

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
In The Circuit Court

Brian Gibbons, Circuit Court Judge
William C. Tindal, Special Referee

Appellate Case No. 2018-001823

First Citizens Bank & Trust Company,

Respondent,

v.

Linda P. Faulkner a/k/a Linda Faulkner,
Founders Federal Credit Union, and
CACH, LLC,
of whom Linda P. Faulkner is the

Appellant.

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SC Court of Appeals

RECORD ON APPEAL

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Attorney for Appellant

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Mary McDonald Campolong
Sowell Gray Robinson Stepp & Lafitte, LLC
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TATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

First-Citizens Bank & Trust Company,

Plaintiff,

v.

Linda P. Faulkner a/k/a Linda Faulkner,
Founders Federal Credit Union, and
CACH, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

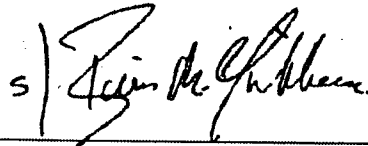
Case No. 2017-CP-29-00872

ORDER
(Striking Jury Demand)

Upon motion of Plaintiff, it is hereby

ORDERED that the jury demand of Defendant Linda P. Faulkner a/k/a Linda Faulkner is
stricken due to the contractual waiver of a right to a jury trial in the loan documents. Wachovia
Bank v. Blackburn, 407 S.C. 321, 755 S.E.2d 437 (2014).

IT IS SO ORDERED.

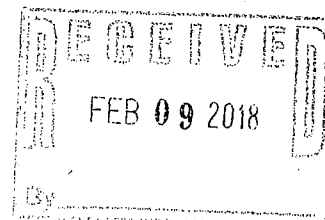


Presiding Judge
Sixth Judicial Circuit

Lancaster, South Carolina.

1-31, 2018

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CLERK OF COURT
LANCASTER, SC



STATE OF SOUTH CAROLINA)

COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS

First-Citizens Bank & Trust Company,)

Case No. 2017-CP-29-00872

Plaintiff,)

v.)

Linda P. Faulkner a/k/a Linda Faulkner,)
Founders Federal Credit Union, and)
CACH, LLC,)

**ORDER OF REFERENCE
AND SETTING COMPENSATION OF
SPECIAL REFEREE
(Foreclosure)**

Defendants.)

IT APPEARING that the above entitled action for foreclosure of a mortgage on real property situated in Lancaster County, South Carolina, is a proper matter to refer to William C. Tindal, as Special Referee; therefore, upon motion of J. Kershaw Spong, Esquire of the law firm of Sowell Gray Robinson Stepp & Laffitte, LLC, attorneys for Plaintiff, it is

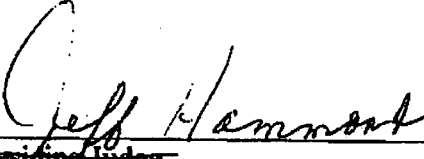
ORDERED that the above entitled action be, and the same hereby is, referred to William C. Tindal, as Special Referee to make findings of fact and conclusions of law; dispose of any and all issues and enter a final judgment in the case; order a judicial sale on any day, not just the regular judicial sale day; hear and dispose of any issues after sale or judgment, including, but not limited to, issuance of a Writ of Assistance and any issues involving appraisal under Code Section 29-3-680, et seq.

Any appeal from the decision of the Special Referee shall be made directly to the Appellate Court, as provided in Rule 203, SCACR.

The Court is further informed that the custom and usage of the Lancaster County Bar is to allow a fee of Two Hundred and 00/100 Dollars (\$200.00) in routine default foreclosures plus the fee allowed by Subsection 15-39-770 and Section 14-11-310 of the 1976 Code of Laws of South Carolina if sold by the Special Referee.

NOW, THEREFORE, pursuant to Rule 53(d) of the South Carolina Rules of Civil Procedure, it is FURTHER ORDERED that the Plaintiff pay to William C. Tindal, Special Referee, the sum of Two Hundred and 00/100 Dollars (\$200.00), plus the one (1%) percent of the gross sale price up to a maximum of Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00), as allowed by Subsection 15-39-770 and Section 14-11-310, if sold by the Special Referee.

IT IS SO ORDERED.



Presiding Judge
Sixth Judicial Circuit

Lancaster, South Carolina.

February 2, 2018

I CONSENT:



STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

First-Citizens Bank & Trust Company,
Plaintiff,

v.

Linda P. Faulkner a/k/a Linda Faulkner,
Founders Federal Credit Union, and
CACH, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2017-CP-29-00872

CERTIFICATE OF SERVICE
BY MAIL

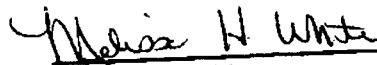
This is to certify that I, Melissa H. White, a Paralegal with the law firm of Sowell Gray Robinson Stepp & Laffitte, LLC, have caused to be served upon the persons named below the Order (Striking Jury Demand) and Order of Reference and Setting Compensation of Special Referee in the foregoing matter by placing copies of same in the United States Mail, postage prepaid, in envelopes addressed as follows:

John Martin Foster, Esquire
Post Office Box 106
Rock Hill, SC 29731

Philip E. Wright, Esquire
Law Office of Philip E. Wright, P.A.
408 North Main Street
Lancaster, SC 29720

Edward H. Overcash, Jr., Esquire
Law Office of Edward H. Overcash, Jr.
37 Villa Road, Suite 507
Greenville, SC 29615

Dated this 7th day of February, 2018 at Columbia, South Carolina.


Melissa H. White

FILED
OFFICE OF CLERK
OF COURT
2018 FEB -9 PM 2:10
CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	
First-Citizens Bank & Trust Company,	)	CASE NO. 2017-CP-29-00872
	)	
Plaintiff,	)	
	)	ORDER DENYING DEFENDANT'S
v.	)	RULE 59 MOTION TO ALTER OR
	)	AMEND
Linda P. Faulkner a/k/a Linda Faulkner,	)	
Founders Federal Credit Union, and	)	
CACH, LLC,	)	
	)	
Defendants.,	)	

Pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, the Defendant Linda P. Faulkner ("Defendant Faulkner") moved to alter or amend this Court's Order dated January 31, 2018, striking Defendant Faulkner's jury demand and the Clerk of Court's Order dated February 2, 2018, referring this foreclosure action to William C. Tindal as Special Referee. Defendant Faulkner argued altering the Order is appropriate because she (1) is entitled to a jury trial as to certain defenses and (2) it was improper to refer this case to a Master in Equity or Special Referee. This Court disagrees and finds it is not necessary for this Court to Alter or Amend the two Orders.

BACKGROUND

Plaintiff, First-Citizens Bank & Trust Company ("FCB"), filed a Summons and Complaint on August 9, 2017, seeking for foreclose on two mortgages given by Defendant Faulkner to First Citizens Bank and Trust Company, Inc., to which FCB is a successor in interest. The first mortgage was executed in 2005, and the second mortgage was executed in 2010.

Defendant Faulkner filed an "Answer and Counterclaim Jury Trial Demanded" on December 29, 2017, which Plaintiff received on January 3, 2018.¹ As defenses to the Complaint, Defendant Faulkner alleged FCB expressly waived any claim of default under "said mortgage;"² FCB's actions created an implied waiver of any claim of default under "said mortgage;" FCB violated the Truth in Lending Act, 15 U.S.C. § 1601 *et al.*, and Federal Reserve Board Regulation Z, 12 C.F.R. § 226, and FCB is liable to Defendant Faulkner for damages from this violation; third parties hired by FCB violated the Unfair Debt Collection Act, 15 U.S.C. § 1692 *et al.*; and FCB breached a duty of good faith to Defendant Faulkner.

FCB filed a Reply to Counterclaim, denying every defense not expressly admitted, arguing the statute of limitations precluded Defendant Faulkner from asserting a counter-claim under the Truth in Lending Act; asserting FCB did not meet the definition of debt collector in the Unfair Debt Collections Act and had no knowledge of the actions of third parties; denying any breach of a covenant of good faith and fair dealing; and claiming Defendant Faulkner failed to state facts to support any cause of action and asking the Court to dismiss Defendant Faulkner's claims pursuant to Rule 12(b)(6).

On January 29, 2018, FCB moved for the case to be referred to a Special Referee and on January 31, 2018, FCB moved to strike Defendant Faulkner's jury demand. The Court granted both motions. On February 20, 2018, Defendant Faulkner moved to alter or amend both orders, and on September 24, 2018, Defendant Faulkner filed a Memorandum on her motion. On September 25, 2018, this Court held a hearing on the motions. In attendance for FCB was its

¹ As to the other defendants, Founders Federal Credit Union filed an Answer on August 22, 2017, admitting it is the holder of an unpaid judgment and asking the Court for notice of proceedings going forward. CACH, LLC filed no Answer in the case and on January 29, 2018, J. Kershaw Spong, attorney for FCB, filed an Affidavit of Default with respect to CACH, LLC.

² It is unclear from the document which mortgage Defendant Faulkner is referring to.

attorney, J. Kershaw Spong, and for Defendant Faulkner was her attorney, John Martin Foster. After carefully considering the briefs and the arguments of both attorneys, I deny Defendant Faulkner's motion.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court denies the motion by Defendant Faulkner, affirms the orders striking Defendant Faulkner's demand for a jury trial, and finds referring the matter to the Special Referee was proper. The order striking Defendant Faulkner's demand for a jury trial was proper because the matter is a foreclosure case where there are no counter-claims. The order referring the matter to the Special Referee is proper because the Court complied with Rules 53 and 70 of the South Carolina Rules of Civil Procedure.

1. Order Striking Demand for Jury Trial

A foreclosure action is in equity, so the parties are not entitled to a jury trial. *Wachovia Bank National Association v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 441 (2014). However, counterclaims may be entitled to a jury trial. As the court explained in *Blackburn*:

- (1) If both the complaint and counterclaim are in equity, the entire matter is triable by the court.
- (2) If both are at law, the issues are triable by a jury.
- (3) If the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury trial.
- (4) If the complaint is equitable and the counterclaim is legal and compulsory, the plaintiff or the defendant has a right to a jury trial on the counterclaim unless a valid jury trial waiver exists that encompasses the counterclaim

407 S.C. at 329-30, 755 S.E.2d at 441-42.

Defendant Faulkner claims, with the exception of the Unfair Trade Practices Act defense, that all of her raised defenses were in fact counter-claims. A defense is "a defense to each cause of action asserted." Rule 8, SCRPC. A counter-claim shows "the pleader is entitled to relief"

and includes a “prayer or demand for judgment for the relief.” Rule 8, SCRCP. Waiver, implied waiver, and breach of duty of good faith are clearly defenses and not counter-claims. Each of these defenses allege why Defendant Faulkner believes FCB cannot recover against her, not an argument as to why Defendant Faulkner is entitled to relief. *See First South Bank v. Rosenberg*, 418 S.C. 170, 183-84, 790 S.E.2d 919, 926-27 (Ct. App. 2016) (comparing defenses to counter-claims and determining negligence and breach of contract were both counter-claims). In her prayer for relief for all three defenses, Defendant Faulkner only asks the Court to dismiss the claims of FCB against Defendant Faulkner.

Additionally, Defendant Faulkner’s Truth in Lending Act allegations must be classified as a defense and not a counter-claim. Under the Truth in Lending Act, a claim for violation of the Act may only be brought “within one year from the date of the occurrence of the violation.” 15 U.S.C. § 1640(e). Defendant Faulkner claims FCB’s violation of the Truth in Lending Act occurred in March 2008, ten years ago. (Def’s Ans. & Counter-Claim ¶ 21). So, Defendant Faulkner cannot assert a counter-claim for a violation of the Truth in Lending Act. However, in a foreclosure action, “a consumer may assert a violation by a creditor” of certain parts of the Act, “as a matter of defense by recoupment or setoff without regard for the time limit on a private action for damages under subsection (e).” 15 U.S.C. § 1640(k)(1). The statute allowing Defendant Faulkner to assert a violation of the Truth in Lending Act defines the assertion as a defense, not a counter-claim. Further, in *Tuloka Affiliates, Inc. v. Moore*, 275 S.C. 199, 202, 268 S.E.2d 293, 295 (1980), the Supreme Court of South Carolina found—prior to the enactment of section 1640(k)(1)—a “defense and counter-claim” under the Act in response to a foreclosure action after the one-year statute of limitations had expired was an equitable defense, not a

counter-claim. Thus, it is clear Defendant Faulkner's Truth in Lending Act allegations are a defense, equitable in nature, and therefore, no jury trial is appropriate.

2. Order Referring the Case to the Special Referee

The order referring the case to the Special Referee was appropriate because "[a]ctions to foreclose liens . . . shall ordinarily be referred to a master pursuant to Rule 53" of the South Carolina Rules of Civil Procedure. Rule 70(a), SCRPC. Rule 53(b) provides: "In an action where the parties consent, in a default case, or an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit court judge or the clerk of court." Here, after striking the jury demand made by Defendant Faulkner, this Court referred a foreclosure action to a special referee. This is consistent with its powers under the Rules of Civil Procedure and appropriate.

Further, Defendant Faulkner argues the Order was not proper because she is entitled to a jury trial. However, as discussed above, this is not the case. None of Defendant Faulkner's defenses or counter-claims entitle her to a jury trial.

NOW, THEREFORE:

For the reasons discussed above, this Court denies Defendant Faulkner's Rule 59 motion, affirms the Order Striking Demand for Jury Trial, and affirms the Order Referring the Case to a Special Referee.

AND IT IS SO ORDERED.

SIGNATURE PAGE TO FOLLOW



Lancaster Common Pleas

Case Caption: First-Citizens Bank & Trust Company VS Linda P Faulkner ,
defendant, et al
Case Number: 2017CP2900872
Type: Order/Amend

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

Electronically signed on 2018-10-01 23:32:44 page 6 of 6

ELECTRONICALLY FILED - 2018 Oct 02 8:55 AM - LANCASTER - COMMON PLEAS - CASE#2017CP2900872

Received 8/17/17 @ 9:45
Did not have to sign for it.

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

First-Citizens Bank & Trust Company

Plaintiff(s)

v.

Linda P. Faulkner a/k/a Linda Faulker,
Founders Federal Credit Union, and CACH,
LLC

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2017-CP-29-00872

FILED
CLERK OF COURT
LANCASTER, SC
2017 AUG -9 PM 1:20

Submitted By: J. Kershaw Spong

Address: Sowell Gray Robinson Stepp & Laffitt

LLC

P.O. Box 11442

Columbia, SC 29211

SC Bar #: 5289

Telephone #: (803) 929-1400

Fax #: (803) 929-0300

E-mail: kspong@sowellgray.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|---|---|---|
| Contracts <ul style="list-style-type: none">☐ Constructions (100)☐ Debt Collection (110)☐ General (130)☐ Breach of Contract (140)☐ Fraud/Bad Faith (150)☐ Failure to Deliver/Warranty (160)☐ Employment Discrim (170)☐ Employment (180)☐ Other (199) _____ | Torts - Professional Malpractice <ul style="list-style-type: none">☐ Dental Malpractice (200)☐ Legal Malpractice (210)☐ Medical Malpractice (220)Previous Notice of Intent Case #
20____-NI-_____
☐ Notice/ File Med Mal (230)☐ Other (299) _____ | Torts - Personal Injury <ul style="list-style-type: none">☐ Conversion (310)☐ Motor Vehicle Accident (320)☐ Premises Liability (330)☐ Products Liability (340)☐ Personal Injury (350)☐ Wrongful Death (360)☐ Assault/Battery (370)☐ Slander/Libel (380)☐ Other (399) _____ | Real Property <ul style="list-style-type: none">☐ Claim & Delivery (400)☐ Condemnation (410)☒ Foreclosure (420)☐ Mechanic's Lien (430)☐ Partition (440)☐ Possession (450)☐ Building Code Violation (460)☐ Other (499) _____ |
| Inmate Petitions <ul style="list-style-type: none">☐ PCR (500)☐ Mandamus (520)☐ Habeas Corpus (530)☐ Other (599) _____ | Administrative Law/Relief <ul style="list-style-type: none">☐ Reinstate Driver's License (800)☐ Judicial Review (810)☐ Relief (820)☐ Permanent Injunction (830)☐ Forfeiture-Petition (840)☐ Forfeiture-Consent Order (850)☐ Other (899) _____ | Judgments/Settlements <ul style="list-style-type: none">☐ Death Settlement (700)☐ Foreign Judgment (710)☐ Magistrate's Judgment (720)☐ Minor Settlement (730)☐ Transcript Judgment (740)☐ Lis Pendens (750)☐ Transfer of Structured Settlement Payment Rights Application (760)☐ Confession of Judgment (770)☐ Petition for Workers Compensation Settlement Approval (780)☐ Other (799) _____ | Appeals <ul style="list-style-type: none">☐ Arbitration (900)☐ Magistrate-Civil (910)☐ Magistrate-Criminal (920)☐ Municipal (930)☐ Probate Court (940)☐ SCDOT (950)☐ Worker's Comp (960)☐ Zoning Board (970)☐ Public Service Comm. (990)☐ Employment Security Comm (991)☐ Other (999) _____ |
| Special/Complex /Other <ul style="list-style-type: none">☐ Environmental (600)☐ Automobile Arb. (610)☐ Medical (620)☐ Other (699) _____☐ Sexual Predator (510)☐ Permanent Restraining Order (680) | <ul style="list-style-type: none">☐ Pharmaceuticals (630)☐ Unfair Trade Practices (640)☐ Out-of-State Depositions (650)☐ Motion to Quash Subpoena in an Out-of-County Action (660)☐ Pre-Suit Discovery (670) | | |

Submitting Party Signature:

Date:

June 23, 2017

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

First-Citizens Bank & Trust Company,

Plaintiff,

v.

Linda P. Faulkner a/k/a Linda Faulker,
Founders Federal Credit Union, and
CACH, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2017-CP-29-

00872

**CERTIFICATE OF
EXEMPTION / WITHDRAWAL
FROM ARBITRATION /
MEDIATION**

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CLERK OF COURT
LANCASTER, SC

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FILED
CLERK OF COURT
LANCASTER, SC

I CERTIFY THAT THIS ACTION IS EXEMPT FROM ARBITRATION BECAUSE

- ☐ monetary relief requested in this case exceeds \$25,000.00;
☐ this is a class action;
☐ there is a substantial claim for injunction or declaratory relief in this case;
☒ this case involves (check one or more of the following)
☐ title to real estate;
☐ wills, trusts and decedents' estates;
☒ mortgage foreclosure;
☐ partition;
☐ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas, corpus, or prohibition;
☐ monetary relief requested in this case is unspecified but exceeds \$25,000;
☐ this case is a companion or related to similar actions pending in other courts with which the action might be consolidated but for lack of jurisdiction or venue;
☐ this action is appellate in nature;
☐ this is a post-conviction relief matter;
☐ this is a forfeiture proceeding brought by the State; or
☐ this is a contempt of court proceeding.

June 23rd 2017

J. Kershaw Spong [SC Bar # 5289]
SOWELL GRAY ROBINSON STEPP & LAFFITTE, LLC
P.O. Box 11449
Columbia, SC 29211
(803) 929-1400
Email: kspont@sowellgray.com

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA)

COUNTY OF LANCASTER)

First-Citizens Bank & Trust Company,)

Plaintiff,)

v.)

Linda P. Faulkner a/k/a Linda Faulker,)
Founders Federal Credit Union, and)
CACH, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Case No.: 2017-CP-29-

00872

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LANCASTER, SC
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NOTICE OF FORECLOSURE INTERVENTION

(Pursuant to Administrative Order No. 2011-05-02-01 of the
South Carolina Supreme Court)

NOTICE OF MORTGAGOR'S RIGHT TO FORECLOSURE INTERVENTION FOR THE
PURPOSE OF SEEKING A RESOLUTION OF THIS FORECLOSURE ACTION BY LOAN
MODIFICATION OR OTHER MEANS OF LOSS MITIGATION.

TO EXERCISE THIS RIGHT, CONTACT THE UNDERSIGNED IN WRITING WITHIN
THIRTY (30) DAYS OF THE SERVICE OF THIS NOTICE.


J. Kershaw Spong [SC Bar # 5289]
SOWELL GRAY ROBINSON STEPP & LAFFITTE, LLC
P.O. Box 11449
Columbia, SC 29211
(803) 929-1400
Email: kspong@sowellgray.com

June 2017, 2017

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

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

First-Citizens Bank & Trust Company,

Plaintiff,

v.

Linda P. Faulkner a/k/a Linda Faulker,
Founders Federal Credit Union, and CACH,
LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2017-CP-29- 00872

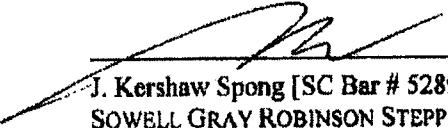
SUMMONS

(Mortgage Foreclosure)
(Deficiency Judgment Demanded)
Non-Jury

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in the above entitled action, copy of which is herewith served upon you, and to serve copy of your answer upon the undersigned at their offices, Sowell Gray Robinson Stepp & Laffitte, LLC, P.O. Box 11449, Columbia, South Carolina 29211, within Thirty (30) days after service hereof upon you, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment will be rendered against you for the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTICE that the undersigned attorney on behalf of the Plaintiff herein, will seek the agreement and stipulation of all parties not in default for an Order of Reference to a Special Referee for Lancaster County stipulating that said Special Referee may enter a final judgment in this case.


J. Kershaw Spong [SC Bar # 5289]

SOWELL GRAY ROBINSON STEPP & LAFFITTE, LLC

P.O. Box 11449

Columbia, SC 29211

(803) 929-1400

Email: kspong@sowellgray.com

Attorneys for the Plaintiff

Columbia, South Carolina

June 23rd 2017

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LANCASTER, SC
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STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

First-Citizens Bank & Trust Company,

Plaintiff,

v.

Linda P. Faulkner a/k/a Linda Faulker,
Founders Federal Credit Union, and
CACH, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No.: 2017-CP-29-

00872

COMPLAINT

(Mortgage Foreclosure)

(Deficiency Judgment Demanded)

Non-Jury

CLERK OF COURT
LANCASTER, SC

2017 AUG -9 PM 1:20

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OFFICE OF CLERK
IN COURT

The Plaintiff above named, complaining of the Defendants herein, alleges that:

1. Plaintiff, First-Citizens Bank & Trust Company, successor in interest to First Citizens Bank and Trust Company, Inc., is a banking institution duly organized and existing under and by virtue of the laws of the United States.

2. Upon information and belief, the Defendant **Linda P. Faulkner** is a resident and citizen of the County of Lancaster, State of South Carolina, and that the subject of this action is real property located in the County of Lancaster, State of South Carolina.

FOR A FIRST CAUSE OF ACTION
LOAN 6108

3. Heretofore, under date the 20th day of May, 2005, Defendant **Linda P. Faulkner** made, executed, and delivered to First Citizens Bank and Trust Company, Inc. a certain Home Equity Line of Credit Agreement ("Agreement") in writing, wherein and whereby she promised to pay to First Citizens Bank and Trust Company, Inc. the principal sum of Two Hundred Thirty-four Thousand and 00/100 Dollars (\$234,000.00), together with variable interest per annum on the unpaid balance; said principal and interest being payable in monthly

installments on terms as set forth therein until said note is fully paid. A true copy of the Agreement is attached as Exhibit A.

