

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Commons Pleas
The Honorable John C. Hayes, III

Case No.: 2012-CP-29-498
Appellate Case No.: 2017-002223

Mark Wilson Appellant,

v.

Keith Jayma Respondent.

SUPPLEMENTAL RECORD ON APPEAL VOLUME II

April 3, 2019

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SC Court of Appeals

INDEX FOR SUPPLEMENTAL RECORD ON APPEAL VOLUME II

Answer and Counterclaims of Defendant Keith Jayma,
dated August 13, 2012 Sup. R. II 138

Affidavit of Keith Jayma with Exhibits "A-E" filed September 30, 2016
..... Sup. R. II 175

Exhibit 4 to Deposition of Mark Wilson
taken on July 7, 2018 Sup. R. II 204

Exhibit 9 to Deposition of Mark Wilson
taken on July 7, 2017 Sup. R. II 207

STATE OF SOUTH CAROLINA AUG 13 PM 2:45 COURT OF COMMON PLEAS

COUNTY OF LANCASTER.

CLERK OF COURT
LANCASTER, SC

SIXTH JUDICIAL CIRCUIT

Mark Wilson,

Case No. 2012-CP-29-00498.

Plaintiff

vs

Keith Jayma and
Wilbur Streater, III,

Defendants

**ANSWER
AND
COUNTERCLAIMS**

Defendant Keith Jayma (hereinafter "Defendant Jayma" or "Jayma"), by and through his undersigned counsel, answers Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE

1. The allegations of the Complaint fail to state a cause of action upon which relief can be granted against this Defendant.

FOR A SECOND DEFENSE

2. All matters and things alleged in the Complaint, not hereinafter specifically admitted are **DENIED** and strict proof demanded thereof.

1. Defendant Jayma lacks the knowledge to either admit or deny the allegations of Paragraph 1 of the Complaint.

2. Defendant Jayma **ADMITS** so much of Paragraph 2 as alleges that he is a resident of Mecklenburg County, North Carolina.

3. Defendant Jayma **DENIES** the allegations of Paragraph 3 of the Complaint. Upon information and belief, the Defendant Sun

Trust Bank is a corporation formed and existing under the laws of the State of Georgia and has been dismissed from this case by a Stipulation of Dismissal filed July 17, 2012.

4. Defendant **ADMITS** so much of Paragraph 4 as alleges the court has jurisdiction over the parties and subject matter and that venue is proper but does not admit that the statutes cited are those conferring jurisdiction over the parties.

5. Defendant Jayma **DENIES** the allegations of Paragraph 5 of the Complaint as stated, and asserts that in April of 2005, at the request of Plaintiff who was about to lose his property for failure to pay past due taxes, Defendant Jayma and Defendant Streater agreed to and did loan Plaintiff Wilson \$32,000 in a purely debtor/creditor relationship. In connection with that debtor/creditor relationship, in April of 2005, Plaintiff Wilson executed an Agreement to Lend, a Promissory Note, and a Mortgage on a certain piece of real estate in Lancaster County. At closing, a portion of the proceeds of this loan was paid to the Lancaster County Tax Collector to pay outstanding back taxes. Said Agreement to Lend, Promissory Note, and Mortgage, along with the subsequent receipt for payment of back taxes, are attached hereto as Exhibits A, B, C, and D, respectively, and are incorporated herein by reference. Said documents speak for themselves in regard to the relationship between the parties and the terms of the parties' agreements.

6. Defendant Jayma **DENIES** the allegations of Paragraph 6 of the Complaint.

7. Defendant Jayma **DENIES** the allegations of paragraph 7 concerning the execution of the Deed for lack of personal knowledge. It is **ADMITTED** that in November of 2005, Plaintiff Wilson agreed to execute a valid deed to the subject property to Defendant Jayma and did execute the deed which deed was subsequently recorded at Deed Book 308 pages 59 through 61. Said deed is attached hereto as Exhibit F and is incorporated herein by reference. The Deed speaks for itself.

8. Defendant Jayma **DENIES** the allegations of paragraph 8 and contends the Deed speaks for itself.

9. Defendant Jayma **DENIES** the allegations of paragraph 9 and states the Deed speaks for itself.

10. Defendant Jayma **DENIES** the remaining allegations of the partially admitted or denied Paragraphs and Paragraphs 10 through 25 of the Complaint and the Plaintiff's prayer for relief.

FOR A THIRD DEFENSE

11. Any defect in execution of the Deed would only affect its effectiveness against innocent third parties. It would still be effective between Plaintiff and Defendant Jayma.

FOR A FOURTH DEFENSE

12. The Complaint fails to demonstrate that Defendant Jayma realized any value from any benefit conferred by Plaintiff or that

it would be inequitable for Defendant Jayma to retain any such benefit without paying additional value to Plaintiff.

FOR A FIFTH DEFENSE

13. If Defendant Jayma owed Plaintiff any fiduciary duties, Plaintiff would owe Defendant Jayma reciprocal fiduciary duties which he breached causing far greater damages to Defendant Jayma than any action of Defendant Jayma's could possibly have caused to Plaintiff.

FOR A SIXTH DEFENSE

14. If Plaintiff were entitled to a share of any profits, he would also be obligated to share in any losses. There were substantial losses and no profits on the house on lot 163. Plaintiff has made no contribution to cover those losses which would far outweigh any claims he might have to compensation based on a partnership theory.

FOR A SEVENTH DEFENSE

16. Defendant Jayma took action to his detriment and for the benefit of Plaintiff based on Plaintiff's representation of the validity of the November 2005 deed as set out in the allegations of the Counterclaims below. Plaintiff is estopped by the November 2005 deed from asserting against Defendant Jayma any right or title in derogation of the deed, or from denying the truth of any material fact asserted in it.

FOR AN EIGHTH DEFENSE

17. Plaintiff comes to the Court with unclean hands, as set out in the allegations of the counterclaims, seeking equitable relief.

COUNTERCLAIMS AGAINST PLAINTIFF

Defendant Keith Jayma (hereinafter "Jayma") counterclaiming against the Plaintiff Wilson (hereinafter "Wilson") alleges and would show as follows:

JURISDICTION

18. The Court has personal jurisdiction over Wilson as he has alleged in his Complaint that he is a resident of Lancaster County, South Carolina.

19. The Court has jurisdiction over the subject matter and venue of the Counterclaims pursuant to S.C. Const. Ann. Art. V, § 11, S. C. Code §§15-7-10, 15-7-30, 15-67-10.

FACTUAL ALLEGATIONS

20. Jayma was employed in the lending industry from June 2000 through September 2009.

21. In the spring of 2005, Wilson was seeking financing. After Wilson had already been turned down several times, he approached Jayma and requested assistance in obtaining a loan of approximately \$75,000 to \$100,000.00.

22. Jayma checked and confirmed that Wilson would not qualify for conventional lending because Wilson could not provide the

required tax returns and had no current income. The private lending market was the only market that would even consider lending Wilson money based on collateral. Although Jayma attempted to secure the requested loan in the private lending market, Wilson did not qualify in any lending market.

23. At the time, Wilson was unemployed and facing a potential loss of approximately 62.69 acres of undeveloped land he owned in Lancaster County for failure to pay past due back taxes.

24. Wilson was aware that Jayma did some private lending personally. When Jayma was unable to obtain a loan for Wilson in the private lending market, Wilson requested that Jayma personally make a loan to him to be secured by the Lancaster County land.

25. Given the state of Wilson's financial affairs, Jayma would not have loaned any money or provided any financing to Wilson without a first lien on collateral more than fully sufficient to cover any and all potential risks including the principal, interest and late fees through the initial term and any extensions, potential costs of collection, and the risks of decline in value of the collateral and potential reduced value from circumstances of foreclosure.

26. Wilson and Jayma along with Defendant Streater carried out this transaction with the assistance of Attorney Blackmon Huckabee through three documents: an Agreement to Lend; Promissory

Note, and Mortgage attached hereto as Exhibits A, B, and C, respectively, and incorporated herein by reference.

27. By its terms, the Mortgage contained express provisions covering both current and future loans, notes, and debts securing all indebtedness now and hereafter owed by Mortgagor [Wilson] to Mortgagees [Jayma and Streater], and any other present or future indebtedness or liability of Mortgagor to Mortgagees, whether as principal debtor, surety, guarantor, endorser or otherwise until it is satisfied of record.

28. Jayma subsequently bought out Defendant Streater's interest in the loan, note and mortgage becoming the sole lender in the transaction.

29. As part of the closing for this secured loan, Attorney Huckabee dispersed \$2,524.17 to the Lancaster County Tax Collector to resolve the tax lien and satisfy the requirements of the Mortgage. See Exhibit D attached hereto. The remainder of the proceeds, less closing costs, was dispersed to Wilson.

30. The terms of this loan required monthly interest only payments at the request of Wilson. For the first three years, the interest rate was set at ten percent (10%). If the principal was not repaid at the end of three years and the loan was not called at that point, the terms of the note called for an increase in the interest rate to fifteen percent (15%). Thereafter the loan became callable at any time at the option of the lender. See Exhibit B.

31. Wilson made approximately seven monthly interest payments on the loan or note during the first year.

32. Thereafter, Wilson ceased making monthly payments. Numerous other monthly interest payments and late fees remain unpaid. No principal payments have been made on the loan or note.

33. In August of 2005, Wilson, still not having obtained employment in the building industry and seriously in need of work, proposed a joint venture to Jayma which Wilson hoped would get him re-started with his own construction company focusing on residential construction. Wilson proposed that he enter into a residential construction contract with Jayma to build a home in Providence Downs South Subdivision in Union County, North Carolina. Wilson proposed that Jayma use the contract and estimate supplied by Wilson to obtain a residential construction loan to finance building the home. Wilson would use his building expertise to build the home as general contractor, completing the home in about six months.

34. Wilson represented to Jayma that he had substantial expertise in the area of residential building and development providing his North Carolina General Contractor License as evidence of this represented expertise.

35. As incentive to encourage Jayma to agree to this project and contract, Wilson proposed that he deed approximately 63 acres he owned in Lancaster County to Jayma so Jayma could get a line of

credit secured by the land which would be available for various purposes connected with construction, such as using part of the line of credit to pay interest on the residential construction loan and to pay subcontractors until funds related to their work could be drawn from the construction loan.

36. Wilson estimated the cost to construct the new home to be \$822,625, or less, in documents he submitted knowing the estimate would be used to secure a residential construction loan to be secured by a mortgage on the new home to be built.

37. Wilson represented that the lot would cost \$276,745 in the estimate he prepared and gave to Jayma to submit in obtaining a residential construction loan for the project.

38. In documents he knew would be relied upon by Jayma and a lender, Wilson represented the completed home would have a market value between 1.328 and 1.538 million dollars.

39. Wilson represented to Jayma and the lender that he would complete the new home within twenty-two weeks of beginning construction.

40. Wilson represented that his contractor's fee for building the home would be \$5,500 calculated at \$250 a week for a total of twenty-two weeks.

41. Wilson also represented he would draw no more than \$250 a week up to a maximum of \$5,000 (twenty weeks) for himself as contractor during the construction of the home. The remaining \$500

of the contractor's fee would be paid with the final draw upon presentation to the lender of the certificate of occupancy.

42. Wilson represented to Jayma that with his building expertise and Jayma's financing, they could sell the house and realize a profit of \$250,000 to \$500,000 which they could split after the house was sold.

43. Relying on these representations, especially the time and cost to complete the new home, Jayma discussed the proposal with his family and banker. The Jayma family's existing home was paid off. That point provided multiple possibilities tending to reduce the risk of the project, including selling the completed Providence Downs South house for a profit, or moving Jayma's family into the Providence Downs South house and selling his existing home if market conditions were more favorable with that approach.

44. Based on Wilson's representations, Jayma accepted Wilson's offer of the residential construction contract and orally agreed to a joint venture for building the Providence Downs South house and splitting any profits from its sale.

45. Relying on these representations, Jayma, as owner, entered into a residential construction contract with Wilson as contractor to build a new home on lot 163 of Strike the Gold in Providence Down South. A non-integrated memorandum of agreement concerning this contract is attached as Exhibit E and incorporated herein.

46. Under the residential construction contract, Jayma agreed to deposit the sum of 1 million dollars (\$1,000,000) in an account against which Wilson could draw for the costs of constructing the home. No changes or additional charges were permitted without written change orders.

47. Relying on the building contract and the representations by Wilson, and in furtherance of the building contract, Jayma entered into a contract to buy lot 163 in Providence Downs for \$276,745 as arranged by Wilson who had a close relationship with the sellers.

