was provided. It's not authenticated. It's just inadmissable hearsay. It couldn't be considered anyway. So, they have failed to provide evidence of a crucial element of their case. The summary judgment rule applies to them just like everybody else. There is no exception for mortgage foreclosure claims. Thank you.

THE COURT: Mr. Jackson, anything?

MR. JACKSON: Briefly. If it is an arrangement and not a piece of paper, shouldn't we enforce what the parties intended? He admitted he intended to mortgage the five acres. He got the money and he has made no payments since April of 2004, so we're fine if you want to do a relationship. Enforce the relationship that the parties agreed to.

THE COURT: Alright, gentlemen. Anything further? I think we have heard the arguments on the Plaintiff's motion and Defendant's, both motions; correct?

MR. RADEKER: I think so.

MR. CALUB: Correct.

MR. JACKSON: Yes, Your Honor.

THE COURT: Do you gentlemen want to submit anything? Now that you've heard the arguments, do you wish to submit any memorandum, brief or anything else after this?

MR. RADEKER: Not from me, unless the Plaintiff does.

THE COURT: I understand. How about the Plaintiff?

MR. JACKSON: Your Honor, if you can give us until the close of business today to debate if there's anything else we want to do? We can discuss it among ourselves and we will send an E-mail to you and copy Mr. Radeker about that.

THE COURT: Alight. That is fine. Then you will let me know. Meanwhile, I will try to assemble everything I've got to review to make a decision on these three motions. Alright, gentlemen.

MR. JACKSON: Thank you, Your Honor.

MR. RADEKER: Thank you, Your Honor.

MR. CALUB: Thank you, Your Honor.

– – – END OF RECORDING – – –

STATE OF SOUTH CAROLINA)

) **CERTIFICATE**

COUNTY OF SPARTANBURG)

I, the undersigned **Dorothy Huntsinger**, Court Reporter for the Office of the Master-in-Equity for the County of Spartanburg, State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of testimony of the proceedings had and evidence introduced at the hearing of the captioned case, before **Honorable Shannon M. Phillips, Master-in-Equity** for Spartanburg County, South Carolina, on the **26th** day of **April, 2021.**

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

DOROTHY HUNTSINGER
COURT REPORTER

April 1, 2022

STATE OF SOUTH CAROLINA)	
)	COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)	2019-CP-42-2270
U.S. Bank Trust, N.A., as Trustee for LSF 10 Master Participation Trust,	
Plaintiff(s),	
vs.	**TRANSCRIPT OF RECORD**
Austin A. Lowery a/k/a Austin Lowery aka Austin Allen Lowery a/k/a Allen Lowery, Lisa D. Lowery, South Carolina Department of Revenue, The United States of America acting by and through its agency, Department of the Treasury - Internal Revenue Service, and Elizabeth A. Lowery,	
Defendant(s).	January 31, 2022 Spartanburg, South Carolina

HELD VIA **WEBEX** BEFORE:

HONORABLE SHANNON PHILLIPS, Master-in-Equity

ALL APPEARANCES VIA WebEx:

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Attorney for Defendant, Austin Allen Lowery

DOROTHY HUNTSINGER
Court Reporter

THE COURT: Alright. I have this as 2019-CP-42-02270, U.S. Bank Trust, N.A., as Trustee for LSF 10 Master Participation Trust versus Lowery and others. So, is this Plaintiff's Motion for Summary Judgment?

MR. JACKSON: Yes, Ma'am. This is Plaintiff's Motion for Summary Judgment. I am Derrick Jackson and along with Regie Corley of Scott and Corley, we are representing the Plaintiff, U.S. Bank. This is our motion.

THE COURT: Alright. Well, whenever you are ready.

MR. JACKSON: Your Honor, if I may. May it please the Court. I have a short Power Point that might help me in my presentation if I could share the screen with your permission. I'll try to do that if I can find it there.

THE COURT: That is fine. Go ahead.

MR. JACKSON: Okay. Hopefully that will--- You can see that okay, everybody?

MR. RADEKER: Yes, I can.

MR. JACKSON: Okay. This is our Motion for Summary Judgment on a couple of issues in the case and I wanted to be able to kind of give the Court a little bit of a background about where we are, I think, procedurally in the case. We've conducted some discovery and both sides filed cross Motions for Summary Judgment resulting in two Orders by Judge Cooper. The first Order basically granted U.S. Bank's Motion for Summary Judgement as it related to the Defendant's Counterclaim for offensive use of unconscionability such that they are not allowed to give any monetary damages or attorney's fees as a result of that Counterclaim for the attorney preference against the Plaintiff. So, that was the first one. But it did retain the Counterclaim for the purposes of a defensive use as a set-off or recoupment. And the second thing, Mr. Lowery filed a Motion for Summary Judgment primarily based on his argument about the lease. Judge Cooper denied that Motion and said that there is no genuine issue of material fact under

the facts and circumstances, it would be inequitable Defendant to receive the Three Hundred and Four Thousand, Forty Dollars ($304,040.00) from the Plaintiff which funds were in fact used to benefit the Defendant and it being clear that he intended to and did give a mortgage to Household Finance on the five acre parcel. That was the second of Judge Cooper's Orders. And finally, he also denied the Plaintiff's Motion for Summary Judgment as to unconscionability, but did say that could still be used as a defensive use. So, where I think that leaves us is with three items. One item is the Defendant's affirmative defense for an action for violation of the attorney preference statute which would be a set-off or a recoupment. Secondly, he also has his affirmative defense alleging unconscionability as to, you know, enforcement or some kind of modification in 105(C) and finally the foreclosure action and sale. And where we hope we end up today, Your Honor, would be that we clear away all these hurdles except for just the foreclosure. Mr. Corley is prepared to proceed forward on that, you know, as to the debt and to present that to the Court if the Court is inclined to do that. So let me first address the attorney preference violation counterclaim. Of course that is based on their allegation that there was not a -- or didn't properly obtain the choice of Counsel prior to the closing and in fact, he has alleged there was no Counsel present at closing. To be honest with the Court, the only evidence we have on that is there was an attorney preference document that was signed at, it looks like, the same date as the closing. It was apparently faxed before then and the only other evidence is the HUD Statement itself which shows, you know, that the lender was at closing. But I think the relevant point for a liability standpoint in moving forward, Your Honor, is, and this just says that it can only be used as a defensive at this point. But the relevant point is--- And we ask what this set-off might be. I should say that we've asked what's the set-off, how was it calculated, what is the basis for the attorney's fees, provide copies of documents and I would say we've not received any of

that information on what the set-off might be, or recoupment, but in a way all of that is a moot point, Your Honor, because this is the Affidavit of Debt in the case, as you can see. The Defendant has admitted that he basically stopped making payments in 2004 and with accumulated principal and interest and the other thing, the amount due is almost three-quarters of a Million ($1,000,000.00) Dollars. So, whatever the amount of the set-off or recoupment might be, it certainly will not be more than the amount of debt due. So, therefore, it's almost an academic exercise on the attorney preference violation. And again, if Mr. Radeker wants to submit a proposed Affidavit of Attorney's Fees and Costs and statutory violation, that is fine, but it would be limited to a set-off and recoupment. So, that is our argument on the first of the three-prongs in terms of the attorney preference violation. And right now, as of right now, today, we are not seeking a deficiency judgment. So, again, that would mean that the amount of the set-off and recoupment to some extent would be irrelevant unless Mr. Lowery believes he can, you know, redeem the property at that price tag. So, that gets us to the second argument that we would like summary judgment on. That is unconscionability. He's pled that he should be allowed to have either the Agreement modified or some relief under 10-105(C) of the Uniform Commercial Code based on unconscionability. And the case law provides that unconscionability is the absence of meaningful choice in part of the one-sided contract provision, i.e. the adhesion contract, but it also says together which terms are so oppressive that no reasonable person would make them and no fair and honest and person would accept them. And Your Honor, that's where I think all the proof fails in this case in terms of what -- that this would somehow be unconscionable. This same argument was made at this District Court case, the Hosey versus Quicken Loans, and I cited some other cases, the Lackey versus Green Tree case, in our Motion for Summary Judgment proffer and basically the mere absence of an attorney in and of itself is not sufficient to be

unconscionable. This says even though Hosey has alleged that Quicken Loans' conduct deprived him of a choice of attorney, he acknowledges that the terms of the loan were not so oppressive that a reasonable person would decline to accept the agreement. And then again here, cannot find that the loan agreement was unconscionable at the time it was made, cannot find that the Quicken Loan's alleged failure to claim their choice of attorney indicates that the agreement was induced by unconscionable conduct. So, we would say that. And again, we asked in Interrogatories to try to devine or figure out what the alleged unconscionable conduct in terms of the agreement was. You know. If you think it's unconscionable for any reason, explain in detail why. We have gotten no responses to those Interrogatories. And again, to contend you were prejudiced by the alleged absence of an attorney at closing, explain how. Again, we have no response to that Interrogatory. And finally, we served Request to Admit. There was no response to that, too. That was admit you could have sought a loan from another lender and that would be admitted because there was no response. Then admit that there are no terms to the note and mortgage which was so oppressive no reasonable person would make them. And so those are also deemed admitted. So, there is nothing in the contract, note or agreement that would be -- would make this unconscionable and I think we are entitled to summary judgment. The bottom line to all this Your Honor, as has been pointed out by Judge Cooper in his Order, was that the debtor almost twenty years ago got -- he had construction loan which was paid off by Household Finance and you can see all the debts in the column that were paid, the Bank of Travelers Rest, the supplies and the big one of course is the SunTrust construction loan mortgage that got paid off for Two Hundred and Twelve Thousand ($212,000.00) Dollars. All those were paid by him, but he stopped making payments in 2004, so it's a bit surprising that he's trying to claim unconscionability now and you can see again that he actually even walked away or

received another Thirteen Thousand ($13,000.00) Dollars from that closing and hasn't made the payments. So, Your Honor, it is our contention that there is no genuine issue of material fact as it relates to the unconscionability claim. And the attorney preference claim, there certainly may be proof that Mr. Radeker can argue on that that we can't controvert, but it's a mere recoupment or set-off against the three-quarters of a Million ($1,000,000.00) Dollar judgment, so it should not interfere with the liability. Mr. Lowery filed a brief in opposition which I received on Friday, about sixteen faxed pages. I'm prepared to respond to that, but I think at this point it would be appropriate to let Mr. Radeker respond to those arguments and then I would like to reserve my time to reply to his argument in opposition. I will stop sharing my screen now if I can find the right button here. I see it. There we go.

THE COURT: Alright. Thank you, Mr. Jackson. Did I understand correctly that you were hoping to have this motion heard and have the final foreclosure hearing today?

MR. JACKSON: Well, Your Honor, we have submitted an Affidavit of Debt. He admits that he's in default. You know, we don't think there's really any issues as to the foreclosure. We would like to proceed on that. Now, Mr. Radeker certainly has some arguments and -- about the Affidavit of Debt in support of the determination of the debt that was filed and I will address those, but I think, Your Honor, you know, if we can't get to that point, we would at least like to get to the point where we could limit the hearing in the future to a determination of the proper amount of the debt where Mr. Radeker could cross-examine, you know, about the debt itself. But we think about as terms of liability for the foreclosure, we think we should get summary judgment on that. We are prepared to move forward today on the foreclosure itself with the Affidavit of Debt. We think there's liquidated damages. You know, quite frankly, the debtor admitted that he has not made any payments since 2004. It's all principal and interest after that point except for

some of the costs which we can stipulate or waive to determine the debt at that point. But, Your Honor, I would leave that to the Court's discretion on how it would want to proceed.

THE COURT: Alright. Mr. Radeker, do you have any objection to hearing the testimony or the arguments about the final foreclosure today?

MR. RADEKER: Your Honor, I had understood that to be part of their motion, so I guess I don't have a problem with them arguing that they are entitled to summary judgment on that basis. I don't agree with that. I think that they are not. That they are not entitled to summary judgment at all. And I will also note that kind of just before I really get into it is that even if you disagree with me and say that they are entitled to a summary judgment, then at most they would be entitled to summary judgment on liability and not as to the amount of the debt that they are trying to recover. We did file a Memorandum on Thursday and I would note that that sets forth these arguments in greater detail and refer Your Honor to that. There are several reasons why summary judgment is not proper.

THE COURT: Well, hold on just a moment. I apologize for interrupting you. But if that is the case, that the Plaintiff is seeking summary judgment as to the foreclosure, should we try to keep things in order and have Mr. Corley present on the foreclosure before you begin your response, Mr. Radeker?

MR. RADEKER: That would be---

THE COURT: You cut out just a ---

MR. JACKSON: Your Honor---

THE COURT: Hold on just a moment. Mr. Radeker, you cut out and I could not hear you for just a moment. So, do you agree that Mr. Corley should present on the foreclosure before you respond?

MR. RADEKER: I said that would be fine with me.

THE COURT: Okay. Thank you. Mr. Jackson?

MR. JACKSON: Well, all I was going to say, Your Honor, is I am sure as part of his response Mr. Radeker is going to argue about -- as he did in his brief -- about the Affidavit of Debt and the competency to prove that. I think Your Honor should probably hear that argument before we decide if you want us to proceed or not in terms of Mr. Corley's presentation.

THE COURT: Okay. Mr. Radeker, do you want to go ahead with that argument?

MR. RADEKER: Sure. I will talk about the whole thing. If it please the Court.

THE COURT: Okay. Go ahead.

MR. RADEKER: Alright. Speaking to that, I guess that first, since we are talking about it. Even if the Court were to determine that some summary judgment in the Plaintiff's favor is proper, it would not be proper as to the amount of the debt here. The Plaintiff has not offered any competent proof of the debt as an initial matter. What they have got is an Affidavit that says it's from someone at a company called Fay Servicing which is evidently the third servicer of this debt. That affidavit alludes to a whole bunch of records that it says are attached to the Affidavit, but they are not attached to it. And it purports to summarize what they say. Importantly, even in the very Affidavit it says that it was drawing from information of the previous servicer which would itself have had to have drawn from information from the servicer before that. It looks like there have been three services of this debt, Household Finance, Caliber Home Loans, and now apparently this company called Fay Servicing. There is an effort in the Affidavit to establish that the business records exception would apply to records of Fay Servicing, but none to make it apply to the records of Caliber Home Loans or Household Finance Corporation from which the information that's in Fay Servicing's records, whatever they might be, they are not before us, is. There is a case that is directly on point, the Deep Keel case that specifically states that the business records exception does not allow a witness to get up

and say our records say X and it applies -- provides for the admission of the records themselves and so there is a case on point that says this is not competent testimony to prove the debt. Further, you've got a hearsay within hearsay problem that looks like there's three levels of hearsay and only an attempt to satisfy one of them in the Affidavit because this information would come from two servicers back forward to the present day and we don't know anything about whether the records of those companies would fall within any hearsay exception even if those records were before the Court, which they are not. Further, all we have to indicate that Fay Servicing would even be the servicer for this debt is an Affidavit from somebody who says that they work for Fay Servicing as an agency relationship. Agency can't be established through the declarations of the agent alone and that's what you would have. So, the Court couldn't even receive this as an Affidavit from the servicer in any event. But furthermore, also is Mr. Jackson acknowledged that what the ultimate set-off would affect on the Plaintiff's claim as a result of the attorney preference violation claim, including the violation of the attorney preference statute with the inducement of the transaction by unconscionable conduct, which there is plenty evidence up here and not just of the unauthorized practice of law, but also of the direct inducement of Mr. Lowery to enter into the loan by promises to my client to renegotiate the loan, refinance it or something later that were reneged upon. Here we don't know what the ultimate effect of that is going to be because that claim hasn't been decided yet. What that claim could do is the Court could decide the entire transaction is unenforceable. The Court could assess a penalty of up to the finance charge which is the projected interest that is supposed to be paid for a loan at the time that it is closed here. Usually a very large amount of money and it would be here, but what that relief is, we just yet don't know in this case. And so, certainly if you were to grant Summary Judgment for the Plaintiff, it could only be on liability, but Your Honor should

not do that. There's a few reasons why, some of which we've just discussed but also we've got a res judicata defense. Household Finance brought an action to foreclose this mortgage based on this 2004 default in 2008. That action was joined. Mr. Lowery appeared through George McMaster in that action and it was ultimately dismissed through an Order that said that the case was stricken pursuant to Rule 40(j), but Rule 40(j) in order to have something stricken with leave to restore, it requires the consent of all parties to the claim that is stricken to do that and that did not happen in this case. Neither Household nor Mr. Lowery consented to the case being stricken by 40(j) and under Rule 41, any dismissal that is not provided for in Rule 41 is a dismissal with prejudice and so that case was dismissed with prejudice. Being that the Plaintiff now is Household's privy as defined under res judicata law, all of the elements of res judicata are present. This case has been decided. They don't get another bite at the apple. Now that might mean that Mr. Lowery doesn't get any affirmative relief, but one, he doesn't get any affirmative relief beyond affecting the Plaintiff's claim anyway under Judge Cooper's Order and so be it. The law is what it is. This matter has already been decided and there is at least a genuine issue of fact about whether res judicata would apply based on what that Order that ended the 2008 action says. There is also a laches defense here. The Plaintiff has offered no explanation for why, on a 2004 default which an action brought in 2008 ended in 2013, another six years went by with no action being taken to do anything about that default whatsoever. Plaintiff claims see, look at all this interest that has accrued. It's all prejudicial to Mr. Lowery just sitting there believing that no one is going to do anything about this mortgage, probably likely abandon it, which would be consistent with what Household's, predecessor of the Plaintiff, conduct was in the first case that was brought. So there is a genuine issue of fact about whether laches would bar the Plaintiff's claim. Also, this mortgage has been released. Filings already in the record acknowledge that the

Plaintiff filed the release of this mortgage. The Plaintiff seems to contend that because there were two mortgage documents executed that they haven't released this mortgage, that there were two mortgages. There was one mortgage. It was just re-signed after Household discovered that they put an incorrect property description in the first mortgage. And so the mortgage is the arrangement. It's not a piece of paper. There has only ever been one arrangement between these people under which there was a mortgage. That mortgage was released. If that mortgage is released, not only would that bar the mortgage foreclosure claim, there being no mortgage to foreclose, it also would also bar the Plaintiff's claim on the basis of Statute of Limitations. The Newell versus Neil case establishes that even if a debt was secured at one time by a mortgage and the mortgage was later done away with, then the unsecured debt statute, three years, would apply to the claim and it has been well over three years since the Plaintiff claims the default was which was in 2004. So, there's an issue there about whether the Statute of Limitations would apply. All of these defenses that we have pled in this case. The Memorandum and the record flushes out a little more directly. We just note that this isn't a proper case for this Summary Judgment to be granted and ask that the Court deny it.

THE COURT: Alright. Mr. Jackson?

MR. JACKSON: Thank you, Your Honor. First let me address the two biggest red herrings in this case that have been raised by the defense. The first one is the res judicata defense. There are three elements to res judicata. You have to have a privity of parties. I mean an identity of parties or their privies. Now, just conceding for the sake of argument that Household and U.S. Bank somehow are privy to each other, which we don't concede if we go beyond this. You also have to show identity of subject matter and I think that is satisfied here. But the key element that you cannot satisfy and which is clearly not satisfied in this case is an adjudication of the case on the merits in the prior

action. He tries to get around this by transforming an Order that was clearly not intended to dismiss the action with prejudice, to a Rule 41 action. We can demonstrate by the Order itself how that doesn't work. Your Honor, again, if I could share my screen I can illustrate this for you. Is that working, or not?

MR. RADEKER: Derrick, I'm not--- There we go.

MR. JACKSON: Alright. So let's look at the Order itself. This is the Order that he is talking about, Your Honor. First, I want you to note that it doesn't have --- And this is what the Court would sign. This would be like what you would sign. It does say action dismissed and they could have chose Rule 41, which is what Mr. Lowery is trying to argue should be the case. It was not checked. Instead, it was checked stricken, Rule 40(j). Okay. And this Order was not appealed to my knowledge by anybody, so it's the law of the case. So, it's not a Rule 41 dismissal and it's not a dismissal with prejudice. If that were not enough, you could go down here to the language that the actual Court had typed in and it says stricken for failure to prosecute pursuant to 40(j) but then it says and may be restored when the parties are ready to proceed. So, how can it be an adjudication on the merits if the Court already contemplated the parties could bring it back when they are ready to go. So, it's not an adjudication on the merits. What happened here is what happened to a lot of cases back, this was 2008, 2009 when the financial crisis went about and courts had their dockets flooded and they were trying to figure out how to try to deal with some of them that weren't ready to proceed. They were in loss mitigation. They were on stay and they just struck, struck them from the docket when they had people that weren't ready to proceed and that is all that happened. The policy behind res judicata is that it's not proper. It's a waste of judicial time and resources to re-litigate something that has been finally decided. This case was never finally decided and the Court contemplated that it wasn't finally decided. So, res judicata is a big red herring. The second big red

herring here is the release. I'll see if I can start sharing my screen again. There we go. Is the release, and this was the basis for Lowery's Motion for Summary Judgment. It's really a legal argument, but it's not a proper legal argument and Judge Cooper saw through that when he said that it would be inequitable for the debtor to have received over Three Hundred Thousand ($300,000.00) Dollars in payoff on this thing and intend to and did sign a mortgage for five acres. What happened here--- And if you look at the language of the Release--- I've got a full brief on this issue in response to the summary judgment. But if you look at that Release it specifically only releases the one that was for fifty something acres and properly. Everybody admits that Lowery did not intend to mortgage the larger parcel, the larger tract, and he did sign a separate mortgage with different witnesses at a different time with a different legal description as a separate mortgage. That mortgage has never been released and this is what we are trying to foreclose now. And he admits that. He admits signing the mortgage separately. He admits that that's what he intended and the release language doesn't mention that mortgage whatsoever, so that is the second big red herring that the Courts could just summarily dismiss. Going to the laches argument, you know, laches is a delay for an unreasonable period of time. It's an equitable argument and the -- when he defaulted in 2004 they did foreclose and you know, because of various reasons and the stuff that is happening with Household Finance is well known, but you know, it was stricken from the docket, but then they re-filed it and still within the Statute of Limitations period for a mortgage, and it didn't prejudice Mr. Lowery. If anything, it benefitted him because he stopped making payments in 2004. I mean, Mr. Radeker argued that, you know, he thought that was abandoned or whatever. I mean, he could have -- and all the interest had accrued. Well, the interest would not have accrued if he had made payments at all since 2004, but he didn't. He just chose to stop making payments for, you know, almost over

fifteen years. So, Your Honor, I think that is another red herring and that--- I guess all that leaves is his argument about lack of proof of the debt and, you know, whether or not Mr. Corley should go ahead and go forward with that or not. He's right that there was no attachments, as there should have been, to the documents and that is something that could be remedied. We can file an Affidavit -- Amended Affidavit with the proper support and send it by Mr. Radeker. I would point out to the Court two things. One is, there has been no Affidavit or objection by Mr. Lowery saying well, this debt is wrong or I've made payments since then or you should correct this or something else. I mean, it's admitted that he just stopped making payments in 2004. It's really a mathematical equation. I mean, you stop making payments on this date, you've got a set interest rate from this period of time and it's a mathematical calculation. So, Your Honor, we would contend that we should be allowed to proceed at least, you know, as to liability to get summary judgment or, if not, to present evidence to move forward on the case as a whole. Thank you.

THE COURT: Alright. Mr. Radeker, any further response to those arguments?

MR. RADEKER: All I would say to that is what you've just heard from Mr. Jackson is the Plaintiff's argument against our arguments viewed in the light most favorable to the moving party, but a Summary Judgment motion requires the record to be viewed in the light most favorable to the non-moving party, which is Mr. Lowery. Thank you.

THE COURT: I do have a question. Mr. Jackson, you said that the Defendant signed an attorney choice form.

MR. JACKSON: Yes, Your Honor.

THE COURT: Was that e-filed and if so, can you point me to that?

MR. JACKSON: Yes, Your Honor. I believe it was e-filed. I think Mr. Radeker,

I know he attached it to Mr. Lowery's Affidavit which has been e-filed and basically what it shows is--- It was dated--- It was signed the same date of closing. It has a fax thing at the beginning, so we don't really know honestly when it was sent to Mr. Lowery. He testified, I think in his Affidavit, and Drew can back this up, that he signed it on the date or received it on the date of closing.

MR. RADEKER: And relevantly to the issue in this case, Your Honor, essentially what that means, and I think the Plaintiff acknowledges is an the issue about compliance here is if they gave it to him on the date of closing as his Affidavit indicates and as the form indicates, then they did not comply with the attorney preference statute.

MR. JACKSON: Your Honor, that would be a correct interpretation of the Code section. And I guess, if I may, Your Honor, just one quick brief response to Mr. Radeker's argument that, you know, about the light most favorable. He is still required to come forward with evidence and facts on the genuine issues of material fact and that, we don't think that they have done.

MR. RADEKER: And we don't agree, but I will quit beating the horse.

THE COURT: Alright. Well, I don't think that we are going to be proceeding with Mr. Corley today, but I will get with you all. I have your email addresses obviously and I will get with you all about drafting an Order from today's hearing and I hope to do that in the next couple of days. Okay.

MR. JACKSON: Thank you, Your Honor.

MR. RADEKER: Thank you.

THE COURT: Alright. Thank you all. I appreciate your time and preparation and the arguments that you've made. Sometimes it makes the job easier for the Court and sometimes it makes it more difficult when there's such good attorneys and so many arguments for and against relief, but you've certainly given me some things to think about

and look at and I need some time to do that and then I will be back in touch with you all. Alright. Thank you. Have a good day.

-- -- -- END OF RECORD -- -- --

STATE OF SOUTH CAROLINA)
) **CERTIFICATE**
COUNTY OF SPARTANBURG)

I, the undersigned **Dorothy Huntsinger**, Court Reporter for the Office of the Master-in-Equity for the County of Spartanburg, State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of testimony of the proceedings had and evidence introduced at the hearing of the captioned case, before **Honorable Shannon M. Phillips, Master-in-Equity** for Spartanburg County, South Carolina, on the **21st** day of **January, 2022.**

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

Dorothy Huntsinger
DOROTHY HUNTSINGER
COURT REPORTER

April 1, 2022

ELECTRONICALLY FILED - 2020 Jan 08 9:11 AM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	IN THE COURT OF COMMON PLEAS CASE NO. 2019-CP-42-02270
U.S. Bank Trust, N.A., as Trustee for LSF 10 Master Participation Trust, **Plaintiff,** **vs.** **Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually, and as Heir or Devisee of the Estate of Lisa D. Lowery a/k/a Lisa Marie Davis Lowery, Deceased; South Carolina Department of Revenue; The United States of America acting by and through its agency, Department of the Treasury - Internal Revenue Service; and Elizabeth A. Lowery,** **Defendants.**	**DEFENDANT AUSTIN ALLEN LOWERY'S MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS COUNTERCLAIM**

Defendant Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery (hereinafter "Defendant") hereby submits this memorandum in opposition to the Plaintiff's motion in the above-captioned action to dismiss his counterclaim for violation of S.C. Code Ann. § 37-10-102, commonly called the attorney preference statute.

STANDARD

The ruling on a motion to dismiss for failure to state facts sufficient to constitute a cause of action must be based solely upon the allegations set forth in the pleading. Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601 (1995). "In evaluating a motion to dismiss pursuant to this rule, the circuit court must view the facts alleged in the complaint and any reasonable inferences to be drawn therefrom in the light most favorable to the plaintiff." Benedict Coll. v. Natl. Credit Systems, Inc., 400 S.C. 538, 544, 735 S.E.2d 518, 521 (Ct. App. 2012) "The motion cannot be

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sustained if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case. The question is whether in the light most favorable to plaintiff, and with every doubt resolved in her behalf, the complaint states any valid claim for relief." Dye v. Gainey, 320 S.C. 65, 67-68, 463 S.E.2d 97, 98-99 (Ct. App. 1995). "If those facts and inferences would entitle the plaintiff to relief on any theory, then a dismissal for failure to state a claim is improper." Benedict Coll., 400 S.C. at 544. Counterclaims are treated no differently from complaints in this regard. Charleston County School Dist. v. Laidlaw Transit Inc., 348 S.C. 420, 424, 559 S.E.2d 362 (Ct. App. 2001). The claim should not be dismissed even if the court doubts the claimant will prevail in the action. Dye, 320 S.C. at 67-68. The question is whether, in the light most favorable to the party asserting the counterclaim, and with every doubt resolved in his favor, the counterclaim states any valid claim for relief. Toussaint v. Ham, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987).

Our Supreme Court recently noted that "[u]nder Rules 12(b)(6) and 15(a), the circuit court may not dismiss a claim with prejudice unless the plaintiff is given a meaningful chance to amend the complaint, and after considering the amended pleading, the court is certain there is no set of facts upon which relief can be granted." Skydive Myrtle Beach, Inc. v. Horry Cnty., 426 S.C. 175, 189, 826 S.E.2d 585, 592 (2019). This, too, applies to counterclaims. See Charleston County School Dist., 348 S.C. at 424.

ATTORNEY PREFERENCE STATUTE AND REMEDIES FOR VIOLATION

In pertinent part, the attorney preference statute provides:

> Whenever the primary purpose of a loan that is secured in whole or in part by a lien on real estate is for a personal, family or household purpose -
>
> (a) The creditor must ascertain prior to closing the preference of the borrower as to the legal counsel that is employed to represent the

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> debtor in all matters of the transaction relating to the closing of the transaction and except in the case of a loan on property that is subject to the South Carolina Horizontal Property Act (Section 27-31-10 et seq.) the insurance agent to furnish required hazard and flood property insurance in connection with the mortgage and comply with such preference.
>
> The creditor may comply with this section by:
>
> (1) including the preference information on or with the credit application so that this information shall be provided on a form substantially similar to a form distributed by the administrator; or
>
> (2) providing written notice to the borrower of the preference information with the notice being delivered or mailed no later than three business days after the application is received or prepared. If a creditor uses a preference notice form substantially similar to a form distributed by the administrator, the form is in compliance with this section.

The attorney preference statute is in Chapter 10 of the South Carolina Consumer Protection Code, which is codified in Title 37 of the South Carolina Code of Laws. A statute in the same chapter, S.C. Code Ann. § 37-10-105, provides the remedies for a violation of § 37-10-102, stating:

> A) If a creditor violates a provision of this chapter, the debtor has a cause of action, other than in a class action, to recover actual damages and also a right in an action, other than in a class action, to recover from the person violating this chapter a penalty in an amount determined by the court of not less than one thousand five hundred dollars and not more than seven thousand five hundred dollars. No debtor may bring a class action for a violation of this chapter. No debtor may bring an action for a violation of this chapter more than three years after the violation occurred, except as set forth in subsection (C). The three-year statute of limitations applies to actions commenced after May 2, 1997. No inference should be drawn as to the applicable statute of limitations for any pending actions. ***This subsection does not bar a debtor from asserting a violation of this chapter in an action to collect a debt which was brought more than three years from the date of the occurrence of the violation as a matter of defense by recoupment or set-off in such action.***

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(B) No creditor may be held liable in an action brought under this section for a violation of this chapter if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

(C) ***If the court finds as a matter of law that the agreement or transaction is unconscionable pursuant to Section 37-5-108 at the time it was made, or was induced by unconscionable conduct***, the court may, in an action other than a class action:

(1) refuse to enforce the agreement, or a term, or part of the agreement or transaction that the court determines to have been unconscionable at the time it was made;

(2) enforce the remainder of the agreement without the unconscionable term or part, or limit the application of the unconscionable term or part to avoid an unconscionable result;

(3) rewrite or modify the agreement to eliminate an unconscionable term, part, or result and enforce the new agreement; or

(4) award:

(a) not more than the total amount of the loan finance charge and allow repayment of the unpaid balance of the loan without any finance charge;

(b) not more than double the amount of the excess loan finance charge or other charges or fees actually received by the creditor or paid by the debtor to a third party; and

(c) attorney's fees and costs.

An action pursuant to this subsection may not be brought after the original scheduled maturity date of the debt.

(D) In an action in which it is found that a creditor has violated this chapter, the court shall award to the debtor the costs of the action and to his attorneys their reasonable fees. In determining attorneys' fees, the amount of the recovery on behalf of the debtor is not controlling.

S.C. Code Ann. § 37-10-105 (emphasis added.)

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DEFENDANT CAN ASSERT THIS CLAIM AGAINST AN ASSIGNEE

The Plaintiff has brought a mortgage foreclosure action against Defendant. The cases of Bartles v. Livingston, 282 S.C. 448, 455, 319 S.E.2d 707 (Ct. App. 1984), and Perpetual Bldg. & Loan Assn. of Anderson v. Braun, 270 S.C. 338, 242 S.E.2d 407 (1978), discuss the creation of the modern South Carolina foreclosure action under Act of 1791 and later acts of the legislature, making a cause of action in which a judgment for the debt and foreclosure by sale of the landowner's equity of redemption are sought in the same suit. Perpetual, 270 S.C. at 341-42; Bartles, 282 S.C. at 455-61. The enforcement of the mortgage to realize the proceeds of the collateral and the ability to obtain a personal judgment are both processes used to collect money and apply it to debt. See Perpetual, 270 S.C. at 341-42; Bartles, 282 S.C. at 455-61. A mortgage foreclosure action is "an action to collect a debt[.]" S.C. Code Ann. § 37-10-105(A). Accordingly, per the terms of S.C. Code Ann. § 37-10-105(A), Defendant is expressly permitted to raise the violation of S.C. Code Ann. § 37-10-102 in this action, regardless of how much time has passed since the violation.

The Plaintiff, however, argues that this claim cannot be assert against *it*, because it is only an assignee of the creditor that committed the violation. The Plaintiff is wrong.

