

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Case No. 2010-CP-13-0064

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OCT 19 2015

S.C. Supreme Court

AMERICAN COMMUNITY BANK, ... Respondent,

vs.

MICHAEL R. BROWN,
C.W. HORNE,
SHORTT AUCTION & REALTY CO., INC.,
BANK OF AMERICA, N.A., and
JAGUAR PORTFOLIO, LLC

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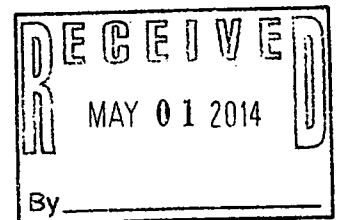
APR 26 2014

S.C. Court of Appeals

of whom

MICHAEL R. BROWN is the Appellant.

RECORD ON APPEAL: VOLUME I



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STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

IN THE COURT OF COMMON PLEAS

American Community Bank, a division of York
Valley Bank & Trust,

Plaintiff,

vs.

Michael R. Brown; C. W. Horne; Shortt Auction
& Realty Co., Inc.; Bank of America, N.A.; and
Jaguar Portfolio, LLC,

Defendants.

True Copy, Attest
Jaye S. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

C.A. No.: 10-CP-13164

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Court of Appeals

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CLERK OF COURT
FAYE SELLERS
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CHESTERFIELD COUNTY, SC

**ORDER GRANTING SUMMARY JUDGMENT ON
BORROWER'S AFFIRMATIVE DEFENSES AND COUNTERCLAIMS**

Jub
This matter came before the Court on Plaintiff's motion for summary judgment against Defendant Brown (hereafter, "Borrower") on his affirmative defenses and counterclaims against Plaintiff. Both parties filed memoranda in support of their position. Present at the hearing for Plaintiff were attorneys James W. Sheedy and Susan E. Driscoll, and for Borrower, Martin A. Foster. Borrower was also present at the hearing. Attorney Harry R. Easterling, Jr. was present on behalf of Defendant C.W. Horne (Guarantor), but took no position on the Motion. Shortt Auction & Realty Co., Bank of America, N.A. and Jaguar Portfolio, LLC are all in default and did not appear at the hearing.

The evidence filed with the Court by Plaintiff relating to the Motion consisted of transcripts from the depositions of Michael R. Brown, William Clewis (a Senior Vice President of Plaintiff) and C.W. Horne; and letters from the South Carolina Department of Health and Environmental Control (SC DHEC) dated March 24, 1997 and January 8, 2010.

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In addition to some of the same evidence submitted by Plaintiff, Borrower filed a 2007 Form 1098 issued to Borrower by Plaintiff; a commitment for title insurance issued to Plaintiff on December 21, 2000; a copy of an October 29, 2007 promissory note in the original amount of \$87,400 in the name of Borrower; an assignment of deposit account dated October 29, 2007; the mortgage given by Borrower to Plaintiff dated December 29, 2000, recorded January 2, 2001 in Book 346, at Page 431 in the Office of the Clerk of Court, Chesterfield County, South Carolina, against 106.85 acres along Hartsville-Ruby Road in Patrick, South Carolina (the "Subject Property")¹; and a disbursement request and authorization dated December 29, 2000 executed by Borrower in favor of Plaintiff.

I. Limited Consent to Requested Relief

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In his pleading in response to the foreclosure complaint, Borrower alleged that at the time of the closing on the Note secured by the Mortgage, the subject property was environmentally contaminated and Plaintiff concealed that fact from Borrower. (Answer, Counterclaims and Crossclaim, pp. 3-4, 6-7, 9-13.) At the hearing on the Motion, Borrower's counsel conceded there was no evidence of environmental contamination of the subject property. Counsel informed the Court that Borrower would not oppose entry of summary judgment in favor of Plaintiff on the counterclaims for civil conspiracy and fraud (both actual and constructive), or on the affirmative defenses of failure to mitigate damages, equitable estoppel, unconscionability and breach of duty of good faith.

Because Plaintiff's motion for summary judgment as to the counterclaims of civil conspiracy and fraud (both actual and constructive) and the affirmative defenses of failure to mitigate damages, equitable estoppel, unconscionability and breach of duty of good faith is well-

¹ This property is indisputably a closed winery consisting of, among other things, a 63,400+/- square foot manufacturing warehouse space, and a 7,000+/- square foot building with concrete floors and 14' drive-in doors.

supported and there are no genuine issues of material fact as applied to the controlling law, in response to which Borrower has not offered any facts, law or argument to the contrary, the Court grants summary judgment against Borrower on those causes of action and affirmative defenses. That leaves Plaintiff's failure to satisfy a mortgage in accordance with S.C. Code Ann. §29-3-310 and alleged violation of the South Carolina Unfair Trade Practices Act as the remaining counterclaims², and it also leaves waiver (express and implied) as the remaining affirmative defense to be resolved by the Motion.

II. Factual Background

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Borrower executed a promissory note in favor of Plaintiff that obligated Borrower to repay the principal amount of \$150,000 (Note). The Note was secured by a Mortgage granting Plaintiff a first lien against the Subject Property. Both the Note and the Mortgage were executed on December 29, 2000. The Note matured, which Borrower did not expressly deny in his Answer, Counterclaims and Crossclaim dated August 12, 2010 (the "Answer"), nor did his counsel contest at the hearing on the Motion. On February 23, 2010, Plaintiff sent a demand letter to Borrower, to which he did not respond. Plaintiff then filed this foreclosure action to enforce the terms of the Note secured by the Mortgage. The foreclosure seeks entry of judgment against Borrower, including a judicial sale of the subject property.

This Court previously entered an Order Deeming Applicable the C.J. Toal Administrative Order to this Foreclosure Action. In the briefing that preceded entry of the Order, Borrower said he was living on the subject property, with which Plaintiff did not disagree. The Order recites

² The Motion does not seek a ruling on Borrower's Truth-in-Lending (TILA) cause of action, so such cause of action is unaffected by the Court's ruling on the Motion before it.

that it was undisputed that the property is residential,³ and, therefore, the foreclosure intervention procedures were applicable to this case. Thus, this case has been stayed. Prior to the hearing on the Motion, Borrower received a Notice of Right to Foreclosure Intervention. Although Plaintiff and Borrower exchanged information about whether the Note secured by the Mortgage could be rehabilitated by Borrower making payments to amortize the loan, the parties were unable to accomplish a loan modification. Plaintiff has filed a certification with this Court, which operates to lift the stay.

III. Borrower's Dispute

For purposes of the Motion, according to counsel for Borrower, there are three facts set forth in his Answer, purportedly supported by his evidence, that he believes warrant denial of summary judgment on the counterclaims for failure to satisfy a mortgage and UTPA, and the affirmative defense of waiver (express and implied); to wit: i) the Note represents a consumer loan; ii) the extensions and modifications to the Note contain forged signatures; and iii) the 2007 Form 1098 issued by Plaintiff to Borrower is a representation that the Note had been paid in full.

IV. Findings of Fact

Based on the Motion, memoranda, evidence and the arguments of counsel given at the hearing, the Court hereby makes the following Findings of Fact dispositive of the Motion.

1. Borrower executed the Note in favor of Bank that obligated Borrower to repay the principal amount of \$150,000. (Depos. Tr. Brown, pp. 14-15.)
2. The Note was secured by the Mortgage signed by Borrower which granted Bank a first lien against the Subject Property. (Depos. Tr. Brown, pp. 18-19.)

³ In the Order, the Court did not rule on whether the loan evidenced by the Note secured by the Mortgage was a consumer or commercial transaction.

3. Both the Note and the Mortgage were executed by Borrower on December 29, 2000. (Depos. Tr. Brown pp. 14, 19.)

4. Borrower has not paid the principal amount owed under the matured Note upon demand by Plaintiff. (Depos. Tr. Brown, pp. 18, 40, 62-63, 83.)

5. Plaintiff has sued for the principal amount of the Note plus interest thereon, attorneys' fees, and costs accruing after the period in the demand letter expired. (Complaint, p.6, ¶23.) Plaintiff has not sued for amounts based on any extension or modification to the Note.

6. Plaintiff never informed Borrower it did not intend to collect the principal amount due and owing on the Note. (Depos. Tr. Brown, pp. 40-41; Depos. Tr. Clewis, pp. 80.)

7. In 2007, Plaintiff issued a Form 1098 Mortgage Interest Statement to Borrower that indicated receipt of \$87,500 in interest payments from Borrower. This Mortgage Interest Statement provides information to the Internal Revenue Service in connection with Borrower's deduction of his mortgage interest on his tax return.

V. Discussion

A. Failure to Satisfy the Mortgage

Under S.C. Code Ann. § 29-3-310 (Cum. Supp. 1999),

[a]ny holder of record of a mortgage who has *received full payment or satisfaction* . . . of his debts, damages, costs, and charges secured by mortgage of real estate shall, at the request by certified mail or other form of deliver with a proof of delivery of the mortgagor or his legal representative . . . within three months after . . . the request is made, enter satisfaction in the proper office on the mortgage which shall forever thereafter discharge and satisfy the mortgage.

S.C. Code Ann. § 29-3-310 requires actual payment of the note secured by the mortgage. *See Dykeman v. Wells Fargo Home Mortg., Inc.*, 381 S.C. 333, 673 S.E.2d 804 (Ct. App. 2009). For the statute to apply, the debt must be paid in full.

The evidence demonstrates clearly and without question that Borrower never paid the \$150,000 he owed to Bank. He admitted he never repaid the principal amount of \$150,000. (Depos. Tr. Brown, p. 18-19, 40, 62-63, 83-84.) His counsel argues that the "Payment" and "Balance" blocks on the 2007 Form 1098 show "Paid" and "-0-"; therefore, his client owes nothing. The 2007 Form 1098 is a Mortgage Interest Statement, and does not say anything about the principal due on the Note. The evidence is indisputable that the principal amount of the Note is still due and owing by Borrower. Because there is no evidence that Borrower paid the Note in full, Plaintiff has no obligation under S.C. Code Ann. § 29-3-310 to satisfy the Mortgage. Summary judgment is granted against Borrower on his counterclaim for failure to satisfy a mortgage.

B. SC UTPA

On page eleven of his memorandum in opposition, Borrower detailed eight items, listed as "i" through "viii," as factual bases for alleging that Plaintiff violated the SC UTPA. Of these, the item referring to title insurance for an environmental condition was effectively withdrawn by Borrower when he admitted he could not prove there was an environmental condition on the Subject Property. Three additional items, that relate to whether the debt had been satisfied, have been resolved by this Court's ruling above that it is indisputable the principal amount of the Note is still due and owing by Borrower.

Left, then, are four factual bases to be considered. These will be addressed in the order in which they were raised by Borrower, and referred to as listed therein. As for item "i", Borrower has offered no evidence that Plaintiff has deliberately engaged in a pattern or practice of mislabeling consumer loans as commercial, or evidence that if Plaintiff mislabeled Borrower's loan, such mislabeling has the potential for repetition by Plaintiff in the future, as part of a

deliberate pattern of unfair or deceptive practices.⁴ Nor did counsel for Borrower make any argument at the hearing about any other similar loan transactions of Plaintiff. Without making any finding on whether the loan was consumer but treated as commercial, this Court denies item "i." as a factual basis for a UTPA claim because there is no evidence or argument on other loans by Plaintiff deliberately being mislabeled.

The same reasoning applies to item "ii." Borrower has offered no evidence that Plaintiff has deliberately engaged in a pattern or practice of not affording borrowers their right to choose counsel on South Carolina consumer loan transactions secured by real estate, or that the allegations in this case have the potential for repetition by Plaintiff in the future, as part of a deliberate pattern of unfair or deceptive practices. Nor did counsel for Borrower make any argument at the hearing about any other similar loan transactions of Plaintiff where Plaintiff deliberately did not afford borrowers their right to choose counsel on South Carolina consumer loan transactions secured by real estate. This Court denies item "ii." as a factual basis for a UTPA claim because there is no evidence or argument on other loans by Plaintiff where it deliberately denied borrowers their right to choose counsel.

On items "iv." and "v.," which pertain to allegations of forged extensions and modifications of the Note in question, assuming, *arguendo*, these allegations are true, such

⁴ Borrower did not produce any evidence "proving that the same kind of actions occurred in the past or [] showing that the procedures employed by [Plaintiff] create a potential for repetition of the deceptive practices." *Schnellmann v. Roettger*, 368 S.C. 17, 23, 627 S.E.2d 724, 746 (Ct. App. 2006). See also *Regions Bank v. College Ave. Development, L.L.C.*, 2010 WL 973480, *5 (D.S.C. 2010) (No UTPA cause of action for borrower where it "complained of acts only relating to the individual loan transaction involved in [that] case."). A "simple contract dispute between two parties to a commercial transaction" is not what "the SCUTPA was created to protect against." *Id.* "The act is not available to redress a private wrong where the public interest is unaffected." *Noack Enterprise, Inc. v. Country Corner Interiors of Hilton Head Island, Inc.*, 290 S.C. 475, 479, 351 S.E.2d 347, 350 (Ct. App. 1986). "An unfair or deceptive act or practice that affects only the parties to a trade or a commercial transaction is beyond the act's embrace." *Id.* Borrower is trying to use the SC UTPA to address a private grievance with Plaintiff. There is no evidence in the record of Plaintiff committing these same alleged acts in transactions with other parties, nor is there any evidence that tends to show Plaintiff will commit the alleged acts in any future transactions. As a result, there is no impact on the public interest as required under the SC UTPA.

forgeries extending the maturity date of the Note do not render unenforceable the original Note and Mortgage. Borrower admits he did not repay the original principal of the Note. Plaintiff is only suing for the original principal amount, plus interest accruing after demand was made upon Borrower on February 23, 2010. (Complaint, p. 6, ¶¶ 23-24; Depos. Tr. Clewis, pp. 71-72, 82-83.) Furthermore, even if Plaintiff did accept the alleged forgeries, there is no evidence that such acceptance damaged Borrower in any way. He borrowed \$150,000, which he has not repaid. Last, the forgeries are also a mere private grievance between Plaintiff and Borrower, so there is again no impact on the public interest as required by the SC UTPA. Thus, this Court denies items "iv." and "v." as factual bases for a UTPA claim.

C. Waiver

Borrower bases his affirmative defense of waiver⁵ on a 2007 Form 1098. The Form 1098 shows that \$87,400 in interest was received by Plaintiff. The Form is clearly labelled "Mortgage Interest Statement." It makes no mention of payment of principal, nor does it reference how much remains due and owing on the Note.

In addition to the information contained on the Form 1098, Borrower admits he knew the Form 1098 was an interest statement for the Note, not a statement marking the Note paid in full. (Depos. Tr. Brown, pp. 39-41.) He also admits that he knew he had not paid Plaintiff \$87,500 in interest on the Note, nor had he paid any of the principal of \$150,000. (Depos. Tr. Brown, pp. 18, 40-41, 62-63, 83.) Borrower never received anything in writing from Plaintiff that if he failed to repay the \$150,000, Plaintiff would waive its right to foreclose on the Mortgage. (Depos. Tr. Brown, pp. 40-41.) Nothing in Plaintiff's records indicate that it ever marked the Note paid in full. (Depos. Tr. Clewis, p. 74.) Borrower's self-serving interpretation of the Form

⁵ Waiver is a voluntary and intentional abandonment or relinquishment of a known right." *Murdock v. Murdock*, 338 S.C. 322, 333, 526 S.E.2d 241, 247 (Ct. App. 2009).

1098 does not create a genuine issue of material fact that prevents summary judgment from being entered on his affirmative defense of waiver.

VI. Conclusion

If a motion for summary judgment is supported as provided in the Rule, summary judgment will be granted, unless the adverse party presents evidence showing that there is a genuine issue of fact for trial. Rule 56(e), SCRCPP. A nonmoving party has to demonstrate at least a scintilla of evidence to defeat a motion for summary judgment, where, as here, the burden is preponderance of the evidence. *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009); and *Shirley's Iron Works, Inc. v. City of Union*, 2010 WL 530195 (S.C. Ct. App. 2010). The scintilla, however, must be of probative value. *Bass v. Gopal, Inc.*, 384 S.C. 238, 680 S.E.2d 917 (Ct.App. 2009); *Lanier Construction Co., Inc. v. Bailey & Yobs, Inc.*, 384 S.C. 275, 681 S.E.2d 909 (Ct.App. 2009); and, *Carolina Renewal, Inc. v. South Carolina Dept. Transp.*, 385 S.C. 550, 684 S.E.2d 779 (Ct.App. 2009). Where, as here, there is no showing of a genuine issue of material fact, the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCPP.

Borrower has not offered even a scintilla of probative evidence to support his counterclaims of failure to satisfy a mortgage and violation of the SC UTPA, nor has he set forth any evidence to support his affirmative defense of waiver. Instead, the evidence shows only that the Note and Mortgage were executed by Borrower, he failed to pay in accordance with the terms thereof, and Plaintiff elected to exercise its remedies. Because there is no evidence to support either the counterclaims of failure to satisfy a mortgage and violation of the SC UTPA or the affirmative defense of waiver, summary judgment is granted as to these issues in favor of Plaintiff.

VII. Procedural Status

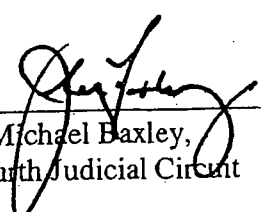
This case now consists of a mortgage foreclosure and a Truth in Lending Act claim on which a jury demand has been made. The Court has not decided as a part of this decision whether the TILA claim is compulsory to which a jury trial right exists, or permissive in which event the right to trial by jury was waived when such claim was lodged in this foreclosure proceeding. *Wells Fargo Bank, N.A. v. Smith et al.*, 2012 WL 2125834 (S.C. Ct. App. June 13, 2012). Because the complaint is equitable and the counterclaim may be compulsory (until decided otherwise upon subsequent motion), the proper procedure is for separate trials of the legal and equitable claims, pursuant to Rule 42(b), SCRPC. Since there are not factual issues common to both the equitable and legal claims, the TILA claim does not have to be tried first. *C&S Real Estate Services, Inc. v. Massengale et al.*, 290 S.C. 299, 302, 350 S.E.2d 191, 193 (1986). Nothing herein limits Plaintiff from referring the foreclosure claim to a special referee under Rule 53(b) and 71(a), SCRPC.

NOW, THEREFORE, it is hereby

ORDERED that the motion of Plaintiff seeking summary judgment in its favor on the counterclaims (except for TILA) and the affirmative defenses is granted.

IT IS SO ORDERED.

July 27, 2012



J. Michael Baxley,
Fourth Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD
IN THE COURT OF COMMON PLEAS

JUDGMENT IN CIVIL CASE

CASE NO.: 2010-CP-13-164

American Community Bank, a division of Yadkin

Michael R. Brown; C.W. Horne; Shortt Auction

Valley Bank & Trust

& Realty Co., Inc.; Bank of America, N.A.; and
Jaguar Portfolio, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: John Martin Foster, Esq.

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other ☐
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ 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:

Defendant Brown's Motion for Reconsideration is Denied. See Page 2 for additional information.

ORDER INFORMATION

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)
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A

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

N/A

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.

Circuit Court Judge

2121

Judge Code

11/5/12

Date

DEC 17 2012

For Clerk of Court Office Use Only

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

James W. Sheedy
Susan E. Driscoll
11520 N. Community House Rd., Ste 200, Charlotte,
NC 28277
ATTORNEY(S) FOR THE PLAINTIFF(S)

John Martin Foster
P.O. Box 106, Rock Hill, SC 29731
Harry R. Easterling, Jr.
P.O. Drawer 655, Bennettsville, SC 29512
ATTORNEY(S) FOR THE DEFENDANT(S)
The Honorable Faye Sellers
CLERK OF COURT, Attest

Court Reporter: N/A

ADDITIONAL INFORMATION REGARDING DECISION REFERENCED ON PAGE ONE:
CLERK OF COURT, CP & SS ONE:
CHESTERFIELD COUNTY, SC

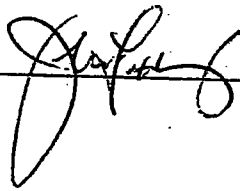
By Order dated July 27, 2012, this Court granted summary judgment in favor of Plaintiff on Defendant Brown's counterclaims for civil conspiracy and fraud (both actual and constructive), as well as Defendant Brown's affirmative defenses of failure to mitigate damages, equitable estoppel, unconscionability, and breach of duty of good faith. At the hearing on Plaintiff's Motion for Summary Judgment, counsel for Defendant Brown indicated that he would not oppose entry of summary judgment in favor of Plaintiff on those counterclaims and affirmative defenses, and further the Court found that summary judgment was appropriate as to those claims because there existed no genuine issues of material fact as to those counterclaims and affirmative defenses. In addition, and through the same Order, the Court granted summary judgment in favor of the Plaintiff on Defendant Brown's counterclaims for (1) Plaintiff's failure to satisfy a mortgage in accordance with S.C. Code Ann. § 29-3-310 (1976) and (2) an alleged violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"). The Court also granted summary judgment in favor of the Plaintiff on Defendant Brown's affirmative defense of waiver.

Defendant Brown, through his counsel, has now filed a Motion to Reconsider pursuant to SCRCP 59(e), claiming the Court erred in granting summary judgment in favor of the Plaintiff on two of Defendant Brown's counterclaims: (1) the alleged violation of SCUTPA; and (2) a Truth-in-Lending Act ("TILA") claim.

The Court's Order, dated July 27, 2012, did not rule on Defendant Brown's TILA counterclaim. The Court directs counsel's attention to footnote two, page 3 of the Court's Order, which states that "[t]he Motion [Plaintiff's Motion for Summary Judgment] does not seek a ruling on Borrower's Truth-in-Lending (TILA) cause of action, so such cause of action is unaffected by the Court's ruling on the Motion before it." Thus, any consideration of this claim in Defendant Brown's Motion to Reconsider would be inappropriate, and such claim is unaffected here as well. With regard to the SCUTPA, Defendant Brown claims that summary judgment was inappropriate as there was a material issue of fact as to whether there was a forged extension or modification of the note in question – one of several factual bases presented to the Court to support a SCUTPA claim. The Court disagrees; regardless of whether the allegations of forgery are true, the original Note and Mortgage are not deemed unenforceable as a result of the alleged forgeries extending the maturity date of the Note.

Therefore, for the above stated reasons, Defendant Brow's Motion to Reconsider is DENIED.

Circuit Court Judge



2121

Judge Code

11/5/12

Date

2012 NOV 7 AM 9 27

FAYE L. SHELLEY
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

FORM 4

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

FOURTH JUDICIAL CIRCUIT

COUNTY OF CHESTERFIELD)

C.A. NO.: 2010-CP-13-164

American Community Bank, a division
of Yadkin Valley Bank & Trust

Plaintiff,

v.

Michael R. Brown; C.W. Horne; Shortt
Auction & Realty Co., Inc.; Bank of
America, N.A.; and Jaguar Portfolio, LLC,
Defendants.

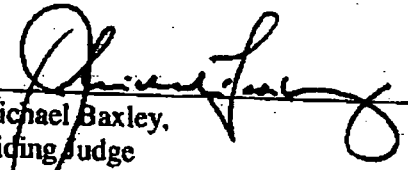
**ORDER DEEMING APPLICABLE THE
C. J. TOAL ADMINISTRATIVE ORDER
TO THIS FORECLOSURE ACTION**
(Granting Stay Until Compliance)

CHESTERFIELD
2011 AUG 23 PM 11 18
S.C.

The Complaint in this matter sets forth a cause of action against Defendants for an entry of judgment, including foreclosure, on a promissory note secured by a mortgage against Defendants' property. This case was filed on May 4, 2010. Defendant Brown resides on the mortgaged property. At issue before the Court is whether South Carolina Supreme Court Order No. 2011-05-02-01, dated May 2, 2011, regarding mortgage foreclosure actions and imposing a Stay in such proceedings until the Plaintiff undertakes certain foreclosure intervention measures, applies to the mortgage given by Defendant Brown to Plaintiff American Community Bank. Both parties were given an opportunity to brief the Court on this issue.

After review, the Court finds it is undisputed that the property at issue in this matter is residential property. Moreover, this case was pending on May 9, 2010, a trigger date for applicability of the Administrative Order. This Court further notes that the Administrative Order is to be liberally construed and applied for reasons of uniformity, judicial economy, and assurance of the mandated protections for distressed debtors and their rights under both state and federal law. Therefore, this Court finds that Administrative Order No. 2011-05-02-01 applies to this case, and Plaintiffs are directed to comply therewith. This action shall be Stayed until Plaintiff provides proof of compliance with the foreclosure intervention requirements outlined in the Administrative Order.

IT IS SO ORDERED.


J. Michael Baxley,
Presiding Judge

Dated at Hartsville, South Carolina, this ____ day of August, 2011

This Judgment was entered on the ____ day of August 2011, and a copy mailed first class to attorneys of record as follows:

Attorney for Plaintiff

James W. Sheedy, Esq.
Driscoll Sheedy, P.A.
11520 N. Community House Road
Suite 200
Charlotte, NC 28277

Attorneys for the Defendant

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Post Office Box 106
Rock Hill, SC 29731

Harry R. Easterling, Jr., Esquire
Post Office Box 655
Bennettsville, SC 29512

CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

) IN THE COURT OF COMMON PLEAS
)

American Community Bank, a division of Yadkin
Valley Bank & Trust,

Plaintiff,

vs.

Michael R. Brown; C. W. Horne; Shortt Auction
& Realty Co., Inc.; Bank of America, N.A.; and
Jaguar Portfolio, LLC,

Defendants.

10 LP 13-47
LIS PENDENS

C.A. No.: 10-CP-13

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

A True Copy Attest
Jaye D. Sellers

0001
MAY 4 PM 12 27
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

TO WHOM IT MAY CONCERN:

NOTICE IS HEREBY GIVEN that American Community Bank, a division of Yadkin Valley Bank & Trust, the plaintiff as captioned above, has commenced in the Court of Common Pleas, Chesterfield County, South Carolina, against the above captioned defendants an action for foreclosure of a certain mortgage dated December 29, 2000, recorded January 2, 2001, in Book 346 at Page 431, in the Office of the Clerk of Court for Chesterfield County, encumbering real property there, together with appurtenances and other property located thereon, along with other rights and interests as set forth therein (collectively, the "Subject Property"), more particularly described as follows:

All that certain piece, parcel, or lot of land, with the improvements thereon, situate, lying, and being on the west side of Highway S-13-29, approximately 8 miles south of the Town of Chesterfield, in the County of Chesterfield, State of South Carolina, and bounded as follows: beginning at an iron on the centerline of Highway S-13-29 and running thence S 26° - 28' - 03" E along the centerline of Highway S-13-29 for a distance of 621.46 feet to its intersection with the centerline of Highway S-13-657; thence S 26° - 52' - 05" E along the centerline of Highway S-13-29 for a distance of

IN THE COURT OF COMMON PLEAS

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SEEM OF COURTESY. P. 873.5.
CHESTERFIELD COUNTY, SC

COMPLAINT

A No.: 10-CP-13

PAUL J. HILLERS
CLERK OF COURT
CHESTERFIELD COUNTY
I

2010 MAY 4 PM 12 27

~~000164~~

A True Copy Attest
J. A. C.
J. W. Sellers

- Driscoll Sheedy, P.A.
Attorneys at Law

4. Defendant Shortt Auction & Realty Co., Inc. (Shortt) is a corporation organized pursuant to the laws of the state of South Carolina and is made a party to this action because it owns and holds a mortgage against real property in Chesterfield County, as more particularly described below, which is junior and inferior to the mortgage lien of Bank.

5. Defendant Bank of America, N.A. (B of A) is a national bank organized pursuant to the laws of the United States, which regularly does business in South Carolina, including Chesterfield County, and is made a party to this action because it owns and holds a mortgage against real property in Chesterfield County, as more particularly described below, which is junior and inferior to the mortgage lien of Bank.

6. Defendant Jaguar Portfolio, LLC (Jaguar) is made a party to this action because it owns and holds a judgment against real property in Chesterfield County, as more particularly described below, which is junior and inferior to the mortgage lien of Bank.

7. This action involves the foreclosure of a mortgage against commercial property and is not subject to the Home Affordable Modification Program (HMP) for residential loans owned, securitized or guaranteed by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) or any other section of the Making Home Affordable Program.

8. On December 29, 2000, Borrower signed in favor of Bank a commercial promissory note in the amount of \$150,000, as extended, renewed and modified by nine (9) agreements that ultimately changed the maturity date to May 10, 2008 (collectively, the Note). A copy of the Note is attached hereto, incorporated by reference herein and marked collectively as **Exhibit A**.

Charlotte, NC

Date: 5/3/10

DRISCOLL SHEEDY, P.A.

By: *J. W. Sheedy*

James W. Sheedy

Susan E. Driscoll

11520 N. Community House Road
Suite 200

Charlotte, N.C. 28277

(704) 341-2101 - Telephone

(704) 341-2105 - Facsimile

jimsheedy@driscollsheedy.com

sdriscoll@driscollsheedy.com

ATTORNEYS FOR BANK

881.13 feet to a point; thence S 26° - 50' - 01" E along the centerline of Highway S-13-29 for a distance of 494.02 feet to a point; thence S 25° - 45' - 54" E along the centerline of Highway S-13-29 for a distance of 201.77 feet to a point; thence S 21° - 42' - 37" E along the centerline of Highway S-13-29 for a distance of 122.05 feet to an iron; thence S 73° - 28' - 41" W for a distance of 241.14 feet to a point; thence S 16° - 35' - 21" E for a distance of 209.82 feet to a point; thence S 73° - 28' - 41" W for a distance of 1528.15 feet to an iron; thence N 09° - 37' - 22" W for a distance of 87.31 feet to a steel fence post; thence N 25° - 03' - 16" W for a distance of 1292.09 feet to a steel fence post; thence S 55° - 13' - 40" W along the northern side of an abandoned county road for a distance of 430.16 feet to a point; thence N 02° - 52' - 37" W for a distance of 208.38 feet to a point; thence N 02° - 49' - 25" W for a distance of 468.20 feet to a concrete post; thence N 44° - 48' - 28" E for a distance of 275.74 feet to a point; thence N 12° - 24' - 36" W for a distance of 764.63 feet to an iron; thence N 84° - 15' - 47" E for a distance of 1531.58 feet to the point of beginning. Said property is more particularly shown and described as 106.85 ACRES according to a plat of survey prepared by William G. Martin, P.L.S., on the 5th day of July, 1998, which plat, recorded in Plat Book C, at page 7-I, in the Office of the Clerk of Court for Chesterfield County, is by reference incorporated herein as a part of this description.

This conveyance is expressly made subject to any existing rights-of-way for the state and county roads shown on the aforesaid plat.

Derivation: This is the identical property conveyed to the Mortgagor by deed of C.W. Horne Sawmill & Chip Company, Inc. dated September 25, 1998, and recorded in Deed Book 368, at page 829, in the Office of the Clerk of Court for Chesterfield County.

Tax Map Number 157-16

taxes, insurance, public assessments, repairs, court costs and attorneys' fees, Borrower executed in favor of Bank a mortgage dated December 29, 2000, recorded January 2, 2001 in Book 346 at Page 431, with the Clerk of Court, Chesterfield County, South Carolina, (Mortgage) encumbering real property there, together with appurtenances and other property located thereon, along with other rights and interests as set forth therein (collectively, the "Subject Property"), more particularly described as follows:

All that certain piece, parcel, or lot of land, with the improvements thereon, situate, lying, and being on the west side of Highway S-13-29, approximately 8 miles south of the Town of Chesterfield, in the County of Chesterfield, State of South Carolina, and bounded as follows: beginning at an iron on the centerline of Highway S-13-29 and running thence S 26° - 28' - 03" E along the centerline of Highway S-13-29 for a distance of 621.46 feet to its intersection with the centerline of Highway S-13-657; thence S 26° - 52' - 05" E along the centerline of Highway S-13-29 for a distance of 881.13 feet to a point; thence S 26° - 50' - 01" E along the centerline of Highway S-13-29 for a distance of 494.02 feet to a point; thence S 25° - 45' - 54" E along the centerline of Highway S-13-29 for a distance of 201.77 feet to a point; thence S 21° - 42' - 37" E along the centerline of Highway S-13-29 for a distance of 122.05 feet to an iron; thence S 73° - 28' - 41" W for a distance of 241.14 feet to a point; thence S 16° - 35' - 21" E for a distance of 209.82 feet to a point; thence S 73° - 28' - 41" W for a distance of 1528.15 feet to an iron; thence N 09° - 37' - 22" W for a distance of 87.31 feet to a steel fence post; thence N 25° - 03' - 16" W for a distance of 1292.09 feet to a steel fence post; thence S 55° - 13' - 40" W along the northern side of an abandoned county road for a distance of 430.16 feet to a point; thence N 02° - 52' - 37" W for a distance of 208.38 feet to a point; thence N 02° - 49' - 25" W for a distance of 468.20 feet to a concrete post; thence N 44° - 48' - 28" E for a distance of 275.74 feet to a point; thence N 12° - 24' - 36" W for a distance of 764.63 feet to an iron; thence N 84° - 15' - 47" E for a distance of 1531.58 feet to the point of beginning. Said property is more particularly shown and described as 106.85 ACRES according to a plat of survey prepared by William G. Martin, P.L.S., on the 5th day of July, 1998, which plat, recorded in Plat Book C, at page 7-I, in the Office of the Clerk of Court for Chesterfield County, is by reference incorporated herein as a part of this description.

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Derivation: This is the identical property conveyed to the Mortgagor by deed of C.W. Horne Sawmill & Chip Company, Inc. dated September 25, 1998, and recorded in Deed Book 368, at page 829, in the Office of the Clerk of Court for Chesterfield County.

Tax Map Number 157-16

A copy of the Mortgage is attached hereto as **Exhibit B**.

19. Borrower agreed to maintain the Subject Property in good condition and make all repairs that are reasonably necessary; to pay promptly all taxes, assessments or other charges which may be secured by a lien on the Subject Property; and to insure the Subject Property in an amount not less than the original principal amount of the Note and assign such policy of insurance to Bank, so that if Borrower does not pay the premiums, Bank may pay them and add such amounts to the debt evidenced by the Note secured by the Mortgage.

20. In the event Borrower fails to pay as agreed the Note secured by the Mortgage or perform any of his duties under the Mortgage, Bank has the right to declare Borrower in default, declare all sums immediately due and payable, and proceed with the exercise of legal remedies, including foreclosure, in which event Bank shall be entitled to recover its costs and a reasonable attorneys' fee.

21. In the Mortgage, Borrower granted to Bank a security interest in all the rents and profits from the Subject Property, which Bank is entitled to collect upon default of the Note secured by the Mortgage.

22. On December 29, 2000, Horne gave Bank an absolute, unconditional guaranty of payment of the Note, which Bank is not enforcing as a part of this action but instead is reserving all of its rights with respect thereto.

23. On February 23, 2010, Bank sent a demand letter to Borrower requesting payment of \$150,000 within 15 days of the date thereof, after which, if payment in full had not been made, Bank stated it would charge interest at the per diem rate of \$41.67 plus attorneys' fees and costs. A copy of the letter is attached hereto as **Exhibit C**.

24. As of May 1, 2010, there was due and owing on the Note the sum of \$152,791.89, plus per diem interest of \$41.67 from that date to the date of payment in full, as well as costs of collection, including, but not limited to, attorneys' fees; and Bank is entitled to judgment against Borrower for that amount.

25. The Note and Mortgage are legally owned and held by Borrower; the conditions of both have been breached; the amount due and owing on the Note was not paid by Borrower upon demand by Bank; and the Mortgage constitutes a valid lien upon the Subject Property and should be foreclosed to provide for payment in full of all monies due under the Note.

26. Bank seeks a deficiency judgment against Borrower to the extent the proceeds from judicial sale of the Subject Property are not sufficient to satisfy in full the debt owed by Borrower to Bank arising under the Note secured by the Mortgage.

27. Shortt is made a party to this action because of its mortgage recorded against the Subject Property on July 20, 2001 in Book 351 at Page 1124 in the Office of the Chesterfield County Clerk of Court, which is junior and inferior to the mortgage lien of Bank against the Subject Property.

28. B of A is made a party to this action because of its mortgage recorded against the Subject Property on January 23, 2002 in Book 357 at Page 1291 in the Office of the Chesterfield

County Clerk of Court, which is junior and inferior to the mortgage lien of Bank against the Subject Property.

29. Jaguar is made a party to this action because of its judgments in the amounts of \$61,825.36, \$31,451.42 and \$19,834.08 entered on July 15, 2004 at Judgment Roll Number 43668, in Chesterfield County, South Carolina, which is junior and inferior to the mortgage lien of Bank against the Subject Property.

WHEREFORE, Bank asks this Court:

- A) for an order granting Bank a judgment against Borrower in the amount set forth in Paragraph 24 above, less any sums which Bank may recover from judicial sale of the Subject Property;
- B) for an order that the Mortgage be foreclosed, free and clear of all liens, interests, restrictions and/or encumbrances; the equity of redemption of Borrower be forever barred; the Subject Property be sold under order of this Court; the bidding at such sale be complete and final within 30 days after the date of initial sale; a deficiency judgment be awarded to Bank against Borrower in the event the proceeds from the foreclosure sale of the Subject Property are insufficient to satisfy in full the entire indebtedness due to Bank; and the successful bidder be put into possession of the Subject Property immediately upon presentation of the deed;
- C) for an order requiring that the proceeds of the foreclosure sale be applied first to payment of the costs of protection, preservation and maintenance of the Subject Property, along with taxes, insurance, other applicable assessments and expenses of sale, plus costs of collection, including, but not limited to, attorneys' fees and costs, and any appraisal and/or environmental assessment expenses; next, to the indebtedness due to Bank and then other lienors, in order of priority; and finally, such other sums found properly due or outstanding by the Court;
- D) for an order that, in the event the successful bidder shall be other than Borrower, the Sheriff of Chesterfield County be directed and empowered to eject and remove from the Subject Property any occupant or occupants thereon, together with all personal property located thereon; to put the successful bidder or assigns in the full, quiet and peaceful possession of the Subject Property without delay; and to keep the successful bidder or assigns in such possession;

- E) For the granting of such other and further relief as appears to the Court to be just and proper.

Charlotte, NC

Date: 5/2/10

DRISCOLL SHEEDY, P.A.

By: James W. Sheedy
James W. Sheedy
Susan E. Driscoll
11520 N. Community House Road
Suite 200
Charlotte, N.C. 28277
(704) 341-2101 - Telephone
(704) 341-2105 - Facsimile
jimsheedy@driscollsheedy.com
sdriscoll@driscollsheedy.com

ATTORNEYS FOR BANK

EXHIBIT A

PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No.	Call	Collateral	Account	Officer	Initials
\$150,000.00	12-29-2000	12-28-2001	74040007				JNC	

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing ***** has been omitted due to text length limitations.

Borrower: MICHAEL R BROWN
1820 A EAST 4TH ST PMB #132
CHARLOTTE, NC 28204

Lender: American Community Bank
Marshville
Marshville, NC 28103

Principal Amount: \$150,000.00 **Interest Rate:** 10.000% **Date of Note:** December 29, 2000

PROMISE TO PAY. MICHAEL R BROWN ("Borrower") promises to pay to American Community Bank ("Lender"), or order, in lawful money of the United States of America, the principal amount of One Hundred Fifty Thousand & 00/100 Dollars (\$150,000.00), together with interest at the rate of 10.000% per annum on the unpaid principal balance from December 29, 2000, until paid in full.

PAYMENT. Borrower will pay this loan in 11 regular payments of \$1,380.65 each and one irregular last payment estimated at \$150,000.00. Borrower's first payment is due January 30, 2001, and all subsequent payments are due on the same day of each month after that. Borrower's final payment will be due on December 30, 2001, and will be for all principal and all accrued interest not yet paid. Payments include principal and interest. Unless otherwise agreed or required by applicable law, payments will be applied first to accrued unpaid interest, then to principal, and any remaining amount to any unpaid collection costs. The annual interest rate for this Note is computed on a 365/360 basis; that is, by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

PREPAYMENT. Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. Except for the foregoing, Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due and may result in Borrower's making fewer payments. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: American Community Bank, Marshville, Marshville, NC 28103.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, the total sum due under this Note will bear interest from the date of acceleration or maturity at the interest rate on this Note. The interest rate will not exceed the maximum rate permitted by applicable law.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Death or Insolvency. The death of Borrower or the dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Creditor or Foreclosure Proceedings. Commencement of foreclosure or foreclosure proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or foreclosure proceeding and if Borrower gives Lender written notice of the creditor or foreclosure proceeding and deposits with Lender monies or a surety bond for the creditor or foreclosure proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

Insecurity. Lender in good faith believes itself insecure.

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

ATTORNEYS' FEES; EXPENSES. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

GOVERNING LAW. This Note will be governed by, construed and enforced in accordance with federal law and the laws of the State of North Carolina. This Note has been accepted by Lender in the State of North Carolina.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

COLLATERAL. Borrower acknowledges this Note is secured by 1ST MORTGAGE ON 108.85 ACRES LOCATED IN CHESTERFIELD CO, SC &.

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

GENERAL PROVISIONS. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

PROMISSORY NOTE
(Continued)

Page 2

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE. BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

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

BORROWER:

X  (Seal)
MICHAEL R BROWN, Individually

MASTER PRO Lending, Inc. U.S. Pat. & T.M. OFF. Yr. L.H. 2000 BY Certificate 1999, 2000. All Rights Reserved. - NO NOTIFICATION/ISSUING 10-1002

mmw/11/29/02

Account Number: 710400073

MODIFICATION AND EXTENSION AGREEMENT

STATE OF NORTH CAROLINA

COUNTY OF: Union

Effective Date: 01-23, 2002

This Modification and Extension Agreement is made and entered into, this 23 day of JAN, 2002 by and between American Community Bank (hereinafter referred to as "BANK");

Michael BROWN (hereinafter referred to as maker(s) or co-maker(s)

on the Note describe below individually and collectively as "BORROWER");

_____ the trustee or successor trustee under the Deed of Trust described below (hereinafter referred to as "TRUSTEE"); and _____ the guarantor(s), endorser(s), or other obligor(s) (if any) on the Note described below, or the owner(s) other than the BORROWER (if any) of any property pledged to secure performance of BORROWER'S obligation to BANK (hereinafter referred to individually and collectively as "THIRD PARTY").

WITNESSETH:

WHEREAS, BORROWER is indebted to BANK in the original principal sum of:

One hundred fifty thousand _____ (\$150,000-)

which Note has a current principal balance of:

One hundred forty nine thousand three hundred forty three and 55/100 (\$149,343.55)

as evidenced by a:

☐ Note dated _____, made payable to _____

☒ Note and Security Agreement dated 12/29/00, which Note is made payable

to _____

☒ Note and Deed of Trust dated 12/29/00, which Note is made payable

to _____

and which Deed of Trust is recorded in Book _____, Page _____, in the _____ County Registry and relates to the real property described therein;

said Note, Note and Security Agreement, or Note and Deed of Trust, including any renewals, extensions, or modifications thereof, being hereinafter referred to as "CONTRACT," and said CONTRACT being incorporated and made a part hereof by reference; and

WHEREAS, BORROWER and BANK mutually desire to modify and amend the provisions of the CONTRACT in the manner hereinafter set forth, it being specifically understood that, except as herein modified and amended, the terms and provisions of the CONTRACT shall remain unchanged and continue in full force as therein written; and

WHEREAS, THIRD PARTY, if different from BORROWER, and TRUSTEE have agreed to the terms of this modification;

NOW, THEREFORE, by mutual agreement of the parties and in mutual consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree that said CONTRACT by modified and amended to provide as follows:

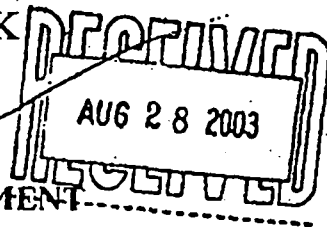
STATE OF NORTH CAROLINA, COUNTY OF _____
I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ and
_____ each personally appeared before me and acknowledged
the due execution of the foregoing instrument.
Witness my hand and notarial seal, this _____ day of _____, 20 _____.
My commission expires: _____
NOTARY PUBLIC

STATE OF NORTH CAROLINA, COUNTY OF _____
I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally came
before me this day and acknowledged that _____ is _____
Secretary of _____, a corporation, and that, by
authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its
_____, sealed with its corporate seal, and attested by
_____ as its _____ Secretary.
Witness my hand and notarial seal, this _____ day of _____, 20 _____.
My commission expires: _____
NOTARY PUBLIC

STATE OF NORTH CAROLINA, COUNTY OF _____
I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally appeared
before me this day and acknowledged the due execution of the foregoing instrument.
Witness my hand and notarial seal, this _____ day of _____, 20 _____.
My commission expires: _____
NOTARY PUBLIC

STATE OF NORTH CAROLINA, COUNTY OF _____
I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally appeared
before me and acknowledged that _____ he is _____
Secretary of American Community Bank, a corporation, and that by authority duly given and as the act of the corporation, the foregoing
instrument was signed in its name by its _____ Vice President, sealed with its corporate seal, and attested
by _____ as its _____ Secretary.
Witness my hand and notarial seal, this _____ day of _____, 20 _____.
My commission expires: _____
NOTARY PUBLIC

AMERICAN COMMUNITY BANK



Account Number: 710400073

MODIFICATION AND EXTENSION AGREEMENT

STATE OF NORTH CAROLINA

COUNTY OF: Union

Effective Date: 8/28, 2003

This Modification and Extension Agreement is made and entered into, this 28 day of Aug, 2003 by and between American Community Bank (hereinafter referred to as "BANK");

MICHAEL BROWN (hereinafter referred to as maker(s) or co-maker(s) on the Note describe below individually and collectively as "BORROWER");

_____ the trustee or successor trustee under the Deed of Trust described below (hereinafter referred to as "TRUSTEE"); and _____ the guarantor(s), endorser(s), or other obligor(s) (if any) on the Note described below, or the owner(s) other than the BORROWER (if any) of any property pledged to secure performance of BORROWER'S obligation to BANK (hereinafter referred to individually and collectively as "THIRD PARTY").

WITNESSETH:

WHEREAS, BORROWER is indebted to BANK in the original principal sum of:

One hundred fifty thousand — (\$150,000-)

which Note has a current principal balance of:

One hundred forty-nine thousand three hundred forty-three⁵⁵ (\$149,343.55)

as evidenced by a:

☐ Note dated _____, made payable to _____

☒ Note and Security Agreement dated 12/29/00, which Note is made payable

to _____

☒ Note and Deed of Trust dated 12/29/00, which Note is made payable

to _____

and which Deed of Trust is recorded in Book _____, Page _____, in the _____ County Registry and relates to the real property described therein:

said Note, Note and Security Agreement, or Note and Deed of Trust, including any renewals, extensions, or modifications thereof, being hereinafter referred to as "CONTRACT," and said CONTRACT being incorporated and made a part hereof by reference; and

WHEREAS, BORROWER and BANK mutually desire to modify and amend the provisions of the CONTRACT in the manner hereinafter set forth, it being specifically understood that, except as herein modified and amended, the terms and provisions of the CONTRACT shall remain unchanged and continue in full force as therein written; and

WHEREAS, THIRD PARTY, if different from BORROWER, and TRUSTEE have agreed to the terms of this modification;

NOW, THEREFORE, by mutual agreement of the parties and in mutual consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree that said CONTRACT by modified and amended to provide as follows:

INTEREST RATE

- ☐ Interest will be paid at the rate of _____ % per annum. This rate will be effective the date this CONTRACT is executed.
- ☐ Interest will be paid at a variable rate of interest known as the "Contract Rate." This rate will be effective the date this CONTRACT is executed. BORROWER acknowledges that the Contract Rate may increase or decrease based on changes in the Prime Rate published by BANK.