4. In order to secure the payment of the Agreement, **James E. Faulkner and Defendant Linda P. Faulkner a/k/a Linda Faulkner** did on the same date, to-wit, the **20th day of May, 2005** make, execute, and deliver to **First Citizens Bank and Trust Company, Inc.**, its successors and assigns, a certain Mortgage covering real property located in the County and State aforesaid and in said Mortgage described as will more fully appear by reference to **Exhibit B** attached hereto and made a part hereof. James E. Faulkner conveyed any and all interest he had in the real property to Linda P. Faulkner by deed dated August 1, 2017 recorded August 2, 2011 in Deed Book 627 at Page 75, subject to Plaintiff's mortgage.

5. Thereafter, on the **25th day of May, 2005**, said Mortgage was recorded in the Office of the Register of Deeds for Lancaster County in **Book 1343 at page 215**. Plaintiff has reviewed the Administrative Order issued by the Supreme Court of South Carolina on May 22, 2009 concerning the foreclosure sale of any property arising out of a loan owned or guaranteed by Federal National Mortgage Association ("Fannie Mae") or Freddie Mac or held by a servicer who has signed an agreement to participate in the Home Affordable Modification Program (HMP). That, after review and consultation of the Administrative Order and the loan file of the within foreclosure action, Plaintiff has determined that it has complied with said Administrative Order.

6. In and by the terms of said Agreement and the Mortgage securing same, it is provided, among other things, that on failure to pay any installment of either principal or interest or any portion thereof when due, or if any of the conditions and requirements in the Mortgage securing the same be not complied with, then the whole principal sum and accrued interest shall

at the option of the legal holder thereof become at once due and payable without notice, and collectible by foreclosure.

7. In and by the terms of the said Agreement it is further provided that the makers thereof shall pay a reasonable sum as and for an attorney's fee if the said note be placed in the hands of an attorney for collection after default.

8. The installments of principal and interest falling due from and after the **September 20, 2015**, have not been paid although demand for the payment thereof has been made and the Plaintiff, as the holder of the said Agreement and Mortgage, has and does hereby elect to declare the entire balance of said principal and interest due and payable at once; that there is now due and owing and unpaid upon the said Agreement and Mortgage the full and just principal sum of **Two Hundred Thirty-four Thousand Four Hundred Fifty-seven and 39/100 Dollars (\$234,457.39)**, together with interest thereon at the current rate of **3.75%** per annum from **August 20, 2015**, together with a reasonable sum as attorney's fees for the collection thereof and the costs of this action.

FOR A SECOND CAUSE OF ACTION
LOAN 8463

9. The allegations stated above are herein restated.

10. Heretofore, under date the **27th day of December, 2010**, Defendant **Linda P. Faulkner** made, executed, and delivered to **First Citizens Bank and Trust Company, Inc.** a certain **Promissory Note ("Note")** in writing, wherein and whereby she promised to pay to **First Citizens Bank and Trust Company, Inc.** the principal sum of **Seventy-seven Thousand Nine Hundred Three and 37/100 Dollars (\$77,903.37)**, together with interest at **5.00%** per annum on the unpaid balance; said principal and interest being payable in monthly installments on terms as set forth therein until said note is fully paid. A true copy of the Note is attached as **Exhibit C**. The Note was modified on several occasions as the request of the Defendant. The Note was last

modified on December 17, 2012. A true copy of the Consumer Note Modification Agreement is attached as Exhibit D.

11. In order to secure the payment of the Note, the said Defendant Linda P. Faulkner did on the 7th day of March, 2008 make, execute, and deliver to First Citizens Bank and Trust Company, Inc., its successors and assigns, a certain Mortgage covering real property located in the County and State aforesaid and in said Mortgage described as will more fully appear by reference to Exhibit E attached hereto and made a part hereof.

12. Thereafter, on the 12th day of March, 2008, said Mortgage was recorded in the Office of the Register of Deeds for Lancaster County in Book 1888 at page 108. Plaintiff has reviewed the Administrative Order issued by the Supreme Court of South Carolina on May 22, 2009 concerning the foreclosure sale of any property arising out of a loan owned or guaranteed by Federal National Mortgage Association ("Fannie Mae") or Freddie Mac or held by a servicer who has signed an agreement to participate in the Home Affordable Modification Program (HMP). That, after review and consultation of the Administrative Order and the loan file of the within foreclosure action, Plaintiff has determined that it has complied with said Administrative Order.

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

14. In and by the terms of the said Note it is further provided that the makers thereof shall pay a reasonable sum as and for an attorney's fee if the said note be placed in the hands of an attorney for collection after default.

15. The installments of principal and interest falling due from and after May 30, 2013, have not been paid although demand for the payment thereof has been made and the Plaintiff, as the holder of the said Note and Mortgage, has and does hereby elect to declare the entire balance of said principal and interest due and payable at once; that there is now due and owing and unpaid upon the said Note and Mortgage the full and just principal sum of **Seventy-three Thousand Two Hundred Sixty-one and 41/100 Dollars (\$73,261.41)**, together with interest thereon at the rate of **5.00%** per annum from **April 30, 2013**, together with a reasonable sum as attorney's fees for the collection thereof and the costs of this action.

16. Upon information and belief, said information having been obtained from the records of Lancaster County, South Carolina, the Defendants below named have or may claim to have some interest in or lien upon the subject premises by virtue of the matters and things hereinbelow alleged but that any such interest in or lien upon the said premises is junior and subordinate to Plaintiff's said mortgage, to-wit:

(a) The Defendant Founders Credit Union by virtue of a judgment obtained against Linda P. Faulkner in the amount of \$7,580.00 filed in the office of the Clerk of Court for Lancaster County on July 10, 2014, and preserved therein in Judgment Roll No. 2014-CP-29-026.

(b) The Defendant CACH, LLC by virtue of a judgment obtained against Linda Faulkner in the amount of \$4,178.14 filed in the office of the Clerk of Court for Lancaster County on June 28, 2016, and preserved therein in Judgment Roll No. 2016-CP-29-00202.

17. The Plaintiff does not waive but specifically demands judgment against the Defendant **Linda P. Faulkner** for the full amount found to be due to Plaintiff on the Agreement, Note, and Mortgages held by Plaintiff, with the right to enter personal judgment against the Defendant **Linda P. Faulkner** at the same time the Court orders a sale of the mortgaged premises and requests the money judgment so rendered be entered and docketed in the Clerk's office pursuant to §29-3-650 SC Code of Laws (1976 amended).

WHEREFORE, Plaintiff prays judgment that:

(a) The amount due upon the said Agreement, Note, and Mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action.

(b) Plaintiff's mortgages be declared a first lien and that Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due or which may be or have been paid by Plaintiff, with a reasonable sum as attorney's fees, and for the costs of this action.

(c) The mortgaged premises be sold according to law and the practice of this Court, the equity of redemption be barred, and that the proceeds of sale be applied as follows:

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

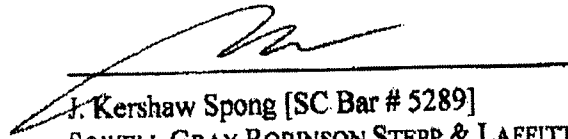
Second, to the payment and discharge of the amount due on Plaintiff's Agreement, Note, and Mortgages, together with attorney's fees as aforesaid; and

Third; the surplus, if any, be distributed according to law.

(d) Plaintiff have judgment entered immediately pursuant §29-3-650 SC Code of Laws (1976 amended) against the Defendant **Linda P. Faulkner** for the full amount found to be due Plaintiff on the note and mortgage, to be credited toward said personal judgment against the

Defendant Linda P. Faulkner for the amount paid to the Plaintiff from the proceeds of the sale of the mortgage premises.

(e) For such other and further relief as may be just and proper.



J. Kershaw Spong [SC Bar # 5289]
SOWELL GRAY ROBINSON STEPP & LAFFITTE, LLC
P.O. Box 11449
Columbia, SC 29211
(803) 929-1400
Email: kspong@sowellgray.com

Attorneys for the Plaintiff

Columbia, South Carolina

June 23, 2017

**NOTICE UNDER THE
FAIR DEBT COLLECTION
PRACTICES ACT, (THE ACT)
15 U.S.C. SECTION 1601 AS AMENDED**

1. The amount of the debt is that as stated in the complaint attached hereto.
2. The Creditor is the Plaintiff as named in the summons and complaint attached hereto.
3. The debt described in the complaint attached hereto will be assumed to be valid by the Creditor's law firm unless you, the debtor, within thirty (30) days after the receipt of this notice, dispute, in writing, the validity of the debt or some portion thereof.
4. If you, the debtor, notify the Creditor's law firm in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, the Creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to you, the debtor, by the Creditor's law firm.
5. If the Creditor named in the attached Complaint is not the original Creditor, and if you make a written request to the Creditor's law firm within the thirty (30) days from the receipt of this notice, the name and address of the original Creditor will be mailed to you by the Creditor's law firm.
6. Written requests should be addressed to J. Kershaw Spong, Esquire, Sowell Gray Robinson Stepp & Laffitte, LLC, P.O. Box 11449, Columbia, SC 29211.
7. This notice is an attempt to collect a debt and information obtained will be used for that purpose.

STATE OF NORTH CAROLINA)
)
COUNTY OF WAKE)

VERIFICATION

PERSONALLY appeared before me, Tracy Hinnant, who being duly sworn, deposes and says that she is a representative of First-Citizens Bank & Trust Company, and is authorized to make this Affidavit on its behalf; that she is familiar with the account and loan documents forming the basis for the within action and has read the foregoing pleadings ; that all of the matters alleged therein are true of her own knowledge, except for those alleged upon information and belief, and as to those, she believes them to be true; that no part of said sum sued for has been paid by discount or otherwise.

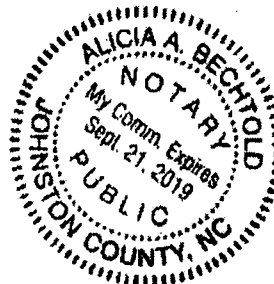
FIRST-CITIZENS BANK & TRUST COMPANY

By: *Tracy Hinnant*
Tracy Hinnant

Its: Sr. Real Estate Resolution Specialist

SWORN to before me this
20 day of July, 2017.

Alicia A. Bechtold (L.S.)
Notary Public for North Carolina
My Commission Expires: September 21, 2019



(Faulkner)

Exhibit A

First Citizens

HOME EQUITY LINE OF CREDIT AGREEMENT

References in the shaded areas are for our use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "XXX" has been omitted due to text length limitations.

Borrower: Linda P. Paulsen
8943 CALVIN HALL ROAD
Fort Mill, SC 29715-0920

Lender: FIRST CITIZENS BANK AND TRUST COMPANY, INC.
First AM Office
1401 Hwy 180 West
Fort Mill, SC 29716

CREDIT LIMIT: \$234,000.00

DATE OF AGREEMENT: May 20, 2008

Introduction. This Home Equity Line of Credit Agreement ("Agreement") governs your line of credit (the "Credit Line" or the "Credit Line Account") issued through FIRST CITIZENS BANK AND TRUST COMPANY, INC. In this Agreement, the words "Borrower," "you," "your," and "Appliances" mean each and every person who signs this Agreement, including all Borrowers named above. The words "we," "us," "our," and "Lender" mean FIRST CITIZENS BANK AND TRUST COMPANY, INC. You agree to the following terms and conditions:

Purpose to Pay. You promise to pay FIRST CITIZENS BANK AND TRUST COMPANY, INC. or order, the total of all credit advances and FINANCE CHARGES, together with all costs and expenses for which you are responsible under this Agreement or under the "mortgage or deed of trust" which secures your Credit Line. You will pay your Credit Line according to the payment terms set forth below. If there is more than one Borrower, each is jointly and severally liable on this Agreement. This means we can require any Borrower to pay all amounts due under this Agreement, including credit advances made to any Borrower. Each Borrower understands any other Borrower, on his or her signature alone, to cancel the Credit Line, to request and receive credit advances, and to do all other things necessary to carry out the terms of this Agreement. We can release any Borrower from responsibility under this Agreement, and the others will remain responsible.

Term. The term of your Credit Line will begin as of the date of this Agreement ("Opening Date") and will continue at all times until all amounts owing under this Agreement have been paid. All indebtedness under this Agreement, if not already paid pursuant to the payment provisions below, will be due and payable at the end of this term. The draw period of your Credit Line will begin on a date, after the Opening Date, when the Agreement is accepted by us in the State of South Carolina, following the expiration of the right to cancel the period of the mortgage or deed of trust. The receipt of all required equalization of nonrecognition, and the meeting of 10% of our other conditions and will continue as follows: for a period of 10 years from the Opening Date. You may obtain credit advances during this period ("Draw Period"). After the Draw Period ends, the repayment period will begin and you will no longer be able to obtain credit advances. The length of the repayment period is as follows: until the Account is fully paid and all obligations are satisfied. You agree that we may renew or extend the period during which you may obtain credit advances or make payments. You further agree that we may renew or extend your Credit Line Account.

Minimum Payment. Your "Regular Payment" will equal the amount of your accrued FINANCE CHARGES ("First Payment Bureau"). You will make 110 of these payments. Your payments will be due monthly. Your "Minimum Payment" will be the Regular Payment, plus any amount due and all other charges. An increase in the ANNUAL PERCENTAGE RATE may increase the amount of your Regular Payment.

After completion of the First Payment Bureau, your "Regular Payment" will be based on a percentage of your balance at the start of the payment period as shown below ("Second Payment Bureau"). Your payments will be due monthly.

Rate of Balance	Number of Payments	Regular Payment Calculation
All Balances	50	2.000% of your balance at the start of the repayment period

Your "Minimum Payment" will be the Regular Payment, plus any amount past due and all other charges.

A change in the ANNUAL PERCENTAGE RATE can cause the balance to be repaid more quickly or more slowly. When rates decrease, less interest is due, so more of the payment repays the principal balance. When rates increase, more interest is due, so less of the payment repays the principal balance. If this happens, we may adjust your payments as follows: your first payment may be increased.

In any event, if your Credit Line balance falls below \$1,000, you agree to pay your balance in full. You agree to pay not less than the Minimum Payment on or before the due date indicated on your periodic billing statement.

How Your Payments Are Applied. Unless otherwise agreed or required by applicable law, payments and other credits will be applied to the Outstanding Balance, which includes unpaid principal balance, finance charges, insurance premiums, late charges and other charges.

Receipt of Payments. All payments must be made by a check, automatic account debit, electronic funds transfer, money order, or other instrument in U.S. dollars and must be received by us at the remittance address shown on your periodic billing statement. Payments received at that address on any business day will be credited to your Credit Line as of the date received.

Credit Limit. This Agreement covers a revolving line of credit for the principal amount of Two Hundred Thirty-four Thousand & 00/100 Dollars (\$234,000.00), which will be your "Credit Limit" under this Agreement. During the Draw Period we will honor your request for credit advances subject to the section below on Lender's Rights. You may borrow against the Credit Line, repay any portion of the amount borrowed, and re-borrow up to the amount of the Credit Limit. Your Credit Limit is the maximum amount you may have outstanding at any one time. You agree not to attempt to request or obtain a credit advance that will make your Credit Line Account balance exceed your Credit Limit. Your Credit Limit will not be increased should you overdraw your Credit Line Account. If you exceed your Credit Limit, you agree to repay immediately the amount by which your Credit Line Account exceeds your Credit Limit, even if we have not yet billed you. Any credit advances in excess of your Credit Limit will not be secured by the mortgage or deed of trust securing your principal dwelling.

Charges to your Credit Line. We may charge your Credit Line to pay other fees and costs that you are obligated to pay under this Agreement, the mortgage or deed of trust or any other document related to your Credit Line. In addition, we may charge your Credit Line for funds required for continuing insurance coverage as described in the paragraph titled "Insurance" below or as described in the mortgage or deed of trust for this transaction. We may also, at our option, charge your Credit Line to pay any costs or expenses to protect our security interest in your principal dwelling. These costs or expenses include, without limitation, payments to sure defaulters under any defaulting policy of your principal dwelling. If you do not pay your property taxes, we may charge your Credit Line and pay the delinquent taxes. Any amount so charged to your Credit Line will be a credit advance and will decrease the funds available, if any, under the Credit Line. However, we have no obligation to provide any of the credit advances referred to in this paragraph.

Credit Advances. After the Effective Disbursement Date of this Agreement, you may obtain credit advances under your Credit Line as follows:

Credit Line Checks. Withdrawing a preprinted "Home Equity LOC Check" that we will supply to you.

Requests in Person. Requesting a credit advance in person at any of our authorized locations.

Credit Card Access. Using your "Home Equity VISA Gold Card" to receive cash advances or to make purchases.

Electronic Funds Transfer. Electronic Funds Transfer includes, but is not limited to, transfer initiated through a personal computer and transfers initiated by using information obtained from a check (automatic check conversion).

If there is more than one person authorized to use this Credit Line Account, you agree not to give us conflicting instructions, such as one Borrower telling us not to give advances to the other.

Limitations on the Use of Checks. We reserve the right not to honor Home Equity LOC Checks in the following circumstances:

Credit Limit Violation. Your Credit Limit has been or would be exceeded by paying the Home Equity LOC Check.

Post-dated Checks. Your Home Equity LOC Check is postdated. If a post-dated Home Equity LOC Check is paid and as a result any other check is returned or not paid, we are not responsible.

Stolen Checks. Your Home Equity LOC Checks have been reported lost or stolen.

Unauthorized Signatures. Your Home Equity LOC Check is not signed by an "Authorized Signer" as defined below.

Termination or Suspension. Your Credit Line has been terminated or suspended as provided in this Agreement or could be if we paid the Home Equity LOC Check.

Other Restrictions. You are otherwise in default under, or in breach of, the terms of this Agreement.

If the pay any Home Equity LOC Check under these conditions, you must repay us, subject to applicable laws, for the amount of the Home

EQUITY LINE OF CREDIT AGREEMENT (Continued)

Equity LOC Check. The Home Equity LOC Check itself will be evidence of your debt to us together with this Agreement. Our liability, if any, for wrongful dishonor of a check is limited to your actual damages. Dishonor for any reason as provided in this Agreement is not wrongful dishonor. We may check not to return Home Equity LOC Checks along with your periodic billing statements; however, your use of such Home Equity LOC Check will be reflected on your periodic statement as a credit advance. We do not "certify" Home Equity LOC Checks drawn on your Credit Line.

Limitations on the Use of Credit Cards. We reserve the right not to honor Home Equity VISA Gold Cards in the following circumstances:

- Credit Limit Violation.** Your Credit Limit has been or would be exceeded by paying the Home Equity VISA Gold Card charge.
- Stolen Credit Cards.** Your Home Equity VISA Gold Cards have been reported lost or stolen.
- Unauthorized Signatures.** Your Home Equity VISA Gold Card is not used by an "Authorized Signer" as defined below.
- Termination or Suspension.** Your Credit Line has been terminated or suspended as provided in this Agreement or could be if we paid the Credit Line charge.
- Other Restrictions.** You are otherwise in default under, or in breach of, the terms of this Agreement.

If we pay any advance requested by use of the Home Equity VISA Gold Card under these conditions, you must repay us, subject to applicable laws, for the amount of the advance. The advance itself will be evidence of your debt to us together with this Agreement. Our liability, if any, for wrongful dishonor of an advance is limited to your actual damages. Dishonor for any reason as provided in this Agreement is not wrongful dishonor. Your use of the Home Equity VISA Gold Card will be reflected on your periodic statement as a credit advance.

Transaction Requirements. The following transaction limitations will apply to the use of your Credit Limit:

Credit Line Home Equity LOC Check Limitations. The following transaction limitations will apply to your Credit Line and the writing of Home Equity LOC Checks.

Other Transaction Requirements. You cannot use a Home Equity LOC Check to pay any amount you owe under this Agreement.

Credit Card Limitations. The following transaction limitations will apply to your Credit Line and using a Credit Card.

Maximum Amount Per Payee. The maximum dollar amount of advances that you may obtain per day is \$7,500.00.

Other Transaction Requirements. AT&T WorldWide may be made up to a total of \$500 per calendar day. If we detect unusual or suspicious activity on your account, we may, for security reasons, temporarily suspend your credit card privileges until we can verify the activity. We may refuse to issue or replace a credit card or may revoke or limit credit card use with or without your knowledge or notice to you.

In Person Request and Electronic Funds Transfer Limitations. There are no transaction limitations for requesting an advance in person or accessing by other methods.

Authorized Signers. The words "Authorized Signer" on Home Equity LOC Checks and Home Equity VISA Gold Cards as used in this Agreement mean and include each person who: (a) signs the application for this Credit Line, (b) signs this Agreement, or (c) has executed a separate signature authorization card for the Credit Line Account.

Lost Home Equity LOC Checks and Home Equity VISA Gold Cards. If you lose your Home Equity LOC Checks or Home Equity VISA Gold Cards or if someone is using them without your permission, you agree to let us know immediately. The fastest way to notify us is by calling us at (800) 555-5578. You also can notify us at Lost Credit Line Checks/VISA Card Notification PO Box 25, Mail Code 99-017, Columbia, SC 29202-0025.

Liability for Unauthorized VISA Credit Card Transactions. Tell us AT ONCE if you believe your VISA credit card has been lost or stolen or if any unauthorized transactions. Your liability for unauthorized use of your credit card with the VISA logo when it is used as a VISA credit card to access this Credit Line will not exceed ten dollars (\$10.00). We may require you to provide a written statement regarding claims of unauthorized VISA credit card transactions.

These provisions limiting your liability do not apply to VISA commercial cards or VISA PLUS ATM withdrawals; and apply only to cards issued in the United States. With respect to unauthorized transactions, these limits may be exceeded for the extent allowed under applicable law only if we determine that you were grossly negligent or fraudulent in the handling of your account or credit card. The same consumer liability limits will apply to unauthorized transactions. To notify us of lost or stolen cards, or of unauthorized transactions, call us at (800) 512-4444 or write to your account, and minimize any inconvenience.

VISA is a registered trademark of Visa International.

Liability for Unauthorized Use. You will not be liable for unauthorized use of your VISA access device if you notify us in our desktop or desktop or portable unauthorized use.

If you use an access card which debits a checking account for other purposes such as account but also draws on an overdraft line of credit, under Regulation Z, as well as sections 228.12(a) and (b) of Regulation Z, in such a transaction, you might be liable for up to \$500.00. Also, you might be liable for \$500.00, \$1,000.00, or an unlimited amount under Regulation Z, as a lesser amount under applicable state law. Please refer to your advance fund transfers disclosure for liability limitations and error-resolution procedures for transactions covered by the Federal Electronic Fund Transfers Act.

Future Credit Line Services. Your application for this Credit Line also serves as a request to receive any new services (such as access devices) which may be available from Finance Line as one of our services in connection with this Credit Line. You understand that this request is voluntary and that you may refuse any of these new services at the time they are offered. You further understand that the terms and conditions of this Agreement will govern any transactions made pursuant to any of these new services.

