

The State of South Carolina - in the Court of Appeals

APPEAL FROM LAURENS COUNTY COURT OF COMMON PLEAS

THE HONORABLE - W. REID COX, JR.,  
MASTER IN EQUITY/SPECIAL REFEREE

APPELLATE CASE NO. 2018-002059

T.M. PROPERTIES, LLC.,  
RESPONDENT,

V.

ANTHONY BERNARD BURNSIDE,  
APPELLANT

BRIEF OF THE APPELLANT

ANTHONY BERNARD BURNSIDE  
10367 HIGHWAY 101, SOUTH  
GRAY COURT, SC 29645

THOMAS J. THOMPSON, ESQUIRE  
POST OFFICE BOX# 215  
LAURENS, SC 29360

LAURENS COUNTY  
CLERK OF COURT  
LYNN W. LANCASTER  
2ND DEC 13 AM 11:36

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SC Court of Appeals

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TABLE OF AUTHORITIES

RULES

RULE - 53, SOUTH CAROLINA RULES OF CIVIL PROCEDURE

SOUTH CAROLINA CODE ANN., SECTION 30-9-31, (1991):

RULE - 71 (C), SOUTH CAROLINA RULES OF CIVIL PROCEDURE

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ISSUE ON APPEAL

1. WHETHER THE SPECIAL REFEREE CORRECTLY ENTERED A FINAL ORDER OF JUDGEMENT - WHERE THE DEFENDANT WAS NOT ALLOWED TO SPEAK OR PRESENT EVIDENCE AT THE NOVEMBER 08, 2018, HEARING FOR FORECLOSURE PROCEEDINGS?

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STATEMENT OF THE CASE

THE DEFENDANT IN THIS MATTER AGREED TO PURCHASE PROPERTY FROM - T.M. PROPRIETIES, LLC., 10367 HIGHWAY 101 SOUTH, GRAY COURT, SC 29645. THE SAID PROPERTY PURCHASED FROM - T.M. PROPRIETIES, IS LOCATED ONE AND ONE-HALF MILES WEST OF GRAY COURT, SC (DIALS TOWNSHIP); LAURENS, SOUTH CAROLINA.

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ARGUMENT - I

Pursuant to Rule - 53, of the South Carolina Rules of Civil Procedure, the above entitled matter was referred to the Special Referee to make appropriate findings of fact and conclusions of law with authority to enter a final judgement in the cause. The defendant now appeals to the South Carolina Court of Appeals - then Final Judgement (ORDER OF FORECLOSURE).

The Defendant, ANTHONY B. BURNSIDE, in this matter asserts the special referee incorrectly entered and "ORDER OF FORECLOSURE" based on the ten (10) minute hearing, without hearing the full facts of the matter from the side of the Defendant; November 9, 2018.

The defendant further asserts, the hearing was based on the erroneous facts presented by the Plaintiff's Attorney. The Defendant asserts the hearing was not in compliance with the rules of the South Carolina Rules of Civil Procedure, as warranted.

The Defendant avers at the said hearing, the Defendant was NOT allowed to address any of the issues that were to be addressed at the said hearing, and was barred from presenting a defense.

The Defendant was also prejudiced as a result of the said hearing being biased, and totally one sided. The Defendant notices this Court of Appeals, the hearing held on November 9, 2018, was PREDETERMINED. SEE - EXHIBIT "A", PARAGRAPH # 4.

The Defendant further contends - the Clerk of Court, for the County of LAURENS, issued an "ORDER OF REFERENCE", on October 12, 2018. In the Clerk's - ORDER OF REFERENCE, Paragraph #2; states:

IT IS HEREBY ORDERED, THAT THIS ACTION IS REFERRED TO  
W. REID COX, JR., AS SPECIAL REFEREE TO TAKE TESTIMONY  
AND TO DIRECT ENTRY OF FINAL JUDGMENT IN THIS ACTION  
UNDER - RULE 53 (B), SCRPC, AND ALL MATTERS ARISING FROM  
OR REASONABLY RELATED TO SUCH ACTION.  
SEE - EXHIBIT - "B"

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The applicant asserts - The Clerk of Court's Order was blatantly ignored, and intentionally violated. There was NO testimony taken, and the Special Referee's ORDER OF FORECLOSURE, does not reflect any testimony from the Defendant. SEE - EXHIBIT "C".

No testimony was taken from the Defendant at the said hearing. The special Referee blatantly "LIED" on the ORDER OF FORECLOSURE; as there was no testimony from the Defendant taken, and no testimony from the Defendant was ever solicited from the Defendant by the Plaintiff's Attorney, nor the Special Referee.