48. Relying on the building contract and the representations by Wilson, Jayma obtained a one million dollar (\$1,000,000) personal residential construction loan and purchased lot 163, using the lot and home to be constructed as collateral. The \$276,745 purchase price of the lot was dispersed at closing. The bank would pay out the remainder of the funds as construction progressed and bills were submitted to the bank. The funds disbursed by the bank would be deposited in a joint account in the name of Jayma and Wilson. That account would be used to segregate, track, and pay costs for the Providence Downs South house joint venture.

49. Although he contracted to take only a contractor's fee of \$250 a week for twenty-two weeks as a contractor's fee on the Providence Downs South house contract, less than a month after getting Jayma to enter into the contract to build that house,

Wilson informed Jayma he needed a cash flow of about \$6,500 a month to cover his family's expenses while he was getting his construction company going. However, he did not want a second loan agreement with an additional monthly payment. He proposed that he deed to Jayma the 62.69 acres in Lancaster County which were already mortgaged to Jayma and Streater to secure the earlier loan and any future indebtedness. Wilson suggested Jayma then use his own personal credit rating and the ownership of the 62.69 acres to obtain a \$200,000 line of credit which would be available in part for Wilson to draw against for living expenses and also for Jayma to draw against for interest payments on the construction loan to build the joint venture house. Wilson stated that if he was not back on his feet and in a position to pay off the line of credit within ten months, Jayma would then keep the land to cover the line of credit Jayma would be liable on.

50. Jayma did not accept Wilson's September 2005 proposal at that time or on those terms.

51. Jayma did make some inquiries to determine how much he would be able to borrow on a smaller number of acres. The amount would have been far less than what Wilson had proposed, and no loans were made as a result of these preliminary inquiries.

52. On or about September 23, 2005, Wilson received a "refund" check for \$31,150 on the purchase price of the Providence Downs South lot Jayma had purchased for the joint venture home.

Although Wilson showed Jayma this check when he received it, he had not informed Jayma prior to receiving the check that he would be getting a "refund" of part of the purchase price for the lot for the joint venture house.

53. Wilson "advanced" himself personally \$15,000 from this joint venture "refund" which he later claimed was advancement of 60 weeks of the contractor's fee at \$250 a week, despite the fact that the construction contract limited the contractor's fee to no more than \$5,500 or only twenty-two weeks at \$250 a week. Wilson took this personal "advance" from the joint venture project without obtaining Jayma's consent or agreement.

54. Wilson began construction on the house he represented would take twenty-two weeks to complete in October of 2005.

55. In November of 2005, Wilson deeded the 62.69 acres in Lancaster County to Jayma as set forth in Exhibit F.

56. Around the same time as the deed, Wilson revised his estimate submitted to the bank for the cost to build the joint venture house.

57. Wilson had control of the draws against the proceeds of the residential construction loan as the bank released the funds as he submitted evidence of the costs and progress of ongoing construction.

58. As contractor, Wilson was responsible for selecting, hiring, contracting with, supervising, and paying the subcontractors to build the new home.

59. Deficiencies in performance of Wilson's obligations as contractor under the residential construction contract, especially in regard to subcontractors, resulted in numerous delays and cost overruns.

60. By June of 2006, the proceeds of the \$1,000,000 construction loan were nearly exhausted, but the new home was far from completion. It was obvious Wilson's representations as to the cost and time for him to build the house were seriously low balled. Additional funds were needed to complete the house, but the construction lender was not going to advance additional funds with the incomplete house as collateral. Wilson was also insisting he needed additional funds himself to cover his family's living expenses.

61. The problems with the new house and the transactions between Wilson and Jayma placed serious strain on Jayma's marriage. It was apparent that the option of Jayma moving into the new home with his family was no longer viable, and it would be necessary to sell the Providence Downs South house as soon as possible after completion.

62. Jayma and Wilson approached Jayma's personal banker at SunTrust seeking additional funds through a line of credit on the

land in Lancaster County Wilson had previously deeded to Jayma. SunTrust Bank would not lend the requested funds in return for just an additional real estate mortgage on the 62.69 acres of land. It would agree only to a commercial line of credit in Jayma's name of up to \$194,000 supported by Jayma's note and secured by a mortgage from Jayma as owner of the Lancaster County land verified by a title search and further secured by any and all present and future collateral Jayma had or would pledge to SunTrust for any other obligations plus a lien on all deposits and investments Jayma might have with SunTrust, which was his personal bank.

63. Wilson and Jayma agreed Wilson could draw up to \$50,000 from this line of credit to support himself personally, but the remainder would be reserved to pay subcontractors and to cover the costs of completing the house so it could be sold.

64. Upon information and belief, Wilson drew more than the agreed upon limit from the line of credit for his personal use.

65. In September 2006, the joint venture house was listed for sale.

66. By the end of October, 2006, three buyers were interested in purchasing the house for a price between \$1.5 million and almost \$1.7 million, but a contract could not be reached because the house was too far from complete.

67. By December of 2006, the \$194,000 line of credit was maxed out and the joint venture home was still far from complete.

Jayma had to negotiate an extension on the residential construction loan as interest costs continued to mount quickly.

68. Although Wilson agreed to use the remaining funds solely for completion of the new home, he has not provided Jayma with sufficient documentation to account for the expenditure of the funds from the line of credit.

69. The last amount from the construction loan could not be drawn until a certificate of completion on the house was obtained.

70. As the completion date was delayed and delayed yet again, the interest costs to Jayma on both the \$1,000,000 construction loan and the \$194,000 line of credit he was personally liable for continued to mount.

71. Jayma repeatedly attempted to contact Wilson in order to obtain completion of their residential building contract.

72. Between January and April of 2007 in an effort to obtain completion of the home and mitigate the damages from Wilson's breach of their residential building contract, Jayma personally paid for the additional costs required for construction and personally paid vendors which Wilson should have paid but was not paying.

73. Jayma estimates the amount he has had to personally pay out of his own funds for completion of the joint venture home after exhaustion of the proceeds of the one million dollar loan and the

\$194,000 line of credit was well in excess of \$150,000.00 exclusive of the interest costs.

74. Between January 18, 2007 and April 2007, Wilson and Jayma attempted to reach an agreement to settle Wilson's obligations to Jayma.

75. On or about January 18, 2007, Wilson proposed that the new home be sold and the proceeds used first to pay off the one million dollar construction loan, second to pay off the principal of the \$194,000 line of credit and the interest for that loan, and third to pay off the other expenses Jayma had incurred in connection with the building of the new home. If there were any profits remaining after the first three priorities were paid off, Wilson proposed any profits be split equally between himself and Jayma with his share being used to pay off \$46,976.65 he acknowledged owing to Jayma on the joint venture transactions and the accrued interest due on the \$32,000 loan he first obtained from Jayma in the spring of 2005.

76. After the sale of the new house and the payment of the agreed amounts from the proceeds, Wilson wanted Jayma to deed the 62.69 acres in Lancaster County back to him subject to the mortgage to secure later repayment of the \$32,000 in principal from the spring 2005 loan. Upon repayment of the principal, he wanted the mortgage to continue and to serve as a \$32,000 personal line of credit for himself from Jayma which he could draw against at will.

77. Jayma agreed to the sale of the joint venture home and the distribution of the proceeds from that sale.

78. In regard to the \$32,000 loan and the 62.69 acres in Lancaster County, Jayma rejected Wilson's request. He countered that he would deed the 62.69 acres in Lancaster County back to Wilson upon occurrence of all the following three conditions: a) the full amount of the \$194,000 line of credit with all interest connected to this line of credit had to be paid/reimbursed. The proceeds of the sale of the joint venture home could be used for these payments if they were sufficient; b) Jayma had to be reimbursed for all the cost overruns on the joint venture home. The proceeds of the sale of the joint venture home could be used for these payments if they were sufficient; and, c) the \$32,000 loan with all accrued interest and late fees had to be paid off. Wilson has never met these conditions.

79. A certificate of occupancy was finally obtained on April 19, 2007, some 20 months after construction was begun on a house the contractor Wilson had represented would take less than six months to build.

80. As a result of the additional fourteen months Wilson took to complete the house, Jayma incurred approximately \$63,000 in additional interest costs on the one million dollar mortgage.

81. The joint venture house was put on the market once the certificate of occupancy was obtained in late April 2007, but by that time the real estate market was substantially depressed.

82. The joint venture house did not sell until September 12, 2008.

83. On the date the sale closed, Wilson had his counsel mail by certified first class mail a demand letter to Jayma seeking to prevent Jayma from selling the joint venture house.

84. During the period the joint venture house was on the market, the \$194,000 line of credit in Jayma's name came due and he had to get an extension on it.

85. During the period the joint venture home was on the market, monthly expenses for interest payments on the one million dollar mortgage, taxes, insurance, and utilities accrued at a rate of about \$6,000 a month which Jayma had to pay.

86. In October of 2007, Jayma wrote Wilson informing him of the costs which had accrued thus far in regard to the joint venture home and informing him that it was fast approaching the point where the associated cost agreed to be paid from the proceeds of its sale would reach \$1.4 million dollars.

87. The sales price for the joint venture home was only \$1,240,000.

88. At closing, seller's settlement costs, the broker's fee, the payoff for the one million dollar mortgage on the joint venture

home, taxes, assessments and other fees were deducted from the proceeds.

89. At closing, only \$194,096.86 remained to be disbursed.

90. The \$194,096.86 disbursed to Jayma was used to pay off the remaining contractors from building the joint venture house and applied to interest only mortgage payments Jayma had paid during the three year life of the one million dollar construction loan/mortgage.

91. No proceeds remained from the sale of the house to pay off the \$194,000 line of credit or the interest on it which remains outstanding at this time. Jayma has had to continue to pay the interest on the line of credit.

92. By the time the joint venture house was sold, Jayma had paid \$28,938.79 in interest on just the \$194,000 line of credit. From June 12, 2006 through May of 2012, Jayma has had to pay \$53,049.79 interest on the line of credit.

93. There were no profits from the sale of the joint venture home.

94. The joint venture home was sold at a loss, the total amount of which cannot be calculated until the \$194,000 loan has been repaid and its costs cease to climb.

95. Although Wilson has fallen far behind in the interest payments on the \$32,000 note, Jayma has continued the loan under the post three year increased interest rate and has elected not to

call the loan or to foreclose the mortgage securing that loan up to this point.

96. With these counterclaims, Jayma is now electing to call the \$32,000 loan. As of June 17, 2012, the amount of principal, interest and late fees due under the promissory note was approximately \$76,359 exclusive of any cost of collection or foreclosure.

97. Jayma is also electing to foreclose on the mortgage securing the \$32,000 loan and all other debts owed by Wilson to Jayma.

FIRST COUNTERCLAIM

BREACH OF CONTRACT/COLLECTION OF \$32,000 PROMISSORY NOTE

98. Jayma re-alleges the preceding paragraphs of the Counterclaims here as if again fully restated.

99. Wilson entered into a contract to borrow money and repay it in accordance with the terms of the agreements entered into in connection with the spring 2005 \$32,000 loan including Exhibits A, B, and C which are attached and incorporated herein.

100. Wilson has breached the terms of those agreements and is in default on the 2005 Agreement to Lend, the 2005 Promissory Note, and the associated mortgage.

101. The terms of the Note provide for the recovery of attorney's fees.

102. As a result of said breaches and default, Wilson is indebted to, and liable to, Jayma in an amount to be calculated in accordance with the terms of said Note which is believed to be approximately \$76,359 as of June 17, 2012 exclusive of attorney's fees and costs of collection.

SECOND COUNTERCLAIM

**BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT OR
ALTERNATIVELY BREACH OF CONTRACT
(RESIDENTIAL CONSTRUCTION CONTRACT)**

103. Jayma re-alleges the preceding paragraphs of the Counterclaims as if again fully restated.

104. Wilson, as contractor, entered into a residential construction contract with Jayma upon the terms and representations described above.

105. Wilson has breached the terms of that contract as described above and is in default.

106. Wilson's breaches of the residential construction contract were accompanied by one or more fraudulent acts, including but not limited to:

- a. arranging for and obtaining a refund or kickback on the purchase price charged to Jayma for the lot which was not disclosed to Jayma at the time Jayma entered into the residential construction contract and was not disclosed to the lender at the time Wilson submitted construction estimates to the lender to support the loan;

- b. advancing himself more than the contractually agreed upon contractor's fee without prompt and full disclosure, consent or agreement; and
- c. personally drawing a substantially larger sum for his personal use from funds/accounts set aside for completion of the home than he represented he would draw or disclosed that he had withdrawn at the time he withdrew the funds.