Collateral. You acknowledge this Agreement is secured by the following collateral described in the security instrument listed herein, all the terms and conditions of which are hereby incorporated and made a part of this Agreement:

A. Real Estate Mortgage or Equity Deed dated _____ County of the State of _____ to us on real property located in _____, if this is an existing Mortgage or Security Deed, the security instrument was recorded in Book _____ Page _____ of the above listed County. If completed, this Note is also secured under a Security Agreement covering the following collateral:

Insurance. You must obtain insurance on the property securing this Agreement that is reasonably satisfactory to us. You may obtain property insurance through any company of your choice that is reasonably satisfactory to us. You have the option of providing any insurance required under this Agreement through an existing policy or a policy independently obtained and paid for by you, subject to your right, for reasonable cause before credit is extended, to decline any insurance provided by you. Subject to applicable law, if you fail to obtain or maintain insurance as required in the mortgage or deed of trust, we may purchase insurance to protect our own interest, add the premium to your balance, pursue any other remedies available to us, or do any one or more of these things.

Periodic Statements. If you have a balance owing on your Credit Line Account or have any account activity, we will send you a periodic statement. It will show, among other things, credit advances, FINANCE CHARGES, other charges, payments made, other credits, your "Previous Balance," and your "New Balance." Your statement also will identify the Minimum Payment you must make for that billing period and the date it is due.

When FINANCE CHARGES Begin to Accrue. Periodic FINANCE CHARGES for credit advances under your Credit Line will begin to accrue on the date credit advances are posted to your Credit Line. There is no "free ride period" which would allow you to avoid a FINANCE CHARGE on your Credit Line credit advances.

Method Used to Determine the Balance on Which the FINANCE CHARGE Will Be Computed. A daily FINANCE CHARGE will be imposed on all credit advances made under your Credit Line imposed from the date of each credit advance based on the "daily balance" method. To get the daily balance, we take the beginning balance of your Credit Line Account each day, add any new advances and subtract any payments or credits. This gives us the "daily balance."

Method of Determining the Amount of FINANCE CHARGE. Any FINANCE CHARGE is determined by applying the "Periodic Rate" to the balance described herein. Then we add together the periodic FINANCE CHARGES for each day in the billing cycle. This is your FINANCE CHARGE.

EQUITY LINE OF CREDIT AGREEMENT

Loan No. [REDACTED]

(Continued)

Page 3

calculated by applying a Periodic Rate.

Periodic Rate and Corresponding ANNUAL PERCENTAGE RATE. We will determine the Periodic Rate and the corresponding ANNUAL PERCENTAGE RATE as follows. Initially, we will apply the discounted rates shown herein. Thereafter, we start with an independent index which is the Prime Rate quoted in the "Money Rates" section of The Wall Street Journal (the "Index"). We will use the most recent index value available to us as of the first business day of the calendar month of any ANNUAL PERCENTAGE RATE adjustment. The Index is not necessarily the lowest rate charged by us on our loans. If the Index becomes unavailable during the term of this Credit Line Account, we may designate a substitute index after notice to you. To determine the Periodic Rate that will apply to your first Payment Stream, we take the value of the Index, then divide the value by the number of days in a year (365). To obtain the ANNUAL PERCENTAGE RATE we multiply the Periodic Rate by the number of days in a year (365). This result is the ANNUAL PERCENTAGE RATE for your first Payment Stream. To determine the Periodic Rate that will apply to your second Payment Stream, we take the value of the Index, then divide the value by the number of days in a year (365). To obtain the ANNUAL PERCENTAGE RATE we multiply the Periodic Rate by the number of days in a year (365). This result is the ANNUAL PERCENTAGE RATE for your second Payment Stream. The ANNUAL PERCENTAGE RATE includes only interest and no other costs.

The Periodic Rate and the corresponding ANNUAL PERCENTAGE RATE on your Credit Line will increase or decrease as the Index increases or decreases from time to time. Any increase in the Periodic Rate will take the form of a higher first payment. Adjustments to the Periodic Rate and the corresponding ANNUAL PERCENTAGE RATE resulting from changes in the Index will take effect on the first day of each billing cycle based on the Index as published on the first business day of the calendar month. In no event will the corresponding ANNUAL PERCENTAGE RATE be more than the larger of 18.000% or the maximum rate allowed by applicable law. Today the Index is 6.780% per annum, and therefore the initial Periodic Rate and the corresponding ANNUAL PERCENTAGE RATE on your Credit Line are as stated below:

Rates During the Discount Period

Term of Discount Range of Balances	Discounted Rate	ANNUAL PERCENTAGE RATE	Daily Periodic Rate
First 4 payments All Balances	2.800%	2.800%	0.00769%

The term of the discount period is 4 payments.

During the discount period, the ANNUAL PERCENTAGE RATE will be the ANNUAL PERCENTAGE RATE stated above. Your discount period will begin on the Opening Date and will continue thereafter for the specified number of "payments" (each "payment" being a partial or complete monthly billing cycle), regardless of whether you obtain any credit advances, have an outstanding balance, or make any payments to us. After the discount period, the ANNUAL PERCENTAGE RATE may change based on the then current Index value and the Margin (if any) identified below, subject to the applicable rate cap.

Range of Balance or Conditions	Current Non-discounted Rate for the First Payment Stream Margin Added to Index	ANNUAL PERCENTAGE RATE	Daily Periodic Rate
All Balances	0.000%	6.780%	0.01875%

Current Non-discounted Rates for the Second Payment Stream

Range of Balance or Conditions	ANNUAL PERCENTAGE RATE	Daily Periodic Rate
All Balances	6.780%	0.01875%

Notwithstanding any other provision of this Agreement, we will not charge interest on any undisbursed loan proceeds, except as may be permitted during any Right of Rescission period.

Rate Increases. If we forego an ANNUAL PERCENTAGE RATE increase, at the time of a later adjustment we may return to the full Index value plus margin.

Conditions Under Which Other Charges May Be Imposed. You agree to pay all the other fees and charges related to your Credit Line as set forth below:

Miscellaneous Photocopying. If you request a copy of any document, we may charge your Credit Line Account the cost of copies of Statements, Checks and other information not routinely provided to you. If this information is requested for the time it takes us to locate, copy, and mail the document to you. If your request is related to a billing error (see "Your Billing Rights" notice) and an error is found, we will waive any photocopying charges.

Late Charge. Your payment will be late if it is not received by us within 10 days after the "Payment Due Date" shown on your periodic statement. If your payment is late we may charge you the greater of \$8.00 or 5.000% of the unpaid amount of your payment not to exceed \$14.00. However, we may charge the maximum delinquency charge authorized by law as it may be increased during the term of this plan.

Credit Line Check Printing Charge. Your Credit Line Account may be charged the vendor cost, if allowed by law.

Security Interest Charges. You agree to pay all security interest charges related to your Credit Line as set forth below:

Fees Due to First American Flood Data Service:	\$0.00
Total:	\$0.00

Lender's Rights. Under this Agreement, we have the following rights:

Termination and Acceleration. We can terminate your Credit Line Account and require you to pay to us the entire outstanding balance in one payment, and charge you certain fees, if any of the following happens: (1) You commit fraud or make a material misrepresentation at any time in connection with this Credit Agreement. This can include, for example, a false statement about your income, assets, liabilities, or any other aspects of your financial condition; (2) You do not meet the repayment terms of this Credit Agreement; (3) Your action or inaction adversely affects the collateral for this plan or our rights in the collateral. This can include, for example, failure to maintain required insurance, waste or destructive use of the dwelling, failure to pay taxes, death of all persons liable on the account, transfer of title or title of the dwelling, creation of a lien on the dwelling without our permission, foreclosure by the holder of another lien, or the use of funds in the dwelling for prohibited purposes.

Suspension or Reduction. In addition to any other rights we may have, we can suspend additional extensions of credit or reduce your Credit Limit during any period in which any of the following are in effect:

(1) The value of your property declines significantly below the property's appraised value for purposes of this Credit Line Account. This includes, for example, a decline such that the initial difference between the Credit Limit and the available equity is reduced by fifty percent and may include a further decline, depending on the individual circumstances.

(2) We reasonably believe that you will be unable to fulfill your payment obligations under your Credit Line Account due to a material change in your financial circumstances.

(3) You are in default under any material obligations of this Credit Line Account. We consider all of your obligations to be material. Categories of material obligations include the events described above under Termination and Acceleration; obligations to pay fees and charges; obligations and limitations on the receipt of credit advances; obligations concerning maintenance or use of the property or proceeds; obligations to pay and perform the terms of any other debt of yours, mortgage or lease of the property; obligations to notify us and provide documents or information to us (such as updated financial information); obligations to comply with applicable laws (such as zoning restrictions); and obligations of any co-borrower. No default will occur until we mail or deliver a notice of default to you, so you can restore your right to credit advances.

(4) We are prohibited by government action from imposing the ANNUAL PERCENTAGE RATE provided for under this Agreement.

(15) The priority of our security interest is adversely affected by government action to the extent that the value of the security interest is less than one hundred twenty percent (120%) of the Credit Limit.

(16) We have been notified by governmental authority that continued advances may constitute an unsecured and unperfected business practice. Change in Terms. We may make changes to the terms of this Agreement if you agree to the change in writing at that time. If the change will unequivocally benefit you throughout the remainder of your Credit Line Account, or if the change is insignificant in terms of charges relating to our data processing system, if the index is no longer available, we will choose a new index and margin. The new index will have an historical record of performance similar to the original index, and the new index and margin will result in an ANNUAL PERCENTAGE RATE that is substantially similar to the rate in effect at the time the original index becomes unavailable. We may prohibit additional extensions of credit or reduce your Credit Limit during any period in which the maximum ANNUAL PERCENTAGE RATE under your Credit Line Account is reached.

Collection Costs. We may hire or pay someone else to help collect this Agreement if you do not pay. You will pay us that amount. This includes our reasonable attorney's fees in an action not less than fifteen percent (15%) of the amount owed on this Agreement and our legal expenses whether or not there is a lawsuit, including reasonable attorney's fees and legal expenses for bankruptcy proceedings (including efforts to modify or waive any automatic stay of liquidation, and appeals, if not prohibited by applicable law, you also will pay any court costs, in addition to all other sums provided by law).

Access Devices. If your Credit Line is suspended or terminated, you must immediately return to us all Home Equity LOC Checks and any other access devices. Any use of Home Equity LOC Checks or other access devices following suspension or termination may be considered fraudulent. You will also remain liable for any further use of Home Equity LOC Checks or other Credit Line access devices not returned to us.

Delay in Enforcement. We may delay or waive the enforcement of any of our rights under this Agreement without losing that right or any other right. If we delay or waive any of our rights, we may enforce that right at any time in the future without advance notice. For example, not terminating your account for non-payment will not be a waiver of our right to terminate your account in the future if you have not paid.

Continuation by you. If you cancel your right to credit advances under this Agreement, you must notify us and return all Home Equity LOC Checks and any other access devices to us. Despite cancellation, your obligations under this Agreement will remain in full force and effect until you have paid us all amounts due under this Agreement.

Prepayments. You may prepay all or any amount owing under this Credit Line at any time without penalty, except we will be entitled to receive all accrued FINANCE CHARGES and other charges, if any. Payments in excess of your Minimum Payments will not relieve you of your obligation to continue to make your Minimum Payments. Instead, they will reduce the principal balance owed on the Credit Line. You agree not to send us payments marked "paid in full," "without recourse," or similar language. If you send such a payment, we may accept it without losing any of our rights under the Agreement, and you will remain obligated to pay any further amount owed to us. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: First Citizens Loan Operations MC 951033, PO Box 28 Columbia, SC 29202.

Notices. All notices will be sent to your address as shown in this Agreement. Notices will be mailed to you at a different address if you give us written notice of a different address. You agree to advise us promptly if you change your mailing address.

Credit Information and Related Matters. You authorize us to release information about you to third parties as described in our privacy policy and our Fair Credit Reporting Act notice, provided you did not opt out of the applicable policy, or as permitted by law. You agree that, upon our request, you will provide us with a current financial statement, a new credit application, or both, or forms provided by us. You also agree we may obtain credit reports on you at any time, at our sole option and expense, for any reason, including but not limited to determining whether there has been an adverse change in your financial condition. We may require a new appraisal of the Property which secures your Credit Line at any time, including an internal inspection, at our sole option and expense.

Transfer or Assignment. Without prior notice or approval from you, we reserve the right to sell or transfer your Credit Line Account and our rights and obligations under this Agreement to another lender, entity, or person, and to assign our rights under the mortgage or deed of trust. Your rights under this Agreement belong to you only and may not be transferred or assigned. Your obligations, however, are binding on your heirs and legal representatives. Upon any such sale or transfer, we will have no further obligation to provide you with credit advances or to perform any other obligation under this Agreement.

Tax Consequences. You understand that neither we, nor any of our employees or agents, make any representation or warranty whatsoever concerning the tax consequences of your establishing and using your Credit Line, including the deductibility of interest, and that neither we nor our employees or agents will be held in the event interest on your Credit Line is not deductible. You should consult your own tax adviser for guidance on this subject.

MINIMUM ADVANCE REQUIREMENTS. If we pay up to \$300.00 of your closing costs, your initial MINIMUM ADVANCE must be \$5,000.00, or greater, and this draw must be made on the date the funds become available to you. Otherwise, there is no minimum advance requirement.

Governing Law. This Agreement will be governed by and interpreted in accordance with federal law and the laws of the State of South Carolina. This Agreement has been accepted by us in the State of South Carolina.

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

Interpretation. You agree that this Agreement, together with the mortgage or deed of trust, is the best evidence of your agreement with us. If we go to court for any reason, we can use a copy, typed or electronic, of any periodic statement, this Agreement, the mortgage or deed of trust, or any other document to prove what you owe us or that a termination has taken place. The copy, electronic, microfilm, or optical image will have the same validity as the original. You agree that, except to the extent you can show there is a better copy, your most current periodic statement is the best evidence of your obligation to pay.

Severability. If a court finds that any provision of this Agreement is not valid or should not be enforced, that fact by itself will not mean that the rest of this Agreement will not be valid or enforced. Therefore, a court will enforce the rest of the provisions of this Agreement even if a provision of this Agreement may be found to be invalid or unenforceable.

Acknowledgment. You understand and agree to the terms and conditions in this Agreement. By signing this Agreement, you acknowledge that you have read this Agreement. You also acknowledge receipt of a completed copy of this Agreement, including the Fair Credit Lending Notice and the early home equity line of credit application disclosure, in addition to the handbook entitled "When Your Home Is On the Line What You Should Know About Home Equity Lines of Credit," given with the application.

This Agreement is dated May 20, 2003.

THIS AGREEMENT IS GIVEN UNDER SEAL AND IT IS INTENDED THAT THIS AGREEMENT IS AND SHALL CONSTITUTE AND HAVE THE EFFECT OF A SEALED INSTRUMENT ACCORDING TO LAW.

BORROWER

Linda P. Pauline

ACCEPTED: FIRST CITIZENS BANK AND TRUST COMPANY, INC.

BY

Authorized Signer

(Signature)

Effective Date: 5/25/05

Loan No. [REDACTED]

IE EQUITY LINE OF CREDIT AGREEMENT
(Continued)

Page 6

BILLING ERROR RIGHTS**YOUR BILLING RIGHTS****KEEP THIS NOTICE FOR FUTURE USE**

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

Notify us in case of errors or questions about your bill.

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us on a separate sheet at:

First Citizens
Mail Code 804017
PO Box 22
Oskema, IL 60202-0022

or at the address listed on your bill. Write to us as soon as possible. We must hear from you no later than sixty (60) days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

Your name and account number.

The dollar amount of the suspected error.

Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about.

If you have authorized us to pay your bill automatically from your savings or checking account, you can stop the payment on any amount you think is wrong. To stop the payment, your letter must reach us three (3) business days before the automatic payment is scheduled to occur.

Your rights and our responsibilities after we receive your written notice.

We must acknowledge your letter within thirty (30) days, unless we have corrected the error by then. Within ninety (90) days, we must either correct the error or explain why we believe the bill was correct.

After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including finance charges, and we can apply any unpaid amount against your Credit Line. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your bill that are not in question.

If we find that we made a mistake on your bill, you will not have to pay any finance charges related to any questioned amount. If we didn't make a mistake, you may have to pay finance charges, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date on which it is due.

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within ten (10) days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill. And, we must tell you the name of anyone we reported you to. We must tell anyone we report you to that the matter has been settled between us when it finally is.

If we don't follow these rules, we can't collect the first \$50 of the questioned amount, even if your bill was correct.

Special Rule for Credit Card Purchases

If you have a problem with the quality of property or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the missing amount due on the property or services. There are two limitations on this right:

- You must have made the purchase in your home state or, if not within your home state within 100 miles of your current mailing address; and
- The purchase price must have been more than \$50.00.

These limitations do not apply if we own or operate the merchant, or if we mailed you the advertisement of the property or services.

Exhibit B

STATE OF SOUTH CAROLINA

COUNTY OF Lancaster

THIS MORTGAGE is dated May 20, 2005

0002993 Bk: 01343 Pg: 215

MORTGAGE OF REAL ESTATE

FILED, RECORDED, INDEXED
05/23/2005 01:13 PM
Fee: \$11.00 St. Fee: \$6.00
Co. Fee: \$4.00 Pages: 5
Register of Deeds
LANCASTER COUNTY, SC

THIS MORTGAGOR(S) as referred to in this Mortgage is (are) James E. Faulkner and Linda P. Faulkner, a/k/a Linda Faulkner

THE MORTGAGEE, First Citizens Bank and Trust Company, Inc., will be referred to herein as "Lender." Lender's address is 1401 Hwy 160 West, Fort Mill, SC 29715

WHEREAS, Borrower(s) Linda P. Faulkner

is indebted to Lender in the principal amount of \$ 234,000.00 pursuant to the note, note agreement, loan agreement or revolving loan agreement (hereinafter referred to as the "Note") dated May 20, 2005

The Note includes all documents renewing, extending, or modifying it and/or evidencing future advances. The Note has a final maturity of May 20, 2020

The amount of debt secured by this Mortgage, including the outstanding amount of the Note and all Future Advances under paragraph 13, shall at no time be more than double the principal amount of the Note or \$ 234,000.00 whichever is greater, plus interest, reasonable attorney's fees and court costs incurred in collection of amounts due hereunder and expenditures by Lender under Paragraph 5 below. Interest under the Note will be deferred, accrued, or capitalized, but Lender shall not be required to defer, accrue or capitalize any interest except as provided in the Note.

THIS MORTGAGE is given to secure the Lender the repayment of the following amounts, with interest: (A) the indebtedness evidenced by the Note; (B) any Future Advances made under paragraph 13 below; (C) expenditures by Lender under paragraph 5 below; and (D) attorney's fees, court costs and other amounts which may be due under the Note and the Mortgage. In consideration of the above indebtedness and for other valuable consideration which Mortgagor acknowledged receiving, Mortgagor does hereby mortgage, grant and convey to Lender, its successors and assigns the following described property (hereinafter sometimes referred to as the "Property"):

(SEE EXHIBIT 'A' ATTACHED FOR LEGAL DESCRIPTION)

Together with all singular rights, manors, hereditaments and appurtenances belonging or in any way incident or appertaining thereto; all improvements, now or hereafter situated thereon; and all fixtures (including, but not limited to, appliances, additions, improvements, and all items and material attached to or used in connection with the described Property) now or hereafter attached thereto; all easements, rights-of-way, goings of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights, and powers, and all estates, rights, titles, interests, privileges, liberties, and tenements, whatsoever and in any way belonging, relating or appertaining to any of the property hereof above described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor, and the reversion and reversions, remainder and remainders, rents, issues, and profits in and to the same, including but not limited to all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the property or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property or to any rights, appurtenant thereto, and all proceeds of any sales or other dispositions of the property or any part thereof (collectively hereafter referred to as the "Property"; and all of the same being deemed part of the Property and included in the reference thereto).

TO HAVE AND TO HOLD all and singular the right unto the Lender and the successors and assigns of Lender. However, MORTGAGOR covenants that Mortgagor is lawfully seized of the Property in fee simple absolute, that Mortgagor has good right and is lawfully authorized to sell, convey or encumber the same, and that the Property is free and clear of all encumbrances except as expressly provided in paragraph 18 and otherwise herein. Mortgagor covenants to warrant and forever defend all and singular the Property unto Lender and the successors or assigns of Lender from and against Mortgagor and all persons whomsoever lawfully claiming the same or any part thereof.

PROVIDED ALWAYS, nevertheless, and it is the true intent and meaning of Mortgagor and Lender, that if Mortgagor pays or causes to be paid to Lender the debt secured hereby, the estate hereby granted shall cease, determine and be utterly null and void; otherwise said estate shall remain in full force and effect.

IT IS AGREED that Mortgagor shall be entitled to hold and enjoy the Property until a Default as herein defined has occurred.

MORTGAGOR further covenants and agrees with Lender as follows:

1. Assignment of Rents and Profits. As further security for all sums secured by this Mortgage, Mortgagor assigns to Lender all rents and profits arising from the Property; provided, however, that so long as no Default as hereinafter defined has occurred, Mortgagor shall be entitled to collect and retain all such rents and profits as the sole property of Mortgagor without accounting to Lender therefor.

2. Care of Property. Mortgagor will maintain the Property in good condition and repair and will neither permit nor allow waste thereof. Mortgagor will promptly repair or restore any portion of the Property which is damaged or destroyed by any cause whatsoever and will promptly pay when due all costs and expenses of such repair or restoration. Mortgagor will not remove or demolish any improvement or fixture which is now or hereafter part of the Property and will cut no timber on the Property without the express written consent of Lender. Lender shall be entitled to specific performance of the provisions of this paragraph.

3. Insurance. (A) Mortgagor shall at its sole expense obtain for, deliver to, and maintain for the benefit of Lender, during the life of the Mortgage, insurance policies in such amounts as Lender may require, in no event less than the full insurable value, insuring the Property against fire, extended coverage and such other insurable hazards, casualties and contingencies as Lender may require including flood damage, and shall pay promptly, when due, any premiums on such insurance policies and on any renewals thereof. The form of such policies, the companies issuing them and the coverages provided shall be acceptable to Lender and shall contain a noncontributory mortgage endorsement making losses payable to Lender. At least thirty (30) days prior to the expiration date of all such policies, renewals thereof satisfactory to Lender shall be delivered to Lender. Mortgagor shall deliver to Lender receipts evidencing the payment of all premiums of such insurance policies and renewals. In the event of loss, Mortgagor will give written notice to Lender, and Lender may make proof of loss if not made promptly by Mortgagor. In the event of foreclosure of this Mortgage or any other transfer of title to the Property in extinguishment of the indebtedness and other sums secured hereby, all right, title and interest of Mortgagor in and to all insurance policies and renewals thereof then in force shall pass to the grantee. Upon the failure of Mortgagor to obtain and maintain insurance satisfactory to Lender, Lender may at its own discretion procure and substitute for any and all of the insurance so held as aforesaid, such other policy or policies of insurance, in such amount as Lender, acting in its sole discretion, may determine; all without prejudice to its right to foreclose hereunder should Mortgagor fail to refuse to keep said premises so insured.

