

ORIGINAL

RECEIVED

JUN 02 2014

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
In the Court of Common Pleas
Sixteenth Judicial Circuit

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2013-002791

Provident Community Bank, Respondent,

v.

Coulston Enterprises, Inc., Alfred Earl Coulston a/k/a A. Earl Coulston, Red Clay Industries, Inc., Glen Ridge Owners Association, Inc. and HD Supply Waterworks, Ltd., Defendants,

of whom

Alfred Earl Coulston a/k/a A. Earl Coulston is the Appellant.

RECORD ON APPEAL

Michael K. Hatch
P.O. Box 176
York, SC 29745
803-684-9604
Attorney for Respondent

Lawrence Caldwell Melton
P.O. Box 2426
Columbia, SC 29202
803-253-8290

Ryan Lee Beaver
100 North Tryon Street, Suite 2690
Bank of America Corporate Center
Charlotte, NC 28202
704-334-3459

Daniel D. D'Agostino
D'Agostino Law Firm
25 W. Liberty St.
York, South Carolina 29745
(803) 628-6509
Attorney for Appellant

Index

Judgment of Foreclosure and Sale 10/07/2011.....	1
Order on Sale of Real Estate 01/19/2012.....	13
Form 4 – 01/19/2012	14
Order of Deficiency Judgment 01/19/2012.....	16
Form 4 - 12/04/2013.....	17
Amended Order of Deficiency Judgment 12/04/2013.....	19
Report of Sale and Disbursement 01/19/2012.....	20
Notice of Sale 10/07/2011.....	22
Amended Notice of Sale 10/25/2011.....	24
Summons and Complaint 03/30/2011.....	26
Motion to Amend Deficiency Judgment under Rule 60(b) 10/11/2013.....	58
Amended Motion to Correct Clerical Mistake in Deficiency Judgment under Rule 60(a)	60
Reply to Motion 11/15/2013.....	63
Transcript of Record 11/21/2013.....	65
Record of Hearing 10/07/2011.....	82
Affidavit of Indebtedness 10/07/2011.....	102
Affidavit of Attorney Fees 10/07/2011.....	104
Certificate of Counsel.....	106

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF YORK

CASE NO: 2011CP4601206

IN THE COURT OF COMMON PLEAS

Provident Community Bank vs. Coulston Enterprises Inc

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy: ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Judgment of Foreclosure and Sale

Dated at York, South Carolina, this 5th day of October, 2011.

Court Reporter:

s/S. Jackson Kimball III

PRESIDING JUDGE - S. Jackson Kimball III

This judgment was entered on the 7th day of October, 2011, and a copy mailed first class this 7th day of October, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Michael K Hatch Morton & Gettys Llc Po Box
176 York, SC 29745

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

SCRPC APP-24/FORM 4

David Hamilton - Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF YORK

PROVIDENT COMMUNITY BANK,

Plaintiff,

vs.

COULSTON ENTERPRISES, INC.,
✓ ALFRED EARL COULSTON, A/K/A A.
EARL COULSTON, RED CLAY
✓ INDUSTRIES, INC., AND HD SUPPLY
✓ WATERWORKS, LTD.

Defendants.

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

JUDGMENT OF FORECLOSURE AND
SALE

C/A No.: 2011-CP-46-1206

DEFICIENCY REQUESTED

π: M. Hatch
Δ: N/A

2011 OCT -7 PM 3:31

RECEIVED

A hearing was held on October 5, 2011 at 3:30 p.m. Testimony was taken, which is reported herewith, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT

1. The Notice of Pendency of Action, Summons and Complaint were filed on March 30, 2011 with the York County Clerk of Court.
2. Service was made upon all Defendants, as shown by the Affidavits of Service filed of record herein.
3. Defendant HD Supply Waterworks. Ltd. has filed an answer in this case, the other Defendants, Alfred Earl Coulston, Coulston Enterprises, Inc., and Red Clay Industries, Inc. are in default. The Defendant Glen Ridge Owners Association, Inc. has been dismissed from the case.

mm
1
000002

4. The Defendants and all Attorneys of record were notified of the time, date and place of the hearing in this matter, as shown by the Notice of Hearing filed herein.

5. On November 15, 2007, Coulston Enterprises, Inc. ("Borrower") executed that certain commercial, multiple advance, closed end credit promissory note in favor of Lender, bearing Lender's loan number 9000286, in the original principal amount of \$3,200,00.00 (the "Note"). The terms of the Note including the interest rate and other terms as set forth more fully therein, are incorporated by reference. The loan evidenced by the Note is referred to hereinafter as the "Loan".

6. To induce Lender to issue the Loan, Alfred Earl Coulston, a/k/a A. Earl Coulston ("Guarantor") executed in favor of Lender on even date with the Note, that certain unconditional and unlimited personal guaranty, guarantying to Lender, among other things, Borrower's payment and performance with respect to the Loan (the "Note Guaranty").

7. To secure the Note, all of Borrower's obligations to Lender in connection therewith, and all present and future indebtedness from Borrower to Lender, Borrower executed and conveyed unto Lender a certain mortgage encumbering the Property, dated November 15, 2007 recorded on November 16, 2007, in OR Volume 9599 at Page 80, et seq., in the York County, South Carolina, Clerk of Court's Office (the

000003

"Mortgage"). The Mortgage conveys unto Lender a first priority mortgage interest in the real property described therein (the "Property") and the appurtenances to the Property described in the Mortgage.

8. The sum of \$4,654.50 is a reasonable fee to allow as attorney's fees for Plaintiff's attorney for services performed and anticipated to be performed until a final adjudication of the within action, and under the terms of the Promissory Note and Mortgage. I further find that Plaintiff is entitled to Court costs in the amount of \$401.80. These sums are reasonable based on the time necessarily devoted to representation of the Plaintiff during the several months course of these proceedings. The services of counsel performed for the Plaintiff, including the number and types of pleadings and documents prepared, the incumbent liability, and the difficulties involved in this particular case also supports the amount awarded. The fees are also reasonable given the professional standing of the Plaintiff's counsel and his experience in handling civil matters. The fees are also reasonable and in light of the fees customarily awarded by this Court for similar services in this locality. Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a prompt foreclosure of the mortgage. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

A handwritten signature in black ink, appearing to be "J. S.", is written above the page number.

9. The amount due and owing on the Loan, with interest at the rates provided in the Notes and other costs and expenses of the within action, including an attorney's fee, secured by the Promissory Note and Mortgage is as follows:

(a)	Principal and interest due as of 10/5/2011 (per diem \$193.977)	Principal \$ 2,148,675.21 Interest \$ 182,744.33
		\$ 2,331,419.54
(b)	Taxes, insurance, etc., not included above and late fees	Late Fees \$ 8,943.27
(c)	Escrow adjustments (debits or credits)	\$
(d)	Appraisal Costs	\$ 2,500.00
(e)	Other: (Please specify)	\$
	LOAN TOTAL	\$ 2,342,862.81
(u)	Attorney's fees as to all loan thru date of hearing	\$ 4,654.50
(v)	Costs of collection prior to hearing (service, filing, etc.)	\$ 401.80
	TOTAL DEBT	\$2,347,919.11

10. Plaintiff is seeking the foreclosure of its mortgage and has expressly demanded a personal or deficiency judgment against the Defendants, Coulston Enterprises, Inc. and Alfred Earl Coulston, a/k/a A. Earl Coulston.

11. The following Defendants claim or may claim a lien upon, or legal interest in the subject property and in the event there is a surplus from the sale of the subject property, such Defendants may present any



000005

such lien or legal interest at a hearing subsequent of the sale, in accordance with the Rule 71 (c) of the South Carolina Rules of Civil Procedure. Said Defendants and such liens or legal interest are as follows:

a. Defendant, Red Clay Industries, Inc. has or may claim an interest in the Property by virtue of that certain York County Court of Common Pleas Case # 2010-CP-46-00876 filed March 1, 2010 in the York County, South Carolina, Clerk of Court's Office. Such judgment interest of this Defendant, if any, is inferior to the interests of Lender in and to the Property by virtue of the recording statute.

b. Defendant HD Supply Waterworks, LTD., has or may claim an interest in the Property by virtue of that certain Mortgage of Real Estate and Security Agreement, dated June 30, 2010 and recorded August 13, 2010 in the York County, South Carolina, Clerk of Court's Office in OR Volume 11541 at Page 42, et seq. Such mortgage interest of this Defendant is inferior to the interests of Lender, as set forth and described herein, in and to the Property by virtue of the recording statute.

12. I find that the Home Affordable Modification Program does not apply in this Action and that S.C. Code of Laws (1976) §12-24-154 does not apply to this action

NOW, THEREFORE it is ordered that:

13. There is due to the Plaintiff on the Promissory Notes and Mortgages set forth in the Complaint the amount of \$2,347,919.11, as set forth in the Findings of Fact, together with interest at the rate provided therein on the balance of the principal from the date of aforesaid to the date hereof.

14. The amount due shall incur interest at the rate of the Promissory Note rate per annum and together with such interest shall constitute the total judgment debt due to the Plaintiff.

Handwritten signature
B-5

000006

15. The amount of the judgment shall be subject to increase to permit the Plaintiff to recover additional costs, commissions and expenses not included in the minimum deposit previously made in compliance with South Carolina Code of Laws, Section 14-11-310, 1976, as amended. It may also increase to include supplemental compensation for attorney's services not contemplated by the initial fee award. Jurisdiction of the fee award and total debt is reserved to facilitate the assessment and payment of any such costs and or supplemental compensation. Such additional costs, commissions and expenses may be established by Affidavit and shall be adjudicated by the Court without further hearing.

16. The Defendants, Coulston Enterprises, Inc. and Alfred Earl Coulston, a/k/a A. Earl Coulston are liable for the aforesaid judgment debt of the Promissory Note and Mortgage including interest at the adjustable rate of the U.S. Prime Rate, known as the Base Rate on Corporate Loans posted by at least 75% of the 30 largest U.S. Banks (the "Index") per annum, which is currently 3.25%, and shall on or before the date of sale of the property hereafter described pay to the Plaintiff or the Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with costs and disbursements of this action.

17. That on default of payment at or before the time indicated, the mortgage premises described in the Complaint and set forth here shall be sold by the Master-in-Equity at public auction, on November 7,


000007

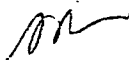
2011 at 11 a.m. at 1 North Congress Street, York, South Carolina or on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event the sales day shall be on the next business day succeeding such holiday), on the following terms, that is to say:

A. FOR CASH: the Master-in-Equity will require a deposit in the amount of 5% on the amount of the bid (in cash or equivalent), the same to be applied to the purchase price if compliance is made, but in the event compliance is not made, the deposit maybe forfeited without further hearing and applied first to the costs of the action and to the Plaintiff's debt. The deficiency judgment having been demanded, the bidding shall remain open for thirty (30) days from the sales date.

B. Interest on the balance of the bid shall be paid the date of compliance at the adjustable rate of the U.S. Prime Rate, known as the Base Rate on Corporate Loans posted by at least 75% of the 30 largest U.S. Banks (the "Index") per annum, which is currently 3.25%.

C. The sale shall be subject to taxes and assessments, existing easements and restrictions of record, and to any other senior incumbent.

D. The successful purchaser shall pay for any statutory commission on the sale for the proceeds of sale.


27
000003

E. The purchaser shall pay for deed preparation, cost of recording the deed, and transfer taxes on the deed.

18. The Master-in-Equity will, by advertisement according to law, give notice of the time and place of such sale and the terms thereof, and will execute to purchaser or purchasers a deed to the premises sold. The Plaintiff or any other party to this action may become a purchaser at such sale, and if, upon such sale being made the purchaser or purchasers shall fail to comply with the terms thereof thirty (30) days after the date of sale, then the Master-in-Equity may advertise the said premises for sale on the next or some other subsequent sales date at the risk of the highest bidder and so, from time to time, thereafter until a full compliance shall be secured.

19. In the event an agent of the Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and be sold at the next available sale date upon the same terms and conditions as set forth in the Judgment of Foreclosure and Sale or upon such terms as maybe set forth in the supplemental order.

20. If the Plaintiff be the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and indebtedness of the Plaintiff in full, the Plaintiff may pay to the Master-in-Equity only the amount of the costs and expenses, crediting the balance of the bid on the Plaintiff indebtedness.



000009

21. The Master-in-Equity will apply the proceeds of sale as follows:

FIRST: To payment in the amount of cost and expenses in this action;

NEXT: To payment to the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest (including attorney's fees) or so much thereof as the purchase money will pay on the same;

NEXT: Any surplus shall be held pending the further Order of this Court.

22. In the event the successful bidder is other than the Defendant in possession herein, the Sheriff for York County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located therein, and put the successful bidder or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

23. In the event the successful bidder is other than the Defendants in possession herein and the occupants have voluntarily vacated the premises or have been ejected from the premises, leaving furnishings, fixtures and items not subject to the Plaintiff's mortgage in said premises, Plaintiff is authorized to remove therefrom all furnishing, fixtures and items not subject to the lien of the Plaintiff's mortgage, which personal property, being deemed abandoned, shall be removed by the Plaintiff or his agent from the subject property by placing said personal


000010

property on the public street or highway or by any other means.

24. The Defendants named herein and all persons whosoever claiming under the Defendants are forever barred and foreclosed of all right, title, interest, equity of redemption, or lien in the said mortgage premises so sold, or any part thereof.

25. In accordance of Rule 77 (d) of the South Carolina Rules Civil Procedure, the Clerk of Court shall serve a notice of entry of this judgment of foreclosure upon all parties not in default for failure to appear herein.

26. The deed of conveyance made pursuant to said sale should contain the names only of the first named Plaintiff and first named Defendant, and the Defendants who are title holders of the mortgaged premises at the time of the following within action, and the name of the Grantee, and the Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

27. The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure, including, but not limited to, the issuance of writ of Assistance.

28. The premises herein ordered to be sold are described as follows:

All that certain piece, parcel or tract of land, lying, being and situate in the State of South Carolina, County of York,

on
\$10

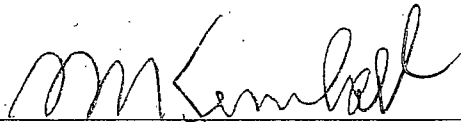
000011

adjacent to the City of York, on Black Highway (SC HWY 5) being described as a tract containing 46.396 acres on an exhibit prepared for Coulston Enterprises, Inc. drawn by David L. Ferguson, PLS, dated 10/4/2007 and revised 11/13/07 and recorded in Plat Book D271 at Page 9 in the Office of the Clerk of Court for York County, South Carolina.

DERIVATION: This being a portion of the property conveyed unto Coulston Enterprises, Inc. by deed of Jeffrey Craig Inman executed May 4, 2007 and recorded May 9, 2007 in Record Book 9073 at Page 16 in the Office of the Clerk of Court for York County, South Carolina.

TMS#: 070-01-01-066
46.396 Parcel on Black Highway

AND IT IS SO ORDERED.



S. Jackson Kimball, III
York County Master-in-Equity

York, South Carolina
10/5, 2011

11

STATE OF SOUTH CAROLINA
COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS
)
) SIXTEENTH JUDICIAL CIRCUIT

PROVIDENT COMMUNITY BANK,

) C/A No.: 2011-CP-46-01206
)

Plaintiff,

) **ORDER ON SALE OF REAL ESTATE**
) **(DEFICIENCY SOUGHT)**
)

vs.

COULSTON ENTERPRISES, INC.,
ALFRED EARL COULSTON a/k/a A.
EARL COULSTON, RED CLAY
INDUSTRIES, INC., GLEN RIDGE
OWNERS ASSOCIATION, INC., and
HD SUPPLY WATERWORKS, LTD.,

Defendants.

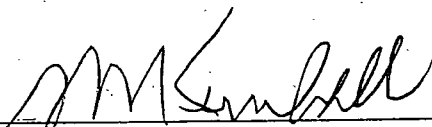
FILED-RECEIVED
2012 JAN 19 PM 2:51
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

Pursuant to a judgment of this Court made in the above-entitled action, after due legal notice, advertised and published, according to law, the undersigned Master-in-Equity sold the property therein described on Sales Day on November 7, 2011, as directed.

That at such sale the said premises were struck off to Provident Community Bank for \$600,000.00.

That the EQUITY COURT JUDGE has executed and delivered to the said purchaser a good and sufficient Deed of said premises, upon its complying with terms of such sale. The Deed having been delivered, I hereby ORDER the file closed and the case ended.

January 19, 2012
York, South Carolina


S. Jackson Kimball, III
Master-in-Equity for York County

FORM 4

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP4601206STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

Provident Community Bank

Coulston Enterprises Inc
A Earl Coulston
Glen Ridge Owners Association
IncAlfred Earl Coulston
Red Clay Industries Inc
HD Supply Waterworks LTD

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: MORTON & GETTYS

Attorney for: ☒ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☒ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

THIS ORDER IS ORDERED AND ADJUDGED:

☐ See attached order; (formal order to follow)☐ Statement of Judgment by the Court:

ORDER OF DEFICIENCY JUDGMENT

ORDER INFORMATION

Additional Information for the Clerk:

This order ☒ ends ☐ does not end the case.

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Provident community bank	Coulston Enterprises Inc	\$ 1,763,531.04

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

s/ s. Jackson Kimball 999
Circuit Court Judge3063
Judge Code01/19/2012
Date

000014

For Clerk of Court Office Use Only

This judgment was entered on January 19, 2012, and a copy mailed first class or placed in the appropriate attorney's box on January 19, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Michael K Hatch Morton & Gettys Llc Po Box 176 York, SC 29745

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

David Hamilton - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS
)
) SIXTEENTH JUDICIAL CIRCUIT

PROVIDENT COMMUNITY BANK,

) C/A No.: 2011-CP-46-01206
)

Plaintiff,

vs.

) **ORDER OF DEFICIENCY JUDGMENT**
) (DEFICIENCY SOUGHT)
)

COULSTON ENTERPRISES, INC.,
ALFRED EARL COULSTON a/k/a A.
EARL COULSTON, RED CLAY
INDUSTRIES, INC., GLEN RIDGE
OWNERS ASSOCIATION, INC., and
HD SUPPLY WATERWORKS, LTD.,

Defendants.