The Contract Rate will be the BANK'S Prime Rate plus _____ Percentage Points (the "Margin"). The initial Contract Rate is _____ %. The Minimum Contract Rate shall be _____ %, and the Maximum Contract Rate shall be _____ %.

provided that at no time shall the Contract Rate exceed the maximum interest rate allowed by law to be charged by BANK. Increases or decreases in the Contract Rate of interest will: ☐ increase or decrease the amount of each payment due thereafter; ☐ increase or decrease the final payment due. The Contract Rate will ☐ be the Prime Rate in effect on the last day of the preceding month, plus the Margin and changes in the Contract Rate during a month will take effect as of the first business day of the following month; OR ☐ change daily assuming there is a change in the Prime Rate;

OR ☐ as often _____. The BANK'S Prime Rate is not intended or represented to be the lowest or most favorable rate of interest charged or offered by the BANK to its customers.

☐ Other: _____

PRINCIPAL AND INTEREST PAYMENT TERMS:

☒ Principal and Interest is payable in full at maturity on 12/15, 2003.

☐ Payable in consecutive _____ installments of: ☐ principal, or ☐ principal and interest, commencing on _____, 20____; and continuing on the same day of each calendar period thereafter, in _____ equal payments of \$_____, with one final payment of all remaining principle and interest due on _____.

☐ Interest is payable _____, commencing on _____, 20____ and continuing on the same day of each calendar period thereafter, with one final payment of all remaining principal and interest due on _____.

☐ Other: _____

In the event periodic accruals of interest shall exceed any periodic fixed payment amount described above, the fixed payment amount shall be immediately increased, or additional supplemental interest payments required on the same periodic basis as specified above (increased fixed payments or supplemental payments to be determined in the BANK'S sole discretion), in such amounts and at such times as shall be necessary to pay all accruals of interest for the period and all accruals of unpaid interest from previous periods. Such adjustments to the fixed payment amount or supplemental payments shall remain in effect for so long as the interest accruals shall exceed the original fixed payment amount and shall be further adjusted upward or downward to reflect changes in the variable interest rate. In no event shall the fixed payment amount be reduced below the original fixed payment amount specified above.

COLLATERAL:

Unless otherwise provided herein, it is expressly understood and agreed by the parties hereto that any and all collateral given as security to insure faithful performance by BORROWER and any THIRD PARTY of any and all obligations to BANK, however created, whether now existing or hereafter arising, shall remain as security for the previously described CONTRACT as modified hereby.

It is expressly understood and agreed by and between the parties hereto that any security agreement, deed of trust, chattel mortgage, trust receipt, assignment, contract or other writing granting BANK security for performance of any obligation to BANK is, to the extent inconsistent herewith, modified and changed to be consistent with the terms of this Modification and Extension Agreement.

- ☐ If marked, the aforesaid CONTRACT, as herein modified, and the performance of any loan agreement between the parties shall be additionally secured by collateral hereinafter described, and a new security instrument shall be executed by the BORROWER and/or THIRD PARTY:

Date: _____ Type of agreement: _____ From: _____

Collateral: _____

Date: _____ Type of agreement: _____ From: _____

Collateral: _____

☐ If marked, the collateral hereinafter described shall be and hereby is deleted as security for payment of the aforesaid

CONTRACT: _____

However, it is understood and agreed that BANK shall not be required or obligated to take any further steps to release said collateral from any lien or security unless BANK determines, in its sole discretion, that it may do so without consequence to its secured position and relative priority in other collateral, and unless BORROWER bears the reasonable cost of such action.

OTHER:

If the CONTRACT being modified by this Agreement is signed by more than one person or entity, the modified CONTRACT shall be the joint and several obligation of all signers, and each provision of the CONTRACT as modified shall apply to each and all of the signers and to the property and liability of each and all of them.

This Modification and Extension Agreement shall bind and inure to the benefit of the successors in interest hereto, and it is expressly understood and agreed that this Agreement is a modification only and not a novation. The original obligation of the BORROWER, as evidenced by the above-described CONTRACT is not extinguished hereby. It is also understood and agreed that, except for the above indicated modifications, said CONTRACT, and/or any other loan documents or agreements and all singular terms and conditions thereof, shall be and remain in force and effect and that this Modification and Extension Agreement shall not release or affect the liability of any co-makers, guarantors, obligors, or endorsers of said CONTRACT. BORROWER specifically consents to the terms of this Modification and Extension Agreement and waives any objection thereto, and further affirms any obligation to BANK previously created. BANK expressly reserves all rights as to any party with right of recourse on the aforesaid CONTRACT.

IN WITNESS WHEREOF, this instrument has been executed by the parties hereto and delivered on the day and year first above written.

Attest:

ASSISTANT SECRETARY

(CORPORATE SEAL)

American Community Bank

By: _____

VICE PRESIDENT

BORROWER

MICHAEL R. ZOO

BORROWER - INDIVIDUAL

(Seal)

BORROWER - INDIVIDUAL

(Seal)

NAME OF CORPORATION OR PARTNERSHIP

By: _____

TITLE

By: _____

TITLE

TRUSTEE:

(Seal)

THIRD PARTY (Guarantor, Endorser, Etc.):

CAROL W. HOENE

(Seal)

(Seal)

(Seal)

(Seal)

710400073

American Community Bank

Account Number: 710400073

Package Reviewed & Booked

J. DeMa 3-29-07

MODIFICATION AND EXTENSION AGREEMENT

State of North Carolina

County of: Union County

Effective Date: March 15, 2007

This Modification and Extension Agreement is made and entered into, this 15th day of March, 2007 by and between American Community Bank (hereinafter referred to as "BANK"); and Michael Brown (hereinafter referred to as maker (s) or co-maker (s) on the Note described below individually and collectively as "BORROWER"):

Trustee or successor trustee under the Deed of Trust described below (hereinafter referred to as "TRUSTEE"); and Cresful W. Horne the guarantor(s), endorser(s), or obligor(s) (if any) on the Note described below, or the owner(s) other than the BORROWER (if any) of any property pledged to secure performance of BORROWER'S obligation to BANK (hereinafter referred to individually and collectively as "THIRD PARTY").

WITNESSETH:

WHEREAS, BORROWER is indebted to BANK in the original principal sum of:

One hundred fifty thousand and no/100 (\$150,000.00).

which Note has a current principal balance of:

One hundred forty-nine thousand three hundred forty-three and 55/100 (\$149,343.55).

is evidenced by a:

Note dated , made payable to American Community Bank.

Note and Security Agreement dated 12/29/00 , which Note is made payable to American Community Bank.

Note and Deed of Trust dated 12/29/00 , which Note is made payable to American Community Bank and which Deed of Trust is recorded in Book Page 431, in the Chesterfield County Registry and relates to the real Property described therein;

said Note, Note and Security Agreement, or Note and Deed of Trust, including any renewals, extensions, or modifications thereof, being hereinafter referred to as "CONTRACT," and said CONTRACT being incorporated and made a part hereof by reference; and

WHEREAS, BORROWER and BANK mutually desire to modify and amend the provisions of the CONTRACT in the manner hereinafter set forth, it being specifically understood that, except as herein modified and amended, the terms and provisions of CONTRACT shall remain unchanged and continue in full force as therein written; and

WHEREAS, THIRD PARTY, if different from BORROWER, and TRUSTEE have agreed to the terms of this modification;

NOW, THEREFORE, by mutual agreement of the parties and in mutual consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree that said CONTRACT by modified and amended to provide as follows:

received

MAR 29 2007

BY:

INTEREST RATE

Interest will be paid at the rate of ☒ % per annum. This rate will be effective the date of this CONTRACT is executed.

Interest will be paid at a variable rate of interest known as the "Contract Rate." This rate will be effective the date this CONTRACT is executed. BORROWER acknowledges that the Contract Rate may increase or decrease based on changes in the Prime Rate published by BANK.

The Contract Rate will be the BANK'S Prime Rate plus Percentage Points (the "Margin"). The initial Contract Rate is %. The Minimum Contract Rate shall be %, and the Maximum Contract Rate shall be %, provided that at no time shall the Contract Rate exceed the maximum interest rate allowed by law to be charged by BANK. Increases or decreases in the Contract Rate of interest will: increase or decrease the amount of each payment due thereafter; increase or decrease the final payment due. The Contract Rate will change daily assuming there is a change in the Prime Rate. The BANK'S Prime Rate is not intended or represented to be the lowest or most favorable rate of interest charged or offered by the BANK to its customers.

Other:

PRINCIPAL AND INTEREST PAYMENT TERMS:

Principal and Interest is payable in full at maturity on September 15, 2007. ☒

Payable in consecutive installments of: principal, or principal and interest, commencing on , 2004 and continuing on the same day of each calendar period thereafter, in equal payments of \$, with one final payment of all remaining principle and interest due on

Interest is payable , commencing on , 2004 and continuing on the same day of each calendar period thereafter, with one final payment of all remaining principal and interest due on

In the event periodic accruals of interest shall exceed any periodic fixed payment amount described above, the fixed payment amount shall be immediately increased, or additional supplemental interest payments required on the same periodic basis as specified above (increased fixed payments or supplemental payments to be determined in the BANK'S sole discretion), in such amounts and at such times as shall be necessary to pay all accruals of interest for the period and all accruals of unpaid interest from previous periods. Such adjustments to the fixed payment amount or supplemental payments shall remain in effect for so long as the interest accruals shall exceed the original fixed payment amount and shall be further adjusted upward or downward to reflect changes in the variable interest rate. In no event shall the fixed payment amount be reduced below the original fixed payment amount specified above.

COLLATERAL:

Unless otherwise provided herein, it is expressly understood and agreed by the parties hereto that any and all collateral given as security to insure faithful performance by BORROWER and any THIRD PARTY of any and all obligations to BANK, however created, whether now existing or hereafter arising, shall remain as security for the previously described CONTRACT as modified hereby.

It is expressly understood and agreed by and between the parties hereto that any security agreement, deed of trust, chattel mortgage, trust receipt, assignment, contract or other writing granting BANK security for performance of any obligation to BANK is, to the extent inconsistent herewith, modified and changed to be consistent with the terms of this Modification and Extension Agreement.

The aforesaid CONTRACT, as herein modified, and the performance of any loan agreement between parties shall be additionally secured by the collateral hereinafter described, and a new security instrument shall be executed by the BORROWER and/or THIRD PARTY.

Date:
Collateral:
Date:
Collateral:

Type of agreement:
Type of agreement:

From:
From:

____ If marked, the collateral hereinafter described shall be and hereby is deleted as security for payment of the aforesaid.

CONTRACT:

However, it is understood and agreed that BANK shall not be required or obligated to take any further steps to release said collateral from any lien or security unless BANK determines, in its sole discretion, that it may do so without consequence to its secured position and relative priority in other collateral, and unless BORROWER bears the reasonable cost of such actions.

____ The undersigned acknowledged receipt from you of the personal property described below in substitution for or in addition to the personal property originally delivered. It is understood that all the terms and provisions of the Original Note and Security Agreement executed by the undersigned on _____, covering the personal property originally delivered shall apply to the personal property now delivered and shall continue in full force and effect.

Personal Property Now Delivered:

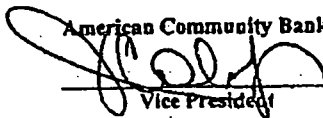
OTHER: ☒

If the CONTRACT being modified by this Agreement is signed by more than one person or entity, the modified CONTRACT shall be the joint and several obligation of all signers, and each provision of the CONTRACT as modified shall apply to each and all of the signers and to the property and liability of each and all of them.

This Modification and Extension Agreement shall bind and inure to the benefit of the successors in interest hereto, and it is expressly understood and agreed that this Agreement is a modification only and not a novation. The original obligation of the BORROWER, as evidenced by the above described CONTRACT is not extinguished hereby. It is also understood and agreed that, except for the above indicated modifications, said CONTRACT, and/or any other loan documents or agreements and all singular terms and conditions thereof, shall be and remain in force and effect and that this Modification and Extension Agreement shall not release or affect the liability of any co-makers, guarantors, obligors, or endorser of said CONTRACT, BORROWER specifically consents to the terms of this Modification and Extension Agreement and waives any objection thereto, and further affirms any obligation to BANK previously created. BANK expressly reserves all rights as to any party with right of recourse on the aforesaid CONTRACT.

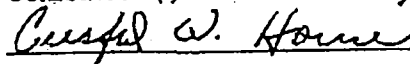
IN WITNESS WHEREOF, this instrument has been executed by the parties hereto and delivered on the day and year first above written.

American Community Bank

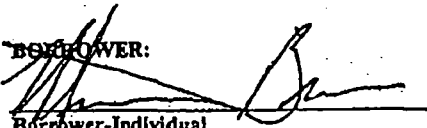


Vice President

GUARANTOR (s)



BORROWER:



Borrower-Individual

Borrower-Individual

Name of Corporation or Partnership

By _____

Title

By _____

Title

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ and
_____ each personally appeared before me and acknowledged
the due execution of the foregoing instrument.

Witness my hand and notarial seal, this _____ day of _____, 20____.

My commission expires: _____

NOTARY PUBLIC

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally came
before me this day and acknowledged that _____ is _____

Secretary of _____, a corporation, and that, by
authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its

_____, sealed with its corporate seal, and attested by
_____ as its _____ Secretary.

Witness my hand and notarial seal, this this _____ day of _____, 20____.

My commission expires: _____

NOTARY PUBLIC

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally appeared
before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this _____ day of _____, 20____.

My commission expires: _____

NOTARY PUBLIC

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally appeared

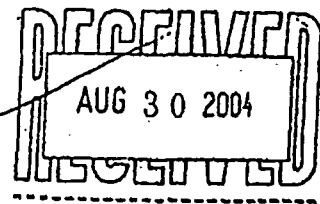
before me and acknowledged that _____ he is _____
Secretary of American Community Bank, a corporation, and that by authority duly given and as the act of the corporation, the foregoing
instrument was signed in its name by its _____ Vice President, sealed with its corporate seal, and attested
by _____ as its _____ Secretary.

Witness my hand and notarial seal, this _____ day of _____, 20____.

My commission expires: _____

NOTARY PUBLIC

AMERICAN COMMUNITY BANK



Account Number: 710400073

MODIFICATION AND EXTENSION AGREEMENT

STATE OF NORTH CAROLINA

COUNTY OF: Union

Effective Date: Aug 20 2004

This Modification and Extension Agreement is made and entered into, this 20 day of Aug, 2004, by and between American Community Bank (hereinafter referred to as "BANK"):

Michael Brown (hereinafter referred to as maker(s) or co-maker(s)

on the Note describe below individually and collectively as "BORROWER"):

Cresful W. Horne the trustee or successor trustee under the Deed of Trust described below (hereinafter referred to as "TRUSTEE"); and Cresful W. Horne the guarantor(s), endorser(s), or other obligor(s) (if any) on the Note described below, or the owner(s) other than the BORROWER (if any) of any property pledged to secure performance of BORROWER'S obligation to BANK (hereinafter referred to individually and collectively as "THIRD PARTY").

WITNESSETH:

WHEREAS, BORROWER is indebted to BANK in the original principal sum of: One hundred fifty thousand (\$150,000).

which Note has a current principal balance of: One hundred forty nine thousand three hundred forty three and 55/100 (\$149,343.55).

as evidenced by a:

☒ Note dated 12/29/00, made payable to _____

☒ Note and Security Agreement dated 12/29/00, which Note is made payable

to _____

☒ Note and Deed of Trust dated 12/29/00, which Note is made payable

to _____

and which Deed of Trust is recorded in Book _____, Page _____, in the _____ County Registry and relates to the real property described therein:

said Note, Note and Security Agreement, or Note and Deed of Trust, including any renewals, extensions, or modifications thereof, being hereinafter referred to as "CONTRACT," and said CONTRACT being incorporated and made a part hereof by reference; and

WHEREAS, BORROWER and BANK mutually desire to modify and amend the provisions of the CONTRACT in the manner hereinafter set forth, it being specifically understood that, except as herein modified and amended, the terms and provisions of the CONTRACT shall remain unchanged and continue in full force as therein written; and

WHEREAS, THIRD PARTY, if different from BORROWER, and TRUSTEE have agreed to the terms of this modification:

NOW, THEREFORE, by mutual agreement of the parties and in mutual consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree that said CONTRACT by modified and amended to provide as follows:

INTEREST RATE

- ☐ Interest will be paid at the rate of _____ % per annum. This rate will be effective the date this CONTRACT is executed.
- ☐ Interest will be paid at a variable rate of interest known as the "Contract Rate." This rate will be effective the date this CONTRACT is executed. BORROWER acknowledges that the Contract Rate may increase or decrease based on changes in the Prime Rate published by BANK.

The Contract Rate will be the BANK'S Prime Rate plus _____ Percentage Points (the "Margin"). The initial Contract Rate is _____ %. The Minimum Contract Rate shall be _____ %, and the Maximum Contract Rate shall be _____ %, provided that at no time shall the Contract Rate exceed the maximum interest rate allowed by law to be charged by BANK. Increases or decreases in the Contract Rate of interest will: ☐ increase or decrease the amount of each payment due thereafter; ☐ increase or decrease the final payment due. The Contract Rate will ☐ be the Prime Rate in effect on the last day of the preceding month, plus the Margin and changes in the Contract Rate during a month will take effect as of the first business day of the following month; OR ☐ change daily assuming there is a change in the Prime Rate;

OR ☐ as often _____. The BANK'S Prime Rate¹ is not intended or represented to be the lowest or most favorable rate of interest charged or offered by the BANK to its customers.

☐ Other: _____

PRINCIPAL AND INTEREST PAYMENT TERMS:

- ☒ Principal and Interest is payable in full at maturity on 01-15 2005.
- ☐ Payable in consecutive _____ installments of: ☐ principal, or ☐ principal and interest, commencing on _____, 20____; and continuing on the same day of each calendar period thereafter, in _____ equal payments of \$_____, with one final payment of all remaining principle and interest due on _____.
- ☐ Interest is payable _____, commencing on _____, 20____ and continuing on the same day of each calendar period thereafter, with one final payment of all remaining principal and interest due on _____.
- ☐ Other: _____

In the event periodic accruals of interest shall exceed any periodic fixed payment amount described above, the fixed payment amount shall be immediately increased, or additional supplemental interest payments required on the same periodic basis as specified above (increased fixed payments or supplemental payments to be determined in the BANK'S sole discretion), in such amounts and at such times as shall be necessary to pay all accruals of interest for the period and all accruals of unpaid interest from previous periods. Such adjustments to the fixed payment amount or supplemental payments shall remain in effect for so long as the interest accruals shall exceed the original fixed payment amount and shall be further adjusted upward or downward to reflect changes in the variable interest rate. In no event shall the fixed payment amount be reduced below the original fixed payment amount specified above.

COLLATERAL:

Unless otherwise provided herein, it is expressly understood and agreed by the parties hereto that any and all collateral given as security to insure faithful performance by BORROWER and any THIRD PARTY of any and all obligations to BANK, however created, whether now existing or hereafter arising, shall remain as security for the previously described CONTRACT as modified hereby.

It is expressly understood and agreed by and between the parties hereto that any security agreement, deed of trust, chattel mortgage, trust receipt, assignment, contract or other writing granting BANK security for performance of any obligation to BANK is, to the extent inconsistent herewith, modified and changed to be consistent with the terms of this Modification and Extension Agreement.

- ☐ If marked, the aforesaid CONTRACT, as herein modified, and the performance of any loan agreement between the parties shall be additionally secured by collateral hereinafter described, and a new security instrument shall be executed by the BORROWER and/or THIRD PARTY:

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ and
_____ each personally appeared before me and acknowledged
the due execution of the foregoing instrument.

Witness my hand and notarial seal, this _____ day of _____, 20 _____.
My commission expires: _____ NOTARY PUBLIC

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally came
before me this day and acknowledged that _____ is _____

Secretary of _____ a corporation, and that, by
authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its
_____, sealed with its corporate seal, and attested by
_____ as its _____ Secretary.

Witness my hand and notarial seal, this this _____ day of _____, 20 _____.
My commission expires: _____ NOTARY PUBLIC

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally appeared
before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this _____ day of _____, 20 _____.
My commission expires: _____ NOTARY PUBLIC

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally appeared
before me and acknowledged that he is _____
Secretary of American Community Bank, a corporation, and that by authority duly given and as the act of the corporation, the foregoing
instrument was signed in its name by its _____ Vice President, sealed with its corporate seal, and attested
by _____ as its _____ Secretary.

Witness my hand and notarial seal, this _____ day of _____, 20 _____.
My commission expires: _____ NOTARY PUBLIC

'110400073
RECEIVED
FEB 24 2005
TO PMP
110400073

MODIFICATION AND EXTENSION AGREEMENT

* Loan is 100% secured by ACB CD

Effective Date: Feb 22 2005

WITNESSETH:

INTEREST RATE

- ☐ Interest will be paid at the rate of _____ % per annum. This rate will be effective the date this CONTRACT is executed.
- ☐ Interest will be paid at a variable rate of interest known as the "Contract Rate." This rate will be effective the date this CONTRACT is executed. BORROWER acknowledges that the Contract Rate may increase or decrease based on changes in the Prime Rate published by BANK.

The Contract Rate will be the BANK'S Prime Rate plus _____ Percentage Points (the "Margin"). The initial Contract Rate is _____ %. The Minimum Contract Rate shall be _____ %, and the Maximum Contract Rate shall be _____ %, provided that at no time shall the Contract Rate exceed the maximum interest rate allowed by law to be charged by BANK. Increases or decreases in the Contract Rate of interest will: ☐ increase or decrease the amount of each payment due thereafter; ☐ increase or decrease the final payment due. The Contract Rate will ☐ be the Prime Rate in effect on the last day of the preceding month, plus the Margin and changes in the Contract Rate during a month will take effect as of the first business day of the following month: OR ☐ change daily assuming there is a change in the Prime Rate:

OR ☐ as often _____. The BANK'S Prime Rate is not intended or represented to be the lowest or most favorable rate of interest charged or offered by the BANK to its customers.

☐ Other: _____

PRINCIPAL AND INTEREST PAYMENT TERMS:

- ☒ Principal and Interest is payable in full at maturity on 04/15, 2005.
- ☐ Payable in consecutive _____ installments of: ☐ principal, or ☐ principal and interest, commencing on _____, 20____; and continuing on the same day of each calendar period thereafter, in _____ equal payments of \$_____, with one final payment of all remaining principle and interest due on _____.
- ☐ Interest is payable _____, commencing on _____, 20____ and continuing on the same day of each calendar period thereafter, with one final payment of all remaining principal and interest due on _____.
- ☐ Other: _____

In the event periodic accruals of interest shall exceed any periodic fixed payment amount described above, the fixed payment amount shall be immediately increased, or additional supplemental interest payments required on the same periodic basis as specified above (increased fixed payments or supplemental payments to be determined in the BANK'S sole discretion), in such amounts and at such times as shall be necessary to pay all accruals of interest for the period and all accruals of unpaid interest from previous periods. Such adjustments to the fixed payment amount or supplemental payments shall remain in effect for so long as the interest accruals shall exceed the original fixed payment amount and shall be further adjusted upward or downward to reflect changes in the variable interest rate. In no event shall the fixed payment amount be reduced below the original fixed payment amount specified above.

COLLATERAL:

Unless otherwise provided herein, it is expressly understood and agreed by the parties hereto that any and all collateral given as security to insure faithful performance by BORROWER and any THIRD PARTY of any and all obligations to BANK, however created, whether now existing or hereafter arising, shall remain as security for the previously described CONTRACT as modified hereby.

It is expressly understood and agreed by and between the parties hereto that any security agreement, deed of trust, chattel mortgage, trust receipt, assignment, contract or other writing granting BANK security for performance of any obligation to BANK is, to the extent inconsistent herewith, modified and changed to be consistent with the terms of this Modification and Extension Agreement.

- ☐ If marked, the aforesaid CONTRACT, as herein modified, and the performance of any loan agreement between the parties shall be additionally secured by collateral hereinafter described, and a new security instrument shall be executed by the BORROWER and/or THIRD PARTY:

Date: _____ Type of agreement: _____ From: _____

Collateral: _____

Date: _____ Type of agreement: _____ From: _____

Collateral: _____

☐ If marked, the collateral hereinafter described shall be and hereby is deleted as security for payment of the aforesaid

CONTRACT: _____

However, it is understood and agreed that BANK shall not be required or obligated to take any further steps to release said collateral from any lien or security unless BANK determines, in its sole discretion, that it may do so without consequence to its secured position and relative priority in other collateral, and unless BORROWER bears the reasonable cost of such action.

OTHER:

If the CONTRACT being modified by this Agreement is signed by more than one person or entity, the modified CONTRACT shall be the joint and several obligation of all signers, and each provision of the CONTRACT as modified shall apply to each and all of the signers and to the property and liability of each and all of them.

This Modification and Extension Agreement shall bind and inure to the benefit of the successors in interest hereto, and it is expressly understood and agreed that this Agreement is a modification only and not a novation. The original obligation of the BORROWER, as evidenced by the above-described CONTRACT is not extinguished hereby. It is also understood and agreed that, except for the above indicated modifications, said CONTRACT, and/or any other loan documents or agreements and all singular terms and conditions thereof, shall be and remain in force and effect and that this Modification and Extension Agreement shall not release or affect the liability of any co-makers, guarantors, obligors, or endorser of said CONTRACT. BORROWER specifically consents to the terms of this Modification and Extension Agreement and waives any objection thereto, and further affirms any obligation to BANK previously created. BANK expressly reserves all rights as to any party with right of recourse on the aforesaid CONTRACT.

IN WITNESS WHEREOF, this instrument has been executed by the parties hereto and delivered on the day and year first above written.

Attest:

ASSISTANT SECRETARY

(CORPORATE SEAL)

Attest:

SECRETARY

(CORPORATE SEAL)

American Community Bank

By: _____

VICE PRESIDENT

BORROWER

BORROWER - INDIVIDUAL

BORROWER - INDIVIDUAL

NAME OF CORPORATION OR PARTNERSHIP

By: _____

TITLE

By: _____

TITLE

TRUSTEE:

(Seal)

THIRD PARTY (Guarantor, Endorser, Etc.):

(Seal)

(Seal)

(Seal)

(Seal)

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ and
_____ each personally appeared before me and acknowledged
the due execution of the foregoing instrument.

Witness my hand and notarial seal, this _____ day of _____, 20 _____.

My commission expires: _____

NOTARY PUBLIC

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally came
before me this day and acknowledged that _____ is _____

Secretary of _____, a corporation, and that, by
authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its

_____, sealed with its corporate seal, and attested by
_____ as its _____ Secretary.

Witness my hand and notarial seal, this this _____ day of _____, 20 _____.

My commission expires: _____

NOTARY PUBLIC

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally appeared
before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this _____ day of _____, 20 _____.

My commission expires: _____

NOTARY PUBLIC

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally appeared

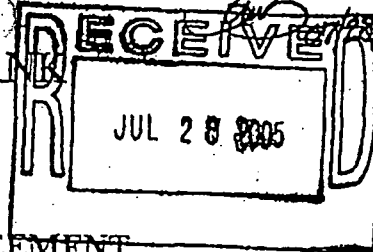
before me and acknowledged that he is _____
Secretary of American Community Bank, a corporation, and that by authority duly given and as the act of the corporation, the foregoing
instrument was signed in its name by its _____ Vice President, sealed with its corporate seal, and attested
by _____ as its _____ Secretary.

Witness my hand and notarial seal, this _____ day of _____, 20 _____.

My commission expires: _____

NOTARY PUBLIC

AMERICAN COMMUNITY BANK



Account Number: 710400073

MODIFICATION AND EXTENSION AGREEMENT

STATE OF NORTH CAROLINA

COUNTY OF: Union

Effective Date: July 25 2005

This Modification and Extension Agreement is made and entered into, this 25 day of July, 2005, by and between American Community Bank (hereinafter referred to as "BANK");

Michael Brown (hereinafter referred to as maker(s) or co-maker(s) on the Note describe below individually and collectively as "BORROWER");

C. W. Horne the trustee or successor trustee under the Deed of Trust described below (hereinafter referred to as "TRUSTEE"); and C. W. Horne the guarantor(s), endorser(s), or other obligor(s) (if any) on the Note described below, or the owner(s) other than the BORROWER (if any) of any property pledged to secure performance of BORROWER'S obligation to BANK (hereinafter referred to individually and collectively as "THIRD PARTY").

WITNESSETH:

WHEREAS, BORROWER is indebted to BANK in the original principal sum of:

One hundred fifty thousand (\$150,000)

which Note has a current principal balance of:

One hundred forty-nine thousand three hundred forty-three and 55/100 \$149,343⁵⁵

as evidenced by a:

☐ Note dated _____, made payable to _____

☒ Note and Security Agreement dated 12/29/00, which Note is made payable to _____

☒ Note and Deed of Trust dated 12/29/00, which Note is made payable to _____

and which Deed of Trust is recorded in Book _____, Page _____, in the _____ County Registry and relates to the real property described therein;

said Note, Note and Security Agreement, or Note and Deed of Trust, including any renewals, extensions, or modifications thereof, being hereinafter referred to as "CONTRACT," and said CONTRACT being incorporated and made a part hereof by reference; and

WHEREAS, BORROWER and BANK mutually desire to modify and amend the provisions of the CONTRACT in the manner hereinafter set forth, it being specifically understood that, except as herein modified and amended, the terms and provisions of the CONTRACT shall remain unchanged and continue in full force as therein written; and

WHEREAS, THIRD PARTY, if different from BORROWER, and TRUSTEE have agreed to the terms of this modification;

NOW, THEREFORE, by mutual agreement of the parties and in mutual consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree that said CONTRACT by modified and amended to provide as follows:

INTEREST RATE

- ☐ Interest will be paid at the rate of _____ % per annum. This rate will be effective the date this CONTRACT is executed.
- ☐ Interest will be paid at a variable rate of interest known as the "Contract Rate." This rate will be effective the date this CONTRACT is executed. BORROWER acknowledges that the Contract Rate may increase or decrease based on changes in the Prime Rate published by BANK.

The Contract Rate will be the BANK'S Prime Rate plus _____ Percentage Points (the "Margin"). The initial Contract Rate is _____ %.

The Minimum Contract Rate shall be _____ %, and the Maximum Contract Rate shall be _____ %, provided that at no time shall the Contract Rate exceed the maximum interest rate allowed by law to be charged by BANK. Increases or decreases in the Contract Rate of interest will: ☐ increase or decrease the amount of each payment due thereafter; ☐ increase or decrease the final payment due. The Contract Rate will ☐ be the Prime Rate in effect on the last day of the preceding month, plus the Margin and changes in the Contract Rate during a month will take effect as of the first business day of the following month; OR ☐ change daily assuming there is a change in the Prime Rate:

OR ☐ as often _____. The BANK'S Prime Rate is not intended or represented to be the lowest or most favorable rate of interest charged or offered by the BANK to its customers.

☐ Other: _____

PRINCIPAL AND INTEREST PAYMENT TERMS:

☒ Principal and Interest is payable in full at maturity on 17/15 2005.

☐ Payable in consecutive _____ installments of: ☐ principal, or ☐ principal and interest, commencing on _____, 20____ : and continuing on the same day of each calendar period thereafter, in _____ equal payments of \$_____, with one final payment of all remaining principle and interest due on _____.

☐ Interest is payable _____, commencing on _____, 20____ and continuing on the same day of each calendar period thereafter, with one final payment of all remaining principal and interest due on _____.

☐ Other: _____

In the event periodic accruals of interest shall exceed any periodic fixed payment amount described above, the fixed payment amount shall be immediately increased, or additional supplemental interest payments required on the same periodic basis as specified above (increased fixed payments or supplemental payments to be determined in the BANK'S sole discretion), in such amounts and at such times as shall be necessary to pay all accruals of interest for the period and all accruals of unpaid interest from previous periods. Such adjustments to the fixed payment amount or supplemental payments shall remain in effect for so long as the interest accruals shall exceed the original fixed payment amount and shall be further adjusted upward or downward to reflect changes in the variable interest rate. In no event shall the fixed payment amount be reduced below the original fixed payment amount specified above.

COLLATERAL:

Unless otherwise provided herein, it is expressly understood and agreed by the parties hereto that any and all collateral given as security to insure faithful performance by BORROWER and any THIRD PARTY of any and all obligations to BANK, however created, whether now existing or hereafter arising, shall remain as security for the previously described CONTRACT as modified hereby.

It is expressly understood and agreed by and between the parties hereto that any security agreement, deed of trust, chattel mortgage, trust receipt, assignment, contract or other writing granting BANK security for performance of any obligation to BANK is, to the extent inconsistent herewith, modified and changed to be consistent with the terms of this Modification and Extension Agreement.

☐ If marked, the aforesaid CONTRACT, as herein modified, and the performance of any loan agreement between the parties shall be additionally secured by collateral hereinafter described, and a new security instrument shall be executed by the BORROWER and/or THIRD PARTY:

Date:
Collateral:
Date:
Collateral:

Type of agreement:
Type of agreement:

From:
From:

___ If marked, the collateral hereinafter described shall be and hereby is deleted as security for payment of the aforesaid.

CONTRACT:

However, it is understood and agreed that BANK shall not be required or obligated to take any further steps to release said collateral from any lien or security unless BANK determines, in its sole discretion, that it may do so without consequence to its secured position and relative priority in other collateral, and unless BORROWER bears the reasonable cost of such actions.

___ The undersigned acknowledged receipt from you of the personal property described below in substitution for or in addition to the personal property originally delivered. It is understood that all the terms and provisions of the Original Note and Security Agreement executed by the undersigned on _____, covering the personal property originally delivered shall apply to the personal property now delivered and shall continue in full force and effect.

Personal Property Now Delivered:

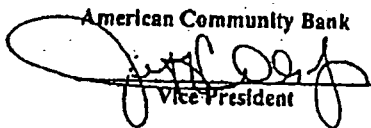
OTHER:

If the CONTRACT being modified by this Agreement is signed by more than one person or entity, the modified CONTRACT shall be the joint and several obligation of all signers, and each provision of the CONTRACT as modified shall apply to each and all of the signers and to the property and liability of each and all of them.

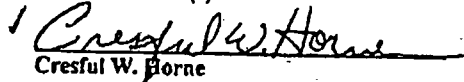
This Modification and Extension Agreement shall bind and inure to the benefit of the successors in interest hereto, and it is expressly understood and agreed that this Agreement is a modification only and not a novation. The original obligation of the BORROWER, as evidenced by the above described CONTRACT is not extinguished hereby. It is also understood and agreed that, except for the above indicated modifications, said CONTRACT, and/or any other loan documents or agreements and all singular terms and conditions thereof, shall be and remain in force and effect and that this Modification and Extension Agreement shall not release or affect the liability of any co-makers, guarantors, obligors, or endorers of said CONTRACT, BORROWER specifically consents to the terms of this Modification and Extension Agreement and waives any objection thereto, and further affirms any obligation to BANK previously created. BANK expressly reserves all rights as to any party with right of recourse on the aforesaid CONTRACT.

IN WITNESS WHEREOF, this instrument has been executed by the parties hereto and delivered on the day and year first above written.

American Community Bank


Vice President

GUARANTOR (s)


Cresful W. Horne

BORROWER:


Borrower-Individual Michael Brown

Borrower-Individual

Name of Corporation or Partnership

By _____
Title

By _____
Title

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ and
_____ each personally appeared before me and acknowledged
the due execution of the foregoing instrument.

Witness my hand and notarial seal, this _____ day of _____, 20 _____.

My commission expires: _____

NOTARY PUBLIC

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally came
before me this day and acknowledged that _____ is _____

Secretary of _____, a corporation, and that, by
authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its

_____, sealed with its corporate seal, and attested by
_____ as its _____ Secretary.

Witness my hand and notarial seal, this _____ day of _____, 20 _____.

My commission expires: _____

NOTARY PUBLIC

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally appeared
before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this _____ day of _____, 20 _____.

My commission expires: _____

NOTARY PUBLIC

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally appeared
before me and acknowledged that _____ he is _____

Secretary of American Community Bank, a corporation, and that by authority duly given and as the act of the corporation, the foregoing
instrument was signed in its name by its _____ Vice President, sealed with its corporate seal, and attested

by _____ as its _____ Secretary.

Witness my hand and notarial seal, this _____ day of _____, 20 _____.

My commission expires: _____

NOTARY PUBLIC

710400073

American Community Bank

Account Number: 710400073

Package Reviewed & Booked

10/15/07 3-29-07

MODIFICATION AND EXTENSION AGREEMENT

State of North Carolina

County of: Union County

Effective Date: March 15, 2007

This Modification and Extension Agreement is made and entered into, this 15th day of March, 2007 by and between American Community Bank (hereinafter referred to as "BANK"); and Michael Brown (hereinafter referred to as maker (s) or co-maker (s) on the Note described below individually and collectively as "BORROWER");

Trustee or successor trustee under the Deed of Trust described below (hereinafter referred to as "TRUSTEE"); and Cresful W. Horne the guarantor(s), endorser(s), or obligor(s) (if any) on the Note described below, or the owner(s) other than the BORROWER (if any) of any property pledged to secure performance of BORROWER'S obligation to BANK (hereinafter referred to individually and collectively as "THIRD PARTY").

WITNESSETH:

WHEREAS, BORROWER is indebted to BANK in the original principal sum of:

One hundred fifty thousand and no/100 (\$150,000.00).

which Note has a current principal balance of:

One hundred forty-nine thousand three hundred forty-three and 55/100 (\$149,343.55).

is evidenced by a:

Note dated , made payable to American Community Bank.

Note and Security Agreement dated 12/29/00 , which Note is made payable to American Community Bank.

Note and Deed of Trust dated 12/29/80 , which Note is made payable to American Community Bank and which Deed of Trust is recorded in Book Page 431, in the Chesterfield County Registry and relates to the real Property described therein;

said Note, Note and Security Agreement, or Note and Deed of Trust, including any renewals, extensions, or modifications thereof, being hereinafter referred to as "CONTRACT," and said CONTRACT being incorporated and made a part hereof by reference; and

WHEREAS, BORROWER and BANK mutually desire to modify and amend the provisions of the CONTRACT in the manner hereinafter set forth, it being specifically understood that, except as herein modified and amended, the terms and provisions of CONTRACT shall remain unchanged and continue in full force as therein written; and

WHEREAS, THIRD PARTY, if different from BORROWER, and TRUSTEE have agreed to the terms of this modification;

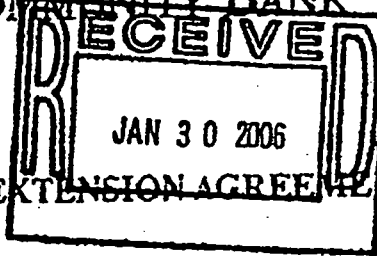
NOW, THEREFORE, by mutual agreement of the parties and in mutual consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree that said CONTRACT by modified and amended to provide as follows:

received

MAR 29 2007

BY:

AMERICAN COMMUNITY BANK



Account Number: 710400073

MODIFICATION AND EXTENSION AGREEMENT

OK to book as
CD-secured
(including accrued
interest)
- JNC to forward
summary memo to file. 01/30/06
[Signature]

STATE OF NORTH CAROLINA

COUNTY OF: Union

Effective Date: January 30, 2006

This Modification and Extension Agreement is made and entered into, this 30 day of January, 2006
by and between American Community Bank (hereinafter referred to as "BANK"):

Michael Brown (hereinafter referred to as maker(s) or co-makers)

on the Note describe below individually and collectively as "BORROWER":

Crescent W. Home the trustee or successor trustee under the Deed of Trust described below (hereinafter referred to as
"TRUSTEE"); and Crescent W. Home the guarantor(s), endorser(s),
or other obligor(s) (if any) on the Note described below, or the owner(s) other than the BORROWER (if any) of any property pledged
to secure performance of BORROWER'S obligation to BANK (hereinafter referred to individually and collectively as "THIRD PARTY").

WITNESSETH:

WHEREAS, BORROWER is indebted to BANK in the original principal sum of:
One Hundred fifty thousand & no/100 (\$ 150,000).

which Note has a current principal balance of:
One Hundred forty nine thousand three hundred forty three & 55/100 (\$ 149,343.55).

as evidenced by:

☒ Note dated 12/29/00 made payable to _____

☐ Note and Security Agreement dated _____ which Note is made payable

to _____

☒ Note and Deed of Trust dated 12/29/00 which Note is made payable

to _____

and which Deed of Trust is recorded in Book _____, Page _____, in the _____ County
Registry and relates to the real property described therein:

said Note, Note and Security Agreement, or Note and Deed of Trust, including any renewals, extensions, or modifications thereof, being
hereinafter referred to as "CONTRACT," and said CONTRACT being incorporated and made a part hereof by reference; and

WHEREAS, BORROWER and BANK mutually desire to modify and amend the provisions of the CONTRACT in the manner
hereinafter set forth, it being specifically understood that, except as herein modified and amended, the terms and provisions of the
CONTRACT shall remain unchanged and continue in full force as therein written; and

WHEREAS, THIRD PARTY, if different from BORROWER, and TRUSTEE have agreed to the terms of this modification;

NOW, THEREFORE, by mutual agreement of the parties and in mutual consideration of the premises and other good and valuable
consideration, the receipt of which is hereby acknowledged, the parties hereto agree that said CONTRACT by modified and amended
to provide as follows:

INTEREST RATE

- ☐ Interest will be paid at the rate of _____ % per annum. This rate will be effective the date this CONTRACT is executed.
- ☐ Interest will be paid at a variable rate of interest known as the "Contract Rate." This rate will be effective the date this CONTRACT is executed. BORROWER acknowledges that the Contract Rate may increase or decrease based on changes in the Prime Rate published by BANK.

The Contract Rate will be the BANK'S Prime Rate plus _____ Percentage Points (the "Margin"). The initial Contract Rate is _____ %. The Minimum Contract Rate shall be _____ %, and the Maximum Contract Rate shall be _____ %.

provided that at no time shall the Contract Rate exceed the maximum interest rate allowed by law to be charged by BANK. Increases or decreases in the Contract Rate of interest will: ☐ increase or decrease the amount of each payment due thereafter; ☐ increase or decrease the final payment due. The Contract Rate will ☐ be the Prime Rate in effect on the last day of the preceding month, plus the Margin and changes in the Contract Rate during a month will take effect as of the first business day of the following month; OR ☐ change daily assuming there is a change in the Prime Rate:

OR ☐ as often _____. The BANK'S Prime Rate is not intended or represented to be the lowest or most favorable rate of interest charged or offered by the BANK to its customers.

☐ Other: _____

PRINCIPAL AND INTEREST PAYMENT TERMS:

- ☒ Principal and Interest is payable in full at maturity on 7/15 2006.
- ☐ Payable in consecutive _____ installments of: ☐ principal, or ☐ principal and interest, commencing on _____, 20____; and continuing on the same day of each calendar period thereafter, in _____ equal payments of \$_____, with one final payment of all remaining principal and interest due on _____.
- ☐ Interest is payable _____, commencing on _____, 20____ and continuing on the same day of each calendar period thereafter, with one final payment of all remaining principal and interest due on _____.
- ☐ Other: _____

In the event periodic accruals of interest shall exceed any periodic fixed payment amount described above, the fixed payment amount shall be immediately increased, or additional supplemental interest payments required on the same periodic basis as specified above (increased fixed payments or supplemental payments to be determined in the BANK'S sole discretion), in such amounts and at such times as shall be necessary to pay all accruals of interest for the period and all accruals of unpaid interest from previous periods. Such adjustments to the fixed payment amount or supplemental payments shall remain in effect for so long as the interest accruals shall exceed the original fixed payment amount and shall be further adjusted upward or downward to reflect changes in the variable interest rate. In no event shall the fixed payment amount be reduced below the original fixed payment amount specified above.

COLLATERAL:

Unless otherwise provided herein, it is expressly understood and agreed by the parties hereto that any and all collateral given as security to insure faithful performance by BORROWER and any THIRD PARTY of any and all obligations to BANK, however created, whether now existing or hereafter arising, shall remain as security for the previously described CONTRACT as modified hereby.

It is expressly understood and agreed by and between the parties hereto that any security agreement, deed of trust, chattel mortgage, trust receipt, assignment, contract or other writing granting BANK security for performance of any obligation to BANK is, to the extent inconsistent herewith, modified and changed to be consistent with the terms of this Modification and Extension Agreement.

- ☐ If marked, the aforesaid CONTRACT, as herein modified, and the performance of any loan agreement between the parties shall be additionally secured by collateral hereinafter described, and a new security instrument shall be executed by the BORROWER and/or THIRD PARTY:

Date: _____ Type of agreement: _____ From: _____

Collateral: _____

Date: _____ Type of agreement: _____ From: _____

Collateral: _____

☐ If marked, the collateral hereinafter described shall be and hereby is deleted as security for payment of the aforesaid

CONTRACT: _____

However, it is understood and agreed that BANK shall not be required or obligated to take any further steps to release said collateral from any lien or security unless BANK determines, in its sole discretion, that it may do so without consequence to its secured position and relative priority in other collateral, and unless BORROWER bears the reasonable cost of such action.

OTHER:

If the CONTRACT being modified by this Agreement is signed by more than one person or entity, the modified CONTRACT shall be the joint and several obligation of all signers, and each provision of the CONTRACT as modified shall apply to each and all of the signers and to the property and liability of each and all of them.

This Modification and Extension Agreement shall bind and inure to the benefit of the successors in interest hereto, and it is expressly understood and agreed that this Agreement is a modification only and not a novation. The original obligation of the BORROWER, as evidenced by the above-described CONTRACT is not extinguished hereby. It is also understood and agreed that, except for the above indicated modifications, said CONTRACT, and/or any other loan documents or agreements and all singular terms and conditions thereof, shall be and remain in force and effect and that this Modification and Extension Agreement shall not release or affect the liability of any co-makers, guarantors, obligors, or endorser of said CONTRACT. BORROWER specifically consents to the terms of this Modification and Extension Agreement and waives any objection thereto, and further affirms any obligation to BANK previously created. BANK expressly reserves all rights as to any party with right of recourse on the aforesaid CONTRACT.

IN WITNESS WHEREOF, this instrument has been executed by the parties hereto and delivered on the day and year first above written.

Attest:

ASSISTANT SECRETARY

(CORPORATE SEAL)

Attest:

SECRETARY

(CORPORATE SEAL)

American Community Bank

By: _____

BORROWER

X Michael Brown (Seal)
Borrower - Individual

Borrower - Individual

NAME OF CORPORATION OR PARTNERSHIP

By: _____

TITLE

By: _____

TITLE

TRUSTEE:

(Seal)

THIRD PARTY (Guarantor, Endorser, Etc.):

X Cesford W. Home (Seal)
Cesford Home

(Seal)

(Seal)

(Seal)

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ and
_____ each personally appeared before me and acknowledged
the due execution of the foregoing instrument.

Witness my hand and notarial seal, this _____ day of _____, 20____.

My commission expires: _____

NOTARY PUBLIC

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally came
before me this day and acknowledged that _____ is _____

Secretary of _____, a corporation, and that, by
authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its

_____, sealed with its corporate seal, and attested by
_____ as its _____ Secretary.

Witness my hand and notarial seal, this this _____ day of _____, 20____.

My commission expires: _____

NOTARY PUBLIC

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally appeared
before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this _____ day of _____, 20____.

My commission expires: _____

NOTARY PUBLIC

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally appeared

before me and acknowledged that _____ he is _____
Secretary of American Community Bank, a corporation, and that by authority duly given and as the act of the corporation, the foregoing
instrument was signed in its name by its _____ Vice President, sealed with its corporate seal, and attested
by _____ as its _____ Secretary.

Witness my hand and notarial seal, this _____ day of _____, 20____.

My commission expires: _____

NOTARY PUBLIC

American Community Bank

Account Number: 710400073

MODIFICATION AND EXTENSION AGREEMENT

State of North Carolina

County of: Union County

Effective Date: August 28, 2006

This Modification and Extension Agreement is made and entered into, this 28 day of August, 2006 by and between American Community Bank (hereinafter referred to as "BANK"); and Michael Brown (hereinafter referred to as maker (s) or co-maker (s) on the Note described below individually and collectively as "BORROWER");

Trustee or successor trustee under the Deed of Trust described below (hereinafter referred to as "TRUSTEE"); and Cresful W. Horne the guarantor(s), endorser(s), or obligor(s) (if any) on the Note described below, or the owner(s) other than the BORROWER (if any) of any property pledged to secure performance of BORROWER'S obligation to BANK (hereinafter referred to individually and collectively as "THIRD PARTY").

