

# PAVAN PARIKH HAMILTON COUNTY CLERK OF COURTS

### **COMMON PLEAS DIVISION**

ELECTRONICALLY FILED
August 4, 2023 02:34 PM
PAVAN PARIKH
Clerk of Courts
Hamilton County, Ohio
CONFIRMATION 1353402

TURNER FARM FOUNDATION INC
vs.
MARCELLA THOMPSON

A 2303317

FILING TYPE: INITIAL FILING (FORECLOSURE-IN COUNTY)
PAGES FILED: 10

EFR200

# COURT OF COMMON PLEAS HAMILTON COUNTY, OHIO

TURNER FARM FOUNDATION, INC. 201 E. Fifth Street, Suite 900

Cincinnati, Ohio 45202

Plaintiff,

VS.

Case No.:

Judge:

COMPLAINT FOR MONEY JUDGMENT, FORECLOSURE AND RELIEF

Parcel No.: 651-0002-0042-00

Estate of BAMBI B. WHITEHEAD, Deceased 2192 Grand Avenue Cincinnati, Ohio 45214

MARCELLA THOMPSON, Administrator of the

UNKNOWN SPOUSE, if any, of BAMBI B. WHITEHEAD, Deceased 5423 Warren Avenue Cincinnati, Ohio 45212

JILL A. SCHILLER, HAMILTON COUNTY TREASURER P.O. Box 740857 Cincinnati, Ohio 45274-0857; and

STATE OF OHIO, DEPARTMENT OF TAXATION 4485 Northland Ridge Blvd. Columbus, Ohio 43229 Defendants.

Now comes Plaintiff TURNER FARM FOUNDATION, INC. (hereinafter "Plaintiff"), by and through its undersigned counsel, and for its claim against Defendants MARCELLA THOMPSON, Administrator of the Estate of BAMBI B. WHITEHEAD, Deceased (hereinafter "Defendant"), Unknown Spouse of BAMBI B. WHITEHEAD, JILL A. SCHILLER, HAMILTON COUNTY TREASURER, and Defendant STATE OF OHIO, DEPARTMENT OF TAXATION (hereinafter "OHIO DEPARTMENT OF TAXATION") and alleges as follows:

#### THE PARTIES

- 1. Plaintiff is a non-profit corporation organized and existing pursuant to the laws of the State of Ohio with its principal office located at 201 East Fifth Street, Suite 900, Cincinnati, Ohio 45202.
- 2. Defendant MARCELLA THOMPSON resides at 2192 Grand Avenue, Cincinnati, Ohio 45214, and is the duly appointed and qualified Administrator of the Estate of BAMBI B. WHITEHEAD, having been appointed as said Administrator on February 14, 2023, by the Hamilton County Probate Court in Case No. 2022004250.
- 3. Defendant's Decedent, BAMBI B. WHITEHEAD, died on August 5, 2022, and prior to her death, was the owner of the real property located at 5423 Warren Avenue, Cincinnati, Hamilton County, Ohio 45212, Parcel No. 651-0002-0042-00.
- 4. Defendant Unknown Spouse of BAMBI B. WHITEHEAD is added as a party defendant by virtue of any dower interest and as to any other interest they may have in the subject property.
- 5. Defendant HAMILTON COUNTY TREASURER is a department of Hamilton County, Ohio with its principal office located at P.O. Box 740857, Cincinnati, Ohio 45274-0857, and may claim an interest in the real property that is the subject of this foreclosure action by reason of real estate taxes and assessments for the second half of the 2023 tax year and thereafter, which are a lien against the premises but not yet due and payable.
- 6. Defendant OHIO DEPARTMENT OF TAXATION is an agency of the State of Ohio with its principal office located at 4485 Northland Ridge Blvd., Columbus, Ohio 43229; and may claim an interest in the real property that is the subject of this foreclosure action by reason of a certain certified judgment lien filed against Marcus Thompson, heir of BAMBI B.

WHITEHEAD, Deceased, with the Clerk of Courts, Hamilton County, Ohio, in the original amount of \$1,310.19, filed October 28, 2022, under Case No. CJ22033932.