(B) Mortgagor hereby assigns to Lender all proceeds from any insurance policies, and Lender is hereby authorized and empowered in its reasonable discretion, to adjust or compromise any loss under any insurance policies on the Property, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to Lender alone, and not to Mortgagor and Lender jointly. After deducting such insurance proceeds any expenses incurred by Lender in the collection or handling of such funds, Lender, acting in its sole discretion, may: apply the net proceeds (1) to the payment of any sum secured by this Mortgage in such order as Lender may determine; or (2) to the replacement, repair, or restoration of the portion of the Property damaged or destroyed in a manner determined by Lender; or may release said net proceeds to the Mortgagor upon such conditions as Lender shall determine; or may apply said net proceeds for any combination of the foregoing; all without affecting the lien of this Mortgage for the full amount secured hereby before such payment took place. If Lender elects to restore the improvements, any balance of such monies after restoration shall either be applied toward the reduction of indebtedness and any other sums secured hereby or shall be paid to Mortgagor. Lender shall not be responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

(C) Mortgagor shall at its sole expense obtain for, deliver to, and maintain for the benefit of Lender, during the life of this Mortgage, liability insurance policies relating to the Property, in such amounts, with such companies and in such form as may be reasonably required by Lender. Lender may require such policies to contain an endorsement, in form satisfactory to Lender, naming Lender as an additional insured thereunder. Mortgagor shall pay promptly, when due, any premiums on such insurance policies and renewals thereof.

4. Taxes and Assessments. Mortgagor will pay all taxes, assessments and other charges which constitute or are secured by a lien upon the Property which is superior to the lien of this Mortgage and will deliver to Lender proof of payment of the same not less than ten (10) days prior to the date the same become delinquent; provided, however, that Mortgagor shall be entitled by appropriate proceedings to contest the amount or validity of such tax, assessment or charge so long as the collection of the same by foreclosure of the lien upon the Property is stayed during the pendency of such proceedings and Mortgagor deposits with the authority to which such tax, assessment or charge is payable or with Lender appropriate security for payment of the same together with any applicable interest and penalties, should the same be determined due and owing.

5. Expenditures by Lender. If Mortgagor fails to make payment for restoration or repair of the Property, for insurance premiums or for taxes, assessments or other charges as required in the Mortgage, Lender may, but shall not be obligated to, pay for the same, and any such payment by Lender will be secured by this Mortgage and have the same rank and priority as the principal debt secured hereby and bear interest from the date of payment at the rate payable from time to time on outstanding principal under the Note. Payments made for taxes by Lender shall be a first lien on the Property to the extent of the taxes so paid with interest from the date of payment, regardless of the rank and priority of this Mortgage. Mortgagor will pay to the Lender in cash on demand an amount equal to any payment made by Lender pursuant to this paragraph plus interest thereon as herein provided.

6. Condemnation. Lender shall be entitled to be made a party to and to participate in any proceeding, whether formal or informal, for condemnation or acquisition pursuant to power of eminent domain of any portion of the Property. Mortgagor hereby assigns to Lender the right to collect and receive any payment or award to which mortgagor would otherwise be entitled by reason of condemnation or acquisition pursuant to the power of eminent domain of any portion of the Property. Any such payment or award received by Lender may, at the option of Lender, (1) be applied by Lender to payment of any sums secured by this Mortgage in such order as Lender may determine or (2) be applied in a manner determined by Lender to the replacement of the portion of the Property taken and to the repair or restoration of the remaining portion of the Property or (3) be released to Mortgagor upon such conditions as Lender may determine or (4) be used for any combination of the foregoing purposes. No portion of an indemnity payment which is applied to replacement, repair or restoration of any portion of the Property or which is released to Mortgagor shall be deemed a payment against any sums secured by this Mortgage.

7. Due on sale or Transfer of Property. At the option of the Lender, the indebtedness secured by this Mortgage shall become due and payable if, without the written consent of the Lender, the Mortgagor shall convey away the mortgaged premises, or if the title shall become vested in any other person in any manner whatsoever (to include a Sales Contract) other than by death of the Mortgagor. It is understood and agreed that in consideration for the consent of the Lender to any transfer of title to the mortgaged premises, the Lender at its option may charge a loan transfer fee and/or require changes in the rate of interest, term of loan, monthly payments of principal and interest and other terms and conditions of this Mortgage and/or the Note secured hereby.

8. Default. The occurrence of any of the following events shall be deemed a Default under this Mortgage:

- (A) any default by Mortgagor as described in the Note;
- (B) failure of Mortgagor to pay any other sum secured by this Mortgage when due;
- (C) failure of Mortgagor to observe or perform any covenant or agreement set forth in this Mortgage or in any loan agreement entered into between the Mortgagor and Lender with respect to the indebtedness hereby secured within ten (10) days following the giving of notice by Lender to Mortgagor to observe or perform the same.

8. Remedies. Upon the occurrence of a Default as hereinabove defined, Lender may, without notice to Mortgagee, declare all sums secured by this Mortgage immediately due and payable and may commence proceedings to collect such sums, foreclose this Mortgage and sell the Property. At the foreclosure Lender shall be entitled to bid and to purchase the Property and shall be entitled to apply the debt secured hereby, or any portion thereof, in payment for the Property. The remedies provided to Lender in this paragraph shall be in addition to and not in lieu of any other rights and remedies provided in this Mortgage or by law, all of which rights and remedies may be exercised by Lender simultaneously or consecutively in any order without being deemed to have waived any right or remedy previously or not yet exercised.

10. Appointment of Receiver. Upon the occurrence of a Default as hereinabove defined Lender shall be entitled to the appointment of a receiver to enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Mortgage. The receiver shall be entitled to receive a reasonable fee for so managing the Property. All rents collected pursuant to this paragraph shall be applied first to the costs of taking control of and managing the Property and collecting the rents, including, but not limited to attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation of liability of Mortgagee as lessor or landlord of the Property and then to the sums secured by this Mortgage. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Lender shall not be liable to Mortgagee, anyone claiming under or through Mortgagee, or anyone having an interest in the Property by reason of anything done or left undone by Mortgagee under this paragraph. If the rents of the Property are not sufficient to meet the cost of taking control and managing the Property and collecting the rents, Lender, at its sole option, may advance funds to meet the costs. Any funds expended by Lender for such purposes shall become indebtedness of Mortgagee to Lender secured by this Mortgage. Unless Lender and Mortgagee agree in writing to other terms of payment, such amounts shall be payable upon notice from Lender to Mortgagee requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in the Note. The entering upon and taking and maintaining of control of the Property by Lender or the receiver and the application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Lender hereunder.

11. Waiver by Lender. Lender may, in its sole discretion, from time to time waive or forbear from enforcing any provision of this Mortgage, and no such waiver or forbearance shall be deemed a waiver by Lender of any right or remedy provided herein or by law or be deemed a waiver of the right at any later time to enforce strictly all provisions of this Mortgage and to exercise any and all remedies provided herein and by law.

12. Costs of Appraisal. Mortgagee shall pay any and all costs of providing to Lender, as it may request from time to time, a current appraisal of the market value of the property prepared by an appraiser acceptable to Lender, in its sole discretion. If Mortgagee fails to pay such costs, Lender may advance the cost on the Mortgagee's behalf and add the amount of such advance to the principal under the Note, which shall bear interest at the rate as provided in the Note, and shall be due and payable on demand. Mortgagee's failure to pay the cost of any such appraisal, plus all accrued interest, in full, within ten (10) days of the date of such demand shall constitute an event of default entitling the Lender to accelerate the maturity of all debts secured by the Mortgage, as allowed by law.

13. Future Advances. Lender, at its option, may make Future Advances to Mortgagee. Such Future Advances, with interest at the rate payable from time to time on the outstanding principal under the Note, shall be secured by this Mortgage when evidenced by the Note or by any other note stating that it is secured by this Mortgage or when advanced under the terms of this Mortgage. Lender may make but is not obligated to make such Future Advances (A) at the request of the Mortgagee, whether or not there is an obligation to make Future Advances; (B) pursuant to an advance of funds under Paragraph 10 above; or (C) to pay, with or without the consent or request of Mortgagee, any amounts which may be due under any other mortgage or lien affecting the Property.

14. Notices. Any notice given by either party hereto to the other party shall be in writing and shall be signed by the party giving notice. Any notice or other document to be delivered to either party hereto by the other party shall be deemed delivered if mailed postage prepaid to the party to whom directed at the latest address of such party known to the party sending the same. This paragraph shall not be deemed to prohibit any other manner of delivering a notice or other document.

15. Miscellaneous.

- (A) The agreements herein shall bind and inure to the benefit of the Mortgagee, Lender and their respective heirs, successors and assigns.
- (B) Whenever in this Mortgage one of the parties hereto is named or referred to, the heirs, legal representatives, successors and assigns of such parties shall be included and all covenants and agreements contained in this Mortgage by or on behalf of the Mortgagee or by or on behalf of the Lender shall bind and inure to the benefit of their representatives, heirs, successors and assigns, whether so expressed or not.
- (C) The headings of the sections, paragraphs and subsections of this Mortgage are for the convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.
- (D) If any provision of this Mortgage conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage are declared to be severable.
- (E) Lender may make or cause to be made reasonable entries upon and inspections of the Property upon giving Mortgagee prior notice.
- (F) All covenants of Mortgagee shall be joint and several.
- (G) This Mortgage shall be governed by, construed and enforced in accordance with the laws of South Carolina.
- (H) If this is not a first Mortgage, Mortgagee has provided Lender with an attorney's opinion letter (or title insurance) setting out in detail any and all prior Mortgages or liens including the date of the existing mortgage liens and the original amounts.
- (I) If the Mortgagee is not obligated on the debt which this Mortgage secures, then the Mortgagee acknowledges that Note was made in consideration for this transaction and the owner of the Property agrees to be bound by all terms and conditions of the Note and the Mortgage.

16. Mortgagee agrees to indemnify, defend and save Lender and its successors and assigns harmless from and against all claims, actions, administrative proceedings, fines, costs, liabilities, attorney's fees and costs of the like that arise directly or indirectly from the presence or release of hazardous materials, substances, wastes or other environmentally regulated substances on the Property. The Mortgagee shall also indemnify and hold the Lender harmless from and against any and all damages, penalties, fines, claims, liens, suits, liabilities, costs (including cleanup costs), judgments and expenses (including attorney's, consultant or expert's fees and expenses) of any kind and nature suffered by or asserted against either Lender or Mortgagee as a direct or indirect result of any requirement under any law, regulation or ordinance, local, state or federal, which requires the elimination, removal, or transfer of any hazardous material, substances, waste or other environmentally regulated substances. The Mortgagee's obligations hereunder to the Lender shall not be limited to any extent by the term of the Note, and as to any act or occurrence prior to payment in full and satisfaction of the Note and Mortgage, or foreclosure under the Mortgage, or remain in full force and effect not withstanding payment in full and satisfaction of the Note and Mortgage, or foreclosure under the Mortgage, or delivery of a deed in lieu of foreclosure. A default hereunder may, at the option of the Lender, be treated as a default under the documents evidencing and securing the loans. Hazardous materials, substances, waste or other environmentally regulated substances as those terms are used herein shall have the meanings specified in the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), as amended, the Resource Conservation Recovery Act, as amended, the Clean Air Act, the Clean Water Act, or any federal, state or local statute, law, ordinance, code, rule, regulation, order or decree as may now or at any time hereafter be in effect.

17. Environmental Assessment Costs. The Mortgagee shall pay the cost of providing to Lender, at Lender's request, a current environmental site assessment, audit, or survey ("Assessment") of the Property, which Assessment shall be prepared by a person or company acceptable to Lender, in Lender's sole discretion. If Mortgagee fails to pay the costs of the Assessment, Lender may pay such cost and the same shall constitute an advance under the Note and be secured by the Property, and shall be due and payable on demand. Mortgagee's failure to pay such amount with all accrued interest in full within ten (10) days of date of such demand shall constitute an event of default and entitle Lender to accelerate the maturity of any and all debts secured by the property, as allowed by law.

State of South Carolina

County of Lanester

To

First Citizens Bank and Trust Company, Inc.

Mortgage of Real Estate

Filed at _____ o'clock _____ M.

this _____ day of _____

and recorded in Mortgage Book _____

Page _____

F.M.C. or Clerk of Court G.P. & G.S.

County, S.C.

18. Waiver by Mortgagor. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage the day and year first above written.

Signed, sealed and delivered

In the presence of:

[Signature]
[Signature]

Mortgagor
X Linda P. Faulkner
X James E. Faulkner

Probate

STATE OF SOUTH CAROLINA

County of York

Before me, the undersigned Notary Public, personally appeared the undersigned witness who, being duly sworn, deposed and said that (s)he saw Linda P. Faulkner James E. Faulkner
sign, seal and deliver the foregoing Mortgage and that (s)he, together with the other witness witnessed the execution thereof.

SWORN to and subscribed
before me this 20th day

of May 2005

[Signature] (SEAL)
Notary Public for South Carolina

My commission expires: 9-1-2010

[Signature]

EXHIBIT 'A'

All that certain piece, parcel or lot of land containing .47 acres, more or less, lying being and situate in Indian Land Township, Lancaster County, South Carolina, being described as follows: BEGINNING at a point in the center of Silver Run Road, said point being .8 miles northeast of the juncture of S. C. Highway 160 and running thence N 78-54-51 W, 213.04 feet to a point; thence N 63-32-00 E, 105.15 feet; N 63-59-44 E, 209.51 feet to a point on Silver Run Road; thence with Silver Run Road, S 21-0518 W, 118.15 feet; S 22-28-15 W, 75.56 feet to the point of beginning, all of which is more accurately shown on a plat of property of J. E. Faulkner prepared by Bradford M. Hucks, RLS, on June 29, 1982, and recorded herewith as Plat No. 14101 in the Register of Deeds Office for Lancaster County, South Carolina.

Being the identical property conveyed to James E. Faulkner and Linda Faulkner by Deed of John J. Miller, et al. recorded November 9, 1993 in Deed Book U-11 Page 245 in the Register of Deeds Office for Lancaster County, South Carolina

ALSO: All that certain piece, parcel or lot of land situate, lying, and being in the State of South Carolina, County of Lancaster, in Indian Land Township, with improvements thereon, being more particularly described as follows: BEGINNING at a point in the center of Silver Run Road (No. 2-29-336) said road being a County Road which leads to S. C. Highway No. 160, and running thence with the center of said Silver Run Road S 7-17 W 210 Feet; thence S 64 W 210 feet to a point; thence N 7-16 E 210 feet to a point; thence N 64 E 210 feet to a point in the center of said Silver Run Road, the point of beginning, containing .84 acre, more or less, and being bounded on the South by land of Leitner Miller and on the North and West by land of W. L. Blackwelder and as shown on map made by Reese F. McRorie, Surveyor, recorded in Plat Book 12, at Page 111, Register of Deeds Office for Lancaster County, South Carolina.

Being a portion of the property conveyed to Linda P. Faulkner by Deed of J. E. Faulkner recorded September 5, 2000 in Deed Book 93 Page 15 in the Register of Deeds Office for Lancaster County, South Carolina.

all of tax map 5-88

4
18

Exhibit C



PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$77,903.37	12-27-2010	12-29-2011				WBA01	
References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing ***** has been omitted due to text length limitations.							

Borrower: LINDA P PAULKNER
8843 CALVIN HALL ROAD
FORT MILL, SC 29716-9620

Lender: FIRST CITIZENS BANK AND TRUST COMPANY, INC
York Office
811 E Liberty St
York, SC 29746

Principal Amount: \$77,903.37 **Interest Rate:** 5.000% **Date of Note:** December 27, 2010

PROMISE TO PAY. I ("Borrower") promise to pay to FIRST CITIZENS BANK AND TRUST COMPANY, INC ("Lender"), or order, in lawful money of the United States of America, the principal amount of Seventy-seven Thousand Nine Hundred Three & 37/100 Dollars (\$77,903.37), together with interest on the unpaid principal balance from December 31, 2010, at an interest rate of 5.000% per annum, until paid in full. The interest rate may change under the terms and conditions of the "INTEREST AFTER DEFAULT" section.

PAYMENT. I will pay this loan in one principal payment of \$77,903.37 plus interest on December 29, 2011. This payment due on December 29, 2011, will be for all principal and all accrued interest not yet paid. In addition, I will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning February 12, 2011, with all subsequent interest payments to be due on the same day of each month after that. Unless otherwise agreed or required by applicable law, payments will be applied to the account as billed if I receive a periodic billing invoice or in the order of late charges, insurance charges, interest, principal and other charges for loans that have a payment coupon. I will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

PREPAYMENT. I may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve me of my obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due. I agree not to send Lender payments marked "paid in full", "without recourse", or similar language. If I send such a payment, Lender may accept it without losing any of Lender's rights under this Note, and I will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: First Citizens, Loan Operations MC 994033, PO Box 28 Columbia, SC 29202.

LATE CHARGE. If a payment is 11 days or more late, I will be charged 5.000% of the unpaid portion of the regularly scheduled payment.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, the total sum due under this Note will continue to accrue interest at the interest rate under this Note.

DEFAULT. I will be in default under this Note if any of the following happen:

Payment Default. I fail to make any payment when due under this Note.

Break Other Promises. I break any promise made to Lender or fail to perform promptly at the time and strictly in the manner provided in this Note or in any agreement related to this Note, or in any other agreement or loan I have with Lender.

False Statements. Any representation or statement made or furnished to Lender by me or on my behalf, or made by Guarantor, or any other guarantor, endorser, surety, or accommodation party, under this Note or the related documents in connection with the obtaining of the loan evidenced by this Note or any security document directly or indirectly securing repayment of this Note is false or misleading in any material respect, either now or at the time made or furnished.

Death or Incapacity. Any Borrower dies or becomes insolvent; a receiver is appointed for any part of my property; I make an assignment for the benefit of creditors; or any proceeding is commenced either by me or against me under any bankruptcy or insolvency laws.

Taking of the Property. Any creditor or governmental agency tries to take any of the property or any other of my property in which Lender has a lien. This includes taking of, garnishing of or levying on my accounts with Lender. However, if I dispute in good faith whether the claim on which the taking of the property is based is valid or reasonable, and if I give Lender written notice of the claim and furnish Lender with monies or a surety bond satisfactory to Lender to satisfy the claim, then this default provision will not apply.

Defensive Collateralization. This Note or any of the related documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Collateral Damage or Loss. Any collateral securing this Note is lost, stolen, substantially damaged or destroyed and the loss, theft, substantial damage or destruction is not covered by insurance.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor, or any other guarantor, endorser, surety, or accommodation party of any of the Indebtedness or any Guarantor, or any other guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the Indebtedness evidenced by this Note.

Insolvency. Lender in good faith believes itself insolvent.

Cure Provisions. If any default, other than a default in payment is curable and if I have not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured if I, after Lender sends written notice to me demanding cure of such default: (1) cure the default within twenty (20) days; or (2) if the cure requires more than twenty (20) days, immediately initiate steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continue and complete all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practicable.

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance under this Note and all accrued unpaid interest immediately due, and then I will pay that amount.

ATTORNEYS' FEES; EXPENSES. Lender may hire or pay someone else to help collect this Note if I do not pay. I will pay Lender that amount. This includes Lender's reasonable attorneys' fees in an amount not less than fifteen percent (15%) of the amount owing on this Note and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, I also will pay any court costs, in addition to all other sums provided by law.

GOVERNING LAW. This Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina without regard to its conflicts of law provisions. This Note has been accepted by Lender in the State of South Carolina.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all my accounts with Lender (whether checking, savings, or some other account). This includes all accounts I hold jointly with someone else and all accounts I may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. I authorize Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts.

COLLATERAL. I acknowledge this Note is secured by first mortgage on real estate located at 8844 Calvin Hall Road, Fort Mill, Lancaster County, South Carolina, which is more fully described in mortgage dated 3-7-2008 and first mortgage on real estate and improvements located at 8843 Calvin Hall Road, Fort Mill, Lancaster County, South Carolina, which is more fully described in mortgage dated 5-20-2008.

FINANCIAL STATEMENTS. I agree to provide Lender with such financial statements and other related information at such frequencies and in such detail as Lender may reasonably request.

PROMPT CREDITING OF PAYMENTS. All payments must be made in U.S. dollars and must be received by us consistent with any payment instructions provided on or with your invoice or coupon prior to 5:00 PM Eastern Time to receive credit for the payment on the date we receive it. If paying at a branch or by mail, payments must include the invoice stub or payment coupon. In addition, if paying by mail, payment must be mailed to the specific address furnished by us. Payments received at any of our ATMs; payments received on a business day after 5:00 PM Eastern Time; payments received at a branch or by mail without an invoice stub or coupon; and payments received on a day that is not a Bank business day will be credited to your account no later than the next Bank business day.

RETURNED PAYMENT FEE. If you make any payment on this account by check, draft or other item that is dishonored for any reason, you agree to pay Lender's reasonable charge as allowed by law. This charge will be in addition to any NSF or similar charge which may be assessed

PROMISSORY NOTE
(Continued)

Page 2

against the account itself by the paying bank.

SUCCESSOR INTERESTS. The terms of this Note shall be binding upon me, and upon my heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

NOTIFY US OF INACCURATE INFORMATION WE REPORT TO CONSUMER REPORTING AGENCIES. I may notify Lender if Lender reports any inaccurate information about my account(s) to a consumer reporting agency. My written notice describing the specific inaccuracy(ies) should be sent to Lender at the following address: First Citizens Loan Operations MC 994033 PO Box 29 Columbia, SC 29202.

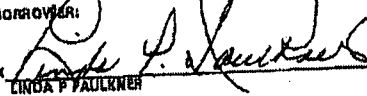
GENERAL PROVISIONS. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. I and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral or impede, fail to realize upon or perfect Lender's security interest in the collateral. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several. This means that the words "I", "me", and "my" mean each and all of the persons signing below.

PRIOR TO SIGNING THIS NOTE, I READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE. I AGREE TO THE TERMS OF THE NOTE.

I ACKNOWLEDGE RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

THIS NOTE IS GIVEN UNDER SEAL AND IT IS INTENDED THAT THIS NOTE IS AND SHALL CONSTITUTE AND HAVE THE EFFECT OF A SEALED INSTRUMENT ACCORDING TO LAW.

BORROWER:

X  (Seal)
LINDA P. FAULKNER

First Citizens Bank, N.A. Member FDIC. Equal Housing Lender. All rights reserved. © 2011 First Citizens Bank, N.A. All rights reserved.