107. As a result of the breach of contract accompanied by fraudulent acts, Wilson is liable to Jayma for exemplary or punitive damages and attorney's fees in addition to compensatory damages.

108. As a result of said breaches and default, Wilson is indebted to, and liable to, Jayma for compensatory damages including reimbursement of unauthorized or improper expenditures and draws, additional costs for completing the home, the additional interest costs on the mortgage on the new home for the extra time it took to complete the home, the personal draws in excess of \$5,500, the principal and interest incurred on the line of credit, the harm to Jayma's valuable credit reputation, and the loss on the sale of the home.

109. Wilson's obligations and liability to Jayma on the residential construction contract are secured by the above described mortgage which provides for the recovery of attorney's fees.

THIRD COUNTERCLAIM

BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT OR ALTERNATIVELY BREACH OF CONTRACT (LINE OF CREDIT)

110. Jayma re-alleges the preceding paragraphs of the Counterclaims as if again fully restated.

111. Wilson entered into a contract with Jayma regarding the use of the funds from the \$194,000 line of credit by which he was granted the authority to make draws against the line of credit strictly for legitimate cost overruns in completing the home and no more than \$50,000 for his personal use.

112. Wilson has breached the terms of that contract as described above and is in default.

113. Wilson's breach of this contract was accompanied by one or more fraudulent acts including personally drawing more than \$50,000 for his personal use and exhausting the line of credit within three or four months after it was obtained all without making commensurate progress in completing the home or documenting the amount and reasons for the draws.

114. As a result of the breach of contract accompanied by fraudulent acts, Wilson is liable to Jayma for exemplary or punitive damages and attorney's fees in addition to compensatory damages.

115. As a result of said breaches and default, Wilson is indebted to, and liable to, Jayma for compensatory damages

including reimbursement of excess personal use of funds, reimbursement of draws which have not been properly documented as authorized construction costs for the home, additional costs for completing the home, the interest incurred on the line of credit, the impairment of Jayma's property by the line of credit, impairment of Jayma's valuable credit reputation.

116. Wilson's obligations and liability to Jayma under the contract are secured by the above described mortgage which provides for the recovery of attorney's fees and/or by Wilson's conveyance and deed of the 62.69 acres to Jayma.

FOURTH COUNTERCLAIM

BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT OR ALTERNATIVELY BREACH OF CONTRACT (SALE OF THE PROVIDENCE DOWNS SOUTH HOUSE)

117. Jayma re-alleges the preceding paragraphs of the Counterclaims as if again fully restated.

118. Wilson entered into a contract with Jayma concerning sale of the house and use of the proceeds from the sale of the house.

119. Wilson has breached the terms of that contract and is in default.

120. Wilson's breach of this contract was accompanied by one or more fraudulent acts including an effort to sabotage sale of the home through a formal demand to re-convey the property conveyed to Jayma free of all encumbrances placed on that land after the

November 5, 2005 deed (including the \$194,000 line of credit) and to stop efforts to sell the home until Wilson approved of the sale.

121. As a result of the breach of contract accompanied by fraudulent acts, Wilson is liable to Jayma for exemplary or punitive damages and attorney's fees in addition to compensatory damages.

122. As a result of said breaches and default, Wilson is indebted to, and liable to, Jayma for compensatory damages including reimbursement of the interest cost, costs of the sale, the loss on the sale of the house, the cost to remove the cloud on Jayma's title to the 62.69 acres, the continuing impairment of Jayma property by the line of credit, and impairment of Jayma's valuable credit reputation.

123. Wilson's obligations and liability to Jayma on this contract are secured by the above described mortgage which provides for the recovery of attorney's fees and/or by Wilson's conveyance and deed of the 62.69 acres to Jayma.

FIFTH COUNTERCLAIM

BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT OR ALTERNATIVELY BREACH OF CONTRACT (JOINT VENTURE - PROVIDENCE DOWNS SOUTH HOUSE)

124. Jayma re-alleges the preceding paragraphs of the Counterclaims as if again fully restated.

125. Wilson entered into a joint venture with Jayma to construct the Providence Downs South house.

126. Wilson has breached the terms of the joint venture agreement and is in default.

127. Wilson's breach of this contract was accompanied by one or more fraudulent acts including:

- a. Misrepresenting his expertise in the business of serving as general contractor on similar residential construction to that found in the Providence Downs South subdivision;
- b. Misrepresenting the time it would take him to complete construction of the house;
- c. Misrepresenting at the beginning of the contract, the costs of the project, including the cost of the lot;
- d. Misrepresenting the amount he would draw for himself personally from the construction funds;
- e. Drawing more than the contractually agreed upon amount as the contractor's fee for the project;
- f. Attempting to sabotage sale of the joint venture home through a formal demand to stop efforts to sell the home until Wilson approved of the sale and until the property conveyed to Jayma was re-conveyed free of all encumbrances placed on that land after the November 5, 2005 deed (including the \$194,000 line of credit).
- g. Failing to redeposit funds into the construction account which he acknowledged owing to the joint venture;
- h. Failing to contribute his share to cover his half of the joint venture losses.

128. As a result of the breach of contract accompanied by fraudulent acts, Wilson is liable to Jayma for exemplary or punitive damages and fees in addition to compensatory damages.

129. As a result of said breaches and default, Wilson is indebted to, and liable to, Jayma for compensatory damages including reimbursement of the interest cost, costs of the sale, the loss on the sale of the house, the cost to remove the cloud on Jayma's title to the 62.69 acres, the continuing impairment of Jayma property by the line of credit, and impairment of Jayma's valuable credit reputation.

130. Wilson's obligations and liability to Jayma on this contract are secured by the above described mortgage which provides for the recovery of attorney's fees and/or by Wilson's conveyance and deed of the 62.69 acres to Jayma.

SIXTH COUNTERCLAIM

REMOVE CLOUD ON AND CONFIRM OR QUIET TITLE

131. Jayma re-alleges the preceding paragraphs of the Counterclaims here as if again fully restated.

132. On or about November 5, 2005, Wilson executed and recorded the deed attached hereto as Exhibit F conveying 62.69 acres of land in Lancaster County to Jayma with the intent of persuading Jayma to pay him \$75,000 to \$100,000 with a right to redeem the land within 10 months for the amount paid to him plus something to compensate Jayma, but forfeiting all interest in the

land if he failed to timely redeem it. However, Jayma did not agree to this deal.

133. In June of 2006, while in default on the residential construction contract, Wilson used the deed to get Jayma, as owner of the land under the deed, to obligate himself on a line of credit for \$194,000 of which no more than \$50,000 would go to Wilson personally while the remainder would be made available to cover the cost overruns on the residential construction contract. There was no right to redeem the 62.69 acres in this agreement.

134. Wilson personally received more than the agreed upon limit from the proceeds of that line of credit.

135. Even if the deed was imperfectly executed, it is nevertheless effective between the parties.

136. In reliance upon this deed, Jayma obtained the line of credit and agreed that Wilson would personally receive up to \$50,000 from the proceeds.

137. By this deed, Wilson is estopped from asserting as against Jayma any right or title in derogation of the deed, or from denying the truth of any material fact asserted in it.

138. Thus, Jayma's title to the 62.69 acres should be confirmed and quieted as against all claims of Wilson.

SEVENTH COUNTERCLAIM

CONSTRUCTIVE TRUST

139. Jayma re-alleges the preceding paragraphs of the Counterclaims as if again fully restated.

140. To the extent that Wilson continues to possess legal title or any other ownership interest in the 62.69 acres, given the facts alleged in this Counterclaim, it would be inequitable for Wilson to retain such interests, especially in light of his inequitable conduct such as arranging for and obtaining a refund or kickback on the purchase price charged to Jayma for the lot which he did not disclose until he actually received the check, advancing himself more than the contractually agreed upon contractor's fee without prompt and full disclosure, consent or agreement, and personally drawing a substantially larger sum for his personal use from funds/accounts set aside for completion of the Providence Downs South house than he represented he would draw or disclosed that he had withdrawn, and inducing Jayma to loan him \$32,000 personally, then to take out a \$1 million construction loan, and then to take out a \$194,000 line of credit all of which Wilson benefited from personally and on all of which Wilson represented that his contribution was represented by the land.

EIGHTH COUNTERCLAIM

UNJUST ENRICHMENT

141. Jayma re-alleges the preceding paragraphs of the Counterclaims as if again fully restated.

142. Through the facts alleged above, Wilson received multiple benefits including the proceeds of loans and various sums of cash. As demonstrated by the facts alleged above, none of these benefits were intended to be conferred gratuitously. In contrast, Jayma relied upon the representations, agreements and claimed expertise of Wilson in taking actions which benefited Wilson and have been detrimental to Jayma causing him to take on additional obligations, causing substantial monetary losses, and resulting in the impairment of Jayma's property and credit. It would be inequitable for the Wilson to retain the benefits conferred without repaying Jayma for the value received.

143. Accordingly, Wilson should be required to repay to Jayma all funds drawn from the construction mortgage account and the line of credit which Wilson cannot demonstrate were legitimate costs for construction as set out by the residential construction contract (without including any cost increases resulting from Wilson's problems in selecting, hiring, contracting with, supervising, and paying the subcontractors in his role as contractor).

144. Additionally, Wilson should be required to repay to Jayma all funds received as a refund on the purchase of lot 163.

145. Further, Wilson should be required to repay to Jayma the time value of the money he received in the form of interest from the time received until the time repaid.

146. It would be inequitable to allow Wilson to retain these benefits in light of the losses he caused to Jayma.

NINTH COUNTERCLAIM

ALTERNATIVELY BREACH OF FIDUCIARY DUTY OF A PARTNER OR JOINT VENTURER

147. Jayma re-alleges the preceding paragraphs of the Counterclaims as if again fully restated.

148. In the event it is found that there was a partnership or joint venture agreement between Wilson and Jayma in regard to the construction of the house on lot 163 in Providence Downs South, then Wilson is liable to Jayma for breach of fiduciary duties in regard to that partnership or joint venture.

149. Wilson's breaches of fiduciary duty would include, but not be limited to:

- a. arranging for and obtaining a refund or kickback on the purchase price charged to Jayma for the lot which was not disclosed until after Wilson received the kickback;
- b. advancing himself more than the contractually agreed upon contractor's fee without prompt and full disclosure, consent or agreement;
- c. personally drawing a substantially larger sum for his personal use from funds / accounts set aside for completion of the house than he represented he would draw or disclosed that he had withdrawn when he withdrew them; and

d. Attempting to stop the sale of the joint venture house.

150. As a result of said breaches, Wilson is indebted to, and liable to, Jayma for compensatory damages including reimbursement of the interest cost, costs of the sale, the loss on the sale of the house, the cost to remove the cloud on Jayma's title to the 62.69 acres, the continuing impairment of Jayma property by the line of credit, and impairment of Jayma's valuable credit reputation.

TENTH COUNTERCLAIM

FORECLOSURE OF MORTGAGE / ENFORCEMENT OF SECURITY INTEREST

151. Jayma re-alleges the preceding paragraphs of the Counterclaims as if again fully restated.

152. The terms of the mortgage secured all current and future indebtedness and liability of Wilson to Jayma until the mortgage is satisfied of record.

153. The mortgage has not been satisfied of record.

154. Any right of appraisal under the mortgage has been waived.

155. The terms of the mortgage provide for the recovery of attorney's fees.

156. Jayma is entitled to have the indebtedness and liability of Wilson on all the counts alleged in the Counterclaims together with attorney's fees reduced to judgment for purposes of

foreclosure of the mortgage and to have the court direct the sale of the mortgaged premises and the entry of a deficiency judgment in the event the sale of the mortgaged premises fails to be sufficient to pay the full judgment subject to the mortgage.

ELEVENTH COUNTERCLAIM

**ALTERNATIVELY, ENFORCEMENT OF DEED
AS A SECURITY INTEREST**

157. Jayma re-alleges the preceding paragraphs of the Counterclaims here as if again fully restated.

158. In the event it should be found that the November 2005 deed is not fully effective as an enforceable deed in fee simple to Jayma of the 62.69 acres, Jayma seeks a declaration that the deed remains effective as a conditional deed, security agreement or mortgage and that Wilson has so failed in the performance of his obligations secured by the deed or land as to have forfeited any right he might have to redeem the deed and/or avoid full and effective conveyance of the property.

159. In this event, Jayma is entitled to enforcement of the deed as a security interest and to a judgment ordering conveyance or ordering Wilson to execute an effective conveyance as a result of Wilson's failure to fully perform all the obligations for which the deed was used as security.