The Plaintiff cites and quotes Rosemond v. Campbell, 288 S.C. 516, 343 S.E.2d 641 (Ct. App. 1986), but the principles of law the Court of Appeals set out in Rosemond actually show that Defendant *can* assert this claim from a defensive posture (as he has done in this case) against an assignee from the original creditor whose conduct gave rise to the claim. Defendant draws the court's attention to the quotation from Rosemond below:

> At common law, an assignee's rights can be no greater than those of his assignor. Dixie Wood Preserving Co. v. Albert Gersten & Associates, 244 S.C. 57, 135 S.E.2d 368 (1964). Consequently, *the assignee of a debt takes the obligation subject to all claims and*

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> *defenses the obligor may have against the assignor*. Id. However, absent an agreement to the contrary, the common law assignee takes only the benefits, not the burdens of the assigned obligation. Koppers Company v. Kaiser Aluminum and Chemical Corp., 9 N.C. App. 118, 175 S.E.2d 761 (1970). Thus, *as against the assignee, the obligor can only assert a claim defensively when the assignee seeks to enforce the obligation*; he has no common law right to sue the assignee affirmatively on a claim against the assignor arising from the underlying obligation. Langel v. Betz, 250 N.Y. 159, 164 N.E. 890 (1928); Pargman v. Maguth, 2 N.J.Super. 33, 64 A.2d 456 (1949).

288 S.C. at 522-23 (emphasis added).

THE STATUTE EXPRESSLY APPLIES TO THE LOAN AT ISSUE

The Plaintiff argues that Defendant's counterclaim must fail because of S.C. Code Ann. § 37-3-105(1), which exempts "a loan secured by a first lien or equivalent security interest in real estate" from the definition of "consumer loan" for most purposes under the South Carolina Consumer Protection Code. This argument cannot stand scrutiny, for two reasons: 1) according to the Plaintiff, the mortgage sought to be foreclosed was junior to another mortgage and 2) another subsection of S.C. Code Ann. § 37-3-105 expressly provides that the attorney preference statute applies to the subject mortgage loan even if the mortgage sought to be foreclosed is a first lien on the subject property.

The original creditor, Household Finance Corporation II, of which the Plaintiff claims to be an assignee, actually had the Defendant sign two mortgage documents and recorded them both. Defendant intended to mortgage five acres to Household, but Household first had him sign a mortgage document on which it placed, without his knowledge, a description of the mortgaged property as being the entire 53.73 acres of the Defendant, which included the five acres and all the Defendant's surrounding property, too. This mortgage document is submitted as an exhibit to this memorandum. Household apparently realized that this was not what was supposed to be

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mortgaged and had Defendant execute another mortgage document in which it did describe five acres as mortgaged. Almost seventeen years later, in 2019, a release document was recorded that referenced the book and page number of the first recorded mortgage document. Originally, the Plaintiff brought this suit stating that the mortgage it sought to foreclose was recorded with the book and page number of the 53 acre mortgage document. By consent, the Plaintiff amended its complaint and pled that the mortgage it is seeking to foreclose has the book and page number of the second recorded mortgage document.

The Plaintiff is obviously taking the position that these are two different mortgages, not that the second recorded mortgage document is just a corrected version of the first. Let us be clear: *Defendant's* position is that the second recorded mortgage document is just a corrected version of the first and that the mortgage was released when the release document was done. The Plaintiff, however, must take the good with the bad that comes with its position that the mortgage it is seeking to foreclose is a separate one from, and a second one to, the 53 acre mortgage. According to the Plaintiff, in other words, the subject mortgage is not "a loan secured by a first lien or equivalent security interest in real estate." S.C. Code Ann. § 37-3-105(1).

Moreover, the Plaintiff has cherrypicked the words it likes from S.C. Code Ann. § 37-3-105 and ignored other very important words in the statute. Subsection (3) of S.C. Code Ann. § 37-3-105 provides that "[l]oans excluded from the definition of a 'consumer loan' pursuant to subsection (1) also are subject to the provisions of Chapter 7, Chapter 10, Chapter 22, and Chapter 23 of this title." S.C. Code Ann. § 37-3-105(3). Chapter 10 of Title 37 is where the attorney preference statute (S.C. Code Ann. § 37-10-102) and the corresponding remedies statute (S.C. Code Ann. § 37-10-105) are codified. Regardless of whether the subject mortgage is or was a first or second lien, these statutes apply to it.

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THE COUNTERCLAIM STATES A CAUSE OF ACTION UNDER THE STATUTE

Defendant's counterclaim states that "[w]ith respect to the closing of the mortgage loan subject of this case, the original creditor did not comply with the attorney preference or insurance preference provisions of S.C. Code Ann. § 37-10-102[,]" that "[n]o attorney licensed to practice law in South Carolina supervised the closing of the mortgage loan[,]" and that "[a]gents of the original creditor closed this mortgage loan without attorney supervision."

A lender may violate S.C. Code Ann. § 37-10-102 by failing to "ascertain prior to closing the preference of the borrower as to the legal counsel that is employed to represent the debtor in all matters of the transaction relating to the closing of the transaction" and by failing to "comply with such preference." S.C. Code Ann. § 37-10-102(a). As the lender never ascertained Defendant's preference as to counsel to represent him and this loan was closed without attorney supervision at all, the original creditor violated the attorney preference statute.

Defendant has also pled facts that bring his claim with the ambit of S.C. Code Ann. § 37-10-105(C), under which greatly enhanced remedies for the violation of the attorney preference statute are available. Defendant's counterclaim pleads that Household not only closed the loan without a attorney supervision, it also "without the knowledge or permission of Defendant, added a property description to a purported mortgage document signed by Defendant that described far more property than both the lender and the Defendant knew was intended to be mortgaged." Defendant's counterclaim lists several ways in which the subject loan was induced by unconscionable conduct, among them the unauthorized practice of law, depriving Defendant of his right to counsel, lying to him about the amount of property that would be stated as being mortgaged in the mortgage document, improper alteration of the mortgage document, and concealment from him of the inclusion of the 53 acres in the mortgage document.

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The General Assembly has provided that the Consumer Protection Code "shall be liberally construed and applied to promote its underlying purposes and policies." S.C. Code Ann. § 37-1-102(1); accord King v. Am. Gen. Finance, Inc., 386 S.C. 82, 89, 90, 687 S.E.2d 321, 324-26 (2009); Davis v. Nationscredit Fin. Services Corp., 326 S.C. 83, 484 S.E.2d 471 (1997); Camp v. Springs Mtg. Corp., 310 S.C. 514, 426 S.E.2d 304 (1992). Among the specifically enumerated purposes of the Consumer Protection Code are "to further consumer understanding of the terms of credit transactions" and "to protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors." S.C. Code Ann. § 37-1-102(2)(c)&(d).

The court must, accordingly, interpret S.C. Code Ann. § 37-10-105, including the statute's use of the word "unconscionable," consistently with the purposes of the Consumer Protection Code, i.e., liberally in favor of the furtherance of consumer understanding of the terms of credit transactions and the protection of consumers against unfair practices by suppliers of consumer credit. S.C. Code Ann. § 37-1-102(1)&(2)(c)&(d).

At issue in this case is a South Carolina mortgage loan. Under South Carolina law, a person has the right to be represented by an attorney of his own choice, without conflicts of interest, in a mortgage closing. See Doe v. McMaster, 355 S.C. 306, 585 S.E.2d 773, 777-78 (2003); State v. Buyers Service Co., Inc., 292 S.C. 426, 357 S.E.2d 15 (1987). A South Carolina mortgage loan closing, including a refinance, must be supervised by an attorney licensed to practice law in South Carolina. Id.

In Wachovia Bank, N.A. v. Coffey, the Court of Appeals observed that "[t]he unauthorized practice of law is inherently prejudicial to not only the parties involved in the instant transaction but also the public at large[.]" 389 S.C. 68, 698 S.E.2d 244, 248 (Ct. App. 2010), *aff'd as modified*

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404 S.C. 421, 746 S.E.2d 35, 76 (2013). The Court of Appeals noted that the purpose served by our Supreme Court requiring lawyers to supervise mortgage loan closings is "the protection of the public from the potentially severe economic and emotional consequences which may flow from erroneous advice given by persons untrained in the law." Id. (quoting Buyers Service, 292 S.C. at 431). The Supreme Court favorably cited Coffey's "inherently prejudicial" description in Matrix Financial Services Corp. v. Frazer, which reaffirmed that "closing a loan without the supervision of an attorney constitutes the unauthorized practice of law." 394 S.C. 134, 714 S.E.2d 532, 534 (2011). Prejudice inheres in the unauthorized practice of law.

Among the chief reasons our Supreme Court requires an attorney licensed to practice law in this state to supervise a mortgage loan closing is so that the mortgage loan customer is in a position to receive accurate information from the lawyer, who represents the customer, about the terms of credit transactions, and so that the lawyer may protect the customer from unfair practices by suppliers of mortgage credit. Doe, 355 S.C. at 315; Buyers Service, 292 S.C. at 434. The closing lawyer represents the mortgage loan customer[1], Doe, 355 S.C. at 315, and must supervise the closing because, among other things, "attorneys . . . have the ability to furnish their clients legal advice should the need arise and fall under the regulatory rules of" the Supreme Court. Buyers Service, 292 S.C. at 434. Per our Supreme Court, underpinning the attorney supervision requirement is the principle that "protection of the public is of paramount concern." Id. Chiefly, what the Court has sought to protect the public from are the negative consequences engendered by people entering into mortgage loan transactions without the opportunity to make a meaningful, informed choice about whether to sign on to the terms of that transaction. Doe, 355 S.C. at 315; Buyers Service, 292 S.C. at 434. The closing attorney is there to ensure the choice to enter into

[1] Under certain circumstances, the closing attorney may also represent the lender. Doe, 355 S.C. at 315.

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the mortgage loan is meaningful and the bargaining process is fundamentally fair. Doe, 355 S.C. at 315; Buyers Service, 292 S.C. at 434.

The right to be represented by an attorney of one's own choice is a substantial right. Hagood v. Sommerville, 362 S.C. 191, 607 S.E.2d 707 (2005). This is no less so in the context of an out-of-court transaction like a mortgage loan closing. See Doe, 355 S.C. at 315; Buyers Service, 292 S.C. at 434. The right of a mortgage loan customer to be represented in a mortgage loan closing by a loyal, unconflicted attorney of his own choice, there to ensure the customer has a meaningful choice about whether to enter into the transaction and that the process is fair, is indeed substantial. Hagood, 362 S.C. 191; Doe, 355 S.C. at 315; Buyers Service, 292 S.C. at 434.

Unconscionability simply means "[e]xtreme unfairness." Black's Law Dictionary 1663 (9th ed. 2009). In discussing unconscionability, our Supreme Court has said that "[a]bsence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue." Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663, 669 (2007). Unconscionability is not and should not be a one-size-fits-all inquiry; rather, "unconscionability claims are context-specific[.]" McFarland v. Wells Fargo Bank, N.A., 810 F.3d 273, 283 (4th Cir. 2016) (analyzing West Virginia unconscionability law).

"A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." Decker, 322 S.C. at 219. "Our courts are constrained to avoid a statutory construction that would have the effect of reading a provision out of a statute." Protection & Advocacy for People with Disabilities, 417 S.C. at 274. Just as the Fourth Circuit concluded that the West Virginia legislature had done with similar statutory language, the South Carolina General Assembly's language providing that S.C. Code Ann. § 37-10-105(C) applies where the court finds that an "agreement or transaction is unconscionable pursuant to Section 37-

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5-108 at the time it was made, or was induced by unconscionable conduct" (emphasis added) was intended to and did "diverg[e] from [the] traditional understanding [of substantive unconscionability] and authoriz[ed] a claim for unconscionable inducement that does not require a showing of substantive unconscionability." McFarland, 810 F.3d at 284. Inducement by unconscionable conduct under S.C. Code Ann. § 37-10-105(C), rather, focuses on process rather than substantive transaction terms. Cf. McFarland, 810 F.3d at 284. In a situation of inducement by unconscionable conduct, the underlying loan terms do not have to be unconscionable; rather, the court looks to the surrounding conduct and assesses that conduct for extreme unfairness. See id.; S.C. Code Ann. § 37-10-105(C).

Our General Assembly has provided that analysis of unconscionability or inducement by unconscionable conduct under the Consumer Protection Code is not limited to a pre-written checklist of elements or even factors. S.C. Code Ann. § 37-5-108(4)(a) ("consideration must be given to applicable factors," listing some factors but noting that list is "without limitation"). An absence of meaningful choice and a lack of fundamental fairness, though, are among the hallmarks of unconscionability. See Simpson, 644 S.E.2d at 669. That is consistent with the legislative mandate concerning interpretation of the Consumer Protection Code. S.C. Code Ann. § 37-1-102(1)&(2)(c)&(d). The essence of unconscionability is fundamental unfairness, and there are as many forms in which that may manifest itself as there are opportunities for it to do so. See McFarland, 810 F.3d at 283; S.C. Code Ann. § 37-5-108(4)(a); Black's Law Dictionary at 1663.

That said, "the fact that the seller, lessor, or lender knowingly has taken advantage of the inability of the consumer or debtor reasonably to protect his interests" is specifically listed by our legislature as a factor to be used in analyzing whether a transaction was induced by unconscionable conduct. S.C. Code Ann. § 37-5-108(4)(a)(iv). If the lending institution making the mortgage

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loan deprives the customer of the opportunity to have an attorney represent him in the closing, it has deprived him of a substantial right that exists to make sure he has a meaningful choice and that the process is a fair one. See Hagood, 362 S.C. 191; Doe, 355 S.C. at 315; Buyers Service, 292 S.C. at 434. That is extremely unfair. The closing of a South Carolina mortgage loan without its supervision by a licensed South Carolina attorney, particularly where the customer is not given any opportunity to select an attorney to represent him, can be understood to be inducement of the loan by unconscionable conduct. Viewing Defendant's answer and counterclaim in the light most favorable to him and drawing all reasonable inferences in his favor, the unauthorized practice of law that he alleges is unconscionable conduct (particularly so when couple with the 53-acre vs. 5-acre property description discrepancy), and, reckoning by that same standard, the alleged closing a mortgage loan without the required attorney supervision, a requirement that exists to ensure fundamental fairness and borrower understanding of the terms of the transaction, is inducement of the loan by unconscionable conduct. That is a reading of Simpson, Hagood, Coffey, Matrix, Doe, Buyers Service, §§ 37-1-102, 37-10-102, and 37-10-105 that is logically consistent and is in accord with the public policy of this state.

CONCLUSION

Especially in light of these principles and viewing its allegations in the light most favorable to Defendant, the non-moving party, Defendant's amended answer and counterclaim alleges a claim under S.C. Code Ann. § 37-10-105(A) and under S.C. Code Ann. § 37-10-105(C). The Plaintiff's motion to dismiss it should be denied.

Respectfully submitted,

/s/ Andrew S. Radeker
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January 8, 2020

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From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Tuesday, March 15, 2022 2:49 PM
To: dj tobywardlaw.com; sphillips@spartanburgcounty.org
Cc: Trejo, Yazmin; Reggie Corley; Rene Bell-Welch
Subject: RE: 2019-CP-42-02270: U.S Bank vs. Austin Lowery
Attachments: Mot reconsider 2-23-22 order.pdf

Judge Phillips:

Yes, that's correct, and a copy of the motion to reconsider is attached. As much fun as a hearing would be, I am not sure one would be necessary on this motion. While I of course want Your Honor to grant the motion, I also realize that most motions to reconsider are denied. Accordingly, I think a form order either denying or granting the motion (and, if granting it, directing me to prepare a more formal order) would be sufficient to deal with this motion.

Thank you.

Drew Radeker

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Sent: Tuesday, March 15, 2022 2:44 PM
To: sphillips@spartanburgcounty.org
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Subject: RE: 2019-CP-42-02270: U.S Bank vs. Austin Lowery

Judge Phillips:

Mr. Radeker filed a motion to reconsider your order granting summary judgment. I did not see where you were provided a copy of his motion so I am attaching one here. I have efiled a response to this motion, also attached.

Pursuant to the rule a hearing is not required to dispose of the motion unless you deem one necessary and appropriate.

Respectfully,

s/ Derrick Jackson

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
U.S. Bank Trust, N.A., as Trustee for LSF 10 Master Participation Trust, Plaintiff, v. Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually, and as Heir or Devisee of the Estate of Lisa D. Lowery a/k/a Lisa Marie Davis Lowery, Deceased; South Carolina Department of Revenue; The United States of America acting by and through its agency, Department of the Treasury – Internal Revenue Service; and Elizabeth A. Lowery, Defendants.	)	Civil Action No. 2019-CP-42-02270

PLAINTIFF U.S. BANK TRUST N.A.,
AS TRUSTEE FOR LSF 10 MASTER PARTICIPATION TRUST'S
MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

In support of Plaintiff U.S. Bank Trust N.A., as Trustee for LSF 10 Master Participation Trust's ("U.S. Bank") Motion for Partial Summary Judgment as to the counterclaim alleged by Defendant Austin A. Lowery ("Defendant"), U.S. Bank hereby submits this brief. U.S. Bank should be granted Summary Judgment in its favor as to the counterclaim alleged, pursuant to SCRCP Rule 56, on the basis that there is no genuine issue as to any material fact and that U.S. Bank is entitled to judgment as a matter of law for the following reasons:

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UNDISPUTED FACTS AND BACKGROUND

On September 24, 2002, Defendant and Lisa D. Lowery executed and delivered a promissory note (the "Note") to Household Finance II ("Household Finance") in the amount of $304,040.62 to refinance the purchase of certain real property located at 1605 Stewart Road a/k/a 1601 Stewart Road, Woodruff, South Carolina 29388 (the "Property").[1] Because the Note funded a refinance of a prior mortgage loan that encumbered the Property, ("Household Finance") also provided Defendant with notice of his right to rescind the transaction.[2] According to the HUD-1 Statement for the transaction, the proceeds disbursed from the Note paid off numerous debt obligations of the Defendant and provided him with over $13,000 in funds.[3] Additionally, Household Finance's records for the loan transaction with the Defendant reflects that Household inquired into Defendant's preferred closing counsel at some time before of the mortgage loan transaction with Household Finance was closed.[4] Defendant, however, did not express a preference for any specified attorney to handle the closing for the mortgage loan transaction between Defendant and Household Finance.[5]

After discovering an error in the legal description in a mortgage instrument that Defendant executed with the Note. On September 30, 2002, Defendant executed and delivered another mortgage (the "Mortgage", and together with the Note, the "Loan") securing the Note to Household Finance.[6] The Mortgage was recorded on October 4, 2002, in the Office of the Register of Deeds for Spartanburg County in book 2789, page 575.[7] By assignment recorded on December

[1] Exhibit 1, Note & Allonge [279-81 & 338]
[2] Exhibit 2, Notice of Right to Rescind. [296-298]
[3] Exhibit 3, HUD-1 Stmnt. [311-313]
[4] Exhibit 4, Atty. Pref. Form. [307]
[5] *Id.*
[6] Exhibit 5, Mortg. dated 9/26/2002. The background for this mortgage is detailed in Plaintiff's return to the Defendant's motion for summary judgment directed towards Plaintiff's foreclosure claim. [287-292]
[7] *Id.*

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14, 2018 in Book 5547 at page 516, Household Finance assigned the Mortgage to U.S. Bank, the present lien holder.[8]

Defendant defaulted on his repayment obligations under the Loan,[9] and Plaintiff filed this foreclosure action against Defendant.[10] After several amendments to the foreclosure complaint, Defendant filed the Counterclaim at issue on or about November 1, 2019.[11] In his Counterclaim, Defendant alleges the original creditor, Household Finance, did not comply with the attorney preference or insurance preference provisions of S.C. Code Ann. § 37-10-102.[12] Defendant further alleges that agents of the original creditor closed the mortgage without attorney supervision and that the mortgage was induced by unconscionable conduct arising from the misidentification of the proper acreage for the collateral in the initial mortgage instrument that he signed.[13]

However, for the reasons explained herein, Defendant's Counterclaim fails as a matter of law. Therefore, U.S. Bank is entitled to summary judgment for the Counterclaim alleged and the Counterclaim should be dismissed with prejudice or in the alternative limited to an affirmative defense to Plaintiff's foreclosure claim with the limited remedy of set-off and/or recoupment.

STANDARD FOR DECISION

Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. *Turner v. Millman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011). When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Fleming v. Rose,* 350 S.C.

[8] Exhibit 6, Assign. Mortg. rec. 12/14/2018. [334]
[9] Exhibit 7, Mortg. Stmnt. Dated 6/11/2019.
[10] Initial Compl. filed 6/21/2019.
[11] Countercl. filed 11/1/2019.
[12] *Id.* ¶ 46.
[13] *Id.* ¶¶ 49-50.

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488, 493–94, 567 S.E.2d 857, 860 (2002) (citation omitted). In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. *Hancock v. Mid–South Mgmt. Co., Inc.,* 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). In cases requiring a heightened burden of proof, the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment. *Id.* at 330–31, 673 S.E.2d at 803.

ARGUMENT

I. Plaintiff's Claim For Violation Of Attorney Preference Statute With Unconscionability Fails As A Matter Of Law Because Plaintiff Cannot Be Held Liable For An Alleged Violation Of The Attorney Preference Statute By The Original Lender.

Defendant alleges that the original creditor did not comply with the attorney preference or insurance preference provisions of S.C. Code Ann. §37-10-102. All of the conduct alleged by Defendant pertains to the original creditor. Defendant has not (and cannot) establish any violation of South Carolina's attorney preference statute by the U.S. Bank because U.S. Bank had no involvement whatsoever in originating the loan. As such, Defendant's Counterclaim fails as a matter of law.

The South Carolina attorney-preference statute provides that a creditor must ascertain prior to closing the preference of a borrower as to the legal counsel that is employed to represent the debtor in all matters relating to the closing of a mortgage loan. S.C. Code Ann. § 37-10-102. If a creditor violates this provision, the debtor has a cause of action to recover actual damages and also a right "to recover from the person violating this chapter a penalty in an amount determined by the court of not less than one thousand five hundred dollars and not more than seven thousand five hundred dollars." *Id.* § 37-10-105.

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As a matter of law, U.S. Bank cannot be held liable for an alleged violation of the attorney-preference statute by the original lender—Household Finance—because U.S. Bank is only the assignee of the Loan and did not participate in the origination or settlement of the Loan transaction. The assignee of a debt "takes only the benefits, not the burdens of the assigned obligation." *Rosemond v. Campbell*, 288 S.C. 516, 522-523, 343 S.E.2d 641, 645 (S.C. Ct. App. 1986). "Thus, as against the assignee, the obligor can only assert a claim defensively when the assignee seeks to enforce the obligation; ***he has no common law right to sue the assignee affirmatively on a claim against the assignor arising from the underlying obligation***." *Id.* (emphasis added); *see also JPMorgan Chase Bank, N.A. v. Guertin*, CA 3:12-2363-MBS, 2012 WL 5550770 (D.S.C. Nov. 15, 2012) ("Defendants cite no authority, nor does the court find any, to support the proposition that a subsequent assignee is imputed with and can be held liable for the wrongful conduct of a promissory note's original obligee."). Moreover, the attorney-preference statute specifically provides that a debtor only has a right to recover for an alleged violation of the statute only "***from the person violating this chapter.***" S.C. Code Ann. § 37-10-105(A) (emphasis added). Consistent with South Carolina's common law limitation on assignee liability, the South Carolina Consumer Protection Code ("SCCPC") expressly precludes the assessment of liability for the acts of an assignor to an assignee in its definition of "creditor," which states as follows:

> "Creditor" means the person who grants credit in a credit transaction or, except as otherwise provided, an assignee of a creditor's right to payment, **but use of the term does not in itself impose on an assignee any obligation of his assignor.**"

S.C. Code Ann. § 37-1-301(13). Clearly, the legislature's limitation of liability for attorney-preference violations to "the person violating this chapter" and express statement that the definition of "creditor" throughout the SCCPC, including § 37-10-102(a) and § 37-10-105(A), establish that as a matter of law, an assignee of a loan cannot be held liable for an alleged violation of the

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attorney-preference statute by the original lender. Indeed, limiting application of the attorney-preference statute to the originating lender and precluding their assignees from liability is consistent with South Carolina common law, which requires courts to consider only the events transpiring during the execution of an agreement to analyze unconscionability claims. *See, e.g., Hardee v. Hardee*, 348 S.C. 84, 95-96, 558 S.E.2d 264, 269-70 (Ct. App. 2001) ("In determining unconscionability, courts are limited to considering facts and circumstances existing when the contract was executed.").

Here, Defendant claims that he was not provided with the attorney-preference notice prior to the closing by the original lender Household Finance. But his allegation is undermined by the fact that there is a completed attorney-preference form in the loan origination file of Household Finance that reflects the date September 18, 2002.[14] Nevertheless, as a matter of law, U.S. Bank cannot be held liable for this alleged violation of the attorney-preference statute by Household Finance because it is not the originating lender responsible for originating the Loan. Therefore, Defendant is not entitled to ***any*** recovery against Plaintiff on his counterclaim for violation of the attorney-preference statute by Household Finance. For the foregoing reasons, U.S. Bank is entitled to summary judgment for any liability exposure alleged through Defendant's attorney-preference violation claim.

CONCLUSION

For the foregoing reasons provided herein, U.S. Bank respectfully prays that the Court grant its Motion for Partial Summary Judgment, and either dismiss the Counterclaim with prejudice or issue an order limiting the Counterclaim to an affirmative defense that only provides

[14] Exhibit 4, Atty. Pref. Form. [307]

the remedy of setoff from any judgment awarded to U.S. Bank. U.S. Bank further prays for an award of such other further relief that the Court deems just and warranted.

Further, U.S. Bank expressly reserves the right to raise any and all additional arguments, briefing, and evidence any time before a final determination of its Partial Motion for Summary Judgment as the Court will allow.

Respectfully submitted on this 23rd day of April, 2021.

U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF 10 MASTER PARTICIPATION TRUST

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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG U.S. Bank Trust, N.A. as Trustee for LSF10 Master Participation Trust, PLAINTIFF, VS. Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, Individually; Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually, and as Heir or Devisee of the Estate of Lisa D. Lowery, Deceased; South Carolina Department of Revenue; The United States of America acting by and through its agency, Department of the Treasury – Internal Revenue Service; and Elizabeth A. Lowery, DEFENDANT(S).	IN THE COURT OF COMMON PLEAS CASE NO. 2019-CP-42-02270 **PLAINTIFF'S RETURN AND BRIEF IN OPPOSITION TO DEFENDANT LOWERY'S MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFF'S CLAIMS**

The Plaintiff, by way of return to the Defendant Austin A. Lowery's motion for summary judgment as to Plaintiff's claims, responds as follows:

FACTUAL/PROCEDURAL BACKGROUND

On or about May 24, 1996, Austin Lowery ("Lowery") acquired a 53.73 tract of land southeast of Woodruff in Spartanburg County. Lowery had 5.0 acres of this land surveyed in 1996 (Plat Book 143 at Page 0468) and again in 2002. (Exhibits 1 A & B, Lowery Plats). On April 26, 2002, Lowery borrowed $210,000 from SunTrust Bank secured by a mortgage on the 5 acres that incorporates by reference the 1996 plat (of the entire 53.73 tract of land) in the legal description of the mortgage. (Exhibit 2, SunTrust mortgage, recorded on May 3, 2002 in Book 2699 at Page 269).

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According to Lowery, he needed to refinance a construction loan that was about to mature[1], so he and his wife, Lisa, applied for a loan from Household Finance Corporation II ("HFC II"), Plaintiff's predecessor in title. The mortgage loan was approved, and on September 24, 2002, Lowery and his wife, Lisa, executed a promissory note to HFC II in the principal amount of $304,040.62 (Exhibit 3, Lowery Promissory Note). These funds were used to pay off various obligations of the Lowerys including the SunTrust mortgage which encumbered only the 5 acres. (Exhibit 4, Lowery HUD-1 Closing Statement). Additionally, the Uniform Residential Appraisal Report, completed on September 19, 2002, for the originating lender and in anticipation of this closing transaction, appraised only 5.0 acre tract and any improvements located on that 5.0 acre tract (Exhibit ___, Lowery Origination Appraisal).

Lowery (who was the sole owner of the 5.0 acre property) also executed a mortgage dated September 24, 2002, to HFC II securing the promissory note which was duly recorded in REM 2782 at Page 874 on September 26, 2002. (Exhibit 5, "53.73 mortgage" or "invalid mortgage"). The legal description of this mortgage referenced the entire 53.73 acre tract which was in Lowery's deed acquiring the property, rather than the 5.0 acre parcel subsequently surveyed by Lowery (and which also was mortgaged by SunTrust) that all parties agree was the parcel intended to be mortgaged. Lowery admits this 53.73 acre mortgage was never valid, (Exhibit 6, Defendants Answer to Interrogatory 23) and that he only intended to mortgage the 5.0 acre tract (Exhibit ___, Affidavit of Austin Allen Lowery, Response 9 at Page 2).

Upon discovery of the error in the legal description of the recorded mortgage, HFC II requested Lowery, consistent with his agreed upon obligation with the originating lender to sign such documents as necessary to complete the loan closing transaction, to return and sign a new,

[1] Presumably, this was not the SunTrust loan as it had a maturity date of 2032.

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separate mortgage with the legal description which was intended by all parties: the 5.0 acre tract. Lowery did so on September 30, 2004, and this mortgage was recorded on October 4, 2002, in the Office of the Register of Deeds for Spartanburg County in Book 2789 at Page 575. (Exhibit 7, 5.0 acre mortgage).

It is worth noting by the court, that the sole, mortgagee title insurance policy insured only the subsequent 5.0 acre mortgage and excluded the invalid mortgage from coverage under Schedule B, Item 10 with the specific mandate from the title insurance company that "BRANCH TO RELEASE" the invalid mortgage. (Exhibit 8, Extracts from Title Insurance Policy).

Lowery made payments on the promissory note but ultimately defaulted under the terms of the promissory note and mortgage by failing to make payments. Lowery admits that he has not made any payment on the note since prior to April 2004. HFC II filed a foreclosure action in 2008, and subsequently amended the pleadings to clarify it was foreclosing the 5.0 acre mortgage. In the answer to paragraph 14 of the Amended Complaint filed in the 2008 foreclosure action, the Lowerys admit they executed a mortgage on the 5.0 acre tract which is the subject of the action. The 2008 foreclosure action was ultimately dismissed under Rule 40(j), SCRCP, in 2013.

On January 11, 2019, consistent with the nature of the invalid mortgage, the intentions of the parties as admitted in prior pleadings, discovery responses in this action, the Affidavit of Austin Allen Lowery (specifically Response on Page 13 of Exhibit ___), and the mandate from the title insurance company in Schedule B of the mortgagee title insurance policy, Plaintiff filed a release (Exhibit 9, Mortgage Release) of the invalid mortgage instrument that encumbered 53.73 acres. (Exhibit 5, "53.73 mortgage" or "invalid mortgage"). Thereafter, in June 2019, Plaintiff filed the present foreclosure which was subsequently amended to clarify the foreclosure

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of the 5.0 acre mortgage (which was alleged in paragraph 27 of the Amended Complaint. (See Second Amended Complaint and Consent Order to Amend (by Plaintiff and Lowery), which specifically and unequivocally consented to the foreclosure of the 5.0 acre mortgage).

Lowery filed the present motion for summary judgment[2] as to Plaintiff's complaint for foreclosure on the narrow but misguided ground that Plaintiff somehow released its mortgage. For the reasons argued below, both legal and equitable reasons, Plaintiff's motion for summary judgment must be denied.

STANDARD OF REVIEW

Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law" and "should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts." *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 362, 563 S.E.2d331, 333 (2002).

[2] There are also separate, cross motions for summary judgment as to Lowery's counterclaim.

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DISCUSSION

1. **SUMMARY JUDGMENT SHOULD BE DENIED BECAUSE A PLAIN READING OF THE RECORDED RELEASE SHOWS IT ONLY RELEASED THE PROPERTY FROM THE LIEN OF THAT CERTAIN MORTGAGE RECORDED IN REM 2782 AT PAGE 874 ON SEPTEMBER 26, 2002 (EXHIBIT 5).**

S.C. Code Ann. § 29-3-330 provides various means by which a party can release property subject to the lien of a security instrument. Probably the most common method is subsection (b)(3), which provides for the secured party or its agent to record a written instrument releasing the mortgage. The statute includes a form instrument that simply provides the recording information for the mortgage to be released and a box stating that the lien of the foregoing instrument is released. (underline emphasis added.)

Likewise, in this case, U.S. Bank (the Plaintiff) recorded a document entitled "RELEASE OF MORTGAGE, Mortgage/Record Book 2782 at Page 874." (Exhibit 9). In that document, US Bank released the property from "liens under that certain Mortgage dated September 24, 2002, from Austin A. Lowery, recorded in the office of the ROD/RMC/Clerk of Court for Spartanburg County on September 26, 2002, in Mortgage/Record Book 2782 at Page 874 and assigned to U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust by assignment dated June 26, 2018, and recorded July 3, 2018, in Book 5469 at Page 795." The language used by US Bank is very specific and intentional. The Release applied to that specific mortgage and no other, and it serves to fully comply with the specific mandate in the mortgagee title insurance policy (Exhibit ___).

It is important for the court to recognize that long before this Release was executed and filed, Lowery executed a separate mortgage for 5.0 acres, specifically in accordance with the intent of the parties, which was duly recorded and represented the

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intent of the parties. (Mortgage recorded on October 4, 2002, in the Office of the Register of Deeds for Spartanburg County in Book 2789 at Page 575. (Exhibit 7, 5.0 acre mortgage).

A release[3] is a contract and contract principles of law should be used to determine what the parties intended. *See Bowers v. Dept. of Transp.*, 360 S.C. 149, 153, 600 S.E.2d 543, 545 (Ct. App. 2004) (stating "The Release is a contract" and applying South Carolina's rules of contract construction). "In construing terms in contracts, this court must first look at the language of the contract to determine the intentions of the parties." *Jacobs v. Service Merch. Co.*, 297 S.C. 123, 375 S.E.2d 1(Ct. App.1988). To discover the intention of a contract, the court must first look to its language if the language is perfectly plain and capable of legal construction, it alone determines the document's force and effect. S*uperior Auto. Ins. Co. v. Maners*, 261 S.C. 257, 263, 199 S.E.2d 719, 722 (1973). "Parties are governed by their outward expressions and the court is not at liberty to consider their secret intentions." *Blakeley v. Rabon*, 266 S.C. 68, 73, 221[649 S.E.2d 502]S.E.2d 767, 769 (1976).