Exhibit D



First Citizens

CONSUMER NOTE MODIFICATION AGREEMENT

12/17/2012

Date of Agreement

12/1/10

Loan Account Number

Borrower(s): LINDA P FAULKNER

The Borrower(s) is/are indebted to First Citizens Bank and Trust Company, Inc. ("Bank") by Note with original terms as follows:

Original Note Date: 12/27/2010

Original Principal Amount of Loan: \$77,903.37

Original Contract Interest Rate: 5.00 %

The obligation currently has an outstanding balance, including interest and any charges due, of \$ 575,659.34 with

final maturity date of 9/26/2012

All parties now desire to modify the Note. This is not a refinancing, substitution, replacement or novation of the Note, but a modification of the Note with all terms and conditions of the Note and related documents remaining in full force and effect except as modified herein. The Note, as modified, continues to be secured by that Mortgage filed in Lancaster County at Book 1838 & 01343 Page 0108 & 00213. Therefore, for value received, it is the intent of all parties to modify the said Note as follows: (Complete Sections 1 and 2 entitled "Interest Rate" and "Payment Terms" in all cases. Subsections not completed are deleted. Section 3 applies only if completed.)

1. Interest Rate (Complete Section A or B.)

A. At the simple, fixed interest rate of 5.1 percent per annum.

B. At the variable interest rate of _____ percentage points above (or below, if checked) the Prime Rate established from time to time by *The Wall Street Journal* (the "Index Rate"). However, the interest rate will not at any time exceed the maximum rate of _____ percent per annum (or the maximum rate permitted by applicable law, whichever is less), or fall below the minimum rate of _____. The interest rate as of the date of this Agreement stated in simple interest terms is _____ percent per annum. The interest rate is subject to change on a monthly basis with changes becoming effective on the first banking day following the 14th of the month.

2. Payment Terms (Complete Section A, B or C.)

A. **Single Payment Loan.** The outstanding principal balance and all accrued interest shall be payable in one single payment on _____ (hereafter referred to as "Maturity").

B. **Amortizing Payments.** The outstanding principal balance and accrued interest shall be payable in _____ equal consecutive _____ (monthly, quarterly, etc.) payments of _____ each commencing on _____ (the "Regular Payment Commencement Date") and on the same day of each such calendar period thereafter and one final payment of the entire balance due on _____ (hereafter referred to as "Maturity"), unless sooner paid. The periodic payment amount specified includes principal and interest.

C. **Principal Payment Terms.** The outstanding balance shall be: (Complete 1 or 2.)

1) Payable in one single payment (exclusive of interest) on 03/30/2013 (hereafter referred to as "Maturity").

2) Payable in _____ equal consecutive _____ (monthly, quarterly, etc.) payments of _____ commencing on _____ and on the same day of each such calendar period thereafter and one final payment of the entire balance due on _____ (hereafter referred to as "Maturity").

Interest Payment Terms. In addition to the principal payment(s) identified above, interest on the outstanding principal balance shall be: (Check 1 or complete Section 2.)

1) ☐ Payable in full at Maturity.

2) Payable Monthly (monthly, quarterly, etc.) beginning 1/14/2013 and consecutively on the same day of each calendar period thereafter, with any accrued but unpaid interest due and payable in full at Maturity.

3. Fees. Loan fees as follows are due and payable to Lender upon this Agreement.

☒ Modification Fee	\$ 150.00	☐ Paid in Cash	☒ Added to Loan Balance
☐ Flood Re-Certification Fee	\$	☐ Paid in Cash	☐ Added to Loan Balance
☐ Intangible Recording Tax	\$	☐ Paid in Cash	☐ Added to Loan Balance
☐ GRMA	\$	☐ Paid in Cash	☐ Added to Loan Balance
☐ Recording Fee	\$	☐ Paid in Cash	☐ Added to Loan Balance
☐ Appraisal Fee	\$	☐ Paid in Cash	☐ Added to Loan Balance

Note: For any Real Estate Secured loan containing a walled, roofed structure, a \$4.00 fee for Flood Insurance Re-Certification must be paid. This fee is in addition to the Modification Fee. If the property is determined to be in a flood zone, you will be provided the Flood Hazard Notice and will be required to obtain proof of adequate flood coverage before signing this Modification Agreement. Intangible Recording Tax may only be applicable when real estate collateral is located in the State of Georgia.

4. Credit Insurance Cancellation Notice. I understand and acknowledge that if the loan being modified has credit life and/or accident and health insurance, the existing coverage will be discontinued as of the effective date of this Modification Agreement.

Borrower and each Guarantor signing below understands and agrees that in modifying the existing Indebtedness, Bank is relying upon Borrower's representations, warranties, and agreements, as set forth in the provisions of the original Note. Except as expressly modified pursuant to this Consumer Note Modification Agreement, the terms of the original Note (including renewals and modifications thereto) remain unchanged and in full force and effect. Bank's agreement to modifications of the existing Indebtedness pursuant to this Consumer Note Modification Agreement in no way shall obligate Bank to make any future modifications to the Indebtedness. Nothing in this Consumer Note Modification Agreement shall constitute a satisfaction of the Indebtedness. It is the intention of Bank and Borrower to retain as liable parties all makers, endorsers, and guarantors of the original Note (including renewals and modifications thereto), unless the party is expressly released by Bank in writing. No maker, endorser, or guarantor will be released by virtue of this Consumer Note Modification Agreement.

Bank has advised Borrower and each Guarantor signing below to review this Consumer Note Modification Agreement with legal counsel of their choice and Borrower and each Guarantor signing below acknowledges that they have done so, to the extent they deemed necessary.

This Modification Agreement amends but does not replace or satisfy the original note. All other provisions of said Note are to remain in full force and effect and unaltered hereby.

Witness

Borrower

Witness

Co-Borrower

Witness

Guarantor

Witness

Guarantor

First Citizens Bank and Trust Company, Inc.

By

Its

I/We acknowledge receipt of a copy of this Modification Agreement as a third party not obligated on the note.

Mortgagee/Grantor

Mortgagee/Grantor

Bank Use Only

Encore Number 355991

Lender WILLIAM ARTHUR

Balloon Code 0

Loan Grade 30

Status 5

Form 603 (Multi-State) (07/11)

2

Exhibit E

After Recording Return To:

WALTER L. HEINSCHN

REGORDATION REQUESTED BY:
FIRST CITIZENS BANK AND TRUST COMPANY, INC
PO Box 29
Columbia SC 29202

WHEN RECORDED MAIL TO:
First Citizens
Loan Operations MC894033
PO Box 29
Columbia SC 29202

SEND TAX NOTICES TO:
LINDA P FAULKNER
9843 CALVIN HALL RD
FORT MILL SC 29707-8520

2008003462

MORTGAGE
RECORDING FEES \$13.00

PRESENTED & RECORDED:
03-12-2008 02:08 PM

JOHN DANE
REGISTERED CLERK
LANCASTER COUNTY, SC
By: CANDICE KIRKLEY DEPUTY

BK:MORT 1888

PG:108-114

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

STATE OF SOUTH CAROLINA

COUNTY OF Lancaster

MORTGAGE OF REAL ESTATE

THIS MORTGAGE is dated 03/07/2008

THE MORTGAGOR(S) as referred to in this Mortgage is (are) LINDA P. FAULKNER

THE MORTGAGEE, First Citizens Bank and Trust Company, Inc. will be referred to herein as "Lender". Lender's address is PO Box 29, MC894033, Columbia, SC 29202.

WHEREAS, Borrower(s) LINDA P FAULKNER

is (are) indebted to Lender in the principal amount of \$ 575,000.00 pursuant to the note, note agreement, loan agreement or revolving loan agreement (hereinafter referred to as the "Note") dated 03/07/2008. The Note includes all documents renewing, extending, or modifying it and/or evidencing future advances. The Note has a final maturity of 03/07/2010.

The amount of debt secured by this Mortgage, including the outstanding amount of the Note and all Future Advances under paragraph 13, shall at no time be more than double the principal amount of the Note or \$ 575,000.00, whichever is greater, plus interest, reasonable attorney's fees and court costs incurred in collection of amounts due hereunder and expenditures by Lender under Paragraph 5 below. Interest under the Note will be deferred, accrued, or capitalized, but Lender shall not be required to defer, accrue or capitalize any interest except as provided in the Note.

THIS MORTGAGE is given to secure the Lender the repayment of the following amounts, with interest: (A) the indebtedness evidenced by the Note; (B) any Future Advances made under Paragraph 13 below; (C) expenditures by Lender under Paragraph 5 below; and (D) attorney's fees, court costs and other amounts which may be due under the Note and the Mortgage. In consideration of the above indebtedness and for other valuable consideration

which Mortgagor acknowledges receiving, Mortgagor does hereby mortgage, grant and convey to Lender, its successors and assigns the following described property (hereinafter sometimes referred to as the "Property"):

The Real Property is located at:
9844 Calvin Hall Road, Fort Mill, SC 29715 (Lancaster)

See Exhibit A

Together with all singular rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto; all improvements, now or hereafter situated thereon; and all fixtures (including, but not limited to, appliances, additions, improvements, and all items and material attached to or used in connection with the described Property) now or hereafter attached thereto; all easements, rights-of-way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights, and powers; and all estates, rights, titles, interests, privileges, liberties, and tenements, whatsoever and in any way belonging, relating or appertaining to any of the property herein above described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, property, possession, claim and demand whatsoever of law as well as in equity of Mortgagor of, in and to the same, including but not limited to all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the property or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property or to any rights, appurtenant thereto; and all proceeds of any sales or other dispositions of the property or any part thereof (collectively hereafter referred to as the "Property"; and all of the same being deemed part of the Property and included in the reference thereto).

TO HAVE AND TO HOLD all and singular the Property unto Lender and the successors and assigns of Lender forever.

MORTGAGOR covenants that Mortgagor is lawfully seized of the Property in fee simple absolute, that Mortgagor has good right and is lawfully authorized to sell, convey or encumber the same, and that the Property is free and clear of all encumbrances except as expressly provided in Paragraph 15 and otherwise herein. Mortgagor covenants to warrant and forever defend all and singular the Property unto Lender and the successors or assigns of Lender from and against Mortgagor and all persons whomsoever lawfully claiming the same or any part thereof.

PROVIDED ALWAYS, nevertheless, and it is the true intent and meaning of Mortgagor and Lender, that if Mortgagor pays or causes to be paid to Lender the debt secured hereby, the estate hereby granted shall cease, determine and be utterly null and void; otherwise said estate shall remain in full force and effect.

IT IS AGREED that Mortgagor shall be entitled to hold and enjoy the Property until a Default as herein defined has occurred.

MORTGAGOR further covenants and agrees with Lender as follows:

1. **Assignment of Rents and Profits.** As further security for all sums secured by this Mortgage, Mortgagor assigns to Lender all rents and profits arising from the Property; provided, however, that so long as no Default, as hereinafter defined, has occurred, Mortgagor shall be entitled to collect and retain all such rents and profits as the sole property of Mortgagor without accounting to Lender therefore.
2. **Cure of Property.** Mortgagor will maintain the Property in good condition and repair and will neither permit nor allow waste thereof. Mortgagor will promptly repair or restore any portion of the Property which is damaged or destroyed by any cause whatsoever and will promptly pay when due all costs and expenses of such repair or restoration. Mortgagor will not remove or demolish any improvement or fixture which is now or hereafter part of the

Property and will cut no timber on the Property without the express written consent of Lender. Lender shall be entitled to specific performance of the provisions of this paragraph.

3. Insurance. (A) Mortgagor shall at its sole expense obtain for, deliver to, and maintain for the benefit of Lender, during the life of the Mortgage, insurance policies in such amounts as Lender may require, in no event less than the full insurable value, insuring the Property against fire, extended coverage and such other insurable hazards, casualties and contingencies as Lender may require including flood damage, and shall pay promptly, when due, any premiums on such insurance policies and on any renewals thereof. The form of such policies, the companies issuing them and the coverages provided shall be acceptable to Lender and shall contain a noncontributory mortgage endorsement making losses payable to Lender. At least thirty (30) days prior to the expiration date of all such policies, renewals thereof satisfactory to Lender shall be delivered to Lender. Mortgagor shall deliver to Lender receipts evidencing the payment of all premiums of such insurance policies and renewals. In the event of loss, Mortgagor will give written notice to Lender, and Lender may make proof of loss if not made promptly by Mortgagor. In the event of foreclosure of this Mortgage or any other transfer of title to the Property in extinguishment of the indebtedness and other sums secured hereby, all rights title and interest of Mortgagor in and to all insurance policies and renewals thereof then in force shall pass to the grantee. Upon the failure of Mortgagor to obtain and maintain insurance satisfactory to Lender, Lender may at its own discretion procure and substitute for any and all of the insurance so held as aforesaid, such other policy or policies in insurance, in such amount as Lender, acting in its sole discretion, may determine; all without prejudice to its right to foreclose hereunder should Mortgagor fail or refuse to keep said premises so insured.

(B) Mortgagor hereby assigns to Lender all proceeds from any insurance policies, and Lender is hereby authorized and empowered in its reasonable discretion, to adjust or compromise any loss under any insurance policies on the Property, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to Lender alone and not to Mortgagor and Lender jointly. After deducting from such insurance proceeds any expenses incurred by Lender in the collection or handling of such funds, Lender, acting in its sole discretion, may apply the net proceeds (1) to the payment of any sum secured by this Mortgage in such order as Lender may determine; or (2) to the replacement, repair, or restoration of the portion of the Property damaged or destroyed in a manner determined by Lender; or may release said net proceeds to the Mortgagor upon such conditions as Lender shall determine; or may apply said net proceeds for any combination of the foregoing; all without affecting the lien of this Mortgage for the full amount secured hereby before such payment took place. If Lender elects to restore the improvements, any balance of such monies after restoration shall either be applied toward the reduction of indebtedness and any other sums secured hereby or shall be paid to Mortgagor. Lender shall not be responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

(C) Mortgagor shall, at its sole expense, obtain for, deliver to, and maintain for the benefit of Lender, during the life of this Mortgage, liability insurance policies relating to the Property, in such amounts, with such companies and in such form as may be reasonably required by Lender. Lender may require such policies to contain an endorsement, in form satisfactory to Lender, naming Lender as an additional insured thereunder. Mortgagor shall pay promptly, when due, any premiums on such insurance policies and renewals thereof.

4. Taxes and Assessments. Mortgagor will pay all taxes, assessments and other charges which constitute or are secured by a lien upon the Property which is superior to the lien of this Mortgage and will deliver to Lender proof of payment of the same not less than ten (10) days prior to the date the same becomes delinquent; provided, however, that Mortgagor shall be entitled by appropriate proceedings to contest the amount or validity of such tax, assessment or charge so long as the collection of the same by foreclosure of the lien upon the Property is stayed during the pendency of such proceedings and Mortgagor deposits with the authority to which such tax, assessment or charge is payable or with Lender appropriate security for payment of the same together with any applicable interest and penalties, should the same be determined due and owing.

5. Expenditures by Lender. If Mortgagor fails to make payment for restoration or repair of the Property (including any improvements to bring the Property in compliance with federal, state or local laws, ordinances or regulations), for insurance premiums or for taxes, assessments or other charges as required in the Mortgage, Lender may, but shall not be obligated to, pay for the same. Any such payment by Lender will be secured by this Mortgage and have the same rank and priority as the principal debt secured hereby and bear interest from the date of payment at the rate payable from time to time to outstanding principal under the Note. Payments made for taxes by Lender shall be a first lien on the Property to the extent of the taxes so paid with interest from the date of payment, regardless of the rank and priority of this Mortgage. Mortgagor will pay to Lender in cash on demand an amount equal to any payment made by Lender pursuant to this paragraph plus interest thereon as herein provided.

6. Condemnation. Lender shall be entitled to be made a party to and to participate in any proceeding, whether formal or informal, for condemnation or acquisition pursuant to power of eminent domain of any portion of the Property. Mortgagor hereby assigns to Lender the right to collect and receive any payment or award to which Mortgagor would otherwise be entitled by reason of condemnation or acquisition pursuant to the power of eminent domain of any portion of the Property. Any such payment or award received by Lender may, at the option of Lender, (1) be applied to payment of any sums secured by this Mortgage in such order as Lender may determine; or (2) be applied in a manner determined by Lender to the replacement of the portion of the Property taken and to the repair or restoration of the remaining portion of the Property; or (3) be released to Mortgagor upon such conditions as Lender may determine; or (4) be used for any combination of the foregoing purposes. No portion of an indemnity payment which is applied

to replacement, repair or restoration of any portion of the Property or which is released to Mortgagor shall be deemed a payment against any sums secured by this Mortgage.

7. **Due on Sale or Transfer of Property.** At the option of Lender, the indebtedness secured by this Mortgage shall become due and payable if, without the written consent of Lender, Mortgagor shall convey away the mortgaged premises, or if the title shall become vested in any other person in any manner whatsoever, (to include a Sales Contract) other than by death of Mortgagor. It is understood and agreed that in consideration for the consent of Lender to any transfer of title to the mortgaged premises, Lender, at its option, may charge a loan transfer fee and/or require changes in the rate of interest, term of loan, monthly payments of principal and interest and other terms and conditions of this Mortgage and/or the Note secured hereby.

8. **Default.** The occurrence of any of the following events shall be deemed a Default under this Mortgage:

- (A) any default by Mortgagor as described in the Note;
- (B) failure of Mortgagor to pay any other sum secured by this Mortgage when due;
- (C) failure of Mortgagor to observe or perform any covenant or agreement set forth in this Mortgage or any loan agreement entered into between Mortgagor and Lender with respect to the indebtedness hereby secured within ten (10) days following the giving of notice by Lender to Mortgagor to observe or perform the same.

9. **Remedies.** Upon the occurrence of a Default as hereinabove defined, Lender may, without notice to Mortgagor unless otherwise required by laws, declare all sums secured by this Mortgage immediately due and payable and may commence proceedings to collect such sums, foreclose this Mortgage and sell the Property. At the foreclosure, Lender shall be entitled to bid and to purchase the Property and shall be entitled to apply the debt secured hereby, or any portion thereof, in payment for the Property. The remedies provided to Lender in this paragraph shall be in addition to and not in lieu of any other rights and remedies provided in this Mortgage or by law, all of which rights and remedies may be exercised by Lender simultaneously or consecutively in any order without being deemed to have waived any right or remedy previously or not yet exercised.

10. **Appointment of Receiver.** Upon the occurrence of a Default as hereinabove defined Lender shall be entitled to the appointment of a receiver to enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases; the making of repairs to the Property; and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Mortgage. The receiver shall be entitled to receive a reasonable fee for so managing the Property. All rents collected pursuant to this paragraph shall be applied first to the costs of taking control of and managing the Property and collecting the rents, including, but not limited to attorney's fees, receiver's fees, premiums on receiver's bonds, costs or repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation of liability of Mortgagor as lessor or landlord of the Property and then to the sums secured by this Mortgage. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Lender shall not be liable to Mortgagor, anyone claiming under or through Mortgagor, or anyone having an interest in the Property by reason of anything done or left undone by Mortgagor under this paragraph. If the rents of the Property are not sufficient to meet the cost of taking control and managing the Property and collecting the rents, Lender, at its sole option, may advance funds to meet the costs. Any funds expended by Lender for such purposes shall become indebtedness of Mortgagor to Lender secured by this Mortgage. Unless Lender and Mortgagor agree in writing to other terms of payment, such amounts shall be payable upon notice from Lender to Mortgagor requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in the Note. The entering upon and taking and maintaining of control of the Property by Lender or the receiver and the application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Lender hereunder.

11. **Waiver by Lender.** Lender may, in its sole discretion, from time to time waive or forbear from enforcing any provision of this Mortgage, and no such waiver or forbearance shall be deemed a waiver by Lender of any right or remedy provided herein by law or be deemed a waiver of the right at any later time to enforce strictly all provisions of this Mortgage and to exercise any and all remedies provided herein and by law.

12. **Costs of Appraisals.** Mortgagor shall pay any and all costs of providing to Lender, as it may request from time to time, a current appraisal of the market value of the Property prepared by an appraiser acceptable to Lender, in its sole discretion. If Mortgagor fails to pay such costs, Lender may advance the cost on the Mortgagor's behalf and add the amount of such advance to the principal under the Note, which shall bear interest at the rate as provided in the Note, and shall be due and payable on demand. Mortgagor's failure to pay the cost of any such appraisal, plus all accrued interest, in full, within ten (10) days of the date of such demand shall constitute an event of default entitling the Lender to accelerate the maturity of all debts secured by the Mortgage, as allowed by law.

13. **Future Advances.** Lender, at its option, may make Future Advances to Mortgagor. Such Future Advances, with interest at the rate payable from time to time on the outstanding principal under the Note, shall be secured by this Mortgage when evidenced by the Note or by any other note stating that it is secured by this Mortgage or when advanced under the terms of this Mortgage. Lender may make but is not obligated to make such Future Advances (A) at the request of Mortgagor, whether or not there is an obligation to make Future Advances; (B) pursuant to advance of funds provided for

herein; or (C) to pay, with or without the consent or request of Mortgagor, any amounts which may be due under any other mortgage or lien affecting the Property.

14. **Notices.** Any notice given by either party hereto to the other party shall be in writing and shall be signed by the party giving notice. Any notice or other document to be delivered to either party hereto by the other party shall be deemed delivered if mailed postage prepaid to the party to who directed at the latest address of such party that is known to the party sending the same. This paragraph shall not be deemed to prohibit any other manner of delivering a notice of other document.

15. **Miscellaneous.**

- (A) The agreements herein shall bind and inure to the benefit of the Mortgagor, Lender and their respective heirs, successors and assigns.
- (B) Whenever in this Mortgage one of the parties hereto is named or referred to, the heirs, legal representatives, successors and assigns of such parties shall be included and all covenants and agreements contained in this Mortgage by or on behalf of Mortgagor or by or on behalf of Lender shall bind and inure to the benefit of their representatives, heirs, successors and assigns, whether so expressed or not.
- (C) The headings of the sections, paragraphs and subdivisions of this Mortgage are for the convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.
- (D) If any provision of this Mortgage conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage are declared to be severable.
- (E) Lender may make or cause to be made reasonable entries upon and inspections of the Property upon giving Mortgagor prior notice.
- (F) All covenants of Mortgage shall be joint and several.
- (G) This Mortgage shall be governed by, construed and enforced in accordance with the laws of South Carolina.
- (H) If this is not a first mortgage, Mortgagor has provided Lender with an attorney's opinion (or title insurance) setting out in detail any and all prior mortgages or liens including the date of the existing mortgage liens and the original amounts.
- (I) If the Mortgagor is not obligated on the debt which this Mortgage secures, then the Mortgagor acknowledges that Note was made in consideration for this transaction and the owner of the Property agrees to be bound by all terms and conditions of the Note and the Mortgage.
- (J) **Construction Mortgage.** If this is a construction loan, this Mortgage is a "construction mortgage" for the purposes of Sections 9-334 and 2A-309 of the Uniform Commercial Code, as those sections have been adopted by the State of South Carolina.