#### **JURISDICTION**

- 7. This Court has jurisdiction over the subject matter of this action. Venue is proper in this county as Plaintiff and Defendant are located in Hamilton County, Ohio; Defendant's Decedent was a resident of Hamilton County, Ohio; and the real property to be foreclosed upon is located in Hamilton County, Ohio.
- 8. Plaintiff's claim was duly presented to Defendant on or about February 3, 2023, within six (6) months of the date of death of Defendant's Decedent in accordance with ORC 2117.06.

#### FIRST COUNT

- 9. Plaintiff incorporates by reference the allegations set forth in paragraphs "1" through "7" as though the same were more fully set forth herein.
- 10. Plaintiff is the holder of a certain promissory Note executed by Defendant's Decedent on December 5, 2013. A true and correct copy of the Note is attached hereto and made a part hereof as *Exhibit A*.
- 11. Defendants and/or Defendant's Decedent have defaulted under the obligations of the Note by, among other things, failing to pay the monthly required payments of principal and interest, and Plaintiff is entitled to enforce the aforesaid Note pursuant to Ohio Revised Code Sections 1303.22, 1303.25, and 1303.31.
- 12. There remains unpaid upon the Note the sum of \$116,598.23 as of July 31, 2023, plus interest at the rate of 13.25% per annum from June 20, 2023, and as such interest rate as may change from time to time pursuant to the terms of said note, plus late charges, any deferred non interest/interest bearing amounts, advances for taxes and insurance, and all other expenditures

recoverable under the note and mortgage and/or Ohio law.

- 13. Plaintiff has satisfied all conditions prior to filing this Complaint, including, but not limited to, mailing written notice to Defendant in her capacity as Administrator of the Estate of Defendant's Decedent, the party who executed the Note.
- 14. By reason of Defendants' default in payment of the said Note and the Mortgage securing the same, Plaintiff has declared said debt to be immediately due and payable; that the conditions in the Mortgage have become absolute; and that all conditions precedent in the Note have been satisfied.

#### SECOND COUNT

- 15. Plaintiff incorporates by reference the allegations set forth in paragraphs "1" through "13" as though the same were more fully set forth herein.
- 16. Plaintiff is the holder of a certain Mortgage made by Defendant's Decedent on December 5, 2013, and recorded on December 18, 2013, in the Hamilton County Recorder's Office at Official Record Book 12490, Page 1310. A true and correct copy of the Mortgage is attached hereto and made a part hereof as *Exhibit B*.
- 17. The aforesaid Mortgage was given to secure the indebtedness evidenced by the aforesaid promissory Note, and said Mortgage is a valid and first lien upon the premises described therein, being Parcel No. 651-0002-0042-00.
- 18. The conditions in said Mortgage have been broken by reason of the default in payment by Defendants and/or Defendant's Decedent; that the Mortgage has become absolute; that the conditions precedent have been satisfied; and that Plaintiff is entitled to foreclosure of said mortgage.
- 19. Pursuant to the covenants and conditions of said Mortgage, Plaintiff may, from time to time during the pendency of this action, advance sums to pay real estate taxes, hazard insurance

premiums, and property protection and maintenance.

20. The remaining Defendants named in this Complaint have or claim to have an interest in the premises described in *Exhibit B*.

WHEREFORE, Plaintiff demands judgment as follows:

- a. That there be found to be due to Plaintiff in the sum of \$116,598.23 plus interest at the rate of 13.25% per annum from June 20, 2023, plus late charges, any deferred non interest/interest bearing amounts, advances for taxes and insurance, and all other expenditures recoverable under the Note and Mortgage and/or Ohio law, unless said Defendant's personal liability for said indebtedness has previously been discharged in a bankruptcy or is discharged in a bankruptcy during the course of these proceedings;
- b. That Defendants named herein be required to answer and setup any claim that they may have in the premises described in the Mortgage attached hereto or be forever barred;
- c. That Plaintiff's Mortgage be found to be a valid and enforceable first lien on said premises for the amount so owing together with its advances made pursuant to the terms of the mortgage for real estate taxes, hazard insurance premiums and property protection and maintenance;
- d. That Plaintiff's mortgage and the equity of redemption be foreclosed and said premises ordered appraised, advertised and sold according to law;
- e. That Plaintiff be paid the amounts found due it from the proceeds of such sale; and
- f. For such other and further relief as the Court deems just and proper.