FILED - RECEIVED
2012 JAN 19 PM 2:51
AND HAMILTON
C.C.P. & GS
YORK COUNTY, SC

Pursuant to the Judgment of the Master-in-Equity gave in the above case on October 4, 2011, the Plaintiff is entitled to have a personal and deficiency judgment against the Defendant Coulston Enterprises, Inc. as follows:

Amount of judgment of foreclosure entered by the Equity Court	\$	2,347,919.11
PLUS: Interest at 3.25% from date of Judgment of foreclosure	\$	12,414.53
To date of deed (Per Diem \$193.977)		
Commission	\$	2,500.00
Advertising	\$	697.40
~~Deed Preparation~~	~~\$~~	~~100.00~~
Total Judgment	\$	2,363,631.04
LESS: Amount Bid	\$	600,000.00
DEFICIENCY JUDGMENT ENTERED AGAINST ABOVE NAMED DEFENDANTS	\$	1,763,631.04

IT IS SO ORDERED

January 19, 2012
York, South Carolina


S. Jackson Kimball, III
Master-in-Equity for York County

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEASProvident Community
BankCoulston Enterprises Inc Alfred Earl Coulston
A Earl Coulston Red Clay Industries Inc
HD Supply Waterworks
LTD

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The Court

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE
CIRCUIT COURT RULING IN THIS APPEAL.IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

Amended Order of Deficiency Judgment

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Provident Community Bank	Alfred Earl Coulston aka A Earl Coulston	\$1,763,531.04

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

s/S. Jackson Kimball
Circuit Court Judge3063
Judge Code

12/4/2013

Date

For Clerk of Court Office Use Only

This judgment was entered on December 4, 2013, and a copy mailed first class or placed in the appropriate attorney's box on December 4, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Michael K. Hatch PO Box 176 Morton & Gettys, LLC York, SC 29745

Lawrence Caldwell Melton PO Drawer 2426 Columbia, SC 29202
Ryan Lee Beaver 100 North Tryon Street, Suite 2690 Bank Of America Corporate Center Charlotte, NC 28202
Daniel Dominic D'Agostino 25 West Liberty St. York, SC 29745

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

David Hamilton - Clerk of Court

Court Reporter

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

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

STATE OF SOUTH CAROLINA
COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS
) SIXTEENTH JUDICIAL CIRCUIT
) Case No.: 2011-CP-46-01206

PROVIDENT COMMUNITY BANK,

Plaintiff,

vs.

COULSTON ENTERPRISES, INC.,
ALFRED EARL COULSTON a/k/a A.
EARL COULSTON, RED CLAY
INDUSTRIES, INC., GLEN RIDGE
OWNERS ASSOCIATION, INC., and
HD SUPPLY WATERWORKS, LTD.,
Defendants.

AMENDED ORDER OF DEFICIENCY
JUDGMENT
(DEFICIENCY SOUGHT)

FILED-RECEIVED
2013 DEC -4 PM 2:37
DAVID HAMILTON
CLERK OF COURTS
YORK COUNTY, SC

Pursuant to the prior order for a deficiency judgment entered in this case on January 12, 2012, Defendant Alfred Earl Coulston was omitted as a judgment debtor regarding the deficiency judgment rendered. It is clear from the Judgment of Foreclosure and Sale entered October 7, 2011, that Plaintiff was granted the right to a deficiency judgment against Defendant Alfred Earl Coulson, individually. Thus, Plaintiff is entitled to have a personal and deficiency judgment entered against the Defendant Coulston Enterprises, Inc. and Defendant Alfred Earl Coulston a/k/a A. Earl Coulston, individually, as follows:

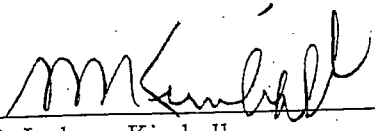
Amount of judgment of foreclosure entered by the Equity Court	\$ 2,347,919.11
PLUS: Interest at 3.25% from date of Judgment of foreclosure	\$ 12,414.53

To date of deed (Per Diem \$193.977)	
Commission	\$ 2,500.00
Advertising	\$ 697.40
Total Judgment	\$ 2,363,531.04
LESS: Amount Bid	\$ 600,000.00
DEFICIENCY JUDGMENT ENTERED AGAINST ABOVE NAMED DEFENDANTS	\$ 1,763,531.04

This AMENDED ORDER OF DEFICIENCY JUDGMENT shall have prospective application only as to Defendant Alfred Earl Coulson, Individually.

AND IT IS SO ORDERED

12/4, 2013


S. Jackson Kimball
Master-in-Equity for York County.

000019

STATE OF SOUTH CAROLINA
COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS
)
) SIXTEENTH JUDICIAL CIRCUIT

PROVIDENT COMMUNITY BANK,

) C/A No.: 2011-CP-46-01206
)

Plaintiff,

) **REPORT OF SALE AND DISBURSEMENT**
) (DEFICIENCY SOUGHT)
)

vs.

COULSTON ENTERPRISES, INC.,
ALFRED EARL COULSTON a/k/a A.
EARL COULSTON, RED CLAY
INDUSTRIES, INC., GLEN RIDGE
OWNERS ASSOCIATION, INC., and
HD SUPPLY WATERWORKS, LTD.,

Defendants.

FILED - RECEIVED
2012 JAN 19 PM 2:51
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

UNDER AUTHORITY of a Decree herein dated October 4, 2011 I offered for sale to the highest bidder for cash, at public auction, the premises subject to this suit, and I received a high bid of 600,000.00, and I have executed and delivered a Master's Deed to Provident Community Bank, and I have disbursed the funds as follows:

<u>CONSIDERATION</u>	\$600,000.00
----------------------	--------------

RECEIPTS

Deposit (Reference Fee)	\$125.00
-------------------------	----------

County Commission	<u>\$2,500.00</u>
-------------------	-------------------

TOTAL RECEIVED BY MASTER	\$2,625.00
--------------------------	------------

DISBURSEMENTS

Master's Fee	\$125.00
--------------	----------


121
000020

County Commission (1%)

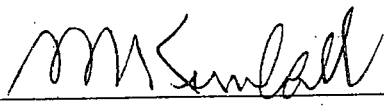
\$2,500.00

TOTAL DISBURSEMENTS

\$2,625.00

All the funds having been received and disbursed, I hereby order the file closed and the case ended. I further order that the Clerk of court is authorized and directed to satisfy and cancel the subject mortgage of record.

January 19, 2012
York, South Carolina



S. Jackson Kimball, III
Master-in-Equity for York County

#2

NOTICE OF SALE:

DEFICIENCY DEMANDED

PROVIDENT COMMUNITY BANK v. COULSTON ENTERPRISES, INC. *et al.*, York
County Civil Action Number 2011-CP-46-1206

By virtue of the Decree of the Court of Common Plea for York County heretofore granted in this case of Provident Community Bank vs. Coulston Enterprises, Inc., *et al.*, I, the undersigned Master-in-Equity for York County, will sell on November 7, 2011 at 11 a.m. at 1 North Congress Street, York, South Carolina at public auction to the highest bidder for cash the following described properties to wit:

All that certain piece, parcel or tract of land, lying, being and situate in the State of South Carolina, County of York, adjacent to the City of York, on Black Highway (SC HWY 5) being described as a tract containing 46.396 acres on an exhibit prepared for Coulston Enterprises, Inc. drawn by David L. Ferguson, PLS, dated 10/4/2007 and revised 11/13/07 and recorded in Plat Book D271 at Page 9 in the Office of the Clerk of Court for York County, South Carolina.

DERIVATION: This being a portion of the property conveyed unto Coulston Enterprises, Inc. by deed of Jeffrey Craig Inman executed May 4, 2007 and recorded May 9, 2007 in Record Book 9073 at Page 16 in the Office of the Clerk of Court for York County, South Carolina.

TMS#: 070-01-01-066
46.396 Parcel on Black Highway

TERMS OF SALE: The said property will be sold for cash. The undersigned Special Referee will require a deposit of five percent (5%) of the amount of the bid in cash or equivalent, the same to be applied to the purchase price only upon compliance with the bid, but in the case of noncompliance, within thirty (30) days after the date of sale, the same to be forfeited and applied to the cost of the debt of Plaintiff and the property to be readvertised for sale on the same terms at the risk of the former highest bidder.

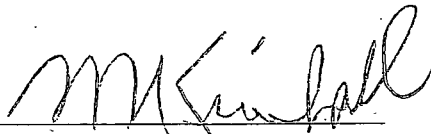
The sale shall be subject to taxes and existing mortgage(s), easements and restrictions of record.

10
#1
000022

RECEIVED
OCT - 7 PM 3:31
SOUTH CAROLINA
CLERK OF COURT
YORK COUNTY

If Plaintiff is the successful bidder at the sale, the amount due on its mortgage may be used as equivalent of cash. The Purchaser shall pay for all cost of recording the deed. The successful bidder will be required to pay interest on the amount of the bid from the date of sale to the date of compliance with the bid at the rate of 0.00% per annum.

NOTICE: The foreclosure deed is not a warranty deed. Interested bidders should satisfy themselves as to the quality of title to be conveyed by obtaining an independent title search prior to the foreclosure sale date.



S. Jackson Kimball, III
Master-in-Equity for York County

York, South Carolina

10/5, 2011

Michael K. Hatch
Attorney for Plaintiff
P.O. Box 176
York, SC 29745
Office: 803-684.9604
Fax: 803-684.4932



AMENDED NOTICE OF SALE:

DEFICIENCY DEMANDED

PROVIDENT COMMUNITY BANK v. COULSTON ENTERPRISES, INC. *et al.*, York
County Civil Action Number 2011-CP-46-1206

FILED - RECEIVED
2011 OCT 25 AM 11:41
C.C.C.P. & GS
YORK COUNTY, SC

By virtue of the Decree of the Court of Common Plea for York County heretofore granted in this case of Provident Community Bank vs. Coulston Enterprises, Inc., *et al.*, I, the undersigned Master-in-Equity for York County, will sell on November 7, 2011 at 11 a.m. at 1 North Congress Street, York, South Carolina at public auction to the highest bidder for cash the following described properties to wit:

All that certain piece, parcel or tract of land, lying, being and situate in the State of South Carolina, County of York, adjacent to the City of York, on Black Highway (SC HWY 5) being described as a tract containing 46.396 acres on an exhibit prepared for Coulston Enterprises, Inc. drawn by David L. Ferguson, PLS, dated 10/4/2007 and revised 11/13/07 and recorded in Plat Book D271 at Page 9 in the Office of the Clerk of Court for York County, South Carolina.

DERIVATION: This being a portion of the property conveyed unto Coulston Enterprises, Inc. by deed of Jeffrey Craig Inman executed May 4, 2007 and recorded May 9, 2007 in Record Book 9073 at Page 16 in the Office of the Clerk of Court for York County, South Carolina.

TMS#: 070-01-01-066

46.396 Parcel on Black Highway

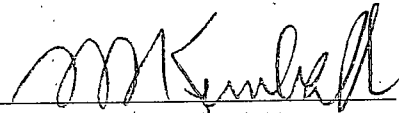
TERMS OF SALE: The said property will be sold for cash. The undersigned Special Referee will require a deposit of five percent (5%) of the amount of the bid in cash or equivalent, the same to be applied to the purchase price only upon compliance with the bid, but in the case of noncompliance, within thirty (30) days after the date of sale, the same to be forfeited and applied to the cost of the debt of Plaintiff and the property to be readvertised for sale on the same terms at the risk of the former highest bidder.

The sale shall be subject to taxes and existing mortgage(s), easements and restrictions of record.


#1
000024

If Plaintiff is the successful bidder at the sale, the amount due on its mortgage may be used as equivalent of cash. The Purchaser shall pay for all cost of recording the deed. The successful bidder will be required to pay interest on the amount of the bid from the date of sale to the date of compliance with the bid at the rate of 3.25% per annum.

NOTICE: The foreclosure deed is not a warranty deed. Interested bidders should satisfy themselves as to the quality of title to be conveyed by obtaining an independent title search prior to the foreclosure sale date.



S. Jackson Kimball, III
Master-in-Equity for York County

York, South Carolina

10/24, 2011

#2

Michael K. Hatch
Attorney for Plaintiff
P.O. Box 176
York, SC 29745
Office: 803-684.9604
Fax: 803-684.4932

STATE OF SOUTH CAROLINA

COUNTY OF YORK

PROVIDENT COMMUNITY BANK

Plaintiff(s)

vs.

COULSTON ENTERPRISES, INC., et al

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

11 - CP - 46 - 1206

(Please Print)

Submitted By: Micheal K. Hatch

Address: Morton & Gettys, LLC

P.O. Box 176, York, SC 29745

SC Bar #: 69735

Telephone #: 803.684.9604

Fax #: 803.684.4932

Other:

E-mail: michael.hatch@mortongettys.com

NOTE: The cover sheet 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 cover sheet must be served on the defendant(s) along with the Summons and Complaint.

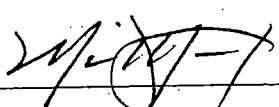
DOCKETING INFORMATION (Check all that apply)

*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 Circuit Court Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
- ☒ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☒ Foreclosure (420) |
| ☐ General (130) | ☐ Other (299) | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | | ☐ Personal Injury (350) | ☐ Possession (450) |
| | | ☐ Other (399) | ☐ Building Code Violation (460) |
| | | | ☐ Other (499) |
-
- | | | | |
|--|--|---|--|
| Inmate Petitions | Judgments/Settlements | Administrative Law/Relief | Appeals |
| ☐ PCR (500) | ☐ Death Settlement (700) | ☐ Reinstate Driver's License (800) | ☐ Arbitration (900) |
| ☐ Sexual Predator (510) | ☐ Foreign Judgment (710) | ☐ Judicial Review (810) | ☐ Magistrate-Civil (910) |
| ☐ Mandamus (520) | ☐ Magistrate's Judgment (720) | ☐ Relief (820) | ☐ Magistrate-Criminal (920) |
| ☐ Habeas Corpus (530) | ☐ Minor Settlement (730) | ☐ Permanent Injunction (830) | ☐ Municipal (930) |
| ☐ Other (599) | ☐ Transcript Judgment (740) | ☐ Forfeiture (840) | ☐ Probate Court (940) |
| | ☐ Lis Pendens (750) | ☐ Other (899) | ☐ SCDOT (950) |
| | ☐ Other (799) | | ☐ Worker's Comp (960) |
| | | | ☐ Zoning Board (970) |
| | | | ☐ Administrative Law Judge (980) |
| | | | ☐ Public Service Commission (990) |
| | | | ☐ Employment Security Comm (991) |
| | | | ☐ Other (999) |
-
- | | |
|--|---|
| Special/Complex /Other | |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) |
| ☐ Medical (620) | ☐ Other (699) |

Submitting Party Signature: 

Date: 3-29-2011

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

FOR MANDATED ADR COUNTIES ONLY

Florence, Horry, Lexington, Richland, Greenville**, and Anderson**

** Contact Respective County Clerk of Court for modified ADR Program Rules

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

You are required to take the following action(s):

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Case 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. Cases which are appellate in nature such as appeals or writs of certiorari;
 - c. Post Conviction relief matters;
 - d. Contempt of Court proceedings;
 - e. Forfeiture proceedings brought by the State;
 - f. Cases involving mortgage foreclosures; and
 - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. 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 had 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.**

000027

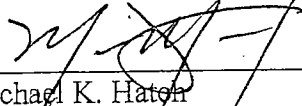
2011-CP-46-1206

CERTIFICATION AS TO ADR

I certify that the within action, captioned *Provident Community Bank vs. Coulston Enterprises, Inc.*, is not subject to mandatory ADR under Rule 3 of the Circuit Court Alternative Dispute Resolution Rules, because the principal nature of the action is that of a mortgage foreclosure.

This 29th day of March, 2011
York, South Carolina

MORTON & GETTYS, LLC

BY: 

Michael K. Hatch
616 East Liberty Street
P.O. Box 176
York, SC 29745
Tel: (803) 684.9604
Fax: (803) 684.4932
micahel.hatch@mortongettys.com
Counsel for Plaintiff

FILED-RECEIVED
2011 MAR 30 PM 2:12
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

000028

STATE OF SOUTH CAROLINA

COUNTY OF YORK

PROVIDENT COMMUNITY BANK,

Plaintiff,

vs.

COULSTON ENTERPRISES, INC.,
ALFRED EARL COULSTON, A/K/A A.
EARL COULSTON, RED CLAY
INDUSTRIES, INC., GLEN RIDGE
OWNERS ASSOCIATION, INC., and
HD SUPPLY WATERWORKS, LTD.,

Defendants.

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

SUMMONS

C/A No.: 2011-CP-46- 1206

FILED-RECEIVED
2011 MAR 30 PM 2:12
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

TO: THE DEFENDANTS, AND ALL OTHERS TO WHOM THESE PRESENTS MAY
COME:

YOU ARE HEREBY SUMMONED and required to answer the Complaint
herewith served upon you, and to serve a copy of your answer to such
Complaint upon the subscribers at their offices at 616 East Liberty Street, P.O. Box
176, York, SC 29745 within thirty (30) days after the date of service hereof upon
you, exclusive of the day of such service, and if you fail to answer such
Complaint within the time aforesaid, Plaintiff will apply to the Court for the relief
demanded in the Complaint.

000029

This 29th day of March, 2011
York, South Carolina

MORTON & GETTYS, LLC

BY: 

Michael K. Hatch

616 East Liberty Street

P.O. Box 176

York, SC 29745

Tel: (803) 684.9604

Fax: (803) 684.4932

michael.hatch@mortongettys.com

Counsel for Plaintiff

000030

STATE OF SOUTH CAROLINA

COUNTY OF YORK

PROVIDENT COMMUNITY BANK,

Plaintiff,

vs.

COULSTON ENTERPRISES, INC.,
ALFRED EARL COULSTON, A/K/A A.
EARL COULSTON, RED CLAY
INDUSTRIES, INC., GLEN RIDGE
OWNERS ASSOCIATION, INC., and
HD SUPPLY WATERWORKS, LTD.,

Defendants.

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

COMPLAINT

C/A No.: 2011-CP-46- 1206

DEFICIENCY SOUGHT

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

2011 MAR 30 PM 2:12

FILED-RECEIVED

Plaintiff, complaining of the Defendants, would respectfully allege and show as follows:

JURISDICTION AND VENUE

1. Plaintiff Provident Community Bank ("Lender") is a national banking association with its principal offices in York County, South Carolina, and does business in York County, South Carolina.

2. Defendant Coulston Enterprises, Inc. ("Borrower") is a corporation organized and existing under the laws of the State of South Carolina, transacts business, and owns the real property in York County, South Carolina subject to this action described more fully below (the "Property").