16. **Compliance with Environmental Laws.** Mortgagor agrees to indemnify, defend and save Lender and its successors and assigns harmless from and against all claims, actions, administrative proceedings, fines, costs, liabilities, attorney's fees and costs or the like that arise directly or indirectly from the presence or release of hazardous materials, substances, waste or other environmentally regulated substances on the Property. Mortgagor shall also indemnify and hold Lender harmless from and against any and all damages, penalties, fines, claims, liens, suits, liabilities, costs (including cleanup costs), judgments and expenses (including attorney's, consultant's or expert's fees or expenses) of any kind and nature suffered by state or federal, which requires the elimination, removal, or transfer of any hazardous material, substances, waste or other environmentally regulated substances. Mortgagor's obligations hereunder to Lender shall not be limited to any extent by the term of the Note, as to any act or occurrence prior to payment in full and satisfaction of the Note which gives rise to the liability hereunder, shall continue to survive and remain in full force and effect not withstanding payment in full and satisfaction of the Note and Mortgage, or foreclosure under the Mortgage, or delivery of a deed in lieu of foreclosure. A default hereunder may, at the option of the Lender, be treated as a default under the documents evidencing and securing the loans. Hazardous materials, substances, waste or other environmentally regulated substances, as those terms are used herein, shall have the meanings specified in the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), as amended, the Resource Conservation Recovery Act, as amended, the Clean Air Act, the Clean Water Act, or any federal, state or local statute, law, ordinance, code, rule, regulation, order or decree as may now or at any time hereafter be in effect.

17. **Environmental Assessments Costs.** The Mortgagor shall pay the cost of providing to Lender, at Lender's request, a current environmental site assessment, audit, or survey ("Assessment") of the Property, which Assessment shall be prepared by a person or company acceptable to Lender, in Lender's sole discretion. If Mortgagor fails to pay the costs of the Assessment, Lender may pay such cost and the same shall constitute an advance under the Note to be secured by the Property, and shall be due and payable on demand. Mortgagor's failure to pay such amount within all accrued interests in full within ten (10) days of date of such demand shall constitute an event of default and entitle Lender to accelerate the maturity of any and all debts secured by the Property, as allowed by law. The Mortgagor acknowledges that the Lender disclaims any duty or obligation to the Mortgagor or any third party in regard to these assessments and is acting solely in compliance with its lending practices. The Mortgagor is advised to seek technical and/or legal advice in regard to any environmental concerns associated with the Property.

18. Waiver by Mortgagor. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty (30) days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. UNLESS PROHIBITED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage the day and year first above written.

Signed, sealed and delivered in the presence of:

Sharon M. Lio
Witness

[Signature]
Witness

Linda P. Falkner
Mortgagor LINDA P. FALKNER

Mortgagor

STATE OF SOUTH CAROLINA

Probate

County of YORK

Before me, the undersigned Notary Public, personally appeared the undersigned witness who, being duly sworn, depose and said that (s)he saw LINDA P. FALKNER

sign, seal and deliver the foregoing Mortgage and that (s)he, together with the other witness witnessed the execution thereof.

SWORN to and subscribed

before me this 7 day

of MARCH 2008

[Signature] (SEAL)
Notary Public for South Carolina

Sharon M. Lio
(Witness)

My commission expires: 3/13/2013

EXHIBIT A

ALL THAT CERTAIN piece, parcel or lot of land lying, being and situate in the State of South Carolina, County of Lancaster, on Calvin Hall Road, containing 1.07 acres, more or less, as shown on a plat thereof prepared by Hucks and Associates, PC, dated October 10, 1996, recorded in Plat Book 96, page 191, Office of the Clerk of Court for Lancaster County, South Carolina, which plat is incorporated herein by this reference and having such metes, bounds, courses and distances as by reference to said plat will more fully appear.

DERIVATION: This being the same property conveyed unto the Mortgagor herein by Deed of J. B. Faulkner dated August 28, 2000, recorded September 5, 2000 in Record Book 93, page 15, Office of the Clerk of Court of Lancaster County, South Carolina. For further reference, see Deed recorded in Record Book I-14, page 251, aforesaid County and State.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LANCASTER

SIXTH JUDICIAL CIRCUIT

FIRST CITIZENS BANK &
TRUST COMPANY, INC.,

ANSWER

Plaintiff,

AND COUNTERCLAIM

vs.

JURY TRIAL DEMANDED

LINDA P. FAULKNER
a/k/a Linda Faulkner,
FOUNDERS FEDERAL CREDIT UNION,
and CACH, LLC.,

Civil Case No: 2017-CP-29-00872

Defendants.]

Comes now the Defendant LINDA P. FAULKNER (hereafter also "the Defendant", "Defendant FAULKNER", and "the Counter-Plaintiff", and for her responsive pleading herein would allege as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Plaintiff's Complaint not admitted, denied or explained herein is denied and strict proof demanded therefor.
2. As to the allegations of the Complaint herein as to:

venue,

corporate identity of any parties,

the existence and terms of the mortgage and note sought to be foreclosed herein,

the existence of any breach on the part of the Defendant LINDA P. FAULKNER,

the expenditure of monies by the Plaintiff(s) in order to preserve its rights,

the rights of Plaintiff as to recovery of any monies expended or the liability of the Defendant for such monies,

the existence and priority of recorded liens senior and/or junior to that of the said Defendant FAULKNER,

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LANCASTER, SC

or any other matter alleged or referenced in the Complaint herein, he said Defendant FAULKNER:

admits all matters herein which are evidenced by public record, and alleges that she is without sufficient information, knowledge or belief as to the remaining factual allegations to respond and therefore denies the same and demand strict proof thereof.

FOR A SECOND DEFENSE
EXPRESS WAIVER

3. All allegations stated or referenced elsewhere in this pleading and relevant to this defense are hereby realleged by this reference to them.
4. On knowledge and information, Plaintiff did not maintain the factual claims of default it now advances as a basis for its right to foreclose the said mortgage until this year.
5. During the period after December, 2011 though at least February, 2016, the Plaintiff gave no notice of any factual claims of default or of its right to seek foreclosure of the mortgage as now advanced in its Complaint.
6. On knowledge and information, no condition existed during the period from December, 2011 or the due date recited on the Defendant's Note, until at least February, 2016 which would have prevented the Plaintiff from giving notice of its change of position or reason for disclaiming its position that the Defendant might continue her regular interest payments on the said mortgage and note debt.
7. No notice or complaint, written or otherwise, was made to the Defendant FAULKNER by or on behalf of the Plaintiff alleging a possible invocation of the alleged default or of its intent to seek foreclosure until the filing of this civil action.
8. During the said period since December, 2011, and through at least February, 2016, the Plaintiff continued to draft the Defendant FAULKNER's mortgage payments from her banking account.
9. On knowledge and information, the Plaintiff's referenced actions constitute and evidence, and its inaction constitutes and evidences, an intention on the part of the Plaintiff to waive any claim of default under the said mortgage and note as to collection or the right to foreclose.

10. On knowledge and information, the Plaintiff's referenced actions constitute and evidence, and its inaction constitutes and evidences, an external act on the part of the Plaintiff by which its intention, to waive any claim for default or its right to seek foreclosure was made clear.
11. The Defendant FAULKNER relied on the said waiver, acknowledgment and acquiescence of Plaintiff in ordering her affairs, which ordering will be to their detriment if the causes of action set out in the Complaint and relating to collection and foreclosure are now prosecuted.
12. On knowledge and information, the Plaintiff's actions constitute and evidence, and its inaction constitutes and evidences, as set out and referenced herein, an express waiver of any claim to default under, or collection of, the said mortgage and note by Plaintiff against Defendant FAULKNER and based upon the factual matter set out and referenced in the pleadings of the parties herein.

FOR AN THIRD DEFENSE
IMPLIED WAIVER

13. All allegations stated or referenced elsewhere in this pleading and relevant to this defense are hereby realleged by this reference to them.
14. On knowledge and information, the Plaintiff's actions constitute and its inaction (as referenced herein) constitutes, an implied waiver of any claim to default under the said note and mortgage and of any right it may have to foreclosure the same.

FOR A FOURTH DEFENSE AND SETOFF
TRUTH IN LENDING VIOLATIONS

15. All allegations stated or referenced elsewhere in this pleading and relevant to this defense are hereby realleged by this reference to them.
16. The Counter-Plaintiff FAULKNER is an individual resident of Lancaster County, South Carolina.
17. The Counter-Defendant FIRST CITIZENS BANK AND TRUST COMPANY, INC. (hereafter also" the Counter-Defendant", "the Counter-Defendant FIRST CITIZENS",

"FIRST CITIZENS" and "the Plaintiff") is a banking corporation organized under the laws of the State of South Carolina.

18. The Counter-Plaintiff FAULKNER institutes this cause of action for actual damages, statutory damages, attorney's fees, and the costs of this action against Plaintiff for multiple violations of the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, (hereinafter TILA), and Federal Reserve Board Regulation Z, 12 C.F.R. § 226, promulgated pursuant thereto.
19. The jurisdiction of this court for this cause of action is invoked pursuant to the Truth in Lending Act, 15 U.S.C. § 1640(e).
20. At all times relevant hereto, the Counter-Defendant FIRST CITIZENS regularly extended or offered to extend consumer credit for which a finance charge is or may be imposed or which, by written agreement, is payable in more than four installments, and is the person to whom the transaction which is the subject of this action is initially payable, making defendant a creditor within the meaning of TILA, 15 U.S.C. § 1602(t) and Regulation Z § 226.2(a)(17).
21. In or about March, 2008, the Counter-Defendant FIRST CITIZENS, by its agents, servants and employees, contacted the Counter-Plaintiff LINDA P. FAULKNER about obtaining credit to finance real property, which property was used for the Counter-Plaintiffs' personal, family and household purposes.
22. In the course of this consumer credit transaction, the Counter-Plaintiff FIRST CITIZENS failed to deliver all "material" disclosures required by TILA and Regulation Z, including the following:
 - I. By failing to clearly and accurately disclose the "finance charge", using that term, in violation of Regulation Z § 226.18(b) and 15 U.S.C. § 1638(a)(3);
 - II. By failing to clearly and accurately disclose the "annual percentage rate", using that term, in violation of Regulation Z § 226.18(e) and 15 U.S.C. § 1638 (a)(4);
 - III. By failing to clearly and accurately disclose the "total of payments", using that term in violation of Regulation Z § 226.18(h) and 15 U.S.C. § 1638(a)(5).
23. As a result of the Counter-Defendant FIRST CITIZEN's failure to observe the TILA requirements, the Counter-Plaintiff FAULKNER has suffered actual damages, has been forced to engage the services of the counsel named below, and has incurred legal costs.

24. By reason of the aforesaid violations of the Act and Regulation Z, and specifically pursuant to 15 U.S.C. § 1640(a), the Counter-Defendant FIRST CITIZENS is liable to the Counter-Plaintiff FAULKNER in the amount equal to the sum of twice the finance charge, actual damages to be established at trial, statutory damages, and attorneys fees and costs in accordance with 15 U.S.C. 1640.

FOR A FIFTH DEFENSE
UNFAIR DEBT COLLECTION PRACTICES

25. All allegations stated or referenced elsewhere in this pleading and relevant to this defense are hereby realleged by this reference to them.

26. 15 U.S.C. § 1692C(a)(2) provides, in relevant part:

(a) Communication with the consumer generally

Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—

...

(2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; . . .

27. On knowledge and information, the Counter-Plaintiff FAULKNER is a consumer within the meaning of 15 U.S.C. § 1692a(3) and as applicable to the Code Section quoted above.

28. On knowledge and information, persons defined as debt collectors for the Counter-Defendant Bank within the meaning of the Fair Debt Collection Practices act have been employed by and acted for the Plaintiff.

29. Persons acting as debt collectors have communicated with the Counter-Plaintiff FAULKNER or her husband without the express permission of a court of competent jurisdiction.

30. Those persons so acting as debt collectors knew, or are chargeable with the knowledge,

that the Counter-Plaintiff FAULKNER is, and at all relevant times was, represented by the attorney undersigned.

31. On knowledge and information, the said attorney's name and address were known to those persons acting as debt collectors, or they are chargeable with such knowledge.
32. At no time did the said attorney for the Counter-Plaintiff FAULKNER fail to respond, or respond within a reasonable period, to any communication from any person acting as a debt collector for the Counter-Defendant Bank.
33. At no time has the said attorney for the Counter-Plaintiff FAULKNER consented to direct communication between the debt collectors and the Counter-Plaintiff FAULKNER.
34. The Counter-Plaintiff FAULKNER has suffered actual damage by reason of the Counter-Defendant's actions.
35. On knowledge and information, the Counter-Plaintiff FAULKNER is entitled to a declaratory judgment that the actions of the Counter-Defendant Bank amount to a violation of the Federal Fair Debt Collection Practices Act.
36. On knowledge and information, the Counter-Plaintiff FAULKNER is entitled to her actual damages and to those statutory damages allowed pursuant to 15 U.S.C. § 1692k.
37. On knowledge and information, the Counter-Plaintiff FAULKNER is entitled to her Costs and reasonable attorney's fees pursuant to 15 U.S.C. §§ 1692k.

FOR A SIXTH DEFENSE
BREACH OF DUTY OF GOOD FAITH

38. All allegations stated or referenced elsewhere in this pleading and relevant to this defense are hereby realleged by this reference to them.
39. On knowledge and information, the contract and dealings between the Plaintiff and Defendant imply a duty of good faith and fair dealing between the parties to the mortgage transaction, and a duty of co-operation on the part of both parties.
40. On knowledge and information, the actions and inaction of Counter-Defendant FIRST CITIZENS referenced herein and in the Complaint are in breach of its contract and dealings with the Counter-Plaintiff FAULKNER as evidenced by the allegations herein, and the same are also in breach of its obligation of good faith.
41. On knowledge and information, the lack of good faith on the part of the Counter-Defendant FIRST CITIZENS deprives it of the right to any relief from this Court by

reason of the Counter-Plaintiff FAULKNER's alleged default under the subject note and mortgage.

WHEREFORE the said Defendant and Counter-Plaintiff FAULKNER prays:

AS TO THE PLAINTIFF'S ACTION FOR FORECLOSURE HEREIN:

- A) That this Court inquire into and determine all matters set out in the Amended Complaint herein, including, but not limited to, all questions relating to the seniority of recorded liens on the subject real property, and
- B) That the orders of the Court herein accord the said Defendant all protections normally accorded to persons in the position of the said Defendant.

AS TO THE SECOND AND THIRD DEFENSES:

- C) Dismiss the action brought by the Plaintiff herein by reason of its waiver or implied waiver of the grounds for collection and foreclosure;

AS TO THE THIRD DEFENSE AND SET-OFF (TRUTH IN LENDING):

- D) Award the Counter-Plaintiff FAULKNER her actual damages against the Counter-Defendant FIRST CITIZENS, to be established at trial pursuant to 15 U.S.C. § 1640(a)(1);
- E) Award statutory damages to the Counter-Plaintiff FAULKNER in the amount of twice the finance charge in accordance with 15 U.S.C. § 1640(a)(2)(i), or not less than \$400 or greater than \$4,000 in accordance with 15 U.S.C. § 1640(a)(2)(iv);
- F) Award the Counter-Plaintiff FAULKNER her costs and reasonable attorney's fees in accordance with 15 U.S.C. § 1640;

AS TO THE FOURTH DEFENSE (VIOLATION OF FDCPA)

- G) Issue its Declaratory judgment that defendants' conduct has violated the Federal Debt Collection Practices Act;

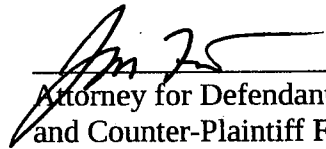
- H) Award the Counter-Plaintiff her actual damages by reason of the Counter-Defendant's violation of the FDCPA;
- I) Award the Counter-Plaintiff her statutory damages by reason of the Counter-Defendant's violation of the FDCPA pursuant to 15 U.S.C. § 1692k;
- J) Award the Counter-Plaintiff her costs and reasonable attorney's fees by reason of the Counter-Defendant's violation of the FDCPA pursuant to 15 U.S.C. §§ 1692k;

AS TO THE FIFTH DEFENSE(BREACH OF DUTY OF GOOD FAITH):

- K) Dismiss the Plaintiff's Complaint as to the Counter-Plaintiff FAULKNER as barred by its breach of the duty of good faith;

AS TO ALL DEFENSES. COUNTERCLAIMS AND CROSSCLAIMS:

- L) Include a prayer for any other relief to which the Defendant and Counter-Plaintiff FAULKNER may be authorized under other causes of action; and
- M) Award or allow the Defendant and Counter-Plaintiff FAULKNER such other and further relief as this Court may deem just and proper.



Attorney for Defendant
and Counter-Plaintiff FAULKNER

The Guardian Building
223 East Main Street, Suite 520
Rock Hill, S. C. 29730
Post Office Box 106
Rock Hill, S. C. 29731-6106

803 324-8100
803 324-8109 Fax
jmfoster@comporium.net

December 29, 2017

Rock Hill, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

FIRST CITIZENS BANK &
TRUST COMPANY, INC.,

Plaintiff,

vs.

CERTIFICATE OF SERVICE

LINDA P. FAULKNER
a/k/a Linda Faulkner,
FOUNDERS FEDERAL CREDIT UNION,
and CACH, LLC.,

Defendants.]

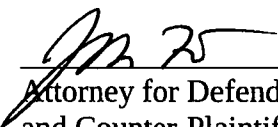
Civil Case No: 2017-CP-29-00872

I certify that I have served the Answer and Counterclaim of Defendant and Counter-Plaintiff Linda P. Faulkner dated December 29, 2017 on the following counselor persons of record:

J. Kershaw Spong
Sowell Gray Robinson Stepp & Lafitte, LLC.
Attorneys for Plaintiff
Post Office Box 11449
Columbia. SC 29211

by causing one (1) copy of the same to be deposited in the United States mail, postage prepaid, on the date set out below, addressed to counselor opposing party's respective last known addressees) as set out above, or, if no address in known, by leaving the same with the Clerk of Court, as indicated above, pursuant to Rule 5(b)(1), S.C.R.C.P.; or

by personally delivering one (1) copy of the same to the said attorney(s) of record at his, her or their office at the address(es) above, on the date set out below.


Attorney for Defendant
and Counter-Plaintiff FAULKNER

The Guardian Building
223 East Main Street, Suite 520
Rock Hill, S. C. 29730
Post Office Box 106
Rock Hill, S. C. 29731-6106

803 324-8100
83 324-8109 Fax
jmfooster@comporium.net

December 29, 2017

Rock Hill, South Carolina

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OFFICE OF CLERK
OF COURT
2018 JAN -2 PM 2:07
CLERK OF COURT
LANCASTER, SC

of the credit agreement set forth in the credit documents or that allege Plaintiff violated any state or federal laws.

5. Responding to paragraphs 22 to 25, Plaintiff denies that Defendant Faulkner has a claim under the Truth in Lending Act or Federal Reserve Board Regulation Z.

6. Further responding to paragraphs 22 to 25, Plaintiff asserts that the statute of limitations in 15 U.S.C. § 1640(e) has run on any claim Defendant Faulkner has under the Truth in Lending Act.

FOR A SECOND DEFENSE
(UNFAIR DEBT COLLECTION PRACTICES)

7. The previous paragraphs are restated and incorporated by reference.

8. Responding to the allegations contained in paragraphs 26 through 28, the allegations contained therein are statements or conclusions of law to which no response is needed. To the extent a response is deemed needed, the allegations are denied.

9. Responding to paragraphs 29 to 33, Plaintiff is not a debt collector as defined in the Unfair Debt Collections Act, 15 U.S.C. § 1692(a).

10. Further responding to paragraphs 29 to 33, Plaintiff is without information or belief as to the actions of third-party debt collectors and specifically denies knowledge of any actions that violate the Unfair Debt Collection Practices Act.

FOR A THIRD DEFENSE
(DUTY OF GOOD FAITH)

11. The previous paragraphs are restated and incorporated by reference.

12. Responding to paragraph 39, the allegations contained in paragraph 39 are statements or conclusions of law to which no response is needed. To the extent a response is deemed needed, the allegations are denied.

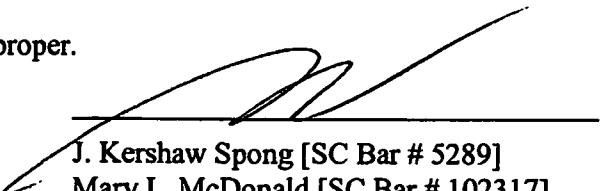
13. Responding to paragraphs 40 to 41, Plaintiff denies any breach of contract and further maintains Defendant Faulkner cannot maintain an action for breach of contract because Defendant Faulkner has not performed her part of the contract or been able, ready, or willing to perform.

14. Further responding to paragraphs 40 to 41, Plaintiff denies any breach of the implied covenant of good faith and fair dealing because, by filing this lawsuit, Plaintiff has simply done what the provisions of the contract expressly gave Plaintiff the right to do. Additionally, Plaintiff has at all times acted in good faith by, among other things, reviewing Defendant Faulkner's application and request for a loan modification, which was ultimately denied.

FOR A FOURTH DEFENSE
(FAILURE TO STATE A CLAIM)

15. Additionally, Defendant Faulkner, through her counterclaims, has failed to state facts sufficient to constitute a cause of action and pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, Plaintiff's claims should be dismissed.

WHEREFORE, having replied to Defendant Faulkner's counterclaims, Plaintiff requests they be dismissed with prejudice, that the prayer of Plaintiff's complaint be granted, foreclosure ordered, and Plaintiff be awarded its attorney's fees and costs of this action, and for such other and further relief the court deems just and proper.



J. Kershaw Spong [SC Bar # 5289]
Mary L. McDonald [SC Bar # 102317]
SOWELL GRAY ROBINSON STEPP & LAFFITTE, LLC
P.O. Box 11449
Columbia, SC 29211
(803) 929-1400
Email: kspong@sowellgray.com
Email: mmcdonald@sowellgray.com

Attorneys for the Plaintiff

Columbia, South Carolina
February 1, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	
First-Citizens Bank & Trust Company,	)	CASE NO. 2017-CP-29-00872
	)	
Plaintiff,	)	
	)	
v.	)	CERTIFICATE OF SERVICE
	)	BY MAIL
Linda P. Faulkner a/k/a Linda Faulkner,	)	
Founders Federal Credit Union, and	)	
CACH, LLC,	)	
	)	
Defendants.	)	

This is to certify that I, Melissa H. White, a Paralegal with the law firm of Sowell Gray Robinson Stepp & Laffitte, LLC, have caused to be served upon the persons named below the Reply to Counterclaim of Defendant Linda P. Faulkner a/k/a Linda Faulkner in the foregoing matter by placing copies of same in the United States Mail, postage prepaid, in envelopes addressed as follows:

John Martin Foster, Esquire
Post Office Box 106
Rock Hill, SC 29731

Philip E. Wright, Esquire
Law Office of Philip E. Wright, P.A.
408 North Main Street
Lancaster, SC 29720

Edward H. Overcash, Jr., Esquire
Law Office of Edward H. Overcash, Jr.
37 Villa Road, Suite 507
Greenville, SC 29615

Dated this 1st day of February, 2018 at Columbia, South Carolina.



Melissa H. White

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

First-Citizens Bank & Trust Company

☐ Plaintiff

v.