WITNESSETH:

WHEREAS, BORROWER is indebted to BANK in the original principal sum of: (5150,000.00).
One hundred fifty thousand and no/100
which Note has a current principal balance of:
One hundred forty-nine thousand three hundred forty-three and 55/100 (\$149,343.55).
is evidenced by a:

Note dated , made payable to American Community Bank.

Note and Security Agreement dated 12/29/00 , which Note is made payable to American Community Bank.

Note and Deed of Trust dated 12/29/00 , which Note is made payable to American Community Bank and which Deed of Trust is recorded in Book Page 431, in the Chesterfield County Registry and relates to the real Property described therein;

said Note, Note and Security Agreement, or Note and Deed of Trust, including any renewals, extensions, or modifications thereof, being hereinafter referred to as "CONTRACT," and said CONTRACT being incorporated and made a part hereof by reference; and

WHEREAS, BORROWER and BANK mutually desire to modify and amend the provisions of the CONTRACT in the manner hereinafter set forth, it being specifically understood that, except as herein modified and amended, the terms and provisions of CONTRACT shall remain unchanged and continue in full force as therein written; and

WHEREAS, THIRD PARTY, if different from BORROWER, and TRUSTEE have agreed to the terms of this modification;

NOW, THEREFORE, by mutual agreement of the parties and in mutual consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree that said CONTRACT by modified and amended to provide as follows:

Date:
Collateral:
Date:
Collateral:

Type of agreement:
Type of agreement:

From:
From:

___ If marked, the collateral hereinafter described shall be and hereby is deleted as security for payment of the aforesaid.

CONTRACT:

However, it is understood and agreed that BANK shall not be required or obligated to take any further steps to release said collateral from any lien or security unless BANK determines, in its sole discretion, that it may do so without consequence to its secured position and relative priority in other collateral, and unless BORROWER bears the reasonable cost of such actions.

___ The undersigned acknowledged receipt from you of the personal property described below in substitution for or in addition to the personal property originally delivered. It is understood that all the terms and provisions of the Original Note and Security Agreement executed by the undersigned on ___, covering the personal property originally delivered shall apply to the personal property now delivered and shall continue in full force and effect.

Personal Property Now Delivered:

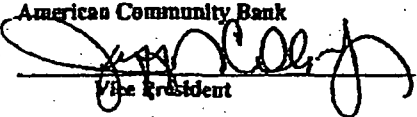
OTHER:

If the CONTRACT being modified by this Agreement is signed by more than one person or entity, the modified CONTRACT shall be the joint and several obligation of all signers, and each provision of the CONTRACT as modified shall apply to each and all of the signers and to the property and liability of each and all of them.

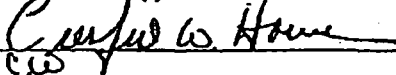
This Modification and Extension Agreement shall bind and inure to the benefit of the successors in interest hereto, and it is expressly understood and agreed that this Agreement is a modification only and not a novation. The original obligation of the BORROWER, as evidenced by the above described CONTRACT is not extinguished hereby. It is also understood and agreed that, except for the above indicated modifications, said CONTRACT, and/or any other loan documents or agreements and all singular terms and conditions thereof, shall be and remain in force and effect and that this Modification and Extension Agreement shall not release or affect the liability of any co-makers, guarantors, obligors, or endorser of said CONTRACT. BORROWER specifically consents to the terms of this Modification and Extension Agreement and waives any objection thereto, and further affirms any obligation to BANK previously created. BANK expressly reserves all rights as to any party with right of recourse on the aforesaid CONTRACT.

IN WITNESS WHEREOF, this instrument has been executed by the parties hereto and delivered on the day and year first above written.

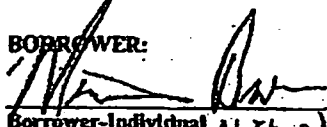
American Community Bank


Vice President

GUARANTOR (s)


C. W. Howe

BORROWER:


Borrower-Individual Michael

Borrower-Individual

Name of Corporation or Partnership

By _____
Title

By _____
Title

INTEREST RATE

Interest will be paid at the rate of _____ % per annum. This rate will be effective the date of this CONTRACT is executed.

Interest will be paid at a variable rate of interest known as the "Contract Rate." This rate will be effective the date this CONTRACT is executed. BORROWER acknowledges that the Contract Rate may increase or decrease based on changes in the Prime Rate published by BANK.

The Contract Rate will be the BANK'S Prime Rate plus _____ Percentage Points (the "Margin"). The initial Contract Rate is _____ %. The Minimum Contract Rate shall be _____ %, and the Maximum Contract Rate shall be _____ %, provided that at no time shall the Contract Rate exceed the maximum interest rate allowed by law to be charged by BANK. Increases or decreases in the Contract Rate of interest will: _____ Increase or decrease the amount of each payment due thereafter; Increase or decrease the final payment due. The Contract Rate will change daily assuming there is a change in the Prime Rate. The BANK'S Prime Rate is not intended or represented to be the lowest or most favorable rate of interest charged or offered by the BANK to its customers.

Other:

PRINCIPAL AND INTEREST PAYMENT TERMS:

Principal and Interest is payable in full at maturity on February 05, 2007.

Payable in consecutive _____ installments of: principal, or principal and interest, commencing on _____, 2004 and continuing on the same day of each calendar period thereafter, in equal payments of \$ _____, with one final payment of all remaining principle and interest due on _____

Interest is payable _____, commencing on _____, 2004 and continuing on the same day of each calendar period thereafter, with one final payment of all remaining principal and interest due on _____

In the event periodic accruals of interest shall exceed any periodic fixed payment amount described above, the fixed payment amount shall be immediately increased, or additional supplemental interest payments required on the same periodic basis as specified above (increased fixed payments or supplemental payments to be determined in the BANK'S sole discretion), in such amounts and at such times as shall be necessary to pay all accruals of interest for the period and all accruals of unpaid interest from previous periods. Such adjustments to the fixed payment amount or supplemental payments shall remain in effect for so long as the interest accruals shall exceed the original fixed payment amount and shall be further adjusted upward or downward to reflect changes in the variable interest rate. In no event shall the fixed payment amount be reduced below the original fixed payment amount specified above.

COLLATERAL:

Unless otherwise provided herein, it is expressly understood and agreed by the parties hereto that any and all collateral given as security to insure faithful performance by BORROWER and any THIRD PARTY of any and all obligations to BANK, however created, whether now existing or hereafter arising, shall remain as security for the previously described CONTRACT as modified hereby.

It is expressly understood and agreed by and between the parties hereto that any security agreement, deed of trust, chattel mortgage, trust receipt, assignment, contract or other writing granting BANK security for performance of any obligation to BANK is, to the extent inconsistent herewith, modified and changed to be consistent with the terms of this Modification and Extension Agreement.

The aforesaid CONTRACT, as herein modified, and the performance of any loan agreement between parties shall be additionally secured by the collateral hereinafter described, and a new security instrument shall be executed by the BORROWER and/or THIRD PARTY.

INTEREST RATE

Interest will be paid at the rate of 7.25% per annum. This rate will be effective the date of this CONTRACT is executed.

Interest will be paid at a variable rate of interest known as the "Contract Rate;" This rate will be effective the date this CONTRACT is executed. BORROWER acknowledges that the Contract Rate may increase or decrease based on changes in the Prime Rate published by BANK.

The Contract Rate will be the BANK'S Prime Rate plus Percentage Points (the "Margin"). The Initial Contract Rate is % . The Minimum Contract Rate shall be %, and the Maximum Contract Rate shall be %, provided that at no time shall the Contract Rate exceed the maximum interest rate allowed by law to be charged by BANK. Increases or decreases in the Contract Rate of interest will: increase or decrease the amount of each payment due thereafter; increase or decrease the final payment due. The Contract Rate will change daily assuming there is a change in the Prime Rate. The BANK'S Prime Rate is not intended or represented to be the lowest or most favorable rate of interest charged or offered by the BANK to its customers.

Other:

PRINCIPAL AND INTEREST PAYMENT TERMS:

Principal and Interest is payable in full at maturity on May 10, 2008.

Payable in consecutive Installments of: principal, or principal and interest, commencing on , 2004 and continuing on the same day of each calendar period thereafter, in equal payments of \$, with one final payment of all remaining principle and interest due on

Interest is payable , commencing on , 2004 and continuing on the same day of each calendar period thereafter, with one final payment of all remaining principal and interest due on

In the event periodic accruals of interest shall exceed any periodic fixed payment amount described above, the fixed payment amount shall be immediately increased, or additional supplemental interest payments required on the same periodic basis as specified above (increased fixed payments or supplemental payments to be determined in the BANK'S sole discretion), in such amounts and at such times as shall be necessary to pay all accruals of interest for the period and all accruals of unpaid interest from previous periods. Such adjustments to the fixed payment amount or supplemental payments shall remain in effect for so long as the interest accruals shall exceed the original fixed payment amount and shall be further adjusted upward or downward to reflect changes in the variable interest rate. In no event shall the fixed payment amount be reduced below the original fixed payment amount specified above.

COLLATERAL:

Unless otherwise provided herein, it is expressly understood and agreed by the parties hereto that any and all collateral given as security to insure faithful performance by BORROWER and any THIRD PARTY of any and all obligations to BANK, however created, whether now existing or hereafter arising, shall remain as security for the previously described CONTRACT as modified hereby.

It is expressly understood and agreed by and between the parties hereto that any security agreement, deed of trust, chattel mortgage, trust receipt, assignment, contract or other writing granting BANK security for performance of any obligation to BANK is, to the extent inconsistent herewith, modified and changed to be consistent with the terms of this Modification and Extension Agreement.

The aforesaid CONTRACT, as herein modified, and the performance of any loan agreement between parties shall be additionally secured by the collateral hereinafter described, and a new security instrument shall be executed by the BORROWER and/or THIRD PARTY.

710400073

American Community Bank

Account Number: 710400073

MODIFICATION AND EXTENSION AGREEMENT

State of North Carolina

County of: Union County

Effective Date: October 29, 2007

This Modification and Extension Agreement is made and entered into, this 29th day of October, 2007 by and between American Community Bank (hereinafter referred to as "BANK"); and Michael Brown (hereinafter referred to as maker (s) or co-maker (s) on the Note described below individually and collectively as "BORROWER"):

Trustee or successor trustee under the Deed of Trust described below (hereinafter referred to as "TRUSTEE"); and Cresful W. Horne the guarantor(s), endorser(s), or obligor(s) (if any) on the Note described below, or the owner(s) other than the BORROWER (if any) of any property pledged to secure performance of BORROWER'S obligation to BANK (hereinafter referred to individually and collectively as "THIRD PARTY").

WITNESSETH:

WHEREAS, BORROWER is indebted to BANK in the original principal sum of: One hundred fifty thousand and no/100 (\$150,000.00).
which Note has a current principal balance of:
One hundred forty-nine thousand three hundred forty-three and 55/100 (\$149,343.55).
is evidenced by a:

Note dated _____, made payable to American Community Bank.

Note and Security Agreement dated 12/29/00, which Note is made payable to American Community Bank.

Note and Deed of Trust dated 12/29/00, which Note is made payable to American Community Bank and which Deed of Trust is recorded in Book 00028 Page 431, in the Chesterfield County Registry and relates to the real Property described therein;

said Note, Note and Security Agreement, or Note and Deed of Trust, including any renewals, extensions, or modifications thereof, being hereinafter referred to as "CONTRACT," and said CONTRACT being incorporated and made a part hereof by reference; and

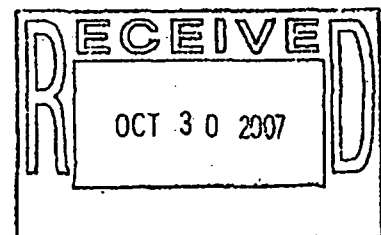
WHEREAS, BORROWER and BANK mutually desire to modify and amend the provisions of the CONTRACT in the manner hereinafter set forth, it being specifically understood that, except as herein modified and amended, the terms and provisions of CONTRACT shall remain unchanged and continue in full force as therein written; and

WHEREAS, THIRD PARTY, if different from BORROWER, and TRUSTEE have agreed to the terms of this modification;

NOW, THEREFORE, by mutual agreement of the parties and in mutual consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree that said CONTRACT by modified and amended to provide as follows:

- 1 -

Package Reviewed & Booked
10/30/07
SW
Input Checked
11-2-07



Date: _____ Type of agreement: _____ From: _____

Collateral: _____

Date: _____ Type of agreement: _____ From: _____

Collateral: _____

☐ If marked, the collateral hereinafter described shall be and hereby is deleted as security for payment of the aforesaid

CONTRACT:

However it is understood and agreed that BANK shall not be required or obligated to take any further steps to release said collateral from any lien or security unless BANK determines, in its sole discretion, that it may do so without consequence to its secured position and relative priority in other collateral, and unless BORROWER bears the reasonable cost of such action.

OTHER:

If the CONTRACT being modified by this Agreement is signed by more than one person or entity, the modified CONTRACT shall be the joint and several obligation of all signers, and each provision of the CONTRACT as modified shall apply to each and all of the signers and to the property and liability of each and all of them.

This Modification and Extension Agreement shall bind and inure to the benefit of the successors in interest hereto, and it is expressly understood and agreed that this Agreement is a modification only and not a novation. The original obligation of the BORROWER, as evidenced by the above-described CONTRACT is not extinguished hereby. It is also understood and agreed that, except for the above indicated modifications, said CONTRACT, and/or any other loan documents or agreements and all singular terms and conditions thereof, shall be and remain in force and effect and that this Modification and Extension Agreement shall not release or affect the liability of any co-makers, guarantors, obligors, or endorser of said CONTRACT. BORROWER specifically consents to the terms of this Modification and Extension Agreement and waives any objection thereto, and further affirms any obligation to BANK previously created. BANK expressly reserves all rights as to any party with right of recourse on the aforesaid CONTRACT.

IN WITNESS WHEREOF, this instrument has been executed by the parties hereto and delivered on the day and year first above written.

Attest:

ASSISTANT SECRETARY

(CORPORATE SEAL)

American Community Bank
By: _____
VICE PRESIDENT

BORROWER

MICHAEL B. BROWN (Seal)

BORROWER - INDIVIDUAL

NAME OF CORPORATION OR PARTNERSHIP
By: _____
TITLE

By: _____
TITLE

TRUSTEE:

(Seal)

THIRD PARTY (Guarantor, Endorser, Etc.):

① _____
CRESFUL W. HOLME (Seal)

(Seal)

(Seal)

(Seal)

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

000028

To All Whom These Presents May Concern:

Whereas, Michael R. Brown

hereinafter called Mortgagor, is indebted to American Community Bank, 7003 East Marshville Boulevard, Marshville, NC 28103,

hereinafter called Mortgagee, as evidenced by that certain promissory note dated December 29, 2000, the terms of which note and any agreement modifying it being incorporated herein by reference, in the principal amount of

One hundred fifty thousand and 00/100----- Dollars (\$ 150,000.00),

with interest thereon at the rate of ten percent

per centum (10.0 %) per annum, until paid, said principal and interest being payable

in full on or before December 30, 2001. ~~installment of~~

~~Dollars (\$)~~

~~and the principal and interest to be paid in full~~

~~at year~~

~~xxx~~

~~xxx~~

~~and the principal and interest to be paid in full~~

~~at year~~

~~xxx~~

~~the principal and interest to be paid in full~~

000431

and Whereas, the Mortgagor may hereafter become indebted to the Mortgagee for renewals, extensions, modifications, or future advances and readvances on the same or different terms or rates of interest under the aforesaid note or other promissory notes, in a sum not to exceed \$ 150,000.00

and Whereas, the Mortgagor may hereafter become indebted to the Mortgagee for reasonable sums advanced to protect the Mortgagee's security or title in the herein described property, including but not limited to payment of taxes, insurance premiums, public assessments, repairs, court costs, and attorney's fees, the full amounts of which shall be secured hereby without limitation.

Now Know All Men by These Presents,

That the Mortgagor, for and in consideration of the aforesaid debt, the better securing its payment to the Mortgagee, and the further sum of One Dollar in hand paid to the Mortgagor by the Mortgagee, the receipt of which is hereby acknowledged, has granted, bargained, sold, and released, and by these presents does grant, bargain, sell, and release unto the said AMERICAN COMMUNITY BANK, its successors and assigns forever:

(See property description on next page or attached Schedule A, incorporated herein by reference)

All that certain piece, parcel, or lot of land, with the improvements thereon, situate, lying, and being on the west side of Highway S-13-29, approximately 8 miles south of the Town of Chesterfield, in the County of Chesterfield, State of South Carolina, and bounded as follows: beginning at an iron on the centerline of Highway S-13-29 and running thence S 26°-28'-03" E along the centerline of Highway S-13-29 for a distance of 621.46 feet to its intersection with the centerline of Highway S-13-657; thence S 26°-52'-05" E along the centerline of Highway S-13-29 for a distance of 881.13 feet to a point; thence S 26°-50'-01" E along the centerline of Highway S-13-29 for a distance of 494.02 feet to a point; thence S 25°-45'-54" E along the centerline of Highway S-13-29 for a distance of 201.77 feet to a point; thence S 21°-42'-37" E along the centerline of Highway S-13-29 for a distance of 122.05 feet to an iron; thence S 73°-28'-41" W for a distance of 241.14 feet to a point; thence S 16°-35'-21" E for a distance of 209.82 feet to a point; thence S 73°-28'-41" W for a distance of 1528.15 feet to an iron; thence N 09°-37'-22" W for a distance of 87.31 feet to a steel fence post; thence N 25°-03'-16" W for a distance of 1292.09 feet to a steel fence post; thence S 55°-13'-40" W along the northern side of an abandoned county road for a distance of 430.16 feet to a point; thence N 02°-52'-37" W for a distance of 208.38 feet to a point; thence N 02°-49'-25" W for a distance of 468.20 feet to a concrete post; thence N 44°-48'-28" E for a distance of 275.74 feet to a point; thence N 12°-24'-36" W for a distance of 764.63 feet to an iron; thence N 84°-15'-47" E for a distance of 1531.58 feet to the point of beginning. Said property is more particularly shown and described as 106.85 ACRES according to a plat of survey prepared by William G. Martin, P.L.S., on the 5th day of July, 1998, which plat, recorded in Plat Book C, at page 7-I, in the Office of the Clerk of Court for Chesterfield County, is by reference incorporated herein as a part of this description.

This is the identical property conveyed to the Mortgagor by deed of C. W. Horne Sawmill & Chip Company, Inc. dated September 25, 1998, and recorded in Deed Book 368, at page 829, in the Office of the Clerk of Court for Chesterfield County.

This conveyance is expressly made subject to any existing rights-of-way for the state and county roads shown of the aforesaid plat.

TOGETHER with all and singular the rights, members, hereditaments, and appurtenances to the premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the said Mortgagee, American Community Bank, its successors and assigns forever.

AND the Mortgagor does hereby bind himself and his heirs, executors, administrators, and successors to warrant and forever defend all and singular the said premises unto the said Mortgagee, its heirs, successors, and assigns, from and against the said Mortgagor and against every other person whomsoever lawfully claiming or to claim the same or any part thereof.

The Mortgagor COVENANTS AND AGREES with the Mortgagee as follows:

1. **TAXES AND ASSESSMENTS.** The Mortgagor shall pay or cause to be paid promptly all taxes and assessments or other charges which constitute or are secured by a lien upon the mortgaged premises, and in default thereof, the holder of this mortgage may pay the same, and such payment shall become a part of the debt secured by this mortgage, whereupon the entire debt secured by this mortgage shall immediately become due and payable, if the Mortgagee shall so elect.
2. **INSURANCE.** The Mortgagor shall keep any and all improvements now existing or hereafter erected upon the mortgaged premises insured, at the Mortgagor's expense, in an amount not less than the original principal amount of the loan secured by this mortgage, and assign the policy of insurance to the Mortgagee, its, his, her, or their executors, administrators, successors, or assigns. And should the Mortgagor at any time fail or neglect so to do, then the Mortgagee or holder hereof may obtain such insurance and charge all of the premiums therefor as an additional debt secured by this mortgage. In the event of foreclosure, all right, title, and interest of the Mortgagor in and to any insurance policies then in force shall pass to the purchaser.
3. **REPAIRS.** The Mortgagor shall keep the premises in as good order and condition as on the date hereof, reasonable wear and tear excepted, and shall not commit or permit any waste thereof. Should the Mortgagor fail so to do, the Mortgagee may enter upon the premises to make reasonable and necessary repairs and charge the Mortgagor for the expense thereof as an advance hereunder.
4. **TRANSFER OF TITLE.** At the option of the Mortgagee, all sums secured by this mortgage shall become immediately due and payable if the Mortgagor shall convey the mortgaged premises or if title thereto shall become vested in any other person in any manner whatsoever other than by death of the Mortgagor. The Mortgagee shall have waived such right to accelerate if, prior to sale or transfer, Mortgagee shall enter into written agreement with the person to whom the subject property is to be sold or transferred that the interest payable on sums secured by this mortgage and the terms of this mortgage shall be as the Mortgagee may request from said Transferee.
5. **PAYMENT AND DEFAULT.** The Mortgagor shall promptly pay the principal and interest on the indebtedness secured by this mortgage, at the times and in the manner provided by the Mortgagor's promissory note. In the event of default in any of the payments of interest, principal, taxes, assessments, or insurance premiums as herein provided, the Mortgagee may, without notice to the Mortgagor, declare all sums secured by this mortgage immediately due and payable and proceed with foreclosure thereof. Upon such default, the Mortgagee shall be entitled to and the Mortgagor hereby assigns any and all rents and profits arising from the mortgaged premises to be applied to the indebtedness of the Mortgagor.
6. **FORECLOSURE.** In the case of foreclosure of this mortgage, by suit or otherwise, the Mortgagee shall recover of the Mortgagor the costs of any action and a reasonable attorney's fee, which shall be secured by this mortgage, and shall be included in a judgment of foreclosure.

000433

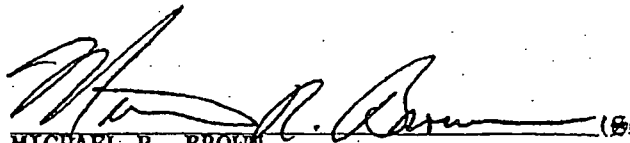
PROVIDED ALWAYS, NEVERTHELESS, that the Mortgagor shall hold and enjoy the premises above conveyed until the occurrence of a default under the terms of this mortgage or of a promissory note secured hereby. And it is the true intent and meaning of the Mortgagor and Mortgagee that if the Mortgagor shall well and truly pay or cause to be paid to the Mortgagee the debt or sum of money aforesaid with interest thereon, if any be due, according to the true intent and meaning of the said note, and any other sums which may be due and payable hereunder, then the estate hereby granted shall cease, determine, and be utterly null and void; otherwise to remain in full force and effect.

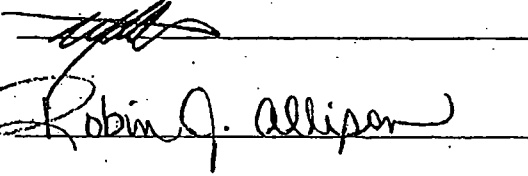
The covenants herein contained shall bind, and the benefits and advantages inure to, the respective heirs, executors, administrators, successors, and assigns of the parties hereto. The term "Mortgagee" shall include any payee of the indebtedness hereby secured or any transferee thereof whether by operation of law or otherwise.

in the year of our Lord ~~two thousand nine hundred and~~
in the two hundred and twenty-fifth
of the United States of America.

year of Sovereignty and Independence

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF


MICHAEL R. BROWN


Robin J. Allison

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

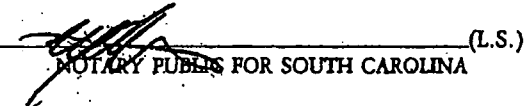
PERSONALLY appeared before me Robin J. Allison

and made oath that she saw the within-named Michael R. Brown

sign, seal, and, as his act and deed, deliver the within-written mortgage for the uses and purposes therein mentioned and that she, with Miller S. Ingram, Jr. witnessed the execution thereof

SWORN to before me this 29th

day of December, 2000


(L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 12/11/07

Form 9-9-00 - 9-9-00 30
Chesterfield, South Carolina 29590

Form #3

COUNTY OF CHESTERFIELD

MICHAEL R. BROWN

To

AMERICAN COMMUNITY BANK

MORTGAGE OF REAL ESTATE

FILED FOR RECORD AT 2:53 P.M. O'CLOCK ON

THE 2 DAY OF Jan. 2001 AND

RECORDED IN BOOK 346 AT PAGE 431-432

CLERK OF COURT/REGISTRAR OF MORTGAGES CONVEYANCE

PAGE

FILED COUNTY, SC

AN 2 PM 2 33

FILED
CLERK OF COURT

MILLER S. INGRAM, JR.
ATTORNEY AT LAW D.C. ID. #2097
POST OFFICE BOX 39
CHERAM, SOUTH CAROLINA 29520
(843) 537-8585

EXHIBIT C



FedEx Express
Customer Support Trace
3875 Airways Boulevard
Module H, 4th Floor
Memphis, TN 38116

Mail: PO Box 727
Memphis, TN 38194-4643
Telephone: 901-369-3600

March 1, 2010

Dear Customer:

The following is the proof-of-delivery for tracking number 798414214957.

Delivery Information:

Status:	Delivered	Delivery location:	2217 D MATTHEWS TOWNSHIP PKWY Matthews, NC 28105
Signed for by:	M.BELL	Delivery date:	Feb 24, 2010 08:58
Service type:	Priority Envelope		



Shipping Information:

Tracking number:	798414214957	Ship date:	Feb 23, 2010
		Weight:	0.5 lbs/0.2 kg

Recipient:
Michael R. Brown
2217 D Matthews Township Pkwy
Apt. 113
Matthews, NC 28105 US

Shipper:
James W. Sheedy
Driscoll Sheedy, P.A.
11520 North Community House Road
Suite 200
Charlotte, NC 28277 US

Reference

Brown

Thank you for choosing FedEx Express.

FedEx Worldwide Customer Service
1.800.GoFedEx 1.800.463.3339

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

AMERICAN COMMUNITY BANK
a division of Yadkin Valley Bank & Trust,

Plaintiff,

vs.

MICHAEL R. BROWN,
C. W. HORNE,
SHORTT AUCTION & REALTY CO., Inc.,
BANK OF AMERICA, N.A., and
JAGUAR PORTFOLIO, LLC,

Defendants.

MICHAEL R. BROWN,

Cross-Plaintiff,

vs.

C. W. HORNE,
AMERICAN COMMUNITY BANK,
JOHN DOE, a fictitious person representing
the class of all unknown adult, mentally
competent, unimprisoned, non-military
persons, who were conspirators in the
causes of action described herein; and
RICHARD ROE, another fictitious person
representing the class of all unknown
persons who are either: under the age of
eighteen (18) years, imprisoned, or in the
Armed Forces, and who were
conspirators in the causes of action
herein; and all persons entitled to claim
under or through them, or any of them,

Cross-Defendants.

IN THE COURT OF COMMON PLEAS

FOURTH JUDICIAL CIRCUIT

ANSWER, COUNTERCLAIMS
AND CROSSCLAIMS

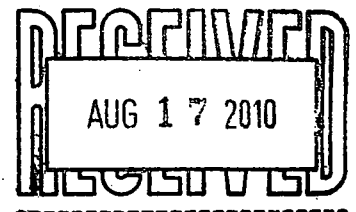
A True Copy, Attest

Faye S. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

C. A. No. 10-CP-13-0164

JURY TRIAL DEMANDED



Comes now the Defendant MICHAEL R. BROWN, and for his responsive pleading herein
would allege as follows:

FOR A FIRST DEFENSE

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

2. As to the allegations of the Complaint herein as to:

venue,

corporate identity of any parties,

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

the existence of any breach on the part of the Defendant MICHAEL R. BROWN,

the existence of any breach on the part of the Defendant C. W. HORNE,

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

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

BROWN Defendant for such monies,

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

BROWN, or any other matter alleged or referenced in the Complaint herein,

the said Defendant BROWN:

admits all matters herein which are evidenced by public record, and

alleges that he is without sufficient information, knowledge or belief as to the remaining factual allegations to respond and therefore denies the same and demand strict proof thereof.

FOR A SECOND, PARTIAL DEFENSE

FAILURE TO MITIGATE DAMAGES

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

4. This civil action arises out of Plaintiff's claim to a note and mortgage dated December 29, 2000. At the time of closing of the mortgage transaction, the Plaintiff required the Defendant BROWN to obtain and pay for Mortgagee's Title Insurance.

5. Defendant BROWN obtained such insurance for the Plaintiff from the lawyer designated by the Plaintiff and by his co-signer and co-debtor Defendant C. W. HORNE.
6. At the time of Defendant BROWN's purchase of the subject real property in September, 1998 and at the time of the transaction which is the subject of Plaintiff's claim, HORNE and his counsel were aware that the subject real property held hazardous waste and was subject to an extensive lien thereon held by the South Carolina Department of Health and Environmental Control (DHEC).
7. On knowledge and information, the said hazardous waste and DHEC lien rendered, and continue to render, the subject real property unmarketable.
8. Neither at the time of Defendant BROWN's purchase, nor at the time of the subject mortgage transaction was BROWN informed of the subject real property's unmarketability due to the hazardous waste and lien.
9. On knowledge and information, Plaintiff was aware of such contamination and unmarketability, with in fact or constructively.
10. Neither at the time of Defendant BROWN's purchase, nor at the time of the subject mortgage transaction was BROWN offered in writing by the attorney selected by HORNE and the Plaintiff of the opportunity to purchase an owner's title insurance policy which would have either a) informed him of the true state of the subject real property or b) given him coverage against the same.
11. On knowledge and information, the failure to offer the Defendant BROWN the opportunity to purchase title insurance as referenced above is in violation of South Carolina Department of Insurance Regulation § 69-18(2)(c)(1)(i).
12. The intended source of the Defendant's funds to repay the subject mortgage loan was a subdivision and sale of the subject real property. The Defendant lacked, and lacks, any other financial ability to repay the subject mortgage loan. The Plaintiff and HORNE were aware of the Defendant's financial source and of his financial ability to pay otherwise.
13. As a consequence of the closing of the mortgage transaction, the Plaintiff obtained a Mortgagee's Title Insurance policy from C. W. HORNE's counsel, paid for by Defendant BROWN, issued by Atlantic Title Insurance Company in the amount of \$150,000.00 and bearing Policy Number M-157931. A copy of that policy is attached hereto and incorporated herein.
14. The said Title Policy does not mention the said hazardous waste or DHEC lien and, on knowledge and information, insures over the same.

15. In or about early 2000 after having engaged various persons to survey and sell portions of the subject real property, Defendant BROWN was for the first time made aware of the hazardous waste and the DHEC lien on the subject real property.

16. At or about the same time, Defendant BROWN learned for the first time, from other legal counsel, that as a result of the said hazardous waste and DHEC lien, the subject real property, or the greater part thereof, was unmarketable.

17. On learning of the true condition of the subject real property, Defendant BROWN made request of the Plaintiff that it invoke the said Atlantic Title Insurance policy and thereby cure the problems that caused the unmarketability of the subject real property.

18. On knowledge and information, the Plaintiff has not, to this date, made any attempt to invoke or make a claim under its said title insurance policy.

19. As a result of the Plaintiff's failure to invoke or make a claim under its title insurance policy, Defendant BROWN has been unable to market the subject real property or to repay any indebtedness due on the claimed mortgage debt.

20. On knowledge and information, the Plaintiff's failure to invoke or make a claim on its title insurance policy is a failure to mitigate its damages.

21. On knowledge and information, the Plaintiff's failure to mitigate its damages bar it from recovery of that portion which it has failed to mitigate.

FOR A THIRD DEFENSE AND CROSSCLAIM

CIVIL CONSPIRACY

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

23. On knowledge and information, the Defendant C. W. HORNE knew of the contamination of the subject real property with hazardous waste prior to the consummation of the transaction that included or resulted in the note and mortgage which form the basis of the Plaintiff's Complaint.

24. In the alternative to the allegations of the Paragraph above, some third person or persons (referenced herein as JOHN DOE and/or RICHARD ROE) having knowledge of the contamination of the subject real property with hazardous waste prior to the consummation of the transaction informed C. W. HORNE prior to its actual sale as set forth above.

25. On knowledge and information, such third persons combine with C. W. HORNE in, and for the purpose of, effecting his sale of the said real property to Defendant BROWN in September, 1998.
26. On knowledge and information, such third persons combined with C. W. HORNE in, and for the purpose of, effecting the sale of the subject real property.
27. On information and belief, such third person knew of the contamination of the subject real property with hazardous waste at or prior to the time of C. W. HORNE's sale to Defendant BROWN referenced herein, and acted for the purpose of causing the injuries to the Defendant BROWN referenced herein.
28. On knowledge and information, the actions and inaction of Defendant C. W. HORNE and the third person or persons referenced herein arose from a combination between them, or between one or more of them and third parties.
29. On knowledge and information, the combination between Defendant HORNE and third persons referenced herein was a concerted action to accomplish a criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful by criminal or unlawful means, to the injury of Defendant BROWN.
30. On knowledge and information, the actions and inaction of Defendant HORNE and the third person or persons referenced herein constitute overt actions done pursuant to the said combination.
31. On knowledge and information, the combination referenced herein had the purpose of injuring Defendant BROWN.
32. In fact, such combination, acts and intent caused the injuries to the Defendant BROWN referenced herein.
33. On knowledge and information, the Defendant MICHAEL R. BROWN is entitled to all remedies allowable to a party as a result of such civil conspiracy.
34. As a result of the actions of the said conspirators, the Defendant BROWN has suffered actual damages, has been forced to engage the services of the counsel named below, and has incurred legal costs.
35. The actions of Defendant HORNE with DOE and/or ROE as set out above were done willfully, wantonly and maliciously, by reason of which the Defendant BROWN is entitled to receive exemplary and punitive damages.

36. On knowledge and information, the Defendant BROWN should be allowed, and hereby petitions this Court for, the amendment of these pleadings to add any persons as parties whose combination, actions or intent were such as to render them liable to this cause of action.

FOR A FOURTH DEFENSE, COUNTERCLAIM OR AS A SET-OFF
CIVIL CONSPIRACY

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

38. On knowledge and information, the Defendant C. W. HORNE in fact made Plaintiff aware of the contamination of the subject real property with hazardous waste prior to the consummation of the transaction that included or resulted in the note and mortgage which form the basis of the Plaintiff's Complaint.

39. In the alternative to the allegations of the Paragraph above, some third person or persons (referenced herein as DOE and/or ROE) having knowledge of the contamination of the subject real property with hazardous waste prior to the consummation of the transaction made the Plaintiff aware of the same prior to its actual sale as set forth above.

40. On knowledge and information, such third persons combined with the Plaintiff and Defendant HORNE in, and for the purpose of, effecting the mortgage transaction involving the subject real property.

41. On knowledge and information, the actions and inaction of Defendant C. W. HORNE and Plaintiff referenced herein arose from a combination between them, or between one or more of them and third parties.

42. On knowledge and information, the combination between Plaintiff and Defendant HORNE, or one or more third parties referenced herein was by a concerted action to accomplish a criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful by criminal or unlawful means, to the injury of Plaintiff.

43. On knowledge and information, the actions and inaction of Plaintiff and Defendant HORNE or one or more third parties referenced herein constitute overt actions done pursuant to the said combination.

44. On knowledge and information, the combination referenced herein had the purpose of injuring Defendant BROWN.

45. On information and belief, such third person knew of the combination of the subject real property with hazardous waste at or prior to the time of the Plaintiffs' actions and inaction referenced herein, and acted for the purpose of causing the injuries to the Defendant BROWN referenced herein.
46. In fact, such combination, acts and intent caused the injuries to the Defendant BROWN referenced herein.
47. On knowledge and information, the Defendant BROWN is entitled to all remedies allowable to a party as a result of such civil conspiracy.
48. As a result of the actions of the said conspirators, the Defendant BROWN has suffered actual damages, has been forced to engage the services of the counsel named below, and has incurred legal costs.
49. The actions of Plaintiff and Defendant HORNE with DOE and/or ROE as set out above were done willfully, wantonly and maliciously, by reason of which the Defendant BROWN is entitled to receive exemplary and punitive damages.
50. On knowledge and information, the Defendant MICHAEL R. BROWN should be allowed, and hereby petitions this Court for, the amendment of these pleadings to add any persons as parties whose combination, actions or intent were such as to render them liable to this cause of action.

FOR A FIFTH DEFENSE AND AS A SET-OFF

TRUTH IN LENDING VIOLATIONS

51. All allegations stated or referenced elsewhere in this pleading and relevant to this defense are hereby realleged by this reference to them.
52. Defendant institutes this cause of action for actual damages, statutory damages, attorney's fees, and the costs of this action against Plaintiff for multiple violations of the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, (hereinafter TILA), and Federal Reserve Board Regulation Z, 12 C.F.R. § 226, promulgated pursuant thereto.
53. The jurisdiction of this court for this cause of action is invoked pursuant to the Truth in Lending Act, 15 U.S.C. § 1640(e).
54. At all times relevant hereto, the Plaintiff regularly extended or offered to extend consumer credit for which a finance charge is or may be imposed or which, by written agreement, is payable in more than four installments, and is the person to whom the transaction which is the subject of

this action is initially payable making defendant a creditor within the meaning of TILA, 15 U.S.C. § 1602(f) and Regulation Z § 226.2(a)(17).

55. In or about December, 2000, Defendant contacted the agents and employees of Plaintiff about obtaining credit to finance the subject real property, which property was used for Defendant BROWN's personal, family and household purposes.

56. On knowledge and information, the Plaintiff was aware the subject real property was, at the time of the negotiations as to finance, at the time of the execution of the alleged note and mortgage, and at all times relevant hereto, used for Defendant BROWN's personal, family and household purposes.

57. On or about December 29, 2000, Defendant BROWN executed a promissory note and mortgage for that purpose, which transaction is a consumer credit transaction within the meaning of TILA, 15 U.S.C. § 1602 and Regulation Z § 226.2.

58. The Defendant BROWN received no Truth in Lending Disclosure statement prepared by Plaintiff disclosing an amount financed, a finance charge, or an annual percentage rate.

59. The failure to supply BROWN a disclosure statement issued in conjunction with this consumer credit transaction violated the requirements of Truth in Lending and Regulation Z in the following and other respects:

- a. By failing to provide the required disclosures prior to consummation of the transaction in violation of 15 U.S.C. § 1638(b) and Regulation Z § 226.17(b);
- b. By failing to make required disclosures clearly and conspicuously in writing in violation of 15 U.S.C. § 1632(a) and Regulation Z § 226.17(a);
- c. By failing to allow a three day rescission period for the transaction, as required by TILA.

60. As a result of the Plaintiff's failure to observe the TILA requirements, the Defendant BROWN has suffered actual damages, has been forced to engage the services of the counsel named below, and has incurred legal costs.

61. By reason of the aforesaid violations of the Act and Regulation Z, Plaintiff is liable to Defendant BROWN in the amount of twice the finance charge, actual damages to be established at trial, statutory damages, and attorneys fees and costs in accordance with 15 U.S.C. § 1640.

FOR A SIXTH DEFENSE AND COUNTERCLAIM

FRAUD

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

63. The Plaintiff's actions and inaction as alleged or referenced above were performed with intent to defraud, in that:

- a. Plaintiff's representations, concealments, and omissions of material facts to Defendant BROWN as to:

the existence of hazardous waste and a DHEC lien on the subject real property;

the marketability of the subject real property;

the existence of enforceable title insurance;

the availability of owner's title insurance;

the lack of any need for the Defendant to obtain his own title policy;

the designation of the transaction as commercial in nature;

the Defendant's right to independent counsel;

the Defendant's need for independent counsel; and

the existence of enforceable title insurance on the subject real property, among others;

were material;

- b. Plaintiff's said representations, concealments, and omissions of material facts were false;
- c. Plaintiff's said representations, concealments, and omissions of material facts were known by Plaintiff to be false, or made by Plaintiff recklessly and without any knowledge of their truth and as positive assertions;
- d. Plaintiff's said representations, concealments, and omissions of material facts were made with the intention that they should be acted upon by the Defendant BROWN;

- e. Defendant BROWN was ignorant of the falsity of the said representations, concealments, and omissions of material facts;
- f. Defendant BROWN believed and relied upon Plaintiff's said representations, concealments, and omissions of material facts, and was therefore induced to enter into and close the subject transaction in the manner the same accomplished;
- g. Defendant BROWN had a right to rely on the truth of the said representations, concealments, and omissions of material facts in that the said transaction, the attorney selected and used by the Plaintiff, and the true nature of the subject real property were under the knowledge and control of Plaintiff and its agents, and Plaintiff could reasonably be expected to know the true facts; and
- h. Defendant has suffered damages as a proximate result of such representations, concealments, and omissions of material facts, in that he has engaged himself to repay a mortgage loan, the security of which is greatly devalued, he is without title insurance (or the benefit thereof) to cure the title problems on the same, and he is deprived of the use of the asset by which he intended, and was understood by Plaintiff to have intended, to repay the mortgage loan.

64. On knowledge and information, Plaintiff had a duty of care to see that it communicated truthful information to the Defendant BROWN.

65. The Plaintiff bank breached its duty of care by failing to exercise due care in its actions and inaction.

FOR A SEVENTH, ALTERNATIVE DEFENSE AND COUNTERCLAIM
CONSTRUCTIVE FRAUD

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

67. This cause of action for constructive fraud is set out in the alternative to that for fraud above.

68. The Plaintiff's actions and inaction as alleged or referenced above were performed with intent to defraud, in that:

- a. Plaintiff's representations, concealments, and omissions of material facts to Defendant BROWN as to:

the existence of hazardous waste and a DHEC lien on the subject real property;
the marketability of the subject real property;
the existence of enforceable title insurance;
the availability of owner's title insurance;
the lack of any need for the Defendant to obtain his own title policy;
the designation of the transaction as commercial in nature;
the Defendant's right to independent counsel;
the Defendant's need for independent counsel; and
the existence of enforceable title insurance on the subject real property, among others;

were material;

- b. Plaintiff's said representations, concealments, and omissions of material facts were false;
- c. Plaintiff's said representations, concealments, and omissions of material facts were made with the intention that they should be acted upon by the Defendant BROWN;
- d. Defendant BROWN was ignorant of the falsity of the said representations, concealments, and omissions of material facts;
- e. Defendant BROWN believed and relied upon Plaintiff's said representations, concealments, and omissions of material facts, and was therefore induced to enter into and close the subject transaction in the manner the same accomplished;
- f. Defendant BROWN had a right to rely on the truth of the said representations, concealments, and omissions of material facts in that the said transaction, the attorney selected and used by the Plaintiff, and the true nature of the subject real property were under the Plaintiff's control and Plaintiff could reasonably be expected to know the true facts; and
- g. Defendant has suffered damages as a proximate result of such representations, concealments, and omissions of material facts, in that he has engaged himself to repay a mortgage loan, the security of which is greatly devalued, he is without title

insurance (or the benefit thereof) to cure the title problems on the same, and he is deprived of the use of the asset by which he intended, and was understood by Plaintiff to have intended, to repay the mortgage loan.

FOR A EIGHTH DEFENSE AND AS A SET-OFF
UNFAIR AND DECEPTIVE TRADE PRACTICES

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

70. In the course of the above-described and referenced transaction Plaintiff, by its assignors, sellers, agents, servants and employees, has committed or engaged in the following unfair and/or deceptive acts or practices, among others, in violation of Title 39, Chapter 5 of the South Carolina Code of Laws:

- a. Failing to inform BROWN of the hazardous waste and DHEC lien on the subject real property;
- b. Treating the transaction as commercial in nature, despite its knowledge that the subject real property had been, and would be, used by BROWN for his personal, family and household use;
- c. Failing to ascertain prior to closing the preference of BROWN as the borrower as to the legal counsel that was to be employed to represent the debtor in all matters of the transaction relating to the closing of the transaction, in violation of S.C. Code Ann. § 102(a) (West);
- d. Failing to insure that BROWN was offered the opportunity to obtain owner's title insurance in connection with the transaction;
- e. Forging or negligently accepting as authentic forged Extension Agreements or other documents in connection with the transaction;
- f. Forging, negligently accepting, or representing as authentic additional documents purporting to evidence other loans of the Defendant BROWN owed to the Plaintiff;
- g. Entering into the said transaction with knowledge, actual or implied, that the subject real property was subject to a lien from the South Carolina Department of Health and Environmental Control;

- h. Entering into the said transaction with knowledge, actual or implied, that the subject real property was contaminated with hazardous substances;
- i. Entering into the said transaction with knowledge, actual or implied, that the subject real property was not marketable, owing to the said contamination and the subsequent a lien from the South Carolina Department of Health and Environmental Control;
- j. Entering into the said transaction with knowledge, actual or implied, that the environmental condition of the subject real property would render it unsellable and thus prevent the Defendant BROWN from repaying the mortgage loan, after being informed by BROWN that such sales were the method by which the said loan could be repaid;
- k. Obtaining and failing to enforce title insurance on the subject real property insuring over the said contamination and the subsequent lien from the South Carolina Department of Health and Environmental Control;
- l. Attempting to enforce its claim against BROWN after notification to him that the debt in question had been satisfied;
- m. Attempting to foreclose its mortgage lien against BROWN after notification to him that the debt in question had been satisfied; and
- n. Failing to satisfy its mortgage lien of record after notification to BROWN that the debt in question had been satisfied.

71. On knowledge and information, the actions and inaction of Plaintiff, by its assignors, sellers, agents, servants, and employees, have an impact, either direct or indirect, upon the public interest as defined by S.C. Code Ann. § 39-5-10(b) (West) and by the holding of the South Carolina Court of Appeals in *Noack Enterprises, Inc. v. Country Corner Interiors*, 290 S.C. 475, 351 S.E.2d 347 (Ct.App. 1986) and of subsequent appellate precedent.

72. On knowledge and information, the actions and inaction of Plaintiff (as referenced above) show a pattern of behavior by Plaintiff consistent with a deliberate pattern of such actions both in the past and planned in the future.

73. On knowledge and information, the Plaintiff's actions and inaction have and its inaction has (as stated above) the potential for repetition within the meaning of *Noack, supra*, and of the

Supreme Court of Washington cited in that case, *Anhold v. Daniels*, Wash.2d 40, 614 P.2d 184 (1980).

74. On knowledge and information, the Plaintiff's actions constitute and its inaction constitutes as referenced herein unfair or deceptive methods, acts or practices in the conduct of a trade or commerce as defined by S.C. Code Ann. § 39-5-20 (West).

75. As a result of the unfair and deceptive trade practices of the Plaintiff, the Defendant BROWN has suffered actual damages, has been forced to engage the services of the counsel named below, and has incurred legal costs.

76. On knowledge and information, the Plaintiff's actions entitle and its inaction entitles (as referenced above) Defendant BROWN to damages in the amount of three times the actual damages sustained by Defendant BROWN by reason of Plaintiff's unfair or deceptive methods, acts or practices, as defined by S.C. Code Ann. § 39-5-140(a) (West).

77. On knowledge and information, the Plaintiff's actions entitle and its inaction entitles (as referenced above) Defendant BROWN to an award of reasonable attorney's fees and costs under the provisions of S.C. Code Ann. § 39-5-140(a) (West).