WHEREFORE, having fully answered the Complaint of the Plaintiff, and Counterclaimed against him, Defendant Jayma requests the following:

- A) That the Plaintiff take nothing and his claims be dismissed, together with the costs of this action.
- B) Judgment on the \$32,000 promissory note in an amount to be calculated in accordance with the terms of said note (which is believed to be approximately \$76,359 as of June 17, 2012) plus attorney's fees and costs;
- C) Judgment for compensatory damages for breach of the residential construction contract in an amount to be found sufficient to reimburse:
 - 1. any and all unauthorized or improper expenditures and draws (unable to estimate without discovery);
 - 2. reimbursement of the amounts Wilson should have paid back to the construction accounts (estimated to be over \$46,000);
 - 3. additional costs for completing the home (estimated at \$307,700);
 - 4. the interest costs on the mortgage on the new home (estimated at \$99,000);
 - 5. the personal draws in excess of \$5,500 (estimated to be at least \$69,500);
 - 6. the costs to sell the home (estimated to be about \$8100);
 - 7. the principal and interest incurred on the line of credit (estimated to be about \$250,000);
 - 8. the harm to Jayma's valuable credit reputation and impairment of collateral available for credit (estimated to be about \$1.5 million); and
 - 9. the loss on the sale of the Providence Downs South house (estimated to be about \$183,000).
- D) Judgment for punitive damages for fraudulent breach of the residential construction contract;

E) Judgment for compensatory damages for breach of contract concerning line of credit in an amount sufficient to reimburse:

- i. any and all unauthorized or improper expenditures and draws (unable to estimate without discovery but in excess of \$60,000);
- ii. draws which have not been properly documented as authorized construction costs for the home (unable to estimate without discovery);
- iii. additional costs for completing the home not completed within the line of credit (estimated to be about \$163,700);
- iv. the interest incurred on the line of credit (estimated to be about \$53,050 through May of 2012);
- v. the impairment of Jayma's property by the line of credit and impairment of Jayma's valuable credit reputation (estimated to be about \$.5 million);

E) Judgment for punitive damages for fraudulent breach of the agreement regarding the line of credit;

F) Judgment for compensatory damages for fraudulent breach of agreement concerning sale of the house and application of the proceeds in an amount sufficient to reimburse:

- i) continuing interest costs and principal on the line of credit not covered by the sale proceeds (estimated at \$250,000 as of May 2012);
- ii) the costs to sell the home (estimated to be about \$8100);
- iii) the loss on the sale of the house (estimated to be about \$183,000);
- iv) the cost to remove the cloud on Jayma's title to the 62.69 acres (cannot be estimated or calculated until the end of this action); and
- v) the continuing impairment of Jayma's property by the line of credit and impairment of Jayma's valuable credit reputation (estimated to be about \$1.5 million);

- G) Judgment for punitive damages for fraudulent breach of the agreement to sell the house and for application of the proceeds of the sale;
- H) Judgment for appropriate compensatory damages for breach of the joint venture (unable to estimate without discovery);
- I) Judgment for punitive damages for fraudulent breach of the joint venture contract;
- H) Judgment for attorney's fees; and
- I) Judgment:
 - i. confirming title in Jayma to the 62.69 acres in Lancaster County and quieting title against any and all claims of Wilson and his heirs and assigns in perpetuity; or, in the alternative
 - ii. judgment fixing the amount of Wilson's obligations and liabilities to Jayma secured by the 62.69 acres in Lancaster County coupled with a foreclosure order of sale and judgment for deficiencies.
- J) For such other and further relief as the Court deems just and proper.



TERRY B. MILLAR
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Rock Hill, SC 29731
(803) 324-3196
tbmillar@tbmlc.com

Attorney for Defendant Jayma

August 10, 2012

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER) SIXTH JUDICIAL CIRCUIT

Mark Wilson,) C/A No. 2012-CP-29-498
Plaintiff,)

v.) AFFIDAVIT OF KEITH JAYMA
Keith Jayma and Wilbur Street, III,¹)
Defendants,)

FILED
OFFICE OF CLERK
OF COURT
2016 SEP 30 PM 1:18
CLERK OF COURT
LANCASTER, SC

Personally appeared before me, Keith Jayma, who first being duly sworn deposes and states:

1. I am a citizen and resident of North Carolina, and the only remaining defendant in this lawsuit. I am over the age of eighteen and I am legally competent to give this affidavit. The facts set forth in this affidavit are based upon my personal knowledge.
2. My business relationship with Mark Wilson began in April 2005, when Wilbur Streeter and I made him a \$32,000 loan, secured by a mortgage on a parcel of real property that was owned by Mr. Wilson and located in Lancaster County, South Carolina. A true and accurate copy of Mr. Wilson's April 2005 promissory note is attached as Exhibit A and is incorporated by reference. A true and accurate copy of Mr. Wilson's April 2005 mortgage is attached as Exhibit B and is incorporated by reference.
3. In or about August 2005, Mr. Wilson and I entered into a business arrangement to build a \$1,000,000 "spec" home at 10010 Strike the Gold Lane, in Waxhaw, North Carolina. Our arrangement was that I would secure financing for the home and Mr. Wilson would serve as

¹ Wilbur Streeter, III has been dismissed from this action.

the general contractor. Our arrangement did not go well, and we ended up significantly behind schedule and significantly over budget. I ended up borrowing well in excess of \$1,000,000 just to complete the project, and also exhausted most, if not all, of my personal savings.

4. The house was finally completed in April 2007, and I began to aggressively market it for sale in order to pay off the primary construction lender and with the goal of recouping the additional amounts that I had paid and borrowed to complete the project.

5. By the time we completed the house, my relationship with Mr. Wilson had deteriorated to the point that we were only communicating with each other in writing, and only when necessary.

6. In early 2008, I received a fax from Mr. Wilson, accusing me of various wrongs. A copy of Mr. Wilson's fax is attached as Exhibit C and incorporated by reference.

7. I finally secured a purchase contract for the house in mid-2008, but for less than I had borrowed and spent to complete the project.

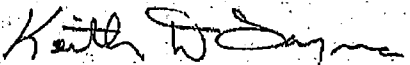
8. Closing occurred on or about September 12, 2008. While I was able to pay off the primary (\$1,000,000) construction loan, I was unable to pay off approximately \$194,000 that I had drawn on a line of credit. I am still carrying that debt to this day. It is secured by an equity line on my home.

9. A few days after closing, I received a certified letter from an attorney representing Mr. Wilson. A true and accurate copy of that letter is attached as Exhibit D and is incorporated by reference.

10. Over the next few years, I continued to receive correspondence from Mr. Wilson, accusing me of various wrongs and continuing to threaten me with legal action. One of the letters I received is attached as Exhibit E and is incorporated by reference. The letter is in Mr.

Wilson's handwriting. At the top of the letter, Mr. Wilson dated the letter 7-14-11, then wrote "mailed 7-19-11." I recall that I received the letter around that time. Mr. Wilson's July 2011 letter specifically references the letter I received from his attorney in September 2008; and then continues "unfortunately, I was unable to pursue you in court at that time."

11. While I vehemently deny the substance of the claims and allegations that Mr. Wilson has made against me in this lawsuit, I can state unequivocally that he has been making the same claims against me since, at least late 2007 or early 2008. Mr. Wilson did not file this lawsuit until April 2012, more than four years after he first threatened me with legal action. I was served with his summons and complaint on April 22, 2012.


Keith D. Jayma

Sworn to before me this

19th day of September, 2016

Barbara Dianne Meffon (notary's signature)

Barbara Dianne Meffon (notary's printed name)

Notary Public for SC

My commission expires: 1/19/26

4835-7219-3080, v. 1

EXHIBIT

A

SCANNED

PROMISSORY NOTE

\$32,000.00

County of Lancaster, S.C.

April 13th, 2005

FOR VALUE RECEIVED, the receipt of which is acknowledged, Frederick Mark Wilson, a North Carolina Resident (the "Borrower") promises to pay to Keith Jayma and Wilbur Streater, III., (the "Lenders"), or order, at such other place as the legal holder hereof may designate in writing, the principal sum of **THIRTY-TWO THOUSAND AND NO/100s (\$32,000.00)**, together with interest (the "Fixed Interest") on the disbursed but unpaid principal balance of this Note at a rate of **TEN percent (10%)** per annum, compounded annually. Fixed interest shall be computed on the basis of a 360-day year for the total number of days that the principal balance of this Note is outstanding. Payments shall be made to the Office of the Lender at 9817 Old River Terrace, Charlotte, NC 28310. The first payment is due on May 17th, 2005. The entire unpaid principal balance of this Note, together with any accrued and unpaid Fixed Interest thereon, shall be due and payable on March 17th, 2008. If the principal is NOT paid off in the 3 years, the Lender, at this time will have the opportunity to either raise the interest rate to **FIFTEEN percent (15%)** or call the note. ✓

Borrower can sell Eight (8) acres of the 63 acre parcel with no penalty if needed in the three (3) year span of the Note.

If Borrower prepays this loan off within the first year, there will be a \$750.00 prepayment penalty.

At the end of the term, or if the loan is paid off after **TWELVE (12)** payments, a fee of **ONE THOUSAND AND NO/100s (\$1,000.00)** will be assessed. This fee is mandatory and must be paid. In essence, the principal payback after 12 months is \$33,000.00.

Borrower will pay all closing cost from the initial proceeds.

The principal balance of this Note and Fixed Interest thereon shall be payable in the manner set forth in the Loan Agreement between Borrower and Lender dated as of April 13th, 2005 (the "Loan Agreement"), terms and conditions of which are incorporated in this Note by reference. Any capitalized term used in this Note that is not defined herein shall have the meaning given that term in the Loan Agreement. It is agreed that Borrower and Lender are not partners or joint venturers, but that Lender is a creditor and Borrower is a debtor under this Note. The indebtedness evidenced by this Note may be prepaid, in whole or in part, at any time without penalty.

Sup. R. II 000178

This Note is secured by a Mortgage of Real Property (the "Mortgage of Real Property") dated as of April 13th, 2005, executed and delivered by Borrower to W. Blackmon Huckabee, Trustee for the benefit of Lender, conveying certain real estate and other property described herein, and duly recorded in the Office of the Register of Deeds for Lancaster County, South Carolina.

If any payment of interest under this Note is delinquent more than fifteen (15) days, the Borrower will pay to the Lender a late charge of five percent (5%) of the amount of the overdue payment. This provision for late charges shall not be deemed to extend the time for payment or be a "grace period" or "cure period" that gives the Borrower a right to cure an Event of Default.

Upon the occurrence of an Event of Default and the expiration of any applicable notice and cure period specified in the Loan Agreement, Lender shall have the right, at its option and election, to accelerate the indebtedness evidenced by this Note and declare the entire principal balance immediately due and payable in full, together with all accrued but unpaid Fixed Interest. Upon such acceleration by Lender, Borrower promises to pay the full principal amount of this Note and Fixed Interest, if any, accrued and unpaid hereunder in accordance with the terms of the Loan Agreement, together with all costs and expenses incurred in connection with the collection or attempted collection of this Note and the protection of the security for this Note, including reasonable attorney's fees, whether or not suit is instituted. As used in this Note, the term "reasonable attorneys' fees" shall mean those fees actually charged by attorneys selected by Lender, based upon their standard rates, as opposed to any statutory presumption that may then be in effect in the State of South Carolina.

All parties to this Note, whether principals, sureties, guarantors or endorser, hereby waive presentment for payment, demand, protest and notice of dishonor, and all defenses on the ground of extension of time for the payment thereof, which may be given by Lender to them or any of them, or to anyone who has assumed the payment of this Note.

The parties to this Note have intended in good faith to comply with all applicable usury laws. Notwithstanding anything to the contrary contained in this Note or any other instrument evidencing, securing or relating to this Note, Borrower shall not be obligated or required to pay interest at a rate that would subject Lender to either criminal or civil liability. If, by the terms of this Note, Borrower at any time is required or obligated to pay interest on the principal made available to Borrower in an amount or at a rate in excess of the applicable legal maximum, the interest due to Lender shall be immediately and automatically reduced to such maximum, the interest payable shall be computed at such maximum rate, and all prior interest payments in excess of such lawful maximum

shall be immediately and automatically applied; and shall be deemed to have been treated as having been applied at the time of receipt, in reduction of the principal balance due under this Note. Borrower warrants and represents that as of the date of execution of this Note that the stated interest rate does not violate any usury laws in the State of South Carolina.

No delays on the part of Lender in exercising any right under this Note or under any of the Loan Documents shall operate as a waiver thereof or preclude the exercise thereof at any time during the continuance of any default or during the continuance of any subsequent default.

This Note may not be modified or terminated orally. This Note shall be constructed and enforced in accordance with the laws of the State of South Carolina.