Dated: August 4, 2023. Respectfully submitted,

/s/ Lvdia A. Cavlor

Lydia A. Caylor (0098257) Cors & Bassett, LLC 201 East Fifth Street, Suite 900 Cincinnati, OH 45202 Phone (513) 852-8231

Fax: (513) 852-8222

Email: lac@corsbassett.com

Attorney for Plaintiff

Turner Farm Foundation. Inc.

THE ORIGINAL IS IN THE SAFE AT THE LAW OFFICE OF ROBERT GRAY EDMISTON, ESO.

## **PROMISSORY NOTE**

\$53,000.00

September 13, 2013 Cincinnati, Ohio

The undersigned, **BAMBI WHITEHEAD**, (hereinafter referred to as "Payor"), and whose address is 5423 Warren Avenue, Cincinnati, Ohio, promises to pay to **TURNER FARM FOUNDATION**, **INC.**, its successors and assigns, (hereinafter referred to as "Payee"), at c/o Robert Gray Edmiston, Attorney at Law, LLC., 537 E. Pete Rose Way, Suite 400, Cincinnati, Ohio 45202, or at such other address as the holder hereof may from time to time designate in writing, at the end of the term of this Note or at the time of the sale, or other Prohibited Conveyance, as defined below, of the real estate upon which a mortgage will be filed securing the repayment of this Note, whichever comes first, the principal sum of Fifty-Three Thousand (\$53,000.00) Dollars, plus interest at the rate of 3.0% per annum, amortized over a period of thirty (30) years, all as more fully set forth herein.

The principal sum together with interest shall be payable in consecutive monthly installments of Two Hundred Twenty-Three and 45/100 (\$223.45) Dollars. The first installment shall be due and payable on or before October 1, 2013 and an equal amount per month thereafter shall be due and payable on the first day of each successive month thereafter until September 1, 2043, or until such time prior thereto upon the sale of the real estate upon which a mortgage will be filed securing the repayment of this Note, to wit: 5423 Warren Avenue, Cincinnati, Ohio (the "Maturity Date"). On the Maturity Date, the entire unpaid principal shall become immediately due and payable. All payments shall first be applied to interest and then to principal.

In addition, Payor shall be responsible for all property taxes and casualty and public liability insurance covering the mortgaged premises. On the day monthly installments of principal and interest are payable under this Note, until the Note is paid in full, a sum equal to one-twelfth (1/12) of the yearly property taxes, in the initial amount of \$91.67, plus onetwelfth (1/12) of yearly premium installments for fire and all such other hazards, casualties, public liabilities and contingencies by extended coverage insurance, in the initial amount of \$70.83, (hereinafter collectively referred to as "Escrow Fund"), shall be paid by Payor to Payee c/o Robert Gray Edmiston, Attorney at Law, LLC., 537 E. Pete Rose Way, Suite 400, Cincinnati, Ohio 45202. Payee shall be listed as an additional insured on all such insurance. Such Escrow Fund shall be held and applied by Payee to pay said taxes and insurance premiums when due. Payee may not charge for so holding and applying the Escrow Fund, and Payee shall not be required to pay Payor any interest or earnings on the Escrow Fund. If the amount of such Escrow Fund shall not be sufficient to pay such taxes and insurance premiums as they fall due, Payor shall pay to Payee any amount necessary to make up the deficiency within ten (10) days from the date notice is mailed by Payee to Payor requesting payment thereof. If the amount of such Escrow Fund held by Payee shall exceed the amount required to pay such taxes and insurance premiums as they fall due, such excess shall be, at Payor's option, either promptly repaid to Payor or credited to Payor's Escrow Fund. Upon written request of Payor, which request shall not be more frequently than annually, Payee shall give to Payor, without charge, an accounting of the Escrow Fund showing credits and debits thereto and the purpose for which each debit to the Escrow Fund was made.