The Defendant, again, asserts - the Defendant was barred from presenting testimony at the said hearing, and there is no evidence to dispute Defendant's claims.

Furthermore, in the Special Referee's - ORDER OF FORECLOSURE - PAGE #1, PARAGRAPH - 3, the Special Referee, emphatically stated:

TESTIMONY WAS TAKEN AND AFFIDAVITS WERE SUBMITTED,  
AND FROM SAME AND OTHER EVIDENCE, I FIND, CONCLUDE,  
AND ORDER AS FOLLOWS:

The Defendant in this matter asserts, there were NO affidavits submitted at the hearing, NO testimony, and NO other evidence presented by the Defendant, at said hearing. Therefore, RULE - 53, SOUTH CAROLINA CODE ANN., SECTION 30-9-31, (1991), all of the RULES OF CIVIL PROCEDURE, were not adhered to, and a VALID - "FINDING OF FACT", could NOT be entered pursuant to the rules.

Futhermore, a FINAL JUDGMENT ORDER, should not have been entered in this action because, there was NO valid hearing held in the above matter.

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CONCLUSION

Wherefore, the Appellant in this matter solemnly pray that this Honorable - Court of Appeals, grant the relief sought by vacating and setting aside the previous biased hearing of November 08, 2018; thus instructing the Clerk of Court, for Laurens County, to enter a new "ORDER OF REFERENCE", in conjunction with a new non-biased hearing.

Respectfully Submitted,

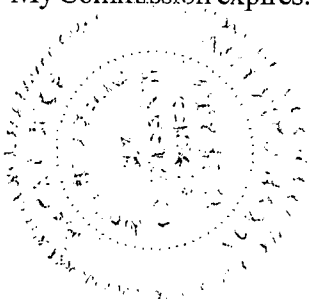
SI Anthony Bernard Burnside

Anthony Bernard Burnside  
10367 Highway 101, South  
Gray Court, SC 29645

Sworn to and subscribed before me  
this 17<sup>th</sup> day of December, 2018.

Mark J. Rice

Notary Public for South Carolina  
My Commission expires: 11/16/2021



LAURENS COUNTY  
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The State of South Carolina in the Court of Appeals  
APPEAL FROM LAURENS COUNTY COURT OF COMMON PLEAS

THE HONORABLE - W. REID COX, JR.,  
MASTER IN EQUITY/SPECIAL REFEREE

APPELLATE CASE NO. 2018-002059

T.M. PROPERTIES, LLC.,  
Respondent,

V.

ANTHONY BERNARD BURNSIDE,  
Appellant.

BRIEF OF THE APPELLANT

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SC Court of Appeals

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CLERK OF COURT

CERTIFICATE OF SERVICE

I, ANTHONY BERNARD BURNSIDE, do hereby certify that a true copy of the - BRIEF OF THE APPELLANT- in the above reference case has been served on, THOMAS J. THOMPSON, ESQUIRE, Post Office Box #215, Laurens, SC 29360 - on this 13<sup>TH</sup> of December, 2018.

Respectfully Submitted,

SI Anthony Bernard Burnside

Anthony Bernard Burnside  
10367 Highway 101, South  
Gray Court, SC 29645

Sworn to and subscribed before me  
this 13<sup>th</sup> day of December, 2018.

Macels J. Rice  
Notary Public for South Carolina  
My Commission expires: 11/16/2021

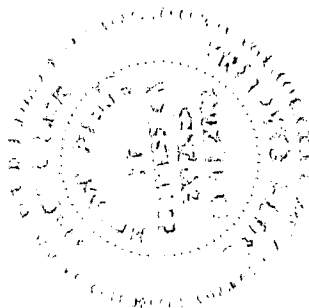


EXHIBIT - "A"

**TOWNSEND & THOMPSON**

REGISTERED LIMITED LIABILITY PARTNERSHIP  
ATTORNEYS AT LAW  
POST OFFICE BOX 215  
210 WEST LAURENS STREET  
LAURENS, SOUTH CAROLINA 29360

THOMAS J. THOMPSON

RICHARD T. TOWNSEND  
1940-2011

TELEPHONE (864) 984-6554  
FAX (864) 984-8000  
EMAIL townsendandthompson@gmail.com

October 24, 2018

**FIRST CLASS USPS MAIL**

Mr. Anthony Bernard Burnside  
10367 Highway 101 South  
Gray Court, SC 29645

Mr. Anthony Bernard Burnside  
369 Westcliff Drive  
Laurens, SC 29360

**RE: TM Properties, LLC v. Anthony Bernard Burnside  
2018-CP-30-578**

Dear Mr. Burnside,


The above matter has been referred to W. Reid Cox, Jr., Esquire, a copy of the order of reference is enclosed.