IN WITNESS WHEREOF, Borrower has executed this Note as of the day and year first above written.

Frederick Mark Wilson
Borrower/Promissor

By: [Signature]
Name: Karen J. [Signature]
Title: _____

State of South Carolina

County of Lancaster

0002293 Bk: 01332 Pg: 00235

FILED, RECORDED, INDEXED

04/22/2005 09:47AM

Rec Fee: 12.00 St Fees: 0.00

Co Fee: 0.00 Pages: 6

Recorder of Deeds
LANCASTER COUNTY, SC

EXHIBIT

B

MORTGAGE OF REAL PROPERTY

THIS MORTGAGE, made this 15th day of April, 2005, among Frederick Mark Wilson (hereinafter referred to as Mortgagor) and Keith Jayma and Wilbur Streater, III., (hereinafter referred to as Mortgagee):

WITNESSETH THAT, WHEREAS, Mortgagor is indebted to Mortgagee for money loaned for which mortgagor has executed and delivered to Mortgagee one or more applications, obligations or agreements Note(s)) with the original Note being in the principal sum of Thirty Two Thousand and 00/100 DOLLARS (\$32,000.00)

AND, WHEREAS, to induce the making of said loan/Notes and in consideration of advances made and which may be made by Mortgagee to Mortgagor as evidenced by said various Notes of even date herewith or subsequent to Notes executed in the future, Mortgagor has agreed to secure said debt and interest thereon evidenced by said Notes and all renewals and extensions thereof, together with (in accordance with Section 29-3-50, Code of Laws of South Carolina, 1976, as may be amended) any future advances that may subsequently be made in connection with said Notes or by Mortgagee, and all renewals and extensions thereof, as well as all other indebtedness of Mortgagor or Mortgagee, now due or to become due or hereafter contracted, provided however that the total amount of existing indebtedness and future advances outstanding at any one time may not exceed 200% of the principal amount of the Note or Thirty Two Thousand and 00/100 DOLLARS (\$32,000.00) whichever is greater, plus or together with interest thereon, attorneys' fees, and court costs and to secure the performance of the undertakings prescribed in the Notes and this Mortgage by the conveyance of the premises hereinafter described. Interest on said Notes will be deferred, accrued, or capitalized.

NOW, THEREFORE, in consideration of the aforesaid loan and the sum of Three Dollars (\$3.00) cash hand paid to Mortgagor, the receipt of which is hereby acknowledged, Mortgagor hereby grants, sells, conveys, assigns and releases to Mortgagee, its successors and assigns, the following described premises located in Lancaster County, South Carolina:

SEE ATTACHED EXHIBIT A

Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in anywise incident or appertaining. Including but not limited to all buildings and improvements, structures, or appurtenances now or hereafter erected thereon, including all apparatus, equipment, fixtures, or utilities, whether in single units or centrally controlled, used to supply heat, gas, air conditioning, water, light, power, refrigeration, ventilation or other services, and also together with any screens, window shades, storm doors and windows, screen doors, awnings, stoves and water heaters (all of which are declared to be a part of said real estate whether physically attached thereto or not).

TO HAVE AND TO HOLD the same with all privileges and appurtenances thereunto belonging to mortgagee, its successors and assigns, forever, for the purpose hereinafter set out and Mortgagor covenants with Mortgagee, its successors and assigns, that Mortgagor is seized of, and has the right to convey, the premises in fee simple; that the premises are free and clear of all encumbrances except as disclosed in writing to the Mortgagee at the time this Mortgage is given; and that Mortgagor will warrant and defend title to the premises against the lawful claims of persons whomsoever.

MORTGAGOR COVENANTS with Mortgagee, its heirs, successors and assigns as follows:

Sup. R. II 000181

1. NOTE PAYMENTS. Mortgagor shall make timely payments of principal and interest on the above mentioned Note(s) in the amounts, in the manner and at the place set forth therein. This Mortgage secures payment of said Note(s) according to its terms, which are incorporated herein by reference.

2. TAXES. Mortgagor shall pay all taxes, charges and assessments which may become a lien upon the premises hereby conveyed before any penalty or interest accrues thereon and shall promptly deliver to Mortgagee (at its request) official receipts evidencing payment thereof. In the event of the passage after the date of this Mortgage of any law imposing a federal, state, or local tax upon Mortgage or debts secured hereby, the whole principal sum (plus or together with interest) secured by this Mortgage shall, at the option of Mortgagee, its principal sum (plus or together with interest) secured by this Mortgage shall, at the option of Mortgagee, its successors and assigns, without notice become immediately due and payable.

3. INSURANCE. Mortgagor shall continually maintain hazard insurance of such types and amounts and in such companies as Mortgagee may from time to time reasonably require on the improvements now or hereafter located on the premises and shall promptly pay all premiums therefore when due. All insurance policies and renewals thereof shall be held by Mortgagee subject to the rights of the holder of the first mortgage lien, if any, and have attached thereto loss payable clauses in favor of and in a form acceptable to Mortgagee. In the event of loss, Mortgagor shall give immediate notice thereof by mail to Mortgagee, who may make proof of loss. Each insurance company is hereby directed to make payment for such loss directly to Mortgagee (instead of Mortgagor and Mortgagee jointly), and the insurance proceeds, or any part thereof, may be applied by Mortgagee, at its option, to the debt hereby secured or for the repair or restoration of the premises. If the insurance proceeds are applied to the debt, it may be applied upon the portion last falling due or in such other manner as Mortgagee may determine. In the event of foreclosure of this Mortgage or other transfer of title to the premises in extinguishment of the indebtedness secured hereby, all right, title and interest of Mortgagor, in any insurance policies then in force shall pass to the Mortgagee.

4. REPAIRS. Mortgagor will keep the premises in as good order and repair as they are now (reasonable wear and tear excepted) and will not commit or permit any waste or any other state of facts whereby the value of the premises might be impaired.

5. COMPLIANCE WITH LAWS. Mortgagor shall promptly comply with any applicable legal requirements of the State of South Carolina or other governmental entity, agency or instrumentality relating to the use or condition of the premises.

6. CONDEMNATION AWARD. Any award for the taking of, or damages to, all or any part of the premises or any interest therein upon the lawful exercise of power of eminent domain shall be payable to Mortgagee who may apply the sums so received to the portion of the debt hereby secured last falling due or in such other manner as Mortgagee may determine.

7. PAYMENTS BY MORTGAGEE. If Mortgagor shall be in default in the timely performance of any obligation under this Mortgage or the Note(s) hereby secured or in the timely performance of any obligation imposed by a prior mortgage, or the Note(s) thereby secured or otherwise, Mortgagee at its option may expend for the account of Mortgagor such sums as may be necessary to cure any such default. Further, Mortgagee may, at its option, expend for the account of Mortgagor such sums, expenses and fees as may become necessary or be incurred for the protection of the premises, for the protection of the lien of this Mortgage and for the maintenance and execution of this Mortgage. Any amounts so expended shall be deemed principal advances secured by this Mortgage, shall bear interest from the time expended at the rate prescribed in the Note(s) hereby secured and shall be due and payable on demand. However, Mortgagee shall be under no obligation to do any of the foregoing, and its failure to do so shall not be construed as a waiver of any default hereunder.

8. TRANSFER OF THE PROPERTY ASSUMPTION. If all or any part of the property or an interest therein is sold or transferred by Borrower without Mortgagee's prior written consent, excluding (a) the creation

a lien or encumbrance subordinate to this Mortgage, (b) the creation of a purchase money security interest in household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant or (d) the grant of any leasehold interest of three years or less not containing an option to purchase, Mortgagee may, at Mortgagee's option for any reason, declare all sums secured by the Mortgage to be immediately due and payable.

9. MORTGAGOR'S CONTINUING OBLIGATION. It is understood and agreed that all advances heretofore, now and hereafter made by Mortgagee or Mortgagor, and all indebtedness now and hereafter owed by Mortgagor to Mortgagee, and any other present or future indebtedness or liability of Mortgagor to Mortgagee, whether as principal debtor, surety, guarantor, endorser or otherwise, will be secured by this instrument until it is satisfied of record. It is further understood and agreed that Mortgagee, at the written request of Mortgagor, will satisfy this mortgage whenever: (1) Mortgagor owes no indebtedness to Mortgagee, (2) Mortgagor has no liability to Mortgagee, (3) Mortgagor requests satisfaction in writing, and (4) Mortgagee is not agreed to make any further advance or advances to Mortgagor. The Mortgagor shall remain liable for all payment of the principal and interest on the Note(s) (or any advancement or obligation) secured hereby, notwithstanding any of the following: (a) The sale of all or a part of the premises, (b) the assumption by another party of the Mortgagor's obligation hereunder, (c) the forbearance or extension of time for payment or performance of any obligation hereunder, whether granted to Mortgagor or a subsequent owner of the property, and (d) the release of all or any part of the premises securing said obligations or the release of any party who assumes payment of the same. None of the foregoing shall in any way affect the full force and effect of the lien of this Mortgage or impair Mortgagee's right to a deficiency judgment (in the event of foreclosure) against Mortgagor or any party assuming the obligations hereunder.

10. WAIVER OF HOMESTEAD, REDEMPTION AND APPRAISAL RIGHTS. The Mortgagor does hereby expressly waive, release and discharge any and all homestead exemption, right of redemption or right of appraisal in the event of foreclosure, as allowed by the laws of the State of South Carolina, until the entire amount under all Notes secured hereby are paid in full.

WAIVER OF APPRAISAL RIGHTS, IF ALLOWED BY LAW. If in the event of foreclosure of this Mortgage a deficiency judgment is requested against Mortgagor, and if at the time of such foreclosure the laws of South Carolina allow and authorize an obligated party to knowingly waive statutory appraisal rights, Mortgagor agrees to and does hereby waive any and rights of appraisal as to the property in connection with the foreclosure of the subject property and Mortgagee's right to seek a deficiency judgment against Mortgagor if the debt hereby secured is not satisfied from the net sales proceeds from the foreclosure sale.

11. DEFAULT. Failure to make any payments or perform any acts required by the note(s) or this instrument shall constitute default by the Mortgagor.

12. ASSIGNMENT OF RENTS, LEASES AND PROFITS. Mortgagor hereby sets over, assigns, transfers and grants a security interest in any and all rents, leases, and profits of the said premises herein described, provided, however, that so long as no Default has occurred, Mortgagor shall be entitled to collect and retain all such rents, leases and profits. In the event of Default, all rents, leases and profits shall be payable and delivered to Mortgagee and Mortgagor hereby authorizes Mortgagee to notify any and all tenants of this assignment and that all payments of rents, leases and profits should be made directly to Mortgagee.

13. APPOINTMENT OF RECEIVER. Upon the event of a Default, Mortgagee shall be entitled to the appointment of a receiver of the rents, leases, and profits of the herein described property, with power to receive and recover the same, to dispossess tenants, to lease the premises, to operate and manage the premises, to pay the taxes and assessments thereon, to keep the same insured, and to make all necessary repairs thereon, and with such other powers as may be necessary. The receiver, after deducting all charges and expenses attending execution of such duties as receiver, shall apply the residue of said rents, leases and profits to the payment of all sums hereby secured or of any deficiency which may arise after applying the proceeds of the sale of the said premises to the amount due, including interest, costs, and expenses of such

foreclosure and sale. Mortgagee and the receiver shall be entitled to review and have access to the books and records used in the operation and maintenance of the subject property.

14. ENVIRONMENTAL MATTERS. Mortgagor agrees to indemnify and hold Mortgagee harmless from and against, and to reimburse Mortgagee with respect to, any and all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including reasonable attorney's fees and court costs) of any and every kind or character, known or unknown, fixed or contingent, asserted against or incurred by Mortgagee at any time and from time to time by reason or arising out of any violation of any federal, state or local health, safety, or environmental laws, ordinances, and regulations, requiring the removal of, or otherwise regulating the maintenance, storage, transportation or disposal of any hazardous substance or any other toxic substances, asbestos, contaminants, petroleum products, or radioactive materials. The provisions of this paragraph shall survive the satisfaction or release of this Mortgage and the satisfaction of the Note(s) and shall continue thereafter in full force and effect.