3. The Home Affordable Modification Program ("HMP") is inapplicable to the mortgage subject to this action because the mortgage loan is

commercial and not owned, securitized or guaranteed by Fannie Mae or Freddie Mac.

4. South Carolina Code of Laws (1976) §. 12-24-154 is not applicable to any conveyance of the Property ordered by the Court as a result of this action, and no tax lien will arise under such section upon any such conveyance, because any such conveyance will constitute a forced sale by the Court, and not a "transfer" as contemplated by the code provision cited. See, SC Revenue Ruling #04-02.

5. Defendant Alfred Earl Coulston, a/k/a A. Earl Coulston ("Guarantor") is made a party to this action by virtue of that absolute and unconditional guaranty signed, executed and delivered by Guarantor to Lender dated November 15, 2007, wherein and whereby Guarantor absolutely and unconditionally guaranteed the payment and performance of each and every debt, liability and obligation which Borrower may owe to Lender.

6. Defendant Red Clay Industries, Inc. is made a party to this action because it has or may claim an interest in the Property by virtue of that certain York County Court of Common Pleas Case # 2010-CP-46-00876 filed March 1, 2010 in the York County, South Carolina, Clerk of Court's Office. Upon information and belief, the action is currently pending in York County, no judgment has been entered, and this Defendant is named such that if the Defendant has obtained a judgment against Borrower prior to the Lis Pendens filed herewith, it will have notice of this action and will have been provided an

opportunity to appear in this action. Such judgment interest of this Defendant, if any, is inferior to the interests of Lender, as set forth and described herein, in and to the Property by virtue of the recording statute.

7. Defendant Glen Ridge Owners Association, Inc. is made a party to this action because it has or may claim an interest in the Property by virtue of that certain York County Court of Common Pleas Case # 2010-CP-46-03623 filed August 25, 2010 in the York County, South Carolina, Clerk of Court's Office. Upon information and belief, the action is currently pending in York County, no judgment has been entered, and this Defendant is named such that if the Defendant has obtained a judgment against Borrower prior to the Lis Pendens filed herewith, it will have notice of this action and will have been provided an opportunity to appear in this action. Such judgment interest of this Defendant, if any, is inferior to the interests of Lender, as set forth and described herein, in and to the Property by virtue of the recording statute.

8. Defendant HD Supply Waterworks, LTD., a Florida corporation is made a party to this action because it has or may claim an interest in the Property by virtue of that certain Mortgage of Real Estate and Security Agreement, dated June 30, 2010 and recorded August 13, 2010 in the York County, South Carolina, Clerk of Court's Office in OR Volume 11541 at Page 42, *et seq.* Such mortgage interest of this Defendant, if any, is inferior to the interests of Lender, as set forth and described herein, in and to the Property by virtue of the recording statute.

FOR A FIRST CAUSE OF ACTION
Foreclosure of Mortgage with Assignment of Rents and Leases and Security Agreement

9. On November 15, 2007, Borrower executed that certain commercial, multiple advance, closed end credit promissory note in favor of Lender, bearing Lender's loan number 9000286, in the original principal amount of \$3,200,00.00 ("Note"). A copy of the Note is attached to this Complaint and incorporated herein by this reference as Exhibit A. The indebtedness represented by the Note and other loan documents described below is hereinafter referred to as the "Loan".

10. Simultaneously, in connection with, and to provide security for the Note, Borrower executed in favor of and granted unto Lender a certain mortgage, with future advance clause, in and to the Property, recorded on November 16, 2007, in OR Volume 9599 at Page 80, *et seq.*, in the York County, South Carolina, Clerk of Court's Office (the "Mortgage"). A copy of the Mortgage is attached to this Complaint and incorporated herein by this reference as Exhibit B. The Mortgage conveys unto Lender a first in priority, purchase money mortgage interest and security interest in and to the Property. The mortgage also contains a provision by which Borrower irrevocably grants, assigns, bargains, conveys, and mortgages to Lender as additional security all the right, title, and interest in and to any existing or future leases, subleases or any other written or verbal agreements for the use and occupancy of the Property. The mortgage also contains a provision by which Borrower irrevocably

grants, bargains, conveys, and mortgages to Lender as additional security, all personal property located on or connected with the Property, including all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Borrower (also referred to in the Mortgage as Mortgagor) owns now or in the future and that are used or useful in the construction, ownership, operation, management or maintenance of the Property. The Mortgage allows Lender to take immediate possession of the Property upon Borrowers default and requires Borrower to pay all future rents to Lender.

The Property encumbered by the Mortgage is as follows:

All that certain piece, parcel or tract of land, lying, being and situate in the State of South Carolina, County of York, adjacent to the City of York, on Black Highway (SC HWY 5) being described as a tract containing 46.396 acres on an exhibit prepared for Coulston Enterprises, Inc. drawn by David L. Ferguson, PLS, dated 10/4/2007 and revised 11/13/07 and recorded in Plat Book D271 at Page 9 in the Office of the Clerk of Court for York County, South Carolina.

DERIVATION: This being a portion of the property conveyed unto Coulston Enterprises, Inc. by deed of Jeffrey Craig Inman executed May 4, 2007 and recorded May 9, 2007 in Record Book 9073 at Page 16 in the Office of the Clerk of Court for York County, South Carolina.

TMS#: 070-01-01-066

11. In the Note, Borrower agreed to repay the principal amount evidenced thereby, together with interest thereon at the adjustable rate of the U.S. Prime Rate, known as the Base Rate on Corporate Loans posted by at least 75% of the 30 largest U.S. Banks (the "Index"), per annum, in monthly payments of

accrued interest calculated on the amount of credit outstanding beginning on December 17, 2007 and quarterly principal payments of \$228,500.00 beginning February 15, 2009, with a final balloon payment of all amounts due and owing under the Note to be paid on November 15, 2011. The loan being a variable rate loan, the Note provides that payment amounts may change according to the Index, and that the final payment amount may also change according to the Index.

12. Further, in the Note, Borrower agreed to pay to Lender a late charge of five percent (5.0%) per calendar month on the amount of any past due payment if the payment was not made by the tenth (10th) day following the due date thereof.

13. A default under the Note is a default by Borrower under the Mortgage. Upon a default, Lender has the right and option to declare the Note due and payable in full, and to accelerate the indebtedness evidenced thereby.

14. Under the Note, if the indebtedness evidenced thereby is placed into the hands of an attorney for collection by suit, upon default of payment thereof, Borrower agrees to pay any and all costs, expenses, and attorneys' fees incurred by Lender in collecting upon the Note.

15. Borrower is in default pursuant to the terms and conditions of the Note and Mortgage for failure to make payments in accordance with the terms thereof, despite notice of default and demand for payment from Lender.

Further, Borrower is in default under the Mortgage for failure to pay the 2009 and 2010 ad valorem taxes assessed against the Property as and when due.

16. Lender has accelerated all amounts due and owing under the Note and Mortgage.

17. Lender seeks a personal or deficiency judgment against Borrower to the extent the proceeds from the judicial sale of the Property are insufficient to satisfy in full the debt owed Lender.

18. As of March 4, 2011, there was due and owing on the Note the sum of \$2,296,601.43, plus interest thereon and late fees until the date of payment in full, as well as the costs of collection thereon, including, but not limited to, attorneys' fees, and Lender is entitled to entry of judgment thereon against Borrower for such amounts.

19. The Note and Mortgage are legally owned and held by Lender, the conditions of each have been breached, and the amounts due and owing and secured thereby have not been paid by the Borrower. The Mortgage constitutes a valid first lien upon the Property, superior to the later judgment or other liens of the named Defendants, and the Mortgage should be foreclosed to provide for payment in full of all monies due under the Note and Mortgage.

FOR A SECOND CAUSE OF ACTION
Action on Guaranty

20. All of the foregoing paragraphs, as applicable, are incorporated herein by reference as if reiterated herein verbatim.

21. To induce Lender to issue the Loan, Guarantor executed in favor of Lender on even date with the Note that certain unconditional and unlimited personal guaranty, guarantying to Lender, among other things, Borrower's payment and performance with respect to the Loan (the "Guaranty"). A copy of the Guaranty is attached to this Complaint as Exhibit C, incorporated by this reference.

22. The Guaranty guaranties and secures all of Borrower's obligations under the Note and Mortgage described herein.

23. Guarantor is in default pursuant to the terms and conditions of the Guaranty for failure to make payments in accordance with the terms thereof, despite notice of default and demand for payment from Lender.

24. Lender has accelerated all amounts due and owing under the Guaranty, and provided Guarantor with notice thereof.

25. The Guaranty is legally owned and held by Lender, the conditions having been breached, as more particularly set forth above, the amounts due and owing to Lender (as set forth above) have not been paid by Guarantor, and Lender is entitled to judgment against Guarantor for the amount due and outstanding from Borrower, as set forth above.

26. Lender hereby agrees to credit to any judgment obtained by it against Guarantor the net proceeds from any sale of the Property and any sums collected as a result of this litigation or any judgment entered pursuant hereto, including, without limitation, as a result of the other causes of action asserted

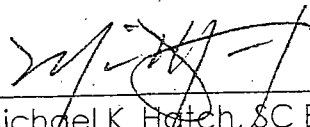
herein; which proceeds shall be in reduction of any judgment entered against Guarantor.

WHEREFORE, Lender prays:

- (a) for an order granting Lender a judgment against Borrower and Guarantor in the amount of the indebtedness due and owing under the Note and Mortgage and other loan documents and agreements referenced above, together with accrued interest and Lender's costs, expenses, and attorneys' fees incurred in connection herewith, and together further with any costs expended by Lender in preserving or maintaining any collateral named above, subject to adjustment as necessary to reflect any recovery made by Lender from the sale of the Property;
- (b) for an order sequestering any rents or lease payments due under any and all leases on the Property;
- (c) for a determination of the interests of the parties in and to the Property, and an order requiring that the Mortgage be foreclosed, free and clear of all junior liens, restrictions and/or encumbrances, with the equity of redemption of Borrower and all defendants to be forever barred, with a finding that the HMP and South Carolina Code of Laws (1976) § 12-24-154 are inapplicable to the sale of the Property, ordering the Property (and any fixtures which comprise a part thereof) sold under order of this Court, the bidding at such sale to be complete and final thirty (30) days after the day of the initial sale; and the successful bidder to be put into possession of the Property immediately upon presentation of the deed;
- (d) for an order requiring that the proceeds of the foreclosure sale of the Property be applied first to payment of the costs of protection, preservation and maintenance of the Property, along with taxes, insurance and other applicable assessments and expenses of sale, plus costs of collection, including, but not limited to, attorneys' fees, next, to the indebtedness to Lender under the Note and Mortgages, and, finally, to such other sums as are found property due or outstanding by the Court; and,
- (e) for the granting of such other and further relief as appears to the Court to be just and proper.

This 29th day of March, 2011
York, South Carolina

MORTON & GETTYS, LLC

BY: 

Michael K. Hatch, SC Bar #69735

616 E. Liberty Street

York, SC 29745

Tel: (803) 684-9604

Fax: (803) 684-49320

michael.hatch@mortongettys.com

Counsel for Plaintiff

2011-CP-46-1206

STATE OF SOUTH CAROLINA)

VERIFICATION

COUNTY OF YORK)

PERSONALLY appeared before me Al G. Schwint, who, after being duly sworn, deposes and says that he is a Commercial Special Assets Manager with Provident Community Bank, the Plaintiff in the foregoing Complaint, and as such, that he has read the allegations contained therein and knows the same to be true to the best of his own knowledge, excepting such matters and things which are alleged upon information and belief, and as to those, he believes the same to be true also.

Al G. Schwint

Al G. Schwint
Commercial Special Assets Manager
Provident Community Bank

SWORN to me this 22 day of
March, 2011

Kimberly S. McSwain

Notary Public for South Carolina

My commission expires: 8/15/2012

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

2011 MAR 30 PM 2:12

FILED-RECEIVED

000041

COULSTON ENTERPRISES, INC.
8170 REGENT PARKWAY
FORT MILL, SC 29715

PROVIDENT COMMUNITY BANK
2700 CHLANESE RD
PO BOX 36428
ROCK HILL, SC 29732

OFFICER: HIRSHKOW 124
Loan Number 9000286
Date 11-15-2007
Maturity Date 11-15-2011
Loan Amount \$ 3,200,000.00
Renewal Of
NAICS 236115

BORROWER'S NAME AND ADDRESS

"I" includes each borrower above jointly and severally. "You" means the lender, its successors and assigns.

LENDER'S NAME AND ADDRESS

For value received, I promise to pay to you, or your order, at your address listed above the **PRINCIPAL** sum of THREE MILLION TWO HUNDRED THOUSAND AND NO/100 Dollars \$ 3,200,000.00

☐ **Single Advance:** I will receive all of this principal sum on _____ No additional advances are contemplated under this note.

☒ **Multiple Advance:** The principal sum shown above is the maximum amount of principal I can borrow under this note. On 11-15-2007 I will receive the amount of \$ 685,679.10 and future principal advances are contemplated.

Conditions: The conditions for future advances are AS NEEDED AND APPROVED BY BORROWER AND BANK

☐ **Open End Credit:** You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on _____

☒ **Closed End Credit:** You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 11-15-2007 at the rate of 7.500% per year until 11-16-2007

☒ **Variable Rate:** This rate may then change as stated below.

☒ **Index Rate:** The future rate will be EQUAL TO the following index rate: U.S. PRIME RATE IS THE BASE RATE ON CORPORATE LOANS POSTED BY AT LEAST 75% OF THE 30 LARGEST U.S. BANKS

☐ **No Index:** The future rate will not be subject to any internal or external index. It will be entirely in your control.

☒ **Frequency and Timing:** The rate on this note may change as often as EVERY DAY BEGINNING 11-16-2007

A change in the interest rate will take effect ON THE SAME DAY

☐ **Limitations:** During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ % each _____ %

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☒ The amount of each scheduled payment will change.

☒ The amount of the final payment will change.

ACCUAL METHOD: Interest will be calculated on a ACTUAL/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to _____

☒ **LATE CHARGE:** If a payment is not made within 30 days after it is due, I agree to pay a late charge of 5.000% OF THE PAYMENT AMOUNT WITH A MIN OF \$100.00

☒ **ADDITIONAL CHARGES:** In addition to interest, I agree to pay the following charges which ☐ are ☒ are not included in the principal amount above: ORIGINATION FEE OF \$16,000.00 AND APPRAISAL FEE OF \$3,500.00

PAYMENTS: I agree to pay this note as follows:

MONTHLY PAYMENTS OF ACCRUED INTEREST CALCULATED ON THE AMOUNT OF CREDIT OUTSTANDING BEGINNING ON 12-15-2007 AND QUARTERLY PRINCIPAL PAYMENTS OF \$228,500.00 BEGINNING 02-15-2009. A FINAL PAYMENT OF ACCRUED INTEREST AND OUTSTANDING PRINCIPAL DUE ON 11-15-2011. THIS IS A VARIABLE RATE LOAN AND THE PAYMENT AMOUNTS MAY CHANGE. THE FINAL PAYMENT MAY ALSO CHANGE.

ADDITIONAL TERMS:

☒ **SECURITY:** This note is separately secured by (describe separate document by type and date): TITLE INSURED FIRST REAL ESTATE MORTGAGE ON 46.396 ACRES ON BLACK HIGHWAY (AKA SC HWY 5), YORK, SC

(This section is for your internal use. Failure to list a separate security document does not mean the agreement will not secure this note.)

Signature for Lender

PURPOSE: The purpose of this loan is FINANCE ACQUISITION/DEVELOPMENT LOAN

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.

COULSTON ENTERPRISES, INC.

A. EARL COULSTON, CHIEF EXECUTIVE OFFICER

COULSTON ENTERPRISES, INC. 8170 REGENT PARKWAY PORT MILL, SC 29715 BORROWER'S NAME AND ADDRESS "I" includes each borrower above, jointly and severally.	PROVIDENT COMMUNITY BANK 2700 CELANESE RD PO BOX 36428 ROCK HILL, SC 29732 LENDER'S NAME AND ADDRESS "You" means the lender, its successors and assigns.	PICRRID: RWIKOW124 Loan Number 9000286 Date 11-15-2007 Mat Date 11-15-2011 Loan Amount \$ 3,200,000.00 Renewal Of _____ NAICS 236115
---	---	--

DISBURSEMENT AUTHORIZATION

I hereby authorize and request the following disbursement from the loan referenced above:

a. Amount given to me directly	\$ _____	o. _____	\$ _____
b. Amount paid on my account (# _____)	\$ _____	p. _____	\$ _____
c. To Lender	\$ _____	q. _____	\$ _____
Amounts paid to others on my behalf:		r. _____	\$ _____
d. Insurance Companies	\$ _____	s. _____	\$ _____
e. Public Officials	\$ _____	t. _____	\$ _____
f. ATTORNEY BRIAN WILSON TRUST ACCOUNT	\$ 685,679.10	u. _____	\$ _____
g. _____	\$ _____	v. _____	\$ _____
h. _____	\$ _____	w. _____	\$ _____
i. _____	\$ _____	x. _____	\$ _____
j. _____	\$ _____	y. _____	\$ _____
k. _____	\$ _____	z. _____	\$ _____
l. _____	\$ _____	aa. _____	\$ _____
m. _____	\$ _____	bb. _____	\$ _____
n. _____	\$ _____	cc. _____	\$ _____

Comments:

COULSTON ENTERPRISES, INC.
 X *Earl Coulston*
 A. EARL COULSTON, CHIEF EXECUTIVE OFFICER
 X _____
 X _____

X _____
 X _____
 X _____

Loan Officer: _____

000044

COULSTON ENTERPRISES, INC.
8170 REGENCY PARKWAY
FORT MILL, SC 29715

BORROWER'S NAME AND ADDRESS

* Includes each borrower above, jointly and severally.

PROVIDENT COMMUNITY BANK

2700 CHILANES RD

PO BOX 36428

ROCK HILL, SC 29732

LENDER'S NAME AND ADDRESS

* You means the lender, its successors and assigns.

Line of Credit No. 9000286

Date 11-15-2007

Max. Credit Amt. 3,200,000.00

Loan Ref. No. 9000286

You have extended to me a line of credit in the

AMOUNT of THREE MILLION TWO HUNDRED THOUSAND AND NO/100 \$ 3,200,000.00

You will make loans to me from time to time until 12:00 P.m. on 11-15-2011. Although the line of credit expires on that date, I will remain obligated to perform all my duties under this agreement so long as I owe you any money advanced according to the terms of this agreement, as evidenced by any note or notes I have signed promising to repay these amounts.