FOR A NINTH DEFENSE

EQUITABLE ESTOPPEL

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

79. In or about October, 2007 and thereafter, the Plaintiff furnished the Defendant BROWN and (on knowledge and information) the Internal Revenue Service and its Bank Examiners a Federal Form 1098 or comparable documents, bearing BROWN's address and the account number of the debt which forms the basis of its present foreclosure action. The said Form 1098 states the payment of interest in the amount of \$87,400.00 as received by the Plaintiff from the borrower on the said Note and Mortgage. On knowledge and information, other, comparable documents state the same facts. A copy of the said Form 1098 is attached hereto and incorporated herein.

80. On knowledge and information, the recited amount received represents the entire remaining amount due as of the date of the said Form 1098.

81. The Defendant BROWN has relied upon the fact of such information to order his affairs.

82. On knowledge and information, both the IRS and the Plaintiff Bank Examiners have relied on the fact of such information to conduct and order their affairs and their treatment of the Plaintiff Bank.

83. On knowledge and information, Plaintiff is equitably estopped by its actions and inaction referenced herein from any assertion of its rights to enforce either the note or mortgage which are the subject of this civil action.

FOR A TENTH DEFENSE

EXPRESS WAIVER

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

85. On knowledge and information, Plaintiff did not maintain the factual claims of default it now advances as a basis for its right to foreclose the said mortgage until this year.

86. During the years since 2007 until the filing of this civil action, the Plaintiff gave no notice of any factual claims of default or of its right to seek foreclosure of the mortgage as now advanced in its Complaint.

87. On knowledge and information, no condition existed during the period from 2007 until this year which would have prevented the Plaintiff from giving notice of its change of position or reason for disclaiming its above-referenced Form 1098 and comparable documents (assuming, for the sake of this defense, that such notice could have been given).

88. No notice or complaint, written or otherwise, was made to the Defendant BROWN by or on behalf of the Plaintiff alleging a possible invocation of the alleged default or of its intent to seek foreclosure until the filing of this civil action.

89. On knowledge and information, the Plaintiff's referenced actions constitute and evidence, and its inaction constitutes and evidences, an intention on the part of the Plaintiff to waive any claim of default under the said mortgage as to collection or the right to foreclose.

90. On knowledge and information, the Plaintiff's referenced actions constitute and evidence, and its inaction constitutes and evidences, an external act on the part of the Plaintiff by which its intention, to waive any claim for default or its right to seek foreclosure was made clear.

91. On knowledge and information, the Plaintiff's referenced actions constitute and evidence and its inaction constitutes and evidences an acknowledgment of and acquiescence in the satisfaction and voiding of the said note and mortgage.

92. Defendant BROWN relied on the said waiver, acknowledgment and acquiescence of Plaintiff in ordering his affairs, which ordering will be to his detriment if the causes of action set out in the Complaint and relating to collection and foreclosure are now prosecuted.

93. On knowledge and information, the Internal Revenue Service and the Plaintiff's Bank Examiners relied on the said waiver, acknowledgment and acquiescence of Plaintiff in ordering his affairs, which ordering will be to his detriment if the causes of action set out in the Complaint and relating to collection and foreclosure are now prosecuted.

94. On knowledge and information, the Plaintiff's actions constitute and evidence, and its inaction, all as set out and referenced herein, constitutes and evidences an express waiver of any claim to default under, or collection of, the said mortgage by Plaintiff against Defendant BROWN and based upon the factual matter set out and referenced in the pleadings of the parties herein.

FOR AN ELEVENTH DEFENSE

IMPLIED WAIVER

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

96. On knowledge and information, the Plaintiff's actions constitute and its inaction (as referenced herein) constitutes, an implied waiver of any claim to default under the said note and mortgage and of any right it may have to foreclosure the same.

FOR A TWELFTH DEFENSE

UNCONSCIONABILITY

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

98. Defendant BROWN affirmatively alleges that the actions of the Plaintiff set out and referenced herein are unconscionable within the meaning of S.C. Code Ann. § 37-5-108 (West) and of the applicable common law and precedent.

99. On knowledge and information, Defendant BROWN is entitled to those remedies available under the statute, laws and precedent cited above against the claims of the Plaintiff.

FOR A THIRTEENTH DEFENSE AND COUNTERCLAIM
FAILURE TO SATISFY MORTGAGE

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

101. In or about December, 2000, Defendant contacted the agents and employees of Plaintiff about obtaining credit to finance the subject real property.

102. On or about December 29, 2000, Defendant BROWN executed a promissory note and mortgage to secure that finance.

103. On January 2, 2001, the said mortgage was recorded in the Office of the Clerk of Court for Chesterfield County, South Carolina in Book 346 at Page 431.

104. In or about October, 2007 and afterwards, the Plaintiff furnished the Defendant BROWN and (on knowledge and information) the Internal Revenue Service and the Bank Examiners a Federal Form 1098 and other, comparable documentation, bearing BROWN's address and the account number of the debt which forms the basis of its present foreclosure action. The said Form 1098 states the payment of interest in the amount of \$87,400.00 as received by the Plaintiff from the borrower on the said Note and Mortgage. On knowledge and information, other, comparable documents state the same facts. A copy of the said Form 1098 is attached hereto and incorporated herein.

105. On knowledge and information, the recited amount received represents the entire remaining amount due as of the date of the said Form 1098.

106. As the initiator of the said Form 1098, the Plaintiff was aware of the payment of the debt and its legal obligation to satisfy the mortgage.

107. By communications with the Plaintiff, Defendant BROWN has indicated his understanding that the Plaintiff has an obligation to satisfy the mortgage and his desire that Plaintiff do so.

108. By its actions, and on knowledge and information, the Plaintiff has waived the requirements of S.C. Code Ann. §§ 29-3-310 and -320 (West) as to formal written demand for satisfaction of the mortgage.

109. In the alternative to the allegations in the Paragraph above, the Defendant BROWN, by his agent, has contemporaneously demanded, by letter of this date, that the Plaintiff deliver a satisfaction or certificate of the discharge of the subject mortgage to BROWN for recordation.

110. Contrary to S.C. Code Ann. §§ 29-3-310 and -320 (West), the Plaintiff has failed and refused, and still refuses, to deliver the satisfaction to Defendant BROWN or to enter or cause such satisfaction to be made of record.

111. As a result of the failure and refusal of the Plaintiff to deliver the said satisfaction, the Defendant BROWN has suffered actual damages, has been forced to engage the services of the counsel named below, and has incurred legal costs.

FOR A FOURTEENTH DEFENSE
BREACH OF DUTY OF GOOD FAITH

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

113. On knowledge and information, the contract and dealings between the Plaintiff and Defendant BROWN imply a duty of good faith and fair dealing between the parties to the mortgage transaction, and a duty of co-operation on the part of both parties.

114. On knowledge and information, the actions and inaction of Plaintiff referenced herein and in the Complaint are in breach of its contract and dealings with Plaintiff as evidenced by the allegations above, and the same are also in breach of its obligation of good faith.

115. On knowledge and information, the lack of good faith on the part of the Plaintiff deprives it of the right to any relief from this Court by reason of Defendant BROWN's alleged default under the subject note and mortgage.

WHEREFORE the said Defendant MICHAEL R. BROWN prays:

AS TO THE PLAINTIFF'S ACTION FOR FORECLOSURE HEREIN:

A. That this Court inquire into and determine all matters set out in the Complaint herein, including, but not limited to, all questions relating to the seniority of recorded liens on the subject real property, and

B. That the order of the Court herein accord the said Defendant all protections normally accorded to persons in the position of the said Defendant.

AS TO THE SECOND, PARTIAL DEFENSE:

C. In the event that Defendant BROWN be held responsible for any damages owed to Plaintiff, the Plaintiff be barred from recovery of that portion of damages which it has failed to mitigate;

AS TO THE THIRD DEFENSE AND CROSSCLAIM (CIVIL CONSPIRACY):

D. Allow the amendment of these pleadings to add any persons as parties whose combination, actions or intent were such as to render them liable to this cause of action;

E. Award the Defendant MICHAEL R. BROWN all remedies allowable to a party as a result of civil conspiracy, as alleged above, against the Defendants C.W. HORNE and JOHN DOE and/or RICHARD ROE, jointly and severally;

F. Award the Defendant MICHAEL R. BROWN exemplary and punitive damages, by reason of the Defendant C.W. HORNE and JOHN DOE and/or RICHARD ROE's willful, wanton and malicious actions as set out above, against the Defendant MICHAEL R. BROWN;

AS TO THE FOURTH DEFENSE, COUNTERCLAIM AND SET-OFF (CIVIL CONSPIRACY):

G. Allow the amendment of these pleadings to add any persons as parties whose combination, actions or intent were such as to render them liable to this cause of action;

H. Award the Defendant MICHAEL R. BROWN all remedies allowable to a party as a result of civil conspiracy, as alleged above, against the Plaintiff AMERICAN COMMUNITY BANK and the Defendants JOHN DOE and/or RICHARD ROE, jointly and severally;

I. Award the Defendant MICHAEL R. BROWN exemplary and punitive damages, by reason of the Plaintiff AMERICAN COMMUNITY BANK's and the Defendants JOHN DOE and/or RICHARD ROE's willful, wanton and malicious actions as set out above, against the Defendant MICHAEL R. BROWN;

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

J. Award actual damages to the Defendant MICHAEL R. BROWN to be established at trial pursuant to 15 U.S.C. § 1640(a)(1);

K. Award statutory damages to the Defendant MICHAEL R. BROWN in the amount of twice the finance charge in accordance with 15 U.S.C. § 1640(a)(2)(i), or not to exceed not less than \$400 or greater than \$4,000 in accordance with 15 U.S.C. § 1640(a)(2)(iv);

L. Award the Defendant MICHAEL R. BROWN costs and reasonable attorneys fees in accordance with 15 U.S.C. § 1640;

AS TO THE SIXTH DEFENSE AND COUNTERCLAIM (FRAUD):

M. Award Defendant MICHAEL R. BROWN his actual damages sustained by reason of the Plaintiff's fraudulent actions and inaction as referenced herein;

N. Award Defendant MICHAEL R. BROWN exemplary and punitive damages against Plaintiff, by reason of Plaintiff's willful, wanton and malicious actions and inaction as referenced herein;

AS TO THE SEVENTH DEFENSE AND COUNTERCLAIM (CONSTRUCTIVE FRAUD):

O. Award Defendant MICHAEL R. BROWN his actual damages sustained by reason of the Plaintiff's constructively fraudulent actions and inaction as referenced herein;

P. Award Defendant MICHAEL R. BROWN exemplary and punitive damages against Plaintiff, by reason of Plaintiff's willful, wanton and malicious actions and inaction as referenced herein;

AS TO THE EIGHTH DEFENSE AND COUNTERCLAIM (UTPA):

Q. Award Defendant MICHAEL R. BROWN three times the actual damages sustained pursuant to S.C. Code Ann. § 39-5-140(a) (West) against Plaintiff;

R. Award Defendant MICHAEL R. BROWN exemplary and punitive damages against Plaintiff, by reason of Plaintiff's willful, wanton and malicious actions and inaction as referenced herein;

S. Award Defendant MICHAEL R. BROWN his reasonable attorney's fees and costs pursuant to S.C. Code Ann. § 39-5-140(a) (West), to be paid by Plaintiff;

AS TO THE NINTH, TENTH AND ELEVENTH DEFENSES (ESTOPPEL AND WAIVER):

T. Dismiss the Plaintiff's Complaint as to the Defendant MICHAEL R. BROWN as barred by the estoppel, waiver and/of implied waiver of the Plaintiff;

AS TO THE TWELFTH DEFENSE (UNCONSCIONABILITY):

U. Dismiss the Plaintiff's Complaint as to the Defendant MICHAEL R. BROWN as the transaction documents are unenforceable due to the unconscionable nature of the Plaintiff's actions and inaction;

AS TO THE THIRTEENTH DEFENSE (FAILURE TO SATISFY MORTGAGE):

V. Pursuant to the provisions of S.C. Code Ann. § 29-3-320 (West), award the Defendant MICHAEL R. BROWN, against the Plaintiff:

a sum of money not exceeding one-half of the amount of the debt secured by the mortgage,
or twenty-five thousand dollars, whichever is less;

plus the said Defendant's actual damages, costs, and attorney's fees in the discretion of the
Court;

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

W. Dismiss the Plaintiff's Complaint as to the Defendant MICHAEL R. BROWN as barred by its breach of the duty of good faith;

AS TO ALL DEFENSES, COUNTERCLAIMS AND CROSSCLAIMS:

X. Include a prayer for any other relief to the Defendant MICHAEL R. BROWN which may be authorized under other causes of action; and

Y. Award or allow the Defendant MICHAEL R. BROWN such other and further relief as this Court may deem just and proper.



John Martin Foster
Attorney for Defendant
MICHAEL R. BROWN

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Rock Hill, S. C. 29730

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jmfoster@comporium.net

Rock Hill, South Carolina

August 12, 2010

M 157931

ATLANTIC
TITLE INSURANCE COMPANY**MORTGAGEE'S POLICY OF TITLE INSURANCE**

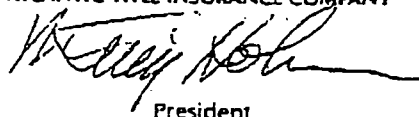
SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS CONTAINED IN SCHEDULE B AND THE PROVISIONS OF THE CONDITIONS AND STIPULATIONS HEREOF, ATLANTIC TITLE INSURANCE COMPANY, OF COLUMBIA, SOUTH CAROLINA, A South Carolina corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the amount of insurance stated in Schedule A, and costs, attorneys' fees and expenses which the Company may become obligated to pay hereunder, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested otherwise than as stated therein;
2. Any defect in or lien or encumbrance on such title;
3. Lack of a right of access to and from the land;
4. Unmarketability of such title;
5. The invalidity or unenforceability of the lien of the insured mortgage upon said estate or interest except to the extent that such invalidity or unenforceability, or claim thereof, arises out of the transaction evidenced by the insured mortgage and is based upon
 - a. usury, or
 - b. any consumer credit protection or truth in lending law;
6. The priority of any lien or encumbrance over the lien of the insured mortgage;
7. Any statutory lien for labor or material which now has gained or hereafter may gain priority over the lien of the insured mortgage, except any such lien arising from an improvement on the land contracted for and commenced subsequent to Date of Policy not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance; or
8. The invalidity or unenforceability of any assignment, shown in Schedule A, of the insured mortgage or the failure of said assignment to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

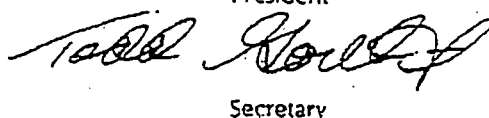
In Witness Whereof, the ATLANTIC TITLE INSURANCE COMPANY has caused this policy to be signed and sealed by its duly authorized officers as of Date of Policy shown in Schedule A.

ATLANTIC TITLE INSURANCE COMPANY

BY:


President

ATTEST:


Secretary

ATLANTIC
TITLE INSURANCE COMPANY

LOAN FORM

SCHEDULE A

Policy Number M- 157931Commitment No./Case No. 104718\$150,000.00

Amount of Policy

January 4, 2001

Date of Policy

\$362.50

Premium

1. Name of Insured:

American Community Bank

2. The estate or interest in the land described in this Schedule and which is encumbered by the insured mortgage is:

fee simple

3. The estate or interest referred to herein is at Date of Policy vested in:

Michael R. Brown

4. The mortgage, herein referred to as the insured mortgage, and the assignments thereof, if any, are described as follows:

That certain Mortgage from Michael R. Brown to American Community Bank, dated December 29, 2000 and recorded in Mortgage Book 346, at page 431, in the Office of the Clerk of Court for Chesterfield County.

5. The land referred to in this policy is situated in Chesterfield County, South Carolina, and is the same land as described in the mortgage shown at No. 4 above, as follows:

see attached description

Countersigned:

SCHEDULE A (Continued)

All that certain piece, parcel, or lot of land, with the improvements thereon, situate, lying, and being on the west side of Highway S-13-29, approximately 8 miles south of the Town of Chesterfield, in the County of Chesterfield, State of South Carolina, and bounded as follows: beginning at an iron on the centerline of Highway S-13-29 and running thence S 26°-28'-03" E along the centerline of Highway S-13-29 for a distance of 621.46 feet to its intersection with the centerline of Highway S-13-657; thence S 26°-52'-05" E along the centerline of Highway S-13-29 for a distance of 881.13 feet to a point; thence S 26°-50'-01" E along the centerline of Highway S-13-29 for a distance of 494.02 feet to a point; thence S 25°-45'-54" E along the centerline of Highway S-13-29 for a distance of 201.77 feet to a point; thence S 21°-42'-37" E along the centerline of Highway S-13-29 for a distance of 122.05 feet to an iron; thence S 73°-28'-41" W for a distance of 241.14 feet to a point; thence S 16°-35'-21" E for a distance of 209.82 feet to a point; thence S 73°-28'-41" W for a distance of 1528.15 feet to an iron; thence N 09°-37'-22" W for a distance of 87.31 feet to a steel fence post; thence N 25°-03'-16" W for a distance of 1292.09 feet to a steel fence post; thence S 55°-13'-40" W along the northern side of an abandoned county road for a distance of 430.16 feet to a point; thence N 02°-52'-37" W for a distance of 208.38 feet to a point; thence N 02°-49'-25" W for a distance of 468.20 feet to a concrete post; thence N 44°-48'-28" E for a distance of 275.74 feet to a point; thence N 12°-24'-36" W for a distance of 764.63 feet to an iron; thence N 84°-15'-47" E for a distance of 1531.58 feet to the point of beginning. Said property is more particularly shown and described as 106.85 ACRES according to a plat of survey prepared by William G. Martin, P.L.S., on the 5th day of July, 1998, which plat, recorded in Plat Book C, at page 7-I, in the Office of the Clerk of Court for Chesterfield County, is by reference incorporated herein as a part of this description.

ATLANTIC TITLE INSURANCE COMPANY

by


Authorized Signatory

page two of Schedule A.

Policy No.: M-157931

LIEN-TO TITLE

TITLE INSURANCE AGENCY

SCHEDULE B PART I

This policy does not insure against loss or damage by reason of the following:

1. Taxes for the year 2001, not yet due and payable, and all subsequent years.
2. Any variation in location and dimensions, conflicts in boundary lines, encroachments, overlaps, easements not of record and any other objections which a survey made in accordance with "Minimum Standard Detail Requirements for Land Title Surveys as adopted by American Land Title Association and American Congress on Surveying & Mapping" would disclose.

SCHEDULE B PART II

In addition to the matters set forth in Part I of this Schedule, the title to the estate or interest in the land described or referred to in Schedule A is subject to the following matters, if any be shown, but the Company insures that such matters are subordinate to the lien or charge of the insured mortgage upon said estate or interest:

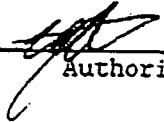
SCHEDULE B

No. M-157931

3. That certain right-of-way easement for existing County Road as shown on plat of survey, and recorded in Plat Book C, at page 7-1, in the Office of the Clerk of Court for Chesterfield County.

ATLANTIC TITLE INSURANCE COMPANY

by



Authorized Signatory

page two of Schedule B.

								Payment	Balance	
AMERCOBANK 70000000710400073	Opened 12/00	Reported 10/07	High balance 150,000	Reviewed 69 mos	30 2	60 0	90+ 0	Positive	Payment	Balance
	Last active 10/07	"BQ1 [Joint]	High limit —	Install (11) Installment - loan	03/07			-0-	Paid	-0-
	Single payment loan									

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

AMERICAN COMMUNITY BANK

Plaintiff,

vs.

MICHAEL R. BROWN, *et al.*,

Defendants.

VERIFICATION

MICHAEL R. BROWN,

Cross-Plaintiff,

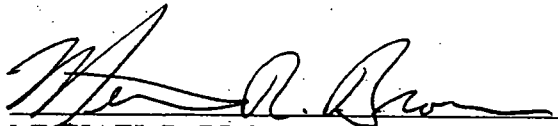
vs.

C. A. No. 10-CP-13-0164

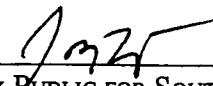
C. W. HORNE,
AMERICAN COMMUNITY BANK,
JOHN DOE; and
RICHARD ROE,

Cross-Defendants.

PERSONALLY appeared before me the undersigned, who, being duly sworn, deposes and says that he is the named Defendant MICHAEL R. BROWN in the foregoing civil action; that he has read the allegations of the preceding Answer, Counterclaims and Crossclaim; and that the allegations of the said pleading are true of his own knowledge, except for those matters alleged therein on knowledge and information, and as to those, he believes them to be true.


MICHAEL R. BROWN

SWORN TO and subscribed before me
this day of August 12, 2010.


NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission expires: 07/20/2019

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

)
) IN THE COURT OF COMMON PLEAS

American Community Bank, a division of Yadkin
Valley Bank & Trust,

Plaintiff,

vs.

C.A. No.: 10-CP-13-164

Michael R. Brown; C. W. Horne; Shortt Auction
& Realty Co., Inc.; Bank of America, N.A.; and
Jaguar Portfolio, LLC,

Defendants.

REPLY OF PLAINTIFF TO COUNTERCLAIM OF MICHAEL R. BROWN

Replying to the Answer, Counterclaims and Crossclaim (Counterclaim) of Michael R. Brown (Brown), Plaintiff respectfully alleges as follows. Except as otherwise defined herein, all capitalized terms shall have the same meanings as set forth in the Complaint.

For a First Defense

1. Each and every allegation of the Counterclaim (including any qualified denials and/or affirmative defenses incorporated therein) not specifically admitted herein is denied.

2. Paragraphs 1 and 2 consist of qualified denials to which Plaintiff hereby replies by denying all of them to the extent any are repugnant or inconsistent with the allegations set forth in the Complaint.

3. As for paragraph 3, because Brown's second defense of failure to mitigate damages references his entire pleading, Plaintiff hereby reiterates all of its admissions, denials and allegations set forth herein as such pertain to the allegations upon which Brown's second defense is based.

4. Paragraph 4 is admitted.
5. In response to paragraph 5, Plaintiff admits a lender's policy of title insurance was obtained for the Mortgage. The remaining allegations of paragraph 5 are denied.
6. Plaintiff is without knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 6 through 8, inclusive, and, as a result, such allegations are denied.
7. Paragraphs 9 through 12, inclusive, are denied.
8. In response to paragraph 13, Plaintiff admits a lender's policy of title insurance was obtained for the Mortgage and a copy thereof is attached to the Counterclaim. The remaining allegations of paragraph 13 are denied.
9. In response to paragraph 14, Plaintiff admits the lender's policy of title insurance does not mention any lien by DHEC or any hazardous waste on the Subject Property. Plaintiff is without knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 14, and, as a result, such allegations are denied. Further replying to averments about any environmental condition on the property, Plaintiff was a lender to Brown and any knowledge of Plaintiff, including of environmental condition, was for the protection of Plaintiff as a lien holder, and not for the benefit or reliance of Brown as a prospective purchaser and owner.
10. Plaintiff is without knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 15 and 16 and, as a result, such allegations are denied.
11. Paragraphs 17 through 21, inclusive, are denied.

12. As for paragraph 22, Plaintiff hereby reiterates all of its admissions, denials and allegations set forth herein as such pertain to the allegations upon which Brown's third defense and cross-claim for civil conspiracy is based.

13. Plaintiff is without knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 23 through 36, inclusive, and, as a result, such allegations are denied.

14. As for paragraph 37, Plaintiff hereby reiterates all of its admissions, denials and allegations set forth herein as such pertain to the allegations upon which Brown's fourth defense and counterclaim for civil conspiracy is based.

15. Paragraphs 38 through 50, inclusive, are denied.

16. As for paragraph 51, Plaintiff hereby reiterates all of its admissions, denials and allegations set forth herein as such pertain to the allegations upon which Brown's fifth defense and counterclaim of truth in lending violations is based.

17. Paragraph 52 contains a recitation of the statutes under which Brown is claiming relief and does not require a response from Plaintiff. To the extent paragraph 52 contains facts to which a response is required, the allegations of paragraph 52 are denied.

18. Paragraphs 53 and 54 contain legal conclusions to which no response is required. To the extent paragraphs 53 and 54 contain facts to which a response is required, the allegations of paragraph 53 and 54 are denied.

19. In response to paragraph 55, Plaintiff admits Brown contacted Plaintiff regarding a loan to finance the Subject Property. The remaining allegations are denied.

20. Paragraph 56 is denied.

21. In response to paragraph 57, Plaintiff admits Brown executed the Note. The remaining allegations of paragraph 57 are denied.

22. Paragraphs 58 through 61, inclusive, are denied.

23. As for paragraph 62, Plaintiff hereby reiterates all of its admissions, denials and allegations set forth herein as such pertain to the allegations upon which Brown's sixth defense and counterclaim for fraud is based.

24. Paragraphs 63 through 65, inclusive, are denied and strict proof is demanded thereof.

25. As for paragraph 66, Plaintiff hereby reiterates all of its admissions, denials and allegations set forth herein as such pertain to the allegations upon which Brown's seventh defense and counterclaim for constructive fraud is based.

26. Paragraph 67 contains a legal conclusion to which no response is required. To the extent paragraph 67 contains facts to which a response is required, the allegations of paragraph 67 are denied and strict proof is demanded thereof.

27. Paragraph 68 is denied and strict proof is demanded thereof.

28. As for paragraph 69, Plaintiff hereby reiterates all of its admissions, denials and allegations set forth herein as such pertain to the allegations upon which Brown's eighth defense and counterclaim under the South Carolina Unfair Trade Practices Act is based.

29. Paragraphs 70 through 77, inclusive, are denied.

30. As for paragraph 78, Plaintiff hereby reiterates all of its admissions, denials and allegations set forth herein as such pertain to the allegations upon which Brown's ninth defense of equitable estoppel is based.

31. In response to paragraph 79, Plaintiff admits a copy of a Form 1098 is attached to the Counterclaim. The remaining allegations of paragraph 79 are denied. Further replying to any averments about a Form 1098, Plaintiff issued such Form to report interest paid by Brown on his commercial mortgage loan, when the proceeds of a loan obtained by him from Plaintiff were used for such purpose.

32. Paragraphs 80 through 83, inclusive, are denied.

33. As for paragraph 84, Plaintiff hereby reiterates all of its admissions, denials and allegations set forth herein as such pertain to the allegations upon which Brown's tenth defense of express waiver is based.

34. Paragraphs 85 through 94, inclusive, are denied.

35. As for paragraph 95, Plaintiff hereby reiterates all of its admissions, denials and allegations set forth herein as such pertain to the allegations upon which Brown's eleventh defense of implied waiver is based.

36. Paragraph 96 is denied.

37. As for paragraph 97, Plaintiff hereby reiterates all of its admissions, denials and allegations set forth herein as such pertain to the allegations upon which Brown's twelfth defense of unconscionability is based.

38. Paragraphs 98 and 99 are denied.

39. As for paragraph 100, Plaintiff hereby reiterates all of its admissions, denials and allegations set forth herein as such pertain to the allegations upon which Brown's thirteenth defense and counterclaim for failure to satisfy the Mortgage is based.

40. Paragraphs 101 through 103, inclusive, are admitted.

41. In response to paragraph 104, Plaintiff admits a copy of a Form 1098 is attached to the Counterclaim. The remaining allegations of paragraph 104 are denied.

42. Paragraphs 105 through 111, inclusive, are denied.

43. As for paragraph 112, Plaintiff hereby reiterates all of its admissions, denials and allegations set forth herein as such pertain to the allegations upon which Brown's fourteenth defense of breach of duty of good faith is based.

44. Paragraphs 113 through 115, inclusive, are denied.

For a Second Defense

45. Plaintiff hereby reiterates all of the foregoing admissions, denials and allegations as fully as if set forth verbatim herein.

47. Each of Brown's causes of action against Plaintiff in the Counterclaim are based on alleged environmental contamination of the Subject Property in violation of South Carolina Department of Health and Environmental Control (DHEC) regulations.

48. DHEC issued a no further action letter for the Subject Property on January 27, 1997.

49. At the time the Note and Mortgage were executed by Brown on December 29, 2000, there was no environmental contamination of the Subject Property in violation of DHEC regulations, nor was there a DHEC lien on the Subject Property.

50. The Counterclaim fails to state facts sufficient to constitute a cause of action against Plaintiff and should be dismissed with prejudice.

For a Third Defense

51. Plaintiff hereby reiterates all of the foregoing admissions, denials, allegations and averments as fully as if set forth verbatim herein.

52. The above captioned action is for judgment on the Note and Guaranty and foreclosure of the Mortgage.

53. Brown admits signing the Note and, through his signature, Brown is responsible for repayment of the full amount of the Note.

54. Plaintiff has no duty to lessen the amount owed by Brown through filing a claim with or suit against the title insurance company that issued the lender's title policy for the Mortgage, nor is there any apparent basis for a title claim under the policy.

For a Fourth Defense

55. Plaintiff hereby reiterates all of the foregoing admissions, denials, allegations and averments as fully as if set forth verbatim herein.

56. Plaintiff obtained the lender's title policy for its own protection, not for the protection of Brown, who, if he had wanted such protection, should have purchased an owner's policy of title insurance (which was not Plaintiff's obligation to make available to him).

57. Brown has no right to rely on the protections afforded to Plaintiff under the terms of the lender's title policy in an attempt to reduce the amount he owes to Plaintiff.

For a Fifth Defense

58. Plaintiff hereby reiterates all of the foregoing admissions, denials, allegations and averments as fully as if set forth verbatim herein.

59. The Counterclaim fails to set forth facts which are sufficient to constitute a cause of action for civil conspiracy against Plaintiff in that there is no averment of unlawful activity by Plaintiff in conjunction with others for the purpose of injuring Brown causing him special damage separate and independent from the other allegations in the Counterclaim.

60. The cause of action in the Counterclaim against Plaintiff for civil conspiracy should be dismissed with prejudice.

For a Sixth Defense

61. Plaintiff hereby reiterates all of the foregoing admissions, denials, allegations and averments as fully as if set forth verbatim herein.

62. Brown admits the purpose of the Note was to finance the purchase of the Subject Property, which would then be subdivided and sold.

63. The Note was not for personal, family or household purposes.

64. The cause of action in the Counterclaim against Plaintiff for violation of 15 U.S.C. § 1601, *et seq.* should be dismissed with prejudice.

For a Seventh Defense

65. Plaintiff hereby reiterates all of the foregoing admissions, denials, allegations and averments as fully as if set forth verbatim herein.

66. The Counterclaim fails to set forth facts which are sufficient to constitute a cause of action for constructive fraud.

67. The cause of action in the Counterclaim against Plaintiff for constructive fraud should be dismissed with prejudice.

For an Eighth Defense

68. Plaintiff hereby reiterates all of the foregoing admissions, denials, allegations and averments as fully as if set forth verbatim herein.

69. The transaction between Plaintiff and Brown was an arms-length commercial creditor-debtor transaction.

70. No confidential or fiduciary relationship existed between Plaintiff and Brown.

71. Brown had no right to rely.

72. The causes of action in the Counterclaim against Plaintiff for fraud and constructive fraud should be dismissed with prejudice.

For a Ninth Defense

73. Plaintiff hereby reiterates all of the foregoing admissions, denials, allegations and averments as fully as if set forth verbatim herein.

74. Brown's claims against Plaintiff are a mere private grievance against a bank which is authorized under other applicable laws and regulations comprehensively governing the lending of money, and are not redressable as an unfair and deceptive trade practice.

75. Because such claims are a mere private grievance against a bank excepted from liability, the South Carolina Unfair Trade Practices Act provides no relief to Brown.

76. The cause of action in the Counterclaim against Plaintiff for violation of the South Carolina Unfair Trade Practices Act should be dismissed with prejudice.

For a Tenth Defense

77. Plaintiff hereby reiterates all of the foregoing admissions, denials, allegations and averments as fully as if set forth verbatim herein.

78. The Note and Mortgage do not constitute a consumer loan.

79. Because this is a commercial, rather than a consumer loan, S.C. Code Ann. § 37-5-108 is inapplicable.

80. The cause of action in the Counterclaim against Plaintiff for unconscionable actions in violation of the S.C. Code Ann. § 37-5-108 should be dismissed with prejudice.

For an Eleventh Defense

81. Plaintiff hereby reiterates all of the foregoing admissions, denials, allegations and averments as fully as if set forth verbatim herein.

82. Plaintiff has not received full payment on the Note and, therefore, has no duty to enter a satisfaction of the Mortgage.

83. The cause of action in the Counterclaim against Plaintiff for the alleged failure to satisfy the Mortgage should be dismissed with prejudice.

For a Twelfth Defense

84. Plaintiff hereby reiterates all of the foregoing admissions, denials, allegations and averments as fully as if set forth verbatim herein.

85. The causes of action for civil conspiracy, truth in lending, fraud, constructive fraud, unfair trade practices and failure to satisfy mortgage, which are all of the causes of action in the Counterclaim, seek equitable relief and recovery of attorneys' fees and costs.

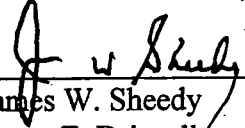
86. Thus, Brown is not entitled to a jury trial on the causes of action in the Counterclaim.

WHEREFORE, having replied to the Counterclaim, Plaintiff asks that the Counterclaim against it be dismissed with prejudice, for an award of its costs, and for such other and further relief as appears to the Court to be proper.

Charlotte, NC

Date: 9/13/10

DRISCOLL SHEEDY, P.A.

By: 
James W. Sheedy
Susan E. Driscoll
11520 N. Community House Road
Suite 200
Charlotte, N.C. 28277
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ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

IN THE COURT OF COMMON PLEAS
C/A No.: 2010-CP-13-0164

AMERICAN COMMUNITY BANK
a Division of Yadkin Valley Bank & Trust,

Plaintiff,

vs.

MICHAEL R. BROWN,
C. W. HORNE,
SHORTT AUCTION & REALTY CO.,
INC., BANK OF AMERICA, N.A. and
JAGUAR PORTOLOIO, LLC,

Defendants.

ANSWER AND COUNTERCLAIMS
TO THE CROSS-CLAIMS
OF THE CROSS-PLAINTIFF,
MICHAEL R. BROWN

JURY TRIAL DEMANDED

MICHAEL R. BROWN,

Cross-Plaintiff,

vs.

C. W. HORNE,
AMERICAN COMMUNITY BANK,
JOHN DOE, a fictitious person representing
the class of all unknown adult, mentally
competent, imprisoned, non-military
persons, who were conspirators in the
causes of action described herein; and
RICHARD ROE, another fictitious person
representing the class of all unknown
persons who are either: under the age of
eighteen (18) years, imprisoned, or in the
Armed Forces, and who were
conspirators in the causes of action herein;
and all persons entitled to claim under or
through them, or any of them,

Cross-Defendants.

This Defendant, C. W. Horne, answering the Cross-claim of the Cross-Plaintiff, Michael R. Brown, but reserving all objections to process, service, proper parties, subject matter and personal jurisdiction and venue, would respectfully show unto the Court:

FOR A FIRST DEFENSE

1. This Defendant, C. W. Horne, denies each and every allegation contained in the Cross-Plaintiff's Answer, Counterclaim, and Cross-claim not hereinafter specifically admitted, qualified or explained and demands strict proof thereof;

2. This Defendant, C. W. Horne, is without sufficient knowledge of the allegations set forth Michael R. Brown's First Defense and therefore denies same and demands strict proof thereof;

3. This Defendant C. W. Horne specifically denies the allegations set forth Michael R. Brown's Second Defense that Defendant C. W. Horne had any knowledge of any contamination, liens held by any third party, or the financial condition of Cross-Plaintiff. Defendant C. W. Horne would allege that the title to the property was marketable and would deny, upon information and belief, that Cross-plaintiff has any claim under a mortgagee title insurance policy.

4. This Defendant, C. W. Horne, denies each and every allegation set forth Michael R. Brown's Third Defense and Cross-claim Civil Conspiracy and demands strict proof thereof;

5. This Defendant, C. W. Horne, denies each and every allegation set forth in Michael R. Brown's Fourth Defense, Counterclaim or as a Set-Off Civil Conspiracy and demands strict proof thereof.

6. This Defendant, C. W. Horne, denies each and every allegation set forth in Michael R. Brown's Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth and Thirteenth Defenses, as these do not apply to this Defendant and demands strict proof thereof.

FOR A SECOND DEFENSE

(Failure of Service)

7. Defendant would allege that Service of the Plaintiff's Cross-claim is insufficient under Rule 12(b) (5), SCRCP and would demand strict proof thereof.

FOR A THIRD DEFENSE

(Failure to State a Claim)

8. Further answering the Cross-claim, this Defendant re-alleges and incorporates all the allegations contained hereinabove as fully as if repeated verbatim.

9. This cause of action fails to state a claim against this Defendant in that the cross-claim fails to set forth factual allegations against this Defendant, which give rise to a cognizable claim.

FOR A THIRD DEFENSE

(Failure to Allege Essential Elements)

9. Further answering the Cross-claim, this Defendant re-alleges and incorporates all the allegations contained hereinabove as fully as if repeated verbatim.

10. This Defendant is entitled to dismissal from this cause of action in that the cross-claim fails to allege the elements establishing causes of action against this defendant.

FOR A FOURTH DEFENSE

(Statute of Frauds)

11. Further answering the Cross-claim, this Defendant re-alleges and incorporates all the allegations contained hereinabove as fully as if repeated verbatim.

12. Defendant would allege that Cross-Plaintiff's action is barred by the applicable Statute of Frauds and would demand strict proof thereof.

FOR A FOURTH DEFENSE

(Failure to Mitigate Damages)

13. Further answering the Cross-claim, this Defendant re-alleges and incorporates all the allegations contained hereinabove as fully as if repeated verbatim.

14. This Defendant pleads, on information and belief, as an additional affirmative defense that the Cross-Plaintiff has failed to minimize his damages, including but not limited to the Cross-Plaintiff's failure to purchase an owner's policy of title insurance.

FOR A FIFTH DEFENSE

(Failure to Name Essential Parties)

15. Further answering the Cross-claim, this Defendant re-alleges and incorporates all the allegations contained hereinabove as fully as if repeated verbatim.

16. This Defendant pleads, on information and belief, that the Cross-Plaintiff has failed to name and implead essential parties with whom the complete relief can be granted as required by Rule 12(b) (7) and 19, SCRCF.

FOR A SIXTH DEFENSE

(Sued Wrong Party)

17. Further answering the Cross-claim, this Defendant re-alleges and incorporates all the allegations contained hereinabove as fully as if repeated verbatim.

18. This Defendant pleads, on information and belief, that the Cross-Plaintiff has commenced his Cross-Claim against the wrong party as this Defendant did not sell the subject property to the Cross-Plaintiff and any and all actions that this Defendant may have taken were done in his representative capacity and not individually.

FOR A SEVENTH DEFENSE

(Contract Bar/Release/Estoppel)

19. Further answering the Cross-claim, this Defendant re-alleges and incorporates all the allegations contained hereinabove as fully as if repeated verbatim.

20. Defendant would allege that the terms of the parties' Contract executed by the Cross-Plaintiff prevent and bar the action commenced against this Defendant.

FOR A EIGHTH DEFENSE

(Accord and Satisfaction)

21. Further answering the Cross-claim, this Defendant re-alleges and incorporates all the allegations contained hereinabove as fully as if repeated verbatim.

22. Defendant is informed and believes that the contamination issue alleged by the Cross-Plaintiff has been resolved and settled and that there has been an accord and satisfaction, and the Cross-Plaintiff is barred from recovery.

FOR AN NINTH DEFENSE

(Laches)

23. Further answering the Cross-claim, this Defendant re-alleges and incorporates all the allegations contained hereinabove as fully as if repeated verbatim.

24. This Defendant asserts as an additional defense that the Cross-Plaintiff has delayed in bringing this action and this delay has prejudiced this Defendant, therefore

this action is barred and should be dismissed by this Honorable Court under the doctrine of Laches.

FOR A TENTH DEFENSE
(Legal Excuse/Release/Waiver)

25. Further answering the Cross-claim, this Defendant re-alleges and incorporates all the allegations contained hereinabove as fully as if repeated verbatim.

26. This Defendant is informed and believes that the Cross-Plaintiff had the opportunity to resolve the dispute that he alleges with DHEC for a nominal amount, but through his own fault, delay and neglect either chose not to or failed to take the action necessary to accomplish such resolution and that the actions or omissions of the Cross-Plaintiff act as a legal excuse, release or the alternative waiver of claims by the Cross-Plaintiff, and the Cross-Plaintiff is barred from recovery.

FOR A ELEVENTH DEFENSE
(Statute of Limitations)

27. This Defendant reiterates all allegations contained hereinabove as fully as if repeated verbatim.

28. This Defendant further alleges that Cross-Plaintiff has failed to commence his action within the applicable Statute of Limitations and would demand strict proof thereof, and the same should be dismissed, and this Defendant should recover attorney fees and costs.

FOR AN TWELFTH DEFENSE

AND BY WAY OF COUNTERCLAIM TO CROSS-PLAINTIFF'S CROSS-CLAIM
(South Carolina Frivolous Civil Proceedings Sanction Act, S.C. Code Ann. § 15-36-10)

29. This Defendant reasserts the foregoing allegations verbatim as if fully set forth herein.

30. The Cross-Plaintiff has instituted the instant civil proceeding against this Defendant.

31. The institution of this civil proceeding is without proper purpose, and is unsupported by fact and law.

32. The Cross-Plaintiff failed to sufficiently investigate the facts prior to instituting this civil proceeding against this Defendant, and failed to give proper consideration to the facts.

33. As a result of the Cross-Plaintiff's institution of this civil proceeding, this Defendant has incurred, and will continue to incur, attorney's fees and court costs associated with the defense of this action.

34. This Defendant is, therefore, entitled to the recovery of attorney's fees and costs from the Cross-Plaintiff pursuant to the *South Carolina Frivolous Civil Proceeding Sanction Act*, S.C. Code Ann. § 15-36-10 *et seq.*

FOR A THIRTEENTH DEFENSE

AND BY WAY OF COUNTERCLAIM TO CROSS-PLAINTIFF'S CROSS-CLAIM

(Defamation/Harm to Reputation)

35. This Defendant reasserts the foregoing allegations verbatim as if fully set forth herein.

36. That at the times alleged in the Cross-Plaintiff's Cross-claim, this Defendant was engaged in business in South Carolina and is still engaged in said business and with good reputation and credit.

37. That this Defendant, is informed and believes, that Cross-Plaintiff, intending to injure this Defendant, in the presence and hearing of many persons and/or has composed and published a statement concerning this Defendant in his trade and business the false and defamatory words to the effect that this Defendant has engaged in criminal and unlawful activity with willful, wanton and malicious intent.

38. That by reason of said publication, the Defendant was greatly injured in his reputation and credit and in his business has suffered great loss of customers, reputation and good will, and has been deprived of great gains and profits, which otherwise it would have made, and has otherwise sustained loss and injury to his damage in an amount to be determined by a jury.

WHEREFORE, Defendant having answered the Cross-claim, demands that the Cross-claim be dismissed, and that this Defendant recover on his Counter-claims as

against the Cross-Plaintiff such damages as may be determined by a jury together with the costs of this action and any such other and further relief as this Honorable Court may deem to be just and proper.

GOLBERG & EASTERLING, P.A.

BY:

Harry R. Easterling, Sr.

Harry R. Easterling, Sr.

South Carolina Bar # 1828

Goldberg & Easterling, P.A.

Post Office Drawer 655

Bennettsville, SC 29512

Telephone: (843) 479-2878

Email: gandelaw@bellsouth.net

September 13, 2010
Bennettsville, South Carolina

STATE OF NORTH CAROLINA)

COUNTY OF Union)

VERIFICATION

CASE NO. 2010-CP-13-0164

PERSONALLY appeared before me C. W. Horne and upon being sworn, deposes and says that he is a Defendant in the above action; that he has read the foregoing responsive pleading and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated to be alleged on information and belief, and to those matters s/he believes them to be true.

C. W. Horne
C. W. Horne

SWORN to before me this
13 day of September, 2010.

Jeanette Carter (L.S.)
Notary Public for North Carolina
My commission expires May 22, 2015

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

AMERICAN COMMUNITY BANK
a division of Yadkin Valley Bank & Trust,

Plaintiff,

vs.

MICHAEL R. BROWN,
C. W. HORNE,
SHORTT AUCTION & REALTY CO., Inc.,
BANK OF AMERICA, N.A., and
JAGUAR PORTFOLIO, LLC,

Defendants.

MICHAEL R. BROWN,

Cross-Plaintiff,

vs.

C. W. HORNE,
AMERICAN COMMUNITY BANK,
JOHN DOE, a fictitious person representing
the class of all unknown adult, mentally
competent, unimprisoned, non-military
persons, who were conspirators in the
causes of action described herein; and
RICHARD ROE, another fictitious person
representing the class of all unknown
persons who are either: under the age of
eighteen (18) years, imprisoned, or in the
Armed Forces, and who were
conspirators in the causes of action
herein; and all persons entitled to claim
under or through them, or any of them,

Cross-Defendants.

IN THE COURT OF COMMON PLEAS

FOURTH JUDICIAL CIRCUIT

REPLY AND ANSWER

TO COUNTERCLAIMS

IN ANSWER TO CROSSCLAIMS

OF CROSS-PLAINTIFF BROWN

C. A. No. 10-CP-13-0164

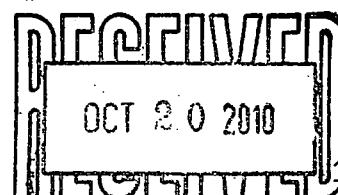
JURY TRIAL DEMANDED

A True Copy, Attest
Steph D. Bell
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

PAUL J. BELLENS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

2010 OCT 19 AM 11 07

Defendant and Cross-Plaintiff MICHAEL R. BROWN (herein also "BROWN"), replying to Counterclaims of Defendant C.W. HORNE (herein also "HORNE") herein, would respectfully show the following:



AS A FIRST DEFENSE AND REPLY

1. Defendant and Cross-Plaintiff BROWN reaffirms and reiterates all of the allegations contained in his Answer, Counterclaims and Crossclaim herein and denies those allegations inconsistent therewith.

AS A SECOND DEFENSE AND REPLY: FRIVOLOUS ACTION

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

3. BROWN affirmatively alleges that his participation in the procurement, initiation, and/or continuation of his Crossclaim is, and has, been done primarily for the purposes of securing the proper discovery, joinder of parties, or adjudication of the claims herein upon which these proceedings are based, within the meaning of S.C. Code Ann. § 15-36-10(1) (West).

4. BROWN affirmatively alleges that his participation in the procurement, initiation and/or continuation of his Crossclaim is based upon a reasonable belief that, given the existence of the facts upon which those claims are based, that he reasonably believes that his claims may be valid under the existing or developing law, within the meaning of S.C. Code Ann. § 15-36-20(1) (West).

5. BROWN affirmatively alleges that his participation in the procurement, initiation and/or continuation of his Crossclaim is based upon his reliance upon the advice of counsel, sought in good faith or given after full disclosure of all facts within his knowledge and information with may be relevant to those causes of action, within the meaning of S.C. Code Ann. § 15-36-20(2) (West).

AS A THIRD DEFENSE, REPLY and COUNTERCLAIM: FRIVOLOUS ACTION

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

7. BROWN affirmatively alleges that the Defendant HORNE's participation in the procurement, initiation, and/or continuation of his Counterclaims is, and has, been done primarily for a purpose other than that of securing the proper discovery, joinder of parties, or adjudication

of the claims herein upon which these proceedings are based, within the meaning of S.C. Code Ann. § 15-36-10(1) (West).

8. BROWN affirmatively alleges that the Defendant HORNE's participation in the procurement, initiation and/or continuation of his Counterclaims is not based upon any reasonable belief that, given the existence of the facts upon which those claims are based, that he reasonably believes that his claims may be valid under the existing or developing law, within the meaning of S.C. Code Ann. § 15-36-20(1) (West).

9. On knowledge and information, the above-referenced actions and omissions were committed by Defendant HORNE willfully, wantonly and with reckless disregard of the rights of the Cross-Plaintiff BROWN.