In this case, a plain reading of the recorded release shows that it only released the property from the lien of the invalid mortgage dated September 24, 2002 from Austin A. Lowery, recorded in the office of the Register of Deeds for Spartanburg County on September 26, 2002, in Mortgage/Record Book 2782 at Page 874. There is no mention or description of the subsequent mortgage dated September 30, 2002, and recorded on October 4, 2002, in the Office of the Register of Deeds for Spartanburg County in Book

[3] While admittedly a different kind of "release", I believe the same rules of construction apply.

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2789 at Page 575 (Exhibit 7, 5.0 acre mortgage), even though it was already filed and of record at the time the release was executed and recorded.

Lowery recognizes this deficiency in his argument, so he tries (but fails) to address it by conflating the two separately executed and recorded mortgages as somehow being the same[4]. First, this argument is not valid as the mortgages were executed on separate days, have different legal descriptions, different witnesses, and were recorded separately. Not to mention that one mortgage was invalid and unintended and the other valid and intended by the parties (as specifically and continuously admitted to by Lower, as outlined above). However, even if this conflation were somehow proper (which it is not), then Lowery cannot have it both ways. Lowery would have the court draw the subsequent mortgage backward to the invalid and unintended mortgage to be released rather than forward to the valid and intended mortgage which was subsequently recorded and not released and of which Lowery made timely mortgage payments on for almost two years. If the two separate mortgages are somehow the same (and again, they are not), then their identity should be under the subsequently executed, and valid mortgage on the 5.0 acres which was intended by the parties.

The plain language of the release shows that US Bank is only releasing the lien of the invalid mortgage dated September 24, 2002, from Austin A. Lowery, recorded in the office of the ROD/RMC/Clerk of Court for Spartanburg County on September 26, 2002, in Mortgage/Record Book 2782 at Page 874. This recorded release did not nor was it ever intended to be a release of the subsequent, valid 5.0 acre mortgage which was

[4] "The Plaintiff is obviously taking the position that these are two different mortgages, not that the second recorded mortgage document is just a corrected version of the first. Let us be clear: Defendant's position is that the second recorded mortgage document is just a corrected version of the first and that the mortgage was released when the release document was done." Defendant's Memorandum in Opposition to Motion to Dismiss Counterclaim, p. 7.

admittedly executed by Lowery and reflected the intention of both parties. For this reason, summary judgment should be denied.

2. SUMMARY JUDGMENT SHOULD BE DENIED BECAUSE THE DEFENDANT ADMITS THE MORTGAGE ACTUALLY RELEASED WAS INVALID AS BEING CONTRARY TO THE INTENT OF THE PARTIES AND WAS SUPPOSED TO BE RELEASED.

In Plaintiff's interrogatories to the Defendant Lowery, the following interrogatory was asked and answered by Lowery:

> 23. Do you contend (corrected) that the mortgage secured by 53.73 acres and recorded in Deed Book 2782 at Page 874 was a valid and enforceable mortgage when executed? If not, why not?
>
> **Answer:**
>
> **No. This mortgage was not valid as the collateral that was listed in the mortgage was incorrect.**

It is difficult to see how the release of a mortgage which Lowery acknowledges was invalid and contrary to the intent of the parties (that 5.0 acres be mortgaged) could somehow result in a release of a subsequently executed mortgage that was valid and consistent with the intent of the parties. Furthermore, Lowery argues that the presence of both mortgages being of record allegedly interfered with his efforts to refinance the property and that he specifically asked that the invalid 53.74 be released[5], so releasing the invalid mortgage is consistent with what Lowery wanted. Likewise, Lowery's title insurance policy provided an exclusion to this invalid mortgage and mandated that it was to be released.

3. SUMMARY JUDGMENT SHOULD BE DENIED SINCE THE DEFENDANT ADMITS EXECUTION OF A MORTGAGE FOR THE PROPERTY WHICH IS THE SUBJECT OF THIS FORECLOSURE

[5] See Lowery, Fifth Defense and Counterclaim to HFC II Amended Complaint where Lowery claimed statutory penalty for failure to satisfy mortgage.

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ACTION AND THERE IS NO EVIDENCE THIS MORTGAGE WAS RELEASED OR SATISFIED.

Lowery's motion is predicated on the absence of an enforceable mortgage supporting U.S. Bank's foreclosure action. However, Lowery admits that it was always his intent to mortgage the 5.0 acre tract,[6] and Lowery also admits to giving HFC II a mortgage on the 5.0 acres in his answer to the original foreclosure pleadings brought by HFC II (US Bank's predecessor in title):

3. Plaintiff is the owner and holder of the Note and Mortgage described hereafter and the subject of this action. The premises covered and affected by the said mortgage and by the foreclosure thereof is described as follows:

All that certain piece, parcel or lot of land lying and being in the State of South Carolina, County of Spartanburg, being designated as 5.00 acres, more or less, and shown on a plat made for Austin A. Lowery, by Joe E. Mitchell, dated 5/22/1996, and filed in Plat Book 143, at Page 458. Being a portion of that property conveyed from Joseph E. Ulmer, II to Austin A. Lowery by deed recorded June 3, 1996 in Book 64H at Page 146, in the Register's Office of Spartanburg County, South Carolina.

Tax Map or Parcel ID No. 4-43-10-029-00.

Lowery Response:

That Lowerys admit so much of paragraph 3 as alleges that a mortgage was given by them to the Plaintiff.

That Lowerys admit so much of paragraph 14 as alleges that they did execute a mortgage on the 5 acre tract that is the subject of this action on September 30, 2002.

It is well settled that parties are judicially bound by their pleadings unless withdrawn, altered, or stricken by amendment or otherwise. The allegations, statements, or admissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are taken as true against the pleader for

[6] See Lowery Affidavit, ¶9.

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the purpose of the action. *Elrod v. All*, 243 S.C. 425, 134 S.E.2d 410 (1964), cited in *Postal v. Mann*, 308 S.C. 385, 418 S.E.2d 322 (S.C. App. 1992).

Having admitted to giving Plaintiff a mortgage on this property, it is incumbent on the Defendant Lowery to prove as an affirmative defense that the mortgage has been released or satisfied. This he cannot do. As set forth in the first argument, nowhere in the recorded release does it mention or refer to the 5.0 acre mortgage which the Lowery(s) specifically and continuously admit giving to Plaintiff. The allegations in the pleadings show the mortgage was not satisfied. Therefore, summary judgment should be denied. At the very least, this court should conclude that further inquiry into the facts at a hearing is desirable to clarify the application of the law to the facts.

4. SUMMARY JUDGMENT SHOULD BE DENIED SINCE IT WOULD BE INEQUITABLE FOR LOWERY TO RECEIVE $304,040.62 FROM PLAINTIFF WHICH HE USED TO PAY OFF HIS CONSTRUCTION LOAN AND OTHER DEBTS WITHOUT GIVING PLAINTIFF THE PROMISED SECURITY FOR ITS LOAN.

It is undisputed that Lowery received loan proceeds from HFC II totaling $304,040.62 (Lowery Promissory Note, Exhibit 3) and that Lowery used those proceeds to pay off over $268,509 in debts and other obligations including a mortgage to SunTrust Bank (Exhibit 2) encumbering this same 5.0 acre property. (HUD-1 Closing Statement, Exhibit 4). It is also undisputed that Lowery intended to and did give Plaintiff a mortgage over the 5.0 acres. Therefore, it would be unfair and inequitable to allow Lowery to receive and use these proceeds from the HFC II loan, fail to repay the promissory note for 17 years, and then claim that the mortgage which he admits he gave to Plaintiff is now unenforceable based on the release of a different, invalid mortgage which Lowery alleged

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he requested and admits was not valid and which release was mandated by the title insurance company.

CONCLUSION

A plain reading of the release shows that the release did not include the 5.0 acre mortgage given by Lowery. Lowery admits that the mortgage actually released by Plaintiff was invalid, contrary to the intention of the parties, and was supposed to be released. Lowery admits giving Plaintiff the mortgage being foreclosed and there is no evidence that it has been released or otherwise satisfied. It would be inequitable for Lowery to receive and apply the loan proceeds, give Plaintiff a mortgage, fail to repay the loan for over 17 years, and then claim the mortgage he admits he gave was released. For all these reasons, and for clarity on the application of the facts to the law, Lowery's motion for summary judgment should be denied.

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803-252-3340

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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG U.S. Bank Trust, N.A. as Trustee for LSF10 Master Participation Trust, PLAINTIFF, VS. Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, Individually; Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually, and as Heir or Devisee of the Estate of Lisa D. Lowery, Deceased; South Carolina Department of Revenue; The United States of America acting by and through its agency, Department of the Treasury – Internal Revenue Service; and Elizabeth A. Lowery, DEFENDANT(S).	IN THE COURT OF COMMON PLEAS CASE NO. 2019-CP-42-02270 **PLAINTIFF'S RETURN AND BRIEF IN OPPOSITION TO DEFENDANT LOWERY'S MOTION FOR SUMMARY JUDGMENT AS TO UNCONSCIONABILITY**

Plaintiff, by way of return to the Defendant Austin A. Lowery's motion for summary judgment as to his counterclaim for unconscionability[1], responds as follows:

FACTUAL/PROCEDURAL BACKGROUND

Plaintiff incorporates by reference the factual/procedural background in the companion brief in opposition to Lowery's motion for summary judgment as to Plaintiff's claim with the following relevant additions. Lowery signed an attorney preference form with a fax date of September 18, 2002 and an execution date of September 24, 2002. On this form, Lowery

[1] Lowery's counterclaim for unconscionability is ambiguous as to whether he is offensively seeking a judgment against Plaintiff for damages, penalties and attorney's fees or merely defensively as a set-off as suggested in his memorandum in opposition to the motion to dismiss. This return is focused on the defensive use claim for summary judgment and co-counsel has filed a separate motion with incorporated memorandum as to the possible offensive claim.

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indicated "None" for no preference. Lowery claims in his affidavit that he closed the loan at the offices of Household Finance and did not have an attorney present.

STANDARD OF REVIEW

Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law" and "should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts." *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 362, 563 S.E.2d331, 333 (2002).

DISCUSSION

1. AN ALLEGED VIOLATION OF THE ATTORNEY-PREFERENCE STATUE IS NOT SUFFICIENT TO ESTABLISH UNCONSCIONABILITY.

Lowery claims that Plaintiff's alleged violation of S.C. Code Ann. § 37-10-102 (Attorney and Insurance Preference Statute) is unconscionable conduct rendering his promissory note and mortgage null and void. Lowery did sign an attorney preference form dated September 24, 2002, (the date of the closing) and selected or approved "None" for no attorney preference. The form itself has a fax date of September 18, 2002, and Lowery, at least, claims that he did not see the form prior to closing. It is difficult to affirm or dispute Lowery's belated claim as the closing

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took place almost twenty years ago. Accordingly, this claim is denied in the reply to Lowery's counterclaim and thus is a disputed material fact.

Even if this claim were not disputed, summary judgment should be denied because this same argument was raised and rejected in *Lackey v. Green Tree Financial Corp.*, 330 S.C. 388, 498 S.E.2d 898 (S.C. App. 1998). In *Lackey* the trial court held that an arbitration clause included in a retail installment contract for the purchase of a manufactured home was unconscionable and unenforceable, in part, because Green Tree failed to comply with the attorney-preference statute, "thereby denying each buyer the right to consult counsel." *Id.* at 330 S.C. 398. The South Carolina Supreme Court rejected this conclusion and stated, "Contrary to the holding of the trial court in this case, we do not read *First Baptist Church of Timmonsville* to establish a bright line test rendering an arbitration clause unenforceable where a contract somehow prevents a party from consulting a lawyer. But even if it did, there is nothing in the contract which prevented respondents from consulting legal counsel." *Lackey* at 399.

Furthermore, Lowery has failed to point out what provision or provisions in the promissory note or the mortgage which are unconscionable which counsel would have allegedly protected him from.

This court should deny summary judgment on the counterclaim for unconscionability based on the alleged attorney preference violation.

2. THE POSSIBLE ABSENCE OF COUNSEL AT CLOSING DOES NOT *PER SE* ESTABLISH UNCONSCIONABILITY.

The previous discussion applies equally here. Lowery claims to have closed his loan without counsel[2]. However, there is no evidence that he was prevented from consulting and

[2] Plaintiff admits that the HUD-1 Closing Statement shows "Lender" as closing agent and the line for Attorney's Fees 1107 is blank. Plaintiff further admits that it is not aware of any documents or other evidence, at this point in the litigation, which shows that an attorney supervised the closing of the mortgage loan.

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being represented by the counsel of his choice. While there is no doubt about the benefits of counsel at a closing, the court should also be mindful of the distant closing date and the circumstances of a closing which occurred almost twenty years ago. "In determining unconscionability, courts are limited to considering facts and circumstances existing when the contract was executed." *Hardee v. Hardee*, 348 S.C. 84, 95-96, 558 S.E.2d 264, 269-70 (Ct.App.2001) (citing Restatement (Second) of Contracts § 208 (1981)), aff'd as modified, 355 S.C. 382, 585 S.E.2d 501 (2003).

As the court knows, during that time, closings did occur without the presence of counsel. *Matrix*[3] was decided almost a decade later, prospectively applying the unclean hands doctrine to potentially preclude equitable remedies to a lender of a loan closed without an attorney. *Id.* 714 S.E.2d at 535. Also, again, Lowery fails to show or allege how the absence of counsel materially prejudiced him in the terms of the note or mortgage.

This court should conclude that the possible absence of counsel at closing in 2002 does not *per se* render the promissory note and mortgage unenforceable.

3. ANY ERROR IN THE PROPERTY DESCRIPTION WAS QUICKLY CORRECTED AND THE PROPER MORTGAGE FOR THE 5.0 ACRES AS INTENDED BY THE PARTIES WAS RECORDED.

Lowery argues as if there was some grand conspiracy by the originating lender, Household Finance II, over the two mortgages he executed in connection with his loan. However, Lowery admits the first mortgage was invalid because of the legal description. Lowery also admits that he intended to and did give HFC II a mortgage over the 5.0 acres which was recorded. The first, invalid mortgage was released, as required by the terms of the title

[3] Matrix Financial Serv. Corp.. v. Frazer, 394 S.C. 134, 714 S.E.2d 532 (S.C. 2011)

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insurance policy. There is no prejudice to Lowery and there is no basis for him to claim unconscionability or unconscionable conduct.

4. LOWERY HAD MEANINGFUL CHOICE AND THE TERMS OF THE PROMISSORY NOTE AND MORTGAGE ARE NOT SO OPPRESSIVE THAT NO REASONABLE PERSON WOULD MAKE THEM AND NO FAIR AND HONEST PERSON WOULD ACCEPT THEM.

Unconscionability, on the other hand, requires a greater showing. Unconscionability is characterized by the "absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Fanning v. Fritz's Pontiac-Cadillac-Buick Inc.*, 322 S.C. 399, 402, 472 S.E.2d 242, 245 (1996) (emphasis added) (citing *Jones Leasing v. Gene Phillips and Assocs.*, 282 S.C. 327, 318 S.E.2d 31 (Ct.App.1984)).

In this case, there is no evidence that Lowery could not have sought a loan elsewhere or that the terms of his loan were "so oppressive that no reasonable person would make them." Indeed, Lowery made payments for a little over 18 months on the promissory note and the mortgage. The HUD-1 Closing Statement reflects that Lowery had several debts paid and walked away from closing with $13,535. (See Plaintiff's Exhibit 4[4])

Lowery claims in his affidavit that there was an agreement to reduce his interest rate if he made payments for a year. (Exhibit 8, paragraph 4.) However, the promissory note, which Lowery is charged with reading, provides for a reduction in rate of .50% at the end of the third year (36th month) , fourth year (48th month), and fifth year (60th month) if Lowery makes his payments within 30 days of their due date and does not file bankruptcy. (Exhibit 3, page 2, "Adjustment to Contract Rate.") Lowery did not make it to 36 months. If Lowery had

[4] References to exhibits are to Plaintiff's exhibits filed with the Return in Opposition to Lowery's motion for Summary Judgment as to Plaintiff's claims.

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continued to make his payments for these periods, his rate would have been reduced to 9.0%, while certainly very high by today's standards, back when he signed the promissory note, the average rate was about 6.0%[5]. Also, the court should keep in mind that Lowery had a very high loan to value ratio of over 96% (cp. loan amount of $304,040 to origination appraisal amount of $317,900). The higher rate bears a reasonable relationship to the business risks. *Lackey v. Green Tree Financial Corp.*, 330 S.C. 388, 401, 498 S.E.2d 898 (S.C. App. 1998)

This court should find, viewing all the evidence in the light most favorable to the non-moving party, that summary judgment as to unconscionability should be denied.

5. UNCONSCIONABILITY IS INHERENTLY A FACT SPECIFIC INQUIRY AND SHOULD NOT BE DECIDED ON SUMMARY JUDGMENT.

"A determination whether a contract is unconscionable depends upon all the facts and circumstances of a particular case." 17A Am.Jur.2d Contracts § 279 (2004); see also 17 C.J.S. Contracts § 4 (1999) ("The determination of unconscionability is fact specific, and the totality of the circumstances must be assessed.") *Holler v. Holler*, 364 S.C. 256, 612 S.E.2d 469, 476 (S.C. 2005). In this case, the court should not decide issues of unconscionability without hearing all the testimony and facts and circumstances of the case.

CONCLUSION

For the reasons set forth herein, this court should deny summary judgment on Defendant Lowery's counterclaim and schedule this case on the merits.

Respectfully submitted,

TOBIAS G. WARD, JR., PA

s/J. Derrick Jackson
J. Derrick Jackson, SC Bar No.: 15192
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[5] Freddie Mac Primary Mortgage Market Survey (PMMS) extract of relevant period in 2002 (attached).

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8/16/2002	6.22	0.6	5.63	0.5
8/23/2002	6.27	0.7	5.71	0.7
8/30/2002	6.22	0.7	5.64	0.7
9/6/2002	6.15	0.6	5.56	0.6
9/13/2002	6.18	0.6	5.59	0.6
9/20/2002	6.05	0.7	5.47	0.7
9/27/2002	5.99	0.6	5.41	0.6

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Primary Mortgage Market Survey (PMMS)
pmms.txt

Section Listing
1. PMMS Definition
2. Data file format and field definitions

Section 1
PMMS Definition

"Each week Freddie Mac surveys lenders on the rates and points for their most popular 30-year fixed-rate, 15-year fixed-rate and 5/1 hybrid amortizing adjustable-rate mortgage products. The survey is based on first-lien prime conventional conforming home purchase mortgages with a loan-to-value of 80 percent. In addition, the adjustable-rate mortgage (ARM) products are indexed to U.S. Treasury yields and lenders are asked for both the initial coupon rate and points as well as the margin on the ARM products."
"Currently, lenders surveyed each week are a mix of lender types - thrifts, credit unions, commercial banks and mortgage lending companies - is roughly proportional to the level of mortgage business that each type commands nationwide."

For more information please refer to the following link:
http://www.freddiemac.com/pmms/about-pmms.html

Section 2

Column	Field	Content Description
1	date	The week rates were collected
2	pmms30	30- Yr FRM
3	pmms30p	30- Yr FRM Fees/Points
4	pmms15	15- Yr FRM
5	pmms15p	15- Yr FRM Fees/Points
6	pmms51	5/1- Yr ARM
7	pmma51p	5/1- Yr ARM Fees/Points
8	pmms51m	5/1- Yr ARM Margins
9	pmms51spread	"5/1- Yr ARM Spread, 30- Yr FRM Minus 5/1- Yr ARM"

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STATE OF SOUTH CAROLINA **COUNTY OF SPARTANBURG**	**IN THE COURT OF COMMON PLEAS** **CASE NO. 2019-CP-42-02270**
U.S. Bank Trust, N.A., as Trustee for LSF 10 Master Participation Trust, **Plaintiff,** **vs.** **Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually, and as Heir or Devisee of the Estate of Lisa D. Lowery a/k/a Lisa Marie Davis Lowery, Deceased; South Carolina Department of Revenue; The United States of America acting by and through its agency, Department of the Treasury - Internal Revenue Service; and Elizabeth A. Lowery,** **Defendants.**	**MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Defendant Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery (hereinafter "Defendant") hereby submits this memorandum in opposition to the Plaintiff's motion for summary judgment in the above-captioned action. There are certainly issues in this case about violation of S.C. Code Ann. § 37-10-102, commonly called the attorney preference statute, that prevent summary judgment; however, there are other, independent reasons why the Plaintiff's summary judgment motion cannot be granted.

RES JUDICATA MAKES SUMMARY JUDGMENT FOR THE PLAINTIFF IMPROPER

The Plaintiff maintains that it is suing to foreclose a mortgage on the basis of a default in note payment that occurred in 2004. In 2008, Household Finance Corporation II, the originator of the mortgage, brought a foreclosure action on the basis of the same default as what the Plaintiff alleges here. By order filed July 26, 2013, that action ended when it was dismissed, "stricken from

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the active roster for failure to prosecute, pursuant to Rule 40(j)[.]" None of the parties to that case consented to the action being stricken from the active docket under Rule 40(j), SCRCP, or otherwise. Such consent is required in order for an action to be stricken with leave to restore. Id. Accordingly, this was a dismissal that was not provided for under the South Carolina Rules of Civil Procedure (including one not provided for in Rule 41, SCRCP).

This was a dismissal with prejudice. Rule 41 states that "*any dismissal not provided for in this rule*, other than a dismissal for lack of jurisdiction or for improper venue or for failure to join a party under Rule 19, *operates as an adjudication upon the merits*." Rule 41(b), SCRCP (emphasis added). The dismissal of Household's claim, which was not one of the dismissals authorized by Rule 41, decided that Household (as mortgagee under the mortgage at issue) was not entitled to anything it sought in its claim.

This "dismissal with prejudice indicates an adjudication on the merits and precluded subsequent litigation to the same extent as if the action had been tried to final adjudication. Where an action has been dismissed with prejudice, the judgment operates in subsequent litigation to the same extent as if the action had been tried to a final adjudication." Jones v. City of Folly Beach, 326 S.C. 360, 483 S.E.2d 770, 773 (Ct. App. 1997). The dismissal of the first action, not being a dismissal provided for in Rule 41, SCRCP, adjudicated that action on the merits. Id.; Rule 41(d), SCRCP.

> "[R]es judicata precludes parties from subsequently relitigating issues actually litigated and those that might have been litigated in a prior action." Duckett v. Goforth, 374 S.C. 446, 464, 649 S.E.2d 72, 81 (Ct. App. 2007). "Res judicata is the branch of the law that defines the effect a valid judgment may have on subsequent litigation between the same parties and their privies." Id. at 464, 649 S.E.2d at 81-82 (quoting Nelson v. QHG of S.C. Inc., 354 S.C. 290, 304, 580 S.E.2d 171, 178 (Ct. App. 2003)). In order for res judicata to apply, the parties—or their privies—and subject matter must be identical, and the prior suit adjudicated the issue. 7 S.C. Jur.

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> *Estoppel and Waiver* § 27 (1991). "For purpose of res judicata, however, the concept of privity rests not on the relationship between the parties asserting it, but rather on each party's relationship to the subject matter of the litigation." Yelsen Land Co. v. State, 397 S.C. 15, 22, 723 S.E.2d 592, 596 (2012). "The term 'privy,' when applied to a judgment or decree, means one so identified in interest with another that he represents the same legal right." Roberts v. Recovery Bureau, Inc., 316 S.C. 492, 496, 450 S.E.2d 616, 619 (Ct. App. 1994). "One in privity is one whose legal interests were litigated in the former proceeding." Id. "Privies are those who are so connected with the parties in estate, or in blood, or in law, as to be identified with them in interest . . . ." Bailey v. U.S. Fid. & Guar. Co., 185 S.C. 169, 193 S.E. 638, 641 (1937).

Equivest Fin., LLC v. Ravenel, 422 S.C. 499, 507, 812 S.E.2d 438, 442 (Ct. App. 2018).

Res judicata bars the parties to the first case – and their privies – "from raising any issues which were adjudicated in the former suit *and any issues which might have been raised in the former suit*." Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) (emphasis added). A litigant's claim is barred under res judicata even when he "is 'prepared in the second action (1) [t]o present evidence or *grounds or theories of the case* not presented in the first action or (2) [t]o seek remedies or forms of relief not demanded in the first action.'" S.C. Pub. Interest Foundation v. Greenville County, 401 S.C. 377, 386, 737 S.E.2d 502, 507 (Ct. App. 2013) (emphasis in original, quoting Restatement (Second) of Judgments § 25 (1982 & Supp. 2012)).

Res judicata applies to all rights and remedies "with respect to *all or part of the transaction, or series of connected transactions, out of which the action arose*." Id. at 388 (emphasis in original; quoting Restatement (Second) of Judgments § 24).

> Failure to assert a compulsory counterclaim precludes a later assertion of that claim in a subsequent or independent action. . . . The Restatement [Second, Judgments § 22(2)(a)] similarly provides that a party may be precluded from subsequently maintaining an action on a counterclaim that was not interposed in a previous suit

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> where the counterclaim must be interposed by a compulsory counterclaim statute or rule of court.

47 Am.Jur.2d Judgments § 504 (2006).

The Plaintiff claims to be an assignee of Household, which means the Plaintiff is the privy of Household. A merits adjudication between these parties about this same subject matter was already made in Civil Action No. 2008-CP-42-05026. Res judicata thus bars the Plaintiff's claim here. The Defendant recognizes that this would negate his attorney preference violation defense and the relief that would go along with it, but the law is what it is. Res judicata bars this litigation between these parties about these issues. S.C. Pub. Interest Foundation, 401 S.C. at 386; Plum Creek Dev. Co., 334 S.C. at 34; Equivest Fin., 422 S.C. at 507.

At this stage, because there is a genuine issue about res judicata barring the Plaintiff's claim, summary judgment for the Plaintiff is not proper.

LACK OF COMPETENT PROOF OF DEBT COMPONENT AMOUNTS MAKES SUMMARY JUDGMENT FOR THE PLAINTIFF IMPROPER

Summary judgment is further not proper because the Plaintiff has not adduced cognizable evidence of the debt component amounts sufficient to allow the court to comply with Rule 71, SCRCP, and issue a foreclosure decree.

Facts presented to the court for consideration in support of or opposition to a motion for summary judgment must be admissible evidence, with the caveat that affidavits are used in place of what would be live testimony at a trial. See Dawkins v. Fields, 354 S.C. 58, 67-68, 580 S.E.2d 433, 438 (2003); Hall v. Fedor, 349 S.C. 169, 561 S.E.2d 654 (Ct. App. 2002); Saro v. Ocean Holiday Partnership, 314 S.C. 116, 121, 441 S.E.2d 835, 838 (Ct. App. 1994); Collins v. RJ Reynolds Tobacco Co., 901 F. Supp. 1038 (1995).

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The affidavit offered by the Plaintiff is not competent to prove anything about the debt amounts at issue. That affidavit does not provide ledger records showing payments made and charges accrued, just purports to give a summary listing of debt components *from* such unpresented records. (The affidavit *states* records are submitted with it, but they are not.) The case of Deep Keel, LLC v. Atl. Private Equity Group, LLC, 413 S.C. 58, 773 S.E.2d 607 (Ct. App. 2015), provides as follows.

> The plain language of Rule 803(6) allows for the admission of "[a] memorandum, report, record, or data compilation," not testimony describing such a document. We hold Rule 803(6) does not apply to admit live testimony offered to prove the contents of a record containing hearsay when that record is not offered in evidence.

Id. at 72. Testimony about the content of records is usually just inadmissible hearsay. Id. In any event, all the business records exception to the hearsay rule does is allow the admission of documents, if an appropriate foundation for the exception is laid. Id.

Further, the affidavit states that information in it about the debt components comes from records of the previous servicer of the debt. (Per the Plaintiff, there have been three servicers: Household Finance Corporation II, Caliber Home Loans Servicing, and, now, Fay Servicing.) That is hearsay within hearsay. No attempt has been made to lay a foundation for the admission of business records of the previous servicers – the source of statements contained in Fay Servicing's records, per the affidavit. Rule 805, SCRE, provides as follows:

> Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.

Even if Fay Servicing's records were before the court, which they are not, they would not be admissible evidence. The affidavit is inadmissible hearsay, any way one cuts it. Id.; Rule 801(c), SCRE.

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RELEASE OF THE SUBJECT MORTGAGE
MAKES SUMMARY JUDGMENT FOR THE PLAINTIFF IMPROPER

This is a contested mortgage foreclosure case. One of the things that the Plaintiff must prove in order to prevail on its claim is that it has a mortgage. "A mortgage and a note are separate securities for the same debt, and a mortgagee who *has a note and a mortgage* to secure a debt has the option to either bring an action on the note or to pursue a foreclosure action." U.S. Bank Natl. Trust Assn. v. Bell, 385 S.C. 364, 684 S.E.2d 199, 204 (Ct. App. 2009) (emphasis added).

There is no dispute that the Plaintiff executed and filed a mortgage release, already of record in this action. The Plaintiff contends that this was for a different mortgage than the one it seeks to foreclose, but that contention is belied by the evidence. There has only ever been one mortgage here – it was just signed twice.

Indeed, the HUD-1 settlement statement *for this loan* (a copy of which the Plaintiff filed in this case on April 23, 2021) gives September 24, 2002, as the closing date, and no settlement statement has been produced indicating that there was another closing on September 30, 2002. What happened on September 30, 2002, is just what the Defendant's affidavit says happened: at Household's request, the Defendant and his now-deceased wife came in a signed the same mortgage a second time. There may have been two pieces of paper, but there has only ever been one mortgage. When the Plaintiff released the mortgage, it released the only mortgage it has ever had on the subject property.

The Plaintiff has no action on this unsecured debt, either, since it is barred by the three-year statute of limitations. Newell v. Neal, 50 S.C. 68, 27 S.E. 560, 567 (1897), holds that a debt that was once secured by a mortgage is subject to the ordinary unsecured debt statute of limitations once that mortgage ceases to exist. Id. That has happened here.

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There is at least a genuine issue of material fact about whether the mortgage at issue has been released. Summary judgment for the Plaintiff is not proper.

THE ATTORNEY PREFERENCE STATUTE AND REMEDIES FOR ITS VIOLATION MAKE SUMMARY JUDGMENT FOR THE PLAINTIFF IMPROPER

In pertinent part, the attorney preference statute provides:

> Whenever the primary purpose of a loan that is secured in whole or in part by a lien on real estate is for a personal, family or household purpose -
>
> (a) The creditor must ascertain prior to closing the preference of the borrower as to the legal counsel that is employed to represent the debtor in all matters of the transaction relating to the closing of the transaction and except in the case of a loan on property that is subject to the South Carolina Horizontal Property Act (Section 27-31-10 et seq.) the insurance agent to furnish required hazard and flood property insurance in connection with the mortgage and comply with such preference.
>
> The creditor may comply with this section by:
>
> (1) including the preference information on or with the credit application so that this information shall be provided on a form substantially similar to a form distributed by the administrator; or
>
> (2) providing written notice to the borrower of the preference information with the notice being delivered or mailed no later than three business days after the application is received or prepared. If a creditor uses a preference notice form substantially similar to a form distributed by the administrator, the form is in compliance with this section.

The attorney preference statute is in Chapter 10 of the South Carolina Consumer Protection Code, which is codified in Title 37 of the South Carolina Code of Laws. A statute in the same chapter, S.C. Code Ann. § 37-10-105, provides the remedies for a violation of § 37-10-102, stating:

> A) If a creditor violates a provision of this chapter, the debtor has a cause of action, other than in a class action, to recover actual damages and also a right in an action, other than in a class action, to recover from the person violating this chapter a penalty in an amount

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determined by the court of not less than one thousand five hundred dollars and not more than seven thousand five hundred dollars. No debtor may bring a class action for a violation of this chapter. No debtor may bring an action for a violation of this chapter more than three years after the violation occurred, except as set forth in subsection (C). The three-year statute of limitations applies to actions commenced after May 2, 1997. No inference should be drawn as to the applicable statute of limitations for any pending actions. ***This subsection does not bar a debtor from asserting a violation of this chapter in an action to collect a debt which was brought more than three years from the date of the occurrence of the violation as a matter of defense by recoupment or set-off in such action.***

(B) No creditor may be held liable in an action brought under this section for a violation of this chapter if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

(C) ***If the court finds as a matter of law that the agreement or transaction is unconscionable pursuant to Section 37-5-108 at the time it was made, or was induced by unconscionable conduct***, the court may, in an action other than a class action:

(1) refuse to enforce the agreement, or a term, or part of the agreement or transaction that the court determines to have been unconscionable at the time it was made;

(2) enforce the remainder of the agreement without the unconscionable term or part, or limit the application of the unconscionable term or part to avoid an unconscionable result;

(3) rewrite or modify the agreement to eliminate an unconscionable term, part, or result and enforce the new agreement; or

(4) award:

(a) not more than the total amount of the loan finance charge and allow repayment of the unpaid balance of the loan without any finance charge;

(b) not more than double the amount of the excess loan finance charge or other charges or fees actually received by the creditor or paid by the debtor to a third party; and

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> (c) attorney's fees and costs.
>
> An action pursuant to this subsection may not be brought after the original scheduled maturity date of the debt.
>
> (D) In an action in which it is found that a creditor has violated this chapter, the court shall award to the debtor the costs of the action and to his attorneys their reasonable fees. In determining attorneys' fees, the amount of the recovery on behalf of the debtor is not controlling.

S.C. Code Ann. § 37-10-105 (emphasis added.)

As acknowledged on page 6 of Judge Cooper's order granting the Plaintiff's previous motion for partial summary judgment, the Defendant's counterclaim for violation of the attorney preference statute remains in play "as an equitable and statutory defense for the purpose of setoff or recoupment, or both," in this case. There is more than an scintilla of evidence to support the Defendant's position on the issues related to the attorney preference violation and what remedy or remedies ought to flow from it.