This line of credit is an agreement between you and me. It is not intended that any third party receive any benefit from this agreement, whether by direct payment, reliance for future payment or in any other manner. This agreement is not a letter of credit.

1. AMOUNT: This line of credit is:

☒ OBLIGATORY: You may not refuse to make a loan to me under this line of credit unless one of the following occurs:

- I have borrowed the maximum amount available to me;
- This line of credit has expired;
- I have defaulted on the note (or notes) which show my indebtedness under this line of credit;
- I have violated any term of this line of credit or any note or other agreement entered into in connection with this line of credit;

a. _____

☐ DISCRETIONARY: You may refuse to make a loan to me under this line of credit once the aggregate outstanding advances equal or exceed \$ _____

Subject to the obligatory or discretionary limitations above, this line of credit is:

☐ OPEN-END (Business or Agricultural only): I may borrow up to the maximum amount of principal more than one time.

☒ CLOSED-END: I may borrow up to the maximum only one time.

2. PROMISSORY NOTE: I will repay any advances made according to this line of credit agreement as set out in the promissory note, I signed on 11-15-2007, or any note(s) I sign at a later time which represent advances under this agreement. The note(s) set(s) out the terms relating to maturity, interest rate, repayment and advances. If indicated on the promissory note, the advances will be made as follows:
AS NEEDED AND APPROVED BY BORROWER AND BANK

3. RELATED DOCUMENTS: I have signed the following documents in connection with this line of credit and note(s) entered into in accordance with this line of credit:

☐ security agreement dated _____

☒ mortgage dated 11-15-2007

☒ guaranty dated 11-15-2007

4. REMEDIES: If I am in default on the note(s) you may:

a. take any action as provided in the related documents;

b. without notice to me, terminate this line of credit.

By selecting any of these remedies you do not give up your right to later use any other remedy. By deciding not to use any remedy should I default, you do not waive your right to later consider the event a default, if it happens again.

5. COSTS AND FEES: If you hire an attorney to enforce this agreement I will pay your reasonable attorney's fees, where permitted by law. I will also pay your court costs and costs of collection, where permitted by law.

6. COVENANTS: For as long as this line of credit is in effect or I owe you money for advances made in accordance with the line of credit, I will do the following:

a. maintain books and records of my operations relating to the need for this line of credit;

b. permit you or any of your representatives to inspect and/or copy these records;

c. provide to you any documentation requested by you which support the reason for making any advance under this line of credit;

d. permit you to make any advance payable to the seller (or seller and me) of any items being purchased with that advance;

a. _____

7. NOTICES: All notices or other correspondence with me should be sent to my address stated above. The notice or correspondence shall be effective when deposited in the mail, first class, or delivered to me in person.

8. MISCELLANEOUS: This line of credit may not be changed except by a written agreement signed by you and me. The law of the state in which you are located will govern this agreement. Any term of this agreement which is contrary to applicable law will not be effective, unless the law permits you and me to agree to such a variation.

FOR THE LENDER

SIGNATURES: I AGREE TO THE TERMS OF THIS LINE OF CREDIT. I HAVE RECEIVED A COPY ON TODAY'S DATE.

A. Earl Coulston
A. EARL COULSTON, CHIEF EXECUTIVE OFFICER

Title _____

000045

9000286
200700382524
Filed for Record in
YORK COUNTY, SC
DAVID HAMILTON
11-16-2007 at 10:51 am.
MORTGAGE 15.00
DR Vol 9599 Page 80 - 88

This document was prepared by (name, address, phone):
PROVIDENT COMMUNITY BANK
2700 CELANESERD
PO BOX 36428 ROCK HILL, SC 29732
(803) 325-9417

State of South Carolina _____ Space Above This Line For Recording Data _____

REALESTATE MORTGAGE

(With Future Advance Clause)

1. DATE AND PARTIES. The date of this Mortgage is 11-15-2007 and the parties and their addresses are as follows:

MORTGAGOR: COULSTON ENTERPRISES, INC.
8170 REGENT PARKWAY
FORT MILL, SC 29715

- 1 Refer to the Addendum which is attached and incorporated herein for additional Mortgagors.

LENDER: PROVIDENT COMMUNITY BANK
ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA
2700 CELANESERD
PO BOX 36428 ROCK HILL, SC 29732

2. MORTGAGE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (hereafter defined), Mortgagor grants, bargains, conveys and mortgages to Lender the following described property:

SEE ATTACHED EXHIBIT "A"

The property is located in YORK (County) at 46.396 ACRES ON BLACK HWY AKA
SCHWY 5 (Address), YORK (City), South Carolina 29745 (Zip Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property"). The term Property also includes, but is not limited to, any and all water wells, water, ditches, reservoirs, reservoir sites and dams located on the real estate and all riparian and water rights associated with the Property, however established.

SOUTH CAROLINA AGRICULTURAL/COMMERCIAL REAL ESTATE SECURITY INSTRUMENT FORM (M/H/M/H/D/A/USE AND NOT FOR CONSUMER PURPOSES)

Expend 1994, 2001 Bankers Systems, Inc., St. Cloud, MN Form AGCD-RESI-SC 1/21/2003

BK 09599 PG 0080

000046



3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed \$ 3,200,000.00. This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees and other charges validly made pursuant to this Mortgage and does not apply to advances (or interest accrued on such advances) made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized; however, Mortgagee shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.

4. **SECURED DEBT DEFINED.** The term "Secured Debt" includes, but is not limited to, the following:

A. The promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all extensions, renewals, modifications or substitutions (Evidence of Debt) (e.g., borrower's name, note amount, interest rate, maturity date):

PROMISSORY NOTE 9000286 IN THE AMOUNT OF \$3,200,000.00 ACCRUING AT A VARIABLE RATE MATURING 11-15-2011. SAID LOAN IS IN THE NAME OF COULSTON ENTERPRISES, INC.

B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the evidence of debt.

C. All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.

D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Mortgage, plus interest at the highest rate in effect, from time to time, as provided in the Evidence of Debt.

E. Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Lender and any Mortgage securing, guarantying, or otherwise relating to the debt.

If more than one person signs this Mortgage as Mortgagor, each Mortgagor agrees that this Mortgage will secure all future advances and future obligations described above that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. This Mortgage will not secure any other debt if Lender fails, with respect to such other debt, to make any required disclosure about this Mortgage or if Lender fails to give any required notice of the right of rescission.

5. **PAYMENTS.** Mortgagor agrees to make all payments on the Secured Debt when due and in accordance with the terms of the Evidence of Debt or this Mortgage.

6. **WARRANTY OF TITLE.** Mortgagor covenants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to grant, bargain, convey, sell, and mortgage the Property and warrants that the Property is unencumbered, except for encumbrances of record.

7. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Mortgage. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses which Mortgagor may have against parties who supply labor or materials to improve or maintain the Property.

8. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property and that may have priority over this Mortgage, Mortgagor agrees:

A. To make all payments when due and to perform or comply with all covenants.

B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.

C. Not to make or permit any modification or extension of, and not to request or accept any future advances under any note or agreement secured by, the other mortgage, deed of trust or security agreement unless Lender consents in writing.

9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of any lien, encumbrance, transfer, or sale, or contract for any of these on the Property. However, if the Property includes Mortgagor's residence, this section shall be subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. For the purposes of this section, the term "Property" also includes any interest in all or any part of the Property. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Mortgage is released.

10. **TRANSFER OF AN INTEREST IN THE MORTGAGOR.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if (1) a beneficial interest in Mortgagor is sold or transferred; (2) there is a change in either the identity or number of members of a partnership or similar entity; or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity. However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Mortgage.

11. **ENTITY WARRANTIES AND REPRESENTATIONS.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Mortgagor makes to Lender the following warranties and representations which shall be continuing as long as the Secured Debt remains outstanding:

- A. Mortgagor is an entity which is duly organized and validly existing in the Mortgagor's state of incorporation (or organization). Mortgagor is in good standing in all states in which Mortgagor transacts business. Mortgagor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Mortgagor operates.
- B. The execution, delivery and performance of this Mortgage by Mortgagor and the obligation evidenced by the Evidence of Debt are within the power of Mortgagor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.
- C. Other than disclosed in writing Mortgagor has not changed its name within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.

12. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will give Lender prompt notice of any loss or damage to the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses which may be made of the Property or any part of the Property, without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor or any other owner made under law or regulation regarding use, ownership and occupancy of the Property. Mortgagor will comply with all legal requirements and restrictions, whether public or private, with respect to the use of the Property. Mortgagor also agrees that the nature of the occupancy and use will not change without Lender's prior written consent.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Mortgage. Mortgagor shall not partition or subdivide the Property without Lender's prior written consent. Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

13. **AUTHORITY TO PERFORM.** If Mortgagor fails to perform any of Mortgagor's duties under this Mortgage, or any other mortgage, deed of trust, security agreement or other lien document that has priority over this Mortgage, Lender may, without notice, perform the duties or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may do whatever is necessary to protect Lender's security interest in the Property. This may include completing the construction.

Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Mortgage. Any amounts paid by Lender for insuring, preserving or otherwise protecting the Property and Lender's security interest will be due on demand and will bear interest from the date of the payment until paid in full at the interest rate in effect from time to time according to the terms of the Evidence of Debt.

14. **ASSIGNMENT OF LEASES AND RENTS.** Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (Property).

- A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to, any extensions, renewals, modifications or replacements (Leases).
- B. Rents, issues and profits, including but not limited to, security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement.

Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive

(page 3 of 8)

any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment.

As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance.

Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

15. CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS. If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

16. DEFAULT. Mortgagor will be in default if any of the following occur:

- A. Any party obligated on the Secured Debt fails to make payment when due;
- B. A breach of any term or covenant in this Mortgage, any prior mortgage or any construction loan agreement, security agreement or any other document evidencing, guarantying, securing or otherwise relating to the Secured Debt;
- C. The making or furnishing of any verbal or written representation, statement or warranty to Lender that is false or incorrect in any material respect by Mortgagor or any person or entity obligated on the Secured Debt;
- D. The death, dissolution, or insolvency of, appointment of a receiver for, or application of any debtor relief law to, Mortgagor or any person or entity obligated on the Secured Debt;
- E. A good faith belief by Lender at any time that Lender is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment is impaired or the value of the Property is impaired;
- F. A material adverse change in Mortgagor's business including ownership, management, and financial conditions, which Lender in its opinion believes impairs the value of the Property or repayment of the Secured Debt; or
- G. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

17. REMEDIES ON DEFAULT. In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure, mediation notices or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Mortgage in a manner provided by law if this Mortgagor is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the Evidence of Debt, other evidences of debt, this Mortgage, and any related documents. All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether expressly set forth or not. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

18. EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS. Except when prohibited by law, Mortgagor agrees to pay all of Lender's expenses if Mortgagor breaches any covenant in this Mortgage. Mortgagor will also pay on demand all of Lender's expenses incurred in collecting, insuring, preserving or protecting the Property or in any inventories, audits, inspections or other examination by Lender in respect to the Property. Mortgagor agrees to pay all costs and expenses incurred by Lender in enforcing or protecting Lender's rights and remedies under this Mortgage, including, but not limited to, attorneys' fees, court costs, and other legal expenses. Once the Secured Debt is fully and finally paid, Lender agrees to release this Mortgage and Mortgagor agrees to pay for any recordation costs. All such amounts are due on demand and will bear interest from the time of the advance at the highest rate in effect, from time to time, as provided in the Evidence of Debt and as permitted by law.

19. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) "Environmental Law" means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) "Hazardous Substance" means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has

(page 4 of 8)

characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law. Mortgagor represents, warrants and agrees that, except as previously disclosed and acknowledged in writing:

- A. No Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property, or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Mortgagor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law.
- F. There are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.
- I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
- J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Mortgage and in return Mortgagor will provide Lender with collateral of at least equal value to the Property secured by this Mortgage without prejudice to any of Lender's rights under this Mortgage.
- L. Notwithstanding any of the language contained in this Mortgage to the contrary, the terms of this section shall survive any foreclosure or satisfaction of this Mortgage regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

20. **CONDEMNATION.** Mortgagor will give Lender prompt notice of any action, real or threatened, by private or public entities, to purchase or take any or all of the Property, including any easements, through condemnation, eminent domain, or any other means. Mortgagor further agrees to notify Lender of any proceedings instituted for the establishment of any sewer, water, conservation, ditch, drainage, or other district relating to or binding upon the Property or any part of it. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims and to collect and receive all sums resulting from the action or claim. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Mortgage. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

21. **INSURANCE.** Mortgagor agrees to maintain insurance as follows:

- A. Mortgagor shall keep the Property insured against loss by fire, theft and other hazards and risks reasonably associated with the Property due to its type and location. Other hazards and risks may include, for example, coverage against loss due to floods or flooding. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding three sentences can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Mortgage.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "lender loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

(page 5 of 8)

Unless Lender and Mortgagor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the Secured Debt, whether or not then due, with any excess paid to Mortgagor. If Mortgagor abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay the Secured Debt whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Mortgagor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of scheduled payments or change the amount of the payments. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

B. Mortgagor agrees to maintain comprehensive general liability insurance naming Lender as an additional insured in an amount acceptable to Lender, insuring against claims arising from any accident or occurrence in or on the Property.

C. Mortgagor agrees to maintain rental loss or business interruption insurance, as required by Lender, in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing), under a form of policy acceptable to Lender.

22. **NO ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

23. **FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem necessary. Mortgagor warrants that all financial statements and information Mortgagor provides to Lender are, or will be, accurate, correct, and complete. Mortgagor agrees to sign, deliver, and file as Lender may reasonably request any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Mortgage and Lender's lien status on the Property. If Mortgagor fails to do so, Lender may sign, deliver, and file such documents or certificates in Mortgagor's name and Mortgagor hereby irrevocably appoints Lender or Lender's agent as attorney in fact to do the things necessary to comply with this section.

24. **JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Mortgage are joint and individual. If Mortgagor signs this Mortgage but does not sign the Evidence of Debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. Mortgagor agrees that Lender and any party to this Mortgage may extend, modify or make any change in the terms of this Mortgage or the Evidence of Debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Mortgage. The duties and benefits of this Mortgage shall bind and benefit the successors and assigns of Mortgagor and Lender.

If this Mortgage secures a guaranty between Lender and Mortgagor and does not directly secure the obligation which is guaranteed, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation including, but not limited to, anti-deficiency or one-action laws.

25. **APPLICABLE LAW; SEVERABILITY; INTERPRETATION.** This Mortgage is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Mortgage is complete and fully integrated. This Mortgage may not be amended or modified by oral agreement. Any section or clause in this Mortgage, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section or clause of this Mortgage cannot be enforced according to its terms, that section or clause will be severed and will not affect the enforceability of the remainder of this Mortgage. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Mortgage are for convenience only and are not to be used to interpret or define the terms of this Mortgage. Time is of the essence in this Mortgage.

26. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Mortgage, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.

27. **WAIVER OF HOMESTEAD.** Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

28. **U.C.C. PROVISIONS.** If checked, the following are applicable to, but do not limit, this Mortgage:

1 **Construction Loan.** This Mortgage secures an obligation incurred for the construction of an improvement on the Property.

1 **Fixture Filing.** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.

1 **Crops; Timber; Minerals; Rents, Issues and Profits.** Mortgagor grants to Lender a security interest in all crops, timber, and minerals located on the Property as well as all rents, issues, and profits of them including, but not limited to, all Conservation Reserve Program (CRP) and Payment in Kind (PIK) payments and similar governmental programs (all of which shall also be included in the term "Property").

1 **Personal Property.** Mortgagor grants to Lender a security interest in all personal property located on or connected with the Property. This security interest includes all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future, and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property. The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.

1 **Filing As Financing Statement.** Mortgagor agrees and acknowledges that this Mortgage also suffices as a financing statement and as such, may be filed of record as a financing statement for purposes of Article 9 of the Uniform Commercial Code. A carbon, photographic, image or other reproduction of this Mortgage is sufficient as a financing statement.

29. **OTHER TERMS.** If checked, the following are applicable to this Mortgage:

1 **Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Mortgage will remain in effect until released.

X **Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may, within 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.

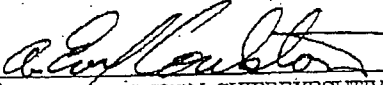
1 **Separate Assignment.** The Mortgagor has executed or will execute a separate assignment of leases and rents. If the separate assignment of leases and rents is properly executed and recorded, then the separate assignment will supersede this Security Instrument's "Assignment of Leases and Rents" section.

1 **Additional Terms.**

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Mortgage and in any attachments. Mortgagor also acknowledges receipt of a copy of this Mortgage on the date stated above on Page 1.

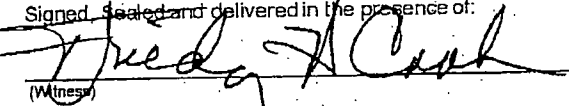
1 Actual authority was granted to the parties signing below by resolution signed and dated _____

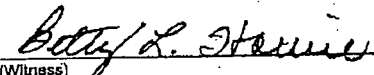
Entity Name: COULSTON ENTERPRISES, INC.


(Signature) A. EARL COULSTON, CHIEF EXECUTIVE OFFICER (Seal)

(Signature) (Date)

Signed, sealed and delivered in the presence of:


(Witness)


(Witness)

1 Refer to the Addendum which is attached and incorporated herein for additional Mortgagors, signatures and acknowledgments.

PROBATE:

STATE OF SOUTH CAROLINA, COUNTY OF _____ } ss.

Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 15TH day

of NOVEMBER, 2007

Betty L. Hamie
Notary Public for South Carolina

[Signature]

My commission expires: 4-6-2010

EXHIBIT A DESCRIPTION

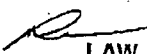
All that certain piece, parcel or tract of land, lying being and situate in the State of South Carolina, County of York, adjacent to the City of York, on Black Highway (SC HWY.5) being described as a tract containing 46.396 acres on an exhibit prepared for Coulston Enterprises, Inc. drawn by David L. Ferguson, PLS, dated 10/4/2007 and revised 11/13/07 and recorded in Plat Book 1271 at Page 9 in the office of the Clerk of Court for York County, South Carolina.

DERIVATION: This being a portion of the property conveyed unto Coulston Enterprises, Inc. by deed of Jeffrey Craig Inman executed May 4, 2007 and recorded May 9, 2007 in Record Book 9073 at Page 16 in the office of the Clerk of Court for York County, South Carolina.