The initial monthly escrow payments for property taxes and casualty insurance on the mortgaged property, as set forth above, are \$162.50. The total initial monthly payment due from Payor to Payee for principal, interest, taxes and insurance shall be Three Hundred Eighty-Five and 95/100 (\$385.95) Dollars.

Payor shall have the right to prepay any or all of the indebtedness in whole or in part at any time, or from time to time, without prepayment penalty.

In the event that, after the date hereof, Payor shall default in the payment, when due, of any amount of interest, Escrow Fund payments or other payments due under this Note, and such non-payment shall continue for a period of ten (10) days after the same becomes due, or upon breach of any terms, covenants, conditions, provisions or stipulations of the accompanying mortgage, or if any bankruptcy, insolvency or reorganization proceedings shall be instituted by or against Payor, or Payor shall make any assignment for the benefit of creditors, or be adjudicated bankrupt, or should Payor convey, mortgage or otherwise encumber her interest in the mortgaged premises ("Prohibited Conveyances"), or should Payor abandon the property or fail to reside therein for a period of ninety (90) consecutive days or one hundred eighty (180) cumulative days during a 365-day period, all such instances being defined as a Default hereunder, then at any time thereafter during the continuance of said Default, Payee shall be entitled, upon written notice to Payor, to take any action at law or equity to enforce its rights hereunder, and to declare the accrued interest payments and the entire principal of this Note to be immediately due and payable, without presentment, protest, demand or other notice, all of which are hereby expressly waived. Payor shall pay Payee all reasonable attorney's fees, court costs and expenses incurred by Payee in connection with Payee's efforts to collect the indebtedness evidenced hereby.

In the event Payee declares the unpaid balance of the Note, including principal and accrued interest, to be immediately due and payable as provided herein, said unpaid balance shall bear interest from the time of such declaration, until paid, at the rate of five (5%) percent over the prime rate at US Bank, Cincinnati, Ohio, on the date of default, per annum.

The terms and provisions of this Note shall be binding and shall inure to the benefit of Payor and Payee, their heirs, successors, executors, administrators, and assigns, and shall be governed by and construed in accordance with the laws of the State of Ohio. This Note shall not be assignable in whole or in part by Payor. No change, modification, termination, amendment, or waiver of any of the provisions of this Note, nor consent to any departure therefrom, shall be of any force or effect unless the same is in writing and signed by both Payor and Payee, notwithstanding any forgiveness of principal or interest, or both which may

be done unilaterally by Payee. Any such consent, modification, termination, amendment or waiver shall be effective only in the specific instance and for the limited purpose for which it is given.

SIGNED at Cincinnati, Ohio this day of September, 2013:

586481.1



#### **EXHIBIT "B"**

Wayne Coates
Hamilton County Recorders Office
Doc #: 13-0165608 Type: MT
Filed: 12/18/13 02:08:58 PM \$28.00
Off.Rec.: 12490 01310 F C9 2 339

#### MORTGAGE

KNOW ALL MEN BY THESE PRESENTS:

That **BAMBI WHITEHEAD**, an unmarried woman, of Hamilton County, Ohio ("Mortgagor"), in consideration of Fifty-Three Thousand and 00/100 (\$53,000.00) Dollars and other good and valuable consideration paid, grants with mortgage covenants to **TURNER FARM FOUNDATION**, **INC.**, a not-for-profit corporation organized and existing under the laws of the State of Ohio ("Mortgagee"), its successors and/or assigns, the real property described as follows:

Situated in the County of Hamilton in the State of Ohio and in the City of Norwood:

Being known numbered and designated as lot number 344 in the Subdivision of Norwood Place, made by the Suburban Real Estate Company, in the City of Norwood, in Section 35, Town 4, Fractional Range 2, Miami Purchase & plat of which is recorded in Plat Book 17, page 21 of the Records of Hamilton County, Ohio. Said lot fronting 33 1/3 feet on the west side of Warren Avenue extending back westwardly between parallel lines, a distance of 100 feet and being the same width in the rear as in front.