The Defendant's affidavit lays out the facts – the only facts in the record – concerning the circumstances of the attorney preference violation. The original creditor, Household Finance Corporation II, of which the Plaintiff claims to be an assignee, actually had the Defendant sign two mortgage documents and recorded them both. Defendant intended to mortgage five acres to Household, but Household first had him sign a mortgage document on which it placed, without his knowledge, a description of the mortgaged property as being the entire 53.73 acres of the Defendant, which included the five acres and all the Defendant's surrounding property, too. This mortgage document is already in the record. Household apparently realized that this was not what was supposed to be mortgaged and had Defendant execute another mortgage document in which it did describe five acres as mortgaged. Household did not couch this as a new mortgage; rather, it called in the Defendant and his now-deceased wife to re-sign the *same* mortgage.

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Almost seventeen years later, in 2019, a release document was recorded that referenced the book and page number of the first recorded mortgage document. Originally, the Plaintiff brought this suit stating that the mortgage it sought to foreclose was recorded with the book and page number of the 53 acre mortgage document. By consent, the Plaintiff amended its complaint and pled that the mortgage it is seeking to foreclose has the book and page number of the second recorded mortgage document.

Defendant's answer and counterclaim states that "[w]ith respect to the closing of the mortgage loan subject of this case, the original creditor did not comply with the attorney preference or insurance preference provisions of S.C. Code Ann. § 37-10-102[,]" that "[n]o attorney licensed to practice law in South Carolina supervised the closing of the mortgage loan[,]" and that "[a]gents of the original creditor closed this mortgage loan without attorney supervision." The Defendant's affidavit bears this out.

A lender may violate S.C. Code Ann. § 37-10-102 by failing to "ascertain *prior to closing* the preference of the borrower as to the legal counsel that is employed to represent the debtor in all matters of the transaction relating to the closing of the transaction" and by failing to "comply with such preference." S.C. Code Ann. § 37-10-102(a). The Plaintiff cannot rely on the attorney preference form submitted with the Defendant's affidavit, as it was given on the date of the closing. Our Supreme Court has noted that "the suggestion that the attorney preference statute disclosure may be made at closing borders on frivolity." King v. Am. Gen. Finance, Inc., 386 S.C. 82, 91, 687 S.E.2d 321, 326 (2009). As the lender never ascertained Defendant's preference prior to closing as to counsel to represent him in that closing this loan was closed without attorney supervision at all, the original creditor violated the attorney preference statute.

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The Defendant's affidavit also presents facts that bring his claim with the ambit of S.C. Code Ann. § 37-10-105(C), under which greatly enhanced remedies for the violation of the attorney preference statute are available – among them ones that could make the debt upon which the Plaintiff sues wholly or partially unenforceable. Household not only closed the loan without a attorney supervision, it also "without the knowledge or permission of Defendant, added a property description to a purported mortgage document signed by Defendant that described far more property than both the lender and the Defendant knew was intended to be mortgaged." Defendant's counterclaim lists several ways in which the subject loan was induced by unconscionable conduct, among them the unauthorized practice of law, depriving Defendant of his right to counsel, lying to him about the amount of property that would be stated as being mortgaged in the mortgage document, improper alteration of the mortgage document, concealment from him of the inclusion of the 53 acres in the mortgage document, and lying to him about whether a modification or refinance to a better interest rate would be forthcoming. The Plaintiff may contend that the *terms* of the transaction, in the abstract, were not unconscionable, but the *conduct* that induced the transaction was.

The General Assembly has provided that the Consumer Protection Code "shall be liberally construed and applied to promote its underlying purposes and policies." S.C. Code Ann. § 37-1-102(1); accord King v. Am. Gen. Finance, Inc., 386 S.C. 82, 89, 90, 687 S.E.2d 321, 324-26 (2009); Davis v. Nationscredit Fin. Services Corp., 326 S.C. 83, 484 S.E.2d 471 (1997); Camp v. Springs Mtg. Corp., 310 S.C. 514, 426 S.E.2d 304 (1992). Among the specifically enumerated purposes of the Consumer Protection Code are "to further consumer understanding of the terms of credit transactions" and "to protect consumer buyers, lessees, and borrowers against unfair

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practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors." S.C. Code Ann. § 37-1-102(2)(c)&(d).

The court must, accordingly, interpret S.C. Code Ann. § 37-10-105, including the statute's use of the word "unconscionable," consistently with the purposes of the Consumer Protection Code, i.e., liberally in favor of the furtherance of consumer understanding of the terms of credit transactions and the protection of consumers against unfair practices by suppliers of consumer credit. S.C. Code Ann. § 37-1-102(1)&(2)(c)&(d).

At issue in this case is a South Carolina mortgage loan. Under South Carolina law, a person has the right to be represented by an attorney of his own choice, without conflicts of interest, in a mortgage closing. See Doe v. McMaster, 355 S.C. 306, 585 S.E.2d 773, 777-78 (2003); State v. Buyers Service Co., Inc., 292 S.C. 426, 357 S.E.2d 15 (1987). A South Carolina mortgage loan closing, including a refinance, must be supervised by an attorney licensed to practice law in South Carolina. Id.

In Wachovia Bank, N.A. v. Coffey, the Court of Appeals observed that "[t]he unauthorized practice of law is *inherently prejudicial* to not only the parties involved in the instant transaction but also the public at large[.]" 389 S.C. 68, 698 S.E.2d 244, 248 (Ct. App. 2010) (emphasis added), *aff'd as modified* 404 S.C. 421, 746 S.E.2d 35, 76 (2013). The Court of Appeals noted that the purpose served by our Supreme Court requiring lawyers to supervise mortgage loan closings is "the protection of the public from the potentially severe economic and emotional consequences which may flow from erroneous advice given by persons untrained in the law." Id. (quoting Buyers Service, 292 S.C. at 431). The Supreme Court favorably cited Coffey's "inherently prejudicial" description in Matrix Financial Services Corp. v. Frazer, which reaffirmed that "closing a loan

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without the supervision of an attorney constitutes the unauthorized practice of law." 394 S.C. 134, 714 S.E.2d 532, 534 (2011). Prejudice inheres in the unauthorized practice of law.

Among the chief reasons our Supreme Court requires an attorney licensed to practice law in this state to supervise a mortgage loan closing is so that the mortgage loan customer is in a position to receive accurate information from the lawyer, who represents the customer, about the terms of credit transactions, and so that the lawyer may protect the customer from unfair practices by suppliers of mortgage credit. Doe, 355 S.C. at 315; Buyers Service, 292 S.C. at 434. The closing lawyer represents the mortgage loan customer[1], Doe, 355 S.C. at 315, and must supervise the closing because, among other things, "attorneys . . . have the ability to furnish their clients legal advice should the need arise and fall under the regulatory rules of" the Supreme Court. Buyers Service, 292 S.C. at 434. Per our Supreme Court, underpinning the attorney supervision requirement is the principle that "protection of the public is of paramount concern." Id. Chiefly, what the Court has sought to protect the public from are the negative consequences engendered by people entering into mortgage loan transactions without the opportunity to make a meaningful, informed choice about whether to sign on to the terms of that transaction. Doe, 355 S.C. at 315; Buyers Service, 292 S.C. at 434. The closing attorney is there to ensure the choice to enter into the mortgage loan is meaningful and the bargaining process is fundamentally fair. Doe, 355 S.C. at 315; Buyers Service, 292 S.C. at 434.

The right to be represented by an attorney of one's own choice is a substantial right. Hagood v. Sommerville, 362 S.C. 191, 607 S.E.2d 707 (2005). This is no less so in the context of an out-of-court transaction like a mortgage loan closing. See Doe, 355 S.C. at 315; Buyers Service, 292 S.C. at 434. The right of a mortgage loan customer to be represented in a mortgage loan

[1] Under certain circumstances, the closing attorney may also represent the lender. Doe, 355 S.C. at 315.

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closing by a loyal, unconflicted attorney of his own choice, there to ensure the customer has a meaningful choice about whether to enter into the transaction and that the process is fair, is indeed substantial. Hagood, 362 S.C. 191; Doe, 355 S.C. at 315; Buyers Service, 292 S.C. at 434.

Unconscionability simply means "[e]xtreme unfairness." Black's Law Dictionary 1663 (9th ed. 2009). In discussing unconscionability, our Supreme Court has said that "[a]bsence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue." Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663, 669 (2007). Unconscionability is not and should not be a one-size-fits-all inquiry; rather, "unconscionability claims are context-specific[.]" McFarland v. Wells Fargo Bank, N.A., 810 F.3d 273, 283 (4th Cir. 2016) (analyzing West Virginia unconscionability law).

"A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." Decker, 322 S.C. at 219. "Our courts are constrained to avoid a statutory construction that would have the effect of reading a provision out of a statute." Protection & Advocacy for People with Disabilities, 417 S.C. at 274. Just as the Fourth Circuit concluded that the West Virginia legislature had done with similar statutory language, the South Carolina General Assembly's language providing that S.C. Code Ann. § 37-10-105(C) applies where the court finds that an "agreement or transaction is unconscionable pursuant to Section 37-5-108 at the time it was made, or was induced by unconscionable conduct" (emphasis added) was intended to and did "diverg[e] from [the] traditional understanding [of substantive unconscionability] and authoriz[ed] a claim for unconscionable inducement that does not require a showing of substantive unconscionability." McFarland, 810 F.3d at 284. Inducement by unconscionable conduct under S.C. Code Ann. § 37-10-105(C), rather, focuses on process rather than substantive transaction terms. Cf. McFarland, 810 F.3d at 284. In a situation of inducement

by unconscionable conduct, the underlying loan terms do not have to be unconscionable; rather, the court looks to the surrounding conduct and assesses that conduct for extreme unfairness. See id.; S.C. Code Ann. § 37-10-105(C).

Our General Assembly has provided that analysis of unconscionability or inducement by unconscionable conduct under the Consumer Protection Code is not limited to a pre-written checklist of elements or even factors. S.C. Code Ann. § 37-5-108(4)(a) ("consideration must be given to applicable factors," listing some factors but noting that list is "without limitation"). An absence of meaningful choice and a lack of fundamental fairness, though, are among the hallmarks of unconscionability. See Simpson, 644 S.E.2d at 669. That is consistent with the legislative mandate concerning interpretation of the Consumer Protection Code. S.C. Code Ann. § 37-1-102(1)&(2)(c)&(d). The essence of unconscionability is fundamental unfairness, and there are as many forms in which that may manifest itself as there are opportunities for it to do so. See McFarland, 810 F.3d at 283; S.C. Code Ann. § 37-5-108(4)(a); Black's Law Dictionary at 1663.

That said, "the fact that the seller, lessor, or lender knowingly has taken advantage of the inability of the consumer or debtor reasonably to protect his interests" is specifically listed by our legislature as a factor to be used in analyzing whether a transaction was induced by unconscionable conduct. S.C. Code Ann. § 37-5-108(4)(a)(iv). If the lending institution making the mortgage loan deprives the customer of the opportunity to have an attorney represent him in the closing, it has deprived him of a substantial right that exists to make sure he has a meaningful choice and that the process is a fair one. See Hagood, 362 S.C. 191; Doe, 355 S.C. at 315; Buyers Service, 292 S.C. at 434. That is extremely unfair. The closing of a South Carolina mortgage loan without its supervision by a licensed South Carolina attorney, particularly where the customer is not given any opportunity to select an attorney to represent him, can be understood to be inducement of the

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loan by unconscionable conduct. Viewing the record in the light most favorable to the Defendant and drawing all reasonable inferences in his favor, the unauthorized practice of law noted in his affidavit is unconscionable conduct (particularly so when coupled with the 53-acre vs. 5-acre property description discrepancy *and* a false promise to refinance or modify the loan), and, reckoning by that same standard, the alleged closing a mortgage loan without the required attorney supervision, a requirement that exists to ensure fundamental fairness and borrower understanding of the terms of the transaction, is inducement of the loan by unconscionable conduct. That is a reading of Simpson, Hagood, Coffey, Matrix, Doe, Buyers Service, §§ 37-1-102, 37-10-102, and 37-10-105 that is logically consistent and is in accord with the public policy of this state.

There is at least a genuine issue of material fact about the violation of the attorney preference statute that precludes summary judgment here.

LACHES MAKES SUMMARY JUDGMENT FOR THE PLAINTIFF IMPROPER

This action was brought about 15 years after the claimed default, which the Plaintiff says was in 2004. Even if there were no other issues, a genuine issue of material fact about laches would bar the Plaintiff from success on summary judgment. "Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Mid–State Trust, II v. Wright, 323 S.C. 303, 474 S.E.2d 421 (1996). An unreasonable length of time has passed, and the Plaintiff and its predecessor neglected in that time to bring this suit. No explanation is offered for why suit was not brought earlier. This prejudices the Defendant, as a mountain of interest is claimed to have accrued.

CONCLUSION

Viewing the record in the light most favorable to Defendant, the non-moving party, the Plaintiff's motion for summary judgment should be denied.

Respectfully submitted,

/s/ Andrew S. Radeker
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ATTORNEYS FOR DEFENDANT
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Columbia, South Carolina
January 27, 2022

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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS
Household Finance Corporation, II, Plaintiff, vs. Austin A. Lowery a/k/a Allen Lowery; Elizabeth A. Lowery; The United States of America by and through its agency the Internal Revenue Service; Financial Federal Credit, Inc.; U.S. Bancorp Equipment Finance, Inc. f/k/a U.S. Bancorp Leasing & Financial Defendant(s).	)	Civil Action No. 2008-CP-42-5026 **AMENDED COMPLAINT** (NON-JURY) FORECLOSURE OF REAL ESTATE MORTGAGE Deficiency Judgment Waived

Plaintiff alleges:

GENERAL ALLEGATIONS

1. This is an action for the foreclosure of a mortgage upon certain real estate in Spartanburg County, South Carolina.

2. Pursuant to S.C. Code Section 33-15-101, Plaintiff is a corporation or other legal entity doing business in the State of South Carolina.

3. Plaintiff is the owner and holder of the Note and Mortgage described hereafter and the subject of this action. The premises covered and affected by the said mortgage and by the foreclosure thereof is described as follows:

> All that certain piece, parcel or lot of land lying and being in the State of South Carolina, County of Spartanburg, being designated as 5.00 acres, more or less, and shown on a plat made for Austin A. Lowery, by Joe E. Mitchell, dated 5/22/1996, and filed in Plat Book 143, at Page 458.

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Being a portion of that property conveyed from Joseph E. Ulmer, II to Austin A. Lowery by deed recorded June 3, 1996 in Book 64H at Page 146, in the Register's Office of Spartanburg County, South Carolina.

Tax Map or Parcel ID No. 4-43-10-029-00.

4. Pursuant to the South Carolina Supreme Court's Administrative Order filed on May 22, 2009, the mortgage loan identified is a consumer loan, as referenced in the above Administrative Order. However, the mortgage loan identified is not owned, securitized or guaranteed by Fannie Mae or Freddie Mac and is not owned or held by a servicer participating in the HMP, and therefore, the Administrative Order is not applicable to the mortgage loan identified herein.

5. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.

6. The Defendant(s) herein described 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 South Carolina Code Section 15-35-840.

7. Based upon a search of the public records of Spartanburg 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 defendants.

8. Pursuant to the terms of the Mortgage and applicable state law, Plaintiff requests the Mortgage be foreclosed and that the property be sold at public auction in accordance with law, subject to any liens for taxes, special assessments of record against such property, and existing easements or restrictions of record.

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9. The hereinafter named Defendant(s) may have some interest in or lien upon the premises covered by the mortgage set forth below, or some part thereof, but that such interests or liens are junior and subsequent to the lien of the Plaintiff's Mortgage or, if specified below, have been paid in full and either should be satisfied of record or the lien released from the subject real estate. Said liens or interests are of record in the Office of the RMC or Clerk of Court of the aforesaid county and are described as follows:

a. Elizabeth A. Lowery, by virtue of a mortgage given by Austin A. Lowery in the amount of $105,900.73, dated May 5, 2004, and recorded May 6, 2004 in Book 3219 at Page 590.

b. The United States of America acting by and through its agent The Internal Revenue Service, by virtue of liens of record, including, but not limited to, a Notice of Federal, Tax Lien Under Internal Revenue Laws against Austin Allen Lowery, Identifying No. 320408006, in the amount of $2,248.11, dated October 3, 2006, and recorded in Spartanburg County on October 18, 2006, in Book 9 at Page 985.

c. Financial Federal Credit, Inc., by virtue of a judgment against Austin A. Lowery and Lisa Lowery in the amount of $161,899.51, dated January 24, 2006 and recorded on January 26, 2006 in Judgment Roll No. 288238.

d. U.S. Bancorp Equipment Finance, Inc. f/k/a U.S. Bancorp Leasing & Financial, by virtue of a judgment against August Allen Lowery a/k/a Allen A. Lowery a/k/a Lowery, individually and d/b/a Al-Tech Machining in the amount of

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$46,957.76, dated January 4, 2006 and recorded on January 9, 2006 in Judgment Roll No. 284903.

FOR A FIRST CAUSE OF ACTION
(Foreclosure of Mortgage)

10. The Plaintiff incorporates the allegations of Paragraphs 1-9 herein.

11. This cause of action is for the foreclosure of the Mortgage described above.

12. Heretofore, on or about September 24, 2002, Austin A. Lowery and Lisa D. Lowery made, executed and delivered a certain Adjustable Rate Note ("Note") in the principal sum of $304,040.62, payable in monthly installments of principal and interest of $2,788.98 commencing on October 24, 2002.

13. In order to secure the payment of the Note according to the terms and conditions thereof, Austin A. Lowery made, executed and delivered unto Household Finance Corporation II a certain real estate Mortgage covering the previously described property and any and all improvements to the property, including a residential structure.

14. The Mortgage was signed, witnessed and probated September 30, 2002; thereafter the Mortgage was recorded in the Office of the RMC/ROD for Spartanburg County on October 4, 2002, in Mortgage Book 2789 at Page 575.

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

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16. Any notice required by the terms of the Mortgage or by state or federal statutes has been given to the applicable Defendant(s) prior to the commencement of this action.

17. After all payments received by the Plaintiff have been credited to the subject loan, the loan is in default and due for April 30, 2004, and the conditions of the Note and Mortgage have been broken. Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due on the Note and Mortgage as of April 30, 2004, the principal sum of $301,994.94, with interest from March 30, 2004, advances, late charges, and also for the costs and disbursements of this action, including attorney's fees.

18. Pursuant to the terms of the Mortgage, Plaintiff has employed counsel to prosecute this action and a reasonable value of services of counsel in this action is such sum as the Court may find appropriate.

19. Plaintiff may be forced to pay sums for taxes and 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.

20. Plaintiff's right to a personal or deficiency judgment pursuant to South Carolina Code Sections 29-3-650 and 29-3-660 is expressly waived.

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

(1) Direct the RMC/ROD to annotate the public records to reflect ownership of the Mortgage in the Plaintiff.

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

(3) Declare Plaintiff's Mortgage a first lien and render judgment of foreclosure for the amount so found to be due and owing thereon, together with any ad volorem taxes or insurance premiums which may be due and have been advanced by the Plaintiff, with reasonable attorney's fees, and for the costs of this action.

(4) Order the reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency.

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

(6) Under the direction of this Court, sell the mortgaged premises, bar any equity of redemption, and apply the proceeds of sale as follows:

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

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

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

(7) Issue an Order directing the Sheriff of Spartanburg County, South Carolina, to place the successful purchase at said foreclosure sale in possession of the property should the same become necessary.

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

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NELSON MULLINS RILEY & SCARBOROUGH LLP

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Columbia, South Carolina

December 14, 2009

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CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Household Finance Corporation II., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Amended Complaint

Parties Served:

George H. McMaster, Esquire
TOMPKINS & MCMASTER, LLP
1333 Main Street, Suite 225
Post Office Box 7337
Columbia, SC 29202

Lisa S. Shumpert
Administrative Assistant

December 4, 2009

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2008-CP-42-5026

Household Finance Corporation II

PLAINTIFF(S)

Austin A. Lowery a/k/a Allen Lowery; Elizabeth A. Lowery; USA; IRS; Financial Federal Credit, Inc.; US Bancorp Equipment Finance, Inc. et al

DEFENDANT(S)

Submitted by: Court	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☒ **ACTION STRICKEN** (*CHECK REASON*): ☒ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

IT IS ORDERED that this case is hereby stricken from the active roster for failure to prosecute, pursuant to Rule 40(j), and may be restored to the active docket without a filing fee once the parties are ready to proceed.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

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M. HOPE BLACKLEY

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Gordon G. Cooper, Master-in-Equity | 3065 Judge Code | 07-25-2013 Date

For Clerk of Court Office Use Only

This judgment was entered on the 26 day of July, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 26 day of July 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Alana Odom Williams, Esq.
P.O. Box 11070
Columbia, SC 29211-1070
ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

M. Hope Blackley
CLERK OF COURT

Court Reporter:

PLAINTIFF(S)

DEFENDANT(S)

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M. HOPE BLACKLEY

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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

U.S. Bank Trust, N.A., as Trustee for LSF 10 Master Participation Trust, Plaintiff, -vs- Austin A. Lowery a/k/a/ Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, Lisa D. Lowery, South Carolina Department of Revenue, The United States of America acting by and through its agency, Department of the Treasury - Internal Revenue Service, and Elizabeth A. Lower, Defendant.	CASE NO. 2019-CP-42-02270

PLAINTIFF U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF 10 MASTER PARTICIPATION TRUST'S ANSWERS TO DEFENDANT AUSTIN A. LOWERY'S FIRST SET OF DISCOVERY REQUESTS

Pursuant to Rules 26 and 33 of South Carolina Rules of Civil Procedure, Plaintiff, U.S. Bank Trust, N.A., as Trustee for the LSF 10 Master Participation Trust ("U.S. Bank") hereby answers Defendant, Austin A. Lowery's ("Defendant") First Set of Interrogatories, Requests for Production of Documents and Requests for Admissions as follows:

GENERAL OBJECTION(S)

1. These general objections are incorporated into each of the specific responses that follow. Notwithstanding those responses, U.S. Bank does not waive any of these general objections.

2. With respect to each response set forth herein, U.S. Bank's investigation continues and U.S. Bank reserves the right to supplement or amend any responses and production as necessary and as additional information is obtained through discovery or otherwise.

3. To the extent that Defendant's requests, definitions, or instructions purport to require U.S. Bank to provide information or documents known only to, or possessed only by, third parties, U.S. Bank objects to each such interrogatory, request, definition, or instruction.

4. U.S. Bank objects to Defendant's requests to the extent that they seek information protected from discovery by the attorney-client privilege, work product immunity, or any other

privilege or immunity. U.S. Bank will provide only information and documents not subject to any applicable privilege or immunity.

5. U.S. Bank objects to Defendant's requests to the extent that they seek documents or information that is privileged, confidential, proprietary, protected as trade secrets regarding its business practices, or are otherwise non-discoverable.

6. U.S. Bank objects to Defendant's requests to the extent that they seek documents or information that are privileged or made confidential or otherwise non-discoverable by applicable law, including without limitation any laws requiring the confidential treatment of non-public personal or financial information regarding consumers.

7. These responses are based upon such information as is reasonably available to U.S. Bank and susceptible to retrieval through reasonable efforts; however, various records of U.S. Bank may have been discarded from time to time over the years in the ordinary course of business.

8. U.S. Bank objects to the interrogatories, requests, and definitions to the extent that they are overly broad or unduly burdensome, to the extent that they seek documents not reasonably calculated to lead to the discovery of admissible evidence, and to the extent that they seek documents or information beyond the scope of matters pled in the Complaint.

9. Unless otherwise noted, U.S. Bank will provide information and documents only for the time period relevant to the allegations in the Complaint.

10. To the extent that Plaintiff's requests, definitions, or instructions purport to impose any obligation on U.S. Bank greater than or different from those under the South Carolina Rules of Civil Procedure or beyond any discovery limitations imposed at law or by the Court, U.S. Bank objects to each such interrogatory, request, definition, or instruction.

11. U.S. Bank expressly reserves any and all objections concerning relevance, authenticity, and admissibility of any documents that may be produced by it.

12. These responses and objections have been prepared in accordance with state law pursuant to a reasonable and diligent investigation and search, and they represent a good faith effort to ascertain responsive information to the extent that such information is available at this stage of discovery. To the extent that these requests purport to require more, U.S. Bank objects on the grounds that the requests exceed the scope of reasonable permissible discovery contemplated by state law and would impose an undue burden and expense upon Caliber.

Subject to and without waiving the foregoing objections, U.S. Bank responds to Plaintiff's requests.

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RESPONSES TO INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case, indicate whether written or recorded statements have been taken from the witnesses, and indicate who has possession of such statements.

ANSWER: U.S. Bank objects to this Interrogatory to the extent that it seeks confidential and personal information about U.S. Bank's employees and agents or information that is protected by the work product doctrine, attorney-client privilege, bank examiner privilege, or any other privilege, protection, immunity applicable under governing law. Subject to and without waiving these objections, U.S. Bank states that no one person within the organization is most knowledgeable regarding the facts of the case and complete information regarding these areas of inquiry would require input from numerous sources. U.S. Bank further states that it has not taken any written or recorded statements from any witnesses. U.S. Bank identifies the following individuals who may have information regarding the allegations in the Complaint:

Austin Lowery
c/o Andrew S. Radeker
P. O. Box 50143
Columbia, SC 29250

Caliber Home Loans, Inc. Servicer
c/o McGuireWoods LLP
201 North Tryon Street, Suite 3000
Charlotte, NC 28202

2. Set forth a list of all photographs, plats, sketches, and all other documents (including, but not limited to, any video footage) in the possession, custody, or control of the Plaintiffs or counsel that relate to any claim or defense in this litigation.

ANSWER: U.S. Bank objects to this Interrogatory as overly broad and unduly burdensome to the extent it requests "a list of all photographs, plats, sketches, and any other documents…that relate to any claim or defense in this case" with no specificity or limitation as to time, scope or relevancy. U.S. Bank also objects to this Interrogatory because it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence for any of the issues in this action. U.S. Bank also objects to the foregoing Interrogatory to the extent that it seeks information that is privileged, confidential, proprietary, protected as trade secrets regarding its business practices, or otherwise protected by any other privilege, protection, or immunity applicable under governing law. Subject to and without waiving these objections, U.S. Bank refers Defendant to the documents produced with U.S. Bank's Responses to Defendant's Requests for Production as Caliber_Lowery_000001-0000917.

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3. List the names and addresses of all expert witnesses whom the Plaintiff proposes to use as witnesses at the trial of this case and set forth a description of the expert's opinion(s) with regard to the case and the subjects about which the Plaintiff believes such expert may testify at trial.

ANSWER: U.S. Bank objects to this Interrogatory to the extent it seeks disclosure of materials and information precluded from discovery pursuant to the attorney-client privilege or work product doctrine. Subject to its general and specific objections, U.S. Bank states that it has not identified a testifying expert witness for use at trial. U.S. Bank reserves the right to name testifying experts, including any rebuttal witnesses, before the conclusion of discovery for this action.

4. For each person known to the parties or- counsel to be a witness concerning the facts of the case, set forth a summary sufficient to inform the Defendant of the important facts known to or observed by such witness and provide a copy of any written or recorded statements taken from such witness.

ANSWER: U.S. Bank objects to this Interrogatory to the extent that it seeks information that is protected by the work product doctrine, attorney-client privilege, bank examiner privilege, or any other privilege, protection, or immunity applicable under governing law. Subject to and without waiving these objections, U.S. Bank states that it has not yet determined which witnesses it may call at a trial and reserves the right to supplement and amend this response, if necessary. BANA identifies the following individuals who may have information regarding the allegations in the Complaint and Counterclaim:

Austin Lowery
c/o Andrew S. Radeker
P. O. Box 50143
Columbia, SC 29250

Austin Lowery is a Defendant in this case. He is expected to testify as to any allegations made in the Counterclaim and all aspects related to this case, including his knowledge of the mortgage loan at issue. Further, he is expected to testify as to any conversation he may have had with any witnesses relating to the facts of this case.

Caliber Home Loans, Inc. Servicer
c/o McGuireWoods LLP
201 North Tryon Street, Suite 3000
Charlotte, NC 28202

Caliber Home Loans, Inc. is the servicer of the mortgage loan which is the subject matter of this suit. A representative of Caliber is expected to testify as to their knowledge of the facts of the case, Caliber's part in the servicing of the mortgage loan that is the subject of the Complaint and Counterclaim and any discussions or communications had with witnesses concerning the events and transactions at issue.

5. Set forth the names and addresses of all insurance companies, bonding companies, and similar entities that have insurance coverage, any bond(s), indemnification obligations, and/or other coverage relating to the claim and set forth the number or numbers and/or other identifying information of the policies, bonds, etc., involved and the amount or amounts of coverage provided in each policy, bond, etc.

ANSWER: U.S. Bank objects to this Interrogatory because it seeks irrelevant information that is not reasonably calculated to lead to the discovery of admissible evidence concerning any claim or defense alleged in this action. Subject to its general and specific objections, U.S. Bank has not identified any information concerning liability coverage for the claims alleged in the Complaint.

6. If the Plaintiff contends that the original creditor with regard to the loan subject of this case complied with the requirements of S.C. Code Ann. § 37-10-102, state how and when this was done and identify by title, date, and description each document used in doing so.

ANSWER: U.S. Bank objects to this Interrogatory as overly broad and unduly burdensome to the extent that is requests information that is not limited in time or scope to documents within U.S. Bank's control. U.S. Bank disputes that it is liable for an alleged violation of S.C. Code Ann. §37-10-102 based upon the plain language of the statute as it was not the originating lender.

7. Itemize each amount the Plaintiff claims is due as part of the debt subject of this action, giving for each such amount its exact dollar figure, its nature, and the date the Plaintiff claims it became due.

ANSWER: U.S. Bank refers Defendant to the documents produced with U.S. Bank's Responses to Defendant's Requests for Production as Caliber_Lowery_000917.

8. Itemize each amount that has ever been paid by the Plaintiff for the payment of taxes for the property subject of this action, giving for each such amount its exact dollar figure, its

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nature, the date the amount was paid to the taxing authority, and the date the Plaintiff claims it became due as part of the loan.

ANSWER: U.S. Bank objects to this Interrogatory as overly broad and unduly burdensome to the extent that is requests information that is not limited in time or scope to documents within U.S. Bank's control. Subject to and without waiving these objections, U.S. Bank refers Defendant to the documents produced with U.S. Bank's Responses to Defendant's Requests for Production as Caliber_Lowery_000102-000106, 000109-000110, 000114-000115, 000126-000127, 000131-000136, 000148-000152, 000154-000165, 000177-000185, 000188-000194, 000206-000213, 000457-000494, 000510, 000523-000533, 000556, 000740, 000897-000916.

9. Itemize each amount that has ever been added to the loan subject of this action for the payment of insurance, giving for each such amount its exact dollar figure, its nature, the date the amount was paid to the applicable insurer, and the date the Plaintiff claims it became due as part of the loan.

ANSWER: U.S. Bank objects to this Interrogatory as overly broad and unduly burdensome to the extent that is requests information that is not limited in time or scope to documents within U.S. Bank's control. Subject to and without waiving these objections, U.S. Bank refers Defendant to the documents produced with U.S. Bank's Responses to Defendant's Requests for Production as 000102-000106, 000109-000110, 000114-000115, 000126-000127, 000131-000136, 000148-000152, 000154-000165, 000177-000185, 000188-000194, 000206-000213, 000457-000494, 000531-000533, 000556, 000740, 000897-000916.

10. Give the date the Plaintiff claims the Defendant came to be in default of the note and mortgage subject of this action.

ANSWER: The mortgage loan which is the subject of this action is currently due for the April 30, 2004 payment. According to the business records provided to U.S. Bank by the prior servicer, the Defendant's last payment was made on May 17, 2004.

11. State the date the Plaintiff's cause of action for foreclosure brought in this case arose.

ANSWER: The mortgage loan which is the subject of this action is currently due for the April 30, 2004 payment. According to the business records provided to U.S. Bank by the prior servicer, the Defendant's last payment was made on May 17, 2004. Pursuant to S.C. Code of Laws §15-3-520 (a) Plaintiff has twenty years from the date of default to bring an action upon a contract in writing which is secured by a mortgage. Plaintiff contends that it brought the action within the time allowed by statute.

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12. Set forth each of the payments that has been made toward the loan subject of this action, stating for each such payment its amount, the date it was received, by whom it was received, and how it was applied to the loan or otherwise treated.

ANSWER: U.S. Bank also objects to this Interrogatory because it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence for any of the issues in this action. U.S. Bank further objects to this Interrogatory as overly broad and unduly burdensome to the extent that is requests information that is not limited in time or scope to documents within U.S. Bank's control. Subject to and without waiving these objections, U.S. Bank refers Defendant to the documents produced with U.S. Bank's Responses to Defendant's Requests for Production as Caliber 000897-000916.

13. State with specificity how and when the Plaintiff acquired whatever interest it has in the account subject of this action.

ANSWER: U.S. Bank objects to this Interrogatory on the grounds that it requests information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence for any of the issues in this action. Without waiving the foregoing objection U.S. Bank acquired an interest in the mortgage loan which is the subject of this action by virtue of an assignment of mortgage which is produced herewith as Caliber_Lowery_000334

14. State with specificity each entity that has ever held any interest in the account subject of this action.

ANSWER: U.S. Bank objects to this Interrogatory on the grounds that it requests information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence for any of the issues in this action. Without waiving the foregoing objection, Household Finance Corporation II and U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust have held an interest in the account that is the subject of this action.

15. State with specificity each servicer of the account subject of this action and that dates of servicing provided by each.

ANSWER: U.S. Bank objects to this Interrogatory on the grounds that it requests information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence for any of the issues in this action. Without waiving the foregoing objection, Household Finance Corporation II was the servicer of the mortgage loan from origination until September 15, 2017. On September 16, 2017, servicing of the mortgage account transferred to Caliber Home Loans, Inc.

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16. State whether there has ever been any charge-off of debt with regard to the account subject of this action.

ANSWER: U.S. Bank objects to this Interrogatory on the grounds that it requests information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence for any of the issues in this action. Without waiving the foregoing objection, U.S. Bank has not identified any information concerning any charge-off of debt regarding the mortgage loan that is the subject of this action.