The Mortgagor shall pay when due the cost of providing to Mortgagee, at Mortgagee's request from time to time, a then-current environmental site assessment, audit or survey of the property described in this Mortgage, which shall be prepared by an environmental person or company acceptable to Mortgagee, in Mortgagee's sole discretion; provided, however, that Mortgagee shall make such request no more frequently than once every year unless the note is being renewed, extended, modified, or accelerated, or unless Mortgagee is required by any laws, regulation, order or other directive from any regulatory agency having jurisdiction over Mortgagee to obtain any such assessment more frequently than once a year. If Mortgagor fails to pay the cost of any assessment or the cost of any remediation to the subject property to correct deficiencies highlighted in an assessment, when due, Mortgagee may pay such cost on Mortgagor's behalf and the same shall constitute principal under the Note and be secured by the subject property, and shall be due and payable on demand. Mortgagor's failure to pay such amount (with all accrued interest) in full within ten (10) days of the date of such demand shall constitute an event of default entitling the Mortgagee to accelerate the maturity of the Note.

15. APPRAISAL. Mortgagor shall pay when due the cost of providing to Mortgagee, at its request, from time to time, a then-current appraisal if the market value of the property prepared by an appraiser acceptable to Mortgagee, in its sole discretion; provided, however, that Mortgagee shall make such request no more frequently than once every two (2) years, unless Mortgagee is required by any law, regulation, order or other directive from any regulatory agency having jurisdiction over Mortgagee to obtain any such appraisal more frequently than every two (2) years. If Mortgagor fails to pay such costs when due, Mortgagee may pay such costs on Mortgagor's behalf and the same shall constitute principal under the Note, shall bear interest at the applicable rate provided in the Note, and shall be due and payable on demand. Mortgagor's failure to pay such amount (with all accrued interest) in full within ten (10) days of the date of such demand shall constitute an event of default entitling the Mortgagee to accelerate the maturity of the Note.

16. DEFINITIONS. As used herein the terms "Mortgagor," "Mortgagee" and other terms shall refer to the singular, plural, neuter, masculine and feminine as the context may require and shall include, be binding upon and inure to the benefit of their respective heirs, successors, legal representatives and assigns.

AND IT IS AGREED by and between the parties that in the case of foreclosure of this Mortgage, by suit or otherwise, the Mortgagee shall recover of the Mortgagor a sum as attorney's fees as set out in said Note(s) which shall be secured by this Mortgage, and shall be included in judgment of foreclosure.

BUT THIS CONVEYANCE IS MADE UPON THIS SPECIAL CONDITION: If, however, there shall be a default in the performance of any of the covenants, terms and conditions of this Mortgage, or under the Note(s) or any advance secured hereby, all sums owing to Mortgagee hereunder or under said Note(s), regardless of maturity and without notice, shall immediately become due and payable at the option of Mortgagee, and Mortgagee may foreclose this Mortgage by Judicial Proceedings.

IN WITNESS WHEREOF, this Mortgage has been duly signed, sealed and delivered by Mortgagor the
and year first above written.

Carolyn M. Reynolds
Witness

Frederick Mark Wilson
Frederick Mark Wilson

W. Blackmon Huckabee
Witness (Notary)

State of South Carolina)

PROBATE

County of Lancaster)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within
signed Frederick Mark Wilson sign, seal and as their act and deed deliver the within written Mortgage of Real
Property, and that (s)he with the other subscribing witness, witnessed the execution thereof.

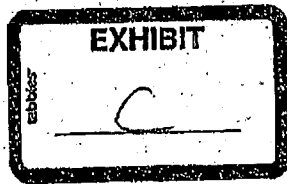
TURN to before me this 18th
day of April, 2005

W. Blackmon Huckabee (L.S.) Carolyn M. Reynolds
Notary Public for South Carolina

Commission Expires: My Commission Expires
September 21, 2010
William Blackmon Huckabee
Notary State of South Carolina

BEGINNING at a nail set in the centerline of the 66' right of way of S 29-51 (Camp Creek Road) and running thence with said centerline, South 61-44-37 West 391.55 feet to a nail found, a common corner with the Douglas A. Wise property (47/131 Plat 99/354 Tax Parcel 37-3.03); thence with the said Wise property, two calls as follows: 1st North 27-38-36 West 885.83 feet (crossing an iron found at 33.07 feet) to an iron found; South 72-21-57 West 537.12 feet to an iron found, a common corner with the Timothy P. Cauthen property (57/248 Plat 15287 Tax Parcel 37-3.02); thence with the northern boundary line of the said Cauthen property, South 74-58-18 West 824.93 feet to an iron found, a common corner with the Frank P. Lopez property (W0/279 Plat 11668 Tax Parcel 37-3.04); thence with the northern boundary line of the said Lopez property, North 78-14-33 West 571.28 feet to an iron found, a common corner with the Gregg P. Shipston property (X0/122 Plat 10649 Tax Parcel 37-3.01); thence with the said Shipston property, two calls as follows: 1st North 13-00-38 West 261.78 feet to an iron found; 2nd North 89-12-46 West 648.11 feet to an iron found in the centerline of the 66' right of way of S.C. Mockingbird Lane (50' right of way of N.C. Gus Eubanks Road); thence with said centerline, six calls as follows: 1st North 00-18-21 East 283.54 feet to a point; 2nd North 06-16-30 East 21.51 feet to a point; 3rd North 01-13-16 East 83.39 feet to a point; 4th North 08-55-51 West 83.43 feet to a point; 5th North 10-15-40 West 120.35 feet to a point; 6th North 03-38-50 West 79.92 feet to a point, a common corner with the Gladys Autry property; thence with the southern boundary line of the said Gladys Autry property, South 07-10-52 East 534.71 feet to an iron found, a common corner with the Richard Autry property (372/338); thence with the southern boundary line of the said Richard Autry property, South 85-47-19 East 1,393.75 feet to an iron found in the southern boundary line of the Richard Autry, Jr. property (461/141); thence with the said southern boundary line of the Richard Autry, Jr. property, South 85-43-56 East 897.45 feet to an iron found, a common corner with the Edwards Wood Products property (450/587); thence with the said Edwards property, North 83-45-11 East 787.85 feet (crossing an iron set at 757.85 feet) to a point in the centerline of the Lynchess River; thence with the centerline of Lynchess River, twelve calls as follows: 1st South 51-42-41 West 87.13 feet to a point; 2nd South 30-12-50 West 47.28 feet to a point; 3rd South 09-40-29 West 41.97 feet to a point; 4th South 30-59-50 West 136.56 feet to a point; 5th South 36-29-26 West 128.10 feet to a point; 6th South 31-04-26 West 285.20 feet to a point; 7th South 66-50-11 West 90.47 feet to a point; 8th South 38-37-40 West 41.27 feet to a point; 9th South 16-40-34 West 140.22 feet to a point; 10th South 04-56-30 West 39.41 feet to a point; 11th South 16-49-08 East 47.69 feet to a point; 12th South 17-07-30 West 86.41 feet to the point and place of BEGINNING and containing approximately 82.69 acres as shown on that survey by Thomas M. Park, S.C.R.L.S., dated November 27, 2000 and being the same property conveyed to Grantor in Deed Book C6/4835 Tax Parcel 37-3.00.

Being the identical property conveyed to C. Ingram Walters by Deed of F. Mark Wilson, Jr., a/k/a Frederick Wilson, Jr. dated May 1, 2001 and recorded May 2, 2001 in Deed Book 117 Page 140, Register of Deeds Office for Lancaster County, South Carolina.



3-6-08

To: Keith Jayma

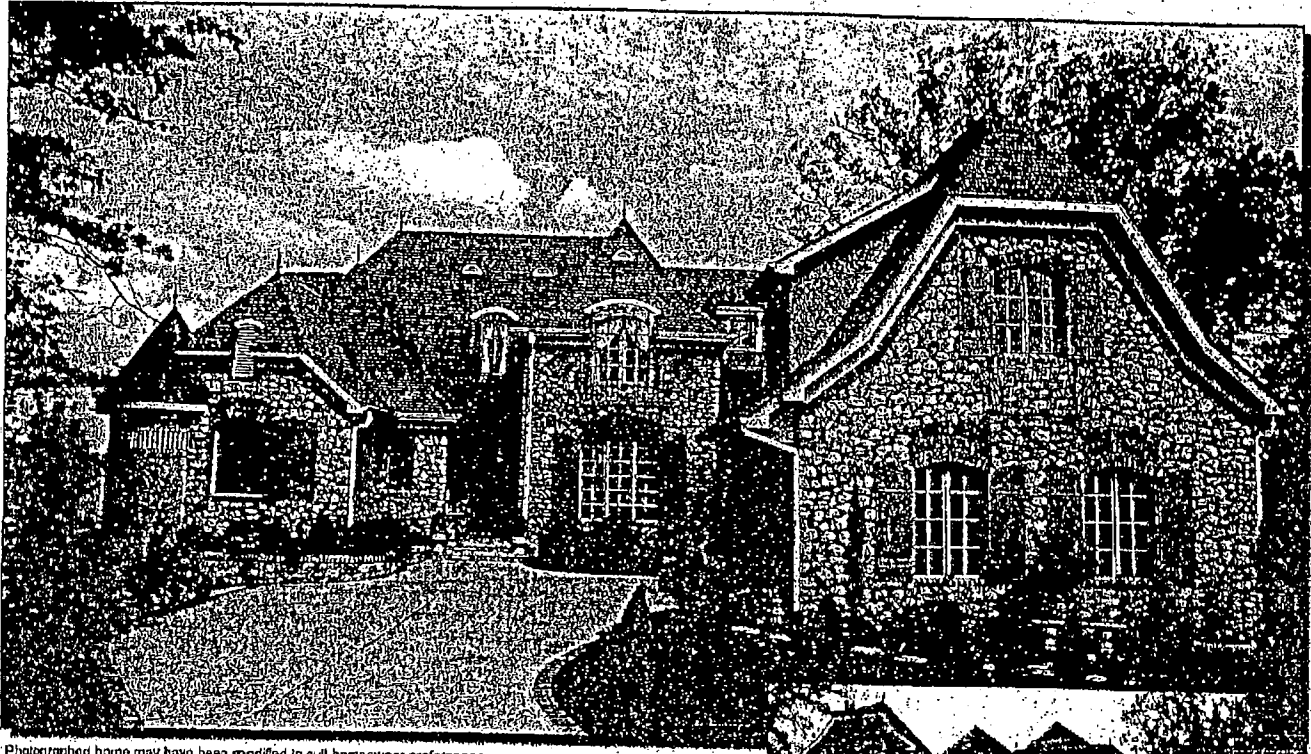
From: F. MARK WILSON

— Personal and Confidential —
3 pages total

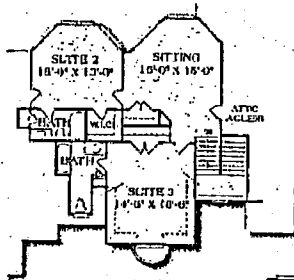
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OFFICE OF CLERK
OF COURT
2016 SEP 30 PM 1:18
CLERK OF COURT
LANCASTER, SC

◇ I signed over, with no legal representation and to an attorney that you have used many times, not 25 acres but my entire 63 acres, with absolutely no money changing hands. And you said you were snookered, too! I've been deceived, defrauded, tricked and shammed. When your wife called you a

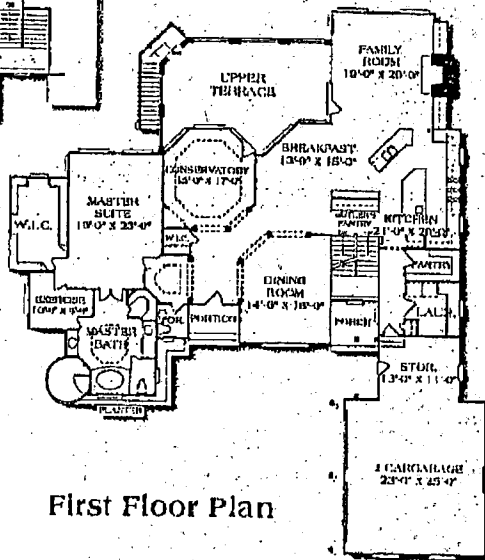
The Waystrode



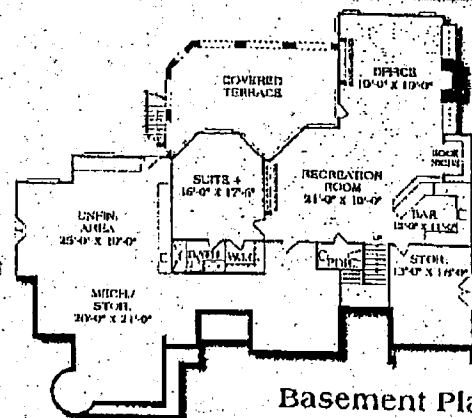
Photographed home may have been modified to suit homeowner preferences.