(2007-674.PFD/2007-674/22)

BK09599 PG0088

000054


LAW OFFICE OF BRIAN C. WILSON, P.A.
P.O. BOX 3211
FORT MILL, SOUTH CAROLINA 29708
2007-674

12-6-67 ⑤

000055

GUARANTY

ROCK HILL SOUTH CAROLINA
(City) (State)

NOVEMBER 15, 2007

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce PROVIDENT COMMUNITY BANK (herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of COULSTON ENTERPRISES, INC.

(herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

A. If this 1 is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: _____ and any extensions,

renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

B. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"); Without limitation, this guaranty includes the following described debt(s): ANY AND ALL PRESENT AND FUTURE DEBT IN THE NAME OF COULSTON ENTERPRISES, INC.

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all Indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all Indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to Indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all Indebtedness, whether due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all Indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ UNLIMITED (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the Indebtedness and securing the payment of the Indebtedness, and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated _____
☐ secured by _____

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.

A. Earl Coulston
A. EARL COULSTON

"Undersigned" shall refer to all persons who sign this guaranty, severally and jointly



ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution thereof; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under §111.1(b)(2) of the United States Bankruptcy Code.

7. The Undersigned waives any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to Indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the Undersigned will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any Indebtedness, or any setoff available against Lender to Borrower or any such other person, whether or not on account of a related transaction. The Undersigned expressly agrees that the Undersigned shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing Indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. The Undersigned shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though the Borrower's obligations had not been discharged.

8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay Indebtedness even though any other person obligated to pay Indebtedness, including Borrower, has such obligation discharged in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy petition interest, and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to Indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.

9. If any payment applied by Lender to Indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the Indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such Indebtedness as fully as if such application had never been made.

10. Until the obligations of the Borrower to Lender have been paid in full, the Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay Indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.

11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. Lender shall not be required first to resort for payment of the Indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for Indebtedness, before enforcing this guaranty.

12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to Lender as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

13. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, shall be binding upon the Undersigned and the heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefit of Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and Lender. This guaranty shall be governed by the laws of the State in which it is executed. The Undersigned waives notice of Lender's acceptance hereof.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
C/A No.: 2011-CP-46-01206

PROVIDENT COMMUNITY BANK,
Plaintiff,

v.

Coulston Enterprises, Inc., Alfred Earl
Coulston, A/K/A A. Earl Coulston,
Red Clay Industries, Inc, Glen Ridge
Owners Association, Inc., and HD
Supply Waterworks, LTD.,

Defendants.

MOTION TO AMEND DEFICIENCY
JUDGMENT UNDER RULE 60(b)

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

2013 OCT 11 AM 11:50

FILED-1061

45

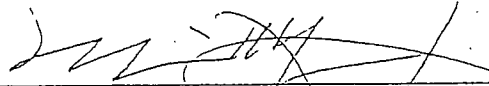
TO: The Defendant, Coulston Enterprises, Inc., Alfred Earl Coulston, A/K/A A.
Earl Coulston, Red Clay Industries, Inc., Glen Ridge Owners Association, inc., and
HD Supply Waterworks, LTD.:

BY MOTION OF THE ATTORNEY FOR PLAINTIFF UNDER RULE 60(b)(1), South
Carolina Rules of Civil Procedure;

Counsel for Plaintiff enters the motion to correct a scrivener's error made
when the the proposed order for Deficiency Judgement was delivered to this
Court. The Deficiency Judgment omitted the name of Alfred Earl Coulston
although pursuant to the Judgment of Foreclosure and Sale, Plaintiff
specifically demanded deficiency judgment against Alfred Earl Coulston
individually. At no point did the Plaintiff authorize counsel to waive the
deficiency against Alfred Earl Coulston individually. Plaintiff's counsel entered a
deficiency judgement against Coulston Enterprises, but by mistake and
inadvertence failed to include the name of Alfred Earl Coulston.

Counsel for Plaintiff realizes that this motion is beyond the time allowed by Rule 60, but pleads with the Court to allow it to correct a scrivener's error.

Respectfully submitted,



Michael K. Hatch, SC Bar No. 69735

Morton & Gettys, LLC

Attorney for Plaintiff

P.O. Box 176

York, SC 29745

T: 803.684.9604

F: 803.684.4932

michael.hatch@mortongettys.com

October 8, 2013
York, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF YORK

PROVIDENT COMMUNITY BANK,

Plaintiff,

vs.

COULSTON ENTERPRISES, INC., et al.

Defendant.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

CASE NO.: 2011-CP-46-01206

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney: Michael K. Hatch, Bar No. SC Bar No.: 69735 Address: P.O. Box 176; York, SC 29745 Phone: 803-684-9604 Fax 803-684-4932 E-mail: michael.hatch@mortongettys.com		Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ 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: AMENDED MOTION; motion already scheduled for November 21, 2013 Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☐ NO			
SECTION II: Motion/Order 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. 11/5/13 Signature of Attorney for ☒ Plaintiff / ☐ Defendant Date submitted			
SECTION III: Motion Fee ☐ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ 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, SCRPC) ☐ 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: \$ _____			

SCCA 233 (11/2003)

000060

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
C/A No.: 2011-CP-46-01206

PROVIDENT COMMUNITY BANK,
Plaintiff,

v.

Coulston Enterprises, Inc., Alfred Earl
Coulston, A/K/A A. Earl Coulston,
Red Clay Industries, Inc, Glen Ridge
Owners Association, Inc., and HD
Supply Waterworks, LTD.,

Defendants.

AMENDED MOTION TO CORRECT
CLERICAL MISTAKE IN DEFICIENCY
JUDGMENT UNDER RULE 60(a)

2013 NOV -5 PM 1:33

TO: The Defendant, Coulston Enterprises, Inc., Alfred Earl Coulston, A/K/A A.
Earl Coulston, Red Clay Industries, Inc., Glen Ridge Owners Association, inc., and
HD Supply Waterworks, LTD.:

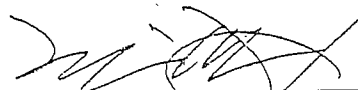
BY MOTION OF THE ATTORNEY FOR PLAINTIFF UNDER RULE 60(a), South
Carolina Rules of Civil Procedure;

Counsel for Plaintiff previously filed under Rule 60(b)(1), on October 11,
2013, but Plaintiff is alternatively entitled to relief under Rule 60(a) to correct
clerical mistakes. Counsel for Plaintiff enters the motion to correct a scrivener's
error or clerical error made when the proposed order for Deficiency
Judgment was delivered to this Court. The Deficiency Judgment omitted the
name of Alfred Earl Coulston although pursuant to the Judgment of Foreclosure
and Sale, Plaintiff specifically demanded deficiency judgment against Alfred
Earl Coulston individually. At no point did the Plaintiff authorize counsel to
waive the deficiency against Alfred Earl Coulston individually. Plaintiff's counsel

entered a deficiency judgement against Coulston Enterprises, but by mistake and inadvertence failed to include the name of Alfred Earl Coulston.

Counsel for Plaintiff asks the Court, respectfully, to allow it to correct a scrivener's error.

Respectfully submitted,



Michael K. Hatch, SC Bar No. 69735
Morton & Gettys, LLC
Attorney for Plaintiff
P.O. Box 176
York, SC 29745
T: 803.684.9604
F: 803.684.4932
michael.hatch@mortongettys.com

November 5, 2013
York, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Provident Community Bank,

Plaintiff,

vs.

Coulston Enterprises, Inc., et al.

Defendants.

FILED-RECEIVED

2013 NOV 15 AM 9:51

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2011-CP-46-0120

REPLY TO MOTION

The defendant Alfred Earl Coulston A/K/A A. Earl Coulston, responding to the motions filed by the plaintiff, would respectfully show unto the court as follows:

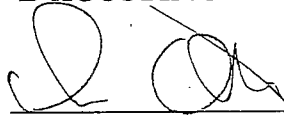
1. The Plaintiff files this motion under Rule 60(a) and Rule 60(b). The Plaintiff is not entitled to relief under either section of the rules

2. First, as it relates to Rule 60(b)(1), Plaintiff has not filed this motion within one year after the judgment or order was entered or taken. As such, this court has no jurisdiction to amend for the court order.

3. As it relates to Plaintiff's motion pursuant to Rule 60 (a), again the Defendant submits the court should not and does not have the authority to amend the order at this time. A significant amount of time has passed since the entering of the order. The Defendant has relied on the fact that no default judgment was entered against him. Since no judgment was entered against him and a significant period of time has passed, Defendant submits the court should not allow an amendment of the judgment. In addition, a clerical error is defined as a mistake or omission by a clerk, counsel, judge or printer which is not the result of exercise of judicial function. Ex Parte Strom (S.C. A pp. 1999) 334 S. C. 605, 514 S.E. 2d 599, (rehearing denied, certiorari granted, 343 S.C. 257, 539 S.E. 2d 699.)

RESPECTFULLY SUBMITTED.

D'AGOSTINO LAW FIRM



DANIEL D. D'AGOSTINO

25 West Liberty Street

York, South Carolina 29745

Office: 803-628-6509

ATTORNEY FOR PLAINTIFF

November 12, 2013
York, South Carolina

000064

1 State of South Carolina In the Court of Common Pleas
2 County of York
3
4 PROVIDENT COMMUNITY BANK,) 2011-CP-46-01206
5 Plaintiff,)
6 -vs-) November 21, 2013
7 COULSTON ENTERPRISES,)
8 INC., ET AL.,) Transcript of Record
9 Defendants.)
10
11 B E F O R E:
12 The Honorable S. Jackson Kimball, III
13 Master-In-Equity
14 A P P E A R A N C E S:
15 Daniel D. D'Agostino, Esquire
16 D'Agostino Law Firm
17 25 West Liberty Street
18 York, South Carolina 29745
19 Attorney for Plaintiff
20
21 Michael K. Hatch, Esquire
22 Morton & Gettys, LLC
23 616 East Liberty Street
24 York, South Carolina 29745
25 Attorney for Defendants

Stacy S. Johnson, RPR
Circuit Court Reporter

ORIGINAL

I N D E X

	PAGE
Motion to Alter and/or Amend	3
Certificate of Reporter	17

E X H I B I T S

NO.	DESCRIPTION	ID	EV
-----	-------------	----	----

(No exhibits were presented during the hearing.)

1 THE COURT: Okay. The first thing I have
2 is Provident Community Bank against Coulston Enterprises
3 and others. Mr. Hatch and Mr. D'Agostino.

4 MR. D'AGOSTINO: Yes, sir.

5 MR. HATCH: Yes, Your Honor.

6 THE COURT: This is Plaintiff's motion to
7 correct a clerical mistake.

8 MR. HATCH: That's correct, Your Honor.

9 THE COURT: Go ahead.

10 MR. HATCH: If I may proceed, Michael Hatch
11 for the Plaintiff. Your Honor, this is a foreclosure
12 action, and consistently throughout the proceedings
13 Provident Community requested a deficiency against the
14 borrower and guarantor. The borrower is Coulston
15 Enterprises and the guarantor is Mr. Alfred Earl
16 Coulston. At no time during the proceedings was a
17 deficiency waived. Subsequent to the sale, a deficiency
18 judgment was entered. By inadvertence or mistake,
19 Mr. Coulston's name was not included in that order for
20 a deficiency judgment, and we ask the Court under
21 Rule 60(a) to correct the deficiency judgment to include
22 his name as the Plaintiff consistently demanded
23 deficiency against him and did ask for it in the
24 underlying foreclosure order.

25 THE COURT: The deficiency -- boy, I'm

1 trying to find, real quick, the decree. I had it out
2 yesterday. The deficiency was granted in the decree,
3 isn't that right?

4 MR. HATCH: Yes.

5 THE COURT: Against everyone?

6 MR. HATCH: The two -- the borrower and the
7 guarantor..

8 THE COURT: Yes.

9 MR. HATCH: Yes.

10 THE COURT: Well, what I mean is Coulston
11 Enterprises and Mr. Coulston?

12 MR. HATCH: That's correct, Your Honor.

13 THE COURT: For some reason I don't have
14 that out. I thought I did.

15 MR. HATCH: It's Paragraph 10 on Page 4.

16 THE COURT: Okay. All right. And I did
17 pull out the deficiency order. It is omitted from the
18 deficiency order. I know it's in here because I read it
19 yesterday. All right. Mr. D'Agostino?

20 MR. D'AGOSTINO: May it please the court,
21 Your Honor. Your Honor, the Plaintiff originally filed
22 this motion under Rule (60)b seeking for the Court to
23 amend the judgment ---

24 THE COURT: Right.

25 MR. D'AGOSTINO: ---but certainly it could

1 not do so because it was not within the time period to
2 do it under Rule 60(b). A motion under 60(b) had to be
3 within one year, so now --

4 THE COURT: (b) 1, 2 or 3.

5 MR. D'AGOSTINO: Yes, sir, Your Honor, and
6 that's what they filed the motion under. The Plaintiff
7 has now come back and is seeking to amend it under
8 Rule 60(a), some two -- almost two years after the
9 deficiency judgment was entered of record against
10 Coulston Enterprises, Inc., and is asserting that this
11 is a mistake. Now Rule 60(a) deals with clerical
12 mistakes. Rule (60)b deals with a plain old mistake and
13 so the rules, therefore, call for it and demonstrate a
14 distinction, and as such we look to case law which
15 addresses that, and in my return I cited In Re Strom --
16 Ex Parte Strom, and Ex Parte Strom refers to the case of
17 Dion -- well, excuse me. There are several cases, but
18 we can also look at the case of Dion versus Ravenel,
19 Eiserhardt Associates, and generally -- which defines a
20 clerical mistake. Generally a clerical error is defined
21 as a mistake in writing or copying. Then it says see
22 Black's Law Dictionary, 252, 1996 edition. As applied
23 to judgments and decrees, it is a mistake or omission by
24 a clerk, counsel, judge or printer, which is not the
25 result of exercise of judicial function. While a court

1 may correct mistakes or clerical errors in its own
2 process to make it conform to the record, it cannot
3 change the scope of the judgment, and it cites --

4 THE COURT: All right. Somebody's gonna
5 have to take the child out of here.

6 MR. D'AGOSTINO: Your Honor, it would be our
7 position --

8 THE COURT: Hold on just a second. Okay.
9 Go ahead.

10 MR. D'AGOSTINO: I'm sorry, Your Honor.

11 THE COURT: That's all right.

12 MR. D'AGOSTINO: It would be our position
13 that this is not a clerical mistake which should be
14 corrected by the Court because the judgment, which was
15 entered on January 19, 2012 -- or signed and then
16 entered, is not a clerical error. In addition, Your
17 Honor, although the rules do not seem to address or
18 provide for a balancing act or evidentiary issues, I
19 would point out that this judgment was entered some
20 two years ago, long after the case has ended. Even
21 Rule (60)b provides for a one-year limitation on various
22 types of mistakes and the correction of various types
23 of mistakes. A lot has happened in the last two years
24 and to correct the judgment -- and, as I said, there's
25 a personal deficiency judgment against an individual

1 entered some two years later --

2 THE COURT: Are you concerned about
3 retroactive effect or what?

4 MR. D'AGOSTINO: Well, I'm concerned about
5 retroactive effect, but I'm also concerned about the
6 conduct that people have relied upon in the last
7 two years in conducting their business when there has
8 been no deficiency judgment of record against them and
9 suddenly a deficiency --

10 THE COURT: Well, you mean Mr. Coulston?

11 MR. D'AGOSTINO: Yes, sir, Your Honor.

12 THE COURT: Well, Mr. Coulston knew there
13 was a deficiency judgment demanded against him ---

14 MR. D'AGOSTINO: He knew there was a
15 deficiency judgment --

16 THE COURT: ---and he knew there was one --
17 a judgment against him for the total amount of the debt
18 granted in the decree of foreclosure.

19 MR. D'AGOSTINO: Yes, sir, but it wasn't
20 entered of record a deficiency judgment against him,
21 Your Honor ---

22 THE COURT: That's right.

23 MR. D'AGOSTINO: ---and, as such, he's
24 conducted business and if the Court were going to get
25 into a balancing act, I believe we would have to have

1 an evidentiary hearing because he's conducted business.
2 I mean, for two years there's not been a deficiency
3 judgment against this individual in his individual
4 capacity.

5 THE COURT: Well, let me -- I guess I'm
6 having trouble processing how that negatively affects
7 him if he's been able to conduct business he wouldn't
8 have otherwise been able to conduct.

9 MR. D'AGOSTINO: Well, if he's resolved
10 other matters as opposed to filing bankruptcy --

11 THE COURT: Well, he can still do that.

12 MR. D'AGOSTINO: Well, he could still do
13 that, but if he's conducted other business and poured
14 money into trying to resolve another -- a lot of other
15 things and/or made investments without a deficiency
16 judgment against him, entering a deficiency judgment
17 against him substantially impairs him, especially a
18 judgment in the amount of \$1.763 million. So, Your
19 Honor, I would argue, number one, although the rule does
20 not have a specific time limit, I also would point out
21 at the end it says --

22 THE COURT: The rule says at any time.

23 MR. D'AGOSTINO: Yes, sir, Your Honor, it
24 does, but it also says the ending of the term of court
25 or departure from the circuit shall not operate to

1 deprive a trial judge of jurisdiction to correct such
2 mistakes.

3 THE COURT: Right.

4 MR. D'AGOSTINO: And I understand that,
5 but when you look at Rule 60(a), when you look at
6 Rule 60(b), which has time limits in there, I would
7 submit that there is not an indefinite period of time
8 for which the court can correct, if the court were to
9 decide it's a clerical mistake, which I submit it's not
10 a clerical mistake. If the court were to consider it a
11 clerical mistake, then I would also submit there's not
12 an indefinite period of time that the court could
13 continue to correct an error even if it found it to be
14 a clerical mistake. There's got to be a limitation.

15 THE COURT: All right. Well, would that
16 presuppose then that as part of making a ruling on the
17 60(a) motion that a court would make findings of fact?
18 Is that what you mean?

19 MR. D'AGOSTINO: I believe if the court were
20 going to make a finding that it is a clerical error it
21 would have to have findings of fact, yes, sir, Your
22 Honor. If it -- that's the problem.