The final hearing in the matter is scheduled to be heard by Mr. Cox on Thursday, November 8, 2018, commencing at 10:00 a.m.

Mr. Cox's office is located at 107 East Laurens Street, Laurens, South Carolina.

\* You may attend the hearing or elect not to attend, and in either event you will be provided a copy of the court's final order.

Sincerely,



Thomas J. Thompson

TJT/cwt

CC: File



EXHIBIT - "C"

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LAURENS )  
 )  
TM Properties, LLC, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Anthony Bernard Burnside, )  
 )  
Defendant. )  
 )

IN THE COURT OF COMMON PLEAS

ORDER OF FORECLOSURE

2018-CP-30-578

PURSUANT to Rule 53 of the South Carolina Rules of Civil Procedure, the above entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgement in the cause. Any appeal of this order is to the South Carolina Court of Appeals.

PURSUANT to an order of reference, a hearing was held on Thursday, November 8, 2018 attended by Thomas J. Thompson, attorney for the Plaintiff. The Defendant was notified of the hearing, and he did make an appearance.

Testimony was taken, and affidavits were submitted, and from same and other evidence, I find, conclude, and order as follows:

FINDINGS OF FACT

1. The Lis Pendens was filed in the Office of the Clerk of Court for Laurens County, South Carolina (Clerk's Office) on August 6, 2018.
2. The Summons and Complaint (Pleadings) were filed in the Clerk's Office on August 6, 2018.
3. Defendant, Anthony Bernard Burnside hereinafter referred to as "Burnside" was served with the Pleadings on August 13, 2018.
4. Burnside timely filed and served a Return.
5. Plaintiff is a limited liability corporation organized to do business in the County of Laurens, South Carolina.
6. Burnside is a citizen and resident of the County of Laurens, South Carolina.
7. The subject matter of the within action is certain real property located in the County of Laurens, South Carolina, Lot No. 7, Property No. 2, fronting on Highway 101 with TMS No. 159-00-00-031, known as and designated as more fully shown on the Lis Pendens filed in this action and shown on Exhibit A, attached hereto and made a part hereof and is hereinafter referred to as "Property."
8. Under date of September 6, 2013, Burnside, for value received, executed and delivered to Plaintiff his Promissory Note in writing in the principal amount of Forty-Three Thousand and No/100 Dollars (\$43,000.00).
9. The Promissory Note, above-mentioned, provides, *inter alia*, that if the default be made in the payment of any amount due thereunder, then the entire principal and accrued interest shall immediately become due and payable at the option of Plaintiff, and further provides that in the event legal proceedings be instituted for the foreclosure of the mortgage securing same, hereinafter referred to, then in such event, all costs of collection, including attorney's fees shall be paid by Burnside and such amount shall be collected under terms of said Promissory Note.

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EXhibit - "C"

10. Under date of September 6, 2013, in order to further secure the above-mentioned Promissory Note, Burnside executed and delivered to Plaintiff his purchase money mortgage, under and by the terms of which they conveyed to Plaintiff, by way of Mortgage, Property.

11. The Mortgage described in the immediately preceding paragraph was dully recorded on September 10, 2013 in the Office of the Clerk of Court for Laurens County, South Carolina (Clerk's Office) in Mortgage Book 2114 at Pages 237-239.

12. The Mortgage, above-mentioned, is a purchase money mortgage and consequently is a first lien on property described therein.

13. Said Promissory Note and Mortgage are hereinafter collectively referred to as "Loan Instruments."

14. Payment on the above-mentioned Loan Instruments, has not been made as provided for therein, and Plaintiff, as holder thereof, has elected to require immediate payment of the entire amount due thereon.

15. The sum of One Thousand Five Hundred and No/100 Dollars (\$1,500.00) is a reasonable attorney's fee for the services performed by Plaintiff's attorney and anticipated to be performed until final adjudication of the within action under the terms of the Loan Instruments. Services anticipated to be performed until final adjudication contemplated completion of this action within a reasonable time and do not include exceptional circumstances delaying conclusion beyond a normal time.