AS A FOURTH DEFENSE AND REPLY: DEFAMATION

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

11. On knowledge and information, the matters and facts alleged in Cross-Plaintiff's Crossclaim do not allege any such facts as may constitute a cause of action for defamation, in that it positively and affirmatively appears from the allegations that the language asserted to have been used by Cross-Plaintiff concerning Defendant HORNE were used in a Crossclaim in the above-captioned and numbered properly constituted legal action, which Crossclaim was based upon the prior actions and inaction of the Defendant HORNE.

12. On knowledge and information, it appears positively and affirmatively from the allegations of Cross-Plaintiff's Crossclaim that the language was relevant and pertinent to the subject matter of the mentioned action.

13. On knowledge and information, the language used in Cross-Plaintiff's Crossclaim in such action were, and are, covered by, and within the application of, the rule of absolute privilege, declared by court decisions to exempt absolutely any litigant from a subsequent suit for libel in such circumstances.

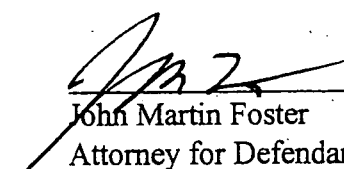
AS A FIFTH DEFENSE AND REPLY: DEFAMATION

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

15. On knowledge and information, any supposed defamatory words set forth in the Cross-Plaintiff's Crossclaim are, each and all of them, in their natural and ordinary meaning, true in substance and in fact.

WHEREFORE, having fully replied to the Counterclaims to the Crossclaim of Cross-Plaintiff BROWN, the Defendant and Cross-Plaintiff MICHAEL R. BROWN prays that this Court:

1. Dismiss the said Counterclaims herein;
2. Award the Defendant and Cross-Plaintiff MICHAEL R. BROWN his damages, actual and punitive, against the Defendant C.W. HORNE by reason of his frivolous actions herein;
3. Award the Defendant and Cross-Plaintiff BROWN his costs herein;
3. Include a prayer for other and further relief to which Defendant and Cross-Plaintiff BROWN may be entitled; and
4. Award or allow such other and further relief as this Court may deem just and proper.



John Martin Foster

Attorney for Defendant and Cross-Plaintiff BROWN

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

Post Office Box 106
Rock Hill, SC 29731-6106

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

Rock Hill, South Carolina

October 17, 2010

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)

IN THE COURT OF COMMON PLEAS

American Community Bank, a division of Yadkin
Valley Bank & Trust,

Plaintiff,

vs.

Michael R. Brown; C. W. Horne; Shortt Auction
& Realty Co., Inc.; Bank of America, N.A.; and
Jaguar Portfolio, LLC,

Defendants.

**NOTICE OF RIGHT TO
FORECLOSURE INTERVENTION**

C.A. No.: 10-CP-13-164

PLEASE TAKE NOTICE that Michael R. Brown may have the right to foreclosure intervention, pursuant to South Carolina Supreme Court Administrative Order 2011-05-02-01 regarding Mortgage Foreclosure Actions. Foreclosure intervention may result in resolution of the above-captioned foreclosure by loan modification or other loss mitigation, provided certain eligibility requirements are met.

Should you wish to inquire about Foreclosure Intervention, please contact the undersigned attorney for American Community Bank, a division of Yadkin Valley Bank & Trust (ACB) at the address or telephone number set forth below.

If you do not respond within thirty (30) days of your receipt of this Notice, you will forfeit your potential right to participate in any Foreclosure Intervention process and ACB as plaintiff will proceed with the above-captioned action for foreclosure.

Charlotte, N.C.

Date: 10 | 21 | 11

DRISCOLL SHEEDY, P.A.

By: *J. W. Sheedy*

James W. Sheedy

Susan E. Driscoll

11520 North Community House Road
Suite 200

Charlotte, N.C. 28277

Telephone - (704) 341-2101

Facsimile - (704) 341-2105

jimsheedy@driscollsheedy.com

sdriscoll@driscollsheedy.com

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

IN THE COURT OF COMMON PLEAS

American Community Bank, a division of Yadkin
Valley Bank & Trust,

Plaintiff,

vs.

Michael R. Brown; C. W. Horne; Shortt Auction
& Realty Co., Inc.; Bank of America, N.A.; and
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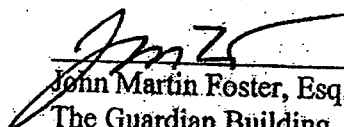
Defendants.

ACCEPTANCE OF SERVICE

C.A. No.: 10-CP-13-164

Pursuant to Rule 4(j), SCRCP, the undersigned hereby accepts due and lawful service on
behalf of Michael R. Brown, of the Notice of Right to Foreclosure Intervention in the above
captioned matter and acknowledges retention of a copy thereof.

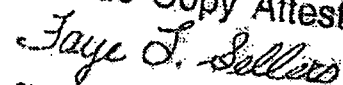
Date: 10/21/2011


John Martin Foster, Esq.
The Guardian Building
223 East Main Street, Suite 520
Rock Hill, SC 29730

ATTORNEY FOR MICHAEL R. BROWN

Driscoll Sheedy, P.A.
Attorneys at Law

00096501.

A True Copy Attest

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

2011 NOV 2 PM 11 32
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

)
) IN THE COURT OF COMMON PLEAS

American Community Bank, a division of Yadkin
Valley Bank & Trust,

Plaintiff,

vs.

Michael R. Brown; C. W. Horne; Shortt Auction
& Realty Co., Inc.; Bank of America, N.A.; and
Jaguar Portfolio, LLC,

Defendants.

) C.A. No.: 10-CP-13-164
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**NOTICE OF DENIAL OF LOAN MODIFICATION OR OTHER MEANS OF LOSS
MITIGATION, AND CERTIFICATION BY ATTORNEY FOR MORTGAGEE THAT
MORTGAGOR HAS FAILED, REFUSED OR VOLUNTARILY ELECTED NOT TO
PARTICIPATE IN ANY FORECLOSURE INTERVENTION PROCESS IN THIS CASE**

PLEASE TAKE NOTICE that pursuant to Administrative Order filed May 2, 2011, Re:
Mortgage Foreclosure Actions, The Supreme Court of South Carolina, Plaintiff served upon
defendant Michael R. Brown, Borrower as defined in the Complaint, on October 21, 2011, a Notice
of Right to Foreclosure Intervention requiring that he contact Plaintiff within thirty (30) days thereof
to inquire about Foreclosure Intervention.

Borrower, through his attorney, accepted service of the Notice on October 25, 2011, at which
time his attorney asked what information Borrower was required to provide in order to be evaluated
for foreclosure intervention. Borrower was told he needed to furnish proof of ability to pay, i.e.,
updated personal financial statements, tax returns for 2010, and a profit and loss or spreadsheet of
revenues and expenses for years 2010 and 2011 demonstrating ability to pay debt service.

In response, on November 21st Borrower furnished his tax returns for 2008, 2009 and 2010. On December 1, 2011, after reviewing the tax returns of Borrower, Plaintiff informed him that his tax returns showed he did not have any money with which to make installment payments that would amortize the loan and that anything less would just cause the debt to compound. Borrower was then asked, what is he proposing to pay, where is it coming from and how can Plaintiff confirm the source of funds from the tax returns?

Borrower did not respond to any of these questions. He was contacted again on January 25, 2012, and he failed once again to respond. On January 25th, Borrower was warned that this notice of denial and certification to proceed with the pending foreclosure would be submitted to the Court on February 1st if Borrower did not respond. Plaintiff gave Borrower another month beyond February 1st and still no response from Borrower or his attorney.

Consequently, Plaintiff submits this notice of denial of loan modification or other means of loss mitigation, and certification by attorney for mortgagee that mortgagor has failed, refused or voluntarily elected not to participate in any foreclosure intervention process in this case. Plaintiff has no money with which to make installment payments that would amortize the loan or serve to accomplish any other means of loss mitigation. Plaintiff and Borrower have not been able to reach any other agreement concerning the foreclosure process. Borrower-mortgagor has failed, refused or voluntarily elected not to participate in any foreclosure intervention process in this case. Thus, Plaintiff through its counsel is certifying this fact to the Court. Plaintiff is, therefore, entitled to have this foreclosure action proceed.

WHEREFORE, Plaintiff asks the Court to lift the stay in this case imposed by the Form 4 Order dated August 2011 since Plaintiff has provided proof of compliance with the foreclosure intervention requirements outlined in the Administrative Order.

Charlotte, N.C.

Date: 3/8/12

DRISCOLL SHEEDY, P.A.

By: James W. Sheedy

James W. Sheedy

Susan E. Driscoll

11520 North Community House Road
Suite 200

Charlotte, N.C. 28277

Telephone - (704) 341-2101

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jimsheedy@driscollsheedy.com

sdriscoll@driscollsheedy.com

ATTORNEYS FOR PLAINTIFF

1 Deposition of C. W. Horne, taken before me, Shirley
2 Dallas-Gerrald, CVR-CM, a Notary Public for the State of
3 South Carolina, in the law offices of Goldberg and
4 Easterling, Bennettsville, South Carolina, commencing at
5 11:00 A.M., on March 22, 2011, in accordance with the
6 South Carolina Rules of Civil Procedure.

7 It was stipulated by and between Counsel for the
8 Plaintiff(s) and Counsel for the Defendant(s) that this
9 deposition is taken for any purpose allowed under the
10 South Carolina Rules of Civil Procedure.

11 That the signing of the transcript of deposition
12 by the witness is waived.

13 * * * * *

14 C.W. Horne, first being duly sworn, deposes and says as
15 follows:

16 Examination: (By Mr. Foster)

17 **Q Sir, would you state your name and address for the
18 record?**

19 **A** My name is Cresful William Horne, 7318 Marshville
20 Boulevard, Marshville, N.C., 28103.

21 **Q Thank you.**

22 **Mr. Foster - I'm just going to put the Notice
23 of Deposition, the second Amended Notice of
24 Deposition in as an exhibit.
25 Whereupon - Deposition Exhibit 26 was marked.**

1 **Q Mr. Horne, have you ever given a deposition before?**

2 **A** I don't think so.

3 **Q Okay, sir. Have you had a chance to talk with Mr.
4 Easterling about what goes on in a deposition?**

5 **A** Yes.

6 **Q Let me go through a little stuff. It's kind of
7 normal for lawyers when they start these things to
8 give a bit of an explanation. We're going to be
9 asking you these questions about this case under
10 oath. This lady, the court reporter, is taking
11 down your answers, which you later have the right
12 to read and sign. The law assumes the answers you
13 give today are truthful because they are under oath
14 just as if we're in court. If you have any reason
15 you want to stop, take a break, we're happy to do
16 that. If you have any health problems or anything
17 like that where we need to stop, we'll be happy to
18 do that. If there's anything I ask you, sir, that
19 you have any questions about, you need to direct
20 your questions about that to me. You can't talk to
21 your lawyer while you're in the middle of a
22 deposition about things of that nature. Do you
23 understand that, sir?**

24 **A** I do.

25 **Q Okay, sir. Sir, I do need to ask you, are you on**

1 **any medications that would give you a problem with
2 being at the deposition today?**

3 **A** Yes.

4 **Q What are those, sir, if I can ask?**

5 **A** Pardon.

6 **Q What are the medications, sir?**

7 **A** I take a hormone injection every so often, and it
8 works every day. I take some chemo every so many
9 weeks. It works continuously.

10 **Q And do you believe those medications, sir, or that
11 treatment would prevent you from being in this
12 deposition?**

13 **A** No, I don't.

14 **Q Do you think they would prevent you from answering
15 any questions in here, sir?**

16 **A** No.

17 **Q As I say, sir, if you have a problem, please let us
18 know. Sir, what is your relationship to C.W. Horne
19 Sawmill and Chip Company, Inc.?**

20 **A** President.

21 **Q Who are the owners of that company?**

22 **A** Myself and my wife.

23 **Q Are there percentages of that ownership, sir?**

24 **A** I don't know.

25 **Q I mean, does she own half?**

1 **A** I don't know.

2 **Q Has stock been issued from the company?**

3 **A** No.

4 **Q Are there any shares issued by that company, sir,
5 to people?**

6 **A** No.

7 **Q Okay, sir. Would it be fair to say you run that
8 business?**

9 **A** Yes.

10 **Q Sir, do you recall the circumstances of a sale of
11 about 106 acres of land in Chesterfield County to
12 you by, and I hope I'm pronouncing this right,
13 Bisceglia Brothers Wine Company back in 1997?**

14 **A** Do I remember it?

15 **Q Do you remember the circumstances surrounding it,
16 yes, sir.**

17 **A** Well, I remember buying the land. Now, all the
18 circumstances, no.

19 **Q Okay, sir.**

20 **A** I didn't buy it. The company bought it.

21 **Q Yes, sir. That's correct. Sir, I'm going to show
22 you a copy of what's been pre-marked as Deposition
23 Exhibit 1. Sir, can you identify that as the Deed
24 into your company from Bisceglia Brothers?**

25 **A** This is a Deed to my company from the winery.

1 Q That's what I'm asking, sir. If you're answering,
2 that's what we wanted.
3 A It looks like it.
4 Q Have you seen that, sir, before?
5 A I'm sure I have.
6 Q Did you seek any legal advice about the kind of
7 title you were getting to that property?
8 A I did.
9 Q And could I ask who you sought that advice from?
10 A Miller Ingram from Cheraw.
11 Q Sir, what was your understanding of the nature of
12 the title you were getting from the winery?
13 A What was the nature? Do you mean was I getting a
14 good title? Is that what you're asking?
15 Q Let me be generic. Was there anything about the
16 title that was out of the ordinary?
17 A Not that I know of.
18 Q Were you aware of an easement that was being
19 retained by the winery?
20 A I never heard tell of any easements till the last
21 few months or several months.
22 Q Did you hear anything about the involvement of DHEC
23 with that land?
24 A No.
25 Q Did you hear anything about the involvement of DHEC

1 guess that's why I didn't question him.
2 Q How long had you dealt with Mr. Ingram, sir?
3 A At that time, I don't know.
4 Q Well, if I remind you that this sale was in 1997,
5 would that help you remember how long you dealt
6 with him before that?
7 A No.
8 Q Sir, I'm showing you a copy of a letter, marked as
9 Deposition Exhibit 2, which is on its face is a
10 letter from Duncan Laney of Tenner Brother's, Inc.
11 out of Patrick from DHEC. I'm sorry. I should
12 note that it's dated on its face March 24, 1997 or
13 stamped as received that day. Sir, have you ever
14 seen that letter before?
15 A I don't think so.
16 Q I'm showing you a document, sir, marked Deposition
17 Exhibit 3 without a date to Mr. David Sorce, S-o-r-
18 c-e, of Canadalgua Wine Company out of New York
19 from DHEC regarding the property. Have you ever
20 seen that letter before, sir?
21 A I do not know.
22 Q Sir, I'm showing you a copy of a letter on its face
23 from Canadalgua Wine Company, dated July 7, 1997
24 marked as Deposition Exhibit 4. Have you seen that
25 exhibit before, sir?

1 with the property prior to the sale to Mr. Brown?
2 A No.
3 Q I may have asked this, sir, but let me be clear.
4 You understood you were getting good title to the
5 property?
6 A I did. I sold some of that land to Paul Lovett.
7 There was over 500 in the beginning. I cut it up
8 into mini tracts, sold it to some of the best
9 businessmen in North Carolina, part of it, and
10 nobody ever asked any questions. Never heard any
11 feedback till recently.
12 Q Sir, did you pay cash or finance this purchase?
13 A Cash.
14 Q Were there any other attorneys involved besides Mr.
15 Ingram and the attorney for the wine company?
16 A At the purchase, when I was purchasing it, no.
17 Wait a minute. I don't know.
18 Q Sir, did you get title insurance on your purchase
19 of this property?
20 A I did not.
21 Q Did anyone advise you to get title insurance on
22 this property, sir?
23 Mr. Sheedy - Objection.
24 A No. I just trusted Ingram because we had done so
25 much business, and he was always so thorough. I

1 A I don't remember.
2 Q That letter specifically states in the next to the
3 last paragraph, please be so kind as to contact
4 Home at 714-233-5555. If that contact is
5 unsuccessful, I suggest you contact Home's
6 attorney, Miller Ingram, in Cheraw, South Carolina,
7 803-536-6565, who is familiar with this matter.
8 Sir, do you recall any contact between yourself and
9 representatives of DHEC in that period?
10 A No, I do not.
11 Q Do you recall any contact with DHEC or its
12 representatives prior to your sale of the property
13 in question to Mr. Brown?
14 A No.
15 Q Do you recall any contact, sir, between Mr. Miller
16 Ingram and the winery in that period?
17 A No.
18 Q Did you have any knowledge, sir, of Mr. Ingram
19 being contacted by the winery during the period
20 when you were purchasing this property?
21 A I might have, but we're talking about 12 years go.
22 I don't remember.
23 Q Do you have any knowledge, sir, as to whether Mr.
24 Ingram knew of DHEC's involvement with the property
25 prior to your sale to Mr. Brown?

- 1 A (Indicating no)
- 2 Q You're shaking your head no.
- 3 A No.
- 4 Q I should have said in my instructions that we do
- 5 ask you to respond orally. Sir, do you recall the
- 6 circumstances of the sale of this property, the 106
- 7 some odd acres that I referred to by your company
- 8 to Michael Brown in 1998?
- 9 A Yes, I remember.
- 10 Q Sir, I'm showing you an exhibit pre-marked,
- 11 Deposition Exhibit 5, and headed Offer to Purchase
- 12 and Contract. Sir, can you identify that document?
- 13 A I remember doing these things. I don't remember
- 14 what it said. What is this?
- 15 Q I'm asking you, sir. Do you know?
- 16 A No, I don't know.
- 17 Q Assuming it to be on its face an offer of contract
- 18 between yourself and Mr. Brown. Sir, do you know a
- 19 Mr. Barry Hilton?
- 20 A Yes, I do.
- 21 Q Has he ever acted for your company, sir?
- 22 A Has he ever worked with my company?
- 23 Q Yes, sir.
- 24 A He has.
- 25 Q Did he ever work with regard to Mr. Brown or

- 1 selling this property, to your knowledge?
- 2 A I would think so, but I can't answer yes or no.
- 3 Q Are you able to identify what purports to be his
- 4 signature on the second page, sir?
- 5 A I wouldn't know whether that was his signature or
- 6 not, but I would assume it is.
- 7 Q Sir, looking over that document, does it represent
- 8 the purchase price you actually received for this
- 9 property?
- 10 A \$340,000, yes. I thought it was \$347,000.
- 11 Q Do you know whether that document was presented to
- 12 Mr. Ingram or whatever attorney handled your sale
- 13 to Mr. Brown?
- 14 A I don't know, but Mr. Ingram handled on my sales on
- 15 that property.
- 16 Q Did Mr. Hilton deal with Mr. Ingram at that time?
- 17 A Well, I don't know if he did unless he was with me.
- 18 I don't know.
- 19 Q You don't think he would have done it on his own.
- 20 Would that be a fair statement?
- 21 A I don't think so, no.
- 22 Q Sir, on the face of Number 5, on the first page
- 23 under what I believe is 4C, it's stating and I'm
- 24 reading it, and please correct me if I'm wrong.
- 25 There must be no restriction, easement, zoning or

- 1 other governmental regulation that would prevent
- 2 the reasonable use of the real property for
- 3 commercial, ampersand, residential purposes. Sir,
- 4 is it your understanding that when the property was
- 5 sold to Mr. Brown that that condition was true?
- 6 A I don't remember anything about that.
- 7 Q Do you have an opinion, sir, as to whether it was
- 8 true when the property was sold to Mr. Brown?
- 9 A No. I've never heard of any easement or anything
- 10 when I sold that property to Mr. Brown. I do - - -
- 11 I do remember this much. He asked him if he would
- 12 like title insurance, and he said no.
- 13 Q Sir, calling your attention to the last page of
- 14 what is Deposition Exhibit 5, Evidence of Title.
- 15 Just reciting it reads, 13, Evidence of Title:
- 16 Seller agrees to use his best efforts to deliver to
- 17 buyer as soon as reasonably possible after the
- 18 acceptance of this offer copies of all title
- 19 information in possession of or available to
- 20 seller, including but not limited to: title
- 21 insurance policies, attorneys opinions on title,
- 22 surveys, covenants, deeds, notes and deeds of trust
- 23 and easements relating to the property. Sir, do
- 24 you know whether that was done prior to the sale of
- 25 the property to Mr. Brown?

- 1 A No. I don't know.
- 2 Q Sir, were you ever - - - Do you have any basis for
- 3 believing that any of that that I just recited was
- 4 done by Mr. Ingram for Mr. Brown prior to the sale
- 5 of this property?
- 6 A I don't understand the question.
- 7 Q Let me clear. Do you have any basis to know, do
- 8 you know whether any of those documents I've
- 9 recited were given to Mr. Brown by Mr. Ingram prior
- 10 to the sale?
- 11 A I don't know.
- 12 Q Sir, have you ever asked Mr. Ingram whether any of
- 13 that was given to Mr. Brown?
- 14 A Whether any of this was given to Mr. Brown or not?
- 15 Q Yes, sir.
- 16 A No.
- 17 Q Sir, I'm handing you a copy of Deposition Exhibit
- 18 6. Can you identify that as the Deed from your
- 19 company to Mr. Brown?
- 20 A I don't remember ever seeing this before. I see my
- 21 name right there.
- 22 Q Can you tell us whether you believe this to be your
- 23 signature? I'm turning to what I believe is the
- 24 third page.
- 25 A Yes.

1 Q Sir, do you have any reason to believe that this
2 was not signed by you on behalf of the company on
3 the recited date of September 25, 1998?
4 A No.
5 Q Sir, do you have any knowledge why this Deed does
6 not recite the easements that are stated in the
7 Deed into you that's our Deposition Exhibit 1?
8 Mr. Sheedy - Object to the form.
9 A I have no idea because just like I told you
10 earlier, I never heard anything about any problems
11 with this property.
12 Q Do you have any knowledge, sir, of why Mr. Ingram
13 did not include a reference to those easements in
14 this Deed?
15 Mr. Sheedy - Same objection.
16 A Probably didn't know about it.
17 Q Do you feel that Mr. Ingram didn't know about it?
18 A About these easements?
19 Q Yes, sir.
20 A I don't know.
21 Q Did you read the Deed, sir, before you signed it?
22 A I don't know.
23 Q Sir, did you receive any legal advice from Mr.
24 Ingram prior to signing that Deed as to the legal
25 effect of it?

1 sold so much of that property and nobody had ever
2 come back with anything against the property.
3 Q How about the involvement of DHEC, sir? Do you
4 have any knowledge of whether Mr. Ingram was aware
5 of DHEC's involvement with the property?
6 A I do not know.
7 Q At the time or prior to the sale to Mr. Brown, sir,
8 did you have any discussions with Mr. Brown as to
9 DHEC's involvement with the property?
10 A Not to my knowledge.
11 Q Did you have any conversations with him, sir, or
12 communications with him at or prior to the sale
13 involving these easements?
14 A No. I even bought some of this property back at
15 the sale or tried to.
16 Q Sir, do you have any knowledge of any documents,
17 either from Mr. Brown or to Mr. Brown, at or prior
18 to sale where these matters are set out?
19 A No.
20 Q Was Mr. Brown given a copy of the Deed into you,
21 sir, at or prior to the time of sale?
22 A I don't know.
23 Q Sir, let me show you Deposition Exhibit 7, which is
24 on its face a Mortgage from Mr. Brown to you for
25 \$115,000, dated September 25, 1998. Can you

1 A I don't know.
2 Q Sir, I may have said this and assumed it, but I
3 believe we've established that in the sale from
4 your company to Mr. Brown, you were represented by
5 Mr. Ingram. Is that correct?
6 A (Indicating yes)
7 Q And who, to your knowledge, represented Mr. Brown?
8 A I don't know. I was thinking maybe Miller did it,
9 but I don't know.
10 Q Sir, do you have any knowledge as to whether Mr.
11 Ingram was aware at the time of the sale of the
12 easements and involvement of DHEC with this
13 property?
14 A I guess I can say this. The first I heard about
15 this easement thing was when Michael put this up
16 for sale. He didn't go back to Ingram. He went to
17 another lawyer to get the title. Ingram gets word
18 that they've got some problems about easements, so
19 he contacts on my behalf, and I don't know that for
20 sure, and they said if there is, we've got no
21 problem doing away with them. He contacted Brown
22 about the situation and said we can get all this
23 cleared up, no big deal. And to the best of my
24 knowledge, he didn't want to go through with it.
25 That was my first knowing anything because I had

1 Identify the document as that, sir?
2 A Is this the Mortgage where I signed the Note at the
3 bank - - -
4 Q No, sir. These are on the face Mortgages, and I'm
5 not trying to testify. On the face, these are
6 Mortgages from Mr. Brown to you on the same date of
7 sale from you to him.
8 A I don't remember.
9 Q You don't remember whether this was part of the
10 purchase price?
11 A I do not.
12 Q Sir, there's another Mortgage that I have on its
13 face dated the same date from Mr. Brown to your
14 company in the amount of \$759,375. It is also
15 dated September 25, 1998. Do you recall that
16 Mortgage, sir?
17 A I do. That had nothing to do with part of the
18 sale.
19 Q Yes, sir. I believe, if I understand correctly,
20 that Mortgage had to do with what I would call a
21 side deal as to some Charlotte property?
22 A That's right.
23 Mr. Sheedy - Object to the use of side deal.
24 Mr. Foster - I'll happy to substitute another
25 term.

1 Q Sir, I'm handing you a Deposition Exhibit 9, a Real
 2 Estate Mortgage Note, on its face for \$115,000 by
 3 Mr. Brown to your company, I believe. Do you
 4 recognize that, sir?
 5 A I don't recognize it.
 6 Q Sir, I'm showing you a document headed Deposition
 7 Exhibit 10, which is on its face purported an
 8 Affidavit by apparently Mr. Ingram as to the
 9 purchase price of the property and its description.
 10 Have you ever seen this before, sir?
 11 A Is this the Deed I would be giving Michael for the
 12 property?
 13 Q We've been through what I believe is that, sir.
 14 What I believe this on the face is, again, without
 15 trying to testify is an Affidavit to the County of
 16 Chesterfield by what I take to be Mr. Ingram, but
 17 I'm asking you.
 18 A I don't know.
 19 Q Have you ever seen it before?
 20 A I don't remember.
 21 Q Sir, I'm handing you what has been pre-marked as
 22 Deposition Exhibit 11, a Bill of Sale, I believe,
 23 from yourself to Mr. Brown or your company to Mr.
 24 Brown. I believe that is dated the same date,
 25 September 25, 1998. Can you identify that

1 document, sir?
 2 A I'm sorry. We're talking about many, many years,
 3 and I couldn't say I remember this.
 4 Q Let me ask you this, sir. Can you tell us whether
 5 this is your signature on the top page, which is a
 6 xerox copy, for C.W. Horne Sawmill?
 7 A I couldn't tell you for sure.
 8 Q So while we were waiting, you were looking through
 9 the documents here that are already exhibits. Is
 10 there anything I can supply you that would help you
 11 in that answer?
 12 A I don't see a reason why it wouldn't be my
 13 signature, but --- Let me see another signature.
 14 Q Let me get the nearest one, which I think would be
 15 the Deed. I'm showing you back on Deposition
 16 Exhibit 6, the third page, that I believe you
 17 testified was your signature.
 18 A I would say that would be my signature.
 19 Q I believe the Bill of Sale had to do with some
 20 tanks and some other personal property that was a
 21 part of this deal, if you know, sir?
 22 A There was a lot of tanks on there, on the property.
 23 Q Sir, I'm showing you Deposition Exhibit 12, which
 24 on its face is a Statement of the transaction. Can
 25 you identify that, sir?

1 A Getting back to this ---
 2 Q Now, you've gone back to Deposition Exhibit 11.
 3 A Okay.
 4 Q Go ahead, sir.
 5 A See, the reason I don't remember all this, I don't
 6 remember having some many papers. About the only
 7 thing I remember is me giving Michael a Deed for
 8 this property. We had an agreement. I do remember
 9 some things, like these tanks was not supposed to
 10 be removed until he satisfied me with some kind of
 11 debt or something. Whether that's on paper or not
 12 I don't know.
 13 Q I don't mean to re-ask, but have we established
 14 that you do remember Number 12, the Statement or
 15 not sir?
 16 A I don't remember.
 17 Q Sir, do you have a recollection as to whether Mr.
 18 Brown paid cash for this purchase or whether he had
 19 financing?
 20 A When he bought the property from me?
 21 Q That's right, sir.
 22 A I think I financed it for him. I don't remember
 23 how, but I think he probably wanted to borrow one
 24 big large sum, and I think it was in that deal
 25 somewhere, so I think I financed it.

1 Q Sir, I have what's pre-marked Deposition Exhibit
 2 13, which is on its face, a Mortgage from Mr. Brown
 3 to C.W. Horne Sawmill and Chip Company from January
 4 13, 2000 for \$100,000. Can you identify that as
 5 being what it is on its face?
 6 A Now, what is this for?
 7 Q I'm asking you, sir, what it seems to be, which is
 8 a Mortgage from Mr. Brown to your company in
 9 January, 2000 for what is on its face of \$100,000.
 10 A I really don't know what it is.
 11 Q Do you have any recollection, sir, of the
 12 circumstances under which that Mortgage would have
 13 been made out in 2000 for \$100,000, assuming it to
 14 be what it is on its face?
 15 A No.
 16 Q Do you have any recollection of Mr. Brown owing you
 17 another \$100,000 or refinancing \$100,000 in 2000 by
 18 that Mortgage, sir?
 19 A No.
 20 Q Sir, I'm showing you from what is apparently the
 21 same date of January 13, 2000 a Lost Mortgage
 22 Satisfaction for a Mortgage --- Hold on.
 23 Actually, I take this back. This is dated December
 24 29, but it is apparently a satisfaction of the
 25 mortgage I just showed you and marked Deposition

1 **Exhibit 14. Do you recognize that, sir?**
 2 A No.
 3 **Q Do you have any recollection, sir, of the**
 4 **circumstances under which this earlier Mortgage was**
 5 **satisfied?**
 6 A I do not.
 7 **Q Sir, I am showing you what has been pre-marked as**
 8 **Deposition 15, a Form 1099-MISC for the year 2000**
 9 **reporting what is apparently \$5,000 in payments to**
 10 **Mr. Brown. Do you have any recollection, sir, of**
 11 **why that document was issued?**
 12 A No.
 13 **Q Okay, sir. Let me get that. Let me ask to be sure**
 14 **in another manner, sir. Do you recall anything Mr.**
 15 **Brown did for you in 2000 that was worth \$5,000,**
 16 **any payments to him or anything of that kind?**
 17 A The only thing I remember, I remember giving
 18 Michael a Deed for the place. I remember doing the
 19 Mortgage on the Charlotte land. I remember I sold
 20 him a little mobile home. That might have been on
 21 a little mobile home. I remember I had to
 22 foreclose on it to get all this cleared out after
 23 two years, and then I got paid all that was owed to
 24 me.
 25 **Q Your memory is your filed a foreclosure on Mr.**

1 **Brown?**
 2 A Pardon.
 3 **Q Did I understand you to say you filed a foreclose**
 4 **on Mr. Brown to get him to pay?**
 5 A Yes. I had to foreclose on him, yes.
 6 **Q Who handled that?**
 7 A Pardon.
 8 **Q Who handled that foreclosure, sir?**
 9 A My attorney in Charlotte, Harold Edwards.
 10 **Q And that suit resulted in your being paid?**
 11 A (Indicating yes)
 12 **Q So you have no Mortgages on the property at this**
 13 **time to your knowledge?**
 14 A No, sir.
 15 **Q Sir, going on ---**
 16 A Well, wait a minute. I signed his Note to help him
 17 out a little bit. He wanted a \$150,000. He wanted
 18 to clean the place up for some reason. I had no
 19 problem because I knew it was a good loan. I went
 20 to the bank. I told them here's a good loan. I
 21 said this is a real good loan, and I said it's so
 22 good that I will even sign it with you.
 23 **Q Was that American Community Bank?**
 24 A It was.
 25 **Q Sir, I'm showing you what's been marked as Exhibit**

1 **16. Do you recall seeing that HUD Statement?**
 2 A I don't know what it is.
 3 **Q Sir, are you capable of telling me whether this is**
 4 **the loan that you referred to in your narrative**
 5 **about Mr. Brown borrowing \$150,000 from the bank?**
 6 A I don't know whether this was the first one ---
 7 This thing went on so long. After he borrowed the
 8 money, according to the bank, he never made a
 9 payment or anything, so I asked why don't you
 10 foreclose on him. I said it's a good loan. I
 11 found out later they did not, so I don't know.
 12 That looks like it. Whether it was the first one,
 13 or second one, or fifth one, I don't know.
 14 **Q Sir, could I ask the source of your knowledge that**
 15 **he never made a payment on this loan?**
 16 A Pardon.
 17 **Q In your narration, sir, and in your answer, you**
 18 **indicated your understanding that Mr. Brown never**
 19 **made a payment on the loan, and I'm asking what's**
 20 **your source of that information?**
 21 A The manager of American Community Bank.
 22 **Q What was his name, sir?**
 23 A Jeff Coley, who is deceased now.
 24 **Q And that was the information passed on to you by**
 25 **Mr. Coley, was it?**

1 A At one time, yes.
 2 **Q Do you happen to remember when that was?**
 3 A Well, I kept asking. I wanted to get my name off
 4 of it, and I said has he ever paid the interest,
 5 has he ever paid anything on the Note or anything,
 6 and he said no. I'm saying that probably would
 7 have been two years after or maybe a year. I don't
 8 know. Probably closer to a year.
 9 **Q Sir, according to that HUD Statement that I've**
 10 **handed you, Deposition Exhibit 16, you or your**
 11 **company received \$72,000 as a payoff from that**
 12 **loan. Do you recall that, sir?**
 13 A That loan from the bank?
 14 **Q That's what the HUD says.**
 15 A No.
 16 **Q You're saying you don't recall it or you don't**
 17 **believe it to be the case?**
 18 A No.
 19 **Q Which one, sir?**
 20 A I don't recall receiving any money.
 21 **Q Did you receive any money ---**
 22 A Why would I have received any money? I don't
 23 understand.
 24 Mr. Sheedy - Objection. It's clear the
 25 witness didn't understand the question.

- 1 Q I will attempt to re-ask. Sir, I'm trying to be
 2 sure. You do not recall being paid money from the
 3 loan which Mr. Brown took out with American
 4 Community Bank?
 5 A I don't recall.
 6 Q Sir, would it be in possession of your financial
 7 records from that period of 2000 when this loan was
 8 taken out?
 9 A What would have been what?
 10 Q Who would have possession of your financial records
 11 from 2000?
 12 A You're talking about like my financial statement?
 13 Q Checks, deposit slips, bank statements.
 14 A Probably my CPA.
 15 Q Who is that, sir?
 16 A J.B. Watson, Wadesboro.
 17 Q Wadesboro?
 18 A Yes. Fifty years of doing business, I think.
 19 Q With you, sir, or with other folks?
 20 A With me.
 21 Q Sir, do you recall being paid any money by Mr.
 22 Brown for the fact of your cosigning on this Note?
 23 A I'm sorry.
 24 Q Were you paid any money by Mr. Brown to cosign this
 25 Note?

- 1 A Was I paid any money from Mr. Brown to cosign this
 2 Note?
 3 Q Did Mr. Brown pay you any money to cosign this
 4 Note?
 5 A I don't know. I don't know why he would have, but
 6 I don't know.
 7 Q Well, why do you understand that you cosigned it,
 8 sir?
 9 A Why do I understand what?
 10 Q Why did you cosign it?
 11 A Why did I sign this Note with him at the bank?
 12 Q Yes, sir.
 13 A I think to show the bank that I had confidence in
 14 this piece of property and Mr. Brown at that time,
 15 and that as a favor to him because he was wanting
 16 the money to keep it from taking so long to go
 17 through the process.
 18 Q What process was that, sir?
 19 A You know, you just don't walk in and walk out with
 20 \$150,000. I thought it might speed up time.
 21 Q What was the end result that you were going
 22 towards, sir, if you know, other than getting him
 23 the money?
 24 Mr. Sheedy - Object to the form.
 25 A I don't understand the question.

- 1 Q Why did he need the money to your knowledge.
 2 A Why did Michael need the money?
 3 Q Yes, sir.
 4 A Michael and I at that time, we were, I thought,
 5 real good friends, and I think he told me that he
 6 would like to do some work on the place, clean the
 7 place up, which made common sense, and I think
 8 that's the reason that he told me he needed the
 9 money.
 10 Q Do you recall, sir, having any communication with
 11 the bank or its officers, other than what you've
 12 told us about regarding that loan?
 13 A Yes. I asked a couple times why didn't they go
 14 ahead and foreclose on it.
 15 Q How about before you signed the Note, did you have
 16 any communication with them, sir, other than what
 17 you've told us about?
 18 A Not that I - - - Any communication with the bank
 19 about the Note?
 20 Q Yes, sir.
 21 A No. I think Michael and I just walked in together.
 22 Whenever I called, Mr. Coley told me come down
 23 there, that I thought I had him a good loan.
 24 Q Did you have any conversation or communication with
 25 the bank, sir, about the title to the property?

- 1 A I told Coley that I would like for him to get title
 2 insurance.
 3 Q He being Mr. Coley to get title insurance, for the
 4 bank to get title insurance?
 5 A He was the manager of the bank.
 6 Q And what response, if any, did he give you?
 7 A I don't remember.
 8 Q Do you recall any other conversations with anyone
 9 connected with the bank about the title to the
 10 property?
 11 A There was none other.
 12 Q Do you recall any conversations, sir, with anyone
 13 connected with the bank about the easements that
 14 were on this property?
 15 A No.
 16 Q Do you recall any conversations, sir, with anyone
 17 connected with the bank as to DHEC's involvement
 18 with this property?
 19 A No.
 20 Q Sir, do you happen to recall how Mr. Ingram came
 21 about to be the lawyer connected with this closing?
 22 A When Brown sold the property?
 23 Q No, sir, when he borrowed this money from American
 24 Community Bank. Mr. Ingram's name is on the HUD,
 25 Number 16, as the closing lawyer. And I'm asking

1 you if you have any knowledge of how that came
2 about?
3 A I do not unless he got me a first mortgage.
4 Q Well, sir, he was also in charge of the bank loan.
5 Do you have any recollection of why the bank was
6 using Mr. Ingram?
7 A I didn't know they did.
8 Q Do you have any knowledge of whether they usually
9 use Mr. Ingram?
10 A I doubt it. No.
11 Q I'm sorry. Say that last part again.
12 A No.
13 Q Sir, you mentioned your recollection of telling Mr.
14 Coley, I believe it was, that the bank needed to
15 get title insurance. Am I stating that correctly?
16 A I'm just saying I requested it.
17 Q You requested it. For the bank or for yourself,
18 sir?
19 A No, sir, the bank.
20 Q Why did you think the bank needed it, sir?
21 A Because I was signing the Note.
22 Q Sir, I'm showing you a copy of a document that's
23 been marked as Deposition Exhibit 17, which is
24 purportedly a mortgagee's title insurance policy
25 from Atlantic Title Insurance Company. Have you

1 ever seen this before, sir?
2 A No.
3 Q Sir, for the record, I don't think you've looked at
4 the last pages of this document. You're that
5 certain you've never seen it?
6 A Well, I don't know why I would have ever seen it.
7 Q I'm handing it again, sir. Did you have any
8 conversation with the bank as to the substance of
9 that policy, what was shown on it? By the bank, I
10 mean anyone connected with the bank.
11 A I didn't understand the last question.
12 Q Have you ever had any conversations, sir, with
13 anyone connected with the bank about what's shown
14 in that policy, what it says about the title of the
15 property?
16 A No.
17 Q Did you ever have any conversation, sir, with Mr.
18 Ingram about what's shown in that policy about the
19 title?
20 A No. Now, I done read it good enough to know
21 exactly what's in there. The only connection
22 Ingram and I ever had when it come back up with
23 these easements or whatever, and he said that's no
24 problem, and that's when he tried to get Mr. Brown
25 to solve the problem and get on down the road.

1 Q Sir, at the time of this matter closing at the
2 bank, which is recited on its face December 29,
3 2000, do you have any knowledge of where Mr. Brown
4 was living?
5 A Yes.
6 Q Where was that, sir?
7 A At the winery, I think. I know part-time anyway.
8 Q To your knowledge, sir, when did he start living
9 there?
10 A I don't know the dates.
11 Q Well, can you tell me, sir, did he move there after
12 he purchased the property?
13 A He did.
14 Q Can you tell me, sir, if you know, how long after
15 he purchased the property he moved there?
16 A I cannot.
17 Q So going back to the title insurance, was it the
18 practice of Mr. Ingram when he handled your
19 business to get you title insurance on new
20 purchases?
21 A Looking back, I can't believe why I didn't do it,
22 but I can't answer that question.
23 Q Well, going to my specific question, sir, when Mr.
24 Ingram handled your purchases - - - By your, I mean
25 either your individual or the company - - -

1 A Prior to this?
2 Q Yes, sir. Did he normally get you title insurance?
3 A I would say so if I had any questions that
4 something might could come up.
5 Q What if you didn't have any questions?
6 A I don't know.
7 Q Do you have any recollection, sir, as to how many
8 real estate purchases Mr. Ingram handled for you
9 over the years?
10 A I do not.
11 Q Were there more than 10?
12 A When I sold this property, there was more than ten.
13 There was probably 40.
14 Q Now, when you say sold this property, that would be
15 your dividing the full property up?
16 A The property that I sold off of this, what was left
17 when Michael bought the balance, which was about
18 400 acres.
19 Q Do you have any knowledge, sir, of whether when
20 those people bought the property, Mr. Ingram
21 handled it?
22 A He did.
23 Q In those cases, sir, do you have any knowledge of
24 whether Mr. Ingram wrote title insurance policies
25 on those other pieces of property?

- 1 A I do not know, but just knowing the people that
2 bought them, I can't believe they wouldn't have
3 bought them without title insurance.
- 4 Q Were those purchases, sir, to your knowledge, done
5 for cash or were they done for financing? Let me
6 say that again and make it English. You testified,
7 sir, that other portions of this property were sold
8 off. Do you have any knowledge, sir, as to whether
9 the purchasers of those portions were able to pay
10 their own cash - - -
- 11 A I have no idea.
- 12 Q Do you have any knowledge, sir, of whether any of
13 those purchasers financed their purchase through
14 American Community Bank?
- 15 A I do not.
- 16 Q Sir, did you have any lawyer representing you at
17 the time of this loan to Mr. Brown, other than Mr.
18 Ingram?
- 19 A No.
- 20 Q Did you regard Mr. Ingram as representing you at
21 the time of this loan?
- 22 A No.
- 23 Q To your knowledge, sir, was there any other lawyer
24 involved in this transaction, other than Mr.
25 Ingram?

- 1 A Not to my knowledge. You're talking about the
2 bank. We're still talking about the bank?
- 3 Q The bank loan, yes, sir. Does that change your
4 answer, sir?
- 5 A No.
- 6 Q Are you aware, sir, of anyone else - - - This may
7 be the same question, but I want to be sure. Are
8 you aware, sir, of any other lawyer representing
9 either the bank or Mr. Brown at the time of this
10 loan, other than Mr. Ingram?
- 11 A No.
- 12 Q Sir, I may have asked this question before. Have
13 you ever discussed the substance of this title
14 insurance policy with anyone prior to the
15 institution of this lawsuit?
- 16 A No, not that I recall.
- 17 Q Sir, I'm showing you a document - - - For the
18 record, I note there's a note on here that's been
19 added later, marked Deposition Exhibit 18. The
20 note is in yellow and that's simply an addition.
21 This purports to be a Modification and Extension
22 Agreement and headed American Community Bank.
23 Mr. Foster - If we can go off the record a
24 minute.
25 Whereupon - There was a discussion held off

- 1 the record which was not reported.
- 2 Mr. Foster - Let's go back on.
- 3 Q Mr. Horne, I'm again handing you what's marked as
4 American Community Bank Modification and Extension
5 Agreement on its face, a document dated 01-23-2002.
6 Sir, I'm going to ask you, first of all, have you
7 ever seen that document before?
- 8 A What is this? Where he was renewing the loan or -
9 - -
- 10 Q I'm not the one testifying, sir. It's headed
11 Modification and Extension Agreement, and I'm
12 simply asking if you've ever seen it before?
- 13 A Bad job.
- 14 Q What is, sir?
- 15 A Signature.
- 16 Q Is this your signature or his you're referring to,
17 sir?
- 18 A I don't know whose it is.
- 19 Q So identify the one you're talking about. I'm
20 handing you the document again.
- 21 A Right here.
- 22 Q You're indicating your purported signature. Is
23 that not your signature, sir?
- 24 A I don't know. What year was it?
- 25 Q It purports on its face, sir, to be 01-23-2002.

- 1 A When was the original Note made?
- 2 Q If I remember correctly and hoping Counsel will
3 correct me, December, 2000.
- 4 A I never signed anything to renew anything.
- 5 Q Do you have any knowledge, sir, of whether the
6 signature on this document, again, still on
7 Deposition Exhibit 18, it purports to carry the
8 signature of a Mr. Coley, is that his name, and Mr.
9 Brown. Were you present when either of those
10 signatures or purported signatures were affixed?
- 11 A What year was this?
- 12 Q Again, 01-23-2002.
- 13 A How long is that after the original Note?
- 14 Q A little more than a year.
- 15 A I would not swear in court that I did not sign that
16 thing maybe to renew it one time. I don't know.
17 It would make sense if I did, but I don't - - - I
18 wouldn't swear that I did.
- 19 Q Going back to my question, sir, were you present -
20 - -
- 21 A I don't remember.
- 22 Q Let me finish my question to be sure you and I are
23 on the same page. Do you have any knowledge, sir,
24 or any recollection as to whether you were present
25 when either Mr. Coley or Mr. Brown purported signed

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1 this document?

2 A I don't remember.

3 Q Sir, I'm showing you Deposition Exhibit 19, which

4 is an American Community Bank Modification and

5 Extension Agreement, dated on its face 8-28-03. I

6 am, again, showing you the page with signatures.

7 Can you tell us, sir, whether that is your

8 signature?

9 A No.

10 Q You're saying it is not your signature?

11 A That's not my signature. I'm under oath. I don't

12 think it's my signature.

13 Q Sir, I have to ask you again. Sir, do you have any

14 knowledge of whether you were present when

15 apparently Mr. Brown or Mr. Coley purportedly

16 signed - - -

17 A This one's after that one. This would have been

18 the third time.

19 Q I believe according to what we've been supplied,

20 it's the second. Do you have any knowledge, sir,

21 of whether you were present when either of these

22 signatures were affixed?

23 A I don't remember.

24 Q Sir, I'm showing you a copy of Deposition Exhibit

25 20, which is on its face American Community Bank

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1 Modification, dated February 22, 2005. I'm turning

2 to the third page. Are you able to tell me, sir,

3 whether that is your signature?

4 A No.

5 Q Sir, I'm handing you a copy of Deposition Exhibit

6 21, dated on its face July 25, 2005, again,

7 American Community Bank Modification and Extension

8 Agreement. I'm showing you the third page, sir.

9 Can you tell us, sir, whether that is your

10 signature?

11 A No.

12 Q It is not your signature. Is that correct? Is

13 that your testimony, sir?

14 A Yes, sir.

15 Q Sir, do you have any recollection as to whether you

16 might have been present when either Mr. Coley's

17 purported signature or that of Mr. Brown was

18 affixed to this document?

19 A No.

20 Q Sir, I'm showing you Deposition Exhibit 22, which

21 is on its face a Modification and Extension

22 Agreement, dated January 30, 2006. I'm turning to

23 the third page. Sir, can you tell us whether this

24 is your signature?

25 A No.

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1 Q Your testimony, sir, I understand to be that this

2 is not your signature?

3 A No.

4 Q Sir, do you have any recollection or knowledge as

5 to whether you were present when either Mr. Coley

6 or Mr. Brown purportedly signed this document?