23 THE COURT: Findings of fact of what nature?

24 MR. D'AGOSTINO: If the court were going to
25 find that it's a clerical mistake, from what I read from

1 the cases it appears that the determination that it's a
2 clerical error has to be clear from the record that
3 exists, but there has to be -- I'm saying that if the
4 court were to determine that it is a clerical error,
5 there also has to be a reasonable period of time in
6 which that clerical error has to be brought to light
7 and can be corrected. There's got to be a limitation.

8 THE COURT: Well, I've read the Strom case
9 and another one, the name of which I don't remember,
10 and I don't remember any -- in either of those cases
11 that either the Supreme Court or the Court of Appeals
12 addressed the time period.

13 MR. D'AGOSTINO: I have not seen -- that's
14 why I'm arguing it, Your Honor. I have not seen --

15 THE COURT: Okay. That would be new?

16 MR. D'AGOSTINO: That would be new.

17 THE COURT: All right.

18 MR. D'AGOSTINO: I have not seen it.
19 Because when you look at the rule, it talks about how
20 you do it when the case is on appeal. It talks about
21 Paragraph A, you know, you've got to make a motion. The
22 fact that a judge departs the -- or the term of court
23 ends does not deprive the court of dealing with it, but
24 all that seems to imply -- and then when you also go
25 down to Subsection B where it talks about you must make

1 a motion to correct a mistake within a year, all of that
2 seems to imply or suppose, presuppose, that this motion
3 to correct a clerical error has to be made within a
4 relatively short period of time of when a judgment is
5 entered.

6 THE COURT: So what you're saying is that I
7 should balance the record -- I do this balancing based
8 on the record in determining whether or not to grant the
9 motion if I deem it to be a clerical mistake?

10 MR. D'AGOSTINO: If you deem it to be a
11 clerical mistake, then you have to -- I would submit the
12 court then has to look at the timeliness of when this is
13 brought to the court's attention, yes, sir, Your Honor,
14 and I would submit that even if we get to that issue, if
15 we get past whether it's a clerical error or not, then
16 the motion should be denied because it certainly is not
17 timely some two years after a judgment is entered.

18 THE COURT: All right. Mr. Hatch ---

19 MR. HATCH: Your Honor --

20 THE COURT: ---what about the time?

21 MR. HATCH: There is no time under the rule.

22 THE COURT: Well, do you think one is
23 implied? I mean --

24 MR. HATCH: There's no indication from any
25 case in the record or any case law in South Carolina

1 that time is implied. And more importantly, the record
2 does support a finding of a deficiency judgment against
3 Mr. Coulston individually. It was demanded in the
4 complaint, it was never waived. It was demanded when
5 the case was referred to this court and it's also
6 demanded in the final order. All of those things point
7 to the fact that it was a slip, an omission, not
8 included in the subsequent order of deficiency judgment,
9 which must be based upon the action, the underlying
10 action. The order -- the deficiency judgment I would
11 say doesn't really stand on its own, it has to have a
12 foundation that's made at the hearing.

13 More importantly, Mr. Coulston at no time
14 contested the right of the Plaintiff to have a
15 deficiency judgment against him. He did not raise that
16 issue at the sale, he did not assert his appraisal
17 rights, and so the Plaintiff -- in this case there's a
18 deficiency under the note alleged in the case. The
19 Plaintiff is entitled to the balance of that note. The
20 mortgage is only secured by that piece of property. If
21 that property is sold, it doesn't negate the note, that
22 there's a balance left on the note.

23 THE COURT: What would be your position
24 about any retroactive effect of the correction, if there
25 is one?

000076

1 MR. HATCH: I believe, Your Honor, that --
2 you know, that there's nothing the Plaintiff could do
3 to go back in that two years' of time to undo a
4 transaction, that would be unfair to the parties
5 involved, but a judgment is good for ten years and I'd
6 say for the balance of the ten years the Plaintiff is
7 entitled to its judgment.

8 THE COURT: And I guess -- I guess one
9 concern I would have in trying to balance it out is
10 that if -- if a party made transactions, particularly
11 involving real estate, between the time of the entry
12 of the incorrect deficiency judgment order and the time
13 of the entry of any corrective order for deficiency
14 judgment, it concerns me that that correction shouldn't
15 have any effect on people who relied on the record to
16 that point, within that span of time.

17 MR. HATCH: Well, one point to that, Your
18 Honor, is that there's more to the record. You know,
19 is that party only supposed to look at the order for
20 deficiency judgment or should they go back into the
21 underlying proceedings, you know, just -- in that case
22 it depends on your title abstract or mine would go
23 back --

24 THE COURT: What's the standard of care of
25 the lawyer you're looking at?

1 MR. HATCH: Right. Mine would go back and
2 look at the underlying proceeding and actually does
3 define those errors and the attorney has to make a
4 decision based upon that.

5 THE COURT: Okay. All right. I think in
6 this instance -- and I did review the cases that I
7 mentioned and the record and it seems to me that
8 balancing the record that the Plaintiff is entitled to
9 a correction of the judgment -- the deficiency judgment
10 order as a clerical mistake. I'll point out that I
11 corrected one clerical mistake in the deficiency
12 judgment order already changing the judgment around
13 before it was entered. I think that this is a -- is an
14 issue that was determined in the foreclosure. The
15 decree of foreclosure clearly grants the right to a
16 deficiency judgment against Mr. Coulston. Mr. Coulston
17 knew that, he's never contested that right. The order
18 -- the omission of his name from the order is clearly an
19 omission by mistake, and so I think the Plaintiff is
20 entitled to have the order reformed or corrected, have
21 a corrective order, entering that deficiency amount
22 against Mr. Coulston.

23 Now I do not think that that -- I think that
24 that -- that the potential lien of that deficiency
25 judgment ought to only have prospective effect because

1 other parties have -- may have -- third parties may
2 have relied upon the fact that there was no deficiency
3 judgment entered against Mr. Coulston.

4 So prepare me an order finding that the
5 order should be corrected, that it's a clerical error,
6 that it should only have prospective effect.

7 MR. D'AGOSTINO: And --

8 THE COURT: Yes, sir?

9 MR. D'AGOSTINO: No, go ahead. I didn't
10 mean to interrupt.

11 THE COURT: No, no, I'm through pretty much.

12 MR. D'AGOSTINO: What I was going to ask
13 you, Your Honor, is that judgment then good for ten
14 years from now or is that judgment good for the balance
15 of the ten years from the time that the decree of
16 foreclosure was entered?

17 THE COURT: That's kind of one of those
18 questions that I hadn't been asked in what's before me.

19 MR. D'AGOSTINO: Well, if the court's going
20 to enter that judgement, I think my client's entitled to
21 know the length of time that judgment's going to exist.

22 THE COURT: The short answer to that is --
23 Mr. D'Agostino, is I don't know ---

24 MR. D'AGOSTINO: Yes, sir.

25 THE COURT: ---because a -- the judgment

1 order was entered, you know, as you point out, almost
2 two years ago. The corrected order will be entered
3 whenever I get it and sign it and file it, and I would
4 be -- I've not looked into the law of that, so I don't
5 know.

6 MR. D'AGOSTINO: I understand. Yes, sir,
7 Your Honor. I didn't know if we could address it is
8 what I was getting at. I wasn't trying --

9 THE COURT: I wouldn't know how to address
10 it today.

11 MR. D'AGOSTINO: I wasn't trying to argue
12 with the court.

13 THE COURT: No, I understand. That's all
14 right. Anything else?

15 MR. D'AGOSTINO: That's it. Thank you, Your
16 Honor.

17 MR. HATCH: No, Your Honor. Thank you.

18 THE COURT: Thank you.

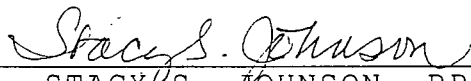
19 (Proceedings concluded at 2:20 p.m.)
20
21
22
23
24
25

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the 16th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 21st day of November, 2013.

I do further certify that I am neither of kin, counsel, nor have an interest to any party hereto.

December 27, 2013



STACY S. JOHNSON, RPR
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA,
COUNTY OF YORK
PROVIDENT COMMUNITY BANK,

Plaintiff,

vs.

COULSTON ENTERPRISES, INC.,
ALFRED EARL COULSTON, A/K/A A.
EARL COULSTON, RED CLAY
INDUSTRIES, INC., AND HD SUPPLY
WATERWORKS, LTD.

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

RECORD OF HEARING

C/A No.: 2011-CP-46-1206

DEFICIENCY REQUESTED



CLERK OF COURT
YORK COUNTY, SC

OCT - 7 PM 3:31

FILED - RECEIVED

Pursuant to the Order referring the above-entitled matter to the Master in Equity for York County, for the purpose set forth in said Order, a reference has been held this day, attended by counsel as follows:

Present: Michael K. Hatch
Morton and Gettys, LLC
Attorney for Plaintiff

Mr. Hatch called attention to the Notice of Pendency of Action, Summons and Complaint, and the proofs of service upon the Defendants.

Whereupon, Michael K. Hatch stated as follows:

I would like to note for the record the original notice of today's hearing which has been filed with the York County Clerk of Court office, a copy of which was mailed to all the Defendants on September 16, 2011.

In support of the allegations of the Complaint, I would like to offer

000082

into evidence a copy of the Note described in the Complaint, also, I would like to offer into evidence a copy of the Mortgage, and also, I would like to offer into evidence a copy of the Guaranty described in the Complaint.

DOCUMENTS IDENTIFIED AND RECEIVED INTO EVIDENCE AS PLAINTIFF'S
EXHIBITS A THROUGH C

Your Honor, based upon an examination of the records of the Office of the Clerk of Court for York County, the following parties to this action have a lien or claim against the subject property which is subordinate to the mortgage of the Plaintiff:

a. Defendant, Red Clay Industries, Inc. has or may claim an interest in the Property by virtue of that certain York County Court of Common Pleas Case # 2010-CP-46-00876 filed March 1, 2010 in the York County, South Carolina, Clerk of Court's Office. Such judgment interest of this Defendant, if any, is inferior to the interests of Lender in and to the Property by virtue of the recording statute.

b. Defendant HD Supply Waterworks, LTD., has or may claim an interest in the Property by virtue of that certain Mortgage of Real Estate and Security Agreement, dated June 30, 2010 and recorded August 13, 2010 in the York County, South Carolina, Clerk of Court's Office in OR Volume 11541 at Page 42, *et seq.* Such mortgage interest of this Defendant is inferior to the interests of Lender, as set forth and described herein, in and to the Property by virtue of the recording statute.

Your Honor, as alleged in the Complaint, payment as provided for in the said Note, Mortgage, and Guaranty has not been made, although demand has been made for payment thereof, and the Plaintiff, as the holder of the said note, mortgage, and guaranty has elected to declare the entire balance of said principal and interest on the Note due and

payable at once.

The property which is the subject of this action and pledged as security of the Note is owned by the Defendant Coulston Enterprises, Inc., and is described as follows:

All that certain piece, parcel or tract of land, lying, being and situate in the State of South Carolina, County of York, adjacent to the City of York, on Black Highway (SC HWY 5) being described as a tract containing 46.396 acres on an exhibit prepared for Coulston Enterprises, Inc. drawn by David L. Ferguson, PLS, dated 10/4/2007 and revised 11/13/07 and recorded in Plat Book D271 at Page 9 in the Office of the Clerk of Court for York County, South Carolina.

DERIVATION: This being a portion of the property conveyed unto Coulston Enterprises, Inc. by deed of Jeffrey Craig Inman executed May 4, 2007 and recorded May 9, 2007 in Record Book 9073 at Page 16 in the Office of the Clerk of Court for York County, South Carolina.

TMS#: 070-01-01-066
46.396 Parcel on Black Highway

All rights to cure and notices have been delivered to the borrower, and I have an Affidavit on behalf of the Plaintiff regarding the default and indebtedness, which I offer into evidence as "Plaintiff's Exhibit D"

ORIGINAL AFFIDAVIT OF DEBT IDENTIFIED
AND RECEIVED INTO EVIDENCE AS
"PLAINTIFF'S EXHIBIT D"

There is now due and unpaid upon said Notes and Mortgages as of October 5, 2011 the principal sum and interest of Notes with late fees and advances in the amount of \$ 2,340,362.81, together with interest thereon from October 5, 2011, at the default rate of interest at the adjustable rate

of the U.S. Prime Rate, known as the Base Rate on Corporate Loans posted by at least 75% of the 30 largest U.S. Banks (the "Index") per annum, plus attorney's fees and costs, all pursuant to the terms of the note(s) and mortgage(s).

In the Complaint, the Plaintiff specifically demanded its right to a personal or deficiency judgment.

Your Honor, the Plaintiff requests that the Court grant the relief prayed for in the Complaint and award a reasonable attorney fee for Plaintiff in the amount of \$4,654.50 plus \$401.80 as court and title costs. In support of this request, I have an Affidavit regarding attorney's fees which I offer into evidence as "Plaintiff's Exhibit E"

ORIGINAL AFFIDAVIT OF ATTORNEYS FEES
IDENTIFIED AND RECEIVED INTO EVIDENCE AS
"PLAINTIFF'S EXHIBIT E"

Nothing further being offered by Plaintiff and no appearances having been made on behalf of the Defendants, the hearing is closed.

COULSTON ENTERPRISES, INC.
8170 REGENT PARKWAY
FORT MILL, SC 29715

PROVIDENT COMMUNITY BANK
2700 CELANESERD
PO BOX 36428
ROCK HILL, SC 29732

OFFICER TIRIKOW 124

Loan Number 9000286

Date 11-15-2007

Maturity Date 11-15-2011

Loan Amount \$ 3,200,000.00

Renewal Of

NAICS 236115

BORROWER'S NAME AND ADDRESS

LENDER'S NAME AND ADDRESS

"I" includes each borrower above, jointly and severally. "You" means the lender, its successors and assigns.

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of THREE MILLION TWO HUNDRED THOUSAND AND NO/100 Dollars \$ 3,200,000.00

☐ Single Advance: I will receive all of this principal sum on _____, No additional advances are contemplated under this note.

☒ Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On 11-15-2007

I will receive the amount of \$ 685,679.10 and future principal advances are contemplated.

Conditions: The conditions for future advances are AS NEEDED AND APPROVED BY BORROWER AND BANK

☐ Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on _____

☒ Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 11-15-2007 at the rate of 7.500% per year until 11-16-2007

☒ Variable Rate: This rate may then change as stated below.

☒ Index Rate: The future rate will be EQUAL TO the following index rate: 115 PRIME RATE IS THE BASE RATE ON CORPORATE LOANS POSTED BY AT LEAST 75% OF THE 30 LARGEST 115 BANKS

☐ No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.

☒ Frequency and Timing: The rate on this note may change as often as EVERY DAY BEGINNING 11-16-2007

A change in the interest rate will take effect ON THE SAME DAY

☐ Limitations: During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ % The rate may not change more than _____ % each _____

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☒ The amount of each scheduled payment will change.

☒ The amount of the final payment will change.

ACCRUAL METHOD: Interest will be calculated on a ACTUAL/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to _____

☒ LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% OF THE PAYMENT AMOUNT WITH A MIN OF \$100.00

☒ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☒ are not included in the principal amount above: ORIGINATION FEE OF \$16,000.00 AND APPRAISAL FEE OF \$3,500.00

PAYMENTS: I agree to pay this note as follows:

MONTHLY PAYMENTS OF ACCRUED INTEREST CALCULATED ON THE AMOUNT OF CREDIT OUTSTANDING BEGINNING ON 12-15-2007 AND QUARTERLY PRINCIPAL PAYMENTS OF \$228,500.00 BEGINNING 02-15-2009. A FINAL PAYMENT OF ACCRUED INTEREST AND OUTSTANDING PRINCIPAL DUE ON 11-15-2011. THIS IS A VARIABLE RATE LOAN AND THE PAYMENT AMOUNTS MAY CHANGE. THE FINAL PAYMENT MAY ALSO CHANGE.

ADDITIONAL TERMS:

☒ SECURITY: This note is separately secured by (describe separate document by type and date): TITLE INSURED FIRST REAL ESTATE MORTGAGE ON 46.396 ACRES ON BLACK HIGHWAY (AKA SC HWY 5), YORK, SC

(This section is for your internal use. Failure to list a separate security document does not mean the agreement will not secure this note.)

Signature for Lender

PURPOSE: The purpose of this loan is FINANCE

ACQUISITION/DEVELOPMENT LOAN

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.

COULSTON ENTERPRISES, INC.

A. EARL COULSTON, CHIEF EXECUTIVE OFFICER

DEFINITIONS: As used on page 1, "IX" means the terms that apply to this loan. "I," "me" or "my" means each Borrower who signs this note and each other person or legal entity (including guarantors, endorsers, and sureties) who agrees to pay this note (together referred to as "us"). "You" or "your" means the Lender and its successors and assigns.

APPLICABLE LAW: The law of the state of South Carolina will govern this note. Any term of this note which is contrary to applicable law will not be effective, unless the law permits you and me to agree to such a variation. If any provision of this agreement cannot be enforced according to its terms, this fact will not affect the enforceability of the remainder of this agreement. No modification of this agreement may be made without your express written consent. Time is of the essence in this agreement.

COMMISSIONS OR OTHER REMUNERATION: I understand and agree that any insurance premiums paid to insurance companies as part of this note will involve money retained by you or paid back to you as commissions or other remuneration.

In addition, I understand and agree that some other payments to third parties as part of this note may also involve money retained by you or paid back to you as commissions or other remuneration.

PAYMENTS: Each payment I make on this note will first reduce the amount I owe you for charges which are neither interest nor principal. The remainder of each payment will then reduce accrued unpaid interest, and then unpaid principal. If you and I agree to a different application of payments, we will describe our agreement on this note. I may prepay a part of, or the entire balance of this loan without penalty, unless we specify to the contrary on this note. Any partial prepayment will not excuse or reduce any later scheduled payment until this note is paid in full (unless, when I make the prepayment, you and I agree in writing to the contrary).

INTEREST: Interest accrues on the principal remaining unpaid from time to time, until paid in full. If I receive the principal in more than one advance, each advance will start to earn interest only when I receive the advance. The interest rate in effect on this note at any given time will apply to the entire principal advanced at that time. Notwithstanding anything to the contrary, I do not agree to pay and you do not intend to charge any rate of interest that is higher than the maximum rate of interest you could charge under applicable law for the extension of credit that is agreed to here (either before or after maturity). If any notice of interest accrual is sent and is in error, we mutually agree to correct it, and if you actually collect more interest than allowed by law and this agreement, you agree to refund it to me.

INDEX RATE: The Index will serve only as a device for setting the rate on this note. You do not guarantee by selecting this index, or the margin, that the rate on this note will be the same rate you charge on any other loans or class of loans to me or other borrowers.