Linda P. Faulkner a/k/a Linda Faulkner, Founders
Federal Credit Union, and CACH, LLC

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2017-CP-29-00872

MOTION AND ORDER INFORMATION FORM
AND COVER SHEET

Plaintiff's Attorney:

J. Kershaw Spong, Bar No. 5289

Address: 1310 Gadsden Street, PO Box 11449
Columbia, SC 29211

phone: (803) 929-1400 fax: (803) 929-0300

e-mail: kspong@sowellgray.com other:

Defendant's Attorney:

John Martin Foster, Bar No.

Address: Post Office Box 106

Rock Hill, SC 29731-6106

phone: (803) 324-8100 fax: (803) 324-6109

e-mail: jmfoster@comporium.net other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**

☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**

☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion for Order of Reference

Estimated Time Needed: 15 minutes Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion Type

☒ Written motion attached

☐ Form Motion/Order --

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

January 29, 2018

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$25.00**

☐ **EXEMPT:** ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ **MOTION FEE COLLECTED:** _____

☐ **CONTESTED - AMOUNT DUE:** _____

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

First-Citizens Bank & Trust Company,

Plaintiff,

v.

Linda P. Faulkner a/k/a Linda Faulkner,
Founders Federal Credit Union, and CACH,
LLC,

Defendants.

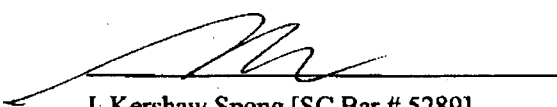
IN THE COURT OF COMMON PLEAS

Case No. 2017-CP-29-00872

**PLAINTIFF'S MOTION TO STRIKE
JURY DEMAND OF DEFENDANT
LINDA P. FAULKNER
A/K/A LINDA FAULKNER**

TO: JOHN MARTIN FOSTER, ATTORNEY FOR DEFENDANT LINDA P. FAULKNER
A/K/A LINDA FAULKNER:

Plaintiff moves to strike the jury demand of the Defendant Linda P. Faulkner a/k/a Linda Faulkner. Defendant contractually waived her right to a jury trial. This Motion is based on the verified complaint and exhibits attached thereto, the answer and counterclaim from Defendant and such other and further memoranda as may be submitted.


J. Kershaw Spong [SC Bar # 5289]
SOWELL GRAY ROBINSON STEPP & LAFFITTE, LLC
P.O. Box 11449
Columbia, SC 29211
(803) 929-1400
Email: kspong@sowellgray.com

Attorneys for the Plaintiff

Columbia, South Carolina

January 29, 2018

FILED
CLERK OF COURT
LANCASTER, SC
2018 JAN 31 AM 11:56

TATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	
First-Citizens Bank & Trust Company,	)	Case No. 2017-CP-29-00872
	)	
Plaintiff,	)	
	)	
v.	)	ORDER
	)	(Striking Jury Demand)
Linda P. Faulkner a/k/a Linda Faulkner,	)	
Founders Federal Credit Union, and	)	
CACH, LLC,	)	
	)	
Defendants.	)	

Upon motion of Plaintiff, it is hereby

ORDERED that the jury demand of Defendant Linda P. Faulkner a/k/a Linda Faulkner is stricken due to the contractual waiver of a right to a jury trial in the loan documents. Wachovia Bank v. Blackburn, 407 S.C. 321, 755 S.E.2d 437 (2014).

IT IS SO ORDERED.

Presiding Judge
Sixth Judicial Circuit

Lancaster, South Carolina.

_____, 2018

STATE OF SOUTH CAROLINA)

COUNTY OF LANCASTER)

First-Citizens Bank & Trust Company,)

Plaintiff,)

v.)

Linda P. Faulkner a/k/a Linda Faulkner,)
Founders Federal Credit Union, and CACH,)
LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Case No.: 2017-CP-29-00872

CERTIFICATE OF SERVICE BY MAIL

This is to certify that I, Melissa H. White, a Paralegal with the law firm of Sowell Gray Robinson Stepp & Laffitte, LLC, have this day caused to be served upon the person(s) named below **Plaintiff's Motion To Strike Jury Demand** in the foregoing matter by placing copies of same in the United States Mail, postage prepaid, in envelope(s) addressed as follows:

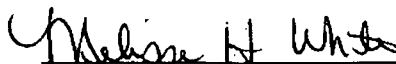
John Martin Foster, Esquire
Post Office Box 106
Rock Hill, SC 29731

Philip E. Wright, Esquire
Law Office of Philip E. Wright, P.A.
408 North Main Street
Lancaster, SC 29720

Edward H. Overcash, Jr., Esquire
Law Office of Edward H. Overcash, Jr.
37 Villa Road, Suite 507
Greenville, SC 29615

FILED
JAN 31 AM 11:56
CLERK OF COURT
LANCASTER COUNTY
SOUTH CAROLINA

Dated at Columbia, South Carolina this 29th day of January, 2018.



Melissa H. White

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

First-Citizens Bank & Trust Company

☐ Plaintiff

v.

Linda P. Faulkner a/k/a Linda Faulkner, Founders
Federal Credit Union, and CACH, LLC

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2017-CP-29-00872

MOTION AND ORDER INFORMATION FORM
AND COVER SHEET

Plaintiff's Attorney: J. Kershaw Spong, Bar No. 5289 Address: 1310 Gadsden Street, PO Box 11449 Columbia, SC 29211 phone: (803) 929-1400 fax: (803) 929-0300 e-mail: kspong@sowellgray.com other:		Defendant's Attorney: John Martin Foster, Bar No. Address: Post Office Box 106 Rock Hill, SC 29731-6106 phone: (803) 324-8100 fax: (803) 324-6109 e-mail: jmfoster@comporium.net other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion to Strike Jury Demand Estimated Time Needed: 15 minutes Court Reporter Needed: ☐ YES / ☒ NO			
SECTION II: Motion Type			
☒ Written motion attached ☐ Form Motion/Order -- I hereby move for relief or action by the court as set forth in the attached proposed order.			
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____	
		CODE: _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____			
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

STATE OF SOUTH CAROLINA)

COUNTY OF LANCASTER)

) IN THE COURT OF COMMON PLEAS

First-Citizens Bank & Trust Company,)

Case No. 2017-CP-29-00872

Plaintiff,)

v.)

Linda P. Faulkner a/k/a Linda Faulkner,)
Founders Federal Credit Union, and)
CACH, LLC,)

**MOTION FOR
ORDER OF REFERENCE**

Defendants.)

The Plaintiff hereby moves pursuant to Rules 53 and 71, SCRPC, to refer the above
foreclosure action to William C. Tindal as Special Referee for Lancaster or such other Special
Referee as the Court deems proper.


J. Kershaw Spong [SC Bar # 5289]
SOWELL GRAY ROBINSON STEPP & LAFFITTE, LLC
P.O. Box 11449
Columbia, SC 29211
(803) 929-1400
Email: kspong@sowellgray.com

Attorneys for Plaintiff

Columbia, South Carolina

January 24th, 2018

FILED
CLERK OF COURT
LANCASTER, SC
JAN 24 2018
2:18 PM

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	
First-Citizens Bank & Trust Company,	)	Case No. 2017-CP-29-00872
	)	
Plaintiff,	)	
	)	
v.	)	ORDER OF REFERENCE
Linda P. Faulkner a/k/a Linda Faulkner,	)	AND SETTING COMPENSATION OF
Founders Federal Credit Union, and	)	SPECIAL REFEREE
CACH, LLC,	)	(Foreclosure)
	)	
Defendants.	)	

IT APPEARING that the above entitled action for foreclosure of a mortgage on real property situated in Lancaster County, South Carolina, is a proper matter to refer to William C. Tindal, as Special Referee; therefore, upon motion of J. Kershaw Spong, Esquire of the law firm of Sowell Gray Robinson Stepp & Laffitte, LLC, attorneys for Plaintiff, it is

ORDERED that the above entitled action be, and the same hereby is, referred to William C. Tindal, as Special Referee to make findings of fact and conclusions of law; dispose of any and all issues and enter a final judgment in the case; order a judicial sale on any day, not just the regular judicial sale day; hear and dispose of any issues after sale or judgment, including, but not limited to, issuance of a Writ of Assistance and any issues involving appraisal under Code Section 29-3-680, et seq.

Any appeal from the decision of the Special Referee shall be made directly to the Appellate Court, as provided in Rule 203, SCACR.

The Court is further informed that the custom and usage of the Lancaster County Bar is to allow a fee of Two Hundred and 00/100 Dollars (\$200.00) in routine default foreclosures plus the fee allowed by Subsection 15-39-770 and Section 14-11-310 of the 1976 Code of Laws of South Carolina if sold by the Special Referee.

NOW, THEREFORE, pursuant to Rule 53(d) of the South Carolina Rules of Civil Procedure, it is FURTHER ORDERED that the Plaintiff pay to William C. Tindal, Special Referee, the sum of Two Hundred and 00/100 Dollars (\$200.00), plus the one (1%) percent of the gross sale price up to a maximum of Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00), as allowed by Subsection 15-39-770 and Section 14-11-310, if sold by the Special Referee.

IT IS SO ORDERED.

Presiding Judge
Sixth Judicial Circuit

Lancaster, South Carolina.

_____, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	
First-Citizens Bank & Trust Company,	)	CASE NO. 2017-CP-29-00872
	)	
Plaintiff,	)	
	)	
v.	)	CERTIFICATE OF SERVICE
	)	BY MAIL
Linda P. Faulkner a/k/a Linda Faulkner,	)	
Founders Federal Credit Union, and	)	
CACH, LLC,	)	
	)	
Defendants.	)	

This is to certify that I, Melissa H. White, a Paralegal with the law firm of Robinson, McFadden & Moore, P.C., have caused to be served upon the persons named below **Plaintiff's Motion for Order of Reference** in the foregoing matter by placing copies of same in the United States Mail, postage prepaid, in envelopes addressed as follows:

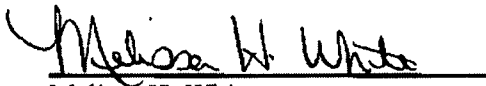
John Martin Foster, Esquire
Post Office Box 106
Rock Hill, SC 29731

Philip E. Wright, Esquire
Law Office of Philip E. Wright, P.A.
408 North Main Street
Lancaster, SC 29720

Edward H. Overcash, Jr., Esquire
Law Office of Edward H. Overcash, Jr.
37 Villa Road, Suite 507
Greenville, SC 29615

RECEIVED - 2 PM 3:18
JAN 30 2018
LANCASTER, SC

Dated this 29th day of January, 2018 at Columbia, South Carolina.


Melissa H. White



**SOWELL GRAY
ROBINSON**

Litigation + Business

J. KERSHAW SPONG

DIRECT 803 227.1101 DIRECT FAX 803 744.1543

kspong@sowellgray.com

January 29, 2018

The Honorable Jeff L. Hammond
Lancaster County Clerk of Court
Post Office Box 1809
Lancaster, SC 29721-1809

Re: First-Citizens Bank & Trust Company v. Linda P. Faulkner a/k/a Linda
Faulkner, Founders Federal Credit Union, and CACH, LLC
Case No. 2017-CP-29-00872
Our File No. 30935-0023

Dear Mr. Hammond:

Enclosed for filing please find the following:

1. Motion for Order of Reference, Certificate of Service, Motion form, proposed Order, and \$25.00 filing fee;
2. Motion to Strike Jury Demand, Certificate of Service, Motion form, proposed Order, and \$25.00 filing fee; and
3. Affidavit of Default as to Defendant CACH, LLC.

Please file same and return clocked copies in the envelope provided.

Thank you for your assistance in this matter.

Sincerely,

SOWELL GRAY ROBINSON STEPP & LAFFITTE, LLC



J. Kershaw Spong

/mhw

Enclosures

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	
First-Citizens Bank & Trust Company,	)	Case No. 2017-CP-29-00872
	)	
Plaintiff,	)	
	)	
v.	)	
	)	AFFIDAVIT OF DEFAULT
Linda P. Faulkner a/k/a Linda Faulkner,	)	
Founders Federal Credit Union, and CACH,	)	
LLC,	)	
	)	
Defendants.	)	

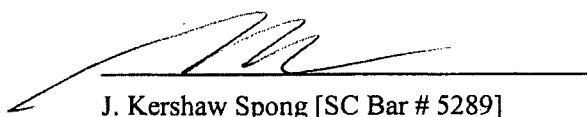
Personally appeared, J. Kershaw Spong, attorney for the Plaintiff, who being duly sworn, doth state:

1. That he is the attorney for Plaintiff in this action;
2. That the Defendant hereinafter named was duly served with the Summons and

Complaint as follows:

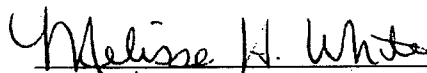
(a) CACH, LLC by service thereof on Amber Ascarino as Administrative Assistant to Edward H. Cash, Jr., its attorney of record, on August 18, 2017.

3. That more than thirty (30) days have elapsed since the date of service and the Defendants have failed to plead, appear, or otherwise defend as provided by the South Carolina Rules of Civil Procedure and the Defendants are now in default.



J. Kershaw Spong [SC Bar # 5289]
SOWELL GRAY ROBINSON STEPP & LAFFITTE, LLC
P.O. Box 11449
Columbia, SC 29211
(803) 929-1400
Email: kspong@sowellgray.com

SWORN to before me this
29th day of January, 2018.

 (L.S.)
Name: Melissa H. White
Notary Public for South Carolina
My Commission Expires: 10/16/19

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

FIRST CITIZENS BANK &
TRUST COMPANY, INC.,

Plaintiff,

vs.

LINDA P. FAULKNER
a/k/a Linda Faulkner,
FOUNDERS FEDERAL CREDIT UNION,
and CACH, LLC.,

Defendants.

NOTICE and MOTION:
TO ALTER OR AMEND JUDGMENT

Pursuant to:
RULE 59(a), S.C.R.C.P.

C.A. No: 2017-CP-29-00872

FILED
OFFICE OF CLERK
OF COURT
2018 FEB 22 PM 1:44
CLERK OF COURT
LANCASTER, SC

To: J. Kershaw Spong
Sowell Gray Robinson Stepp & Lafitte, LLC.
Attorneys for Plaintiff
Post Office Box 11449
Columbia, SC 29211

You or your attorney should appear before this Court to present evidence or argument, if any you have, relating to the Motion herein, as follows:

DATE AND TIME: To be set by the Clerk of the Court, or as soon thereafter as counsel may be heard.

PLACE: Lancaster County Courthouse
104 North Main Street
Lancaster, South Carolina 29720,
or at such other place as the Court or Clerk may designate

Pursuant to Rule 59, S.C.R.C.P., the Defendant FAULKNER, by and through her attorney, moves this Court:

For an Order reopening the Orders dated January 31, 2018 and February 2, 2018 respectively received by the Defendant on February 9, 2018, amending the findings of fact and conclusions of law or making new findings and conclusions, and directing the entry of a new Order; and

For such other and further relief as this Court may deem just and proper.

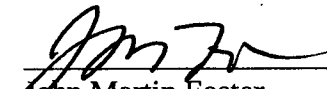
on the grounds that the Order of the Court is contrary to law and the evidence as proven at trial, on the following bases:

1. The Defendant FAULKNER has raised defenses to this Foreclosure action which are, respectively, permissive and mandatory in nature. *See, e.g., Gardner v. Travis*, 316 S.C. 315, 450 S.E.2d 54, (Ct.App. 1994). She is entitled to a jury trial as to those defenses and the Order striking her jury demand is improper to that extent.
2. For the same reason, the Order referring the case is improper for the above reason, and due to the lack of a motion or agreement by counsel for the Movant.
3. With respect to the Court, the said Motions were decided without notice to counsel for Movant and without the opportunity to be heard.

Counsel for the Movant is not required to attempt in good faith to resolve the matter contained in this Motion by reason of the dispositive nature thereof and due to the *pro se* status of the Plaintiff.

The basis for this Motion is the applicable law and rules of procedure, the above-cited Rules and Statutes, the records of these civil actions, and any Supporting Memorandum which the Movants may submit herein.

Respectfully submitted,



John Martin Foster
Attorney for Defendant

The Guardian Building
223 East Main Street, Suite 520
Rock Hill, SC 29730

Post Office Box 106
Rock Hill, SC 29731-6109

803 324-8100
803-324-8109: Fax
jmfoster@comporium.net

February 20, 2018

Rock Hill, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

FIRST CITIZENS BANK &
TRUST COMPANY, INC.,

Plaintiff,

vs.

LINDA P. FAULKNER
a/k/a Linda Faulkner,
FOUNDERS FEDERAL CREDIT UNION,
and CACH, LLC.,

Defendants.

CERTIFICATE OF SERVICE

C.A. No: 2017-CP-29-00872

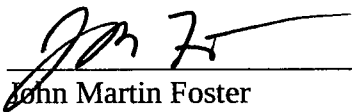
The undersigned, counsel for Defendant FAULKNER in the civil action above, hereby certifies that on February 20, 2018 he served copies of the following pleadings or documents in the above-captioned and numbered civil action, the original of which were sent to be filed with the Clerk of the Court for the Court named above,:

Notice and Motion to Alter or Amend Judgment Pursuant to Rule 59(a), S.C.R.C.P.; and
This Certificate of Service

by depositing the same with the United States mail, with sufficient first class postage attached, properly addressed to the clerk of the Court, and with a copy also directed to the respective last known address(es) of those attorney(s) and/or persons set out below; or

by hand delivering copies of the same to the following persons, or by leaving the same at that person's office with that person's clerk or some other person in charge thereof, or by leaving it in a conspicuous place therein; or if the office was closed or the person to be served has no office, by leaving a copy at that person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein, all pursuant to Rule 6(b), S.C.R.C.P.

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February 20, 2018

Rock Hill, South Carolina

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LANCASTER, SC

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

FIRST CITIZENS BANK &
TRUST COMPANY, INC.,

Plaintiff,

vs.

LINDA P. FAULKNER
a/k/a Linda Faulkner,
FOUNDERS FEDERAL CREDIT UNION,
and CACH, LLC.,

Defendants.

MEMORANDUM ON MOTION:
TO ALTER OR AMEND JUDGMENT

Pursuant to:
RULE 59(a), S.C.R.C.P.

C.A. No: 2017-CP-29-00872

PROCEDURAL BACKGROUND

On January 2, 1028, the Defendant LINDA FAULKNER filed her Answer and Counterclaim in this foreclosure action. This pleading advanced claims of express and implied waiver by reason of accepting payments, Truth in Lending violations, violations of the Fair Debt Collections Act, and breach of good faith. She requested a jury trial.

On February 9, 2018, counsel for FAULKNER received simultaneously a Motion to Strike the Jury Demand (dated January 29, 2018) and the Order granting that Motion (dated January 31, 2018). No previous communication was received and no hearing was noticed for the Motion.

The Plaintiff asserts that its Motion to refer the case to a Special Referee was also made January 29, 2018 and granted.

On February 20, 2018, FAULKNER served her Motion under Rule 59, S.C.R.C.P. to set aside the Order striking the jury request.

ANALYSIS

The Plaintiff accurately cites the law as stated in *Wachovia Bank National Association v. Blackburn*, 407 S.C. 321, 755 S.E.2d 437 (2014). Our Supreme Court there set out the controlling law

as to jury trial requests:

“(1) If both the complaint and the counterclaim are in equity, the entire matter is triable by the court.

“(2) If both are at law, the issues are triable by a jury.

“(3) If the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury trial.

“(4) If the complaint is equitable and the counterclaim is legal and compulsory, the plaintiff or the defendant has a right to a jury trial on the counterclaim. . . . “

407 S.C. at 329-30, 755 S.E.2d at 441.

Compulsory counterclaims are clearly defined in Rule 13(a), S.C.R.C.P., which states in relevant part:

(a) Compulsory Counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.

The rule as here stated obviously covers the claims of waiver, the TILA violation claim and the claim of bad faith, all of which arose out of the mortgage and its administration by the Plaintiff.

The Defendant FAULKNER has raised defenses to this Foreclosure action which are, respectively, permissive and mandatory in nature. *See, e.g., Gardner v. Travis*, 316 S.C. 315, 450 S.E.2d 54, (Ct.App. 1994). She is entitled to a jury trial as to those defenses and the Order striking her jury demand is improper to that extent.

FAULKNER claims express and implied waiver based upon the Plaintiffs draft of payments from 2011 through 2016, and after maturity of the debt. This Court can take notice that this is the second attempt at foreclosure on the part of the Plaintiff. Its previous action, filed as Civil Case No:

2014-CP-29-00954, was subject to the same defense and was dropped by the Plaintiff.

Equitable estoppel or waiver is a mixed question of law and fact. *Southern Railway-Carolina Div. v. Howell*, 89 S.C. 391, 71 S.E. 972 (1911); 28 AM.JUR.2D *Estoppel and Waiver* § 149 (1994). It is firmly settled that the question of the existence of an estoppel or waiver is to be settled by the trier of fact where there is a dispute as to the facts involving those doctrines. *Southern R. Co. v. Day*, 140 S.C. 388, 138 S.E. 870 (1926); 28 AM.JUR.2D *Estoppel and Waiver* § 149 (1994).

On the TILA claim, FAULKNER would note that 15 U.S.C. § 1640(e) specifically provides:

This subsection does not bar a person from asserting a violation of this subchapter in an action to collect the debt which was brought more than one year from the date of the occurrence of the violation as a matter of defense by recoupment or set-off in such action, except as otherwise provided by State law.

In this case, FAULKNER has plead her TILA claims as a set-off.

The Georgia Court of Appeals, in *Aycock v. Household Finance Corp. of Georgia*, 142 Ga.App. 207, 235 S.E.2d 578 (1977), in line with other Courts which have dealt with the issue, found that in a suit on a debt any truth-in-lending claims must be raised as compulsory counterclaims. Here, FAULKNER has so raised the issue.

FAULKNER contends that the alleged TILA violations, insofar as they plead for monetary damages and are dependent upon statutory interpretation, are legal in nature.

Finally and in general terms, the Orders striking the jury request and referring the case are improper as entered with out proper notice or hearing.

REMEDIES

Allowing that FAULKNER has timely advanced compulsory defenses and counterclaims to the equitable claim for foreclosure, i.e., Number 4 in the list of possibilities set out in *Wachovia Bank National Association v. Blackburn*, *supra*. The same case sets out specific parameters for the Court in trying such matters:

(a) The trial judge may, pursuant to Rule 42(b), order separate trials of the legal and equitable claims, or may order the claims tried in a single proceeding.

(b) If separate trials are ordered, the judge must determine which issues are to be tried first. If there are factual issues common to both claims, absent the most imperative circumstances, the at law claim must be tried first. If there are no common factual issues, it is within the trial judge's discretion which claim will be tried first.

(c) If the claims are to be tried in a single proceeding and there are factual issues common to both claims, the jury shall first determine the legal issues. The court may then determine the equitable claims, but the jury's determination of common factual issues shall be binding upon the court.