7 A Not to my knowledge.

8 Q Sir, I am showing you Deposition Exhibit 23, which

9 is on its face a Modification and Extension

10 Agreement, dated August 28, 2006, and I am turning

11 to the third page under the notation guarantor.

12 Sir, is that your signature to your knowledge?

13 A No.

14 Q And so, once again, do you have any knowledge or

15 recollection or whether you were present when - - -

16 A Not to my knowledge.

17 Q Let me finish, sir. When either Mr. Coley or Mr.

18 Brown purportedly signed this document?

19 A No.

20 Q Sir, I am showing you Deposition Exhibit 24, which

21 is on its face a Modification and Extension

22 Agreement, dated March 15, 2007. On the third page

23 there, sir, under guarantor, can you tell us

24 whether that is your signature?

25 A No.

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1 Q And, sir, the same question again. Do you have any

2 knowledge or recollection of whether you were

3 present when either Mr. Coley or Mr. Brown - - -

4 A No.

5 Q Let me finish, sir. Were you present or do you

6 have any recollection, sir, or knowledge as to

7 whether you were present when Mr. Coley and Mr.

8 Brown purportedly signed this document?

9 A No.

10 Q Sir, I am showing you Deposition Exhibit 25, which

11 is American Community Bank Modification and

12 Extension Agreement, dated on its face October 29,

13 2007. I'm showing you the third page and asking

14 you whether you can tell us if this is your

15 signature, sir, under guarantor?

16 A No.

17 Q Sir, the same question. Were you present or do you

18 have any recollection or knowledge of whether you

19 were present when either Mr. Coley or Mr. Brown

20 purportedly signed this document?

21 A No. Excuse me. I need to go to the bathroom.

22 Mr. Foster - This is a good point for a break

23 actually.

24 Whereupon - A recess was held.

25 Q Mr. Horne, on these documents that we've been

1 talking about, these extension exhibits, and I'm
 2 going to try to find one that has the language that
 3 I wish to ask you about. I picked up Deposition
 4 Exhibit 23. If I can show you where we can read
 5 this together. It says, okay to book - - - It
 6 looks like delta S 08-3-06 and what seems to be a
 7 signature. Principal and interest 100 percent
 8 secured by RCB CD. Do you happen to know, sir,
 9 what that refers to?

10 A Where is it?

11 Q You have your finger on it.

12 A I have no idea.

13 Q Do the initials RCB mean anything to you, sir?

14 A No.

15 Q Perhaps I'm misreading it and what we're talking
 16 about is actually ACB, American Community Bank. Do
 17 you have a CD, sir, with American Community Bank?

18 A I did. Yes, I did.

19 Q When was that, sir?

20 A For many years, and I don't know how many years.

21 Q Do you still have it with their successor, sir?

22 A I have CDs. You said - - -

23 Q CD is what they say.

24 A With what bank?

25 Q I believe it was American Community Bank, sir, and

1 I'm now assuming it's Yadkin Valley National?
 2 Mr. Sheedy - American Community Bank still
 3 exists as a division of Yadkin Valley.
 4 Mr. Foster - Thank you.

5 A I did at that time and still do have CDs with them.

6 Q Can I ask in what amount those CDs are, sir?

7 A I don't know.

8 Q Do you have any knowledge, sir, of anyone else
 9 besides yourself who has CDs with that bank and is
 10 also connected with this transaction?

11 A No.

12 Mr. Sheedy - Object to the form.

13 Q Well, I'll ask more specifically, sir. To your
 14 knowledge, does Mr. Michael Brown - - - Let's try
 15 it again. To your knowledge, sir, has Mr. Michael
 16 Brown had CDs with either American Community Bank
 17 or Valley National Bank at anytime since the year
 18 2000?

19 A I do not know.

20 Q Sir, you've indicated in response to my questioning
 21 about the Modification and Extension Agreements, I
 22 believe it would be fair to say that on some of
 23 them, you believe - - - Let me be fair. On some of
 24 them, you have doubts as to their authenticity and
 25 on some of them, I believe it would be fair to say

1 they are not your signature. Would that be a fair
 2 characterization, sir?

3 A I've been through a lot these last few years. I'm
 4 not sure that somebody couldn't write a signature
 5 that signature looks so much like mine that - - - I
 6 know one of them is my signature, and I wouldn't
 7 swear that the second one because it would make
 8 sense if he wanted to renew it for one year that I
 9 would have gone along with that. After that, none
 10 of them are my signatures unless it was in my
 11 sleep.

12 Q Sir, do you have any knowledge as to how these
 13 purported signatures were put on these documents?

14 A I know what I think, but I don't have any knowledge
 15 of how it was done.

16 Q Well, sir, we're in a deposition, so I will ask you
 17 what you think.

18 A Are you asking me who I think put them on there?

19 Mr. Sheedy - Object to form. Calls for
 20 speculation.

21 Q I'm asking you to speculate. Go ahead, sir.

22 A You're asking me why do I think that somebody
 23 forged my signature?

24 Q Yes, sir.

25 A To get Mr. Brown out of a tight, plus make the bank

1 look good. That's my speculation.

2 Q Do you have any knowledge, sir, of who might have
 3 done that?

4 Mr. Sheedy - Same objection.

5 A Do I what?

6 Q I'm asking you, sir, do you have any knowledge of
 7 who might have done that?

8 Mr. Foster - I take your objection as
 9 continuing.

10 A I don't have any knowledge of who done it.

11 Q Do you have any suspicion, sir?

12 A I wouldn't think anybody would have any reason to
 13 do it, other than the manager of the bank.

14 Q Mr. Coley? Is that who you're referring to?

15 A (Indicating yes)

16 Q What leads you to believe he would have reason to
 17 do so, sir?

18 A I just told you.

19 Q Sir, I have to ask this, and to ask it, I'm not
 20 implying any wrongdoing or any motive on your part,
 21 but I have to ask it. Sir, the news reports which
 22 we have received about the merger between American
 23 Community Bank and Valley National, Yadkin Valley
 24 National, indicate that there was at one point some
 25 missing 4.3 million dollars from unfunded cashier's

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1 checks. Do you have any knowledge, sir, of that
 2 circumstance?

3 A No, sir.

4 Mr. Sheedy - Object to the form.

5 Q Sir, going back to Deposition Exhibit 16, I'm
 6 calling your attention to the notation on Line 111,
 7 the front page. Well, 110 and 111. Holding
 8 account containing 12 monthly payments, and there
 9 is a figure set down of \$16,567.80. Assuming this,
 10 sir, to be an escrow for payments on this loan, and
 11 we are referring again to the loan from American
 12 Community Bank to Mr. Brown, you stated that you
 13 had a conversation with Mr. Coley in which he
 14 indicated there had been no payments on this loan.

15 A Yes.

16 Q Sir, I assume that conversation by your memory or
 17 knowledge would be after the closing of this loan?

18 Mr. Sheedy - Object to the form: Is that a
 19 question.

20 Mr. Foster - Well, it was put in the form of
 21 one, I think.

22 Mr. Sheedy - It was a sentence.

23 Q Did your conversation with Mr. Coley as to the lack
 24 of payments take place after the loan closing?

25 A Sure it did because there wouldn't have been any

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1 reason for me to ask him. Why would I have asked
 2 him if I hadn't wondered what was going on. My
 3 name was on the Note, so it made sense that I ask
 4 him was he keeping up with his payments.

5 Q And I believe you indicated, sir, you had no
 6 recollection of when that conversation took place?

7 A I do not. I would presume it would have been a
 8 year later maybe.

9 Q Do you have any knowledge, sir, of who held this
 10 escrow shown on the HUD?

11 A Who held the escrow?

12 Q The amounts I was pointing out to you, sir. They
 13 seem to be 12 monthly payments escrowed. Do you
 14 know who held that escrow?

15 A No.

16 Q Sir, I need to ask and, again, I imply nothing by
 17 this. Can you give me your social security number?

18 I'm happy to sign a confidentiality agreement on
 19 this, if Counsel would like.

20 A You want my social security number?

21 Q Yes, sir, and if you have it the Federal ID of
 22 Home Sawmill.

23 A I don't have that with me.

24 Q Can that be supplied to us?

25 Mr. Easterling - Yes, sir.

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1 Q Actually, it occurs to me we may already have that
 2 on the tax form that we have. We do, sir. It's on
 3 Deposition Exhibit 15. Your social was what I was
 4 trying to ask for.

5 A I don't have it.

6 Q So Mr. Easterling, I presume, can supply us with
 7 that.

8 Mr. Easterling - Yes, sir.

9 Q Sir, I also ask in every deposition and, again, I
 10 don't intend anything by this, so please don't take
 11 it as such. Sir, other than traffic violations,
 12 speeding and so forth, do you have any type of
 13 record for conviction of any crime, sir?

14 A No. Wait a minute. Ask me that question again.

15 Q Other than traffic tickets and traffic violations,
 16 sir, do you have any criminal convictions?

17 A No, sir.

18 Mr. Foster - Thank you, I have no other
 19 questions.

20 Mr. Sheedy - Let me pose a question. It's
 21 about 12:35. What is the pleasure of the
 22 folks in attendance? Do you want to take a
 23 break for lunch and reconvene or do you want
 24 to continue this? My guess is we've got
 25 probably about 45 minutes maybe.

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1 Mr. Foster - I would assume that if you have
 2 45 minutes, the thing would be to reconvene.

3 Mr. Easterling - I have no problem with
 4 however you want to do.

5 A I've got a big problem with a long lunch break
 6 because my understanding was this was going to take
 7 about two hours.

8 Mr. Sheedy - That's fine. We can go forward.

9 Examination: (By Mr. Driscoll)

10 Q Mr. Horne, I introduced myself to you at the
 11 beginning of the deposition. I'm Susan Driscoll,
 12 and I'm here on behalf of American Community Bank,
 13 and I just have a few more questions for you.
 14 We'll try to get you out of here as soon as we can.

15 A Okay.

16 Q I'm going to show you a document titled Answer and
 17 Counterclaims to the Cross Claims of the Cross
 18 Plaintiff Michael R. Brown. Specifically I'm
 19 showing you paragraphs 21 and 22. I would just ask
 20 that you look at those two paragraphs and read them
 21 for me right quick, please.

22 A Could you and I step out for a minute?

23 Mr. Easterling - I don't have any problem in
 24 stepping out and talking to you, but I think
 25 the attorney for Mr. Brown may have an

1 objection to that.

2 Mr. Foster - Right now all I know is she's
3 asking him to read a document. Consequently I
4 assume we're heading towards her asking what
5 it means in some fashion or another.

6 Mr. Easterling - I think you can answer the
7 question that she may have about that.

8 A Okay.

9 Q Mr. Horne, that's the Answer that you filed in
10 response to Mr. Brown's Cross-Claims against you,
11 isn't it?

12 Mr. Easterling - For the record, I would say
13 that I think that Mr. Horne is somewhat
14 unfamiliar with litigation of this type, and
15 without objection, I would say this is the
16 Answer and Counterclaims to the Cross Claims
17 of the Cross Plaintiff Michael R. Brown, and
18 this is my signature as your attorney. This
19 is the Pleadings that I filed responsibility
20 to Mr. Brown's Pleadings against you. I would
21 say for the record, after discussion with you,
22 I filed the answers and defenses that I felt
23 could be appropriate and would be appropriate,
24 and that's why I filed in your behalf. And I
25 see no problem with you reading and responding

1 to that.

2 Q Mr. Horne, if I could just get you to look at the
3 eighth defense on that page. It's paragraphs 21
4 and 22. Do you see that?

5 A What does that mean?

6 Q Well, I'm getting ready to ask you that, so just
7 give me a little bit of leeway here. I'm going to
8 paraphrase that for you. And that defense
9 basically states that the contamination issue that
10 Mr. Brown has made certain allegations about has
11 been resolved and settled. Is that what that says?
12 Let me rephrase that. Is that basically what those
13 two paragraphs say?

14 A That's what I understand, yes.

15 Q And is it your belief today that the property at
16 issue in this litigation, the acreage that's in
17 Patrick, South Carolina, is not environmentally
18 contaminated?

19 A I think it's a clean piece of property.

20 Q And you believe that it was also a clean piece of
21 property at the time Mr. Brown purchased it from
22 you. Is that right?

23 A I don't know.

24 Q You don't have any knowledge as to whether or not
25 the property was clean at the time Mr. Brown

1 purchased it from you?

2 A I don't know there was ever anything wrong with it
3 in the beginning.

4 Q Let me rephrase my question because I think you're
5 answering a different question than I'm asking. Is
6 it your testimony that you don't have any knowledge
7 as to the environmental condition of the property?

8 A No, I don't.

9 Q But I think you just testified that you believe
10 that the property is not environmentally
11 contaminated. Is that correct?

12 A I think it's been taken care of. I didn't know in
13 the beginning it was, but I've heard that since
14 then that there was problems, and to my
15 understanding, it's been taken care. Is that what
16 you asked me?

17 Q You've answered my question. Let me direct your
18 attention to Deposition Exhibit Number 2. If you
19 can just take a second and read that letter for me,
20 please.

21 A (Witness complies)

22 Q And that letter is from DHEC, is it not? Is that
23 correct?

24 A (Indicating yes)

25 Q And that letter is addressed to Tenner Brother's,

1 Incorporated. Is that right?

2 A (Indicating yes)

3 Q Tenner Brother's, Incorporated was the prior owner
4 of this property that's at issue in this
5 litigation. When I say prior owner, it was the
6 owner that you purchased it from. Is that correct?

7 A That's right.

8 Q Tenner Brother's merged with Bisceglia. Is that
9 correct?

10 A I don't know about that.

11 Q But it's your understanding that Tenner Brother's
12 did have an ownership interest in this property.
13 Is that correct?

14 A They did have what?

15 Q An ownership interest in the property?

16 A Yes.

17 Q And based on the second paragraph in this letter,
18 is it correct that DHEC performed some type of site
19 investigation on this property?

20 Mr. Foster - Objection. He has no ability to
21 say what DHEC did. He can read the letter,
22 which is already in evidence.

23 Q Based on the second paragraph in that letter, does
24 it appear that DHEC is going to require further
25 action on this property?

1 **Mr. Foster - Same objection.**
 2 A I don't know.
 3 Q Does the letter, in fact, state no further action
 4 will be required at this time?
 5 **Mr. Foster - Objection. The letter is in**
 6 **evidence.**
 7 A What did you ask me?
 8 Q I'm asking you, based on reading this letter, if
 9 according to this letter DHEC is not requiring any
 10 further action on this property?
 11 **Mr. Foster - Can I just make this objection**
 12 **continuing?**
 13 Q Mr. Horne, let me ask it this way. Do you have any
 14 information that is different from what is in this
 15 letter about the environmental condition of this
 16 property?
 17 A No.
 18 Q And this letter is dated March 24, 1997. Is that
 19 correct?
 20 A (Indicating yes)
 21 Q And you purchased this property from Bisceglia in
 22 May of 1997. Correct?
 23 A That's right.
 24 Q And that's evidenced by Exhibit 1, which is the
 25 Deed from Bisceglia into you. Is that correct?

1 A What?
 2 Q The Deed from Bisceglia into you, which is Exhibit
 3 1 in this deposition, and that supports the date of
 4 May of 1997. Is that right?
 5 A That's right.
 6 Q So this letter from DHEC, which is Exhibit 2, was
 7 prior to your purchase of the property in May. Is
 8 that correct?
 9 A Yes.
 10 Q And when you purchased the property from Bisceglia
 11 in May of 1997, as far as you knew at that time,
 12 there was no environmental contamination on the
 13 property. Is that right?
 14 A That's right.
 15 Q And then you sold this property to Mr. Brown in
 16 September of 1998. Is that right?
 17 A A portion of this property, yes.
 18 Q So you held that property from May of 1997 to
 19 September of 1998. Is that correct?
 20 A That I sold Michael Brown or that I sold ---
 21 Q I'm specifically asking you only about the portion
 22 of the property that you sold to Mr. Brown.
 23 A Yes, that's right.
 24 Q And during the period of time that you held this
 25 property, you did not perform any activities on the

1 property that would have environmentally
 2 contaminated it, did you?
 3 A No, I didn't.
 4 Q Did you do anything to the property?
 5 A I cut the timber on the property.
 6 Q Let me ask this one more time just to confirm. You
 7 didn't perform any activities on this property that
 8 would have resulted in it being environmentally
 9 contaminated?
 10 A No.
 11 Q So at the time you sold the property to Mr. Brown
 12 in September of 1998, you believed that the
 13 property was not environmentally contaminated. Is
 14 that correct?
 15 A That's right.
 16 Q And it's your belief today that the property is not
 17 environmentally contaminated. Is that right?
 18 A That's right.
 19 Q Did you ever have any correspondence or
 20 communications with American Community Bank about
 21 the environmental condition of the property?
 22 A No.
 23 Q And your request from American Community Bank to
 24 get a title insurance policy did not have anything
 25 to do with the environmental condition of the

1 property, did it?
 2 A No.
 3 Q And you wouldn't have agreed to guarantee a loan on
 4 a piece of contaminated property, would you?
 5 A No.
 6 Q Because if the borrower had defaulted and then the
 7 property were foreclosed on, the property would be
 8 worth less if it were environmentally contaminated,
 9 wouldn't it?
 10 **Mr. Foster - I believe that's testimony by the**
 11 **questioner.**
 12 **Mr. Sheedy - It's a question.**
 13 A My main thing was getting title insurance so if
 14 anything happened at the time I sold it to Michael
 15 Brown is when I signed this Note. That was my
 16 concern.
 17 Q I understand that. My question though is, if a
 18 piece of property is environmentally contaminated,
 19 it's not going to be worth as much as a piece of
 20 property that is not environmentally contaminated.
 21 Is that right?
 22 A I wouldn't think so.
 23 Q And so, if the property that you had signed a
 24 guaranty for, if the Note that you guaranteed,
 25 which was secured by this property, and then the

1 property was foreclosed, if that property were
2 worth less, would that mean you would have to pay
3 more on your guaranty?

4 Mr. Foster - I believe that question requires
5 him to effectively respond as a lawyer.

6 Q If the property was worth less, would you have to
7 pay ACB more?

8 Mr. Foster - Same objection.

9 A If there was problems with the property, would I
10 have to do what?

11 Q If ACB could not recover its debt from the
12 property, is it your understanding that ACB would
13 look to you for the shortfall?

14 A No.

15 Q But you had guaranteed that loan. Correct?

16 A I did.

17 Q And in signing that guaranty, was it your
18 understanding that you were responsible for the
19 payment of that loan?

20 A Yes.

21 Q Mr. Horne, Mr. Foster went through several
22 Modification and Extension Agreements with you. I
23 think they're Exhibit 18, 19, 20, 21, 22, 23, 24
24 and 25. If I could get you to look at those
25 exhibits with me right quick.

1 A When he had this sale, I bought a portion of this
2 land back and requested a Deed for it.

3 Q You bought a portion of the land back from Mr.
4 Brown?

5 A Yes.

6 Q And when was that?

7 A It's the date that he had the sale. If I had
8 thought there had been any environmental problems,
9 I certainly wouldn't have bought the property back.

10 Q Was that after the loan to ACB?

11 A No.

12 Q That was before 2000?

13 A I think that was before. I wouldn't have signed
14 anything after the sale. That was before the sale.

15 Q Mr. Horne, I'm going to show you Deposition Exhibit
16 18 and ask you to take a look at that for a second.
17 If you'll look at page 2 of that. Do you see where
18 it says principal and interest is payable in full
19 at maturity on 4-23-2002?

20 A (Indicating yes)

21 Q Is it your understanding that that's an extension
22 of the maturity date of the loan?

23 A Is that my what?

24 Q Is it your understanding that that sentence right
25 there is an extension of the maturity date of the

1 loan?

2 A Yes.

3 Q And did you object to the extension of that
4 maturity?

5 A I never had an opportunity to object.

6 Q You didn't communicate with American Community Bank
7 about that extension?

8 A No, not that I remember.

9 Q And if they had not extended that, the Note would
10 have been due a year earlier. Is that correct?

11 A Right.

12 Q But you didn't make any objections to it being due
13 a year later. Is that correct?

14 A I thought that was American Community's business if
15 they wanted to renew the loan for ever how long.

16 Q I'll take that one back from you and I'll trade you
17 for Deposition Exhibit 19. If you'll take a second
18 and look at that. And if you'll flip to the second
19 page of that, please, sir. If you'll look at the
20 same place on that page 2 where it says principal
21 and interest is payable in full at maturity on 12-
22 15-2003. Do you see that?

23 A Yes.

24 Q And that's another extension of the maturity date.
25 Is that correct?

1 A Without my knowledge.

2 Q But you never had any communications with American
3 Community Bank about that?

4 A Are you asking me if Community Bank ever called me
5 asking me was it okay to renew this Note? That's
6 kind of what you're asking me. Right?

7 Q What I'm asking you is did you object to the
8 extension of the maturity?

9 A I didn't know anything about it. I didn't know
10 what was going on, so I couldn't object.

11 Q And this is Deposition Exhibit 20, if you'll take a
12 look at that. If you'll flip to page 2 of that as
13 well. Do you see there where the maturity date on
14 the loan was extended to June 15, 2005. Is that
15 correct?

16 A Yes, ma'am.

17 Q And you didn't object to the extension of that
18 maturity either?

19 A No. Again, I didn't have the opportunity to
20 object.

21 Q Did you call ACB and ask them why the loan had not
22 matured?

23 A By this time, the best I remember, I didn't know it
24 hadn't been taken care of. The first two or three
25 years I kept up with it and kept questioning him

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1 why he didn't foreclose. I didn't hear anymore
 2 about it. I had too much to take care of to worry
 3 about what the bank was doing.
 4 **Q So you didn't monitor the status of the loan. Is**
 5 **that what you're saying?**
 6 A That's right.
 7 **Q I'll show you Deposition Exhibit 21 and ask you to**
 8 **look on page 2 of that as well. And, again, that**
 9 **maturity was extended to December 15th of 2005. Is**
 10 **that right?**
 11 A That's right.
 12 **Q And I'll ask you the same question. You didn't --**
 13 **- Because you were no longer monitoring the status**
 14 **of the loan, you didn't inquire as to why that Note**
 15 **had been extended?**
 16 A No.
 17 **Q And you made no objection to ACB about that**
 18 **extension?**
 19 A No.
 20 **Q Exhibit 22, if you'll flip to the second page of**
 21 **that one as well, please. This time I believe the**
 22 **Note was extended to July 15th of 2006. Do you see**
 23 **that?**
 24 A Yes, ma'am.
 25 **Q And you made no objection to ACB about the**

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1 **extension of that maturity. Is that correct?**
 2 A No. I'm not saying I okayed it. I made no
 3 objection because I didn't know anything about it.
 4 **Q But the answer to my question is to whether you**
 5 **objected to it is that you did not object to it.**
 6 **Is that right?**
 7 A No, I didn't object to it. My wife could buy a
 8 new car today and bring it home tonight. I
 9 wouldn't approve of it if I'd known it, but I
 10 didn't object to it because I wasn't there. I
 11 didn't know about it. That's what I'm trying to
 12 get across.
 13 **Q If I could get you to look at Exhibit 23 for me,**
 14 **please. Now, this is a little bit different form,**
 15 **but it's still on the second page. It says**
 16 **principal and interest is payable in full at**
 17 **maturity on February 5, 2007. Do you see that?**
 18 A Yes, ma'am.
 19 **Q So that's another extension of this loan by ACB.**
 20 **Is that correct?**
 21 A That's right.
 22 **Q And as a result, the maturity date was extended to**
 23 **that date you see there, February 5, 2007. Is that**
 24 **right?**
 25 A That's right.

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1 **Q And you made no objection to ACB about that**
 2 **extension?**
 3 A Let me say something. The first that I knew there
 4 was a problem, Mr. Brown walks in my office one
 5 day, and I don't remember why he come to visit me,
 6 which was not often. Why he done it, I do not
 7 know, but he put on my desk where that he had kept
 8 up with interest on this thing from the bank, and
 9 it blew my mind, for a period of years, and I
 10 didn't get into details with that.
 11 **Q He showed you something that showed he had been**
 12 **making interest payments. Is that what you're**
 13 **saying?**
 14 A Yes, a large sum that he showed me.
 15 **Q Mr. Horne, we'll probably get into that in Mr.**
 16 **Brown's deposition. I just want to focus on some**
 17 **questions that I want to definitively ask you.**
 18 A I was telling you that's the reason I didn't know
 19 this thing wasn't taken care of.
 20 **Q I understand that. If I can get you to look at**
 21 **Exhibit 24 for me, please. If you'll flip to the**
 22 **second page on that one, do you see where the**
 23 **principal and interest is payable in full at**
 24 **maturity on September 15, 2007. Do you see that?**
 25 A (Indicating yes)

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1 **Q So that's another extension of the maturity date.**
 2 **Is that right?**
 3 A Yes.
 4 **Q And, again, you made no objection to ACB on that.**
 5 **Is that correct?**
 6 A No.
 7 **Q And this is the last one, Exhibit 25. If you'll**
 8 **flip to the second page on that one for me. May**
 9 **10, 2008 is the last extension of the maturity. Do**
 10 **you see that?**
 11 A Yes, ma'am.
 12 **Q So the Note was again extended to that date. Is**
 13 **that correct?**
 14 A Yes.
 15 **Q And you made no objection to ACB on that. Is that**
 16 **correct?**
 17 A No.
 18 **Q I just want to make sure I'm clear on some of your**
 19 **earlier testimony. It's my understanding from your**
 20 **testimony with Mr. Foster that you had no**
 21 **conversations with American Community Bank about**
 22 **any easements on the property that you sold to Mr.**
 23 **Brown?**
 24 A Never.
 25 **Q And you also had no conversations as to whether or**

- 1 not DHEC had any involvement in this property?
- 2 A No.
- 3 Q And to your understanding, at the time you sold the
- 4 property to Mr. Brown, DHEC did not have any
- 5 involvement in this property. Is that correct?
- 6 A To my understanding, no.
- 7 Whereupon - A recess was taken.
- 8 Ms. Driscoll - Mr. Horne, I just have a couple
- 9 more questions for you.
- 10 Mr. Sheedy - Before she begins and while I'm
- 11 thinking about it, I am more than willing to
- 12 stipulate for the record that on behalf of the
- 13 bank, we have zero interest in conflicting
- 14 with Mr. Horne's medical appointments, medical
- 15 conditions, medical needs. So, thank you, for
- 16 this appointment reminder, and I'm more than
- 17 willing to work with co-counsel in order to
- 18 accommodate Mr. Horne in that respect.
- 19 Mr. Easterling - Thank you. And that's just
- 20 information to you in case we try this case or
- 21 something.
- 22 Q (By Ms. Driscoll) Mr. Horne, you don't dispute that
- 23 you guaranteed the loan to Mr. Brown, do you?
- 24 A Do I what?
- 25 Q You don't dispute that you guaranteed the loan to

- 1 Mr. Brown, do you?
- 2 A No.
- 3 Q And as part of that guaranty, you agreed to be
- 4 responsible for the payment of that Note, did you
- 5 not?
- 6 A I signed the Note.
- 7 Q Well, that's what I'm asking. By signing that and
- 8 agreeing to repay it, that's what you did is you
- 9 agreed to repay that Note. Is that correct?
- 10 A I don't know what the Note said, but I signed the
- 11 Note. Whatever the Note said, that's what I
- 12 agreed to.
- 13 Q I'm handing you a document entitled Commercial
- 14 Guarantee, and it has borrower Michael Brown and
- 15 Guarantor C.W. Horne. I'll ask you to take a look
- 16 at that, please.
- 17 Mr. Foster - May I take a look at it. For the
- 18 record, I don't believe we've been supplied
- 19 this document.
- 20 Ms. Driscoll - I'll be more than happy to
- 21 provide you with a copy of that.
- 22 Mr. Foster - Thank you.
- 23 Q Mr. Horne, under the terms of this Guaranty, if
- 24 you'll look at the amount of guaranty up at the
- 25 top, it says it's a guaranty of payment of the

- 1 Note, including without limitation the principle
- 2 Note, the amount of \$150,000. Do you see that?
- 3 A Yes.
- 4 Q So by signing that document, you agreed to be
- 5 responsible for the repayment of \$150,000. Is that
- 6 correct?
- 7 A Yes.
- 8 Q And if the bank had not extended the maturity of
- 9 that Note, you would have been responsible for the
- 10 payment of that Note within 12 months. Is that
- 11 correct.
- 12 Mr. Foster - I'm going to object on the
- 13 grounds that he asks him to reach a legal
- 14 conclusion.
- 15 Mr. Sheedy - The witness can state his lay
- 16 opinion of the document. He signed it.
- 17 Q When you signed this document, was it your
- 18 understanding that if the Note was not otherwise
- 19 paid, you would have to pay it within 12 months.
- 20 Is that correct?
- 21 A Yes.
- 22 Q And if it hadn't been extended by these various
- 23 Modification Agreements that we looked at, the bank
- 24 would have been able to look directly to you for
- 25 payment of that Note. Is that correct?

- 1 A That wasn't my understanding. My understanding was
- 2 that the bank would foreclose on the property.
- 3 Q But this Guaranty document, and I'll be more than
- 4 happy to let you look at it, doesn't say that the
- 5 bank has to foreclose. Is that right?
- 6 A I didn't read it that way probably.
- 7 Mr. Foster - For the record, the document says
- 8 what the document says. Has it been proffered
- 9 as an exhibit?
- 10 Ms. Driscoll - I want to make sure I go
- 11 through it before I proffer it.
- 12 Q Mr. Horne, I'm glad to have you look at that, and
- 13 you can tell me if there's a provision in there,
- 14 and I will state to you that I do not believe that
- 15 there is, that requires the bank to go after the
- 16 property first. And I'm happy to let you look at
- 17 that and confirm that for yourself.
- 18 A I didn't understand it.
- 19 Q So according to the terms of this document, I just
- 20 want to make sure we're clear for the record, is it
- 21 your understanding that the bank could look
- 22 directly to you for payment of the Note?
- 23 A If it had been handled right, yes.
- 24 Q I'm going to ask it again. According to the terms
- 25 of this document, the bank had the right to look

Page 73

1 directly to you for the payment of this Note?

2 Mr. Foster - I don't wish to be endless.

3 There are two issues here. One is what the

4 document says. That's settled once it's in

5 evidence. The other is his understanding. I

6 haven't heard anything that would make his

7 understanding relevant to the question of what

8 the document says, unless he's claiming an

9 inability to read or insanity. So I really

10 don't understand the purpose of this whole

11 line of questioning.

12 Mr. Sheedy - Is that an objection to the form?

13 Mr. Foster - Yes, it is.

14 Mr. Sheedy - Thank you.

15 Q Mr. Horne, one last question for you about this

16 Guaranty, and I just want to make sure that we're

17 clear on the record. According to the terms of

18 this Guaranty, which I will proffer as an exhibit

19 in a moment, you were responsible for the payment

20 of this Note. Is that correct?

21 A Yes, I guess I said that if he didn't pay it, I

22 would pay. I will say this. He never gave me an

23 opportunity to do this because there was renew,

24 renew, renew, renew.

25 Q And if it hadn't been renewed, the bank would have

Page 74

1 looked to you to pay it?

2 A That's right.

3 Q And did you want to pay it than May of 2008?

4 A Did I want to pay it earlier? I didn't know it

5 hadn't been paid in 2008.

6 Q But would you have been in any hurry to pay the

7 Note if the bank had looked to you for payment?

8 A Certainly not. I would have been on their case

9 every day to foreclose on it and get something done

10 about it, yes.

11 Q That's not what I'm asking you. What I'm asking

12 you is, were you personally, C.W. Horne, in any

13 hurry to pay this Note?

14 A No, I was in no hurry to pay it. I wasn't in no

15 hurry for me to pay the Note.

16 Ms. Driscoll - That's the answer to my

17 question. Thank you.

18 Ms. Driscoll - Unfortunately, this is the

19 only copy that I have.

20 Mr. Foster - I presume Mr. Easterling

21 can provide a copy.

22 Ms. Driscoll - If we could get a copy of this,

23 I would ask that it be marked.

24 Whereupon - Deposition Exhibit 27 was marked.

25 Ms. Driscoll - I don't have any further

Page 75

1 questions.

2 Mr. Easterling - I have no questions of Mr.

3 Horne at this time.

4 Mr. Foster - And I have none in response.

5 Whereupon - Deposition was concluded at

6 1:15 P.M.

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Page 76

1 Signing of Transcript Shirley Dallas-Gerrald, CVR-CM

2 of Deposition By Notary Public/Court Reporter

3 Witness Reserved

4 (Recorded deposition tapes retained fifteen days from

5 date of certification or until transcript has been

6 signed in cases when signature is not waived.)

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25 Deposition of C. W. Horne

SUBSCRIPTION OF DEPONENT

State of _____)

County of _____)

I, C.W. Horne, do hereby certify that
 I have this day read the foregoing deposition and do
 hereby declare that the same is a true and accurate
 transcript of the proceedings had at the time and place
 herein designated (except for the notations as
 indicated on the attached errata sheet, if any).

Dated: _____

C. W. Horne

Sworn to and subscribed before me

this ____ day of _____, 2011.

Notary Public

My Commission Expires: _____

Deposition of C. W. Horne

CERTIFICATE OF REPORTER

State of South Carolina)

County of York)

I, Shirley Dallas-Gerrald, CVR-CM, a Notary Public
 for the State of South Carolina, do hereby certify that
 I placed under oath the aforesaid deponent; that I
 reported the foregoing proceedings at the time and place
 herein designated and that the foregoing pages are a
 true, accurate and correct transcript of the aforesaid
 proceedings.

I further certify that I am not a relative,
 employee, attorney or counsel of any of the parties, nor
 relative or employee of such attorney or counsel, nor in
 anyway interested in the event of said cause.

In witness my hand and official seal this the 4th
 day of April, 2011, in the City of Rock Hill, County of
 York, State of South Carolina.

Shirley Dallas-Gerrald, CVR-CM
 Court Reporter/Notary Public

My Commission Expires:
 9-6-2011

Deposition of C. W. Horne

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)

TITLE TO REAL ESTATE
(DEED)

002349

358/305.

KNOW ALL MEN BY THESE PRESENTS, THAT BISCEGLIA BROTHERS WINE CO., whose mailing address is 116 Buffalo Street, Canandaigua, NY 14424 (the "Grantor"), which is the successor by merger to Tenner Brothers, Inc., in the State aforesaid, for and in consideration of Three Hundred Fifty Thousand and no/100 Dollars (\$350,000.00) and other valuable consideration to the Grantor paid by C. W. HORNE SAWMILL AND CHIP CO., INC., whose mailing address is P.O. Box 625, Marshville, North Carolina 28103 (the "Grantee") has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the Grantee, the real property with improvements (the "Premises") described in Exhibit A attached hereto and incorporated herein by reference.

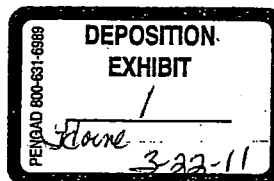
The Premises is sold subject to all encumbrances, conditions, restrictions or easements of record affecting the Premises or which may be revealed by an accurate survey or an inspection of the Premises, including but not limited to the monitoring well located on the property, which was constructed for the South Carolina Department of Health and Environmental Control pursuant to that certain Initial Groundwater Assessment Site #02214 on January 22, 1997, and all rights of access by representatives of such Department and its successors to assess the results of such well. The Premises is further sold "AS IS, WHERE IS" and THERE ARE NO WARRANTIES EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MARKETABILITY (OTHER THAN THE WARRANTY OF TITLE), AND NO WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, HABITABILITY, WORKMANSHIP OR OTHERWISE.

Grantor expressly RESERVES for itself, its successors and assigns, a non-exclusive, perpetual easement and right of access over, through, across, under, upon and to all of the Premises and any improvements from time to time located thereon for the purpose of taking such actions, performing such work and installing such improvements (including, without limitation, actions, work and/or improvements relating to investigation, monitoring, remediation, detoxification, containment, encapsulation, mitigation or other response activities arising out of or related to the actual or suspected presence of hazardous substances, hazardous wastes or other regulated materials) upon, in, to, on, under or about the Premises or any improvements from time to time located thereon as Grantor may reasonably determine as being necessary or desirable to protect its interests, discharge its legal obligations (whether to one or more governmental agencies, authorities or courts, or to any third party), reduce its losses, costs or expenses or mitigate its potential exposure to liability and/or claims in connection with, relating to or arising in any way out of the actual or alleged

COAJ:34366-1

000305

MYLLER S. INGRAM, JR.
ATTORNEY AT LAW I.D. # 2037
204 MARKET STREET
CHERAW, SOUTH CAROLINA 29520
(803) 537-6565



12

prior ownership, occupancy and/or use of the Premises and/or the improvements located thereon by the Grantor or the Grantor's immediate predecessor in title.

Such easement shall be, constitute and remain a covenant running with the land and a burden which binds all current and subsequent owner(s) of the Premises and/or improvements from time to time located thereon and each of their heirs, executors, administrators, personal and legal representatives, grantees, successors and assigns.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the Premises belonging or in any wise incident or appertaining thereto.

TO HAVE AND TO HOLD all and singular the Premises unto the Grantee, his heirs and assigns forever.

And the Grantor does hereby bind itself, its successors and other lawful representatives, to warrant and forever defend all and singular the Premises unto the Grantee and the Grantee's heirs, and assigns, against the Grantor and against the Grantor's successors and assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS the Hand and Seal of this Grantor this 20th day of May, in the year of our Lord one thousand nine hundred and ninety-seven and in the two hundred twenty-first year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

[Signature]
(WITNESS)
[Signature]
(WITNESS)

DISCEGLIA BROTHERS WINE CO.

By: *[Signature]*
Its: Assistant Treasurer

COLAJ343654-1

2

000306

(12 A)

LESS AND EXCEPT THE FOLLOWING PROPERTY FROM TRACT NO. ONE

All that certain piece, parcel or lot of land being situate in the County of Chesterfield, State of South Carolina, about nine miles South of the Town of Chesterfield, and more particularly described according to a survey made by James H. Hoover, P.E., as follows: Beginning at a point marked by an iron pin in the North right-of-way line of S. C. State Hwy. 13-657, said point being 670 feet East of the center line of S. C. State Hwy. 13-29; thence N05°10'E 200 feet to an iron; thence S61°50'E 100 feet to an iron; thence S06°10'W 200 feet to an iron in the North right-of-way of said Hwy. 13-657; thence N61°50'W 100 feet to the beginning point.

Said plat of this property recorded in Plat Book 37, Page 67, Office of Clerk of Court for Chesterfield County, South Carolina.

This being the same property conveyed to Chesterfield County Rural Water Co., Inc. by Deed of Tenner Brothers, Inc., dated March 26, 1976 and recorded in the Office of the Clerk of Court for Chesterfield County on April 14, 1976 in Deed Book 239 at Page 553.

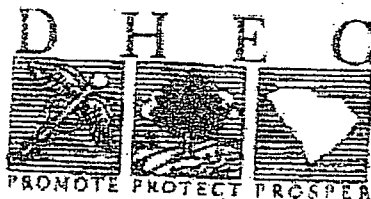
LESS AND EXCEPT THE FOLLOWING PROPERTY FROM TRACT NO. ONE

All that certain parcel or lot of land containing one (1) acre, more or less, situate on the western side of South Carolina Road S-13-29 in Cole Hill Township, County of Chesterfield, State of South Carolina, and bounded generally as follows: On the North by lands of Tenner Brothers, Inc., for a distance of 108.00 feet and by lands to be conveyed to Chesterfield County Rural Water Co., Inc., for a distance of 100.00 feet; on the East by South Carolina Road S-13-29 for a distance of 210.00 feet; on the South by lands of Tenner Brothers, Inc., for a distance of 208.00 feet; and on the West by lands of Tenner Brothers, Inc., for a distance of 209.95 feet. Said lot of land is more particularly described on a Plat thereof made by Kenneth A. Johnson, R. L. S., dated March 19, 1987, designated "Boundary Survey For Bay Springs Volunteer Fire Dept.", a copy of said Plat being hereto attached marked "Exhibit A" and made a part of this description.

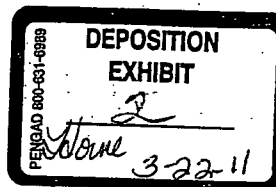
000309

This being the same property conveyed to Bay Springs Voluntary Fire Department, Inc. by Deed of Tenner Brothers, Inc., dated April 26, 1988 and recorded in the Office of the Clerk of Court for Chesterfield County on July 18, 1988 in Deed Book ___ at Page 1156.

12 B



2600 Bull Street
Columbia, SC 29201-1708



Mr. Duncan Laney
Tanner Brother's, Inc.
Route 2, Box 85
Patrick, South Carolina 29584

MAR 24 1997

Re: Tanner Brother's, SC 109 Ruby-Hartsville Highway
Site ID #02214
Assessment Report received February 21, 1997
Chesterfield County

Dear Mr. Duncan:

The Bureau of Underground Storage Tank Management of the South Carolina Department of Health and Environmental Control, has reviewed the referenced assessment report by Enviro-Test Services. A copy of the report is enclosed for your information.

Based upon the geotechnical data in the referenced report, the samples are below risk based screening levels and the release does not require further site rehabilitation or present a significant threat to human health or the environment. Therefore, no further action will be required at this time. If, however, any contamination becomes evident which could be attributed to the UST system, this office will, under authority established in the South Carolina Underground Storage Tank Control Regulations R.61-92 Part 280.52, require investigative and/or remedial activities.

The decision for requiring no further action pertains only to the referenced regulated USTs and is based solely on the information provided in the report.

In the future, the Bureau plans to solicit bids to properly abandon the monitoring well in accordance with South Carolina Well Standards and Regulations (R. 61-71). You will be provided details concerning well abandonment by a separate letter.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CLERK OF COURTS 18997

EXHIBIT 18997

OFFICE OF THE CLERK OF COURTS

Mr. Laney
Page 2

On all correspondence related to this site, please reference Site ID #02214. Questions should be addressed to Kimberly A. Wilson at (803) 734-0726.

Sincerely,

State Lead & Field Services Section
Assessment & Corrective Action Division
Bureau of Underground Storage Tank Management

Kimberly A. Wilson

Kimberly A. Wilson, P.G., Hydrologist

Christopher S. Doll
Christopher S. Doll, P.G., Manager

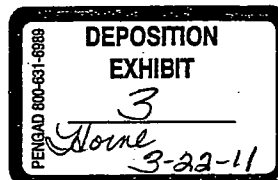
enc: Report of Investigation

cc: Diane Taggerty, Canadaigua Wine Co., 116 Buffalo St, Canadaigua NY 14424
Technical File

DNREC/UST/032497/1000



2600 Bull Street
Columbia, SC 29201-1708



Mr. David Sorce
Canadaigua Wine Company
116 Buffalo Street
Canadaigua, New York 14424

Re: Tenner Brother's, SC 109 Ruby-Hartsville Highway
Site ID #02214
Abandonment of Monitoring Well(s)
Chesterfield County

Dear Mr. Sorce:

The Bureau of Underground Storage Tank Management of the South Carolina Department of Health and Environmental Control is currently seeking bids from environmental contractors to abandon ground water monitoring wells.

To ensure that the referenced facility is included in the bid package, the enclosed "Right of Entry" form should be completed and submitted to the attention of Kimberly Wilson within ten days of the date of this letter. On all correspondence related to this site, please reference Site ID #02214. If you have any questions or comments, please call Kimberly Wilson at (803) 734-0726.

Sincerely,

State Lead & Field Services Section
Assessment & Corrective Action Division
Bureau of Underground Storage Tank Management

Kimberly A. Wilson

Kimberly A. Wilson, P.G., Hydrologist

Christopher S. Doll

Christopher S. Doll, P.G., Manager

enc: Permission/Right of Entry Form

cc: Technical File

Duncan Laney, Tenner Brother's, Route 2, Box 85, Patrick, SC 29584

DHEC/UST/052397/kaw



Canandaigua Wine Company

RECEIVED

July 7, 1997

JUL 11 0 1997

Bureau of Underground
Storage Tank Management

Christopher S. Doll, P.G., Manager
South Carolina Department of Health
and Environmental Control
2600 Bull Street
Columbia, SC 29201-1708

Dear Mr. Doll:

As discussed, Bisceglia Brothers Wine Co., Inc. ("Bisceglia"), as successor by merger to Tenner Brothers, Inc., sold site #02214 ("the Site") to C.W. Horne Saw Mill and Chip Co., Inc. ("Horne") on May 20, 1997.

In the title deed, Bisceglia expressly reserved an easement for itself, its successors and assigns to enter the Site. Pursuant to such easement, the South Carolina Department of Health and Environmental Control may enter the premises to abandon the ground water monitoring wells.

A copy of the Title to Real Estate, which includes the above-described easement, is attached hereto.

Please be so kind as to contact Horne at 714/233-5555. If that contact is unsuccessful, suggest you contact Horne's attorney, Miller Ingram in Cheraw, South Carolina (803/536-6565), who is familiar with the matter.

If I may provide additional assistance, please contact me at 716/396-7631.

Very truly yours,

CANANDAIGUA WINE COMPANY, INC.

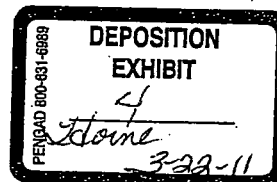
Ronald C. Fondiller / alh

Ronald C. Fondiller
Vice President and
Wine Division Legal Counsel

RCF/alh
A1405rf

Enclosure

c: Diana W. Taggerty



Canandaigua Wine Company, Inc., 116 Buffalo Street, Canandaigua, New York 14424-1086
Telephone (716) 394-7900 / Telex 856762 (CDGWINE) / Corp. Fax (716) 394-6017 / Winery Fax (716) 394-4839

OFFER TO PURCHASE AND CONTRACT

Michael R. Brown hereby offers to purchase and C.W. Horne Sawmill & Chip Co. Inc. as Buyer, upon acceptance of said offer, agrees to sell and convey, all of that plot, piece or parcel of land described below, together with all improvements located thereon and such personal property as is listed below (the real and personal property are collectively referred to as "the Property"), in accordance with the Standard Provisions on the REVERSE SIDE HEREOF and upon the following terms and conditions:

1. **REAL PROPERTY:** Located in the City of N/A, County of Chesterfield, S.C.
 State of South Carolina, being known as and more particularly described as:
 Street Address Approx 120+ acres ± 73,000 ± Building Patrick S.C.
 Legal Description Portion of property recorded D.B.-37, Page 67
Chesterfield, S.C.
2. **PERSONAL PROPERTY:** Approx. 1,600,000 gal. of Stainless Steel Storage Silos.
3. **PURCHASE PRICE:** The purchase price is \$ 350,000.00 and shall be paid as follows:
 (a) \$ 10,000.00 in earnest money paid by Check (cash; bank, certified, or personal check) with the delivery of this contract, to be held in escrow by C.W. Horne, as agent, until the sale is closed, at which time it will be credited to Buyer, or until this contract is otherwise terminated and it is disbursed in accordance with the Standard Provisions on the REVERSE SIDE HEREOF;
 (b) \$ N/A by assumption of the unpaid principal balance and all obligations of Seller on the existing loan secured by a deed of trust on the Property;
 (c) \$ N/A by a promissory note secured by a purchase money deed of trust on the Property with interest prior to default at the rate of _____ % per annum payable as follows: N/A
 Prepayment restrictions and/or penalties, if any, shall be: N/A
 Assumption or transfer rights, if any, shall be: N/A
 (d) \$ 340,000.00 the balance of the purchase price in cash at closing.

4. **CONDITIONS:** (State N/A in each blank of paragraph 4(a) and 4(b) that is not a condition to this contract.)