16. The amount due and owing on the Loan Instruments, together with interest at the rate provided of 11.9% per annum and other costs and expenses of collection, including attorney's fee, secured by the Promissory Note and Mortgage is as follows:

a) Principal due as of July 30, 2018	\$ 42,447.04
b) Interest from July 30, 2018 to November 8, 2018	\$ 1,397.84
c) Cost of collection prior to hearing	
Title search fee	\$ 100.00
Initial filing fee	\$ 180.00
Service fee	\$ 55.00
Postage	\$ 23.96
Filing fee (Order of Reference)	\$ 31.74
Master-in-Equity fee	\$ 200.00
d) Attorney's Fee	\$ 1,500.00
 TOTAL DEBT secured by Loan Instruments to date shown	 \$ 45,935.58 <sup>1</sup>

with interest after November 8, 2018 in the amount of Thirteen Dollars and 84/100 (\$13.84) per day through the date of compliance with the bid.

17. The parties to this transaction did not participate in the Home Affordable Modification Program and, therefore, are not eligible for modification under said program.

<sup>1</sup> The costs incurred by Plaintiff relative to publishing the Notice of Sale shall be added to this amount.

Exhibit - "C"

18. Burnside was not and is not in the military service of the United States of America, and an Affidavit of Non-Military Service has been filed with this Court.

19. The Administrative Order of the Supreme Court of this state dated May 2, 2001 (2001-05-02-01) does not apply in this case because Burnside vacated the subject real property prior to the institution of this action and the subject property is not an "owner occupied dwelling" as defined by said order, further said order does not have application to purchase money mortgages.

CONCLUSIONS OF LAW

I, therefore, conclude that Plaintiff should have judgement of foreclosure of its mortgage, and the mortgaged property should be ordered sold at public auction after due advertisement.

NOW THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

ONE. That there is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of Forty-Three Thousand and No/100 Dollars (\$43,000.00).

TWO. That the amount due in the preceding paragraph shall draw interest as hereinabove set forth and shall constitute the total judgement due the Plaintiff.

THREE That Burnside is liable for the aforesaid mortgage debt and shall, on or before the date of the sale of the Property hereinafter described, pay to the Plaintiff or Plaintiff's attorney the amount of Defendant's debt.

FOUR. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, and as hereinafter set forth, shall be sold by the undersigned at the Laurens County Courthouse Complex, 100 Hillcrest Drive, Laurens, South Carolina, on Monday, <sup>JAN 9, 2014</sup> or on some convenient Sales Day thereafter, on the following terms, that is to say:

A. FOR CASH: The undersigned shall require a deposit of five percent (5%) on the amount of the bid (in cash or equivalent) at the time of the bid, same to be applied on the purchase price only upon compliance with the bid, but in case of noncompliance, within twenty (20) days, same to be forfeited and applied to the costs and the costs due Plaintiff in connection with the Loan Instruments.

B. The sale shall be subject to taxes and assessments, to existing easements and restrictions, and to any other senior encumbrances.

C. Purchaser to pay for the preparation of Deed, Deed Stamps and cost of recording the Deed, and other cost associated with the sale to include the Special Referee's commission.

FIVE. That in the event an agent of Plaintiff does not appear at the time of sale, the subject real property shall be automatically withdrawn from sale and sold at the next available Sales Day upon the same terms and conditions as set forth in the Order.

SIX. That in the event Plaintiff is the successful bidder at the sale, for a sum not exceeding the amount of costs, disbursements, expenses, and the indebtedness of Plaintiff in full, Plaintiff may pay to the undersigned only the amount of the costs, disbursements, and expenses, crediting the balance of the bid on Defendant's indebtedness.

SEVEN. That the undersigned will, by advertisement according to law, give notice of the time and place of sale and the terms thereof and will execute to the purchaser a Deed to the premises sold.

Exhibit - "C"

The Plaintiff or any other party to this action may become a purchaser at such sale, and if upon such sale being made the purchaser should fail to comply with the terms thereof within twenty (20) days after date of sale, then the undersigned may advertise the said premises for sale on the next available Sales Day at the risk of the former highest bidder and so from time to time thereafter until a full compliance shall be secured.

EIGHT. That the undersigned will apply the proceeds of the sale as follows:

First: To the payment of the amount of the costs and expenses of this action; to include Plaintiff's attorney's fees;

Next: To the payment to Plaintiff or Plaintiff's attorney of the amount of Defendant's and interest or so much thereof as the purchase money will pay on the same; and

Next: Any surplus will be held pursuant to Rule 71(c) of the South Carolina Rules of Civil Procedure pending the further order of this Court.

NINE. That in the event the successful bidder is other than the Plaintiff, the Sheriff of Laurens County is ordered and directed to eject and remove from the premises the occupants thereof, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet, and peaceable possession of said premises without delay and to keep said successful bidder or his assigns in such peaceable possession.