Parcel No. 651-2-42

Mortgagor warrants that she is lawfully seized of the estate hereby conveyed and has the full right and power to grant, convey, and mortgage the same and that the Mortgaged Property is free and clear of all encumbrances except easements, restrictions and stipulations of record, applicable zoning rules and regulations, and taxes and assessments not yet due and payable.

The said Mortgagor, **BAMBI WHITEHEAD**, her heirs and assigns, hereby covenants and agrees with the said Mortgagee, **TURNER FARM FOUNDATION**, **INC.**, its successors and/or assigns, as follows:

- 1. This Mortgage is given to secure payment of Fifty-Three Thousand and 00/100 (\$53,000.00) Dollars with interest, together with all taxes, assessments and other charges which are now or may hereafter be levied, charged or assessed upon said Mortgaged Property when due and payable according to law, as provided in a note of even date herewith between Mortgagor and Mortgagee ("Note").
- 2. Mortgagor shall, through the payment of the Escrow Funds under the Note, keep the Property insured, at a total amount in excess of the sum of the Note and all other indebtedness secured by the Mortgaged Property, until the Note is fully paid, against loss by fire and such other hazards as are covered by a standard extended coverage endorsement with an insurance company or companies authorized to do business in the State of Ohio along with such limits as are acceptable to Mortgagee. Mortgagor shall also promptly pay all taxes and legal assessments, and other charges, fines, or impositions against the Mortgaged Property. In the event Mortgagor shall fail to keep said insurance in force or to pay said taxes, legal assessments, or other charges, fines, or impositions, Mortgagèe may effect said insurance or pay said taxes, legal assessments, or other charges,

fines, or impositions. Any sums so expended by Mortgagee will be repaid by Mortgagor upon demand with interest thereon at the rate specified in the Note, and said sums and the interest thereon shall be deemed a part of the debt secured hereby and included herein.

All such insurance policies with respect to the Property shall contain a standard, non-contributory mortgagee clause naming Mortgagee, and its successors and assigns, as an additional insured under all policies, as a mortgagee and loss payee on all Property insurance policies.

Mortgagor will not convey, mortgage or otherwise encumber her interest in the Property described in this Mortgage without obtaining the prior written consent of the Mortgagee. In the event there shall be any change in the ownership of the Mortgaged Property, the entire principal and all accrued interest due under the Note shall become due and payable.

PROVIDED, HOWEVER, that if Mortgagor shall pay the Note in full according to the terms thereof and perform all of the covenants, conditions, stipulations, and agreements set out in the same or herein contained, then this Mortgage shall be void, and Mortgagee shall, at Mortgagor's cost and request, release the same.

Mortgagor expressly agrees to pay the debt herein secured, without any relief whatsoever from valuation or appraisement laws of the State of Ohio.

her hand this day of Octob	becamber 2013  Decamber 2013  BAMBI WHITEHEAD, has hereunto se ver, 2013  BAMBI WHITEHEAD
STATE OF OHIO	)
COUNTY OF HAMILTON	) ss.:
	on this day of October, 2013, before me, a Notan
acknowledged, under penalty of p	on this day of <del>October</del> , 2013, before me, a Notand State, personally appeared <b>BAMBI WHITEHEAD</b> , who berjury in violation of §2921.11 of the Revised Code, that and that the same is her own voluntary act and deed.
IN TESTIMONY WHEREO seal on the day and year last above	F, I have hereunto subscribed my name and affixed my ementioned.

BRIDGET WILLIAMS Notary Public, State of Ohio

My Commission Expires

November 15, 2016

This instrument prepared by: Robert Gray Edmiston, Attorney at Law, LLC 537 East Pete Rose Way, Suite 400 Cincinnati, Ohio 45202 (513) 361-0444 Box C-9

586477.1