17. State with specificity each amount ever charged off with respect to the account subject of this action and, for each such amount, the date it was charged off.

ANSWER: U.S. Bank objects to this Interrogatory on the grounds that it requests information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence for any of the issues in this action. Without waiving the foregoing objection, U.S. Bank refers to its answer to Interrogatory 16.

18. For each communication between each entity having any connection with the account subject of this action and the Defendant (or anyone on his behalf), state the date of the communication, the means of the communication (e.g., telephone, letter), and the substance of the communication.

ANSWER: U.S. Bank objects to this Interrogatory as overly broad and unduly burdensome to the extent it requests "communication between each entity having any connection with the account subject of this action and the Defendant" with no specificity or limitation as to time, scope or relevancy. U.S. Bank also objects to this Interrogatory because it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence for any of the issues in this action. U.S. Bank further objects to this Interrogatory as overly broad and unduly burdensome to the extent that is requests information that is not limited in time or scope to documents within U.S. Bank's control. Subject to and without waiving these objections, U.S. Bank refers Defendant to the documents produced with U.S. Bank's Responses to Defendant's Requests for Production as Caliber_Lowery_000001-000917.

19. For each document that the Plaintiff identifies in response to discovery requests in this case, state the author of the document and when it was written.

ANSWER: U.S. Bank objects to this Interrogatory as overly broad and unduly burdensome to the extent that is requests information that is not limited in time or scope to documents within U.S. Bank's control. Subject to and without waiving these objections, U.S.

Bank refers Defendant to the documents produced with U.S. Bank's Responses to Defendant's Requests for Production as Caliber_Lowery_000001-000917.

20. For each document that the Plaintiff claims relates to the account subject of this case, state the date on which the Plaintiff claims the author of the document acquired the information stated in the document.

ANSWER: U.S. Bank objects to this Interrogatory as overly broad and unduly burdensome to the extent that is requests information that is not limited in time or scope to documents within U.S. Bank's control. Subject to and without waiving these objections, U.S. Bank refers Defendant to the documents produced with U.S. Bank's Responses to Defendant's Requests for Production as Caliber_Lowery_000001-000917. Any documents not created by U.S. Bank's current servicer, Caliber Home Loans, Inc. were acquired as of the date of transfer to U.S. Bank.

21. For each denial of an admission requested by the Defendants in this action, set forth with specificity the facts that support the denial.

ANSWER: U.S. Bank has not expressly denied any of the admissions requested by the Defendant. As stated in the responses to the Requests for Admissions, U.S. Bank is without sufficient information to admit or deny certain requests as they relate to prior litigation in which U.S. Bank was not involved.

22. For each denial of an allegation made by the Defendants in this action, set forth with specificity the facts that support the denial.

ANSWER: U.S. Bank disputes that it is liable to the Defendant for any alleged violation of South Carolina's Attorney Preference Statute as U.S. Bank is not the originating lender and the express language of the statute does not permit a consumer to recover from an assignee. Alternatively, Defendant has admitted that he intended to mortgage the property which is the subject of this action and has not disputed the breach of his obligations under the governing mortgage loan documents.

23. For each of the Plaintiffs' claims in this action, state the facts that support the claim.

ANSWER: U.S. Bank refers Defendant to the second amended complaint and the exhibits attached thereto previously filed in this matter.

24. For each of the Plaintiffs' defenses in this action, state the facts that support the defense.

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ANSWER: U.S. Bank refers Defendant to the Reply to Counterclaim and Memorandum in Support of Motion to Dismiss previously filed in this matter.

RESPONSES TO REQUEST TO PRODUCE

1. All documents the Plaintiff possess that are capable of being used as exhibits at the trial of this case or any hearing in this action.

ANSWER: U.S. Bank objects to the foregoing request on the grounds that it is premature, vague, ambiguous, untimely and purports to require the creation of a document not already in existence. Without waiving the foregoing objections, U.S. Bank states that it has not yet determined what exhibits it will offer at trial in this matter. When Plaintiff identifies any such exhibits, it will notify Defendant's counsel and supplement its responses to this request to the extent the exhibits have not already been produced in this lawsuit and pursuant to the terms of a pre-trial order.

2. Any and all documents, whether written, recorded, or otherwise, that relate to the claims and defenses in this action.

ANSWER: U.S. Bank objects to this Interrogatory as overly broad and unduly burdensome to the extent that it requests information that is not limited in time or scope to documents within U.S. Bank's control. Subject to and without waiving these objections, U.S. Bank refers Defendant to the documents produced herewith as Caliber_Lowery_000001-000917.

3. A copy of any and all written or recorded statements made by any witness in this case.

ANSWER: U.S. Bank objects to this Request because it is overly broad and is not limited in time or scope to documents within U.S. Bank's control or related to the subject loan or property. U.S. Bank objects to this request because it is premature, and U.S. Bank expressly reserves the right to supplement, clarify, revise or correct this response and to assert additional objections or privileges. Plaintiff further objects that this information is protected by the attorney-client privilege, bank examiner privilege, or any other privilege. Without waiving the foregoing objection, upon information and belief, U.S. Bank is not aware of any documents responsive to this Request.

4. For each witness to the facts of the case, a copy of any and all written or recorded statements made by such witness.

ANSWER: U.S. Bank objects to this Request because it is overly broad and is not limited in time or scope to documents within U.S. Bank's control or related to the subject loan or property. U.S. Bank objects to this request because it is premature, and U.S. Bank

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expressly reserves the right to supplement, clarify, revise or correct this response and to assert additional objections or privileges. Plaintiff further objects that this information is protected by the attorney-client privilege, bank examiner privilege, or any other privilege. Without waiving the foregoing objection, upon information and belief, U.S. Bank is not aware of any documents responsive to this Request.

5. Any and all photographs, slides, video tape, motion pictures, film, data, data compilations, plats, sketches, or diagrams associated with this litigation.

ANSWER: U.S. Bank objects to this Interrogatory as overly broad and unduly burdensome to the extent it requests "a list of all photographs,slides, video tape, motion pictures, film, data, data compilations, plats, sketches or diagrams associated with this litigation" with no specificity or limitation as to time, scope or relevancy. U.S. Bank also objects to this Interrogatory because it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence for any of the issues in this action. U.S. Bank also objects to the foregoing Interrogatory to the extent that it seeks information that is privileged, confidential, proprietary, protected as trade secrets regarding its business practices, or otherwise protected by any other privilege, protection, or immunity applicable under governing law. Subject to and without waiving these objections, U.S. Bank refers Defendant to the documents produced with U.S. Bank's Responses to Defendant's Requests for Production as Caliber_Lowery_000001-0000917.

6. Copies of all written communications and notes of spoken communications between the Defendant and/or any person on behalf of the Defendant and any person(s) concerning any matter subject of this action.

ANSWER: U.S. Bank objects to this Interrogatory as overly broad and unduly burdensome to the extent that is requests information that is not limited in time or scope to documents within U.S. Bank's control. Subject to and without waiving these objections, U.S. Bank refers Defendant to the documents produced herewith as Caliber_Lowery_000001-000917.

7. Copies of all written communications and notes of spoken communications between the Plaintiff and/or any person on behalf of the Plaintiff and any person(s) concerning any matter subject of this action (with the exception of attorney-client privileged communications for which the privilege remains intact),

ANSWER: U.S. Bank objects to this Interrogatory as overly broad and unduly burdensome to the extent that is requests information that is not limited in time or scope to documents within U.S. Bank's control. Subject to and without waiving these objections, U.S.

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Bank refers Defendant to the documents produced herewith as Caliber_Lowery_000001-000917.

8. Copies of any and all invoices that related to amounts charged to the loan subject of case.

ANSWER: U.S. Bank objects to this Interrogatory as overly broad and unduly burdensome to the extent that is requests information that is not limited in time or scope to documents within U.S. Bank's control. U.S. Bank also objects to the foregoing Interrogatory to the extent that it seeks information that is privileged, confidential, proprietary, protected as trade secrets regarding its business practices, or otherwise protected by any other privilege, protection, or immunity applicable under governing law. Subject to and without waiving these objections, U.S. Bank refers Defendant to the documents produced herewith as Caliber_Lowery_000897-000917.

9. All documents that relate to the servicing arrangement, if any, that the Plaintiff has with any entity it contends is the servicer for the loan subject of this case.

ANSWER: U.S. Bank objects to this Request because if it overly broad and seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. U.S. Bank further objects to this Request as it is vague and ambiguous as "servicing arrangement" is not defined. Plaintiff further objects to this Request as it seeks disclosure of trade secrets, commercial information, proprietary information and/or confidential information.

10. All documents that relate to whether the original creditor with regard to the loan subject of this case complied with the requirements of S.C. Code Ann. § 37-10-102.

ANSWER: U.S. Bank disputes that it is liable for an alleged violation of S.C. Code Ann. §37-10-102 based upon the plain language of the statute as it was not the originating lender. U.S. Bank refers Defendant to the documents produced herewith as Caliber_Lowery_000307 & 000423-000426.

11. Copies of all insurance policies subject of the Defendants' interrogatories in this action.

ANSWER: U.S. Bank is not aware of any documents responsive to this request.

12. With regard to each expert witness identified by the Defendants:

a. All documents prepared by the expert;

b. All documents sent to the expert by the Defendants or their counsel;

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c. All documents relied upon by the expert;

d. All documents used or consulted, or reviewed by the expert;

e. All documents setting forth the compensation agreement between the Defendants or their counsel or her insurer and the expert;

f. All documents used, relied upon, consulted, or reviewed by the expert in answering expert witness interrogatories;

g. All documents that have been or will be shown to the expert prior to trial testimony; and

h. All documents, including a current curriculum vitae, used to establish the expert's qualifications for trial purposes.

ANSWER: U.S. Bank is not aware of any documents responsive to this request at this time.

13. All documents relevant to any claim or defense received from any third party, regardless of whether or not a subpoena was utilized, since commencement of this action.

ANSWER: U.S. Bank objects to this Interrogatory as overly broad and unduly burdensome to the extent it requests "all documents relevant to any claim or defense received from any third party" with no specificity or limitation as to time, scope or relevancy. U.S. Bank also objects to this Interrogatory because it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence for any of the issues in this action. U.S. Bank also objects to the foregoing Interrogatory to the extent that it seeks information that is privileged, confidential, proprietary, protected as trade secrets regarding its business practices, or otherwise protected by any other privilege, protection, or immunity applicable under governing law.

14. A copy of each and every document referenced in and/or identified in response to any discovery request in this action.

ANSWER: U.S. Bank objects to this Interrogatory as overly broad and unduly burdensome to the extent it requests "each and every document referenced in and/or identified in respose to any discovery request in this action" with no specificity or limitation as to time, scope or relevancy. U.S. Bank also objects to this Interrogatory because it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence for any of the issues in this action. U.S. Bank also objects to the foregoing

Interrogatory to the extent that it seeks information that is privileged, confidential, proprietary, protected as trade secrets regarding its business practices, or otherwise protected by any other privilege, protection, or immunity applicable under governing law. Subject to and without waiving these objections, U.S. Bank refers Defendant to the documents produced with U.S. Bank's Responses to Defendant's Requests for Production as Caliber_Lowery_000001-0000917.

RESPONSES TO REQUESTS TO ADMIT

Pursuant to Rules 26 and 36 of the South Carolina Rules of Civil Procedure, Plaintiff U.S. Bank hereby answers Defendant Austin A. Lowery's First Set of Requests for Admissions as follows:

1. Exhibit A to these discovery requests is the document the Plaintiff contends shows compliance with S.C. Code Ann. § 37-10-102 for the loan subject of this case.

RESPONSE: The contents of Exhibit A speak for themselves. Plaintiff admits that Exhibit A is a piece of evidence which may demonstrate compliance with S.C. Code Ann. §37-10-102.

2. No attorney supervised the closing of the mortgage loan subject of this case.

RESPONSE: Denied as qualified. Plaintiff admits that the HUD-1 Closing Statement shows "Lender" as closing agent and the line for Attorney's Fees 1107 is blank. Plaintiff further admits that it is not aware of any documents or other evidence, at this point in the litigation, which shows that an attorney supervised the closing of the mortgage loan. However, Plaintiff was not the originating lender and was not present at the closing, so it qualifies this answer on this basis.

3. The mortgage document recorded in Book 2789 at page 575 of the land records for Spartanburg County, South Carolina, is a corrected version of the mortgage document recorded in Book 2782 at page 874 of the land records for Spartanburg County, South Carolina.

RESPONSE: Denied.

4. The case of Household Finance Corporation II v. Austin A. Lowery, etc., et al., Case No. 2008-CP-42-5026, concerned the same mortgage loan that is at issue in this case.

RESPONSE: U.S. Bank objects to this request because it was not the holder/servicer of the loan at the time of the litigation referenced in Request 4 above.

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5. The plaintiff in the case of Household Finance Corporation II v. Austin A. Lowery, etc., et al., Case No. 2008-CP-42-5026, did not agree in writing that that case should be stricken from the active docket.

RESPONSE: U.S. Bank objects to this request because it was not involved in the litigation referenced in Request 5 above.

6. Austin A. Lowery did not agree in writing that the case of Household Finance Corporation II v. Austin A. Lowery, etc., et al., Case No. 2008-CP-42-5026, should be stricken from the active docket.

RESPONSE: U.S. Bank objects to this request because it was not involved the litigation referenced in Request 6 above.

7. All parties to the case of Household Finance Corporation II v. Austin A. Lowery, etc., et al., Case No. 2008-CP-42-5026, did not agree in writing that that case should be stricken from the active docket.

RESPONSE: U.S. Bank objects to this request because it was not involved in the litigation referenced in Request 7 above.

8. The closing of the mortgage loan subject of this case occurred on September 24, 2002.

RESPONSE: Denied as stated. U.S. Bank further objects to this Request as it is vague and ambiguous as "closing" is not defined. Plaintiff admits that it appears from the documents in the record that the HUD-1 Settlement Statement and Note were dated September 24, 2002, but Plaintiff is informed and believes that other actions by the Defendant, Austin A. Lowery, which are part of the "loan transaction" occurred before and after this date including the execution of the mortgage on September 30, 2002.

Dated this 6 th day of April 2020.

Respectfully submitted,

Plaintiff U.S. Bank Trust, N.A., as Trustee for the
LSF 10 Master Participation Trust
By counsel

s/Amanda K. Cutler
Amanda K. Cutler
S.C. Bar No. 101052
McGuireWoods LLP
201 N. Tryon St.
Suite 3000
Charlotte, NC 28202-2146
Phone: 704-343-2182
E-Mail: acutler@mcguirewoods.com

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VERIFICATION

I am authorized to answer the foregoing interrogatories on behalf of Plaintiff, U.S. Bank Trust, N.A., as Trustee for the LSF 10 Master Participation Trust The answers provided are true and correct to the best of my knowledge based on a upon a review of records and from personnel in the appropriate offices and departments of Caliber Home Loans, Inc., except as to those matters stated on information and belief, and as to those mattes, I believe them to be true.

Caliber Home Loans, Inc., Attorney in Fact for Plaintiff U.S. Bank Trust, N.A. as Trustee for LSF 10 Master Participation Trust

Signature _____

Date April 1, 2020

Title Default Servicing Officer

Printed Name Tonya Tillman

SUBSCRIBED and SWORN to before me on this 1st day of April, 2020, by Tonya Tillman, known to me to be the person who appeared before me.

(seal)

RYAN BENNETT
Notary ID #130635730
My Commission Expires
April 25, 2020

_____

Notary Public, State of Texas

Printed Name Ryan Bennett

Title Notary

Date 4/1/20

Commission No.: 130635730

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CERTIFICATE OF SERVICE

I did this 6 th day of April, 2020 serve the attached document(s) on the parties listed below by placing them in the United States mail with proper postage affixed thereto and addressed as follows or via the ECF system:

Andrew S. Radeker
HARRISON, RADEKER & SMITH, P.A.
P. O. Box 50143
Columbia, SC 29250
803.779.2211 (t)
803.779.6700 (f)
drew@harrisonfirm.com

/s/ Amanda K. Cutler
Amanda K. Cutler (S.C. Bar # 101052)

ELECTRONICALLY FILED - 2022 Mar 15 2:36 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG U.S. Bank Trust, N.A. as Trustee for LSF10 Master Participation Trust, PLAINTIFF, VS. Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually; Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually, and as Heir or Devisee of the Estate of Lisa D. Lowery, Deceased; South Carolina Department of Revenue; The United States of America acting by and through its agency, Department of the Treasury – Internal Revenue Service; and Elizabeth A. Lowery, DEFENDANT(S).	IN THE COURT OF COMMON PLEAS CASE NO. 2019-CP-42-02270 **PLAINTIFF'S RETURN TO LOWERY'S MOTION TO RECONSIDER**

The Plaintiff, U.S. Bank and Trust, N.A. as Trustee for LSF10 Master Participation Trust (Plaintiff or US Bank), by way of return to Lowery's (Defendant) motion to reconsider filed March 7, 2022 to this court's Order Granting Partial Summary Judgment filed February 23, 2022, responds as follows:

1. Plaintiff incorporates by reference its previous filings, exhibits and arguments presented to the court.

2. The Defendant's arguments as to res judicata, the alleged release, and unconscionability are mere recapitulations of the arguments already made and denied by this court. The arguments were fully addressed in the briefs, at the hearing, and in the order filed by this court.

3. The Defendant's affidavit did not contain all the information sought in Plaintiff's requests and filing an affidavit is no substitute for responding to discovery and requests for admissions.

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4. The Defendant is correct that the court did not address the Defendant's laches defense in the order, nor is the court required to; however, US Bank will briefly address the Laches argument and will provide this court a revised order if the court believes that is necessary. As the Defendant argues, Laches is the delay for an unreasonable period of time to the prejudice of the party making the claim. In this case, US Bank's predecessor, HFC II, did file a previous foreclosure suit which was dismissed pursuant to Rule 40(j) and then after the paper changed hands, US Bank brought the present suit within the statue of limitations period. The Defendant fails to articulate how the delay prejudiced him as he was always free to assert his claims in a lawsuit filed by him at any time. Furthermore, Laches is an equitable defense, and the Defendant has been inequitable. This court notes in the order the comment from Judge Cooper, "that there is no genuine issue of material fact as it would, under the facts and circumstances, be inequitable for Defendant to receive $304,040.62 from Plaintiff which funds were in fact used to benefit the Defendant and it being clear that Defendant intended to and did give a mortgage to HFC II on the 5.0-acre parcel." Also, the Defendant stopped making payments in 2004. If anything, US Bank could claim Laches against the Defendant for not making alleged claims concerning the closing of his mortgage loan sooner.

5. The Defendant mischaracterizes this court's order and takes the quote "closings did occur without the presence of counsel" out of context. The full context is "While there is no doubt about the benefits of counsel at a closing, the court is mindful of the distant closing date and the circumstances of a closing which occurred almost twenty years ago." In determining unconscionability, courts are limited to considering facts and circumstances existing when the contract was executed." *Hardee v. Hardee*, 348 S.C. 84, 95-96, 558 S.E.2d 264, 269-70 (Ct.App.2001) (citing Restatement (Second) of Contracts § 208 (1981)), affd as modified, 355 S.C. 382, 585 S.E.2d 501 (2003). During that time, closings did occur without the presence of counsel. The *Matrix*[1] decision was decided almost a decade later, *prospectively* applying the unclean hands doctrine to potentially preclude equitable remedies to a lender of a loan closed without an attorney. The court merely acknowledges the facts and circumstances existing when the contract was executed.

[1] *Matrix Financial Services Corp. v. Frazier*, 394 S.C. 134, 714 S.E.2d 532 (2011)

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6. The Defendant's allegations in paragraphs 12 and 13 do not create genuine issues of material fact as to unconscionability. The only matters alleged by the Defendant as unconscionable conduct are the mistaken recordation of the 53-acre mortgage and the alleged promise to refinance by HFC II at a lower rate. As to the mistakenly recorded 53-acre mortgage, that was quickly corrected and eventually released in full compliance with the intent of the Defendant and the requirement of the title insurance company. The Defendant makes the conclusory claim that he could not refinance because of the two recorded mortgages; however, he failed to produce any documentation about his alleged attempts to refinance despite specific requests from the Plaintiff in discovery and numerous opportunities to do so. Furthermore, the Defendant has provided no evidence that recording the 53 acres was anything but a mistake which was corrected to reflect the intention of the parties and that a release could have been filed if and when a bank approved a refinance. This is not unconscionable conduct.

As to the alleged promise to refinance at a lower rate, the Defendant has provided no documentation or support for this claim other than his claims in his affidavit. It is also contrary to the terms of the promissory note. The promissory note does provide for a lower rate but only after the Defendant makes 36 monthly payments. The Defendant paid for 18 months, then quit. He never even tendered payment at what he allegedly considered was the lower rate. It is not a reasonable inference that the bank would cut an interest rate by more than ½ after 12 monthly payments. Furthermore, the Defendant admits that the terms of the promissory note and mortgage are not unconscionable; therefore, the alleged breach of a promise not to refinance an agreement that is not unconscionable should not be considered unconscionable conduct.

This court properly granted summary judgment as to unconscionability.

7. Finally, the Defendant argues by requiring the submission of affidavits 3 days prior to a hearing, the court is taking away the Defendant's right to cross-examine witnesses at trial. First, there is no right to cross-examine witnesses on issues which have already been decided prior to trial. Second, there is no right to cross-examine witness to which there are no genuine disputes of material fact. The only issues remaining after this court's order are the amount of the Plaintiff's debt and the amount of the Defendant's offset for the attorney preference violation. The Plaintiff has or soon will file the

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affidavit required by the court's order supported by appropriate documentation. Since the Defendant has admitted to failing make payments since 2004, then the amount of the debt should not be the subject of genuine dispute[2]; however, should the Defendant's counsel have a genuine dispute with the amount of the debt which cannot be resolved and file with the court under Rule 11 a statement clearly setting forth the dispute, then the court can address the issue at a prehearing status conference.

CONCLUSION

For the reasons set forth above, this court should deny the motion to reconsider and schedule this case for a hearing as set forth in the order and the affidavits to be submitted.

Respectfully submitted,

TOBIAS G. WARD, JR., PA

s/J. Derrick Jackson
J. Derrick Jackson, SC Bar No.: 15192
P.O. Box 50124
Columbia, SC 29250
803-708-4200
dj@tobywardlaw.com

SCOTT AND CORLEY, P.A.

s/Reginald P. Corley
Reginald P. Corley (reggiec@scottandcorley.com),
SC Bar #69453
H. Guyton Murrell (guytonm@scottandcorley.com),
SC Bar #64134
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
803-252-3340

[2] See paragraph 18 of the Plaintiff's Second Amended Complaint filed on October 17, 2019, which states in part: "Pursuant to a review of the business records of Plaintiff or its designated agent, as of October 17, 2019, there is now due and owing and unpaid upon the Note and Mortgage the total amount of $686,622.53, which is itemized as follows: Unpaid Principal Balance of $301,994.94, Interest of $371,548.49 from May 17, 2004 through October 17, 2019 … Interest on the unpaid principal balance will continue to accrue at the contractual interest rate, which is currently 7.980%"

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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	IN THE COURT OF COMMON PLEAS CASE NO. 2019-CP-42-02270
U.S. Bank Trust, N.A., as Trustee for LSF 10 Master Participation Trust, **Plaintiff,** **vs.** **Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually, and as Heir or Devisee of the Estate of Lisa D. Lowery a/k/a Lisa Marie Davis Lowery, Deceased; South Carolina Department of Revenue; The United States of America acting by and through its agency, Department of the Treasury - Internal Revenue Service; and Elizabeth A. Lowery,** **Defendants.**	**AFFIDAVIT OF AUSTIN ALLEN LOWERY**

Personally appeared before me Austin Allen Lowery, who first being duly sworn, deposes and says as follows:

1. My name is Austin Allen Lowery. I am a defendant in the above-captioned lawsuit.
2. I have read my answer and counterclaim filed on November 1, 2019, in this case, and I hereby verify that the factual statements in it are true.
3. My late wife, Lisa D. Lowery, and I got the mortgage that is involved in this case because we needed to refinance a construction loan. Time was a major factor, as our construction loan was about to mature.
4. The mortgage loan involved in this case was made by Household Finance Corporation II. (I will call them "Household" in this affidavit for ease of reference.) Household

promised us a lower interest rate than we got. As we approached the closing date for the loan, Household told us that they could only make the loan at the high interest rate that is in the note, but they also said that they would refinance or modify the loan at a five percent fixed rate if we made our payments on time for one year.

5. Relying on this statement to be true, we went through with getting the loan.

6. We were never given any opportunity to choose a lawyer to represent us in closing the loan. No one asked us, in writing or otherwise, for our preference as to an attorney to represent us in connection with closing the loan. Household told us we did not need a lawyer and that they would close the loan themselves. They told us they closed loans without a lawyer all the time.

7. That is what they did. On September 24, 2002, we went to Household's office and were presented with the closing papers for the loan. We were not given advice or explanations of the documents. Instead, the Household employee who was with us just said things like "Sign here." We signed where the employee told us to sign. No lawyer was present at the closing.

8. Among the documents we signed at the closing on September 24, 2002, was the document that is Exhibit A to this affidavit.

9. What we intended to mortgage for this loan was five acres that is part of a 53-acre tract of land. We told that to the Household people, and they represented to us that the five-acre parcel was what was being mortgaged.

10. If any of the papers we signed at the closing had a property description of the 53-acre tract in them, that was not shown to us.

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11. A few days after the closing, someone from Household called us and said that they had made an error in the mortgage and that we needed to come in and re-sign the same mortgage. We did that on September 30, 2002. No lawyer was present for that re-signing, either.

12. We made our payments on time for a year like Household said to do. I then contacted Household about getting the lower interest rate they had promised us. The Household people said we would have to apply for a refinance to do that. We applied, and Household turned us down.

13. Because of the two mortgage documents on record, one of which described the whole 53-acre tract, I was unable to get refinancing to get out of this mortgage with Household.

FURTHER AFFIANT SAYETH NOT.

Austin Allen Lowery

SWORN to before me this

12 day of February, 2020.

(L.S.)

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 5.12.26

Record on Appeal p. 312

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REAL ESTATE LOAN ATTORNEY
AND
INSURANCE AGENT
CUSTOMER PREFERENCE INFORMATION

Please be advised that you have the right to select an attorney to represent you in connection with your mortgage loan closing. Please list the name and address and telephone number of the attorney you would prefer to use to represent you in connection with your mortgage loan closing. If no preference, state "NONE".

None
(Name)

(Address)

(Telephone No.)

Additionally, please list the insurance agent you would like to use to furnish any required insurance in connection with this mortgage loan. If no preference, state "NONE".

Kevin Sims
(Agent Name)

Premier Insurance Company
(Insurance Company Name)

(Address)

(Telephone No.)

[signature] 9-24-02
(Debtor Signature) Date

Lisa D Lowry 9/24/02
(Co-Debtor Signature) Date

FORM 603 (06-29-98)

SC060311

*L13E087C10936038000SC0603110**LOWRY * ORIGINAL

ELECTRONICALLY FILED - 2020 Feb 12 5:25 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
Household Finance Corporation II	)	CIVIL ACTION NO.:08-CP-42-5026
Plaintiff,	)	
vs.	)	**AMENDED ANSWER AND COUNTERCLAIM** ***JURY TRIAL DEMANDED***
Austin Lowery a/k/a Allen Lowery; Elizabeth A. Lowery; The United States of America by and through its agency the Internal Revenue Service; Financial Federal Credit, Inc.; U.S. Bancorp Equipment Finance, Inc. f/k/a U.S. Bancorp Leasing & Financial, Defendants.	)	

The Defendants, Austin Lowery a/k/a Allen Lowery and Elizabeth A. Lowery [hereinafter collectively "Lowerys"] Answering the Complaint and by way of Counterclaim, allege as follows:

FOR A FIRST DEFENSE
(AS TO ALL CAUSES OF ACTION)

1. That each and every allegation of the Amended Complaint not hereinafter admitted is denied and strict proof is demanded thereof.

FOR A SECOND DEFENSE
(AS TO ALL CAUSES OF ACTION)

2. That by virtue of their initial Answer in the cause, the Lowerys specifically asserted that the Mortgage held by the Plaintiff was a First Mortgage on 5 acres of real property as opposed to the 53.75 acres of land upon which they sought to foreclose.

MARC HITCHENS

3. That in their initial Answer the Lowerys sought damages by virtue of breach of contract as the Plaintiff was foreclosing on real property upon which it had no mortgage, all to the harm of the Lowerys. The Plaintiff ignored the Lowerys assertions until December 14, 2009, when it filed an Amended Complaint seeking foreclosure on the 5 acres upon which they had an interest by way of a Mortgage on real property.

4. That the Plaintiff's actions in (i) foreclosing on real property on which it did not have a mortgage and (ii) ignoring the assertions of the Lowerys that the Plaintiff had brought an action on a tract of land containing 53.73 acres, which tract no longer existed, was Frivolous Civil Proceeding and subject to the provisions of Section 15-36-10, et seq., South Carolina Code of Law (1976, as amended).

FOR A THIRD DEFENSE
(AS TO ALL CAUSES OF ACTION)

5. That the allegations of Paragraphs 1 and 2 are admitted.

6. That Lowerys admit so much of paragraph 3 as alleges that a mortgage was given by them to the Plaintiff.

7. That Lowerys are without sufficient information and belief to confirm or deny the allegations of paragraph 4, so deny same and demand strict proof thereof.

8. That Lowerys are without sufficient information and belief to confirm or deny the allegations of paragraphs 5, 6, 7, 8 and 9, to include all subsections of paragraph 9, so deny same and demand strict proof thereof.

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MARC KITCHENS
CLERK OF COURT
SPARTANBURG COUNTY

9. That the allegations of paragraph 10 do not require an answer by the Defendants, so Lowerys deny the allegations of paragraph 10 and demand strict proof thereof.

10. That Lowerys admit the allegations of paragraph 11.

11. That Lowerys deny the allegations of paragraph 12 in that, upon information and belief, they can not recall the execution of a note on September 24, 2002, so deny same and demand strict proof thereof.

#3

12. That Lowerys deny the allegations of 13, in that the note of September 24, 2002, to the extent it exists, was secured by a mortgage dated that date covering 53.73 acres, a copy of such mortgage being attached hereto as exhibit "A".

FOR A FOURTH DEFENSE
(AS TO ALL CAUSES OF ACTION)

13. That Lowerys incorporate the allegations and denials of paragraphs 1 through 12 above as if set out herein.

14. That Lowerys admit so much of paragraph 14 as alleges that they did execute a mortgage on the 5 acre tract that is the subject of this action on September 30, 2002.

15. That the mortgage on the 5 acre tract, exhibit "B" recites a Loan Agreement and a Note both dated as of September 30, 2002, which agreements supercede that note a mortgage of September 24, 2002.

16. That the Plaintiff seeks to foreclose on the Mortgage of September 30, 2002, without alleging in any fashion that the Mortgage of September 30th

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SPARTANBURG COUNTY
MARY KITCHENS

was as a result of a note of the same date as set out in the specific terms of the Mortgage.

FOR A FIFTH DEFENSE
And By Way of Statutory Penalty and Counterclaim

17. That demand was made by Lowerys pursuant to Section 29-3-320 for the satisfaction of that mortgage dated September 24, 2002, and the Plaintiff has failed and refused to satisfy such mortgage.

18. That the Plaintiff is entitled to that relief set out in Section 29-3-320 South Carolina Code of Law (1976), as amended.

FOR A SIXTH DEFENSE
And By Way of Breach of Contract

19. That Lowerys incorporate the allegations and denials set out in paragraphs 1 though 18 set out hereinabove.

20. That the Plaintiff, has never satisfied, despite demand, its mortgage on 53.75 acres of real property located in Spartanburg, South Carolina despite the fact that (i) their mortgage was on 5 acres of land and (ii) Plaintiff had no financial interest in the remaining 48.75 acres tract still owned by the Lowerys.

21. The failure of the Plaintiff to satisfy its mortgage of record on the 53.75 acre tract that, in fact, did not exist, constituted a slander of title to the lowery property as:

    a. the slander was published in the first Summons and Complaint filed in this action by the Plaintiff;

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MARC MITCHENER

b. that the statement regarding the title, that 53.74 acres was covered by a valid mortgage in favor of the Plaintiff was false;

c. that the Plaintiff's action was derogatory to the Defendants' title;

d. that the actions of the Plaintiff were with malice in that the publication was made with wanton disregard of the rights of the Lowerys despite clear assertion by the Lowerys of the error made by the Plaintiff and the records in the office of the Register of Deeds in Spartanburg County to the effect that the last mortgage of record relating to this matter covered 5 acres of land, all of which caused special damages to the Lowerys as a result of diminished value of their property in the eyes of third parties.

#5

WHEREFORE, having fully answered, the Defendants pray:

1. That the Complaint be dismissed with productive and with cause;
2. For an award as mandated by Section 15-36-10, et seq., South Carolina Code of Laws (1976, as amended) in that the original Complaint did not constitute a meritorious pleadings and the claim was not valid under existing or developing law;
3. For an award of damages for Slander of Title;

MARC SITOMS
SPARTANBURG COUNTY

4. For such other relief as the Court may deem just and proper.

Respectfully Submitted,

George Hunter McMaster
Frank B. McMaster
Tompkins and McMaster
1530 Richland Street
PO Box 7337
Columbia, SC 29202
(803) 799-4499

Columbia, South Carolina
December 29, 2009

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STATE OF SOUTH CAROLINA **COUNTY OF SPARTANBURG**	**IN THE COURT OF COMMON PLEAS** **CASE NO. 2019-CP-42-02270**
U.S. Bank Trust, N.A., as Trustee for LSF 10 Master Participation Trust, **PLAINTIFF,** **vs.** **Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, Lisa D. Lowery, South Carolina Department of Revenue, The United States of America acting by and through its agency, Department of the Treasury - Internal Revenue Service, and Elizabeth A. Lowery,** **DEFENDANTS.**	**DEFENDANT AUSTIN A. LOWERY'S RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUESTS TO PRODUCE**

The Defendant Austin A. Lowery (hereinafter "Mr. Lowery"), hereby answers Plaintiffs First Set of Interrogatories as follows:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

Answer:

Austin A. Lowery (c/o counsel) – see affidavit

George H. McMaster, Esq. – This person was counsel of record in the 2008 foreclosure case concerning the same mortgage here at issue.