TEN. That Burnside, and all persons whosoever claiming under him, be forever barred and foreclosed of all right, title, interest, and equity of redemption in and to the mortgaged premises so sold or any part thereof.

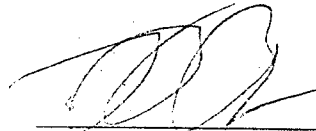
ELEVEN. That pursuant to South Carolina Code Ann. §30-9-31 (1991), the deed of conveyance made pursuant to this Order shall be indexed in the grantor index by the Clerk's Office in the name of the owner of record of subject Property immediately prior to execution of the Deed, as well as in the name of the undersigned who executes such Deed as grantor.

TWELVE. That the undersigned shall retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance and/or supplemental order without further notice to the mortgagors and disposing of any surplus funds pursuant to Rule 71(c) of the South Carolina Rules of Civil Procedure.

THIRTEEN. That the premises to be sold pursuant to the within Order is described on Exhibit A, attached hereto and made a part hereof.

FOURTEEN. That the Plaintiff does not seek a Deficiency Judgment and, therefore, the Sale shall be final on the conclusion of bidding.

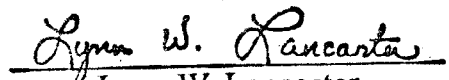
AND IT IS SO ORDERED.



W. Reid Cox, Jr.  
Special Referee

October 9, 2018  
Laurens, South Carolina

A TRUE COPY OF ORIGINAL



Lynn W. Lancaster  
Laurens County CCCP & GS

Exhibit D

# NOTE

\$47,000.00

Laurens, South Carolina

September 6, 2013

## 1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$47,000.00 (this amount is called "*principal*"), plus interest, to the order of **TM PROPERTIES, LLC**, the "*Lender*". I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note will be called the "*Note Holder*."

## 2. INTEREST

Interest will be charged on unpaid principal commencing this date, and until the full amount of principal has been paid. I will pay interest at the yearly rate of ELEVEN AND 90/100 PERCENT (11.90%) per annum. The interest rate required by this Section 2 is the rate that I will pay both before and after any default described in Section 5(B) of this Note.

## 3. PAYMENTS

I will pay principal and interest by making payments every month. I will make monthly payments of Six Hundred Fifty and No/100 Dollars (\$650.00) on the 6<sup>th</sup> day of each month beginning on October 6, 2013, and continuing on the 6<sup>th</sup> day of each month thereafter, with a final payment of the remaining principal balance and any interest accrued thereon due and payable on May 6, 2024, which is called the "*Maturity Date*." I will make said payment at 13130 Highway 76 West, Gray Court, SC 29645, or at a different place if required by the Note Holder.

## 4. BORROWER'S RIGHT TO MAKE PREPAYMENTS

I have the right to make payments of principal before they are due. Any payment made before it is due is known as a "*prepayment*". A prepayment of only part of the unpaid principal is known as a "*partial prepayment*." When I make a prepayment, I will tell the Note Holder in writing that I am doing so.

I may make a full prepayment or partial prepayments without paying any prepayment charge. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no changes in the due date or in the amount of my payment unless the Note Holder agrees in writing to those changes.

LYNN W. LANCASTER  
CLERK OF COURT  
LAURENS COUNTY  
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Page 1

**5. LOAN CHARGES**

If a law which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment.

**6. BORROWER'S FAILURE TO PAY AS REQUIRED**

**(A) Late Charge for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of five (5) calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 10.0% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

**(B) Default.** If I do not pay the full amount on the date it is due, I will be in default.

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

**(D) No Waiver By Note Holder.** Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

**(E) Payment of Note Holder's Cost and Expenses.** If I default as described above, the Note Holder will have the right to accelerate the remaining balance due under this Note immediately and also be paid back for all of its reasonable costs and expenses. Those expenses include, for example, reasonable attorney's fees.

**7. GIVING OF NOTICES**

Any notice that must be given to me under this Note will be given by delivering it or by mailing it addressed to me at the address below. A notice will be delivered or mailed to me at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it to the Note Holder at the address stated in Section 3 above. A notice will be mailed to the Note Holder at a different address if I am given a notice of that different address.

Exhibit D

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

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

9. WAIVERS

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

10. UNIFORM SECURED NOTE

In addition to the protections given to the Note Holder under this Note, a Mortgage (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Those terms and conditions are incorporated into this Note.

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

Anthony Bernard Burnside  
Anthony Bernard Burnside

-Borrower

\_\_\_\_\_  
-Borrower

Address: 10367 Highway 101 South  
Gray Court, SC 29645