The Movant would only comment that her defenses and Counterclaims must, in logic, be decided prior to the issuance of any order that might allow the Plaintiff the relief of a foreclosure. How this Court wishes to organize that result is a matter for its discretion.

Respectfully submitted,

/s/ John Martin Foster

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September 24, 2018

Rock Hill, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	
First-Citizens Bank & Trust Company,	)	CASE NO. 2017-CP-29-00872
	)	
Plaintiff,	)	
	)	
v.	)	PLAINTIFF'S RESPONSE IN
	)	OPPOSITION TO DEFENDANT'S
Linda P. Faulkner a/k/a Linda Faulkner,	)	MOTION TO ALTER OR AMEND
Founders Federal Credit Union, and	)	JUDGMENT
CACH, LLC,	)	
	)	
Defendants.	)	

Pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, the Defendant Linda P. Faulkner moved to alter or amend this Court's order, dated January 31, 2018, striking the Faulkner's jury demand and this Court's order, dated February 2, 2018, referring this foreclosure action to William C. Tindal as Special Referee. Faulkner argued altering the Orders is appropriate because she (1) is entitled to a jury trial as to certain defenses and (2) it was improper to refer this case to a Master in Equity or Special Referee. Faulkner's arguments are flawed, and it is not necessary for this Court to Alter or Amend the two Orders.

BACKGROUND

Plaintiff, First-Citizens Bank & Trust Company ("FCB") filed a summons and complaint on August 9, 2017, seeking for foreclose on two mortgages given by Faulkner to First Citizens Bank and Trust Company, Inc., to which FCB is a successor in interest. The first mortgage was executed in 2005, and the second mortgage was executed in 2010.

Defendant Faulkner filed an "Answer and Counterclaim Jury Trial Demanded" on December 29, 2017, which Plaintiff received on January 3, 2018.¹ As defenses to the complaint,

¹ As to the other defendants, Founders Federal Credit Union filed an Answer on August 22, 2017, admitting it is the holder of an unpaid judgment and asking the Court for notice of proceedings going forward. CACH, LLC filed no

Faulkner alleged FCB expressly waived any claim of default under “said mortgage;”² FCB’s actions created an implied waiver of any claim of default under “said mortgage;” FCB violated the Truth in Lending Act, 15 U.S.C. § 1601 *et al.*, and Federal Reserve Board Regulation Z, 12 C.F.R. § 226, and FCB is liable to Faulkner for damages from this violation; third parties hired by FCB violated the Unfair Debt Collection Act, 15 U.S.C. § 1692 *et al.*; and FCB breached a duty of good faith to Faulkner.

FCB filed a Reply to Counterclaim, denying every defense not expressly admitted, arguing the statute of limitations precludes Faulkner from asserting a counter-claim under the Truth in Lending Act; asserting FCB does not meet the definition of debt collector in the Unfair Debt Collections Act and has no knowledge of the actions of third parties; denying any breach of a covenant of good faith and fair dealing; and claiming Faulkner failed to state facts to support any cause of action and asking the Court to dismiss Faulkner’s claims pursuant to Rule 12(b)(6).

On January 29, 2018, FCB moved for the case to be referred to a Special Referee and on January 31, 2018, FCB moved to strike Faulkner’s jury demand. The Court granted both motions. On February 20, 2018, Faulkner moved to alter or amend both motions.

ANALYSIS

This Court’s orders striking Faulkner’s demand for a jury trial and referring the matter to the Special Referee were proper. The order striking Faulkner’s demand for a jury trial was proper because the matter is a foreclosure case where the counter-claims are not mandatory counter-claims. The order referring the matter to the Special Referee is proper because the Court complied with Rules 53 and 70 of the South Carolina Rules of Civil Procedure.

Answer in the case and on January 29, 2018, J. Kershaw Spong, attorney for FCB, filed an Affidavit of Default with respect to CACH, LLC.

² It is unclear from the document which mortgage Faulkner is referring to.

1. Order Striking Demand for Jury Trial

A foreclosure action is in equity, so the parties are not entitled to a jury trial. *Wachovia Bank National Association v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 441 (2014).

However, counterclaims may be entitled to a jury trial. As the court explained in *Blackburn*:

- (1) If both the complaint and counterclaim are in equity, the entire matter is triable by the court.
- (2) If both are at law, the issues are triable by a jury.
- (3) If the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury trial.
- (4) If the complaint is equitable and the counterclaim is legal and compulsory, the plaintiff or the defendant has a right to a jury trial on the counterclaim unless a valid jury trial waiver exists that encompasses the counterclaim

407 S.C. at 329-30, 755 S.E.2d at 441-42.

Faulkner does not specify which of her defenses she considers counter-claims. A defense is “a defense to each cause of action asserted.” Rule 8, SCRPC. A counter-claim shows “the pleader is entitled to relief” and includes a “prayer or demand for judgment for the relief.” Rule 8, SCRPC. Going through what Faulkner labels defenses: waiver, implied waiver, and breach of duty of good faith³ are defenses and not counter-claims. Each of these defenses provide why Faulkner believes FCB cannot recover against her, not an argument as to why Faulkner is entitled to relief. *See First South Bank v. Rosenberg*, 418 S.C. 170, 183-84, 790 S.E.2d 919, 926-27 (Ct. App. 2016) (comparing defenses to counter-claims and determining negligence and breach of contract were both counter-claims). In her prayer for relief for all three defenses, Faulkner only asks the Court to dismiss the claims of FCB against Faulkner.

Additionally, Faulkner’s Truth in Lending Act allegations must be classified as a defense and not a counter-claim. Under the Truth in Lending Act, a claim for violation of the Act may

³ In the event this Court finds breach of the duty of good faith to be a counter-claim, FCB believes it to be a permissive, not a compulsory counter-claim. Faulkner could bring a breach of contract action separate from this foreclosure action.

only be brought “within one year from the date of the occurrence of the violation.” 15 U.S.C. § 1640(e). Faulkner claims FCB’s violation of the Truth in Lending Act occurred in March 2008, ten years ago. (Def’s Ans. & Counter-Claim ¶ 21). So, Faulkner cannot assert a counter-claim for a violation of the Truth in Lending Act. However, in a foreclosure action, “a consumer may assert a violation by a creditor” of certain parts of the Act, “as a matter of defense by recoupment or setoff without regard for the time limit on a private action for damages under subsection (e).” 15 U.S.C. § 1640(k)(1). The statute allowing Faulkner to assert a violation of the Truth in Lending Act defines the assertion as a defense, not a counter-claim. Further, in *Tuloka Affiliates, Inc. v. Moore*, 275 S.C. 199, 202, 268 S.E.2d 293, 295 (1980), the Supreme Court of South Carolina found—prior to the enactment of section 1640(k)(1)—a “defense and counter-claim” under the Act in response to a foreclosure action after the one year statute of limitations had expired was an equitable defense, not a counter-claim. Thus, it is clear Faulkner’s Truth in Lending Act allegations are a defense, equitable in nature, and therefore, no jury trial is appropriate.⁴

Turning to the only counter-claim, Unfair Debt Collection Practices, this counter-claim does not entitle Faulkner to a jury trial. For Faulkner to be entitled to a jury trial, the counter-claim must be legal in nature and compulsory. A claim under the Fair Debt Collection Practices Act is not compulsory. A counterclaim is compulsory only if it “arises out of the same transaction or occurrence as the opposing party’s claims.” Rule 13(a), SCRPC. Faulkner claims a third party employed by FCB violated the Fair Debt Collection Practices Act by contacting Faulkner and her husband when Faulkner had an attorney. These allegations arise out of a separate transaction or occurrence than FCB taking two mortgages to secure two promissory

⁴ Further, even if Faulkner’s allegations are a counter-claim and not a defense, the loan documents at issue in this Case were originated in May 2005 and December 2010. Any claim related to a loan that occurred in March 2008 is from separate transaction or occurrence and thus, not a compulsory counter-claim.

notes given by Faulkner to FCB. Faulkner's interactions with any alleged third party debt collectors have no effect on FCB's right to enforce the note or foreclose on the mortgage.

In *South Carolina Community Bank v. Salon Proz, LLC*, 420 S.C. 89, 800 S.E.2d 488 (Ct. App. 2017), the court of appeals found a claim under the Unfair Trade Practices Act was legal and compulsory because that claim involved the bank's actions in allegedly reneging on promises to restructure or modify the loan being foreclosed on. As the court noted "[w]ere this allegation true, it could affect the loan's enforceability." 420 S.C. at 97, 408 S.E.2d at 492. In contract, Faulkner is alleging the actions of third party debt collectors violated the Fair Debt Collection Practices Act and these actions have no bearing on the enforceability of the either promissory note secured by the mortgages.

2. Order Referring the Case to the Special Referee

The order referring the case to the Special Referee was appropriate because "[a]ctions to foreclose liens . . . shall ordinarily be referred to a master pursuant to Rule 53" of the South Carolina Rules of Civil Procedure. Rule 70(a), SCRPC. Rule 53(b) provides: "In an action where the parties consent, in a default case, or an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit court judge or the clerk of court." Here, after striking the jury demand made by Faulkner, the court referred a foreclosure action to a special referee. This is consistent with its powers under the Rules of Civil Procedure.

Further, Faulkner argues the Order was not proper because she is entitled to a jury trial. However, as discussed above, this is not the case. None of Faulkner's defenses or counter-claims entitle her to a jury trial.

CONCLUSION

For the reasons discussed above, this Court should deny Faulkner's Rule 59 motion to reopen the Order Striking Demand for Jury Trial and the Order Referring the Case to a Special Referee.

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March 14, 2018

1 THE COURT: All right. Gentlemen, I have the
2 pleadings. I know I told y'all to bring everything I need
3 so if y'all want to hand up everything you can. I think I
4 have everything, including the motion, my law clerk had it.
5 Anyway, this is docket 17-CP-29-872, styled First Citizens
6 Bank and Trust Company versus Linda Faulkner, also known as
7 Linda Faulkner, Founders Federal Credit Union and CACH, LLC.
8 It appears to be a foreclosure action lis pendens that was
9 filed back on August 9th of 2017. An answer and
10 counterclaim was filed by Ms. Faulkner by and through her
11 attorney, Mr. John Martin Foster, where he raises a number
12 of defenses including some counterclaims. By previous order
13 of this Court I struck the jury trial demand. There was a
14 reference order customarily signed by the clerk of court and
15 a motion was timely filed, it appears, by Mr. Foster to
16 alter or amend the order of reference, and I believe that is
17 what we're here for. Gentleman, is that correct?

18 MR. FOSTER: Yes to my understanding.

19 THE COURT: Is that correct?

20 MR. SPONG: Yes, sir, Your Honor.

21 THE COURT: All right. Well, Mr. Foster, it's your
22 motion, I will be glad to hear from you first. If you wish
23 to hand up any additional materials I'll be glad to receive
24 it.

25 MR. FOSTER: We had emailed my brief yesterday, we do

1 have the cases if I could hand this up to you and your
2 clerk.

3 THE COURT: Yes, sir.

4 MR. FOSTER: Your Honor, I'll try to be brief on the
5 matter. Basically the Court has already addressed the
6 procedural background on the matter. Mr. Spong accurately
7 quotes the law on this matter out of Wachovia Bank National.
8 And what we're dealing with in my understanding here is the
9 fourth prong, or the four possibility among the various
10 things that that case set forward which says basically, and
11 we've put it here, if the complaint is equitable and the
12 counterclaim is legal and compulsory the plaintiff or the
13 defendant has the right to a jury trial. So there are two
14 prongs that I suggest we meet on the basis of that matter.
15 We believe that our cases are compulsory -- our defenses are
16 compulsory and that they are legal. On compulsory I don't
17 spend a lot of time. We quote the Rule 13A, the matter
18 arising out of the same transaction or occurrence. I would
19 maintain that all of our defenses in question waiver
20 explicit or implied truth in lending and bad faith, or
21 breach of good faith, certainly arise out of same the
22 transaction. I will allow for the purpose of this argument
23 that a violation as alleged of the Fair Debt Collection
24 Practice Act could be conceived as not doing so, so I don't
25 address that. Assuming therefore that I meet the standards

1 for compulsory the question becomes are these defenses
2 legal. Well, on waiver we have cited several South Carolina
3 cases, some of them are the controlling cases in this
4 country according to American Jurisprudence, that basically
5 say waiver is a mixed question of law and fact, yet the
6 question of fact is for the trier of fact. It is for the
7 jury if the jury is raised. On that basis we are saying
8 waiver, or implied waiver, is a question that we have the
9 right to a jury trial on. I can dance around that issue but
10 that's basically what we understand the precedent to
11 indicate and what we believe to be the case hear. On the
12 truth and lending claim, and I possibly went outside the
13 nature of this argument because counsel has ably raised the
14 question of the fact that we have raised it after one year
15 and as a set-off, we have cited the federal statute allowing
16 us to do this. We're talking here about a statutory damage
17 and the interpretation of the statute. I can't conceive how
18 anything could be for more of a legal issue than this. We
19 have cited a case out of the Georgia Court of Appeals which
20 said that a truth in lending claim is a compulsory
21 counterclaim, once again backing up our claim. Beyond this,
22 Your Honor, assuming that the bad faith matter can be
23 debated at this point, I would return briefly to the
24 question of waiver. We have alleged that from 2011 to 2016
25 and after the note came due the bank continued to draft and

1 receive payments from my client. This point was brought up
2 before this Court in a previous action to foreclose this
3 matter, we have cited the case number here. In that case I
4 was the attorney. In that case we also raised the issue of
5 waiver and pled the fact that they had continued to take
6 payments. That case was dropped. There was an attempt to
7 return the money. I will freely admit that money sits and
8 the check uncashed in my bank -- in my case file. That
9 would raise the question I suppose if we're going to get off
10 on that angle of whether one can un-waive a matter. We
11 maintain this course of behavior, taking the money and then
12 dropping an earlier case, certainly shows the basis for a
13 colorable claim of waiver, not of the debt, we're not
14 disputing that but of the right to foreclose in this
15 instance. And as a matter of fact it raises a legal
16 question both under the doctrines of waiver and under the
17 doctrine of bad faith.

18 THE COURT: Is the issue of a jury trial still before
19 the Court, was that part of your motion as well?

20 MR. FOSTER: That is my understanding the basis of the
21 motion. We're basically saying that the Court struck,
22 indeed that is exactly what the Court did do, it issued an
23 order striking the jury demand. Now, let me go on, sir, if
24 I'm not interrupting or --

25 THE COURT: Yes, sir, go ahead.

1 MR. FOSTER: Wachovia Bank goes on to discuss what the
2 Court should do in this instance. It can try everything
3 together, it can separate the issues. We literally have no
4 position on what the Court wishes to do in that case. I
5 would point out that if we succeed on waiver that directly
6 affects the relief which the plaintiff seeks, therefore it
7 would seem to me logically that that question is prior to
8 any matter of foreclosure. But how this Court wishes to
9 structure this case, assuming it takes my arguments to be
10 what they are, is something we leave completely to this
11 Court. As I say, we've cited the language from Wachovia
12 where this is set out. Beyond that, sir, we have handed up
13 the cases that we've discussed in the brief. I have nothing
14 further at this point unless the Court I'll immediately
15 raise the question for, and I'm happy to turn things over to
16 Mr. Spong.

17 THE COURT: All right. Thank you, Mr. Foster. Yes,
18 sir?

19 MR. SPONG: Good morning, Your Honor, thank you for
20 accommodating us over here. My name is Kerk Spong from
21 Columbia. I'm with Robinson Gray, formerly known as Sowell,
22 Gray and Robinson, formerly know as Robinson, McFadden and
23 Morris, such is the state of practicing law now a days. I'm
24 happy to be here and glad to see my good friend, Martin
25 Foster. You know, I listened to Mr. Foster talk about some

1 of the history of the case, which is really not in evidence,
2 Judge, and I just sort of just say that no good deed goes
3 unpunished. We have been trying to work with the Faulkners
4 for some time when we filed this foreclosure action. Of
5 course, we entertained and considered loan modifications
6 through that process, and unfortunately given their
7 financial situation it's just not something that the bank
8 could do so we're back here at foreclosure. Mr. Foster
9 raises, I think, some interesting issues, however we're in
10 agreement, I believe, Judge, the Wachovia Blackburn case,
11 which you've got to look at, that's what's going to decide
12 what's here. I think the reference is proper. There's no
13 right to a jury trial in an equity action and a foreclosure,
14 the Court was proper to strike that and it was proper to
15 refer it to Mr. Tindal over in Lancaster. And, of course,
16 Judge, you referred that, I think, back in the first part of
17 the year, you know, and now we're here and getting close to
18 October and I'm still trying to move the case forward. So
19 Judge, Mr. Foster's arguments dealing with waiver and
20 implied waiver, these are defenses that he's raised. A
21 defense to a foreclosure action doesn't create a legal basis
22 for a jury trial, and so those cases -- the waiver is an
23 equitable remedy. I was just looking through this South
24 Carolina Equity Action book, glad to hand it up to the
25 Court, but it talks about waiver. Waiver is an equitable

1 matter, waiver is an affirmative defense, waiver is the
2 burden of proof. It talks on. Waiver should not be used as
3 an offensive weapon, but rather should be used as a shield
4 as an affirmative defense to claims or counterclaims. And
5 that's what -- I'm not arguing -- he can argue waiver,
6 that's merits, because as a procedural matter as just a
7 defense to the foreclosure action it does not create a right
8 to a jury trial. It's a defense that he can assert, or
9 really any of the defenses. He has to -- to get under the
10 Wachovia matrix or analysis he's got to allege a
11 counterclaim, and it's difficult from determining from his
12 answer what he's done, but waiver is not a counterclaim,
13 it's a defense and does not create a right. And the same
14 with the implied waiver. Now, he does have some additional
15 defenses which frankly I'll just assume that they're
16 counterclaims under the complaint. One is the Truth in
17 Lending Act. And Mr. Foster acknowledges that to bring an
18 action under the Truth in Lending Act as an affirmative
19 claim has to be brought within one year, and that's
20 established under 15-16-40 of the federal statute, and I
21 cite that in my memo, Your Honor. These loans are 2005 and
22 2010, so we're way past a year where you can bring a truth
23 in lending violation. Now he can assert them as a set off
24 or recoup, and there's a South Carolina case which discusses
25 how you can continue and the statute allows you to assert it

1 as a defense. But again, Your Honor, at that point once
2 you're past a one year statute of limitations you're talking
3 about a defense, and so that again does not create a
4 counterclaim upon which there's any basis to assert a jury
5 trial. Your Honor, in addition under the Unfair Debt
6 Collection Act, he's alleging in the complaint -- or excuse
7 me, in his answer that somehow, you know, some unfair
8 collection practices were inflicted upon his client in
9 violating that statute. Your Honor, any allegations
10 regarding -- or excuse me, the allegations regarding that
11 really are not tied to whether you can enforce the note or
12 mortgage, and that's really what the Court is looking at in
13 terms of whether it's a compulsory counterclaim. So in this
14 instance because you're dealing with collection practices
15 that occurred years after the note and mortgage were agreed
16 to is really a permissive counterclaim. So he can sue us in
17 that, he could seek a jury trial if he wanted to sue us, but
18 he chose to raise it as a defense in this action and is
19 permissive and therefore under all of those defenses or
20 counterclaims, however you want to assert them, there is no
21 right to a jury trial in this situation, Your Honor. Thank
22 you very much.

23 THE COURT: All right. Thank you. Mr. Foster?

24 MR. FOSTER: May I briefly respond?

25 THE COURT: Yes, sir.

1 MR. FOSTER: First of all let me say, counsel's
2 argument, as I understand it, comes from this: He believes
3 there is a distinction to be made under Wachovia Bank
4 between defenses and counterclaims, I am aware of no such
5 precedent. I'm aware of no such basis for distinction. As
6 to the history of the bank's action, the case I refer to and
7 cite in our brief is part of this Court's record, this Court
8 in Lancaster and as such can be taken judicial notice of.
9 Beyond that I refer the Court to the cases we've said, I can
10 only repeat myself at the risk of trying the patience of the
11 court, waiver is a mixed question period. That's what South
12 Carolina cases have said, that's what American Jurisprudence
13 Second says, that's it. That's all I have to say.

14 THE COURT: All right. Thank you. Anything else?

15 MR. SPONG: No, sir, Your Honor.

16 THE COURT: Thank you. Gentlemen, what I'm going to
17 do, y'all will have an answer by the end of the day because
18 this thing has been dragging on quite some time. I know
19 we've had several conference calls on it, which is why I
20 wanted to put everything on the record today to have a
21 record of it. And I assure you -- well, you'll have a
22 decision by lunch because I'll take these back -- I don't
23 have anything else on my docket this morning so I'm going to
24 go back downstairs in my office and I will send out an email
25 with instructions for one of you to prepare an order. Okay?

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
In The Circuit Court

Brian Gibbons, Circuit Court Judge
William C. Tindal, Special Referee

Case No. 2017-CP-20-00872

First Citizens Bank & Trust Company,

Respondent,

v.

Linda P. Faulkner a/k/a Linda Faulkner,
Founders Federal Credit Union, and
CACH, LLC,
of whom Linda P. Faulkner is the

Appellant.

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OCT 12 2018
SC Court of Appeals

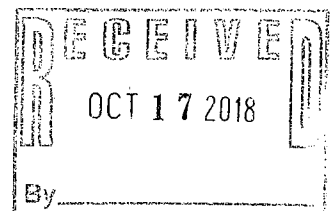
NOTICE OF APPEAL

Linda P. Faulkner appeals the following orders:

Order (Striking Jury Demand) filed January 31, 2018, by the Honorable Brian M. Gibbons;

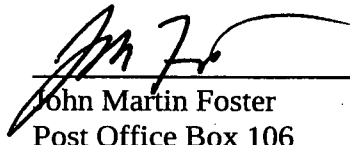
Order of Reference and Setting Compensation of Special Referee (Foreclosure),
filed February 2, 2018, by the Clerk of Court; and

Order Denying Defendant's Rule 59 Motion to Alter or Amend, filed October 2,
2018, by the Honorable Brian M. Gibbons.



Appellant received written notice of entry of the final Order listed above on October 2, 2018.

October 11, 2018



John Martin Foster
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Attorney for Appellant

Other Counsel of Record:

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Sowell Gray Robinson Stepp & Lafitte, LLC
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Attorneys for Respondent
803 929-1400

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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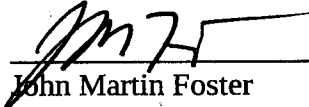
PROOF OF SERVICE

I certify that I have served the Notice of Appeal dated October 11, 2018, on the following counsel or persons of record:

J. Kershaw Spong
Sowell Gray Robinson Stepp & Lafitte, LLC
P.O. Box 11449
Columbia, S.C. 29211
Attorneys for Respondent

by depositing the same with the United States mail, with sufficient first class postage attached, properly addressed to the clerk of the Court, and with a copy also directed to the respective last known address(es) of those attorney(s) and/or persons set out above, pursuant to Rule 262(b), S.C.A.C.R.

October 11, 2018


John Martin Foster
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Attorney for Appellant

CERTIFICATE OF COUNSEL

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



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November 8, 2019

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