Second Floor Plan



First Floor Plan



Basement Plan

First Floor	2,981	Sq. Ft.	Bedrooms	4
Second Floor	1,017	Sq. Ft.	Baths	3 Full - 2 Half
TOTAL	3,998	Sq. Ft.	Width	79'-4"
Basement	1,471	Sq. Ft.	Depth	91'-0"
			Foundation	Basement

SUNMARK
HOMES

704-320-5273
Sup. R. 11000189

SUNMARK HOMES

Is lead by F. Mark Wilson, a gentleman with over 27 years of experience and impeccable reputation for building quality homes.

His primary focus is to incorporate new, interesting, and sophisticated ideas into each home, while still maintaining those features that have always remained traditionally and architecturally correct. He holds UNLIMITED contractor's license in both NC and SC, he is also able to provide full design and architectural services in developing a plan for your new custom home.

He has built homes with "Smart House" and "Elan" state-of-the-art home wiring technologies and won awards for Best Kitchen at the International Tour of Homes in Piper Glen Country Club and Best Landscaping at HomeArama in Providence Country Club.

F. Mark Wilson's exquisite taste can be admired in very well know communities in North and South Carolina such as Piper Glen, Providence Plantation, Providence Country Club, Providence Downs South and The Estates at Longbrooke.

He exceeds his customer's expectations by using only high quality materials, skilled workmanship and excellent supervision through out the entire process. That is why every one of his homes is a true work of art.

✱

✱

In October 2005, I went over the entire interior trim package including all materials to be used and their cost with Jack Richardson at ITC Millwork. His son Jason gave me a price of \$1.50 per square foot to install that trim package. When Keith Jayma failed to pay ITC for the Real Estate Office doors they shut down my account. I was forced to scramble for interior trim, even using lumber yard trim and doors from Stock Supply. It also took 6 other vendors for a total of 7 suppliers to piece together this trim package and 6 different subcontractors to do the labor. This took a tremendous amount of extra time and effort on my part because of Keith Jayma's involvement. The interior trim took 6 months to complete, not 6 weeks because of Keith.

Vendors:

1. STOCK: doors, casing, crown
2. The Building Center: door and window casings
3. 84 Lumber: Mahogany front door surround and elliptical arches
4. Contractor Yard: mantel board
5. American Legacy Staircase: special crown, staircase
6. Diamond Hill Plywood: Judges panels
7. ITC millwork: cedar brackets, 8x8 and shoe mold; reopened account

Keith Jayma

From: "Joannah Thompson" <ThompsonJ@firstcharter.com>
To: "Keith Jayma" <keith@lendinglocal.com>
Sent: Thursday, September 15, 2005 2:43 PM
Subject: RE: 25 acres

Joannah B. Thompson
Vice President
Consumer Loan Officer

FIRST CHARTER
INVESTMENT SERVICE

Mailing Address:
P.O. Box 37937
Charlotte, NC 28237-7937
thompsonj@firstcharter.com

6310 Fairview Road
Charlotte, NC 28210
704-688-1424
704-367-5461 Fax
704-408-7210 Cell

Financial, Retirement, College Planning • Life/Long Term Care Insurance
Securities offered by UVEST Investment Services
Member NASD, SIPC

Got you approved. Just waiting for an address to send out an appraiser.
When will the property be deeded to you? Can you get me a copy of the
book and page once it is recorded?
Can you send me your latest pay stub?

65% of appraised value.
7.25% fixed
24 months interest only

Here are your other choices:

Fixed Rate	Variable Rate	Term
7.625	N/A	120 months
7.125	p + .25	240 / 60

Good thing you told Joannah
that this loan, using my land,
was for "MARK and HIS
GIRLS." It would be

From: Keith Jayma [mailto:keith@lendinglocal.com]
Sent: Thursday, September 15, 2005 9:44 AM
To: Joannah Thompson
Subject: Re: 25 acres

your word against my word
as to the use of this loan.

Mark's number is 704-321-5230.

He can work the details with you. Did you talk to him?

----- Original Message -----

From: Joannah Thompson
To: Keith Jayma
Sent: Thursday, September 15, 2005 9:34 AM
Subject: RE: 25 acres

Ok. Mark is getting an address for me. I'm going to give it a value of \$200k and see what it appraises for.

From: Keith Jayma [mailto:keith@lendinglocal.com]
Sent: Thursday, September 15, 2005 9:37 AM
To: Joannah Thompson
Subject: Re: 25 acres

An appraiser said it was worth about 7K to 8K per acre. However, I do not think Mark has a current
appraisal.....Also, I think the property is in South Carolina. Mark's acreage is like Carowinds, its on the border,
some in NC, some in SC.

Keith

----- Original Message -----

From: Joannah Thompson
To: Keith Jayma

You asked me to look over this quote.
 It says 92,904, you said you
 spent 120,000+ What was the permit?

One Source Plus
 11336 Camel Commons Blvd
 Charlotte, NC 28226

SUMMARY:	Directs	77,268	Site Work	1,800	Total SF	1500
	Indirects	5,002	Drywall	16,287		
	Subtotal	82,270	Ceilings	3,200		
	Print and Overhead	0,004	Painting	3,525		
	Grand Total	92,904	Floor covering	5,216		
PRICING PREPARED			Doors and Hardware	7,020	Project Total	12,004
			Millwork	4,045	SF Cost	\$8.97
			Specialties			
			Plumbing	7,000		
			HVAC	13,700		
			Electric	14,075		
			Total Directs	77,290		
		7/26/2006				
		Per 7/25/08 Meeting				

SUBCATEGORY	UNIT	QTY	UNIT COST	ITEM TOTAL	SUBTOTAL \$
Site Work					1,800

Cleaning	Flint	LS	1	300	300
Concrete	Core drilling (2nd Floor)	LS	1	1500	1,500

Drywall					16,287
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Walls	Frame, hang and finish interior partitions	LF	230	50	11,500
	Frame hang and finish demising wall one side	SF	1548	2.4	3,739
Insulation	Perimeter walls	SF	500	0.75	455
	Restroom walls	SF	1778	0.5	889
	Office walls at Office 1, 2 and 3 with dense insulation	SF	303	0.75	229

Ceilings					3,200
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Install 2 x 2 grid and tin per plans	SF	1600	2	3,200	
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Painting and Wall Finishes					3,525
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Latex	Walls using three colors eggshell	SF	5490	0.40	2,196
	Doors and Frames using semi gloss enamel	EA	10	100	1,000

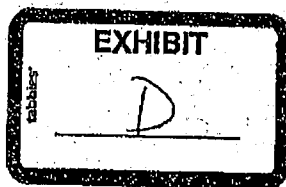
Floor covering					5,216
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Flooring	Carpet	SY	155	13	2,025
	Using a 323 per yard installed allowance				
	Permit Tile in restrooms and breakroom	SF	225	5.5	1,238
	Prefinished Hardwood in reception and hall	SF	300	6.5	1,950

Doors and Hardware					7,020
---------------------------	--	--	--	--	--------------

Doors	3 x 8 solid core wood with 612 round frames with glass sidelights	PER	10	275	2,750
		PER	10	150	1,500
Windows	8 x 10 Window with Wood Trim	LS	1	1400	1,400
Hardware	Solidage Lever Handle Lockset	PER	7	25	505
	Solidage Lever Handle Passage	PER	1	65	255
Bath Access.	Grab Bars	PER	4	45	180
	Toilet Dispensers	PER	2	45	90
	Soap dispensers	PER	2	25	50
	Tissue dispensers	PER	2	35	70
	24" x 36" Mirror	PER	2	65	130

NEXSEN|PRUET



Sean M. Phelan
Member
Admitted in NC

September 12, 2008

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
AND FIRST CLASS MAIL**

Mr. Keith Jayma
9817 Pallisers Terrace
Charlotte, North Carolina 28210

RE: 10010 Strike The Gold Lane, Waxhaw, North Carolina 28173

Dear Mr. Jayma:

This firm represents F. Mark Wilson with regard to the business endeavor between you and Mr. Wilson for the development of 10010 Strike The Gold Lane located in Waxhaw, North Carolina.

We have been apprised of the events surrounding this transaction by Mr. Wilson, and it is clear that you two gentlemen created a general partnership to develop the property at 10010 Strike The Gold Lane. As such, you are obligated to the partnership and Mr. Wilson as a general partner; he is owed a fiduciary duty, the right to inspect books and records, the right to an accounting of partnership financial records, and the right to be involved in the partnership business, including any decisions regarding the sale of the 10010 Strike The Gold property.

By virtue of the deed from Mr. Wilson to you containing 63 acres of land in Lancaster County, South Carolina rather than the intended 25 acres, the encumbrance thereof by the SunTrust credit line, your failure to account for financial records relating to 10010 Strike The Gold, your expressed intention to sell the 38 acres in Lancaster County, South Carolina that was not intended to be partnership property, and your personal acceptance of construction loan funds meant for the 10010 Strike The Gold property, you are in violation of North Carolina Statutes and common law governing partnerships.

FILED
OFFICE OF CLERK
OF COURT
SEP 10 PM 1:18
CLERK OF COURT
LANCASTER, SC

201 S. Tryon Street
Suite 1200
Charlotte, NC 28202
www.nexsenpruet.com

T 704.338.5348
F 704.805.4711
E SPhelan@nexsenpruet.com
Nexsen Pruet, PLLC
Attorneys and Counselors at Law

NPCHLT1:235085.1-TBF-(SMP) 700000-02100

Sup. R. II 000194

Mr. Keith Jayma
September 12, 2008
Page 2

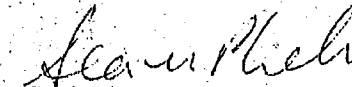
We hereby demand, on behalf of Mr. Wilson, the following: (1) that you cease the sale of 10010 Strike The Gold home until such time as Mr. Wilson has been provided the books and records of the partnership and has approved such sale; and (2) re-conveyance of the 63 acres from you to Mr. Wilson free and clear of any and all liens and encumbrances placed thereon following the November 4, 2005 conveyance to you.

Because Mr. Wilson is a partner in the 10010 Strike The Gold property, he has an equitable lien in the property and if necessary we will seek to enforce the lien against you and/or any subsequent purchaser. Furthermore, we hope that this issue can be resolved without the necessity of having to include First Charter Bank and SunTrust, however, if this cannot be resolved by the terms above, we will have no choice but to seek remedies against you and all other appropriate parties.

Please contact me at your earliest convenience to provide a proper accounting of the partnership books and records and to provide for the re-conveyance of Mr. Wilson's property.

Sincerely,

Nexsen Pruet, PLLC



Sean M. Phelan

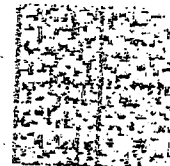
SMP/dw
cc: F. Mark Wilson

NEXSEN|PRUET

201 S. Tryon Street
Suite 1200
Charlotte NC 28202



7004 1160 0004 0416 1409



05/12/2004
\$05.32
US POSTAGE

Sue Kueser

541-3433

Martine

541-5780

10AM

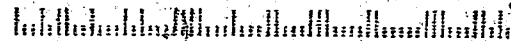
LANG

Joes

Mr. Keith Jayma
9817 Pallizers Terrace
Charlotte, North Carolina 28210

Karl Lindholm
544-0732

2821057706 C039



SPK S44

2161 Trees

City View

natural

structure

7-14-71

Alameda 7-14-71

I have been wondering how many children's lives and families you have impacted, from the education they'll end up getting, to the homes they will live in, by making all of those liar loans.

I had a well respected law firm contact you to try and resolve our issues before a full blown investigation was started. I know you got their letter because Michael Alvarez told me personally about your reaction, among other things. Unfortunately I was unable to pursue you in court at that time, for over 2 years I have been dealing with the sub-prime mortgage shit you got me into. Are there any lawsuits against mortgage lenders? If there are, I'd like to be included in one.

From the evidence I have received from you and others I believe you have exposed yourself in a full blown fraud scheme, committing mortgage fraud, bank fraud, business fraud, insurance fraud, conspiracy and collusion to commit fraud, in other words a "REAL FRAUDSTER" you have lied about the facts, provided fake information, fraudulently, misleadingly and deliberately obtained a loan and insurance for a purpose other than it was intended for.