- (a) The Buyer must be able to obtain a firm commitment on or before N/A, effective through the date of closing, for a N/A loan in the principal amount of \$ N/A for a term of _____ year(s), at an interest rate not to exceed _____ % per annum, with mortgage loan discount points not to exceed _____ % of the loan amount. Buyer agrees to use his best efforts to secure such commitment and to advise Seller immediately upon receipt of the lender's decision. If Seller is to pay any loan closing costs, those costs are as follows: N/A
- (b) The Buyer must be able to assume the unpaid principal balance of the existing loan described in paragraph 3(b) above for the remainder of the loan term, at an interest rate not to exceed _____ % per annum fixed (or describe type of loan) N/A with mortgage loan assumption and/or discount points not to exceed _____ % of the loan balance. (See Standard Provision No. 2). If such assumption requires the lender's approval, approval must be granted on or before N/A. Buyer agrees to use his best efforts to secure such approval and to advise Seller immediately upon his receipt of the lender's decision. If Seller is to pay any loan assumption costs, those costs are as follows: N/A

(c) There must be no restriction, easement, zoning or other governmental regulation that would prevent the reasonable use of the real property for Commercial & Residential purposes.

5. **ASSESSMENTS:** Seller warrants that there are no special assessments, either pending or confirmed, for sidewalk, paving, water, sewer or other improvements on or adjoining the Property, except as follows: NONE

(Insert "None" or the identification of such assessments, if any. The agreement for payment or proration of any assessments indicated is to be set forth in paragraph 6 below.)

6. OTHER PROVISIONS AND CONDITIONS:

(a) All of the Standard Provisions on the REVERSE SIDE HEREOF are understood and shall apply to this instrument, except the following numbered Standard Provisions shall be deleted: (If none are to be deleted, state "None".) 2, 3, 7, 9, 11

Seller will provide new survey on property.
Buyer will have the option to sell Stainless Storage Silos with the purchase price held in escrow with Sellers atty. until closing.

IF THERE ARE ANY ADDENDA TO THIS CONTRACT, INDICATE ABOVE AND ATTACH HERETO.

7. **CLOSING:** All parties agree to execute any and all documents and papers necessary in connection with closing and transfer of title on or 151

until the sale is closed, at which time it will be applied to the purchase price of the Property.
disbursed in accordance with the Standard Provisions on the REVERSE SIDE HEREOF:
(b) \$ N/A by assumption of the unpaid principal balance and all obligations of Seller on the existing loan secured by a deed of trust on the Property;
(c) \$ N/A by a promissory note secured by a purchase money deed of trust on the Property with interest prior to default at the rate of _____ % per annum payable as follows: N/A
Prepayment restrictions and/or penalties, if any, shall be: N/A
Assumption or transfer rights, if any, shall be: N/A

(d) \$ 340,000.00 the balance of the purchase price in cash at closing.
4. CONDITIONS: (State N/A in each blank of paragraph 4(a) and 4(b) that is not a condition to this contract.)
(a) The Buyer must be able to obtain a firm commitment on or before N/A, effective through the date of closing, for a N/A loan in the principal amount of \$ N/A for a term of _____ year(s), at an interest rate not to exceed _____ % per annum, with mortgage loan discount points not to exceed _____ % of the loan amount. Buyer agrees to use his best efforts to secure such commitment and to advise Seller immediately upon receipt of the lender's decision. If Seller is to pay any loan closing costs, those costs are as follows: N/A
(b) The Buyer must be able to assume the unpaid principal balance of the existing loan described in paragraph 3(b) above for the remainder of the loan term, at an interest rate not to exceed _____ % per annum fixed (or describe type of loan) N/A, with mortgage loan assumption and/or discount points not to exceed _____ % of the loan balance. (See Standard Provision No. 2). If such assumption requires the lender's approval, approval must be granted on or before N/A. Buyer agrees to use his best efforts to secure such approval and to advise Seller immediately upon his receipt of the lender's decision. If Seller is to pay any loan assumption costs, those costs are as follows: N/A
(c) There must be no restriction, easement, zoning or other governmental regulation that would prevent the reasonable use of the real property for Commercial & Residential purposes.
5. ASSESSMENTS: Seller warrants that there are no special assessments, either pending or confirmed, for sidewalk, paving, water, sewer or other improvements on or adjoining the Property, except as follows: NONE

(Insert "None" or the identification of such assessments, if any. The agreement for payment or proration of any assessments indicated is to be set forth in paragraph 6 below.)

6. OTHER PROVISIONS AND CONDITIONS:
(a) All of the Standard Provisions on the REVERSE SIDE HEREOF are understood and shall apply to this instrument, except the following numbered Standard Provisions shall be deleted: (If none are to be deleted, state "None".) 2, 3, 7, 9, 11

Seller will provide new survey on property.
Buyer will have the option to sell stainless storage silos with the purchase price held in escrow with seller's atty. until closing.

IF THERE ARE ANY ADDENDA TO THIS CONTRACT, INDICATE ABOVE AND ATTACH HERETO.

7. CLOSING: All parties agree to execute any and all documents and papers necessary in connection with closing and transfer of title on or before MAY 4th, 1998, at a place designated by The Buyer.
The deed is to be made to at Buyer's Direction

8. POSSESSION: Possession shall be delivered Upon Closing.
In the event that Buyer has agreed that possession is not delivered at closing, then Seller agrees to pay to Buyer the sum of \$ N/A per day from and including the date of closing to and including the date that possession is to be delivered as above set forth.

9. COUNTERPARTS: This offer shall become a binding contract when signed by both Buyer and Seller. It is to be signed in 4 (four) counterparts with a signed counterpart being retained by each party hereto and the escrow agent, if any.
Date of Offer: Feb. 4th, 1998 Date of Acceptance: Feb. 4th, 1998

Buyer [Signature] (SEAL) Seller C.W. Horne (SEAL)
Buyer _____ (SEAL) Seller _____ (SEAL)

I hereby acknowledge receipt of the earnest money herein set forth and agree to hold and disburse the same in accordance with the terms hereof.
Date MARCH 1st Firm C.W. Horne Sawmill & Chip Co. Inc.
By: Barry Hilton

Name of Selling Agent/Firm N/A
Name of Listing Agent/Firm N/A

STANDARD PROVISIONS

1. **EARNEST MONEY:** In the event this offer is not accepted, or in the event that any of the conditions hereto are not satisfied, or in the event of a breach of this contract by Seller, then the earnest money shall be returned to Buyer, but such return shall not affect any other remedies available to Buyer for such breach. In the event this offer is accepted and Buyer breaches this contract, then the earnest money shall be forfeited, but such forfeiture shall not affect any other remedies available to Seller for such breach. **NOTE:** In the event of a dispute between Seller and Buyer over the return or forfeiture of earnest money held in escrow by a broker, the broker is required by state law to retain said earnest money in his trust or escrow account until he has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction.
2. **LOAN ASSUMED:** In the event a loan is assumed as part of the payment of the purchase price, then all payments due from Seller thereon must be current at closing, and the principal balance assumed shall be computed as of the date of closing. The amounts shown for the assumption balance and cash at closing shall be adjusted as appropriate at closing to reflect the final computations. Unless Buyer has otherwise specifically agreed in writing, the existing loan must be assumable without either acceleration of the amount secured or any change in the original terms of the note and deed of trust. Buyer shall be responsible for all loan assumption costs. Seller shall have no obligation to pay any loan assumption costs unless specifically set forth in this contract. The escrow account, if any, shall be purchased by Buyer.
3. **PROMISSORY NOTE AND DEED OF TRUST:** In the event a promissory note secured by a deed of trust is given by Buyer to Seller as part of the payment of the purchase price, the promissory note and deed of trust shall be in the form of and contain the provisions of the currently approved N. C. Bar Association Forms 4 and 5, as modified in paragraph 3(c) on the reverse side hereof.
4. **PRORATIONS AND ADJUSTMENTS:** Unless otherwise provided, the following items shall be prorated and either adjusted between the parties or paid at closing.
- (a) Ad valorem taxes on real property shall be prorated on a calendar year basis to the date of closing;
 - (b) Ad valorem taxes on personal property for the entire year shall be paid by Seller;
 - (c) All late listing penalties, if any, shall be paid by Seller;
 - (d) Rents, if any, for the Property shall be prorated to the date of closing;
 - (e) Accrued, but unpaid interest and other charges to Seller, if any, shall be computed to the date of closing and paid by Seller. Interest and other charges prepaid by Seller shall be credited to Seller at closing and paid by Buyer. (Other charges may include FHA mortgage insurance premiums, private mortgage insurance, premiums and homeowner's association dues.)
5. **FIRE AND OTHER CASUALTY:** The risk of loss or damage by fire or other casualty prior to closing shall be upon Seller.
6. **CONDITIONS:**
- (a) The Property must be in substantially the same condition at closing as on the date of this offer, reasonable wear and tear excepted.
 - (b) All deeds of trust, liens and other charges against the Property, not assumed by Buyer, must be paid and cancelled by Seller prior to or at closing.
 - (c) Title must be delivered at closing by general warranty deed and must be fee simple marketable title, free of all encumbrances except ad valorem taxes for the current year (prorated to the date (unless otherwise provided in this contract), but such inspections must be completed in sufficient time before closing to permit any repairs to be completed by closing. If any repairs are necessary, Seller shall have the option of (a) completing them, (b) providing for their completion, or (c) refusing to complete them. If Seller elects not to complete or provide for the completion of the repairs, then Buyer shall have the option of (d) accepting the Property in its present condition, or (e) terminating this contract, in which case the earnest money shall be refunded. Closing shall constitute acceptance of each of the systems, items and conditions listed in (i), (ii), (iii) and (iv) above in its then existing condition unless provision is otherwise made in writing.
- IF BUYER OBTAINS A VETERANS ADMINISTRATION (VA) LOAN, SELLER SHALL PAY THE COST OF ANY WELL/WATER AND SEPTIC/SEWER SYSTEM INSPECTION.
- RECOMMENDATION: Buyer should have any inspections made prior to incurring expenses for closing.
9. **WOOD-DESTROYING INSECTS:** Unless otherwise stated herein Buyer shall have the option of obtaining, at Buyer's expense, a report from a licensed pest control operator on a standard form in accordance with the regulations of the North Carolina Structural Pest Control Committee, stating that there was no visible evidence of wood-destroying insects and containing no indication of visible damage therefrom. The report must be obtained in sufficient time before closing so as to permit treatment, if any, and repairs, if any, to be completed prior to closing. All treatment required shall be paid for by Seller and completed prior to closing, unless otherwise agreed upon in writing by the parties. If any structural repairs are necessary, Seller shall have the option of (a) completing them, (b) providing for their completion, or (c) refusing to complete them. If Seller elects not to complete or provide for the completion of structural repairs, then Buyer shall have the option of (d) accepting the Property in its present condition, or (e) terminating this contract, in which case the earnest money shall be refunded. The Buyer is advised that the inspection and report described in this paragraph may not always reveal either structural damage or damage caused by agents or organisms other than wood-destroying insects. If new construction, Seller shall provide a new construction termite guarantee.
- IF BUYER OBTAINS A VETERANS ADMINISTRATION (VA) LOAN, SELLER SHALL PAY THE COST OF THE WOOD-DESTROYING INSECT REPORT.
10. **LABOR AND MATERIAL:** Seller shall furnish at closing an affidavit and indemnification agreement in form satisfactory to Buyer showing that all labor and materials, if any, furnished to the Property within 120 days prior to the date of closing have been paid for and agreeing to indemnify Buyer against all loss from any cause or claim arising therefrom.
11. **FUEL:** Buyer agrees to purchase from Seller the fuel, if any, situated in a tank on the Property at the prevailing rate, with the cost of measurement thereof, if any, being paid by Seller.
12. **CLOSING EXPENSES:** Seller shall pay for the preparation of a deed and for the excise tax (revenue stamps) required by law. Buyer shall pay for recording the deed and for preparation and recording of all instruments required to secure the balance of the purchase price unpaid at closing.
13. **EVIDENCE OF TITLE:** Seller agrees to use his best efforts to deliver to Buyer as soon as reasonably possible after the acceptance of this offer, copies of all title information in possession of or available to Seller, including but not limited to: title insurance policies, attorney's opinions on title, surveys, covenants, deeds, notes and deeds of trust and easements relating to the Property.

responsible for all loan assumption costs unless specifically obligation to pay any loan assumption costs unless specifically set forth in this contract. The escrow account, if any, shall be purchased by Buyer.

3. **PROMISSORY NOTE AND DEED OF TRUST:** In the event a promissory note secured by a deed of trust is given by Buyer to Seller as part of the payment of the purchase price, the promissory note and deed of trust shall be in the form of and contain the provisions of the currently approved N. C. Bar Association Forms 4 and 5, as modified in paragraph 3(c) on the reverse side hereof.

4. **PRORATIONS AND ADJUSTMENTS:** Unless otherwise provided, the following items shall be prorated and either adjusted between the parties or paid at closing.

- (a) Ad valorem taxes on real property shall be prorated on a calendar year basis to the date of closing;
- (b) Ad valorem taxes on personal property for the entire year shall be paid by Seller;
- (c) All late listing penalties, if any, shall be paid by Seller;
- (d) Rents, if any, for the Property shall be prorated to the date of closing;
- (e) Accrued, but unpaid interest and other charges to Seller, if any, shall be computed to the date of closing and paid by Seller. Interest and other charges prepaid by Seller shall be credited to Seller at closing and paid by Buyer. (Other charges may include FHA mortgage insurance premiums, private mortgage insurance premiums and homeowner's association dues.)

5. **FIRE AND OTHER CASUALTY:** The risk of loss or damage by fire or other casualty prior to closing shall be upon Seller.

6. **CONDITIONS:**

- (a) The Property must be in substantially the same condition at closing as on the date of this offer, reasonable wear and tear excepted.
- (b) All deeds of trust, liens and other charges against the Property, not assumed by Buyer, must be paid and cancelled by Seller prior to or at closing.
- (c) Title must be delivered at closing by general warranty deed and must be fee simple marketable title, free of all encumbrances except ad valorem taxes for the current year (prorated to the date of closing), utility easements and unviolated restrictive covenants that do not materially affect the value of the Property and such other encumbrances as may be assumed or specifically approved by Buyer. The Property must have legal access to a public right of way.

7. **NEW LOAN:** Buyer shall be responsible for all costs with respect to any new loan obtained by Buyer. Seller shall have no obligation to pay any discount fee or other charge in connection therewith unless specifically set forth in this contract.

8. **INSPECTIONS:** Unless otherwise stated herein: (i) the electrical, plumbing, heating and cooling systems and built-in appliances, if any, shall be in good working order at closing; (ii) the roof, gutters, structural components, foundation, fireplace(s) and chimney(s) shall be performing the function for which intended and shall not be in need of immediate repair; (iii) there shall be no unusual drainage conditions or evidence of excessive moisture adversely affecting the structure(s); and (iv) the well/water and septic/sewer systems, if any, shall be adequate, not in need of immediate repair and performing the function for which intended. Buyer shall have the option to have the above listed systems, items and conditions inspected by a reputable inspector or contractor, at Buyer's expense

prior to closing. All treatment required shall be provided by Seller and completed prior to closing, unless otherwise agreed upon in writing by the parties. If any structural repairs are necessary, Seller shall have the option of (a) completing them, (b) providing for their completion, or (c) refusing to complete them. If Seller elects not to complete or provide for the completion of structural repairs, then Buyer shall have the option of (d) accepting the Property in its present condition, or (e) terminating this contract, in which case the earnest money shall be refunded. The Buyer is advised that the inspection and report described in this paragraph may not always reveal either structural damage or damage caused by agents or organisms other than wood-destroying insects. If new construction, Seller shall provide a new construction termite guarantee.

IF BUYER OBTAINS A VETERANS ADMINISTRATION (VA) LOAN, SELLER SHALL PAY THE COST OF THE WOOD-DESTROYING INSECT REPORT.

10. **LABOR AND MATERIAL:** Seller shall furnish at closing an affidavit and indemnification agreement in form satisfactory to Buyer showing that all labor and materials, if any, furnished to the Property within 120 days prior to the date of closing have been paid for and agreeing to indemnify Buyer against all loss from any cause or claim arising therefrom.

11. **FUEL:** Buyer agrees to purchase from Seller the fuel, if any, situated in a tank on the Property at the prevailing rate, with the cost of measurement thereof, if any, being paid by Seller.

12. **CLOSING EXPENSES:** Seller shall pay for the preparation of a deed and for the excise tax (revenue stamps) required by law. Buyer shall pay for recording the deed and for preparation and recording of all instruments required to secure the balance of the purchase price unpaid at closing.

13. **EVIDENCE OF TITLE:** Seller agrees to use his best efforts to deliver to Buyer as soon as reasonably possible after the acceptance of this offer, copies of all title information in the possession of or available to Seller, including but not limited to: title insurance policies, attorney's opinions on title, surveys, covenants, deeds, notes and deeds of trust and easements relating to the Property.

14. **ASSIGNMENTS:** This contract may not be assigned without the written agreement of all parties, but if assigned by agreement, then this contract shall be binding on the assignee and his heirs and successors.

15. **PARTIES:** This contract shall be binding upon and shall inure to the benefit of the parties and their heirs, successors and assigns. As used herein, words in the singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.

16. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

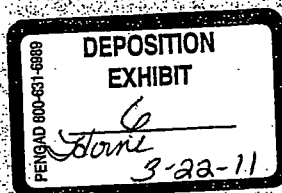
17. **ENTIRE AGREEMENT:** Buyer acknowledges that he has inspected the Property. This contract contains the entire agreement of the parties and there are no representations, inducements or other provisions other than those expressed in writing. All changes, additions or deletions hereto must be in writing and signed by all parties. Nothing contained herein shall alter any agreement between a REALTOR® or broker and Seller as contained in any listing contract or other agreement between them.

N.C. Bar Form No. 2, © 1987. JWC

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

NOT ABSTRACTED



005198

Know All Men by These Presents, that

C. W. Horne Sawmill & Chip Company, Inc.

A corporation organized

and existing under the laws of the State of North Carolina

in consideration of the sum of Two Hundred Fifty Thousand and 00/100 (\$250,000.00) Dollars to it in hand paid by Michael R. Brown, 510 Queens Road, Suite 204, Charlotte, NC 28207 in the State aforesaid, the receipt of which is hereby acknowledged,

has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said

Michael R. Brown, his heirs and assigns forever:

All that certain piece, parcel, or lot of land, with the improvements thereon, situate, lying, and being on the west side of Highway S-13-29, approximately 8 miles south of the Town of Chesterfield, in the County of Chesterfield, State of South Carolina, and bounded as follows: beginning at an iron on the centerline of Highway S-13-29 and running thence S 26°-28'-03" E along the centerline of Highway S-13-29 for a distance of 621.46 feet to its intersection with the centerline of Highway S-13-657; thence S 26°-52'-05" E along the centerline of Highway S-13-29 for a distance of 881.13 feet to a point; thence S 26°-50'-01" E along the centerline of Highway S-13-29 for a distance of 494.02 feet to a point; thence S 25°-45'-54" E along the centerline of Highway S-13-29 for a distance of 201.77 feet to a point; thence S 21°-42'-37" E along the centerline of Highway S-13-29 for a distance of 122.05 feet to an iron; thence S 73°-28'-41" W for a distance of 241.14 feet to a point; thence S 16°-35'-21" E for a distance of 209.82 feet to a point; thence S 73°-28'-41" W for a distance of 1528.15 feet to an iron; thence N 09°-37'-22" W for a distance of 87.31 feet to a steel fence post; thence N 25°-03'-16" W for a distance of 1292.09 feet to a steel fence post; thence S 55°-13'-40" W along the northern side of an abandoned county road for a distance of 430.16 feet to a point; thence N 02°-52'-37" W for a distance of 208.38 feet to a point; thence N 02°-49'-25" W for a distance of 468.20 feet to a concrete post; thence N 44°-48'-28" E for a distance of 275.74 feet to a point; thence N 12°-24'-36" W for a distance of 764.63 feet to an iron; thence N 84°-15'-47" E for a distance of 1531.58 feet to the point of beginning. Said property is more particularly shown and described as 106.85 ACRES according to a plat of survey prepared by William G. Martin, P.E.S., on the 5th day of July, 1998, which plat, recorded in Plat Book C, at page 7-1, in the Office of the Clerk of Court for Chesterfield County, is by reference incorporated herein as a part of this description.

000029

This is a portion of that property conveyed to the Grantor by deed of Bisceglia Brothers Wine Co. dated May 20, 1997, and recorded in Deed Book 358, at page 305, in the Office of the Clerk of Court for Chesterfield County.

This conveyance is expressly made subject to any existing rights-of-way for the state and county roads shown of the aforesaid plat.

000830

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

~~TO HAVE AND TO HOLD all and singular the premises before mentioned unto the~~
said Michael R. Brown, his

Heirs and Assigns forever.

And the said C. W. Horne Sawmill & Chip Company, Inc.
does hereby bind itself and its successors to warrant and forever defend all and singular the said premises
unto the said Michael R. Brown, his

Heirs and Assigns, against itself and its successors and assigns and against every person whomsoever
lawfully claiming, or to claim, the same or any part thereof.

In Witness Whereof,

C.W. HORNE SAWMILL & CHIP COMPANY, INC.

has caused these presents to be executed in its name by C. W. Horne

, its

President and

Barry Hilton

, its

Assistant Secretary

and

its corporate seal to be hereto affixed this 25th day of September

in the year of our Lord one thousand nine hundred and ninety-eight

and

in the two hundred and twenty-third

year of sovereignty and independence

of the United States of America.

Corporate

Seal

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

C. W. HORNE SAWMILL & CHIP COMPANY, INC.

Dana H. Threadgill

By: C. W. Horne
C. W. HORNE

PRESIDENT

And: Barry Hilton
BARRY HILTON, Assistant Secretary

STATE OF

SOUTH CAROLINA

CHESTERFIELD

COUNTY }

PERSONALLY appeared before me Dana H. Threadgill

and made oath that she saw the within-named C. W. Horne Sawmill & Chip Company, Inc.

by C. W. Horne

, its

President and

by Barry Hilton

, its

Assistant Secretary

sign

the within-written Deed and the said corporation, by said officers, seal said Deed, and, as its duly authorized act and deed, deliver the same for the uses and purposes therein mentioned and that s he, with

Miller S. Ingram, Jr.

witnessed the execution thereof.

SWORN to before me this

25th

day of September

, 19 98

NOTARY PUBLIC FOR SOUTH CAROLINA

(L.S.)

My Commission Expires:

12/11/07

Dana H. Threadgill

000831

STATE OF SOUTH CAROLINA]

AFFIDAVIT

COUNTY OF CHESTERFIELD]

PERSONALLY appeared before me the undersigned who, being duly sworn, deposes and says concerning the transaction evidenced by this deed:

[] That this transaction is exempt from documentary stamp tax by virtue of.
[X] That this transaction was an "arm's length" sale and the true consideration and fair market value is reflected is as stated hereon.

[] That this transaction is not an "arm's length" sale and the fair market value of the property is \$.

That the affiant is a responsible person connected with the transaction as Grantee's attorney.

SWORN TO before me this 25th day of September, 1998.

Rene H. Threadgill (s.)

Notary Public for South Carolina

My commission expires: ~~03/31/99~~
03/09/06

NOTARIAL

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

C. W. HORNE SAMMILL & CHIP COMPANY, INC.

To

MICHAEL R. BROWN

TITLE TO REAL ESTATE
BY A CORPORATION

FILED FOR RECORD AT 11:42 A. M. O'CLOCK ON

THE 29 DAY OF Sept. 19 98 AND

RECORDED IN DEED BOOK 368 AT PAGE 829-832

CLERK OF COURT/REGISTER OF MESNE CONVEYANCE

RECORDED THIS 16th DAY OF Oct. 19 98

IN BOOK 5 OF DEEDS, AT PAGE 116

John S. Ingram, Jr.
COUNTY AUDITOR

REGISTERED AS PARCEL NUMBER

THIS DAY OF 19

COUNTY ASSESSOR

Miller S. Ingram, Jr.

Attorney At Law

Post Office Box 39

Cheraw, South Carolina 29520

FILED
CLERK OF COURT

'98 SEP 28 AM 11 42

CHESTERFIELD COUNTY, SC

BOOK PAGE

Clerk of Court, Chesterfield County
REVENUE FEE COLLECTED

STATE \$ 650.00

COUNTY \$ 275.00

DATE: _____

000832

CHESTERFIELD COUNTY ASSESSOR
TMS # 157-16
156-2
10-15-98

John S. Ingram, Jr.

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

PURCHASE MONEY MORTGAGE

To All Whom These Presents May Concern: 00519

Whereas, Michael R. Brown

hereinafter called Mortgagor, is indebted to C. W. Horne Sawmill and Chip Co., Inc.,

hereinafter called Mortgagee, as evidenced by that certain promissory note dated September 25, 1998, the terms of which note and any agreement modifying it being incorporated herein by reference, in the principal amount of

One Hundred Fifteen Thousand and 00/100-----Dollars (\$115,000.00-----),

with interest thereon at the rate of ten

per centum (-----10 %) per annum, until paid, said principal and interest being payable in full one (1) year from the date hereof ~~on or before~~ on or before September 24, 1999.

~~Dollars (\$~~)

~~cash or by check or by money order or by draft or by any other means~~

~~may not~~

~~xxx~~

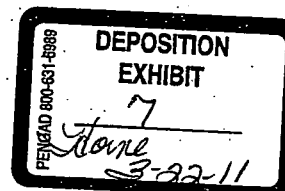
~~and~~

~~containing the sum of~~

~~the sum of~~

~~xxx~~

~~the principal and interest thereon~~



001232

and Whereas, the Mortgagor may hereafter become indebted to the Mortgagee for renewals, extensions, modifications, or future advances and readvances on the same or different terms or rates of interest under the aforesaid note or other promissory notes, in a sum not to exceed \$115,000.00

and Whereas, the Mortgagor may hereafter become indebted to the Mortgagee for reasonable sums advanced to protect the Mortgagee's security or title in the herein described property, including but not limited to payment of taxes, insurance premiums, public assessments, repairs, court costs, and attorney's fees, the full amounts of which shall be secured hereby without limitation.

Now Know All Men by These Presents,

That the Mortgagor, for and in consideration of the aforesaid debt, the better securing its payment to the Mortgagee, and the further sum of One Dollar in hand paid to the Mortgagor by the Mortgagee, the receipt of which is hereby acknowledged, has granted, bargained, sold, and released, and by these presents does grant, bargain, sell, and release unto the said C. W. HORNE SAWMILL AND CHIP CO., INC., its successors and assigns forever:

The Mortgagor COVENANTS AND AGREES with the Mortgagee as follows:

1. TAXES AND ASSESSMENTS. The Mortgagor shall pay or cause to be paid promptly all taxes and assessments or other charges which constitute or are secured by a lien upon the mortgaged premises, and in default thereof, the holder of this mortgage may pay the same, and such payment shall become a part of the debt secured by this mortgage, whereupon the entire debt secured by this mortgage shall immediately become due and payable, if the Mortgagee shall so elect.

2. INSURANCE. The Mortgagor shall keep any and all improvements now existing or hereafter erected upon the mortgaged premises insured, at the Mortgagor's expense, in an amount not less than the original principal amount of the loan secured by this mortgage, and assign the policy of insurance to the Mortgagee, its, his, her, or their executors, administrators, successors, or assigns. And should the Mortgagor at any time fail or neglect so to do, then the Mortgagee or holder hereof may obtain such insurance and charge all of the premiums therefor as an additional debt secured by this mortgage. In the event of foreclosure, all right, title, and interest of the Mortgagor in and to any insurance policies then in force shall pass to the purchaser.

3. REPAIRS. The Mortgagor shall keep the premises in as good order and condition as on the date hereof, reasonable wear and tear excepted, and shall not commit or permit any waste thereof. Should the Mortgagor fail so to do, the Mortgagee may enter upon the premises to make reasonable and necessary repairs and charge the Mortgagor for the expense thereof as an advance hereunder.

4. TRANSFER OF TITLE. At the option of the Mortgagee, all sums secured by this mortgage shall become immediately due and payable if the Mortgagor shall convey the mortgaged premises or if title thereto shall become vested in any other person in any manner whatsoever other than by death of the Mortgagor. The Mortgagee shall have waived such right to accelerate if, prior to sale or transfer, Mortgagee shall enter into written agreement with the person to whom the subject property is to be sold or transferred that the interest payable on sums secured by this mortgage and the terms of this mortgage shall be as the Mortgagee may request from said Transferee.

5. PAYMENT AND DEFAULT. The Mortgagor shall promptly pay the principal and interest on the indebtedness secured by this mortgage, at the times and in the manner provided by the Mortgagor's promissory note. In the event of default in any of the payments of interest, principal, taxes, assessments, or insurance premiums as herein provided, the Mortgagee may, without notice to the Mortgagor, declare all sums secured by this mortgage immediately due and payable and proceed with foreclosure thereof. Upon such default, the Mortgagee shall be entitled to and the Mortgagor hereby assigns any and all rents and profits arising from the mortgaged premises to be applied to the indebtedness of the Mortgagor.

6. FORECLOSURE. In the case of foreclosure of this mortgage, by suit or otherwise, the Mortgagee shall recover of the Mortgagor the costs of any action and a reasonable attorney's fee, which shall be secured by this mortgage, and shall be included in a judgment of foreclosure.

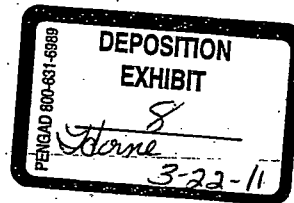
7. LIEN ON PERSONALTY (BUSINESS PROPERTY) ATTACHED TO PREMISES. The Mortgagee retains, and the Mortgagor hereby grants a continuing lien upon personalty in the mortgaged premises consisting mainly of tanks. The Mortgagor covenants and agrees that any proceeds from the sales of tanks or other personalty attached to the premises shall be applied to the indebtedness secured by this mortgage.

PROVIDED ALWAYS, NEVERTHELESS, that the Mortgagor shall hold and enjoy the premises above conveyed until the occurrence of a default under the terms of this mortgage or of a promissory note secured hereby. And it is the true intent and meaning of the Mortgagor and Mortgagee that if the Mortgagor shall well and truly pay or cause to be paid to the Mortgagee the debt or sum of money aforesaid with interest thereon, if any be due, according to the true intent and meaning of the said note, and any other sums which may be due and payable hereunder, then the estate hereby granted shall cease, determine, and be utterly null and void; otherwise to remain in full force and effect.

The covenants herein contained shall bind, and the benefits and advantages inure to, the respective heirs, executors, administrators, successors, and assigns of the parties hereto. The term "Mortgagee" shall include any payee of the indebtedness

001234

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD



To All Whom These Presents May Concern:

Whereas, Michael R. Brown,

00519

hereinafter called Mortgagor, is indebted to C. W. Horne Sawmill and Chip Co., Inc.,

hereinafter called Mortgagee, as evidenced by that certain promissory note dated September 25, 1998, the terms of which note and any agreement modifying it being incorporated herein by reference, in the principal amount of

Seven Hundred Fifty Thousand and 00/100----- Dollars (\$750,000.00-----),

with interest thereon at the rate of Fifteen

per centum (-----15 %) per annum, until paid, said principal and interest being payable

in fourteen (14) consecutive monthly installments of Nine Thousand Three Hundred Seventy-five Dollars (\$9,375.00-----)

each; commencing on the first day of November, 1998, and one (1) final payment of Seven Hundred Fifty-nine Thousand Three Hundred Seventy-five (\$759,375.00) Dollars, until the principal and interest are paid in full.

and Whereas, the Mortgagor may hereafter become indebted to the Mortgagee for renewals, extensions, modifications, or future advances and readvances on the same or different terms or rates of interest under the aforesaid note or other promissory notes, in a sum not to exceed \$ 750,000.00

and Whereas, the Mortgagor may hereafter become indebted to the Mortgagee for reasonable sums advanced to protect the Mortgagee's security or title in the herein described property, including but not limited to payment of taxes, insurance premiums, public assessments, repairs, court costs, and attorney's fees, the full amounts of which shall be secured hereby without limitation.

Now Know All Men by These Presents,

That the Mortgagor, for and in consideration of the aforesaid debt, the better securing its payment to the Mortgagee, and the further sum of One Dollar in hand paid to the Mortgagor by the Mortgagee, the receipt of which is hereby acknowledged, has granted, bargained, sold, and released, and by these presents does grant, bargain, sell, and release unto the said

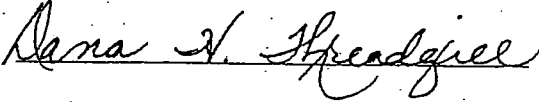
C. W. HORNE SAWMILL AND CHIP CO., INC., its successors and assigns forever:

Witness my Hand and Seal this 25th day of September
in the year of our Lord one thousand nine hundred and ninety-eight, and
in the two hundred and twenty-third year of Sovereignty and Independence
of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF


MICHAEL R. BROWN

(Seal)



(Seal)

(Seal)

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

PERSONALLY appeared before me Dana H. Threadgill

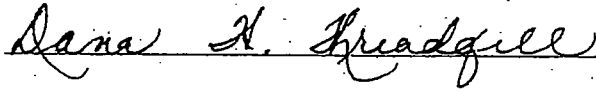
and made oath that she saw the within-named Michael R. Brown

sign, seal, and, as his act and deed, deliver the within-written mortgage for the uses and purposes
therein mentioned and that she, with Miller S. Ingram, Jr. witnessed the execution thereof.

SWORN to before me this 25th

day of September, 1998


(L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA



My Commission Expires: 12/11/07

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

MICHAEL R. BROWN

To

C. W. HORNE SAMMILL AND CHIP
COMPANY, INC.

MORTGAGE OF REAL ESTATE

FILED FOR RECORD AT 1:25 P.M. O'CLOCK ON

THE 29 DAY OF Sept. 1998 AND

RECORDED IN BOOK 328 AT PAGE 1228

CLERK OF COURT/REGISTER OF DEEDS CONVEYANCE

117-2331

FILED
CLERK OF COURT
SEP 29 PM 1 25
CHESTERFIELD COUNTY, SC

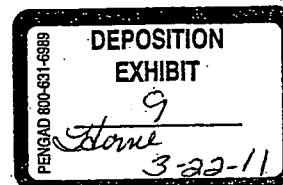
Miller S. Ingram, Jr.

Attorney at Law

Post Office Box 39

Cheraw, South Carolina 29520

(843) 537-6565



REAL ESTATE MORTGAGE NOTE
OF

Michael R. Brown

TO

C. W. Horne Sawmill and Chip Co., Inc.

\$115,000.00

Cheraw, South Carolina

September 25, 1998

FOR VALUE RECEIVED, the undersigned promises to pay to the order of C. W. Horne Sawmill and Chip Company, Inc., at such place as the Holder of this Note may designate, the principal sum of One Hundred Fifteen Thousand and 00/100 (\$115,000.00) Dollars, with interest thereon at the rate of ten (10%) per centum, per annum, until paid, said principal and interest being payable in full one (1) year from the date hereof on or before September 24, 1999. Any payment shall be applied first to the payment of interest and then to the payment of principal. Said interest shall be computed monthly on the unpaid balance and any interest not paid when due shall become a part of the principal debt and shall bear interest at the same rate and, if not sooner paid, shall be \$12,042.00 for the year. In the event default is made in the payment of any installment due under this mortgage, following a grace period of ten (10) days, the Mortgagor will pay a "late charge" of four (4%) per cent of the amount of each such installment in default to cover the extra expense involved in handling delinquent payments.

Should any payment not be made when due, regardless of any prior forbearance or acceptance of payment, the Holder of this Note shall have the option of declaring the entire indebtedness due and payable at once.

In the event that it becomes necessary to place this Note in the hands of an attorney for collection, the Maker hereof agrees to pay a reasonable attorney's fee of no less than 10% of the outstanding balance for such collection together with costs.

In the event that the Maker hereof should seek relief from this debt in any bankruptcy proceeding, the Maker agrees that the Holder of this Note shall continue to receive a reasonable rate of interest on any arrearages due; and in such event, should the value of the property securing this Note exceed the balance due on this Note, the Maker agrees that the Holder shall be entitled to the reasonable post-petition fees, costs, and charges provided for in 11 U.S.C. § 506 (b).

The Maker reserves the right to prepay this indebtedness at any time hereafter without penalty.

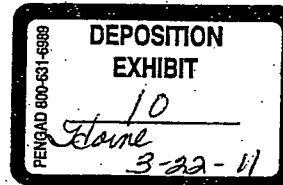
This Note is given to secure a Purchase Money Real Estate Mortgage executed simultaneously herewith. In addition to the real property described on said mortgage, this Note is secured by personalty consisting of tanks located on the premises. The Maker agrees to apply to the indebtedness secured by this Note any proceeds from sale of said tanks, and grants a continuing lien on said personalty to the Holder hereof.

Given under my hand and seal on the day and year first above written.



[SEAL]

MICHAEL R. BROWN



STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

Property located in Chesterfield County, bearing Chesterfield County Tax Map Numbers 156-000-000-002 and 156-000-000-016, was transferred by Bisceglia Brothers Wine Co. to C.W. Home Saw Mill and Chip Co., Inc. on May 20, 1997.

The transaction was (Check one):

X an arm's length real property transaction and the sales price paid or to be paid in money or money's worth was \$350,000*.

_____ not an arm's length real property transaction and the fair market value of the property is \$ _____ *

The above transaction is exempt, or partially exempt, from the recording fee as set forth in S.C. Code Ann. Section 12-24-10 et seq. because the deed is (See back of affidavit):

As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as:

I further understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

[Signature]
Purchaser, Legal Representative of the Purchaser, or other Responsible Person Connected with the Transaction

SWORN to before me this
22 day of May, 1997.

[Signature] (S.S.)
Notary Public for South Carolina
My Commission Expires: 5/20/06

MILLER S. INGRAM, JR.
ATTORNEY AT LAW, L.D. # 2037
204 MARKET STREET
CHERAW, SOUTH CAROLINA 29520
(803) 537-5555

* The fee is based on the real property's value. Value means the realty's fair market value. In arm's length real property transactions, this value is the sales price to be paid in money or money's worth (e.g. stocks, personal property, other realty, forgiveness of debt, mortgages assumed or placed on the realty as a result of the transaction). However, a deduction is allowed from this value for the amount of any lien or encumbrance existing on land, interest, or realty before the transfer and remaining on it after the transfer.

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EXHIBIT A
LEGAL DESCRIPTION

TRACT NO. 3: All that certain piece, parcel, or tract of land situate, lying, and being in the Old Bay Springs School District, Cole Hill Township, Chesterfield County, State of South Carolina, containing five (5) acres, more or less, and being bounded generally, now or formerly, as follows: On the North by lands of J. L. Creed; on the East by lands of Tenner Brothers; on the South by County Road; and on the West by lot of Jule Hancock and lands of J. L. Creed.

The above-described real estate was conveyed to Robert Scott, Inc., by Deed of Lester E. Smith dated April 20, 1972, and recorded in the office of Clerk of Court for Chesterfield County on April 20, 1972, in Deed Book 218 at Page 705. By Articles of Merger dated November 30, 1972, and recorded in the office of Clerk of Court for Chesterfield County on March 28, 1973, in Deed Book 223 at Page 715, Robert Scott, Inc., and Tenner Brothers, Inc., merged, and the surviving Corporation is Tenner Brothers, Inc.

ALSO

TRACT NO. ONE. "All that certain parcel or tracts of land containing six hundred forty four (644) acres, more or less, situate in Cole Hill Township, School District No. 6, Chesterfield County, South Carolina, lying on both sides of the South Carolina State Highway No. 109, approximately nine (9) miles South of the Town of Chesterfield and bounded generally now or formerly as follows: On the North by lands of D. A. McHair, lands of Dan P. Roscoe, lands of Mrs. J. W. Roscoe and lands of T. W. Cassidy; on the East by lands of T. W. Cassidy, lands of Polson and lands of Lum Crowley; on the South by lands of Polson, lands of Lum Crowley and lands of D. H. McGregor Estate; on the West by lands of T. C. Crowley, and lands of Crowley, and more particularly described on a plat thereof made by Will Clark, Surveyor, for Tenner Brothers in January 1944, which plat is recorded in Plat book 19 at Page 15 in the Office of the Clerk of Court for Chesterfield County."

000308

The above-described Tract No. One was conveyed to Robert Scott, Inc., by Deed of Tenner Brothers, Inc., dated December 17, 1965, and recorded in the Office of the Clerk of Court for Chesterfield County in Deed Book 173 at Page 381. By Articles of Merger dated November 30, 1972, and recorded in the Office of the Clerk of Court for Chesterfield County on March 28, 1973, in Deed Book 223 at Page 715, Robert Scott, Inc. and Tenner Brothers, Inc. merged, and the surviving corporation is Tenner Brothers, Inc.

LESS AND EXCEPT THE FOLLOWING PROPERTY FROM TRACT NO. ONE

All that certain parcel or tract of land containing thirty-eight (38) acres, more or less, situate in the County of Chesterfield, State of South Carolina, approximately nine (9) miles almost south of the Town of Chesterfield at the intersection of State Road S-13-29 and the Mary Ann Crowley Road, and bounded generally as follows: on the North by Mary Ann Crowley Road, the same being a county dirt road (the center of said road being the boundary); on the East by State Road S-13-29 (the center of said road being the boundary); on the South by lands of Robert Funderburk; and on the West by lands of Al Tyner and Carolyn Tyner.

This being the same property conveyed to Robert J. Funderburk and Barbara W. Funderburk by Deed of Tenner Brothers, Inc., dated November 6, 1995 and recorded in the Office of the Clerk of Court for Chesterfield County on November 17, 1995 in Deed Book 348 at Page 852.

LESS AND EXCEPT THE FOLLOWING PROPERTY FROM TRACT NO. ONE

All that certain parcel or tract of land containing 171.03 acres, more or less, situate in the County of Chesterfield, State of South Carolina, approximately nine (9) miles almost south of the Town of Chesterfield on the east side of Road S-13-29 and on the south side of Road S-13-657, and bounded generally as follows: on the North by Road S-13-657; on the East by lands of Wayne Crowley, by lands of Annie Mae Jordan, by lands of Alice D. Crowley, and by lands of Carolyn F. Tyner; on the South by lands of Carolyn F. Tyner and by Ida Cassidy Road; on the West by Road S-13-29 and by lands, now or formerly, of Tenner Brothers, Inc. Said land is more particularly described on a plat thereof made for Carolyn F. Tyner by Robert H. Lackey Surveying, Inc. dated December 19, 1995 and recorded in the Office of the Clerk of Court for Chesterfield County in Plat Book 43 at Page 96.

This being the same property conveyed to Carolyn F. Tyner by Deed of Tenner Brothers, Inc., dated January 8, 1996 and recorded in the Office of the Clerk of Court for Chesterfield County on January 16, 1996 in

000314

L. Settlement Charges

700. Total Sales/Broker's Commission based on price \$		@	% =	Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
Division of Commission (line 700) as follows:					
701. \$	to				
702. \$	to				
703. Commission paid at Settlement					
704.					
800. Items Payable in Connection With Loan					
801. Loan Origination Fee	%	to	AMERICAN COMMUNITY BANK	1,500.00	
802. Loan Discount	%				
803. Appraisal Fee	to				
804. Credit Report	to				
805. Lender's Inspection Fee					
806. Mortgage Insurance Application Fee to					
807. Assumption Fee					
808.					
809.					
810.					
811.					
812.					
813.					
814.					
815.					
900. Items Required By Lender To Be Paid in Advance					
901. Interest from	to	@ \$	/day		
902. Mortgage Insurance Premium for			months to		
903. Hazard Insurance Premium for			years to		
904.			years to		
905.					
1000. Reserves Deposited With Lender					
1001. Hazard Insurance	months @ \$		per month		
1002. Mortgage Insurance	months @ \$		per month		
1003. City property taxes	months @ \$		per month		
1004. County property taxes	months @ \$		per month		
1005. Annual assessments	months @ \$		per month		
1006.	months @ \$		per month		
1007.	months @ \$		per month		
1008.	months @ \$		per month		
1100. Title Charges					
1101. Settlement or closing fee	to				
1102. Abstract or title search	to				
1103. Title examination	to				
1104. Title Insurance binder	to				
1105. Document preparation	to				
1106. Notary fees	to				
1107. Attorney's fees	to	MILLER S. INGRAM, JR.		500.00	
(includes above items numbers:)					
1108. Title Insurance	to	LIEN-TO-TITLE AGENCY		372.50	
(includes above items numbers:)					
1109. Lender's coverage	\$				
1110. Owner's coverage	\$				
1111.					
1112.					
1113.					
1200. Government Recording and Transfer Charges					
1201. Recording fees: Deed \$		; Mortgage \$ 10.00		15.00	
1202. City/county tax/stamps: Deed \$		; Mortgage \$			
1203. State tax/stamps: Deed \$		; Mortgage \$			
1204.					
1205.					

LESS AND EXCEPT THE FOLLOWING PROPERTY FROM TRACT NO. ONE

All that certain parcel or tract of land containing thirty-eight (38) acres, more or less, situate in the County of Chesterfield, State of South Carolina, approximately nine (9) miles almost south of the Town of Chesterfield at the intersection of State Road S-13-29 and the Mary Ann Crowley Road, and bounded generally as follows: on the North by Mary Ann Crowley Road, the same being a county dirt road (the center of said road being the boundary); on the East by State Road S-13-29 (the center of said road being the boundary); on the South by lands of Robert Funderburk; and on the West by lands of Al Tyner and Carolyn Tyner.

This being the same property conveyed to Robert J. Funderburk and Barbara W. Funderburk by Deed of Tenner Brothers, Inc., dated November 6, 1995 and recorded in the Office of the Clerk of Court for Chesterfield County on November 17, 1995 in Deed Book 348 at Page 852.

LESS AND EXCEPT THE FOLLOWING PROPERTY FROM TRACT NO. ONE

All that certain parcel or tract of land containing 171.03 acres, more or less, situate in the County of Chesterfield, State of South Carolina, approximately nine (9) miles almost south of the Town of Chesterfield on the east side of Road S-13-29 and on the south side of Road S-13-657, and bounded generally as follows: on the North by Road S-13-657; on the East by lands of Wayne Crowley, by lands of Annie Mae Jordan, by lands of Alice D. Crowley, and by lands of Carolyn F. Tyner; on the South by lands of Carolyn F. Tyner and by Ida Cassidy Road; on the West by Road S-13-29 and by lands, now or formerly, of Tenner Brothers, Inc. Said land is more particularly described on a plat thereof made for Carolyn F. Tyner by Robert H. Lackey Surveying, Inc. dated December 19, 1995 and recorded in the Office of the Clerk of Court for Chesterfield County in Plat Book 43 at Page 96.

This being the same property conveyed to Carolyn F. Tyner by Deed of Tenner Brothers, Inc., dated January 8, 1996 and recorded in the Office of the Clerk of Court for Chesterfield County on January 16, 1996 in

000311

LESS AND EXCEPT THE FOLLOWING PROPERTY FROM TRACT NO. ONE

All that certain parcel or tract of land containing 34.99 acres, more or less, situate in the County of Chesterfield, State of South Carolina, approximately nine (9) miles almost south of the Town of Chesterfield on the southeast side of Road S-13-657, and bounded generally as follows: on the Northwest by Road S-13-657; on the West by lands, now or formerly, of Tenner Brothers, Inc.; on the Northeast by lands of Catawba Timber Co.; on the Southeast by lands of Margie W. Hess, by lands of Danny C. Wilkerson, by lands of Wayne Crowley, and by lands of Annie Mae Jordan. Said land is more particularly described on a plat thereof made for Wayne O. Crowley by Robert H. Lackey Surveying, Inc. dated December 19, 1995 and recorded in the Office of the Clerk of Court for Chesterfield County in Plat Book 47 at Page 96.

This being the same property conveyed to Wayne O. Crowley by Deed of Tenner Brothers, Inc., dated January 8, 1996 and recorded in the Office of the Clerk of Court for Chesterfield County on January 16, 1996 in Deed Book 349 at Page 772.