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Alana Odom Williams, Esq. – This person was counsel of record in the 2008 foreclosure case concerning the same mortgage here at issue.

Phil Hembree (if he was the Household Finance employee executing the documents) – no known statement – knowledge would relate to the closing of the subject mortgage loan

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in this case.

Answer: **See documents served in discovery, filed in this case, and otherwise exchanged by the parties. See documents Bates-stamped Lowery production 1-224 provided herewith.**

3. Identify all civil or criminal litigation in which you are or were a named party, including, but not limited to, any judicial foreclosure proceedings, and, for each lawsuit, identify: (a) the plaintiffs; (b) the defendants; (c) the court in which the lawsuit was filed; (d) the case number; (e) the date that the lawsuit was filed; and (f) the current status of the lawsuit, including whether judgment was entered against you or any other party and whether you or any other party was dismissed voluntarily.

Answer:

Civil: Household Finance Corporation II v. Austin A. Lowery, Elizabeth A. Lowery, The United States of America by and through the IRS, Financial Federal Credit, Inc, U.S. Bankcorp Equipment Finance, Inc; Court of Common Pleas in Spartanburg, SC; 08-CP-42-5026; October 20, 2008; this case was dismissed by Rule 40(j), SCRCP on July 26, 2013.

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Civil: Joseph E. Ulmer v Austin A. Lowery and Carolina Investors, Inc.; Court of Common Pleas in Spartanburg, SC; 1999-CP-42-00827; April 5, 1999; Dismissed by Court, Not Rule 40J

Civil: Branch Banking & Trust Company and Branch Banking & Trust Company of South Carolina v. Austin A. Lowery, Elizabeth A. Lowery, Household Finance Corporation, Financial Federal Credit, Inc., Internal Revenue Service, U S Bancorp Equipment Finance, Inc., U S Bancorp Leasing & Financial, and the United States of America; Court of Common Pleas in Spartanburg, SC; 2008-CP-42-03860; July 24, 2008; Dismissed per Rule 41(a)

Civil: Branch Banking and Trust Company and Branch Banking and Trust Company of South Carolina v Austin Lowery, Financial Federal Credit, Inc., Household Finance Corporation Ii, Internal Revenue Service, Elizabeth A. Lowery, South Carolina Department of Revenue, the United States of America, Us Bancorp Equipment Finance, Inc., and Us Bancorp Leasing & Financial; Court of Common Pleas in Spartanburg, SC; 2012-CP-42-05028; December 6, 2012; Dismissed per Rule 41(a)

Criminal:

4. State whether you have ever been a party in any bankruptcy proceeding, and, for each such bankruptcy proceeding, state, (a) the court in which the bankruptcy proceeding was filed; (b) the case number; (c) the date that the bankruptcy proceeding was filed; and (d) the current status of the bankruptcy proceeding.

Answer: **No, upon information and belief.**

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5. Identify any person who contributed to or participated in the preparation or drafting of answers to these interrogatories and state specifically, with reference to each interrogatory, the area of participation for each person.

Answer: **Defendant Lowery objects to this interrogatory, which impermissibly seeks to invade the attorney-client and work product privileges.**

6. Identify any person that you know, believe, suspect may have knowledge or information concerning the subject matter of the lawsuit and, with respect to each person, summarize the information you believe to be known to that person and state whether you have taken any written or recorded statements from that person regarding Defendant, the subject matter of the lawsuit, the Loan, the Mortgage, the Note, or the Property.

Answer:

See answer to interrogatory 1.

7. Identify each current or former employee or representative of Plaintiff with whom you have communicated concerning the subject matter of the Lawsuit and describe the substance of each communication with any such person along with all the documents that evidence or relate to each communication.

Answer:

See documents served in discovery, filed in this case, and otherwise exchanged by the parties. See documents Bates-stamped Lowery production 1-224 provided herewith.

8. Identify each and every person with whom you have communicated concerning the subject matter of the Lawsuit and describe the substance of each communication with

any such person along with all documents that evidence or relate to each communication.

Answer: **Defendant Lowery communicated with his mother and his wife to let them know about the suit. He communicated with his counsel and his counsel's staff, and those communications are within the attorney-client privilege. He had the communications noted in his affidavit. To the extent they answer this interrogatory, see documents served in discovery, filed in this case, and otherwise exchanged by the parties, including those Bates-stamped Lowery production 1-224 provided herewith.**

9. Identify and describe the documents you contend establish the duties and obligation between you and Plaintiff, including, but not limited to, any contracts or correspondence between you and Plaintiff, and for each document, state the date of the document and the addresses, senders, or parties to the document.

Answer: **To the extent they answer this interrogatory, see documents served in discovery, filed in this case, and otherwise exchanged by the parties, including those Bates-stamped Lowery production 1-224 provided herewith.**

10. State the amount of any and all damages you seek to recover from Plaintiff and, in doing so, identify: (a) each category of costs or damages incurred; (b) an itemized list of the amount of costs or damages incurred in each category; and (c) all facts, circumstances, documents, representations, or other information relating to the incurrence of such costs or damages.

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Answer: **Damages flowing from Defendant Lowery's inability to refinance and inability to sell property he owned, which damages have not yet been calculated. See Defendant Lowery's affidavit.**

11. Identify all persons you intend to call as an expert witness at trial and, with regard to each expert witness, describe: (a) the subject matter on which the expert witness is expected to testify; (b) the substance of the facts and opinions on which the expert witness is expected to testify; (c) summary of the grounds for each opinion; and (d) the compensation arrangements with each expert witness.

Answer: **No such expert witnesses have been identified at this time.**

12. For each person identified as an expert witness in response to the previous interrogatory, identify each of the expert witness's areas of claimed expertise and the background, training, and expertise that qualify such person as an expert witness, including, but not limited to: (i) the expert witness's education, degrees, licenses, memberships and professional association and positions held on such associations; (ii) the title, subject matter, publication, and location of all of the expert witness's published and unpublished writings concerning the subject matter of the expert witness's opinions; (iii) the caption, case, number, and court of each case in which the expert witness has testified either by deposition or in person; and (iv) a list of all documents provided to, reviewed by, and generated by, the expert witness concerning the lawsuit.

Answer: **No such expert witnesses have been identified at this time.**

13. Describe each payment you did not make according to the terms of the Mortgage and Note, including, but not limited to, payments you have not made to date and payments

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you made late, and with regard to each payment describe (a) the amount you failed to pay; (b) the date such payment was due; and (c) whether you ever made such payment.

Answer: **No payments on the subject mortgage loan have been made since before April of 2004.**

14. Identify all persons you dealt with concerning the loan by Household Finance Corporation II in the amount of $304,040.82.

Answer: **See Defendant Lowery's affidavit.**

15. What was the purpose of the loan?

Answer:

The purpose of this loan was to refinance a construction loan that was about to mature. See Defendant Lowery's affidavit.

16. Describe in detail all offers or opportunities to engage in foreclosure intervention provided by Plaintiff, including, but not limited to, the dates and terms of any loan modification application offers, and loan modification offers, along with all documents that evidence or relate to each offer.

Answer: **Defendant Lowery objects to this interrogatory, which seeks irrelevant and inadmissible information and is not calculated to lead to the discovery of admissible evidence.**

17. How were the loan proceeds used or applied?

Answer:

The proceeds of the loan went to pay off a construction loan.

18. What collateral was required to secure the loan?

Answer:

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Defendant Lowery objects to this interrogatory, which is vague and ambiguous. Subject to this objection, a five-acre tract of land.

19. Did you communicate with Household Finance Corporation II that you were only mortgaging 5.0 acres of the 53.73 acre tract?

Answer:

Yes.

20. When and where did the closing take place?

Answer: **See Defendant Lowery's affidavit. At a Household Finance office and not at a lawyer's office.**

21. Who was present at the closing?

Answer:

Austin Lowery, Lisa Lowery, and a person believed to be Phil Hembree. See Defendant Lowery's affidavit.

22. Have you been represented by counsel in connection with any matter concerning this loan? If so, please identify counsel.

Answer:

Yes. Andrew S. Radeker and his firm (currently) and George H. McMaster and his firm (in a previous lawsuit seeking mortgage foreclosure).

23. Do you content that the mortgage secured by 53.73 acres and recorded in Deed Book 2782 at Page 874 was a valid and enforceable mortgage when executed? If not, why not?

Answer:

No. This mortgage was not valid as the collateral that was listed in the mortgage was incorrect.

24. Please provide the reason for the mortgage from to Elizabeth A. Lowery from Austin Lowery dated May 5, 2004 and recorded in Deed Book 3219 at Page 590.

Answer:

While Defendant Lowery does not know Household Finance's reason, see Defendant Lowery's affidavit.

25. Did you actually receive $105,900.73 from Elizabeth Lowery, and if so, what was the money used for?

Answer: **Defendant Lowery objects to this interrogatory, which seeks irrelevant and inadmissible information and is not calculated to lead to the discovery of admissible evidence.**

26. Why was the mortgage to Elizabeth A. Lowery never released or satisfied?

Answer: **Defendant Lowery objects to this interrogatory, which seeks irrelevant and inadmissible information and is not calculated to lead to the discovery of admissible evidence.**

27. Describe all efforts you made to refinance "to get out of this mortgage" including when it was made, who you spoke with and identify any related documents.

Answer:

See Defendant Lowery's affidavit.

28. Did you ever ask Household Finance Corporation II or any successor in interest to cancel or release the mortgage you executed on September 24, 2002 secured by 53.73

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acres and recorded in Deed Book 2782 at Page 874? If so, when, who did you speak with and identify any related documents to your request.

Answer:

Upon information and belief, this was done through counsel in the 2008 foreclosure case.

29. Why do you contend that the mortgage recorded in Deed Book 2789 at Page 575 and the Mortgage recorded in Book 2782 at Page 874 are the same mortgage when they were executed at different times, with different witnesses, have different legal descriptions and were recorded separately.

Answer:

See Defendant Lowery's affidavit. They are the same mortgage. Mr.Lowery was told by a person or persons working for the mortgagee that there was an error in the paperwork of the first mortgage and that he and his wife needed to sign new papers after the error was corrected by the bank. They were executed at different times as a result. The only person who signed as a witness that is different on the mortgages is the Notary Public.

30. Please describe with specific facts why you would contend the Plaintiff has unclean hands concerning this transaction?

Answer:

See Defendant Lowery's affidavit.

31. Why do you contend the debt is not secured by a mortgage?

Answer: **The mortgage has been released.**

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Defendant Lowery hereby responses to the Plaintiff's Requests for Production as follows:

See documents served in discovery, filed in this case, and otherwise exchanged by the parties. See documents Bates-stamped Lowery production 1-224 provided herewith. Defendant Lowery objects to Request 23, which seeks information that is not reasonably calculated to lead to the discovery of admissible evidence, and object to the requests to the extent they seek discovery of information or documents subject of attorney-client and work product privileges.

I hereby certify that this document has been duly served by email on counsel for the Plaintiff on the date given below.

Respectfully submitted,

Andrew S. Radeker
S.C. Bar No. 73743
HARRISON, RADEKER & SMITH, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
(803) 779-6700 (facsimile)
drew@harrisonfirm.com (email)
ATTORNEY FOR DEFENDANT
AUSTIN ALLEN LOWERY

Columbia, South Carolina
August 3, 2020

PLAINTIFF'S EXHIBIT 7

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REM 2782 PAGE 874 11

MORTGAGE

[redacted]

☐ If box is checked, this mortgage secures future advances.

THIS MORTGAGE is made this 24TH day of SEPTEMBER 20 02, between the Mortgagor, AUSTIN A. LOWERY, NOT STATED

(herein "Borrower"), and Mortgagee HOUSEHOLD FINANCE CORPORATION II, a corporation organized and existing under the laws of DELAWARE whose address is 150 E. BLACKSTOCK RD, STE. E BLKSTOCK PLAZA, SPARTANBURG, SC 29301 (herein "Lender").

The following paragraph preceded by a checked box is applicable.

☒ WHEREAS, Borrower is indebted to Lender in the principal sum of $ 304,040.62, evidenced by Borrower's Loan Agreement dated SEPTEMBER 24, 2002 and any extensions or renewals thereof (including those pursuant to any Renegotiable Rate Agreement) (herein "Note"), providing for monthly installments of principal and interest, (including any adjustments in the amount of payments or the contract rate if that rate is variable), with the balance of the indebtedness, if not sooner paid, due and payable on SEPTEMBER 24, 2032;

☐ WHEREAS, Borrower is indebted to Lender in the principal sum of $ _____, or so much thereof as may be advanced pursuant to Borrower's Revolving Loan Agreement dated _____ and extensions and renewals thereof (herein "Note"), providing for monthly installments, and interest at the rate and under the terms specified in the Note, including any adjustments in the interest rate if that rate is variable, and providing for a credit limit stated in the principal sum above and an initial advance of $ _____;

TO SECURE to Lender the repayment of (1) the indebtedness evidenced by the Note, with interest thereon, including any increases if the contract rate is variable; (2) future advances under any Revolving Loan Agreement; (3) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and (4) the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns the following described property located in the County of SPARTANBURG State of South Carolina:

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, WITH THE IMPROVEMENTS THEREON, SITUATE, LYING AND BEING IN THE COUNTY OF SPARTANBURG, STATE OF SOUTH CAROLINA, SOUTHEAST OF WOODRUFF, ON THE SOUTHEAST SIDE OF S-42-448, CONTAINING 53.73 ACRES, MORE OR LESS AND BEING MORE FULLY SHOWN AS LOT 3 OF THE M.C. HILL ESTATE ON A PLAT PREPARED BY E. MITCHELL, RLS DATED 05/22/98 AND RECORDED IN PLAT BOOK 134 AT PAGE 9 IN THE OFFICE FOR THE RMC FOR SPARTANBURG COUNTY.

BEING THE SAME PROPERTY CONVEYED FROM JOSEPH E. ULMER, II TO AUSTIN A. LOWERY BY DEED RECORDED 07/03/96, IN BOOK 64-H, AT PAGE 146, IN THE REGISTER'S OFFICE OF SPARTANBURG COUNTY, SOUTH CAROLINA. TAX MAP OR PARCEL ID NO.: 4-43-10-029.00

RECORDED
02 SEP 26 AM 11:48
R.M.C.
SPARTANBURG, S.C.

$11.00 +
11 16 RMC 1245 92602#187

04-15-02 MTG

[redacted]

SC001251

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TO HAVE AND TO HOLD such property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water rights and stock and all fixtures now or hereafter a part of the property. All replacements and additions shall be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, 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 and Interest. Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note, including any variations resulting from changes in the Contract Rate.

2. Funds for Taxes and Insurance. Subject to applicable law and only if requested in writing by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") equal to one-twelfth of: (a) yearly taxes and assessments which may attain priority over this Security Instrument; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard insurance premuims; and (d) yearly mortgage insurance premiums, if any. These items are called "escrow items." Lender may estimate the Funds due on the basis of current data and reasonable estimates of future escrow items.

The Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay the escrow items. Lender may not charge for holding and applying the Funds, analyzing the account or verifying the escrow items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing that interest shall be paid on the Funds. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Security Instrument.

If the amount of the Funds held by Lender, together with the future monthly payments of Funds payable prior to the due dates of the escrow items, shall exceed the amount required to pay the escrow items when due, the excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly payments of Funds. If the amount of the Funds held by Lender is not sufficient to pay the escrow items when due, Borrower shall pay to Lender any amount necessary to make up the deficiency in one or more payments as required by Lender.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender. If under paragraph 18 the Property is sold or acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by lender at the time of application as a credit against the sums secured by this Security Instrument.

3. Application of Payments. Unless applicable law or the Note provide otherwise, all payments received by Lender under paragraphs 1 and 2 shall be applied: first; to amounts payable under paragraph 2; second, to interest due; and last to the principal due.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations in the manner provided in paragraph 2, or if not paid in that manner, Borrower shall pay them on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

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; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien or forfeiture of any part of the property; 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 may attain priority over this Security Instrument. Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

5. Hazard 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 for which Lender require insurance. This insurance shall be maintained in the amounts and for the periods that the Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to L.ender's approval which shall not be unreasonably withheld.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. 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, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is not economically feasible and Lender's security would be lessened. 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 any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

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Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of the payments. If under paragraph 18 the Property is acquired by Lender, Borrower's rights to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

6. **Preservation and Maintenance of Property; Leaseholds.** Borrower shall not destroy, damage or substantially change the Property, allow the Property to deteriorate or commit waste. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease, and if Borrower acquires fee title to the Property, the leasehold and fee title shall not merge unless Lender agrees to the merger in writing.

7. **Protection of Lender's Rights in the Property; Mortgage Insurance.** If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorney's fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 7, Lender does not have to do so.

Any amounts disbursed by Lender under this paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

If Lender required mortgage insurance as a condition of making the loan secured by this Security Instrument, Borrower shall pay the premiums required to maintain the insurance in effect until such time as the requirement for the insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

8. **Inspection.** Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

9. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or 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 proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of such payments.

10. **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 any successor in interest of Borrower shall not operate to release the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor or 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 Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

11. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 16. Borrower covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument, but does not execute the Note, (a) is co-signing this Security Instrument only to Mortgage, grant and convey that Borrower'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 may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

12. **Loan Charges.** If the loan secured by this Security Instrument 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 under the Note.

13. **Legislation Affecting Lender's Rights.** If enactment or expiration of applicable laws has the effect of rendering any provision of the Note or this Security Instrument unenforceable according to its terms, Lender, at its option, may require immediate payment in full of all sums secured by this Security Instrument and may invoke any remedies permitted by paragraph 18. If Lender exercises this option, lender shall take the steps specified in the second paragraph of paragraph 16.

14. **Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Borrower's address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

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15. Governing Law; Severability. The applicable law contained in the Note shall control. Where no applicable law is contained therein, this Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provisions 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. To this end the provisions of this Security Instrument and the Note are declared to be severable.

16. Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

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 delivered or mailed within which Borrower may 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 by this Security Instrument without further notice or demand on Borrower.

17. Borrower's Right to Reinstate. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) 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 had no acceleration 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; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrower's obligations to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the 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 paragraphs 13 or 16.

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

18. 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 paragraphs 13 and 16 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 paragraph 18, including, but not limited to, reasonable attorney's fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

19. Lender in Possession. Upon acceleration under paragraph 18 or abandonment of the Property, Lender (by judicially appointed receiver) shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. Any rents collected by lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Security Instrument.

20. 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 without charge to Borrower. Borrower shall pay any recordation costs.

21. Waivers. Borrower waives all rights of homestead exemption in the property. Borrower waives the right to assert any statute providing appraisal rights which may reduce any deficiency judgment obtained by Lender against Borrower in the event of foreclosure under this Security Instrument.

22. 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 one hundred fifty percent (150%) of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

23. Arbitration Rider to Note. The Arbitration Rider attached to and made a part of the Note is hereby incorporated by reference and made a part of this Mortgage.

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REQUEST FOR NOTICE OF DEFAULT AND FORECLOSURE UNDER SUPERIOR MORTGAGES OR DEEDS OF TRUST

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Mortgage to give Notice to Lender, at Lender's address set forth on page one of this Mortgage, of any default under the superior encumbrance and of any sale or other foreclosure action.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants acontained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

_____ -Witness

_____ (Seal) -Borrower

_____ -Witness

_____ (Seal) -Borrower

ACKNOWLEDGEMENT OF WITNESS

STATE OF SOUTH CAROLINA, Spartanburg County ss:

Before me personally appeared Phil Hembree and made oath that he saw the within named Borrower sign, seal, and as his act and deed, deliver the within written Mortgage; and that he/she with the other witness subscribed above witnessed the execution thereof.

Sworn before me this 24th day of September, 20 02.

_____ (Seal)
Notary Public for South Carolina

_____
Witness

My Commission expires: 6/4/08

(Space Below This Line For Recorder Data)

Return To:
Records Processing Services
577 Lamont Road
Elmhurst, IL 60126

04-15-02 MTG

[redacted]

PLAINTIFF'S EXHIBIT 6

ELECTRONICALLY FILED - 2021 Apr 23 1:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

REM 2789 PAGE 575

MORTGAGE

[redacted]

☐ If box is checked, this mortgage secures future advances.

THIS MORTGAGE is made this 30TH day of SEPTEMBER 20 02, between the Mortgagor, AUSTIN A. LOWERY, NOT STATED

(herein "Borrower"), and Mortgagee HOUSEHOLD FINANCE CORPORATION II, a corporation organized and existing under the laws of DELAWARE whose address is 150 E. BLACKSTOCK RD, STE. E BLKSTOCK PLAZA, SPARTANBURG, SC 29301 (herein "Lender").

The following paragraph preceded by a checked box is applicable.

☒ WHEREAS, Borrower is indebted to Lender in the principal sum of $ 304,040.82, evidenced by Borrower's Loan Agreement dated SEPTEMBER 30, 2002 and any extensions or renewals thereof (including those pursuant to any Renegotiable Rate Agreement) (herein "Note"), providing for monthly installments of principal and interest, (including any adjustments in the amount of payments or the contract rate if that rate is variable), with the balance of the indebtedness, if not sooner paid, due and payable on SEPTEMBER 30, 2032;

☐ WHEREAS, Borrower is indebted to Lender in the principal sum of $ _____, or so much thereof as may be advanced pursuant to Borrower's Revolving Loan Agreement dated _____ and extensions and renewals thereof (herein "Note"), providing for monthly installments, and interest at the rate and under the terms specified in the Note, including any adjustments in the interest rate if that rate is variable, and providing for a credit limit stated in the principal sum above and an initial advance of $ _____;

TO SECURE to Lender the repayment of (1) the indebtedness evidenced by the Note, with interest thereon, including any increases if the contract rate is variable; (2) future advances under any Revolving Loan Agreement; (3) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and (4) the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns the following described property located in the County of SPARTANBURG State of South Carolina:

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND LYING AND BEING IN THE STATE OF SOUTH CAROLINA, COUNTY OF SPARTANBURG, BEING DESIGNATED AS 5.00 ACRES, MORE OR LESS, AND SHOWNO N A PLAT MADE FOR AUSTIN A. LOWWERY, BY JOE E MITCHELL, DATED 5/22/1998, AND FILLED IN OPLAT BOOK 143, AT PAGE 468.

BEING A PROPERTY OF THAT PROPERTY CONVEYED FORM JOSEPH E ULMER, II TO AUSTIN A. LOWERY BY DEED RECORDED 07/03/96, IN BOOK 64-H, AT PAGE 146, IN THE REGISTER'S OFFICE OF SPARTANBURG COUNTY, SOUTH CAROLINA.

TAX MAP OR PARCEL IONO.: 4-43-10-029-.00

RECORDED
02 OCT -4 PM 1:19
R.M.C.
SPARTANBURG, S.C.

+ 00 111 627M20H0DT422 2MRTTI

04-15-02 MTG [redacted] SC0001251

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TO HAVE AND TO HOLD such property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water rights and stock and all fixtures now or hereafter a part of the property. All replacements and additions shall be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, 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 and Interest.** Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note, including any variations resulting from changes in the Contract Rate.

2. **Funds for Taxes and Insurance.** Subject to applicable law and only if requested in writing by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") equal to one-twelfth of: (a) yearly taxes and assessments which may attain priority over this Security Instrument; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard insurance premuims; and (d) yearly mortgage insurance premiums, if any. These items are called "escrow items." Lender may estimate the Funds due on the basis of current data and reasonable estimates of future escrow items.

The Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay the escrow items. Lender may not charge for holding and applying the Funds, analyzing the account or verifying the escrow items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing that interest shall be paid on the Funds. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Security Instrument.

If the amount of the Funds held by Lender, together with the future monthly payments of Funds payable prior to the due dates of the escrow items, shall exceed the amount required to pay the escrow items when due, the excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly payments of Funds. If the amount of the Funds held by Lender is not sufficient to pay the escrow items when due, Borrower shall pay to Lender any amount necessary to make up the deficiency in one or more payments as required by Lender.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender. If under paragraph 18 the Property is sold or acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by lender at the time of application as a credit against the sums secured by this Security Instrument.

3. **Application of Payments.** Unless applicable law or the Note provide otherwise, all payments received by Lender under paragraphs 1 and 2 shall be applied: first; to amounts payable under paragraph 2; second, to interest due; and last to the principal due.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations in the manner provided in paragraph 2, or if not paid in that manner, Borrower shall pay them on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

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; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien or forfeiture of any part of the property; 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 may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

5. **Hazard 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 for which Lender require insurance. This insurance shall be maintained in the amounts and for the periods that the Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. 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, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is not economically feasible and Lender's security would be lessened. 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 any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

[redacted]

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REM 2789 PAGE 577

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of the payments. If under paragraph 18 the Property is acquired by Lender, Borrower's rights to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

6. Preservation and Maintenance of Property; Leaseholds. Borrower shall not destroy, damage or substantially change the Property, allow the Property to deteriorate or commit waste. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease, and if Borrower acquires fee title to the Property, the leasehold and fee title shall not merge unless Lender agrees to the merger in writing.

7. Protection of Lender's Rights in the Property; Mortgage Insurance. If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorney's fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 7, Lender does not have to do so.

Any amounts disbursed by Lender under this paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

If Lender required mortgage insurance as a condition of making the loan secured by this Security Instrument, Borrower shall pay the premiums required to maintain the insurance in effect until such time as the requirement for the insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

8. Inspection. Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

9. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or 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 proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of such payments.

10. 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 any successor in interest of Borrower shall not operate to release the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor or 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 Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

11. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 16. Borrower covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument, but does not execute the Note, (a) is co-signing this Security Instrument only to Mortgage, grant and convey that Borrower'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 may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

12. Loan Charges. If the loan secured by this Security Instrument 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 under the Note.

13. Legislation Affecting Lender's Rights. If enactment or expiration of applicable laws has the effect of rendering any provision of the Note or this Security Instrument unenforceable according to its terms, Lender, at its option, may require immediate payment in full of all sums secured by this Security Instrument and may invoke any remedies permitted by paragraph 18. If Lender exercises this option, lender shall take the steps specified in the second paragraph of paragraph 16.

14. Notices. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Borrower's address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

[redacted]

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15. Governing Law; Severability. The applicable law contained in the Note shall control. Where no applicable law is contained therein, this Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provisions 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. To this end the provisions of this Security Instrument and the Note are declared to be severable.

16. Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

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 delivered or mailed within which Borrower may 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 by this Security Instrument without further notice or demand on Borrower.

17. Borrower's Right to Reinstate. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) 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 had no acceleration 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; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrower's obligations to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the 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 paragraphs 13 or 16.

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

18. 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 paragraphs 13 and 16 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 paragraph 18, including, but not limited to, reasonable attorney's fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

19. Lender in Possession. Upon acceleration under paragraph 18 or abandonment of the Property, Lender (by judicially appointed receiver) shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. Any rents collected by lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Security Instrument.

20. 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 without charge to Borrower. Borrower shall pay any recordation costs.

21. Waivers. Borrower waives all rights of homestead exemption in the property, Borrower waives the right to assert any statute providing appraisal rights which may reduce any deficiency judgment obtained by Lender against Borrower in the event of foreclosure under this Security Instrument.

22. 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 one hundred fifty percent (150%) of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

23. Arbitration Rider to Note. The Arbitration Rider attached to and made a part of the Note is hereby incorporated by reference and made a part of this Mortgage.

[redacted]

ELECTRONICALLY FILED - 2021 Apr 23 1:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

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REQUEST FOR NOTICE OF DEFAULT AND FORECLOSURE UNDER SUPERIOR MORTGAGES OR DEEDS OF TRUST

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Mortgage to give Notice to Lender, at Lender's address set forth on page one of this Mortgage, of any default under the superior encumbrance and of any sale or other foreclosure action.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants acontained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

_____ -Witness

_____ -Witness

_____ (Seal) -Borrower

_____ (Seal) -Borrower

ACKNOWLEDGEMENT OF WITNESS

STATE OF SOUTH CAROLINA, Spartanburg County ss:

Before me personally appeared Phil Hembree and made oath that he saw the within named Borrower sign, seal, and as his act and deed, deliver the within written Mortgage; and that he/she with the other witness subscribed above witnessed the execution thereof.

Sworn before me this 30th day of September, 20 02.

_____ (Seal)
Notary Public for South Carolina

_____
Witness

My Commission expires: 5/15/12

JASON A. SEELEY NOTARY PUBLIC SOUTH CAROLINA

(Space Below This Line For Recorder Data)

Return To:
Records Processing Services
577 Lamont Road
Elmhurst, IL 60126

PLAINTIFF'S EXHIBIT 9

RTR

HSBC RECORDS TO CAPTURE CENTER IMAGE REQUEST FORM

*Mail Team - Deliver to Capture Speciality Team In Bin

PLEASE COMPLETE FORM WITH ALL NECESSARY INFORMATION

FAILURE TO DO SO WILL RESULT IN A DELAY IN YOUR REQUEST OR ITEMS MAY NOT BE PICKED UP

Dept/Team:	Record Admin/Reg FCL
Name:	Christina Bland / Kordecki's Team
Date:	1-13-17
Extension:	x48518

Priority (Check one)*

- [x] Same Day
- [ ] Next Day
- [ ] No Priority

Please check one*:

- [x] Needs to be imaged in IAW (loan not on image)
- [ ] Imaged incorrectly; Specify error: _____

Please check one*:

- [ ] Store documents according to the Retention Policy
- [ ] Keep documents for 5 business days and then destroy documents
- [ ] Destroy documents immediately
- [x] Return originals to team
- [ ] Other _____

RECEIVED
JAN 16 2017
PREP TEAM
BRANDON, FL

Comments/Other:

ACCT #: [redacted] - Lowery

NAME:

Document Type: (Original Note) RMG AOM Title Policy

Population: "A" with Allonge/Endorse

For Capture Center Use Only

Date picked up_____ Initials_____

Date Imaged_____ Initials_____

Date Returned_____ Initials_____

NWT

Updated 8/1/2012

RESTRICTED

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LOAN REPAYMENT AND SECURITY AGREEMENT (Page 1 of 3)

LENDER (called "We", "Us", "Our")

HOUSEHOLD FINANCE CORPORATION II
150 E. BLACKSTOCK RD
STE. E BLKSTOCK PLAZA
SPARTANBURG SC 29301

BORROWERS (called "You", "Your") **LOAN NO:** [redacted]

LOWERY, ALLEN
SS# [redacted]
LOWERY, LISA D
SS# [redacted]
1605 STEWART RD
WOODRUFF SC 29388

DATE OF LOAN	FIRST PAYMENT DUE DATE	OTHERS	SCHEDULED MATURITY DATE	CONTRACT RATE (per year)
09/24/2002	10/24/2002	SAME DAY OF EACH MONTH	09/24/2032	10.634 %

AMOUNT FINANCED	PRINCIPAL	POINTS
$ 281,997.68	$ 304,040.62	$ 22,042.94

LIFE INS PREMIUM	DISABILITY INS PREMIUM	RELI INS PREMIUM
$ NONE	$ NONE	$ NONE

FIRST INSTALLMENT	MONTHLY INSTALLMENT	TERM PERIOD
$ 2,788.98	$ 2,788.98	360

YOU ARE GIVING US A SECURITY INTEREST IN THE REAL ESTATE LOCATED AT THE ABOVE ADDRESS.

REQUIRED INSURANCE. You must obtain insurance for term of loan covering security for this loan as indicated by the word "YES" below, naming us as Loss Payee:

YES Title insurance on real estate security.
YES Hazard insurance on real estate security.

You may obtain any required insurance from anyone you choose and may assign any other policy of insurance you own to cover the security for this loan.
(See "Security" paragraph above for description of security to be insured.)

NOTICE: THE FOLLOWING PAGES CONTAIN ADDITIONAL CONTRACT TERMS.

07-22-02 RE SI
1ST MTG NO PPP

[redacted]

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ELECTRONICALLY FILED - 2021 Apr 23 1:18 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

PAYMENT. In return for your loan described below, you agree to pay us, the Principal and Interest computed at the Contract Rate (as stated on page one) and any monthly insurance premium, if elected. Principal is Amount Financed, plus Points. You shall pay us monthly payments, at our business address or other address given you. If more than one Borrower is named on page one, we may enforce this Contract against all, or any Borrowers, but not in a combined amount greater than the amount owed. Payments are applied in the following order: late charges, interest at the Contract Rate for the actual time outstanding, principal, and insurance. For any past due amounts, payments will be applied to the most delinquent monthly installment first, in the same order shown above, until all past due monthly installments are paid in full.

DATE ON WHICH INTEREST BEGINS. If you do not cancel this loan, the date on which Interest begins, payment dates, and effective date of insurance purchased are postponed by the number of days from this contract's date to date you receive this loan.

ADJUSTMENT TO CONTRACT RATE. The Contract Rate, as shown on page one, will decrease by one half of one percent (.50%) at the end of the 3rd year (36th month), the 4th year (48th month) and the 5th year (60th month) (collectively the "Rate Reduction"), if all payments are made within 30 days of their due date, and you have not filed a petition under the U.S. Bankruptcy Code during the months preceding the Rate Reduction. The Rate Reduction will take effect no later than the first payment due date following the 36th, 48th, and 60th month anniversary dates from the date of the contract. Even if the rate is decreased, the monthly payment will not be adjusted, thus the total loan amount will be paid in full sooner than the final payment due date shown on page one, assuming all payments are made on their due date. Notwithstanding anything to the contrary in this paragraph, if, before any Rate Reduction, any payment is made more than 30 days after the due date, or you have filed a petition under the U.S. Bankruptcy Code, you will not receive the Rate Reduction following such event.

PAY-OUTS. You agree to pay-outs of Amount Financed as shown on Truth-In-Lending disclosure form. If pay-outs change because loan closing is delayed, (a) you shall pay additional amounts due at closing, or (b) your cash or check will be reduced to cover additional pay-outs.