ACCRUAL METHOD: The amount of interest that I will pay on this loan will be calculated using the interest rate and accrual method stated on page 1 of this note. For the purpose of interest calculation, the accrual method will determine the number of days in a "year." If no accrual method is stated, then you may use any reasonable accrual method for calculating interest.

POST MATURITY RATE: For purposes of deciding when the "Post Maturity Rate" (shown on page 1) applies, the term "maturity" means the date of the last scheduled payment indicated on page 1 of this note or the date you accelerate payment on the note, whichever is earlier.

SINGLE ADVANCE LOANS: If this is a single advance loan, you and I expect that you will make only one advance of principal. However, you may add other amounts to the principal if you make any payments described in the "PAYMENTS BY LENDER" paragraph below.

MULTIPLE ADVANCE LOANS: If this is a multiple advance loan, you and I expect that you will make more than one advance of principal. If this is closed end credit, repaying a part of the principal will not entitle me to additional credit.

PAYMENTS BY LENDER: If you are authorized to pay, on my behalf, charges I am obligated to pay (such as property insurance premiums), then you may treat those payments made by you as advances and add them to the unpaid principal under this note, or you may demand immediate payment of the charges.

SET-OFF: I agree that you may set off any amount due and payable under this note against any right I have to receive money from you.

"Right to receive money from you" means:

- (1) any deposit account balance I have with you;
- (2) any money owed to me on an item presented to you or in your possession for collection or exchange; and
- (3) any repurchase agreement or other nondeposit obligation.

"Any amount due and payable under this note" means the total amount of which you are entitled to demand payment under the terms of this note at the time you set off. This total includes any balance the due date for which you properly accelerate under this note.

If my right to receive money from you is also owned by someone who has not agreed to pay this note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement. Your right of set-off does not apply to an account or other obligation where my rights are only as a representative. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set off this debt against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

REAL ESTATE OR RESIDENCE SECURITY: If this note is secured by real estate or a residence that is personal property, the existence of a default

and your remedies for such a default will be determined by applicable law, by the terms of any separate instrument creating the security interest and, to the extent not prohibited by law and not contrary to the terms of the separate security instrument, by the "Default" and "Remedies" paragraphs herein.

DEFAULT: I will be in default if any one or more of the following occur: (1) I fail to make a payment on time or in the amount due; (2) I fail to keep the property insured, if required; (3) I fail to pay, or keep any promise, on any debt or agreement I have with you; (4) any other creditor of mine attempts to collect any debt I owe him through court proceedings; (5) I die, am declared incompetent, make an assignment for the benefit of creditors, or become insolvent (either because my liabilities exceed my assets or I am unable to pay my debts as they become due); (6) I make any written statement or provide any financial information that is untrue or inaccurate at the time it was provided; (7) I do or fail to do something which causes you to believe that you will have difficulty collecting the amount I owe you; (8) any collateral securing this note is used in a manner or for a purpose which threatens confiscation by a legal authority; (9) I change my name or assume an additional name without first notifying you before making such a change; (10) I fail to plant, cultivate and harvest crops in due season if I am a producer of crops; (11) any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

REMEDIES: If I am in default on this note you have, but are not limited to, the following remedies:

- (1) You may demand immediate payment of all I owe you under this note (principal, accrued unpaid interest and other accrued charges).
- (2) You may set off this debt against any right I have to the payment of money from you, subject to the terms of the "SET-OFF" paragraph herein.
- (3) You may demand security, additional security, or additional parties to be obligated to pay this note as a condition for not using any other remedy.
- (4) You may refuse to make advances to me or allow purchases on credit by me.
- (5) You may use any remedy you have under state or federal law.

By selecting any one or more of these remedies you do not give up your right to later use any other remedy. By waiving your right to declare an event to be a default, you do not waive your right to later consider the event as a default if it continues or happens again.

COLLECTION COSTS AND ATTORNEY'S FEES: I agree to pay all costs of collection, replevin or any other or similar type of cost if I am in default. In addition, if you hire an attorney to collect this note, I also agree to pay any fee you incur with such attorney plus court costs (except where prohibited by law). To the extent permitted by the United States Bankruptcy Code, I also agree to pay the reasonable attorney's fees and costs you incur to collect this debt as awarded by any court exercising jurisdiction under the Bankruptcy Code.

WAIVER: I give up my rights to require you to do certain things. I will not require you to:

- (1) demand payment of amounts due (presentment);
- (2) obtain official certification of nonpayment (protest); or
- (3) give notice that amounts due have not been paid (notice of dishonor).

I waive any defenses I have based on suretyship or impairment of collateral.

OBLIGATIONS INDEPENDENT: I understand that I must pay this note even if someone else has also agreed to pay it (by, for example, signing this form or a separate guarantee or endorsement). You may sue me alone, or anyone else who is obligated on this note, or any number of us together, to collect this note. You may without notice release any party to this agreement without releasing any other party. If you give up any of your rights, with or without notice, it will not affect my duty to pay this note. Any extension of new credit to any of us, or renewal of this note by all or less than all of us will not release me from my duty to pay it. (Of course, you are entitled to only one payment in full.) I agree that you may at your option extend this note or the debt represented by this note, or any portion of the note or debt, from time to time without limit or notice and for any term without affecting my liability for payment of the note. I will not assign my obligation under this agreement without your prior written approval. You may, without notice, fail to perfect your security interest in, impair, or release any security and I will still be obligated to pay this loan.

FINANCIAL INFORMATION: I agree to provide you, upon request, any financial statement or information you may deem necessary. I warrant that the financial statements and information I provide to you are or will be accurate, correct and complete.

NOTICE: Unless otherwise required by law, any notice to me shall be given by delivering it or by mailing it by first class mail addressed to me at my last known address. My current address is on page 1. I agree to inform you in writing of any change in my address. I will give any notice to you by mailing it first class to your address stated on page 1 of this agreement, or to any other address that you have designated.

WAIVER OF HEARING PRIOR TO IMMEDIATE POSSESSION: If this loan is for a business purpose I agree to waive the right to five days' notice and a pre-seizure hearing prior to seizure of any personal property which may secure this loan.

DATE OF TRANSACTION	PRINCIPAL ADVANCE	BORROWER'S INITIALS (not required)	PRINCIPAL PAYMENTS	PRINCIPAL BALANCE	INTEREST RATE	INTEREST PAYMENTS	INTEREST PAID THROUGH
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	

COULSTON ENTERPRISES, INC. 8170 REGENT PARKWAY PORT MILL, SC 29715 BORROWER'S NAME AND ADDRESS "I" includes each borrower above, jointly and severally.	PROVIDENT COMMUNITY BANK 2700 CELANESE RD PO BOX 36428 ROCK HILL, SC 29732 LENDER'S NAME AND ADDRESS "You" means the lender, its successors and assigns.	FICRRTD: RLH1KOW124 Loan Number 2000286 Date 11-15-2007 Mat. Date 11-15-2011 Loan Amount \$ 3,200,000.00 Renewal Of _____ NAICS 236115
--	--	--

DISBURSEMENT AUTHORIZATION

I hereby authorize and request the following disbursement from the loan referenced above:

a. Amount given to me directly	\$ _____	o. _____	\$ _____
b. Amount paid on my account (# _____)	\$ _____	p. _____	\$ _____
c. To Lender	\$ _____	q. _____	\$ _____
Amounts paid to others on my behalf:		r. _____	\$ _____
d. Insurance Companies	\$ _____	s. _____	\$ _____
e. Public Officials	\$ _____	t. _____	\$ _____
f. ATTORNEY BRIAN WILSON TRUST ACCOUNT	\$ 685,679.10	u. _____	\$ _____
g. _____	\$ _____	v. _____	\$ _____
h. _____	\$ _____	w. _____	\$ _____
i. _____	\$ _____	x. _____	\$ _____
j. _____	\$ _____	y. _____	\$ _____
k. _____	\$ _____	z. _____	\$ _____
l. _____	\$ _____	aa. _____	\$ _____
m. _____	\$ _____	bb. _____	\$ _____
n. _____	\$ _____	cc. _____	\$ _____

Comments:

COULSTON ENTERPRISES, INC.
 X *A. Earl Coulston*
 A. EARL COULSTON, CHIEF EXECUTIVE OFFICER
 X _____
 X _____

X _____
 X _____
 X _____

Loan Officer: _____

000088

COULSTON ENTERPRISES, INC. 8170 REGENT PARKWAY FORT MILL, SC 29715	PROVIDENT COMMUNITY BANK 2700 CHLANESERD PO BOX 16428 ROCK HILL, SC 29732	Line of Credit No. 9000286 Date 11-15-2007 Max. Credit Amt. 3,200,000.00 Loan Ref. No. 9000286
BORROWER'S NAME AND ADDRESS "I" includes each borrower above, jointly and severally.		LENDER'S NAME AND ADDRESS "You" means the lender, its successors and assigns.

You have extended to me a line of credit in the
 AMOUNT of THREE MILLION TWO HUNDRED THOUSAND AND NO/100 \$ 3,200,000.00
 You will make loans to me from time to time until 12:00 P.m. on 11-15-2011. Although the line of credit
 expires on that date, I will remain obligated to perform all my duties under this agreement so long as I owe you any money advanced according to the
 terms of this agreement, as evidenced by any note or notes I have signed promising to repay these amounts.
 This line of credit is an agreement between you and me. It is not intended that any third party receive any benefit from this agreement, whether by
 direct payment, reliance for future payment or in any other manner. This agreement is not a letter of credit.

1. AMOUNT: This line of credit is:

- ☒ OBLIGATORY: You may not refuse to make a loan to me under this line of credit unless one of the following occurs:
- a. I have borrowed the maximum amount available to me;
 - b. This line of credit has expired;
 - c. I have defaulted on the note (or notes) which show my indebtedness under this line of credit;
 - d. I have violated any term of this line of credit or any note or other agreement entered into in connection with this line of credit;
- a. _____

☐ DISCRETIONARY: You may refuse to make a loan to me under this line of credit once the aggregate outstanding advances equal or exceed
 \$ _____

Subject to the obligatory or discretionary limitations above, this line of credit is:

- ☐ OPEN-END (Business or Agricultural only): I may borrow up to the maximum amount of principal more than one time.
☒ CLOSED-END: I may borrow up to the maximum only one time.

2. PROMISSORY NOTE: I will repay any advances made according to this line of credit agreement as set out in the promissory note, I signed on
11-15-2007, or any note(s) I sign at a later time which represent advances under this agreement. The note(s) set(s) out
 the terms relating to maturity, interest rate, repayment and advances. If indicated on the promissory note, the advances will be made as follows:
AS NEEDED AND APPROVED BY BORROWER AND BANK

3. RELATED DOCUMENTS: I have signed the following documents in connection with this line of credit and note(s) entered into, in accordance with
 this line of credit:

- ☐ security agreement dated _____
☒ mortgage dated 11-15-2007
☒ guaranty dated 11-15-2007

4. REMEDIES: If I am in default on the note(s) you may:

- a. take any action as provided in the related documents;
 - b. without notice to me, terminate this line of credit.
- By selecting any of these remedies you do not give up your right to later use any other remedy. By deciding not to use any remedy should I
 default, you do not waive your right to later consider the event a default, if it happens again.

5. COSTS AND FEES: If you hire an attorney to enforce this agreement I will pay your reasonable attorney's fees, where permitted by law. I will also
 pay your court costs and costs of collection, where permitted by law.

6. COVENANTS: For as long as this line of credit is in effect or I owe you money for advances made in accordance with the line of credit, I will do the
 following:

- a. maintain books and records of my operations relating to the need for this line of credit;
- b. permit you or any of your representatives to inspect and/or copy these records;
- c. provide to you any documentation requested by you which support the reason for making any advance under this line of credit;
- d. permit you to make any advance payable to the seller (or seller and me) of any items being purchased with that advance;

a. _____

7. NOTICES: All notices or other correspondence with me should be sent to my address stated above. The notice or correspondence shall be effective
 when deposited in the mail, first class, or delivered to me in person.

8. MISCELLANEOUS: This line of credit may not be changed except by a written agreement signed by you and me. The law of the state in which you
 are located will govern this agreement. Any term of this agreement which is contrary to applicable law will not be effective, unless the law per-
 mits you and me to agree to such a variation.

FORTHE LENDER

SIGNATURES: I AGREE TO THE TERMS OF THIS LINE OF CREDIT. I
 HAVE RECEIVED COPY ON TODAY'S DATE.

A. Earl Coulston
 A. EARL COULSTON, CHIEF EXECUTIVE OFFICER

Title _____

000089

200700382524
Filed for Record in
YORK COUNTY, SC
DAVID HAMILTON
11-16-2007 At 10:51 am.
MORTGAGE 15.00
DR Vol 9599 Page 80 - 88

9000284
✓

This document was prepared by (name, address, phone):
PROVIDENT COMMUNITY BANK
2700 CELANESERD
PO BOX 36428 ROCK HILL, SC 29732
(803) 325-9417

State of South Carolina

Space Above This Line For Recording Data

REAL ESTATE MORTGAGE

(With Future Advance Clause)

1. DATE AND PARTIES: The date of this Mortgage is 11-15-2007 and the parties and their addresses are as follows:

MORTGAGOR: COULSTON ENTERPRISES, INC.
8170 REGENT PARKWAY
FORT MILL, SC 29715

- 1 Refer to the Addendum which is attached and incorporated herein for additional Mortgagors.

LENDER: PROVIDENT COMMUNITY BANK
ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA
2700 CELANESERD
PO BOX 36428 ROCK HILL, SC 29732

2. MORTGAGE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (hereafter defined), Mortgagor grants, bargains, conveys and mortgages to Lender the following described property:
SEE ATTACHED EXHIBIT "A"

The property is located in YORK at 46.396 ACRES ON BLACK HWY AKA
(County)
SCHWY 5, YORK, South Carolina 29745
(Address) (City) (Zip Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property"). The term Property also includes, but is not limited to, any and all water wells, water, ditches, reservoirs, reservoir sites and dams located on the real estate and all riparian and water rights associated with the Property, however established.

SOUTH CAROLINA AGRICULTURAL/COMMERCIAL REAL ESTATE SECURITY INSTRUMENT FOR FARM, HOME, OR BUSINESS AND NOT FOR CONSUMER PURPOSES

(page 1 of 8)

Expend 1994, 2001 Bankers Systems, Inc., St. Cloud, MN Form AGCD-RESI-SC 1/21/2003

BK 09599 PG 0080

000090



3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed \$ 3,200,000.00. This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees and other charges validly made pursuant to this Mortgage and does not apply to advances (or interest accrued on such advances) made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized; however, Mortgagee shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.

4. **SECURED DEBT DEFINED.** The term "Secured Debt" includes, but is not limited to, the following:

- A. The promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all extensions, renewals, modifications or substitutions (Evidence of Debt) (e.g., borrower's name, note amount, interest rate, maturity date):

PROMISSORY NOTE 9000286 IN THE AMOUNT OF \$3,200,000.00 ACCRUING AT A VARIABLE RATE MATURING 11-15-2011. SAID LOAN IS IN THE NAME OF COULSTON ENTERPRISES, INC.

- B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the evidence of debt.
- C. All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.
- D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Mortgage, plus interest at the highest rate in effect, from time to time, as provided in the Evidence of Debt.
- E. Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Lender and any Mortgage securing, guarantying, or otherwise relating to the debt.

If more than one person signs this Mortgage as Mortgagor, each Mortgagor agrees that this Mortgage will secure all future advances and future obligations described above that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. This Mortgage will not secure any other debt if Lender fails, with respect to such other debt, to make any required disclosure about this Mortgage or if Lender fails to give any required notice of the right of rescission.

5. **PAYMENTS.** Mortgagor agrees to make all payments on the Secured Debt when due and in accordance with the terms of the Evidence of Debt or this Mortgage.
6. **WARRANTY OF TITLE.** Mortgagor covenants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to grant, bargain, convey, sell, and mortgage the Property and warrants that the Property is unencumbered, except for encumbrances of record.
7. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Mortgage. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses which Mortgagor may have against parties who supply labor or materials to improve or maintain the Property.
8. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property and that may have priority over this Mortgage, Mortgagor agrees:
- A. To make all payments when due and to perform or comply with all covenants.
- B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
- C. Not to make or permit any modification or extension of, and not to request or accept any future advances under any note or agreement secured by, the other mortgage, deed of trust or security agreement unless Lender consents in writing.
9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of any lien, encumbrance, transfer, or sale, or contract for any of these on the Property. However, if the Property includes Mortgagor's residence, this section shall be subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. For the purposes of this section, the term "Property" also includes any interest in all or any part of the Property. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Mortgage is released.

10. **TRANSFER OF AN INTEREST IN THE MORTGAGOR.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if (1) a beneficial interest in Mortgagor is sold or transferred; (2) there is a change in either the identity or number of members of a partnership or similar entity; or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity. However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Mortgage.

11. **ENTITY WARRANTIES AND REPRESENTATIONS.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Mortgagor makes to Lender the following warranties and representations which shall be continuing as long as the Secured Debt remains outstanding:

- A. Mortgagor is an entity which is duly organized and validly existing in the Mortgagor's state of incorporation (or organization). Mortgagor is in good standing in all states in which Mortgagor transacts business. Mortgagor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Mortgagor operates.
- B. The execution, delivery and performance of this Mortgage by Mortgagor and the obligation evidenced by the Evidence of Debt are within the power of Mortgagor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.
- C. Other than disclosed in writing Mortgagor has not changed its name within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.

12. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will give Lender prompt notice of any loss or damage to the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses which may be made of the Property or any part of the Property, without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor or any other owner made under law or regulation regarding use, ownership and occupancy of the Property. Mortgagor will comply with all legal requirements and restrictions, whether public or private, with respect to the use of the Property. Mortgagor also agrees that the nature of the occupancy and use will not change without Lender's prior written consent.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Mortgage. Mortgagor shall not partition or subdivide the Property without Lender's prior written consent. Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

13. **AUTHORITY TO PERFORM.** If Mortgagor fails to perform any of Mortgagor's duties under this Mortgage, or any other mortgage, deed of trust, security agreement or other lien document that has priority over this Mortgage, Lender may, without notice, perform the duties or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may do whatever is necessary to protect Lender's security interest in the Property. This may include completing the construction.

Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Mortgage. Any amounts paid by Lender for insuring, preserving or otherwise protecting the Property and Lender's security interest will be due on demand and will bear interest from the date of the payment until paid in full at the interest rate in effect from time to time according to the terms of the Evidence of Debt.