EXHIBIT

Sup. R. I

000197

E

2.
You have concealed those improper practices from me and the banks to deliberately deceive us. You have unjustly enriched yourself. Why do you have to lie so much? The truth may take a lot of time and money to uncover but it hasn't gone anywhere. All the evidence and all the documentation is still there. First Charter "has" documented the stated purpose and reason for the loan. First Charter "has" documented the stated purpose and reason they released a final check to you and in my construction company's name, nothing there was done right. Somehow you were able to convince someone to issue that check to you. Someone removed my signature from the construction contract that I furnished to you as a licensed General Contractor, all of this supposedly orchestrated at your direction, for each and every bank and loan officer you dealt with. I don't know how you did it all, it will have to come out in discoveries and depositions. I can get this documentation and evidence from a thorough investigation of all the bank records and from the loan officers you dealt

with direct, starting first with Joannah
Thompson. I am prepared to retain an
attorney and start a full blown investigation
of all your deceptive activities and shady
entanglements. Every Monday I have been
working on my document books about you and
your lies. Everything you have done has been
documented and recorded. I have developed three
legal boxes full. I just have to get my attorney
to put it all together. I wish I could but when
I approached First Charter to find out why
they had issued a check to you, without me
knowing about it or signing an affidavit and
in my company's name, they said at first
"it wasn't done right" and then they said
they could not talk about it without me filing
a lawsuit. First Charter may have some
liability along with yours. It may take
an all out investigation to determine how and
who you deceived and tricked into doing
what they did for you and who forged my
name on First Charter's check. Two felonies
were committed in forging my name on that
\$30,000+ check. You have hidden and concealed
all of this for a very long time. That check

4.
carries a lot of leverage. You deliberately
concealed the fact that you immediately
contracted with Carolina Home Buyers Realty
and placed the home on the market for sale
with your wife and Jason Wisofow. What
was SemMark Homes and who paid the
LLC fees? You even had a business card
printed with your name on it as a "Home
Builder". I don't care for your fabrication
of lies, facts and/or figures. I will let
the law determine whose facts and figures are
right. The house was "always" listed for
sale by you, it was just "always" listed
in the wrong area by Diana Jayma and
Jason Wisofow. No wonder the First Charter
draw inspector "freaked out" when he saw Jason's
"FOR SALE" sign in the yard, "this house isn't suppose
to be for sale!" If I listed all the wrong in
your actions this letter would go on and on. You
really stuck your foot in your mouth when you
put in writing that you couldn't keep the
house "as financed". What was discussed about
me, as a licensed General Contractor, building you
a 2nd home? What was agreed on to use my

And to finance your 2nd home? How much money would I be paid to build your 2nd home as it was financed? You've turned out to be quite a shady character, a real flim flam artist, as my dad would say "they're a dime a dozen". The money from my land was for "Mark and his girls" your quote to Joannah Thompson as to the stated purpose of that loan, it will be easy to prove in court and one of the very first things to prove.

Your alienation of subcontractors, mostly by not paying them, including Amy with Harmour Wright, Jonas Morales, Mel Deese, Melody Bradshaw and others cost a lot of extra time in finishing construction. When Diana and Jason wanted an open house, Jonas was busy in mouse painting Chuck Horne's house. When you shit Mel Deese \$5,000 on the mortgage office he wouldn't come back to the house. When you sent Melody Bradshaw a check of what you thought was "fair" she wouldn't give me the paint colors on the house when you asked for them. Do you see a pattern here? Your shady behavior has

Left a good stinky trail. You "fire sold"
the house using my farm as your safety net.
I'm prepared to find out and prove what
you've really been up to behind everyone's back,
all those twists and turns. It seems after
all these years that \$5,000 to \$10,000 in
depositions might shake things out, starting
with First Charter, you, Joanna Thompson,
Mel Deese, Melody Bradshaw, Texas
Morales, Michael Alvarez, Diana, Jason & Amy.

Your words are always biased. I don't
want your Mel Deese, Melody Bradshaw, Texas
Morales, Amy or any other explanation of
what you think is fair or in "your opinion
this check is adequate" answer. You have
had a golden opportunity to fix this.
Since you seem to have the loudest bark,
outside of the courtroom, the only communication
I will allow you is an e-mail, fmbuilder5@
hotmail.com. I have been wronged by you
and I have the evidence.

The first thing I plan to do is take a
copy of the check I discovered with my forged
signature to the FBI, "forgery of US funds" quote

-from attorney Underwood. You didn't even tell me about that check and you didn't even think I would see it, I did! What a crook!

Then I am going back to my attorney to discuss my options, based on what he said in his letter to you but updated with the new evidence I have discovered and what he should discover. I am sure there is a lot more.

Then I am going to have my attorney file a reformation of the deed to my farm, based on fraud, conspiracy, collusion, conversion, misrepresentation, unfair and deceptive trade practices, negligence, deceit and mistakes made in transferring that farm to you and mistakes made by the law firm of Blackmon Huckabee, to include Greta meeting me at Honda Cars of Rock Hill, not in Blackmon's office and not having all parties present and no consideration.

EXHIBIT

4 *Wilson*
 Huseby.com
CREATING VALUE THROUGH
INTEGRITY & EXCELLENCE
7-7-17

CONTRACT FOR RESIDENTIAL CONSTRUCTION

AGREEMENT

Made as of the 24th day of August, 2005.

BETWEEN the OWNER: Keith Jaymu.
9817 Pallisers Terrace
Charlotte, NC 28210

And the CONTRACTOR: F. Mark Wilson Construction
7602 Gus Eubanks Rd.
Monroe, NC 28112
Unlimited N.C. License #26620
Unlimited S.C. License #9794

The Project location: LOT 163 on Strike the Gold in Providence Downs South.

ARTICLE IV

CONTRACT AMOUNT

The Contract Amount for the Work described in Exhibits A & B is the actual cost to complete which is estimated to be \$822,625.00

ARTICLE V

DEPOSIT AMOUNT

The deposit amount shall be \$1,000,000. This amount is due and payable upon execution of this contract as witnessed by the signature here within.

ARTICLE VI

CHANGE ORDERS

The CONTRACTOR agrees to work closely with the OWNER to target the amount reflected on the ESTIMATE GUIDE. The OWNER and CONTRACTOR shall meet regularly to evaluate the status of work relative to the ESTIMATED BUDGET. Additionally, during the regular meetings, any change the OWNER would like to make to the project will be discussed.

There shall be no CHANGES or ADDITIONS to the Work as described in the CONTRACT DOCUMENTS, except those in the form of written change orders which have been signed by both the OWNER and the CONTRACTOR, as well as setting out the additional charge or credit to the OWNER, as well as additional time for the CONTRACTOR to comply with the change order.

ARTICLE VII

PAYMENT SCHEDULE

The CONTRACTOR shall submit to the OWNER a JOB COST LEDGER. Attached to these Reports will be copies of the actual invoices for which payment has been requested.

The CONTRACTOR shall receive payment for WORK IN PROGRESS as the work progresses.

ARTICLE VIII

OTHER PROVISIONS

This AGREEMENT BETWEEN OWNER AND CONTRACTOR shall be governed by the laws of the State of North Carolina.

The OWNER or his or her agent may enter and inspect the Work for the purpose of determining whether the WORK performed or being performed conforms with the CONTRACT DOCUMENTS.

If the CONTRACTOR voluntarily or involuntarily goes into bankruptcy or receivership, or if the CONTRACTOR fails to make any significant progress on the WORK for a period of 30 days after commencement of the WORK, then in any of these events, the OWNER may, after seven (7) days written notice, direct the CONTRACTOR to cease work. Adverse weather as described in Article III is specifically excluded from counting against the 30 day period above referenced. Upon such default, in addition to any other remedies the OWNER may have, the OWNER may retain another party or parties to complete the WORK in accordance with the CONTRACT DOCUMENTS and make payments to such parties as provided for in the CONTRACT DOCUMENTS with respect to the CONTRACTOR.

AGREEMENT BETWEEN OWNER AND CONTRACTOR, or the breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect.

Each provision of this AGREEMENT BETWEEN OWNER AND CONTRACTOR is separate from every other provision contained here within, and if any provision is determined to be unenforceable or is revised, it will not affect the enforceability or validity of any other provision.

This agreement entered into as of the day and year first written above.

OWNER(S)

CONTRACTOR

_____ (seal)

_____ (seal)
F. Mark Wilson
F. Mark Wilson Construction

_____ (seal)

9/6/05

To: Keith Jayma

From: F.M. Wilson

Personal and Confidential

5 pages including cover

EXHIBIT

9 Wilson
Huseby.com
80 YEARS OF
7-7-17

Hey Buddy

9/6/05

I recieved your E-mail which included the closing statements on lots 31, 52 & 53, congratulations and your request for a subcontractor agreement from Blackmon.

I was trying to E-mail you back to say thank you. You will have to send Robert, Michael and me in my back yard.

You have proven to me that you will do whatever it takes to get the job done. You have shown me how genuine you are. Everything you have said you would do, you have done. At our first meeting, at the apartment complex, I expected you to show up in a suit and tie like Brian. Instead you were warm, professional and engaging. I think that first meeting lasted 2 hours.

You have included me or at least invited me to be included in many things, birthday parties, baseball, football, poker games, your X-mas party and the Blackovia golf tournament. You have treated me to many lunches, meals and Wolfman Pizzas. You have really stepped up to include me and to encourage me.

I am ready to step up and do my part by furnishing my expertise in building. You know, probably better than anyone, where I am financially. Your initial loan was beneficial to me and my family. My initial request was \$75,000 and you tried to get King to do \$100,000.

page 2

I based my request on a monthly budget of \$6,000 and I thought that within a year I would be employed as a project manager for one of the larger homebuilders, i.e. Arcadia, Simonini, Diener. Your initial loan of \$32,000, minus the back taxes of \$2,500 and the closing costs have carried me the past 5 months. Without any other income, I find myself at that crossroads again. Nothing is worse than being underfunded except not being funded at all.

Think about this; I will deed the entire 63 acres to you. You obtain a business line of credit using the land as collateral. Ingram, American Community Homes, got a \$275,000 line from First Charter. I paid him back \$275,000 to get it back, March 2004. You can determine your own figure but I was thinking \$200,000, less than 50% LTV. I know you have your own money but this line of credit could pay me; it could pay the interest expense on all your construction loans; it could pay subcontractors like Doggett Concrete until bank draws are made or down payments on new lots including closing costs.

Andy Harper, an appraiser in Lancaster County told me he is appraising land in that part of the county for \$8,000 per acre. $63 \text{ acres} \times \$8,000 = \$504,000$. You've been the written offers I've received. Ottenger offered \$10,000 for the entire 1300 acres.

Wilson Budget 4-26-05

1. Contractor license fees	\$250/yr.	\$ 21/mo
2. Time Warner Cable + taxes		\$ 65/mo
3. Road Runner internet +taxes		\$ 30/mo
4. Nextel cell phone		\$ 70/mo
5. Celtic medical insurance		\$236/mo
6. N.C.C.S		\$483/mo
7. Vacations \$1,500 / 12		\$125/mo
8. Honda Car payments \$340+265		\$606/mo
9. Honda Car Insurance \$555x12/4		\$185/mo
10. Union County Car taxes \$125x3/12		\$ 31/mo
11. Car fuel, oil changes, tires, wiper blades, inspections, tags, repair expenses, other		\$200/mo
12. Clothes, shoes, jewelry, shopping, toys, games		\$100/mo
13. Food, groceries, household supplies, dining out		\$1,200/mo
Mon. \$25 Tues. \$25 Wed. \$25 Thurs. \$20 Fri. \$45 Sat. 60 Sun. \$55 Groc. \$75		
14. Medical, CVS, Eckerd, cold medicine, dental, Eye care, exams, glasses		\$167/mo
15. Kim and Amber Orthodontists		\$ 90/mo
16. School, book bags, books, office max, supplies		\$ 25/mo
17. Attorney fees		\$variable
18. Home Mortgage		\$1550/mo
19. Farm Mortgage		\$277/mo
20. Yard maintenance, cut 8 months, April thru Nov.		\$ 82/mo
\$60/mo x 8 mo. \$480, fertilizer, seed, lime \$350, clean gutters, chemicals, pine needles \$150.		
21. Homeowner's dues \$400/yr		\$ 33/mo
22. Homeowner's insurance \$650/yr		\$ 54/mo
23. Utilities, electric, water, and sewer		\$250/mo
\$150 to \$350/mo, average \$250 x 12 = \$3000/yr		
24. Union County an Indian Trail property taxes		\$142/mo
\$1700/yr		
25. Personal expenses		\$ 37/mo
Total		\$6,000/mo

Need \$6,000/mo \$72,000/yr. Not including any attorney fees, advertising expenses, or extended medical or vacation expenses

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Commons Pleas
The Honorable John C. Hayes, III

RECEIVED

APR 08 2019

Case No.: 2012-CP-29-498
Appellate Case No.: 2017-002223

SC Court of Appeals

Mark Wilson Appellant,

v.

Keith Jayma Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

April 3, 2019

W. Keith Martens

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