PREPAYMENT. You may prepay any or all of your loan at any time. If you fully prepay before final due date, the amount you owe will be reduced by unearned credit insurance charges, if any. The points are nonrefundable and fully earned when the loan is made.

LATE CHARGE. We will charge you a Late Charge if you do not pay any payment in full within 10 days after the due date. The Late Charge is equal to 5% of the unpaid monthly payment, up to a maximum of $14.00. The minimum Late Charge is $5.40.

BAD CHECK CHARGE. If you pay by a check which is returned for any reason, you will pay a bad check charge of $25.00.

FAILURE TO PAY. If you don't pay on time, or if permitted in the event of default under the Real Estate Mortgage, (1) we will notify you of your right to bring your account up to date, and (2) if your account is not brought up to date in 20 days, we may sue you for the total amount you owe. If the Amount Financed stated on page one is over $2,800 (or such higher amount as set by the Department of Consumer Affairs' Rules), you will also pay our reasonable attorney fees (not over 15% of amount owed), if the attorney is not our salaried employee.

SECURITY. You agree to give us a security interest in the real estate as described in the Mortgage/Deed of Trust.

PROPERTY INSURANCE:

A. YOUR OBLIGATION TO INSURE. You shall keep the structures located on the real property securing this loan insured against damage caused by fire and other physical hazards, name us as a loss payee and deliver to us a loss payable endorsement. If insurance covering the real property is cancelled or expires while the loan is outstanding and you do not reinstate the coverage, we may obtain, at our option, hazard insurance coverage protecting our interest in the real property as outlined below.

B. LENDER'S RIGHT TO PLACE HAZARD INSURANCE. You authorize us, at our option, to obtain coverage on the Property in an amount not greater than the outstanding balance of principal and interest on the loan or, if known to be less, the replacement value of the Property, in the event that you fail to maintain the required hazard insurance outlined above or fail to provide adequate proof of its existence. You authorize us to charge you for the costs of this insurance and add the insurance charges to your loan. The Insurance charges will be added to the unpaid balance of the loan which accrues interest at the Contract Rate. The addition of the insurance charges due might increase the amount of your final

installment. The cost of Lender placed hazard insurance might be higher than the cost of standard insurance protecting the property. The Lender placed insurance will not insure the contents of the property or provide liability coverage. The insurance might not be the lowest cost coverage of its type available and you agree that we have no obligation to obtain the lowest cost coverage. We or an affiliated company might receive some benefit from the placement of this insurance and you will be charged for the full cost of the premium without reduction for any such benefit. If at any time after we have obtained this insurance, you provide adequate proof that you have subsequently purchased the required coverage, we will cancel the coverage we obtained and credit any unearned premiums to your loan.

CREDIT REPORTING AND CUSTOMER INFORMATION PRACTICES. If you fail to fulfill the terms of your credit obligation, a negative report reflecting on your credit record may be submitted to a Credit Reporting Agency. You agree that the Department of Motor Vehicles (or your state's equivalent of such department) may release your residence address to us, should it become necessary to locate you. You agree that our supervisory personnel may listen to telephone calls between you and our representatives in order to evaluate the quality of our service to you. For more information regarding our privacy practices, please refer to our Privacy Statement, which is included with your loan documents.

INSURANCE. Optional credit insurance and any required insurance disclosures are attached to this Agreement and are incorporated herein by reference.

ALTERNATIVE DISPUTE RESOLUTION AND OTHER RIDERS. The terms of the Arbitration Agreement and any other Riders signed as part of this loan transaction are incorporated into this Agreement by reference.

APPLICABLE LAW. This loan is governed by the South Carolina Consumer Protection Code S.S. CODE ANN. Sections 37-1-101, et. seq.

YOU HAVE RECEIVED A COMPLETE COPY OF THIS AGREEMENT AND THE TRUTH-IN-LENDING DISCLOSURES.

BORROWERS:

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

WITNESS:

_____

[redacted] on Appeal p. 344

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ALLONGE TO NOTE

Service #:	[redacted]
Control Number:	[redacted]
Allonge to Note Dated:	**9/24/02**
And Executed by:	**ALLEN LOWERY AND LISA D LOWERY**
County of:	**SPARTANBURG**
Property Address:	**1605 STEWART RD, WOODRUFF, SC 29388-0000**
Loan Amount:	**$304,040.62**
Pay to the order of:	**U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF10 MASTER PARTICIPATION TRUST**
Without recourse:	**HOUSEHOLD FINANCE CORPORATION II, BY CALIBER HOME LOANS, INC., AS ATTORNEY IN FACT**
By:	Brandi Coulter
Title:	**Authorized Signatory**

Prepared By: ANTHONY LOZADA - CALIBER

CAALNG

PLAINTIFF'S EXHIBIT 3

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Settlement Statement
Optional Form for
Transactions without Sellers

U.S. Department of Housing and Urban Development (Page 2 of 2)

Name and Address of Borrower:	Name and Address of Lender:
ALLEN LOWERY LISA D LOWERY 1605 STEWART RD WOODRUFF, SC29388	HOUSEHOLD FINANCE CORPORATION II 150 E. BLACKSTOCK RD STE. B BLKSTOCK PLAZA SPARTANBURG, SC
Property Location (if different than above):	Settlement Agent: ● Lender ○ Other _____ Place of Settlement: SPARTANBURG, SC Settlement Date: 09/24/2002
Loan Number: [redacted]	

L. SETTLEMENT CHARGES			
800. ITEMS PAYABLE IN CONNECTION WITH LOAN:			
801. Loan Origination Fee/Points ("Closing Costs"): %			
802. Loan Discount Fee/Points: 7.25 %			22,042.94
803. Appraisal Fee To: I.R.E. PROCESSING			350.00
804. Credit Report To:			
805. Inspection Fee To:			
806. Mortgage Insurance Application Fee To:			
807. Mortgage Broker Fee To:			
808. Document Preparation Fee			
809. Application Fee %			
810. Flood Certification			
811.			
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE:			
901. Invest From To @ $		Per Day	
902. Mortgage Insurance Premium For		Months To	
903. Hazard Insurance Premium For		Year(s) To	
904.			
1000. RESERVES DEPOSITED WITH LENDER:			
1001. Hazard Insurance	Months @ $	Per Month	
1002. Mortgage Insurance	Months @ $	Per Month	
1003. City Property Taxes	Months @ $	Per Month	
1004. County Property Taxes	Months @ $	Per Month	
1005. Annual Assessments	Months @ $	Per Month	
1006.	Months @ $	Per Month	
1007.	Months @ $	Per Month	
1008.	Months @ $	Per Month	
1100. TITLE CHARGES			
1101. Settlement Or Closing Fee ("Escrow Fee") To:			
1102. Abstract Or Title Search To: I.R.E. PROCESSING			200.00
1103. Title Examination To:			
1104. Title Insurance Binder To:			
1105. Document Preparation To:			
1106. Notary Fees To:			
1107. Attorney's Fees To: (Includes Above Item Numbers:)			
1108. Title Insurance To: I.R.E. PROCESSING (Includes Above Item Numbers:)			633.75
1109. Lender's Coverage $			
1110. Owner's Coverage $			
1111.			
1112.			
1113.			
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES:			
1201. Recording Fees: Mortgage/Deed of Trust $		Release $	0.00
1202. City/County Tax/Stamps: $			
1203. State Tax/Stamps $			0.00
1204.			
1205.			
1300. ADDITIONAL SETTLEMENT CHARGES:			
1301. Survey To:			
1302. Pest Inspection To:			
1303. Architectural/Engineering Services To:			
1304. Building Permit To:			
1305.			
1306.			
1307.			
1400. TOTAL SETTLEMENT CHARGES (Enter On Line 1602)			23,226.69

N. DISBURSEMENT TO OTHERS	
1501. HFC $165010045284	9,066.25
1502. BK OF TRAV	2,913.49 ~~2,881.00~~
1503. COMMUNITY SUPPL	2,508.02 ~~2,789.16~~
1504. GECF/HMDEP	11,017.65 ~~12,000.00~~
1505. KEN'S INCORP	6,010.30
1506. ROBBIN'S BRICK	521.54
1507. SEARS	1,271.00
1508. SUNTRUST	212,448.79
1509. THBO BROTHER'S	13,200.00
1510. ZUPAN & SMITH	8,321.78
1511.	
1512.	
1513.	
1514.	
1515.	
1520. TOTAL DISBURSED (Enter On Line 1603)	268,509.82
M. NET SETTLEMENT	
1600. LOAN AMOUNT RL= Initial Advance (Includes line 1400) OE= Principal Loan Amount	$304,040.62
1601. Plus Cash/Check From Borrower	
1602. Minus Total Settlement Charges (Line 1400)	$23,226.69
1603. Minus Total Disbursement To Others (Line 1520)	$268,509.82
1604. Equals Disbursement To Borrower (After Expiration Of Any Applicable Rescission Period Required By Law)	13,303.91 ~~$12,304.11~~

Borrower's Signature
Date: Sept 24 2002

Borrower's Signature
Date: September 24, 2002

Lender:

09-01-96 HUD - 1A SETTLEMENT STATEMENT - A

UB422742

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HUD 1A SETTLEMENT STATEMENT

Customer Name: LOWERY, ALLEN

Account Number: [redacted]

Place the HUD 1A Settlement Statement behind this form.

[redacted]

10-01-99 HUD 1A

SSOHG901

[redacted]

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SETTLEMENT STATEMENT
(Page 1 of 2)

NOTICE REGARDING LOAN SETTLEMENT STATEMENT AND LOAN VOUCHER OR TRUTH IN LENDING DISCLOSURE

The actual disbursement amounts, as stated on this Settlement Statement and the Truth in Lending Disclosure given at the time of funding, may reflect changes due to updated payoff figures or the subsequent voluntary purchase of ancillary products provided at the time of funding.

The following statement is only applicable for North Carolina closed-end second mortgages up to $25,000: "The loan is regulated by the provisions of Chapter 24, Article 2 of the General Statutes of North Carolina entitled 'Loans Secured by Secondary or Junior Mortgages'."

PLAINTIFF'S EXHIBIT 4

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SCHEDULE B

File No.: T002-329067 Policy No.: LP-11-1458-0000047967

THE POLICY DOES **NOT** INSURE AGAINST LOSS OR DAMAGE BY RESULT OF THE FOLLOWING:

1. RIGHTS OR CLAIMS OF PARTIES IN POSSESSION NOT SHOWN BY THE PUBLIC RECORDS.

2. EASEMENTS, OR CLAIMS OF EASEMENTS, RECORDED AND UNRECORDED IN THE PUBLIC RECORDS.

3. ENCROACHMENTS, OVERLAPS, BOUNDARY LINE DISPUTES, OR OTHER MATTERS WHICH WOULD BE DISCLOSED BY AN ACCURATE SURVEY OR INSPECTION OF THE PREMISES.

4. ANY LIEN, OR RIGHT TO A LIEN, FOR SERVICES, LABOR, OR MATERIAL HERETOFORE OR HEREAFTER FURNISHED, IMPOSED BY LAW AND NOT SHOWN BY THE PUBLIC RECORDS.

5. ANY ADVERSE CLAIM TO ANY PORTION OF SAID LAND WHICH HAS BEEN CREATED BY ARTIFICIAL MEANS OR HAS ACCRETED TO ANY SUCH PORTION SO CREATED AND RIPARIAN RIGHTS, IF ANY.

6. ALL EASEMENTS, RIGHTS-OF-WAY, AND RESTRICTIVE COVENANTS WHICH MAY AFFECT SAID LAND.

7. TAXES FOR THE CURRENT YEAR AND SUBSEQUENT YEARS WHICH MAY CONSTITUTE A LIEN UPON THE SUBJECT PROPERTY BUT ARE NOT YET DUE AND PAYABLE.

8. SET BACK LINES, EASEMENTS, NOTES, RESERVATIONS, OPEN SPACES, CONDITIONS, WIDENING STRIPS, RESTRICTIONS OR OTHER MATTERS AFFECTING SAID PROPERTY AS SHOWN ON THE PLAN OR MAP WHEN A PLAN OR MAP EXISTS.

9. BASED UPON REPRESENTATIONS MADE BY THE INSURED THAT THEY HAVE BEEN PAID, CERTAIN LIENS AFFECTING TITLE TO THE PREMISES HAVE BEEN OMITTED FROM SCHEDULE B OF THIS POLICY. IN THE EVENT THAT SUCH LIENS HAVE NOT IN FACT BEEN RELEASED OR SATISFIED OF RECORD, NO COVERAGE AGAINST SUCH LIENS IS AFFORDED BY THIS POLICY.

10. MORTGAGE FROM AUSTIN A. LOWERY, N/S, TO HOUSEHOLD FINANCE CORPORATION II DATED 09/24/2002 AND RECORDED 09/26/2002 IN VOLUME 2782 PAGE 874 IN THE AMOUNT OF $304,040.00, NOT OPEN ENDED. COMMENT: BRANCH TO RELEASE.

11. SUBJECT TO ANY AND ALL UNPAID AND/OR DELINQUENT REAL ESTATE TAXES.

12. SUBJECT TO ANY LOSS OR FORFEITURE OF TITLE WHICH MAY OCCUR DUE TO ANY LIENS, DEFECTS OR ENCUMBRANCES THAT MAY AFFECT ANY PORTION OF THE CURRENT INSTRUMENT OF TITLE FOR WHICH COVERAGE HAS NOT BEEN REQUESTED.

NOTE: Unless Schedule B Part II is attached there are no subordinate matters that affect the title to the estate or interest referred to in Schedule A.

American Land Title Association Loan Policy - (10-17-92)

LOAN TITLE INSURANCE POLICY
SCHEDULE A

File No.: T002-329067
Amount of Insurance $304040.62
Date of Policy: October 4, 2002

Policy No.: LP-11-1458-0000047967
Premium: $633.75

1.
Name of Insured: HOUSEHOLD FINANCE CORPORATION II
ITS SUCCESSORS AND/OR ASSIGNS
CII ACCOUNT NUMBER: 816501 00 146755
150 EAST BLACKSTOCK ROAD
SPARTANBURG, SC 29301

2.
The estate or interest in the land described in this Schedule and which is encumbered by the insured mortgage is fee simple and *is* at Date of Policy vested in: AUSTIN A. LOWERY
Tenancy: NOT STATED

3.
The mortgage, herein referred to as the insured mortgage and the assignments thereof, if any, are described as follows:
$304040.62 from AUSTIN A. LOWERY
Tenancy: NOT STATED
to insured dated **September 30, 2002**, and recorded on **October 4, 2002**, at 01:19 in volume 2789 page 575 in the Recorder of Deeds Office, SPARTANBURG County, SOUTH CAROLINA.

4.
The Land referred to in this policy described as set forth in the insured mortgage is situated in the State of SOUTH CAROLINA, SPARTANBURG County and is identified as follows:
LEGAL DESCRIPTION:

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, LYING AND BEING IN STATE OF SOUTH CAROLINA, COUNTY FO SPARTRANBURG, BEING DESIGNATED AS 5.00 ACRES, MORE OR LESS, AND SHOWNO N A PLAT MADE FOR AUSTIN A. LOWERY, BY JOE E. MITCHELL, DATED 5/22/1996, AND FILED IN OPLAT BOOK 143, AT PAGE

(continued)

L.R.E. Processing

By: _____
(Authorized Signature)

These schedules constitute the *policy* and this policy includes the insuring agreements, exclusions from coverage, terms and conditions, and exceptions of the applicable title insurance policy form and state amendatory endorsement form, if any, specified in the Agreement to Incorporate Title Insurance Policy Provisions by Reference made between Household Finance Corporation, American Pioneer Title Insurance Company, and Integrated Real Estate Processing, L.P., as amended on the effective date of the policy.

American Land Title Association Loan Policy - (10-17-92)

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SCHEDULE A - 1

File No.: T002-329067

Policy No.: LP-11-1458-0000047967

4. (continued:)
468.

BEING A PORTION OF THAT PROPERTY CONVEYED FROM JOSEPH E. ULMER, II TO AUSTIN A. LOWERY BY DEED RECORDED 07/03/96, IN BOOK 64-H, AT PAGE 146, IN THE REGISTER'S OFFICE OF SPARTANBURG COUNTY, SOUTH CAROLINA. TAX MAP OR PARCEL ID NO.: 4-43-10-029.00

PLAINTIFF'S EXHIBIT 10
tabbies®

SUMMARY REPORT

UNIFORM RESIDENTIAL APPRAISAL REPORT

File No. [redacted]

Property Description

SUBJECT

Property Address 1605 STEWART ROAD | City WOODRUFF | State SC | Zip Code 29388-8272

Legal Description TRACT 3 M C HILL EST | County SPARTANBURG

Assessor's Parcel No. 4-43-00-029.00 | Tax Year 01 | R.E. Taxes $ 201.66 | Special Assessments $ 0.00

Borrower AUSTIN ALLEN LOWRY | Current Owner SAME AS BORROWER | Occupant: ☒ Owner ☐ Tenant ☐ Vacant

Property rights appraised ☒ Fee Simple ☐ Leasehold | Project Type ☐ PUD ☐ Condominium (HUD/VA only) | HOA $ 0 /Mo.

Neighborhood or Project Name CROSS ANCHOR | Map Reference 4-43-00-029.00 | Census Tract 0237.00

Sale Price $ N/A | Date of Sale N/A | Description and $ amount of loan charges/concessions to be paid by seller N/A

Lender/Client HOUSEHOLD FINANCE COMPANY | Address 150 EAST BLACKSTOCK ROAD, SPARTANBURG, SC 29301

Appraiser MJ BUSH-2864 | Address BENCHMARK APPRAISAL PO BOX 685, LANDRUM, SC 29356

NEIGHBORHOOD

				Predominant occupancy	Single family housing PRICE $(000)	AGE (yrs)	Present land use %	Land use change
Location	☐ Urban	☒ Suburban	☐ Rural					
Built up	☐ Over 75%	☒ 25-75%	☐ Under 25%	☒ Owner 90	20 Low	NEW	One family 60	☐ Not likely ☒ Likely
Growth rate	☐ Rapid	☒ Stable	☐ Slow	☐ Tenant	450 High	100	2-4 family 0	☐ In process
Property values	☐ Increasing	☒ Stable	☐ Declining	☒ Vacant (0-5%)	Predominant		Multi-family 0	To: DEVELOPED TO
Demand/supply	☐ Shortage	☒ In balance	☐ Over supply	☐ Vac.(over 5%)	100	15	Commercial 0	SINGLE FAMILY
Marketing time	☐ Under 3 mos.	☒ 3-6 mos.	☐ Over 6 mos.				VACANT 40	RESIDENTIAL

Note: Race and the racial composition of the neighborhood are not appraisal factors.

Neighborhood boundaries and characteristics: THE SUBJECT NEIGHBORHOOD BOUNDARIES ARE HIGHWAY 146 TO THE SOUTH, I-26 TO THE EAST,OLD HILLS BRIDGE TO THE WEST AND CHUMLY TO THE NORTH.

Factors that affect the marketability of the properties in the neighborhood (proximity to employment and amenities, employment stability, appeal to market, etc.):
THE SUBJECT IS LOCATED IN THE CROSS ANCHOR AREA OF SOUTHERN SPARTANBURG COUNTY. THE AREA IS A MIX OF HOMESTYLES ON TYPICALLY LARGER SITES. THE SCHOOLS PROVIDE BUS SERVICE. THE LOCAL SHOPPING IS LIMITED. THE MAIN SERVICES ARE AVAILABLE IN WOODRUFF. THE EMPLOYMENT CENTERS ARE WITHIN A 15 MILE RADIUS.

Market conditions in the subject neighborhood (including support for the above conclusions related to the trend of property values, demand/supply, and marketing time -- such as data on competitive properties for sale in the neighborhood, description of the prevalence of sales and financing concessions, etc.):
PROPERTY VALUE IN THIS AREA APPEARS TO BE STABLE AND DEMAND FOR HOMES IN THIS PRICE RANGE IS GOOD. AT THE PRESENT TIME FAVORABLE INTEREST RATES ARE AVAILABLE.

PUD

Project Information for PUDs (If applicable) - - Is the developer/builder in control of the Home Owners' Association (HOA)? ☐ Yes ☐ No 0

Approximate total number of units in the subject project 0 | Approximate total number of units for sale in the subject project 0

Describe common elements and recreational facilities: 0

SITE

Dimensions REFER TO PLAT MAP | Topography GENERALLY LEVEL

Site area 53.73 ACRES/ 5 ACRES CONSIDERED. | Corner Lot ☐ Yes ☒ No | Size LARGER THAN AVG

Specific zoning classification and description NO ZONING | Shape IRREGULAR

Zoning compliance ☐ Legal ☐ Legal nonconforming (Grandfathered use) ☐ Illegal ☒ No zoning | Drainage NATURAL

Highest & best use as improved: ☒ Present use ☐ Other use (explain) | View NEIGHBORHOOD

Utilities	Public	Other	Off-site Improvements	Type	Public	Private
Electricity	☒		Street	ASPHALT	☒	☐
Gas	☐	PROPANE	Curb/gutter	NONE	☐	☐
Water	☒		Sidewalk	NONE	☐	☐
Sanitary sewer	☐	SEPTIC	Street lights	NONE	☐	☐
Storm sewer	☐		Alley	NONE	☐	☐

Landscaping AVERAGE FOR AREA

Driveway Surface CONCRETE

Apparent easements TYPICAL UTILITIES

FEMA Special Flood Hazard Area ☐ Yes ☒ No

FEMA Zone C | Map Date 08/01/1984

FEMA Map No. 4501760250B

Comments (apparent adverse easements, encroachments, special assessments, slide areas, illegal or legal nonconforming zoning use, etc.): NO KNOWN OR APPARENT ADVERSE CONDITIONS OR EASEMENTS NOTED AT THE TIME OF INSPECTION

DESCRIPTION OF IMPROVEMENTS

GENERAL DESCRIPTION		EXTERIOR DESCRIPTION		FOUNDATION		BASEMENT		INSULATION	
No. of Units	ONE	Foundation	CBLK	Slab	N/A	Area Sq. Ft.	N/A	Roof	☐
No. of Stories	1 STY	Exterior Walls	VINYL	Crawl Space	YES	% Finished	N/A	Ceiling	AVG ☒
Type (Det./Att.)	DETACHED	Roof Surface	COMPOSITION	Basement	NONE NOTED	Ceiling	N/A	Walls	AVG ☒
Design (Style)	RANCH	Gutters & Dwnspts.	METAL	Sump Pump	NONE NOTED	Walls	N/A	Floor	AVG ☒
Existing/Proposed	EXISTING	Window Type	VINYL CLAD	Dampness	NONE NOTED	Floor	N/A	None	☐
Age (Yrs.)	NEW	Storm/Screens	SCREENS	Settlement	NONE NOTED	Outside Entry	N/A	Unknown	☐
Effective Age (Yrs.)	NEW	Manufactured House	NO	Infestation	NONE NOTED				

ROOMS	Foyer	Living	Dining	Kitchen	Den	Family Rm.	Rec. Rm.	Bedrooms	# Baths	Laundry	Other	Area Sq. Ft.
Basement												N/A
Level 1		1	AREA	1		1		4	2.5	YES		2,711
Level 2												

Finished area above grade contains: 7 Rooms; 4 Bedroom(s); 2.5 Bath(s); 2,711 Square Feet of Gross Living Area

INTERIOR	Materials/Condition	HEATING		KITCHEN EQUIP.		ATTIC		AMENITIES		CAR STORAGE:	
Floors	CPT/VNL/CTILE/HD	Type	HTPUMP	Refrigerator	☐	None	☐	Fireplace(s) # ONE	☒	None	☐
Walls	DRYWALL	Fuel	ELEC	Range/Oven	☒	Stairs	☐	Patio CONCRETE	☒	Garage	# of cars
Trim/Finish	STAINED WOOD	Condition	AVG	Disposal	☒	Drop Stair	☒	Deck	☐	Attached	2 CAR
Bath Floor	VINYL/CTILE	COOLING		Dishwasher	☒	Scuttle	☐	Porch COVERED	☒	Detached	
Bath Wainscot	FIBERGLASS	Central	YES	Fan/Hood	☒	Floor	☐	Fence	☐	Built-In	
Doors	6 PANEL	Other	N/A	Microwave	☒	Heated	☐	Pool	☐	Carport	
ALL IN GOOD CONDIT.		Condition	AVG	Washer/Dryer	☐	Finished	☐	STG BLDG	☒	Driveway	YES

COMMENTS

Additional features (special energy efficient items, etc.): THE S/P IS A NEW HOME OF GOOD QUALITY. IT HAS A SECURITY SYSTEM, UPGRADED INTERIOR, STAINLESS APPLIANCES, QUARRY TILE, 4 BEDROOMS, 2.5 BATHS AND A 1800 SF HEATED/COOLED SHP

Condition of the improvements, depreciation (physical, functional, and external), repairs needed, quality of construction, remodeling/additions, etc.: THE SUBJECT WAS IN GOOD CONDITION AT THE TIME OF INSPECTION AND NO MAJOR REPAIRS WERE NOTED. PHYSICAL DEPRECIATION IS ESTIMATED BY THE AGE/LIFE METHOD.

Adverse environmental conditions (such as, but not limited to, hazardous wastes, toxic substances, etc.) present in the improvements, on the site, or in the immediate vicinity of the subject property.: DURING THE INSPECTION NO NOTICEABLE ADVERSE ENVIRONMENTAL CONDITIONS WERE NOTED ON THE SUBJECT SITE, OR IN THE IMMEDIATE VICINITY.

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SUMMARY REPORT

Valuation Section

UNIFORM RESIDENTIAL APPRAISAL REPORT

File No. [redacted]

COST APPROACH

ESTIMATED SITE VALUE	= $ 25,000	Comments on Cost Approach (such as, source of cost estimate, site value, square foot calculation and for HUD, VA and FmHA, the estimated remaining economic life of the property): THE REPLACEMENT COSTS ARE BASED UPON THE MARSHAL AND SWIFT RESIDENTIAL COST HANDBOOK, WITH ADJUSTMENTS FOR LOCAL BUILDING COSTS AND TRENDS. LAND VALUES ARE BASED UPON CURRENT CLOSED LAND SALES WITHIN THE SUBJECT MARKET AREA, OR MARKET ABSTRACTION.
ESTIMATED REPRODUCTION COST-NEW-OF IMPROVEMENTS:		
Dwelling 2,711 Sq. Ft. @$ 85.00	= $ 230,435	
589 Sq. Ft. @$ 20.00	= 11,780	
192 PCH/1800 SHOP	= 31,920	
Garage/Carport 840 Sq. Ft. @$ 20.00	= 16,800	
Total Estimated Cost New	= $ 290,935	
Less Physical / Functional / External Depreciation	= $	
Depreciated Value of Improvements	= $ 290,935	
"As-is" Value of Site Improvements	= $ 2,000	
INDICATED VALUE BY COST APPROACH	= $ 317,935	

SALES COMPARISON ANALYSIS

ITEM	SUBJECT	COMPARABLE NO. 1		COMPARABLE NO. 2		COMPARABLE NO. 3	
Address	1605 STEWART ROAD WOODRUFF,SC	547 MOORES CROSSING ROEBUCK,SC		240 BAGWELL ROAD ROEBUCK,SC		150 PATRIOT ROAD ROEBUCK,SC	
Proximity to Subject		5.97 miles		5.80 miles		7.43 miles	
Sales Price	$ N/A		$ 283,000		$ 300,000		$ 272,500
Price/Gross Living Area	$ /[illegible]	$ 104.81 /[illegible]		$ 108.07 /[illegible]		$ 125.58 /[illegible]	
Data and/or Verification Source	INSPECTION PUBLIC RECORD	MLS		MLS		MLS	
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(-)$ Adjust.	DESCRIPTION	+(-)$ Adjust.	DESCRIPTION	+(-)$ Adjust.
Sales or Financing Concessions		CONV NONE NOTED		CONV NONE NOTED		CONV NONE NOTED	
Date of Sale/Time		10/26/01		5/01/02		3/27/02	
Location	SUBURBAN	SUBURBAN		SUBURBAN		SUBURBAN	
Leasehold/Fee Simple	FEE SIMPLE	FEE SIMPLE		FEE SIMPLE		FEE SIMPLE	
Site	5 ACRES/AVG	1.14 AC/GD	EQUAL	1.75 AC/GD	EQUAL	3.08 AC/GOOD	-5,000
View	NEIGHBORHOOD	NEIGHBORHD		NEIGHBORHD		NEIGHBORHD	
Design and Appeal	RANCH/GOOD	1 1/2 STY/GD		11/2 STY/GOOD		RANCH/GOOD	
Quality of Construction	FRAME/GOOD	BV/VN/GOOD		FRAME/GOOD		BV/GOOD	
Age	NEW	NEW		24 YEARS	+2,400	3 YEARS	+300
Condition	GOOD	GOOD		GOOD		GOOD	
Above Grade Room Count	Total 7 Bdrms 4 Baths 2.5	Total 7 Bdrms 4 Baths 3.5	-2,000	Total 7 Bdrms 4 Baths 3.5	-3,000	Total 6 Bdrms 3 Baths 2	
Gross Living Area	2,711 Sq. Ft.	2,700 Sq. Ft.	+275	2,776 Sq. Ft.	-1,625	2,170 Sq. Ft.	+13,525
Basement & Finished Rooms Below Grade	NONE N/A	NONE N/A		542 SF 542 FINISH	-5,420 -5,420	NONE N/A	
Functional Utility	STANDARD	STANDARD		STANDARD		STANDARD	
Heating/Cooling	HTPUMP/YES	FA/GAS/YES		HTPUMP/YES		FA/GAS/YES	
Energy Efficient Items	INSL WINDOW	INSL WINDOW		INSL WINDOW		INSL WINDOW	
Garage/Carport	2 CAR GARAGE	2 CAR GARAGE		2 CAR GARAGE		2 CAR GARAGE	
Porch, Patio, Deck, Fireplace(s), etc.	PORCH/PATIO FIREPLACE	PORCH/DECK FIREPLACE		PORCH/DECK FIREPLACE		PORCH/2 FIREPLACE	
Fence, Pool, etc.	SHOP	NONE	+5,000	POOL	EQUAL	NONE	+5,000
DOM	N/A	112 DOM		101 DOM		191 DOM	
Net Adj. (total)		☒ + ☐ - $	3,275	☐ + ☒ - $	13,065	☒ + ☐ - $	13,825
Adjusted Sales Price of Comparable		Net 1.2 % Gross 2.6 % $	286,275	Net 4.4 % Gross 6.0 % $	286,935	Net 5.1 % Gross 8.7 % $	286,325

Comments on Sales Comparison (including the subject property's compatibility to the neighborhood, etc.): See attached addenda.

ITEM	SUBJECT	COMPARABLE NO. 1	COMPARABLE NO. 2	COMPARABLE NO. 3
Date, Price and Data Source, for prior sales within year of appraisal	NONE NOTED OR LOCATED IN PUB. REC.	NONE NOTED OR LOCATED IN PUB. REC.	NONE NOTED OR LOCATED IN PUB. REC.	NONE NOTED OR LOCATED IN PUB. REC.

Analysis of any current agreement of sale, option, or listing of subject property and analysis of any prior sales of subject and comparables within one year of the date of appraisal:
N/A

INDICATED VALUE BY SALES COMPARISON APPROACH $ 286,500

INDICATED VALUE BY INCOME APPROACH (if Applicable) Estimated Market Rent $ 0 /Mo. x Gross Rent Multiplier 0 = $ 0

RECONCILIATION

This appraisal is made ☒ "as is" ☐ subject to the repairs, alterations, inspections or conditions listed below ☐ subject to completion per plans & specifications.

Conditions of Appraisal: THIS REPORT WAS PREPARED USING SALES DATA AND INFORMATION PROVIDED BY THE STATED SOURCES AND WAS CONSIDERED TO BE REALISTIC AND RELIABLE.

Final Reconciliation: MOST CONSIDERATION WAS GIVEN TO THE MARKET APPROACH TO VALUE AS IT REPRESENTS THE ACTIONS OF A WELL INFORMED BUYER & SELLER ACTING IN THEIR BEST INTEREST.

The purpose of this appraisal is to estimate the market value of the real property that is the subject of this report, based on the above conditions and the certification, contingent and limiting conditions, and market value definition that are stated in the attached Freddie Mac Form 439/FNMA form 1004B (Revised 06-30-93).