14. **ASSIGNMENT OF LEASES AND RENTS.** Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (Property).

- A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to, any extensions, renewals, modifications or replacements (Leases).
- B. Rents, issues and profits, including but not limited to, security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement.

Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive

any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment.

As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance.

Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

15. **CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS.** If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

16. **DEFAULT.** Mortgagor will be in default if any of the following occur:

- A. Any party obligated on the Secured Debt fails to make payment when due;
- B. A breach of any term or covenant in this Mortgage, any prior mortgage or any construction loan agreement, security agreement or any other document evidencing, guarantying, securing or otherwise relating to the Secured Debt;
- C. The making or furnishing of any verbal or written representation, statement or warranty to Lender that is false or incorrect in any material respect by Mortgagor or any person or entity obligated on the Secured Debt;
- D. The death, dissolution, or insolvency of, appointment of a receiver for, or application of any debtor relief law to, Mortgagor or any person or entity obligated on the Secured Debt;
- E. A good faith belief by Lender at any time that Lender is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment is impaired or the value of the Property is impaired;
- F. A material adverse change in Mortgagor's business including ownership, management, and financial conditions, which Lender in its opinion believes impairs the value of the Property or repayment of the Secured Debt; or
- G. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

17. **REMEDIES ON DEFAULT.** In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure, mediation notices or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Mortgage in a manner provided by law if this Mortgagor is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the Evidence of Debt, other evidences of debt, this Mortgage, and any related documents. All remedies are distinct, cumulative, and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether expressly set forth or not. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

18. **EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS.** Except when prohibited by law, Mortgagor agrees to pay all of Lender's expenses if Mortgagor breaches any covenant in this Mortgage. Mortgagor will also pay on demand all of Lender's expenses incurred in collecting, insuring, preserving or protecting the Property or in any inventories, audits, inspections or other examination by Lender in respect to the Property. Mortgagor agrees to pay all costs and expenses incurred by Lender in enforcing or protecting Lender's rights and remedies under this Mortgage, including, but not limited to, attorneys' fees, court costs, and other legal expenses. Once the Secured Debt is fully and finally paid, Lender agrees to release this Mortgage and Mortgagor agrees to pay for any recordation costs. All such amounts are due on demand and will bear interest from the time of the advance at the highest rate in effect, from time to time, as provided in the Evidence of Debt and as permitted by law.

19. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) "Environmental Law" means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) "Hazardous Substance" means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has

(page 4 of 8)

characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law. Mortgagor represents, warrants and agrees that, except as previously disclosed and acknowledged in writing:

- A. No Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property, or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Mortgagor has no knowledge, of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Mortgagor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law.
- F. There are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.
- I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
- J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Mortgage and in return Mortgagor will provide Lender with collateral of at least equal value to the Property secured by this Mortgage without prejudice to any of Lender's rights under this Mortgage.
- L. Notwithstanding any of the language contained in this Mortgage, to the contrary, the terms of this section shall survive any foreclosure or satisfaction of this Mortgage regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

20. **CONDEMNATION.** Mortgagor will give Lender prompt notice of any action, real or threatened, by private or public entities, to purchase or take any or all of the Property, including any easements, through condemnation, eminent domain, or any other means. Mortgagor further agrees to notify Lender of any proceedings instituted for the establishment of any sewer, water, conservation, ditch, drainage, or other district relating to or binding upon the Property or any part of it. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims and to collect and receive all sums resulting from the action or claim. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Mortgage. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

21. **INSURANCE.** Mortgagor agrees to maintain insurance as follows:

- A. Mortgagor shall keep the Property insured against loss by fire, theft and other hazards and risks reasonably associated with the Property due to its type and location. Other hazards and risks may include, for example, coverage against loss due to floods or flooding. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding three sentences can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Mortgage.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "lender loss-payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

(page 5 of 8)

Unless Lender and Mortgagor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the Secured Debt, whether or not then due, with any excess paid to Mortgagor. If Mortgagor abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay the Secured Debt whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Mortgagor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of scheduled payments or change the amount of the payments. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

- B. Mortgagor agrees to maintain comprehensive general liability insurance naming Lender as an additional insured in an amount acceptable to Lender, insuring against claims arising from any accident or occurrence in or on the Property.
- C. Mortgagor agrees to maintain rental loss or business interruption insurance, as required by Lender, in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing), under a form of policy acceptable to Lender.

22. **NO ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

23. **FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem necessary. Mortgagor warrants that all financial statements and information Mortgagor provides to Lender are, or will be, accurate, correct, and complete. Mortgagor agrees to sign, deliver, and file as Lender may reasonably request any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Mortgage and Lender's lien status on the Property. If Mortgagor fails to do so, Lender may sign, deliver, and file such documents or certificates in Mortgagor's name and Mortgagor hereby irrevocably appoints Lender or Lender's agent as attorney in fact to do the things necessary to comply with this section.

24. **JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Mortgage are joint and individual. If Mortgagor signs this Mortgage but does not sign the Evidence of Debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. Mortgagor agrees that Lender and any party to this Mortgage may extend, modify or make any change in the terms of this Mortgage or the Evidence of Debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Mortgage. The duties and benefits of this Mortgage shall bind and benefit the successors and assigns of Mortgagor and Lender.

If this Mortgage secures a guaranty between Lender and Mortgagor and does not directly secure the obligation which is guarantied, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation including, but not limited to, anti-deficiency or one-action laws.

25. **APPLICABLE LAW; SEVERABILITY; INTERPRETATION.** This Mortgage is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Mortgage is complete and fully integrated. This Mortgage may not be amended or modified by oral agreement. Any section or clause in this Mortgage, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section or clause of this Mortgage cannot be enforced according to its terms, that section or clause will be severed, and will not affect the enforceability of the remainder of this Mortgage. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Mortgage are for convenience only and are not to be used to interpret or define the terms of this Mortgage. Time is of the essence in this Mortgage.

26. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Mortgage, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.

27. **WAIVER OF HOMESTEAD.** Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

28. **U.C.C. PROVISIONS.** If checked, the following are applicable to, but do not limit, this Mortgage:

- 1 **Construction Loan.** This Mortgage secures an obligation incurred for the construction of an improvement on the Property.
- 1 **Fixture Filing.** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.
- 1 **Crops; Timber; Minerals; Rents, Issues and Profits.** Mortgagor grants to Lender a security interest in all crops, timber, and minerals located on the Property as well as all rents, issues, and profits of them including, but not limited to, all Conservation Reserve Program (CRP) and Payment in Kind (PIK) payments and similar governmental programs (all of which shall also be included in the term "Property").

(page 6 of 8)

1 Personal Property. Mortgagor grants to Lender a security interest in all personal property located on or connected with the Property. This security interest includes all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property. Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property. The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.

1 Filing As Financing Statement. Mortgagor agrees and acknowledges that this Mortgage also suffices as a financing statement and as such, may be filed of record as a financing statement for purposes of Article 9 of the Uniform Commercial Code. A carbon, photographic, image or other reproduction of this Mortgage is sufficient as a financing statement.

29. OTHER TERMS. If checked, the following are applicable to this Mortgage:

1 Line of Credit. The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Mortgage will remain in effect until released.

X Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may, within 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.

1 Separate Assignment. The Mortgagor has executed or will execute a separate assignment of leases and rents. If the separate assignment of leases and rents is properly executed and recorded, then the separate assignment will supersede this Security Instrument's "Assignment of Leases and Rents" section.

1 Additional Terms.

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Mortgage and in any attachments. Mortgagor also acknowledges receipt of a copy of this Mortgage on the date stated above on Page 1.

1 Actual authority was granted to the parties signing below by resolution signed and dated _____

Entity Name: COULSTON ENTERPRISES, INC.

A. Earl Coulston (Seal)
(Signature) A. EARL COULSTON, CHIEF EXECUTIVE OFFICER

(Signature) (Date)

Signed, sealed and delivered in the presence of:

Frederick A. Cook
(Witness)

Betty L. Steiner
(Witness)

1 Refer to the Addendum which is attached and incorporated herein for additional Mortgagors, signatures and acknowledgments.

PROBATE:

STATE OF SOUTH CAROLINA, COUNTY OF _____) ss.

Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 15TH day

of: NOVEMBER, 2007.

Betty L. Hamie
Notary Public for South Carolina

[Signature]

My commission expires: 4-6-2010

(page 8 of 8)

EXHIBIT A DESCRIPTION

All that certain piece, parcel or tract of land, lying being and situate in the State of South Carolina, County of York, adjacent to the City of York, on Black Highway (SC HWY.5) being described as a tract containing 46.396 acres on an exhibit prepared for Coulston Enterprises, Inc. drawn by David L. Ferguson, PLS, dated 10/4/2007 and revised 11/13/07 and recorded in Plat Book 1271 at Page 9 in the office of the Clerk of Court for York County, South Carolina.

DERIVATION: This being a portion of the property conveyed unto Coulston Enterprises, Inc. by deed of Jeffrey Craig Inman executed May 4, 2007 and recorded May 9, 2007 in Record Book 9073 at Page 16 in the office of the Clerk of Court for York County, South Carolina.

(2007-674.PFD/2007-674/22)

BK09599 PG0088

000098


LAW OFFICE OF BRIAN C. WILSON, P.A.
P.O. BOX 3211
FORT MILL, SOUTH CAROLINA 29708
2007-674

000099

12-6-67 ⑤

GUARANTY

ROCK HILL, SOUTH CAROLINA
(City) (State)

NOVEMBER 15, 2007

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce PROVIDENT COMMUNITY BANK (herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of COULSTON ENTERPRISES, INC.

(herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

A. If this 1 is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: _____ and any extensions,

renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

B. If this 1x is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debt(s): ANY AND ALL PRESENT AND FUTURE DEBT IN THE NAME OF COULSTON ENTERPRISES, INC.

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all Indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all Indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to Indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all Indebtedness, whether due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all Indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ UNLIMITED (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the Indebtedness and securing the payment of the Indebtedness, and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated _____
secured by _____

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.

A. Earl Coulston
A. EARL COULSTON

"Undersigned" shall refer to all persons who sign this guaranty, severally and jointly

ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all indebtedness; (ii) any one or more extensions or renewals of indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any indebtedness; (v) any discharge of any evidence of indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon indebtedness; (x) any election by the Lender under §111 1(b)(2) of the United States Bankruptcy Code.

7. The Undersigned waives any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the Undersigned will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any indebtedness, or any setoff available against Lender to Borrower or any such other person, whether or not on account of a related transaction. The Undersigned expressly agrees that the Undersigned shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. The Undersigned shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though the Borrower's obligations had not been discharged.

8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay indebtedness even though any other person obligated to pay indebtedness, including Borrower, has such obligation discharged in bankruptcy, or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy petition interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.

9. If any payment applied by Lender to indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such indebtedness as fully as if such application had never been made.

10. Until the obligations of the Borrower to Lender have been paid in full, the Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.

11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing indebtedness. Lender shall not be required first to resort for payment of the indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for indebtedness, before enforcing this guaranty.

12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to Lender as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

13. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, shall be binding upon the Undersigned and the heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefit of Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and Lender. This guaranty shall be governed by the laws of the State in which it is executed. The Undersigned waives notice of Lender's acceptance hereof.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

PROVIDENT COMMUNITY BANK,

Plaintiff,

vs.

COULSTON ENTERPRISES, INC.,
ALFRED EARL COULSTON, A/K/A A.
EARL COULSTON, RED CLAY
INDUSTRIES, INC., AND HD SUPPLY
WATERWORKS, LTD.

Defendants.

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

AFFIDAVIT OF INDEBTEDNESS

C/A No.: 2011-CP-46-1206

DEFICIENCY REQUESTED

RECEIVED
OCT - 7 PM 3:31
HAMILTON
C.P. & GS
YORK COUNTY, SC

Personally appeared before me, Al G. Schwint, who being duly sworn, deposes and states as follows:

1. He is the Commercial Special Assets Manager for Plaintiff, and as part of his duties, maintains the records of outstanding loans for Plaintiff.
2. The Plaintiff is the owner and holder of the Note and Mortgage which are the subject of this action.
3. The installments of principal and interest required by the Note and Mortgage have not been paid although demand has been made by the Plaintiff.
4. The Plaintiff, as the holder of said Note and Mortgage, has elected to declare the entire balance of said principal and interest due and payable at once.
5. The Note required monthly payments, and no monthly payments have been received since January 15, 2010.
6. A summary of the total outstanding indebtedness secured by the Note and Mortgage is as follows:

(a) Principal and interest due

Principal \$ 2,148,675.21

as of 10/5/2011 (per diem \$193.977) Interest \$ 182,744.33
\$ 2,331,419.54

(b) Taxes, insurance, etc., not included above
and late fees Late Fees \$ 8,943.27

(c) Escrow adjustments (debits or credits) \$

(d) Appraisal Costs \$ 2,500.00

(e) Other: (Please specify) \$

LOAN TOTAL \$ 2,342,862.81

(u) Attorney's fees as to all loan
thru date of hearing \$ 4,654.50

(v) Costs of collection prior to hearing (service,
filing, etc.) \$ 401.80

TOTAL DEBT \$2,347,919.11

7. The attorneys of the firm of Morton & Gettys are authorized to testify and/or report on behalf of the Plaintiff in connection with the above-captioned action

Further affiant sayeth not.

Provident Community Bank,

By: Al G. Schwint
Al G. Schwint

Its: Commercial Special Assets Manager

Sworn before me this 5th
day of October, 2011.

Richard C. [Signature] (SEAL)

Notary Public for South Carolina

My commission expires: 8-7-2017

STATE OF SOUTH CAROLINA

COUNTY OF YORK

PROVIDENT COMMUNITY BANK,

Plaintiff,

vs.

COULSTON ENTERPRISES, INC., ALFRED
EARL COULSTON, A/K/A A. EARL
COULSTON, RED CLAY INDUSTRIES,
INC., AND HD SUPPLY WATERWORKS,
LTD.

Defendants.

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

AFFIDAVIT OF ATTORNEY FEES

C/A No.: 2011-CP-46-1206

DEFICIENCY REQUESTED

RECEIVED
OCT - 7 PM 3:31
CLERK OF COURT
YORK COUNTY, SC

Personally appeared before me the undersigned, being the attorney for the Plaintiff in the above-captioned action, and being duly sworn, deposes and states that in connection with the handling of this foreclosure action, his office has been responsible for the following:

1. Review of the title to the subject property from date of acquisition by the Defendant, Coulston Enterprises, Inc.
2. Preparation of the pleadings, including the Notice of Pendency of Action, Summons, Complaint, Petition for Order of Reference, Order of Reference, Notice of Hearing, Record of Hearing (including Affidavit of Debt and Affidavit of Attorney's Fees and Costs), Judgment of Foreclosure and Sale, and Notice of Sale.
3. Arranging for service of the action upon the Defendants.
4. Scheduling and attendance at hearing.
5. In addition to the foregoing, the undersigned anticipates future

services in connection with the completion of this matter to include service of the Judgment upon the Defendants, representation of the Plaintiff at the foreclosure sale, representation of the Plaintiff at any subsequent deficiency sale, and preparation of the Master's Deed.

6. The undersigned anticipates having to expend a total of approximately 22.6 hours of attorney fees and 3 hours of paralegal work in connection with the foreclosure, plus fees and costs of the action.

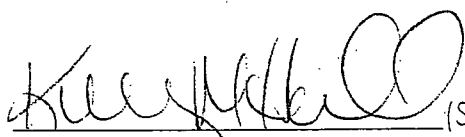
7. In light of the liability and responsibilities involved in this foreclosure action, the undersigned submits that an attorney's fee of \$4,654.50 would be reasonable. Further the undersigned states that the cost of this action including, but not limited to, title fees in the amount of \$56.80, filing fees in the amount of \$150.00, service fees in the amount of \$45.00, motion fee in the amount of \$25.00, and reference fee for the Master in Equity in the amount of \$125.00 is \$401.80.

Further affiant sayeth not.



Michael K. Hatch

Sworn before me this 14th
day of October, 2011.

 (SEAL)
Notary Public for South Carolina
My commission expires: 10/16/2018

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM YORK COUNTY

In the Court of Common Pleas

Sixteenth Judicial Circuit

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2013-002791

Provident Community Bank, Respondent,

v.

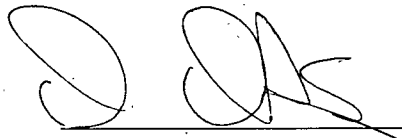
Coulston Enterprises, Inc., Alfred Earl Coulston a/k/a A. Earl Coulston, Red Clay Industries, Inc.,
Glen Ridge Owners Association, Inc. and HD Supply Waterworks, LTD, Defendants,

Alfred Earl Coulston a/k/a A. Earl Coulston is the Appellant.

CERTIFICATE OF COUNSEL

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

May 30, 2014



Daniel D. D'Agostino
D'Agostino Law Firm
25 W. Liberty St.
York, South Carolina 29745
(803) 628-6509
Attorney for Appellant

000106

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM YORK COUNTY

In the Court of Common Pleas

Sixteenth Judicial Circuit

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2013-002791

RECEIVED

JUN 02 2014

SC Court of Appeals

Provident Community Bank, Respondent,

v.

Coulston Enterprises, Inc., Alfred Earl Coulston a/k/a A. Earl Coulston, Red Clay Industries, Inc.,
Glen Ridge Owners Association, Inc. and HD Supply Waterworks, LTD, Defendants,

Alfred Earl Coulston a/k/a A. Earl Coulston is the Appellant.

PROOF OF SERVICE

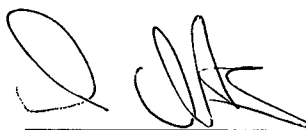
I certify that I served the **RECORD ON APPEAL** on the respondent by depositing a copy of it in
the United States mail, correctly addressed, postage prepaid, on May 30, 2014, addressed to

Michael K. Hatch
Morton & Gettys
P.O. Box 176
York, SC 29745

Lawrence Caldwell Melton
P.O. Box 2426
Columbia, SC 29202

Ryan Lee Beaver
100 North Tryon Street
Suite 2690
Bank of America Corporate Center
Charlotte, NC 28202

May 30, 2014



Daniel D. D'Agostino
D'Agostino Law Firm
25 W. Liberty St.
York, South Carolina 29745
(803) 628-6509
Attorney for Appellant