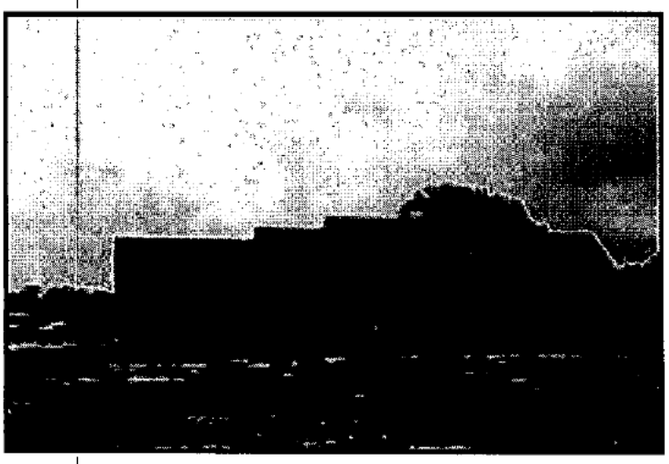
I (WE) ESTIMATE THE MARKET VALUE, AS DEFINED, OF THE REAL PROPERTY THAT IS THE SUBJECT OF THIS REPORT, AS OF SEPTEMBER 19, 2002 (WHICH IS THE DATE OF INSPECTION AND THE EFFECTIVE DATE OF THIS REPORT) TO BE $ 286,500

APPRAISER: M.J.BUSH	SUPERVISORY APPRAISER (ONLY IF REQUIRED):
Signature [illegible]	Signature [illegible] ☐ Did ☒ Did Not Inspect Property
Name M.J.BUSH-GR-2864	Name K.DON BUSH
Date Report Signed SEPTEMBER 19, 2002	Date Report Signed SEPTEMBER 19, 2002
State Certification # CR 2864 State SC	State Certification # CR-3010 State SC
Or State License # State	Or State License # State

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Subject Photo Page

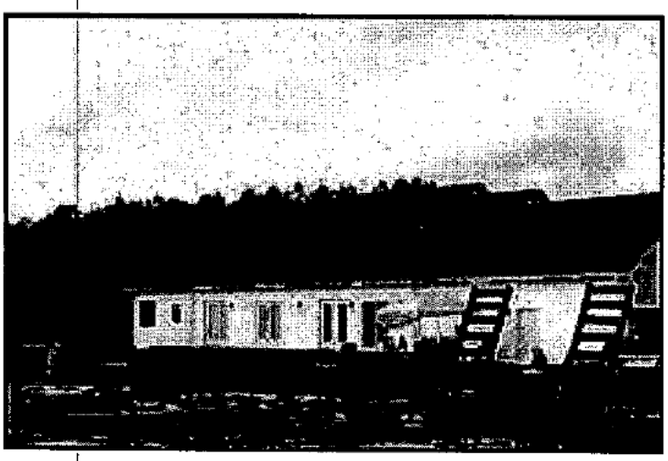
Borrower/Client AUSTIN ALLEN LOWRY			
Property Address 1605 STEWART ROAD			
City WOODRUFF	County SPARTANBURG	State SC	Zip Code 29388-8272
Lender HOUSEHOLD FINANCE COMPANY			



Subject Front

1605 STEWART ROAD

Sales Price	N/A
Gross Living Area	2,711
Total Rooms	7
Total Bedrooms	4
Total Bathrooms	2.5
Location	SUBURBAN
View	NEIGHBORHOOD
Site	5 ACRES/AVG
Quality	FRAME/GOOD
Age	NEW



Subject Rear



Subject Street

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Comparable Photo Page

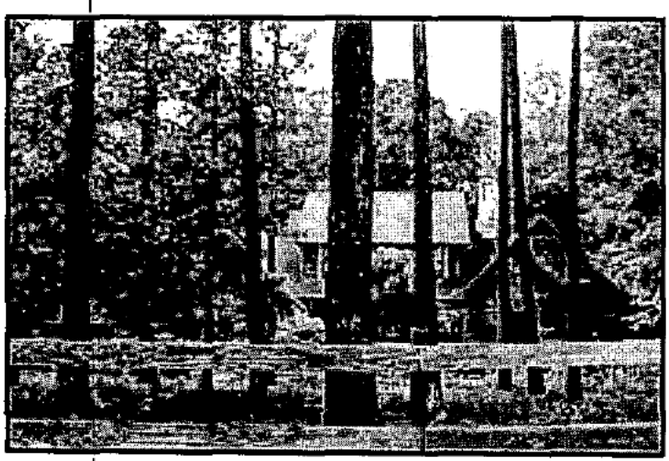
Borrower/Client	AUSTIN ALLEN LOWRY			
Property Address	1605 STEWART ROAD			
City	WOODRUFF	County SPARTANBURG	State SC	Zip Code 29388-8272
Lender	HOUSEHOLD FINANCE COMPANY			



Comparable 1

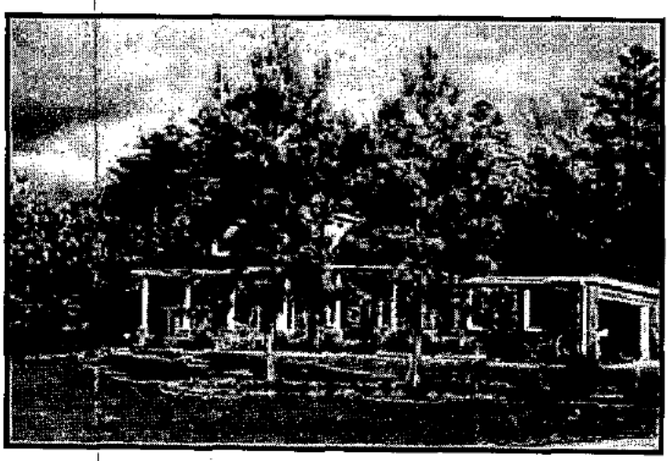
547 MOORES CROSSING

Prox. to Subject	5.97 miles
Sale Price	283,000
Gross Living Area	2,700
Total Rooms	7
Total Bedrooms	4
Total Bathrooms	3.5
Location	SUBURBAN
View	NEIGHBORHD
Site	1.14 AC/GD
Quality	BV/VN/GOOD
Age	NEW



Comparable 2

Address	240 BAGWELL ROAD
Prox. to Subject	5.80 miles
Sale Price	300,000
Gross Living Area	2,776
Total Rooms	7
Total Bedrooms	4
Total Bathrooms	3.5
Location	SUBURBAN
View	NEIGHBORHD
Site	1.75 AC/GD
Quality	FRAME/GOOD
Age	24 YEARS



Comparable 3

Address	150 PATRIOT ROAD
Prox. to Subject	7.43 miles
Sale Price	272,500
Gross Living Area	2,170
Total Rooms	6
Total Bedrooms	3
Total Bathrooms	2
Location	SUBURBAN
View	NEIGHBORHD
Site	3.08 AC/GOOD
Quality	BV/GOOD
Age	3 YEARS

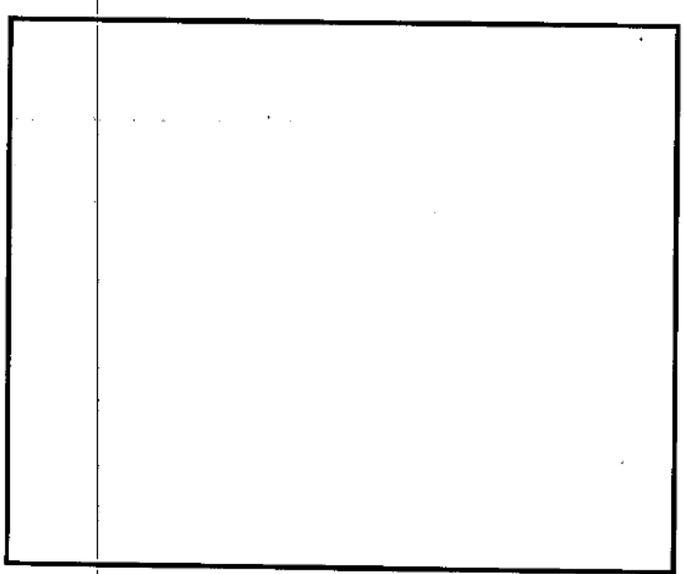
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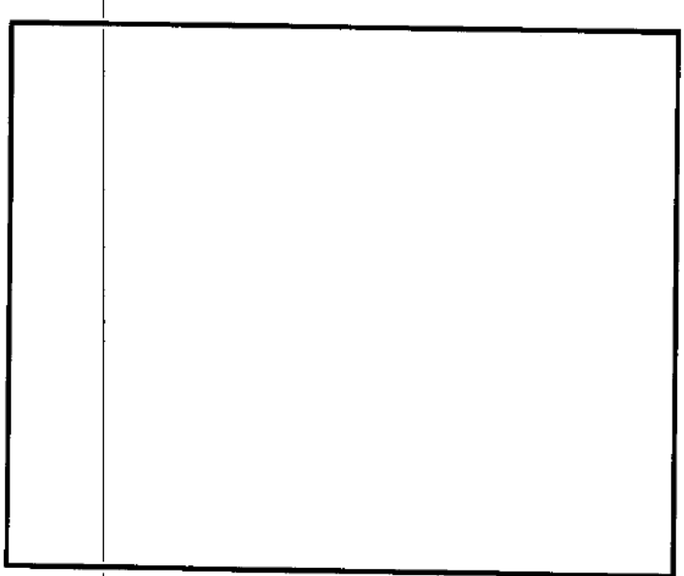
PHOTOGRAPH ADDENDUM

Borrower/Client	AUSTIN ALLEN LOWRY						
Property Address	1605 STEWART ROAD						
City	WOODRUFF	County	SPARTANBURG	State	SC	Zip Code	29388-8272
Lender	HOUSEHOLD FINANCE COMPANY						



HEATED AND COOLED SHOP

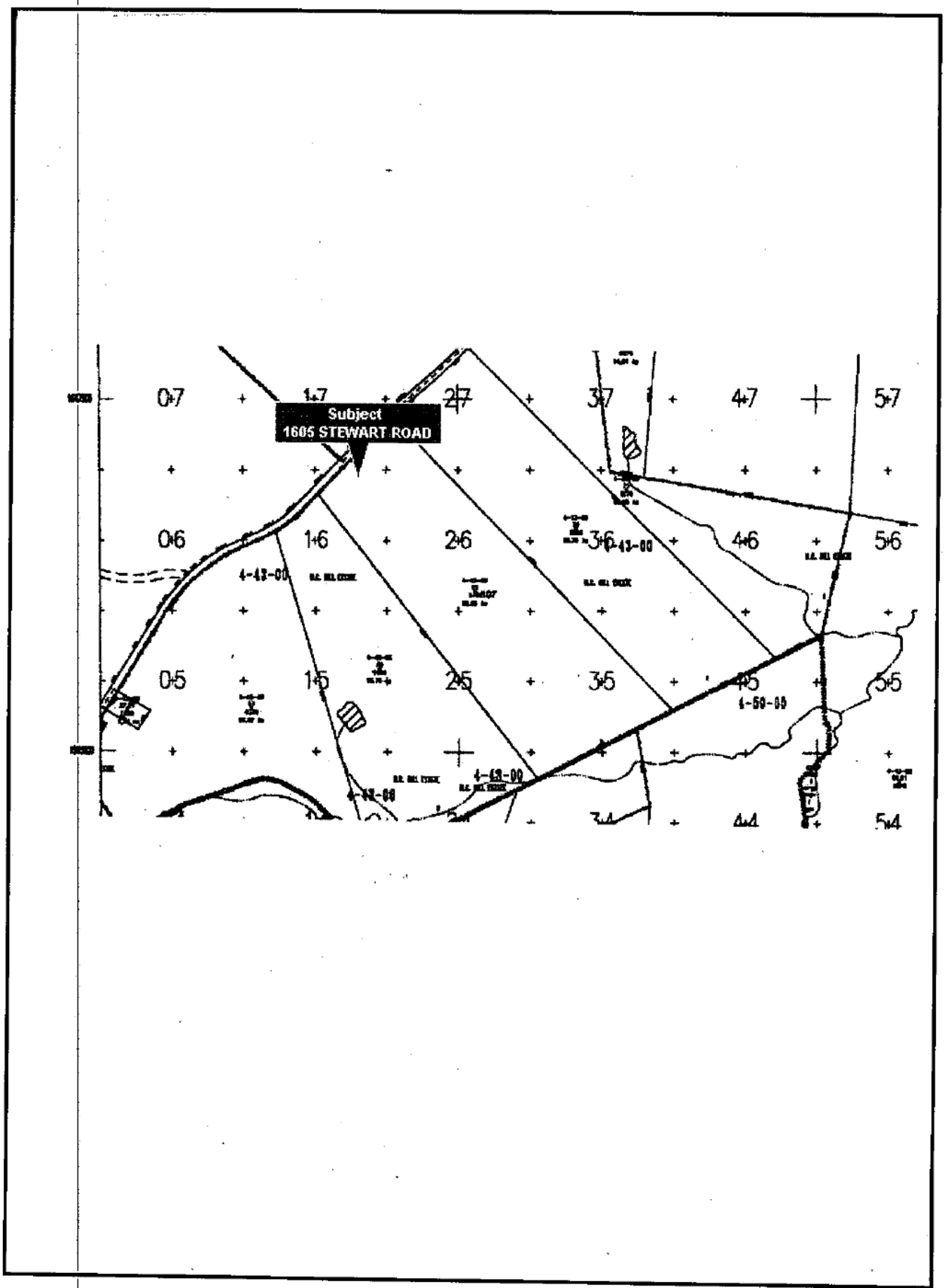




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Plat Map

Borrower/Client AUSTIN ALLEN LOWRY				
Property Address 1605 STEWART ROAD				
City WOODRUFF	County SPARTANBURG	State SC	Zip Code 29388-8272	
Lender HOUSEHOLD FINANCE COMPANY				

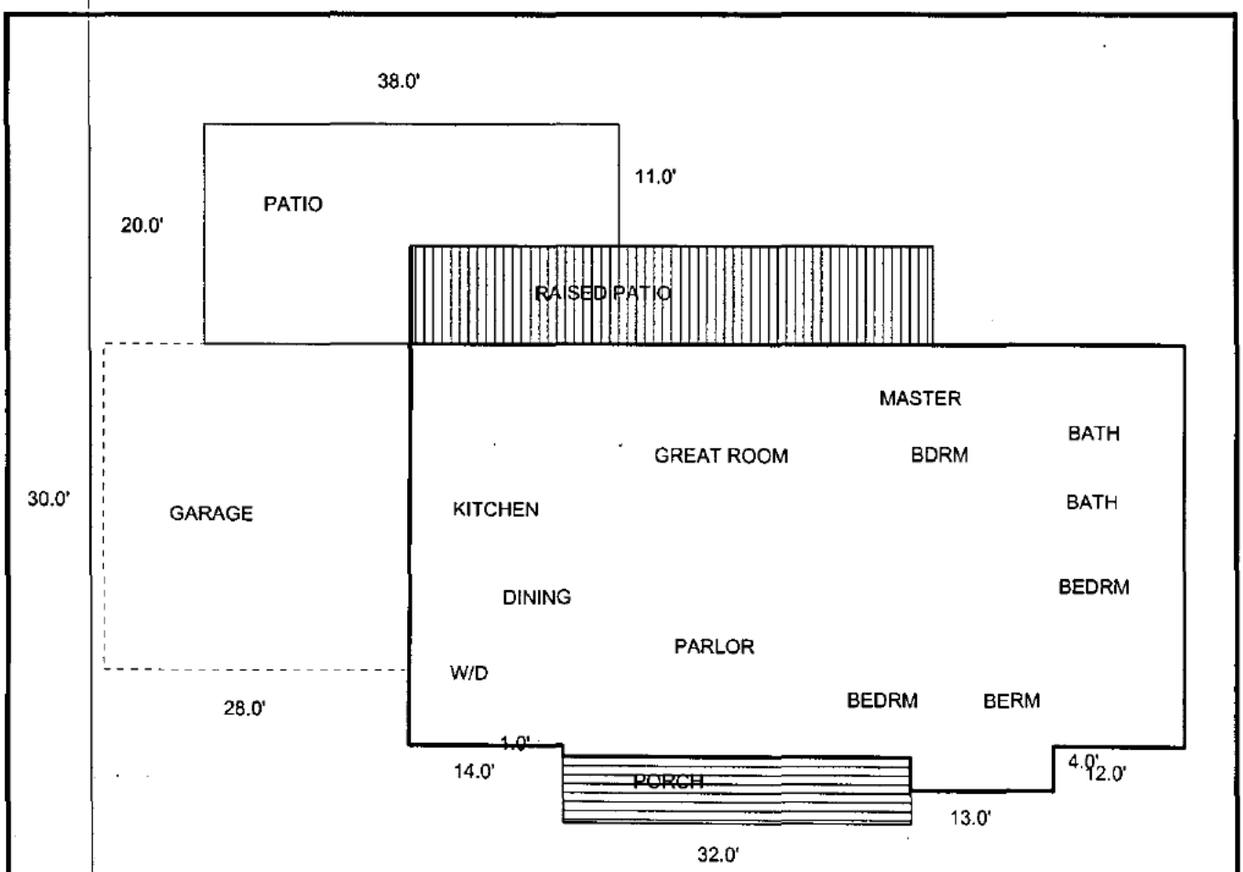


Form MAP.PLAT — "TOTAL for Windows" appraisal software by a la mode, inc. — 1-800-ALAMODE

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Building Sketch (Page - 1)

Borrower/Client	AUSTIN ALLEN LOWRY				
Property Address	1605 STEWART ROAD				
City	WOODRUFF	County	SPARTANBURG	State	SC	Zip Code	29388-8272
Lender	HOUSEHOLD FINANCE COMPANY				



SKETCH CALCULATIONS

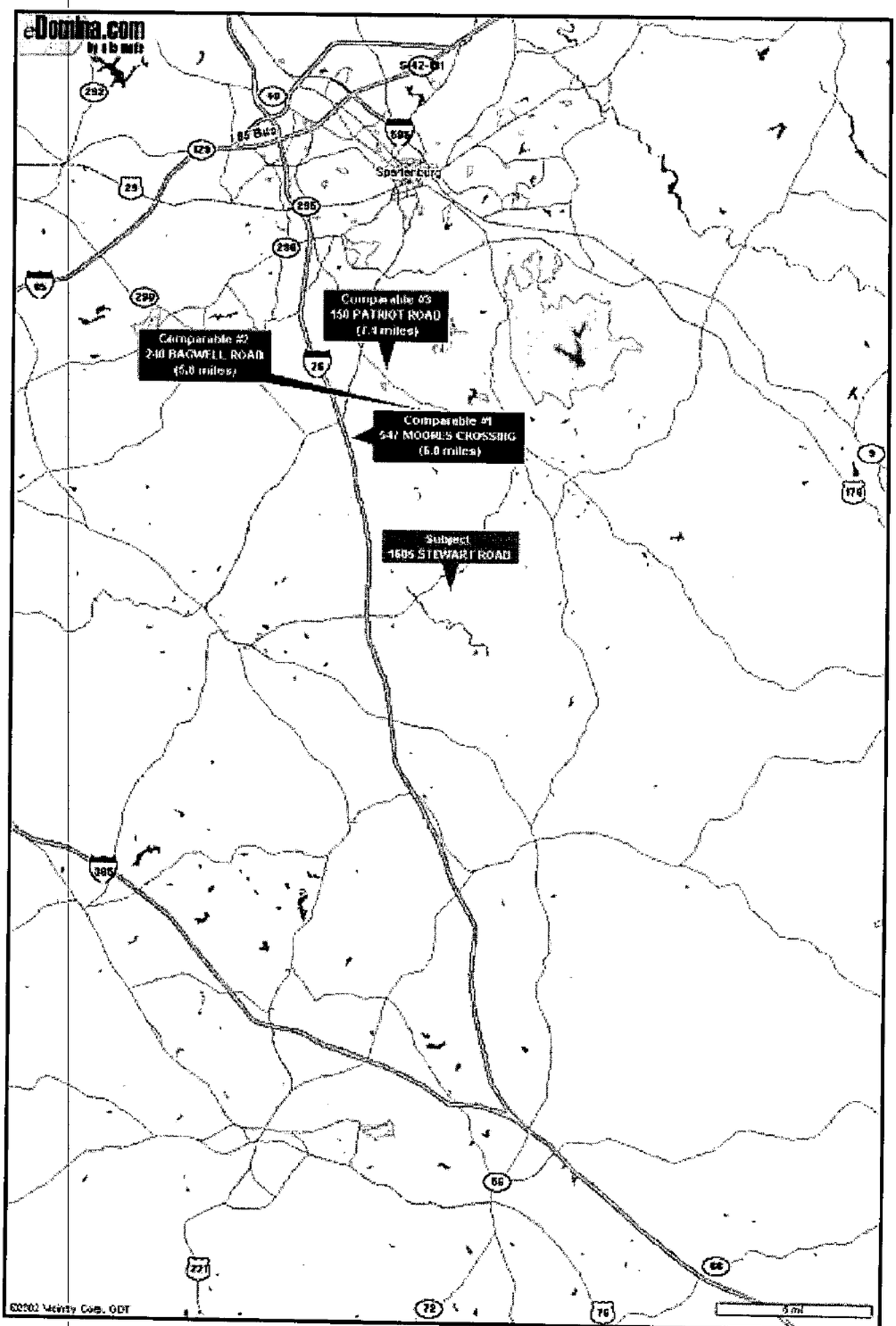
Misc. Area		
CONC PATIO		589.0
	Total Misc. Area	**589.0**
Living Area		
First Floor		2711.0
	Total Living Area	**2711.0**
Garage Area		
Detached Garage		840.0
	Total Garage Area	**840.0**
Porch Area		
Porch		192.0
	Total Porch Area	**192.0**
Patio/Deck Area		
Patio		432.0
	Total Patio/Deck Area	**432.0**

Form SKT.BldSkl — "TOTAL for Windows" appraisal software by a la mode, inc. — 1-800-ALAMODE

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Comparable Sales Map

Borrower/Client	AUSTIN ALLEN LOWRY				
Property Address	1605 STEWART ROAD				
City	WOODRUFF	County	SPARTANBURG	State	SC	Zip Code	29388-8272
Lender	HOUSEHOLD FINANCE COMPANY				

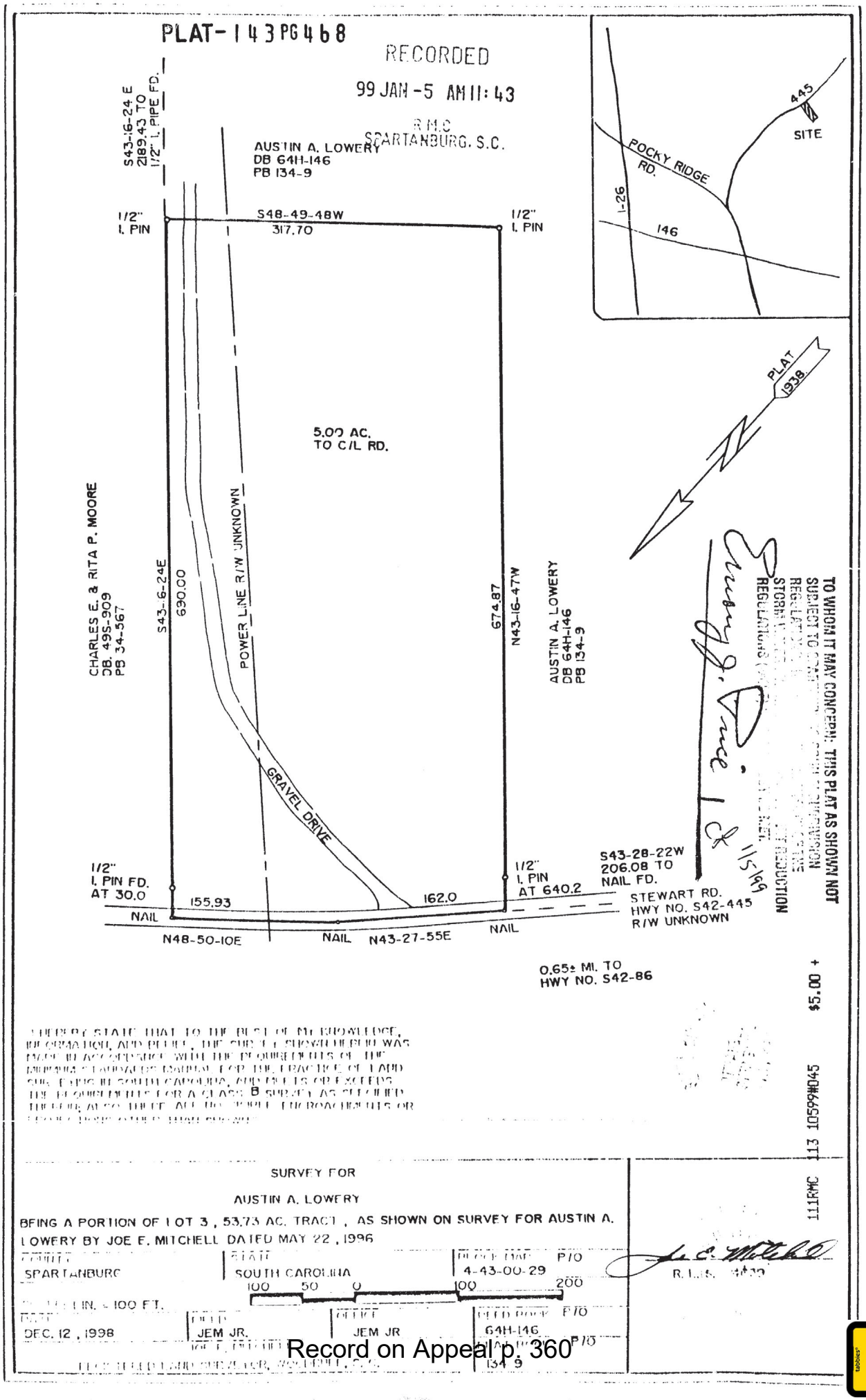


Form MAP.Comp — "TOTAL for Windows" appraisal software by a la mode, inc. — 1-800-ALAMODE

PLAINTIFF'S EXHIBIT 5

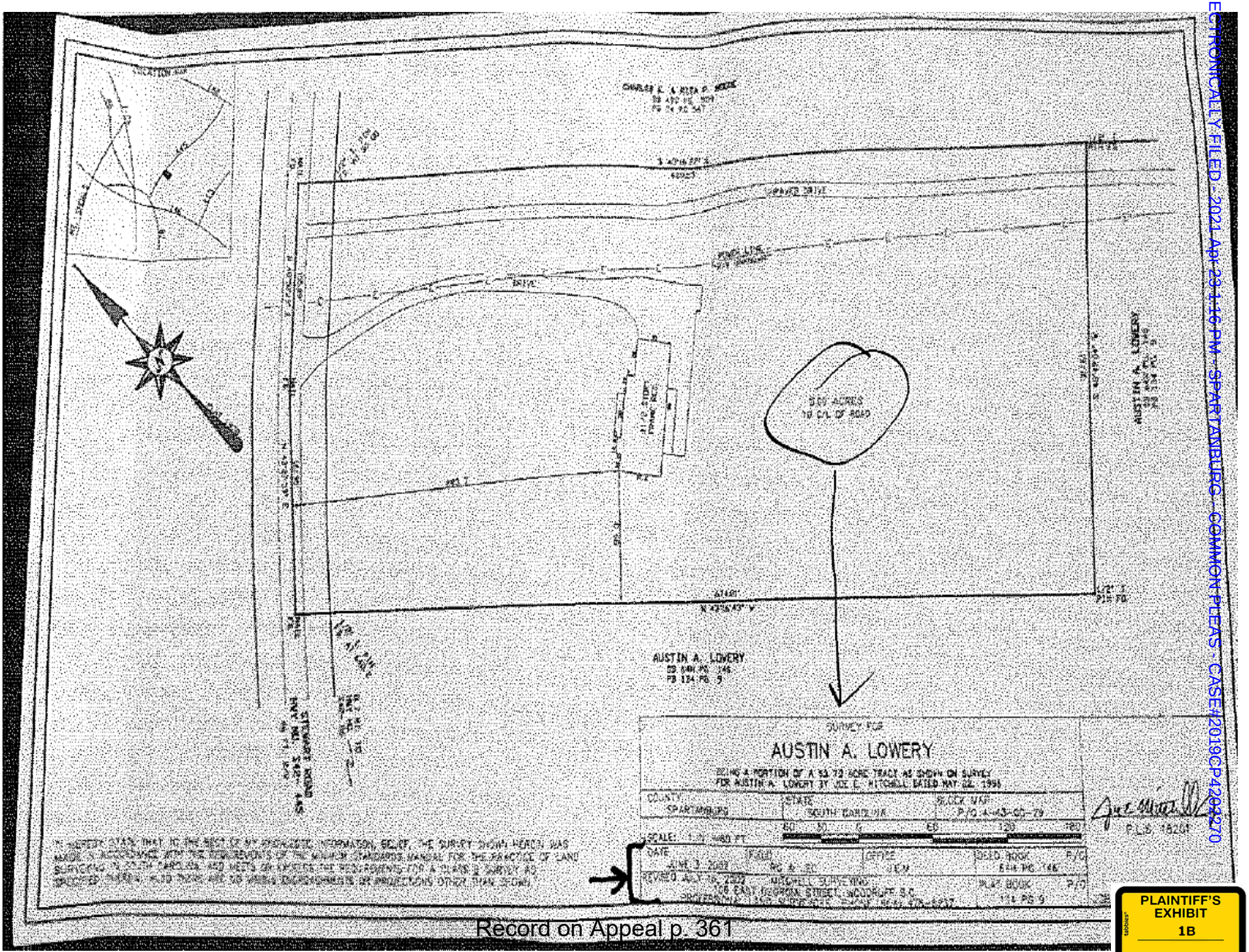
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ELECTRONICALLY FILED - 2021 Apr 23 1:15 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270



PLAINTIFF'S EXHIBIT 1A

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Record on Appeal p. 361

PLAINTIFF'S EXHIBIT 1B

ELECTRONICALLY FILED - 2021 Apr 23 4:50 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202270

Return To:
SUNTRUST MORTGAGE, INC.
901 SEMMES AVENUE
RICHMOND, VIRGINIA 23224
ATTN: MTG 1904

RECORDED
02 MAY -3 PM 3:24
R.M.C.
SPARTANBURG, S.C.

Prepared By:

FMSC / [redacted]

[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 APRIL 26, 2002, together with all Riders to this document.
(B) "Borrower" is
AUSTIN ALLEN LOWERY

Borrower is the mortgagor under this Security Instrument.
(C) "Lender" is SUNTRUST MORTGAGE, INC.

Lender is a CORPORATION
organized and existing under the laws of THE COMMONWEALTH OF VIRGINIA

111RMC 439 50302#775 $22.00 +

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STATE OF SOUTH CAROLINA,
County of Greenville

Personally appeared before me the undersigned witness and made oath that he/she saw the within named Borrower sign, seal and as his/her/their act and deed, deliver the within written Mortgage; and that he/she with the other witness, witnessed the execution thereof.

Sworn to before me this 26th day of April, 2021

My Commission Expires: 2/24/2028

(Seal)

Notary Public for South Carolina

COMMITMENT NO.: G9133

SCHEDULE A
LEGAL DESCRIPTION

All that certain piece, parcel or lot of land, lying and being in State of South Carolina, County Spartanburg, being designated as 5.00 acres, more or less and shown on a plat made for Aust A. Lowery, by Joe E. Mitchell, dated May 22, 1996, and filed in Plat Book 143, at Page 468. F a more accurate description, refer to the above referenced plat.

Being a portion of the same property conveyed to Austin A. Lowery by deed from Joseph Ulmer, II, dated 5/24/96, recorded 6/3/96, in Book 64H, at Page 146, in the Official Records f Spartanburg County.

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PLAINTIFF'S EXHIBIT 2

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MTG-2019-1650

MTG BK 5558 PG 222-223

Recorded 2 Pages on 01/11/2019 02:04:42 PM
Recording Fee: $7.00
Office of REGISTER OF DEEDS, SPARTANBURG, S.C.
Dorothy Earle, Register Of Deeds

DOCUMENTS PREPARED BY:
SCOTT AND CORLEY, P.A.
2712 MIDDLEBURG DR., STE 200
COLUMBIA, SC 29204

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

RELEASE OF MORTGAGE
Mortgage/Record Book 2782 at Page 874

KNOW ALL MEN that **U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust**, owner of the Mortgage hereinafter referred to, for and in consideration of good and valuable consideration, receipt of which is hereby acknowledged, does forever discharge and release that certain tract of land described as follows, to wit:

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Spartanburg, State of South Carolina, Southeast of Woodruff, on the southeast side of S-42-448, containing 53.73 acres, more or less, and being fully shown as Lot 3 of the M.C. Hill Estate on a plat prepared by E. Mitchell, RLS dated 5/22/96 and recorded in Plat Book 134 at Page 9 in the office of the RMC for Spartanburg County.

Being the same property conveyed from Joseph E. Ulmer, II to Austin A. Lowery by deed recorded 6/3/96 in Book 64-H at Page 146 in the Register's Office of Spartanburg County, South Carolina.

TMS No. 4-43-00-029.00

Property Address: 1605 Stewart Road, Woodruff, SC 29388

from all claims and liens under that certain Mortgage dated **September 24, 2002** from **Austin A. Lowery**, recorded in the office of the ROD/RMC/Clerk of Court for **Spartanburg** County on **September 26, 2002**, in Mortgage/Record **Book 2782 at Page 874** and assigned to **U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust** by assignment dated **June 26, 2018** and recorded **July 3, 2018** in **Book 5469 at Page 795.**

IN ALL OTHER RESPECTS, the aforesaid Mortgage shall remain in full force and effect.

171121.00152

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IN WITNESS WHEREOF, **U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust**, by its duly authorized officer, agent has its hand and seal this 4 day of January, 2018.9

Witness #1 Steven Ellison

Witness #2 – Notary RITA FONT

U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust ~~as its~~ for attorney in fact by Caliber Home Loans, its attorney in fact

By:

Print Name: David Loper

Its: Authorized Signatory

STATE OF TEXAS

COUNTY OF DALLAS

ACKNOWLEDGMENT
S.C. § 30-5-30
(Effective January 1, 1995)

I, a Notary Public for the State of TEXAS, do hereby certify that **U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust** by its duly authorized agent, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

SWORN to before me this 4 day of JANUARY, ~~2018~~ 2019.

JIMIL DEMOND BETTS
Notary ID #125383529
My Commission Expires
August 27, 2021

Notary Public
Print Name: JIMIL D BETTS
My Commission Expires: AUGUST 27, 2021

171121.00152

PLAINTIFF'S EXHIBIT 11

RECEIVED
Jul 05 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Shannon M. Phillips, Master-in-Equity

Appellate Case No. 2022-000393

U.S. Bank Trust, N.A. as Trustee for LSF10 Master Participation Trust,……...…….Respondent,

v.

Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually, and as Heir or Devisee of the Estate of Lisa D. Lowery a/k/a Lisa Marie Davis Lowery, Deceased; South Carolina Department of Revenue; The United States of America acting by and through its agency, Department of the Treasury - Internal Revenue Service; and Elizabeth A. Lowery,.……Defendants,

Of whom Austin A. Lowery a/k/a Austin Lowery a/k/a Austin Allen Lowery a/k/a Allen Lowery, individually, and as Heir or Devisee of the Estate of Lisa D. Lowery a/k/a Lisa Marie Davis Lowery, Deceased, is the…….....Appellant.

CERTIFICATE OF COUNSEL

I certify that the record on appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Attorney for Appellant

March 20, 2023