Recorded this 9th day
of June 19 97
in Book S Page 25
John S. Jenkins
Assessor for Chesterfield County, SC

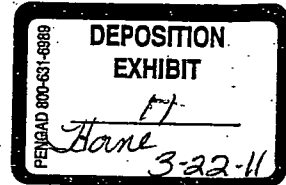
Thomas W. Pullen
CHESTERFIELD COUNTY ASSESSOR
TMS # 157-16
156-2
DATE 6-5-97

FILED
CLERK COURT
97 JUN 22 PM 2 22
CHESTERFIELD COUNTY, SC
BOOK 358 PAGE 305
313

Clerk of Court, Chesterfield County
REVENUE FEE COLLECTED

STATE \$ 910.00
COUNTY \$ 385.00
DATE 5-22-97

000372



State of South Carolina
County of Chesterfield

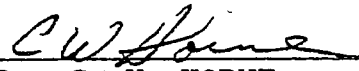
BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that C. W. Horne Sawmill and Chip Company, Inc. (Seller), pursuant to an Asset Purchase Agreement (Agreement) by and between Seller, C. W. Horne Sawmill and Chip Company, Inc. and Michael R. Brown (Purchaser), and for good and valuable consideration, the receipt of which is hereby acknowledged, hereby sells, transfers, conveyed and assigns to Michael R. Brown the assets more particularly described in the Agreement.

Seller hereby represents and warrants that Seller has full title, right and authority to sell and transfer to Purchaser such assets.

IN WITNESS WHEREOF, Seller has hereunto executed this Bill of Sale this 25th day of September, 1998.

C.W. HORNE SAWMILL AND CHIP COMPANY, INC.


By: C. W. HORNE
Its: President
OFFICE: 704-233-5555
HOME : 704-624-2204

State of South Carolina
County of Chesterfield

LOAN AND SECURITY AGREEMENT

Pursuant to this Agreement made and entered into on this 25th day of September, 1998:

MICHAEL R. BROWN

(hereinafter called "Debtor"), for value received hereby grants to

C.W. HORNE SAWMILL AND CHIP COMPANY, INC.

(hereinafter called "Secured Party"), a security interest in the following described property and any and all additions, accession and replacements, whether now owned or hereafter acquired by Debtor (hereinafter called "Collateral")"

DESCRIPTION OF COLLATERAL

- 4 117,336 gallon tanks 27' x 27'
- 3 118,225 gallon tanks 27.5' x 27'
- 8 87,103 gallon tanks 23' x 27'
- 1 51,215 gallon tank 20' x 24'

to secure the payment of all obligations set out below, any extensions or renewals thereof, any future advances made by Secured Party to Debtor and all expenses and costs incident to collection of said indebtedness and the enforcement and protection of the security interest created thereby.

Debtor promises to pay to Secured Party at its address set out above, the sum of One Hundred Fifteen Thousand and 00/100 (\$115,000.00) Dollars with interest thereon at the rate of ten (10%) per centum per annum, as set forth in a Note and Purchase Money Mortgage executed herewith. If any such installment is not paid when due, the entire amount unpaid shall be due and payable at the election of the holder hereof, without notice. All parties hereto, whether makers, indorsers, sureties, guarantors, or otherwise, hereby waive demand, notice and protest. If placed in

the hands of an attorney for collection, we jointly and severally agree to pay reasonable attorney's fees.

DEBTOR REPRESENTS, WARRANTS AND AGREES THAT:

The Collateral is or is to be used by Debtor primarily:

[check each box which applies]

☐ for personal, family or household purposes

☐ in farming operations

☐ in business

☒ as fixtures to be attached to real estate conveyed from the Seller to the Debtor, and described as follows:

All that certain piece, parcel, or lot of land, with the improvements thereon, situate, lying, and being on the west side of Highway S-13-29, approximately 8 miles south of the Town of Chesterfield, in the County of Chesterfield, State of South Carolina, and bounded as follows: beginning at an iron on the centerline of Highway S-13-29 and running thence S 26°-28'-03" E along the centerline of Highway S-13-29 for a distance of 621.46 feet to its intersection with the centerline of Highway S-13-657; thence S 26°-52'-05" E along the centerline of Highway S-13-29 for a distance of 881.13 feet to a point; thence S 26°-50'-01" E along the centerline of Highway S-13-29 for a distance of 494.02 feet to a point; thence S 25°-45'-54" E along the centerline of Highway S-13-29 for a distance of 201.77 feet to a point; thence S 21°-42'-37" E along the centerline of Highway S-13-29 for a distance of 122.05 feet to an iron; thence S 73°-28'-41" W for a distance of 241.14 feet to a point; thence S 16°-35'-21" E for a distance of 209.82 feet to a point; thence S 73°-28'-41" W for a distance of 1528.15 feet to an iron; thence N 09°-37'-22" W for a distance of 87.31 feet to a steel fence post; thence N 25°-03'-16" W for a distance of 1292.09 feet to a steel fence post; thence S 55°-13'-40" W along the northern side of an abandoned county road for a distance of 430.16 feet to a point; thence N 02°-52'-37" W for a distance of 208.38 feet to a point; thence N 02°-49'-25" W for a distance of 468.20 feet to a concrete post; thence N 44°-48'-28" E for a distance of 275.74 feet to a point; thence N 12°-24'-36" W for a distance of 764.63 feet to an iron; thence N 84°-15'-47" E for a distance of 1531.58 feet to the point of beginning. Said property is more particularly shown and described as 106.85 ACRES according to a plat of survey prepared by William G. Martin, P.L.S., on the 5th day of July, 1998, which plat, recorded in Plat Book _____, at page _____, in the Office of the Clerk of Court for Chesterfield County, is by reference incorporated herein as a part of this description.

and if checked here ☒ is being acquired with the proceeds of note(s) which Secured Party may disburse directly to the Seller of the Collateral.

The Collateral will be kept at the Debtor's address shown at the beginning of this Agreement unless a different address is shown

in the following space: NONE

Debtor will not remove Collateral from the said address without the payment of any proceeds of sale of said property to the Seller toward satisfaction of Seller's Note and Mortgage.

SIGNATURE(S) OF DEBTOR


MICHAEL R. BROWN

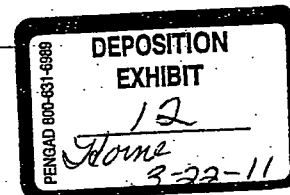
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MILLER S. INGRAM, JR.

ATTORNEY AT LAW

743-537-6565

9 TANK (TFF)



SALE OF 106.85 ACRES
AND TANKS

TENNER BROTHERS WINERY

SELLER: C.W. HORNE SAWMILL AND CHIP
COMPANY, INC.

PURCHASER: MICHAEL R. BROWN

DATE OF CLOSING: SEPTEMBER 25, 1998

CLOSING STATEMENT

PURCHASE PRICE (Realty \$250,000.00/Personalty \$115,000.00)	\$ 365,000.00
MINUS EARNEST MONEY PAID	0
BALANCE DUE FROM PURCHASER	\$ 365,000.00

SELLER'S COSTS:

Miller S. Ingram, Jr.:	
Preparation of deed, S.C. Tax Commission	
Affidavit, 1099 form, conferences, etc.	\$ 250.00
Chesterfield County Clerk of Court:	
Documentary tax stamps on deed	\$ 925.00
1998 Pro-rata real property taxes	\$ 412.63
TOTAL.....	\$ 1,587.63
PURCHASE PRICE	\$ 365,000.00
MINUS SELLER'S COSTS	1,587.63
NET DUE TO SELLER AT CLOSING	\$ 363,412.37

PURCHASER'S COSTS:

Preparation and execution of Note, Security	
Agreement, two Mortgage	\$ 110.00
Chesterfield County Clerk of Court:	
Recording fee on deed	\$ 10.00
Recording fee on plat	\$ 10.00
Recording fee on mortgages	\$ 20.00
TOTAL.....	\$ 150.00
BALANCE DUE FROM PURCHASER	\$ 340,000.00
MINUS PRO-RATA 1998 REAL PROPERTY TAXES	412.63
PLUS PURCHASER'S COSTS	150.00
NET DUE FROM PURCHASER AT CLOSING	\$ 339,737.37

MICHAEL R. BROWN, Purchaser

C. W. HORNE SAWMILL AND CHIP COMPANY, INC., Seller

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

PURCHASE MONEY MORTGAGE

000317

To All Whom These Presents May Concern:

Whereas, Michael R. Brown

hereinafter called Mortgagor, is indebted to C. W. Horne Sawmill and Chip Co., Inc.,

hereinafter called Mortgagee, as evidenced by that certain promissory note dated January 13, 2000, the terms of which note and any agreement modifying it being incorporated herein by reference, in the principal amount of

One Hundred Thousand and 00/100----- Dollars (\$100,000.00-----),

with interest thereon at the rate of twelve and one half

per centum (-----12.5%) per annum, until paid, said principal and interest being payable

in full on or before December 31, 2000. ~~XXXXXXXXXX~~

~~XXXXXXXXXX~~

~~XXXXXXXXXXXXXXXXXXXX~~

~~XXXXXXXXXX~~

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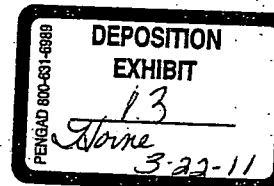
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and Whereas, the Mortgagor may hereafter become indebted to the Mortgagee for renewals, extensions, modifications, or future advances and readvances on the same or different terms or rates of interest under the aforesaid note or other promissory notes, in a sum not to exceed \$ 100,000.00

and Whereas, the Mortgagor may hereafter become indebted to the Mortgagee for reasonable sums advanced to protect the Mortgagee's security or title in the herein described property, including but not limited to payment of taxes, insurance premiums, public assessments, repairs, court costs, and attorney's fees, the full amounts of which shall be secured hereby without limitation.

Now Know All Men by These Presents,

That the Mortgagor, for and in consideration of the aforesaid debt, the better securing its payment to the Mortgagee, and the further sum of One Dollar in hand paid to the Mortgagor by the Mortgagee, the receipt of which is hereby acknowledged, has granted, bargained, sold, and released, and by these presents does grant, bargain, sell, and release unto the said C.W. HORNE SAWMILL AND CHIP CO., INC., its successors and assigns forever:

The Mortgagor COVENANTS AND AGREES with the Mortgagee as follows:

1. **TAXES AND ASSESSMENTS.** The Mortgagor shall pay or cause to be paid promptly all taxes and assessments or other charges which constitute or are secured by a lien upon the mortgaged premises, and in default thereof, the holder of this mortgage may pay the same, and such payment shall become a part of the debt secured by this mortgage, whereupon the entire debt secured by this mortgage shall immediately become due and payable, if the Mortgagee shall so elect.
2. **INSURANCE.** The Mortgagor shall keep any and all improvements now existing or hereafter erected upon the mortgaged premises insured, at the Mortgagor's expense, in an amount not less than the original principal amount of the loan secured by this mortgage, and assign the policy of insurance to the Mortgagee, its, his, her, or their executors, administrators, successors, or assigns. And should the Mortgagor at any time fail or neglect so to do, then the Mortgagee or holder hereof may obtain such insurance and charge all of the premiums therefor as an additional debt secured by this mortgage. In the event of foreclosure, all right, title, and interest of the Mortgagor in and to any insurance policies then in force shall pass to the purchaser.
3. **REPAIRS.** The Mortgagor shall keep the premises in as good order and condition as on the date hereof, reasonable wear and tear excepted, and shall not commit or permit any waste thereof. Should the Mortgagor fail so to do, the Mortgagee may enter upon the premises to make reasonable and necessary repairs and charge the Mortgagor for the expense thereof as an advance hereunder.
4. **TRANSFER OF TITLE.** At the option of the Mortgagee, all sums secured by this mortgage shall become immediately due and payable if the Mortgagor shall convey the mortgaged premises or if title thereto shall become vested in any other person in any manner whatsoever other than by death of the Mortgagor. The Mortgagee shall have waived such right to accelerate if, prior to sale or transfer, Mortgagee shall enter into written agreement with the person to whom the subject property is to be sold or transferred that the interest payable on sums secured by this mortgage and the terms of this mortgage shall be as the Mortgagee may request from said Transferee.
5. **PAYMENT AND DEFAULT.** The Mortgagor shall promptly pay the principal and interest on the indebtedness secured by this mortgage, at the times and in the manner provided by the Mortgagor's promissory note. In the event of default in any of the payments of interest, principal, taxes, assessments, or insurance premiums as herein provided, the Mortgagee may, without notice to the Mortgagor, declare all sums secured by this mortgage immediately due and payable and proceed with foreclosure thereof. Upon such default, the Mortgagee shall be entitled to and the Mortgagor hereby assigns any and all rents and profits arising from the mortgaged premises to be applied to the indebtedness of the Mortgagor.
6. **FORECLOSURE.** In the case of foreclosure of this mortgage, by suit or otherwise, the Mortgagee shall recover of the Mortgagor the costs of any action and a reasonable attorney's fee, which shall be secured by this mortgage, and shall be included in a judgment of foreclosure.
7. **LIEN ON PERSONALTY (BUSINESS PROPERTY) ATTACHED TO PREMISES.** The Mortgagee retains, and the Mortgagor hereby grants a continuing lien upon personalty in the mortgaged premises consisting mainly of tanks. The Mortgagor covenants and agrees that the first Thirty-five Thousand (\$35,000.00) Dollars received from sale of said property shall be applied to the indebtedness secured hereby, satisfying the lien on personalty.

000072

PROVIDED ALWAYS, NEVERTHELESS, that the Mortgagor shall hold and enjoy the premises above conveyed until the occurrence of a default under the terms of this mortgage or of a promissory note secured hereby. And it is the true intent and meaning of the Mortgagor and Mortgagee that if the Mortgagor shall well and truly pay or cause to be paid to the Mortgagee the debt or sum of money aforesaid with interest thereon, if any be due, according to the true intent and meaning of the said note, and any other sums which may be due and payable hereunder, then the estate hereby granted shall cease, determine, and be utterly null and void; otherwise to remain in full force and effect.

The covenants herein contained shall bind, and the benefits and advantages inure to, the respective heirs, executors, administrators, successors, and assigns of the parties hereto. The term "Mortgagee" shall include any payee of the indebtedness hereby secured or any transferee thereof whether by operation of law or otherwise.

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

LOST MORTGAGE SATISFACTION

Michael R. Brown,

MORTGAGOR,

to

C.W. Horne Sawmill and Chip Co., Inc.,

MORTGAGEE.

DATED : January 13, 2000

AMOUNT: \$100,000.00

MORTGAGE BOOK 339, PAGE 70-73

OFFICE OF THE CLERK OF COURT
FOR CHESTERFIELD COUNTY

The undersigned, being the owner and holder of the above described mortgage, acknowledges that the debt which was secured thereby has been paid in full and the lien of the mortgage is satisfied and canceled.

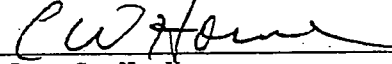
DATED: December 29, 2000

C. W. Horne Sawmill and Chip Co., Inc.



Robin J. Allison

WITNESSES



(SEAL)

By: C. W. Horne
President

STATE OF SOUTH CAROLINA]

PROBATE

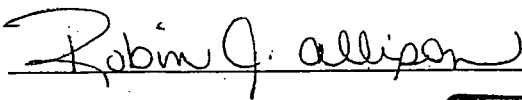
COUNTY OF CHESTERFIELD]

Personally appeared before me Robin J. Allison who, being duly sworn, says that she saw the within-named Owner/Holder sign, seal, and deliver the within written Lost Mortgage Satisfaction; and that she with Miller S. Ingram, Jr. witnessed the execution thereof.

SWORN TO before me this 29th

day of December, 2000.

(L.S.)



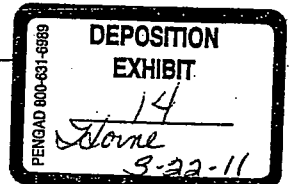
Notary Public for South Carolina

My commission expires: 12/11/07

STATE OF SOUTH CAROLINA]

AFFIDAVIT OF LOST MORTGAGE

COUNTY OF CHESTERFIELD]

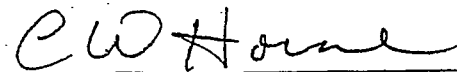


Personally appeared before me the undersigned who, being duly sworn, says that the above-designated Owner/Holder is the bona fide owner and holder of the described mortgage; that the original mortgage has been lost and cannot be found; and that the mortgage has not been assigned, hypothecated or disposed of otherwise.

SWORN TO before me this 29th

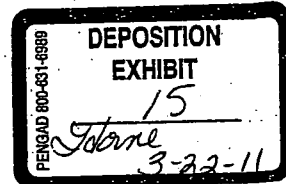
day of December, 2000.

(L.S.)



Notary Public for South Carolina

My commission expires: 12/11/07



☐ CORRECTED (if checked)

PAYER'S name, street address, city, state, ZIP code, and telephone no.

C.W. HONE SMITH & CHIEF CO., INC.
7318 E MARSHVILLE BLVD
MARSHVILLE NC 28103

1 Rents

\$

2 Royalties

\$

3 Other income

\$

OMB No. 1545-0115

2000

Form 1099-MISC

**Miscellaneous
Income**

PAYER'S Federal identification number

56-0960147

RECIPIENT'S identification number

473-60-3653

4 Federal income tax withheld

\$

5 Fishing boat proceeds

\$

RECIPIENT'S name

MICHAEL FROM

6 Medical and health care payments

\$

7 Nonemployee compensation

\$ **5,000.00**

Street address (including apt. no.)

RT 2 BOX 6710

8 Substitute payments in lieu of
dividends or interest

\$

9 Payer made direct sales of
\$5,000 or more of consumer
products to a buyer
(recipient) for resale ☐

City, state, and ZIP code

PATRICK SC 29584

10 Crop insurance proceeds

\$

11 State income tax withheld

\$

Account number (optional)

12 State/Payer's state number

\$

13

\$

**Copy B
For Recipient**

This is important tax
information and is
being furnished to the
Internal Revenue
Service. If you are
required to file a return,
a negligence penalty or
other sanction may be
imposed on you if this
income is taxable and
the IRS determines that
it has not been
reported.

om 1099-MISC

(Keep for your records.)

Department of the Treasury - Internal Revenue Service

A. Settlement Statement

U.S. Department of Housing
and Urban Development



OMB No. 2502-0265

B. Type of Loan

1. ☐ FHA 2. ☐ FmHA 3. ☐ Conv. Unins.
4. ☐ VA 5. ☐ Conv. Ins.

6. File Number
1461-A

7. Loan Number
710400073

8. Mortgage Insurance Case Number

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for information purposes and are not included in the totals.

D. Name and Address of Borrower

MICHAEL R. BROWN
1620-A EAST 4TH STREET
PMB # 132
CHARLOTTE, NC 28204

E. Name and Address of Seller

REFINANCE

F. Name and Address of Lender

AMERICAN COMMUNITY BANK
7003 E. MARSHVILLE BOULEVARD
MARSHVILLE, NC 28103

G. Property Location

WINERY PROPERTY / 106.85 ACRES
HIGHWAY 109
PATRICK, SC 29584

H. Settlement Agent

MILLER S. INGRAM, JR.

I. Settlement Date

Place of Settlement
204 MARKET STREET
CHERAW, SC 29520

DECEMBER 29, 200

J. Summary of Borrower's Transaction

100. Gross Amount Due From Borrower

101. Contract sales price	
102. Personal property	
103. Settlement charges to borrower (line 1400)	4,485.69
104. PAYOFF TO C.W. HORNE	72,000.00
105. SAWMILL & CHIP COMPANY	
Adjustments for items paid by seller in advance	
106. City/town taxes to	
107. County taxes to	
108. Assessments to	
109.	
110. HOLDING ACCOUNT CONTAINING	
111. 12 MONTHLY PAYMENTS	16,567.80
112.	
120. Gross Amount Due From Borrower	93,053.49

200. Amounts Paid By or in Behalf of Borrower

201. Deposit or earnest money	
202. Principal amount of new loan(s)	150,000.00
203. Existing loan(s) taken subject to	
204.	
205.	
206.	
207.	
208.	
209.	

Adjustments for items unpaid by seller

210. City/town taxes to	
211. County taxes to	
212. Assessments to	
213.	
214.	
215.	
216.	
217.	
218.	
219.	

K. Summary of Seller's Transaction

400. Gross Amount Due To Seller

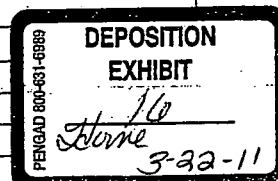
401. Contract sales price	
402. Personal property	
403.	
404.	
405.	
Adjustments for items paid by seller in advance	
406. City/town taxes to	
407. County taxes to	
408. Assessments to	
409.	
410.	
411.	
412.	
420. Gross Amount Due To Seller	

500. Reductions in Amount Due To Seller

501. Excess deposit (see instructions)	
502. Settlement charges to seller (line 1400)	
503. Existing loan(s) taken subject to	
504. Payoff of first mortgage loan	
505. Payoff of second mortgage loan	
506.	
507.	
508.	
509.	

Adjustments for items unpaid by seller

510. City/town taxes to	
511. County taxes to	
512. Assessments to	
513.	
514.	
515.	
516.	
517.	
518.	
519.	



209.			509.		
Adjustments for items unpaid by seller			Adjustments for items unpaid by seller		
210. City/town taxes	to		510. City/town taxes	to	
211. County taxes	to		511. County taxes	to	
212. Assessments	to		512. Assessments	to	
213.			513.		
214.			514.		
215.			515.		
216.			516.		
217.			517.		
218.			518.		
219.			519.		
220. Total Paid By/For Borrower		150,000.00	520. Total Reduction Amount Due Seller		
300. Cash At Settlement From/To Borrower			600. Cash At Settlement To/From Seller		
301. Gross Amount due from borrower (line 120)		93,053.49	601. Gross amount due to Seller (line 420)		
302. Less amounts paid by/for borrower (line 220)		(150,000.00)	602. Less reductions in amt. due seller (line 520)		()
303. Cash	☐ From ☒ To Borrower	56,946.51	603. Cash	☐ To ☐ From Seller	

Previous Edition Is Obsolete

ITEM 2384 (9301)

HUD-1 (3-86)

RESPA, HB 4305.2

Great Lakes Business Forms, Inc. 

To Order Call: 1-800-530-9393 CT FAX 616-791-1131

L. Settlement Charges

700. Total Sales/Broker's Commission based on price \$ @ % =				Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
Division of Commission (line 700) as follows:					
701. \$	to				
702. \$	to				
703. Commission paid at Settlement					
704.					
800. Items Payable in Connection With Loan					
801. Loan Origination Fee	%	to	AMERICAN COMMUNITY BANK	1,500.00	
802. Loan Discount	%				
803. Appraisal Fee	to				
804. Credit Report	to				
805. Lender's Inspection Fee					
806. Mortgage Insurance Application Fee to					
807. Assumption Fee					
808.					
809.					
810.					
811.					
812.					
813.					
814.					
815.					
900. Items Required By Lender To Be Paid in Advance					
901. Interest from	to	@ \$	/day		
902. Mortgage Insurance Premium for			months to		
903. Hazard Insurance Premium for			years to		
904.			years to		
905.					
1000. Reserves Deposited With Lender					
1001. Hazard Insurance	months @ \$		per month		
1002. Mortgage Insurance	months @ \$		per month		
1003. City property taxes	months @ \$		per month		
1004. County property taxes	months @ \$		per month		
1005. Annual assessments	months @ \$		per month		
1006.	months @ \$		per month		
1007.	months @ \$		per month		
1008.	months @ \$		per month		
1100. Title Charges					
1101. Settlement or closing fee	to				
1102. Abstract or title search	to				
1103. Title examination	to				
1104. Title Insurance binder	to				
1105. Document preparation	to				
1106. Notary fees	to				
1107. Attorney's fees	to	MILLER S. INGRAM, JR.		500.00	
(includes above items numbers:)					
1108. Title Insurance	to	LIEN-TO-TITLE AGENCY		372.50	
(includes above items numbers:)					
1109. Lender's coverage	\$				
1110. Owner's coverage	\$				
1111.					
1112.					
1113.					
1200. Government Recording and Transfer Charges					
1201. Recording fees: Deed \$		Mortgage \$ 10.00		Releases \$ 5.00	15.00
1202. City/county tax/stamps: Deed \$		Mortgage \$			
1203. State tax/stamps: Deed \$		Mortgage \$			
1204.					
1205.					

1113.

1200. Government Recording and Transfer Charges

1201. Recording fees: Deed \$; Mortgage \$ 10.00 ; Releases \$ 5.00 15.00

1202. City/county tax/stamps: Deed \$; Mortgage \$

1203. State tax/stamps: Deed \$; Mortgage \$

1204.

1205.

1300. Additional Settlement Charges

1301. Survey to

1302. Pest inspection to

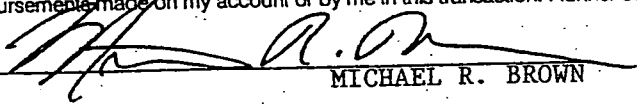
1303.

1304. 2000 PROPERTY TAXES TO CHESTERFIELD COUNTY TREASURER 2,098.19

1305.

1300. Total Settlement Charges (enter on lines 103, Section J and 502, Section K) 4,485.69

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of HUD-1 Settlement Statement.


 MICHAEL R. BROWN

Borrowers

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

Sellers

DECEMBER 29, 2000

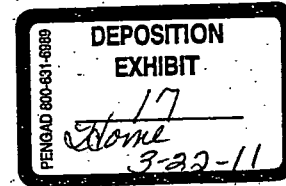
Settlement Agent

MILLER S. INGRAM, JR.

Date

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine or imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

M 157931
ATLANTIC
 TITLE INSURANCE COMPANY



MORTGAGEE'S POLICY OF TITLE INSURANCE

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS CONTAINED IN SCHEDULE B AND THE PROVISIONS OF THE CONDITIONS AND STIPULATIONS HEREOF, ATLANTIC TITLE INSURANCE COMPANY, OF COLUMBIA, SOUTH CAROLINA, A South Carolina corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the amount of insurance stated in Schedule A, and costs, attorneys' fees and expenses which the Company may become obligated to pay hereunder, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested otherwise than as stated therein;
2. Any defect in or lien or encumbrance on such title;
3. Lack of a right of access to and from the land;
4. Unmarketability of such title;
5. The invalidity or unenforceability of the lien of the insured mortgage upon said estate or interest except to the extent that such invalidity or unenforceability, or claim thereof, arises out of the transaction evidenced by the insured mortgage and is based upon
 - a. usury, or
 - b. any consumer credit protection or truth in lending law;
6. The priority of any lien or encumbrance over the lien of the insured mortgage;
7. Any statutory lien for labor or material which now has gained or hereafter may gain priority over the lien of the insured mortgage, except any such lien arising from an improvement on the land contracted for and commenced subsequent to Date of Policy not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance; or
8. The invalidity or unenforceability of any assignment, shown in Schedule A, of the insured mortgage or the failure of said assignment to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

In Witness Whereof, the ATLANTIC TITLE INSURANCE COMPANY has caused this policy to be signed and sealed by its duly authorized officers as of Date of Policy shown in Schedule A.

ATLANTIC TITLE INSURANCE COMPANY

BY:

Walter H. Hohn
 President

ATTEST:

Todd H. Hohn
 Secretary

ATLANTIC
TITLE INSURANCE COMPANY

LOAN FORM

SCHEDULE A

Policy Number M- 157931

Commitment No./Case No. 104718

\$150,000.00

Amount of Policy

January 4, 2001

Date of Policy

\$362.50

Premium

1. Name of Insured:

American Community Bank

2. The estate or interest in the land described in this Schedule and which is encumbered by the insured mortgage is:

fee simple

3. The estate or interest referred to herein is at Date of Policy vested in:

Michael R. Brown

4. The mortgage, herein referred to as the insured mortgage, and the assignments thereof, if any, are described as follows:

That certain Mortgage from Michael R. Brown to American Community Bank, dated December 29, 2000 and recorded in Mortgage Book 346, at page 431, in the Office of the Clerk of Court for Chesterfield County.

5. The land referred to in this policy is situated in Chesterfield County, South Carolina, and is the same land as described in the mortgage shown at No. 4 above, as follows:

see attached description

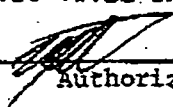
Countersigned:

SCHEDULE A (Continued)

All that certain piece, parcel, or lot of land, with the improvements thereon, situate, lying, and being on the west side of Highway S-13-29, approximately 8 miles south of the Town of Chesterfield, in the County of Chesterfield, State of South Carolina, and bounded as follows: beginning at an iron on the centerline of Highway S-13-29 and running thence S 26°-28'-03" E along the centerline of Highway S-13-29 for a distance of 621.46 feet to its intersection with the centerline of Highway S-13-657; thence S 26°-52'-05" E along the centerline of Highway S-13-29 for a distance of 881.13 feet to a point; thence S 26°-50'-01" E along the centerline of Highway S-13-29 for a distance of 494.02 feet to a point; thence S 25°-45'-54" E along the centerline of Highway S-13-29 for a distance of 201.77 feet to a point; thence S 21°-42'-37" E along the centerline of Highway S-13-29 for a distance of 122.05 feet to an iron; thence S 73°-28'-41" W for a distance of 241.14 feet to a point; thence S 16°-35'-21" E for a distance of 209.82 feet to a point; thence S 73°-28'-41" W for a distance of 1528.15 feet to an iron; thence N 09°-37'-22" W for a distance of 87.31 feet to a steel fence post; thence N 25°-03'-16" W for a distance of 1292.09 feet to a steel fence post; thence S 55°-13'-40" W along the northern side of an abandoned county road for a distance of 430.16 feet to a point; thence N 02°-52'-37" W for a distance of 208.38 feet to a point; thence N 02°-49'-25" W for a distance of 468.20 feet to a concrete post; thence N 44°-48'-28" E for a distance of 275.74 feet to a point; thence N 12°-24'-36" W for a distance of 764.63 feet to an iron; thence N 84°-15'-47" E for a distance of 1531.58 feet to the point of beginning. Said property is more particularly shown and described as 106.85 ACRES according to a plat of survey prepared by William G. Martin, P.L.S., on the 5th day of July, 1998, which plat, recorded in Plat Book C, at page 7-I, in the Office of the Clerk of Court for Chesterfield County, is by reference incorporated herein as a part of this description.

ATLANTIC TITLE INSURANCE COMPANY

by


Authorized Signatory

page two of Schedule A.

Policy No.: M-157931

LIEN-TO TITLE

TITLE INSURANCE AGENCY

SCHEDULE B PART I

This policy does not insure against loss or damage by reason of the following:

1. Taxes for the year, 2001, not yet due and payable, and all subsequent years.
2. Any variation in location and dimensions, conflicts in boundary lines, encroachments, overlaps, easements not of record and any other objections which a survey made in accordance with "Minimum Standard Detail Requirements for Land Title Surveys as adopted by American Land Title Association and American Congress on Surveying & Mapping" would disclose.

SCHEDULE B PART II

In addition to the matters set forth in Part I of this Schedule, the title to the estate or interest in the land described or referred to in Schedule A is subject to the following matters, if any be shown, but the Company insures that such matters are subordinate to the lien or charge of the insured mortgage upon said estate or interest:

AMERICAN COMMUNITY BANK

AMERICAN
COMMUNITY
BANK
MODIFICATION
NOTE.

Account Number: 710400073

MODIFICATION AND EXTENSION AGREEMENT

STATE OF NORTH CAROLINA

COUNTY OF: Union

Effective Date: 01-23, 2002

This Modification and Extension Agreement is made and entered into, this 23 day of JAN, 2002
by and between American Community Bank (hereinafter referred to as "BANK");

Michael BROWN (hereinafter referred to as maker(s) or co-maker(s))
on the Note describe below individually and collectively as "BORROWER";

_____ the trustee or successor trustee under the Deed of Trust described below (hereinafter referred to as
"TRUSTEE"); and _____ the guarantor(s), endorser(s),
or other obligor(s) (if any) on the Note described below, or the owner(s) other than the BORROWER (if any) of any property pledged
secure performance of BORROWER'S obligation to BANK (hereinafter referred to individually and collectively as "THIRD PARTY").

WITNESSETH:

WHEREAS, BORROWER is indebted to BANK in the original principal sum of:

One hundred fifty thousand (\$150,000),

which Note has a current principal balance of:

One hundred forty nine thousand three hundred forty three and 55/100 (\$149,343.55).

as evidenced by a:

- ☐ Note dated _____, made payable to _____
- ☒ Note and Security Agreement dated 12/29/00, which Note is made payable
to _____
- ☒ Note and Deed of Trust dated 12/29/00, which Note is made payable
to _____

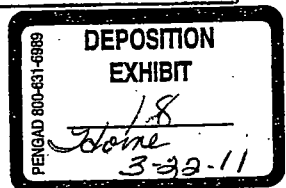
and which Deed of Trust is recorded in Book _____, Page _____, in the _____ County
Registry and relates to the real property described therein;

said Note, Note and Security Agreement, or Note and Deed of Trust, including any renewals, extensions, or modifications thereof, being
hereinafter referred to as "CONTRACT," and said CONTRACT being incorporated and made a part hereof by reference; and

WHEREAS, BORROWER and BANK mutually desire to modify and amend the provisions of the CONTRACT in the manner
hereinafter set forth, it being specifically understood that, except as herein modified and amended, the terms and provisions of the
CONTRACT shall remain unchanged and continue in full force as therein written; and

WHEREAS, THIRD PARTY, if different from BORROWER, and TRUSTEE have agreed to the terms of this modification;

NOW THEREFORE, by mutual agreement of the parties and in mutual consideration of the premises and other good and valuable



INTEREST RATE

☐ Interest will be paid at the rate of _____% per annum. This rate will be effective the date this CONTRACT is executed.

☐ Interest will be paid at a variable rate of interest known as the "Contract Rate." This rate will be effective the date this CONTRACT is executed. BORROWER acknowledges that the Contract Rate may increase or decrease based on changes in the Prime Rate published by BANK.

The Contract Rate will be the BANK'S Prime Rate plus _____ Percentage Points (the "Margin"). The initial Contract Rate is _____%.

The Minimum Contract Rate shall be _____%, and the Maximum Contract Rate shall be _____%, provided that at no time shall the Contract Rate exceed the maximum interest rate allowed by law to be charged by BANK. Increases or decreases in the Contract Rate of interest will: ☐ increase or decrease the amount of each payment due thereafter; ☐ increase or decrease the final payment due. The Contract Rate will ☐ be the Prime Rate in effect on the last day of the preceding month, plus the Margin and changes in the Contract Rate during a month will take effect as of the first business day of the following month; OR ☐ change daily assuming there is a change in the Prime Rate;

OR ☐ as often _____. The BANK'S Prime Rate is not intended or represented to be the lowest or most favorable rate of interest charged or offered by the BANK to its customers.

☐ Other: _____

PRINCIPAL AND INTEREST PAYMENT TERMS:

☒ Principal and Interest is payable in full at maturity on 4/23, 2002.

☐ Payable in consecutive _____ installments of: ☐ principal, or ☐ principal and interest, commencing on _____, 20____; and continuing on the same day of each calendar period thereafter, in _____ equal payments of \$_____, with one final payment of all remaining principle and interest due on _____.

☐ Interest is payable _____, commencing on _____, 20____ and continuing on the same day of each calendar period thereafter, with one final payment of all remaining principal and interest due on _____.

☐ Other: _____

In the event periodic accruals of interest shall exceed any periodic fixed payment amount described above, the fixed payment amount shall be immediately increased, or additional supplemental interest payments required on the same periodic basis as specified above (increased fixed payments or supplemental payments to be determined in the BANK'S sole discretion), in such amounts and at such times as shall be necessary to pay all accruals of interest for the period and all accruals of unpaid interest from previous periods. Such adjustments to the fixed payment amount or supplemental payments shall remain in effect for so long as the interest accruals shall exceed the original fixed payment amount and shall be further adjusted upward or downward to reflect changes in the variable interest rate. In no event shall the fixed payment amount be reduced below the original fixed payment amount specified above.

COLLATERAL:

Unless otherwise provided herein, it is expressly understood and agreed by the parties hereto that any and all collateral given as security to insure faithful performance by BORROWER and any THIRD PARTY of any and all obligations to BANK, however created, whether now existing or hereafter arising, shall remain as security for the previously described CONTRACT as modified hereby.

It is expressly understood and agreed by and between the parties hereto that any security agreement, deed of trust, chattel mortgage, trust receipt, assignment, contract or other writing granting BANK security for performance of any obligation to BANK is, to the extent inconsistent herewith, modified and changed to be consistent with the terms of this Modification and Extension Agreement.

☐ If marked, the aforesaid CONTRACT, as herein modified, and the performance of any loan agreement between the parties shall be additionally secured by collateral hereinafter described, and a new security instrument shall be executed by the

Date: _____ Type of agreement: _____ From: _____

Collateral: _____

Date: _____ Type of agreement: _____ From: _____

Collateral: _____

☐ If marked, the collateral hereinafter described shall be and hereby is deleted as security for payment of the aforesaid

CONTRACT: _____

However, it is understood and agreed that BANK shall not be required or obligated to take any further steps to release said collateral from any lien or security unless BANK determines, in its sole discretion, that it may do so without consequence to its secured position and relative priority in other collateral, and unless BORROWER bears the reasonable cost of such action.

OTHER: _____

If the CONTRACT being modified by this Agreement is signed by more than one person or entity, the modified CONTRACT shall be the joint and several obligation of all signers, and each provision of the CONTRACT as modified shall apply to each and all of the signers and to the property and liability of each and all of them.

This Modification and Extension Agreement shall bind and inure to the benefit of the successors in interest hereto, and it is expressly understood and agreed that this Agreement is a modification only and not a novation. The original obligation of the BORROWER, as evidenced by the above-described CONTRACT is not extinguished hereby. It is also understood and agreed that, except for the above indicated modifications, said CONTRACT, and/or any other loan documents or agreements and all singular terms and conditions thereof, shall be and remain in force and effect and that this Modification and Extension Agreement shall not release or affect the liability of any co-makers, guarantors, obligors, or endorser of said CONTRACT. BORROWER specifically consents to the terms of this Modification and Extension Agreement and waives any objection thereto, and further affirms any obligation to BANK previously created. BANK expressly reserves all rights as to any party with right of recourse on the aforesaid CONTRACT.

IN WITNESS WHEREOF, this instrument has been executed by the parties hereto and delivered on the day and year first above written.

Attest:

ASSISTANT SECRETARY

(CORPORATE SEAL)

By: American Community Bank
[Signature]
VICE PRESIDENT

BORROWER:

[Signature] (Seal)
MICHAEL S. [Signature] - INDIVIDUAL

BORROWER - INDIVIDUAL

(Seal)

NAME OF CORPORATION OR PARTNERSHIP

By: _____
TITLE

By: _____
TITLE

TRUSTEE:

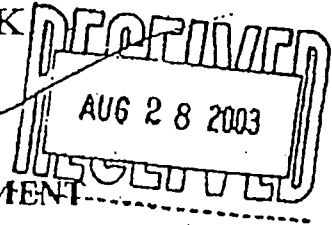
(Seal)

THIRD PARTY (Guarantor, Endorser, Etc.):

Crestful W. Horne (Seal)
CRESTFUL W. HORNE (Seal)

AMERICAN COMMUNITY BANK

Account Number: 710400073



MODIFICATION AND EXTENSION AGREEMENT

STATE OF NORTH CAROLINA

COUNTY OF: Union

Effective Date: 8/28, 2003

This Modification and Extension Agreement is made and entered into, this 28 day of Aug, 2003 by and between American Community Bank (hereinafter referred to as "BANK");

MICHAEL BROWN (hereinafter referred to as maker(s) or co-maker(s) on the Note describe below individually and collectively as "BORROWER");

_____ the trustee or successor trustee under the Deed of Trust described below (hereinafter referred to as "TRUSTEE"); and _____ the guarantor(s), endorser(s), or other obligor(s) (if any) on the Note described below, or the owner(s) other than the BORROWER (if any) of any property pledged to secure performance of BORROWER'S obligation to BANK (hereinafter referred to individually and collectively as "THIRD PARTY").

WITNESSETH:

WHEREAS, BORROWER is indebted to BANK in the original principal sum of:

One hundred fifty thousand — (\$150,000)

which Note has a current principal balance of:

One hundred forty nine thousand three hundred forty three⁵⁵ (\$149,343.55)

as evidenced by a:

☐ Note dated _____, made payable to _____

☒ Note and Security Agreement dated 12/29/00, which Note is made payable

to _____

☒ Note and Deed of Trust dated 12/29/00, which Note is made payable

to _____

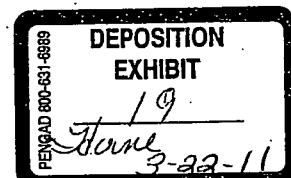
and which Deed of Trust is recorded in Book _____, Page _____, in the _____ County Registry and relates to the real property described therein:

said Note, Note and Security Agreement, or Note and Deed of Trust, including any renewals, extensions, or modifications thereof, being hereinafter referred to as "CONTRACT," and said CONTRACT being incorporated and made a part hereof by reference; and

WHEREAS, BORROWER and BANK mutually desire to modify and amend the provisions of the CONTRACT in the manner hereinafter set forth, it being specifically understood that, except as herein modified and amended, the terms and provisions of the CONTRACT shall remain unchanged and continue in full force as therein written; and

WHEREAS, THIRD PARTY, if different from BORROWER, and TRUSTEE have agreed to the terms of this modification;

NOW, THEREFORE, by mutual agreement of the parties and in mutual consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree that said CONTRACT by modified and amended to provide as follows:



INTEREST RATE

- ☐ Interest will be paid at the rate of _____ % per annum. This rate will be effective the date this CONTRACT is executed.
- ☐ Interest will be paid at a variable rate of interest known as the "Contract Rate." This rate will be effective the date this CONTRACT is executed. BORROWER acknowledges that the Contract Rate may increase or decrease based on changes in the Prime Rate published by BANK.

The Contract Rate will be the BANK'S Prime Rate plus _____ Percentage Points (the "Margin"). The initial Contract Rate is _____ %. The Minimum Contract Rate shall be _____ %, and the Maximum Contract Rate shall be _____ %, provided that at no time shall the Contract Rate exceed the maximum interest rate allowed by law to be charged by BANK. Increases or decreases in the Contract Rate of interest will: ☐ increase or decrease the amount of each payment due thereafter; ☐ increase or decrease the final payment due. The Contract Rate will ☐ be the Prime Rate in effect on the last day of the preceding month, plus the Margin and changes in the Contract Rate during a month will take effect as of the first business day of the following month; OR ☐ change daily assuming there is a change in the Prime Rate;

OR ☐ as often _____. The BANK'S Prime Rate is not intended or represented to be the lowest or most favorable rate of interest charged or offered by the BANK to its customers.

☐ Other: _____

PRINCIPAL AND INTEREST PAYMENT TERMS:

☒ Principal and Interest is payable in full at maturity on 12/15, 2003.

☐ Payable in consecutive _____ installments of: ☐ principal, or ☐ principal and interest, commencing on _____, 20____; and continuing on the same day of each calendar period thereafter, in _____ equal payments of \$_____, with one final payment of all remaining principle and interest due on _____.

☐ Interest is payable _____, commencing on _____, 20____ and continuing on the same day of each calendar period thereafter, with one final payment of all remaining principal and interest due on _____.

☐ Other: _____

In the event periodic accruals of interest shall exceed any periodic fixed payment amount described above, the fixed payment amount shall be immediately increased, or additional supplemental interest payments required on the same periodic basis as specified above (increased fixed payments or supplemental payments to be determined in the BANK'S sole discretion), in such amounts and at such times as shall be necessary to pay all accruals of interest for the period and all accruals of unpaid interest from previous periods. Such adjustments to the fixed payment amount or supplemental payments shall remain in effect for so long as the interest accruals shall exceed the original fixed payment amount and shall be further adjusted upward or downward to reflect changes in the variable interest rate. In no event shall the fixed payment amount be reduced below the original fixed payment amount specified above.

COLLATERAL:

Unless otherwise provided herein, it is expressly understood and agreed by the parties hereto that any and all collateral given as security to insure faithful performance by BORROWER and any THIRD PARTY of any and all obligations to BANK, however created, whether now existing or hereafter arising, shall remain as security for the previously described CONTRACT as modified hereby.

It is expressly understood and agreed by and between the parties hereto that any security agreement, deed of trust, chattel mortgage, trust receipt, assignment, contract or other writing granting BANK security for performance of any obligation to BANK is, to the extent inconsistent herewith, modified and changed to be consistent with the terms of this Modification and Extension Agreement.

- ☐ If marked, the aforesaid CONTRACT, as herein modified, and the performance of any loan agreement between the parties shall be additionally secured by collateral hereinafter described, and a new security instrument shall be executed by the BORROWER and/or THIRD PARTY:

Date: _____ Type of agreement: _____ From: _____

Collateral: _____

Date: _____ Type of agreement: _____ From: _____

Collateral: _____

☐ If marked, the collateral hereinafter described shall be and hereby is deleted as security for payment of the aforesaid

CONTRACT: _____

However, it is understood and agreed that BANK shall not be required or obligated to take any further steps to release said collateral from any lien or security unless BANK determines, in its sole discretion, that it may do so without consequence to its secured position and relative priority in other collateral, and unless BORROWER bears the reasonable cost of such action.

OTHER:

If the CONTRACT being modified by this Agreement is signed by more than one person or entity, the modified CONTRACT shall be the joint and several obligation of all signers, and each provision of the CONTRACT as modified shall apply to each and all of the signers and to the property and liability of each and all of them.

This Modification and Extension Agreement shall bind and inure to the benefit of the successors in interest hereto, and it is expressly understood and agreed that this Agreement is a modification only and not a novation. The original obligation of the BORROWER, as evidenced by the above-described CONTRACT is not extinguished hereby. It is also understood and agreed that, except for the above indicated modifications, said CONTRACT, and/or any other loan documents or agreements and all singular terms and conditions thereof, shall be and remain in force and effect and that this Modification and Extension Agreement shall not release or affect the liability of any co-makers, guarantors, obligors, or endorser of said CONTRACT. BORROWER specifically consents to the terms of this Modification and Extension Agreement and waives any objection thereto, and further affirms any obligation to BANK previously created. BANK expressly reserves all rights as to any party with right of recourse on the aforesaid CONTRACT.

IN WITNESS WHEREOF, this instrument has been executed by the parties hereto and delivered on the day and year first above written.

Attest:

ASSISTANT SECRETARY

(CORPORATE SEAL)

Attest:

SECRETARY

(CORPORATE SEAL)

American Community Bank

By: _____

VICE PRESIDENT

BORROWER:

MICHAEL R ZOOB BORROWER - INDIVIDUAL

(Seal)

BORROWER - INDIVIDUAL

(Seal)

NAME OF CORPORATION OR PARTNERSHIP

By: _____

TITLE

By: _____

TITLE

TRUSTEE:

(Seal)

THIRD PARTY (Guarantor, Endorser, Etc.):

CAROL W. HORNE

(Seal)

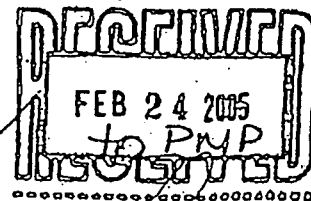
(Seal)

(Seal)

(Seal)

AMERICAN COMMUNITY BANK

710400073



Account Number: 710400073

MODIFICATION AND EXTENSION AGREEMENT

* Loan is 100% secured by ACB CD

STATE OF NORTH CAROLINA

COUNTY OF: Union

Effective Date: Feb 22, 2005

This Modification and Extension Agreement is made and entered into, this 22 day of Feb, 2005 by and between American Community Bank (hereinafter referred to as "BANK");

Michael Brown (hereinafter referred to as maker(s) or co-maker(s) on the Note describe below individually and collectively as "BORROWER");

the trustee or successor trustee under the Deed of Trust described below (hereinafter referred to as "TRUSTEE"); and Crefield W. Horne the guarantor(s), endorser(s), or other obligor(s) (if any) on the Note described below, or the owner(s) other than the BORROWER (if any) of any property pledged to secure performance of BORROWER'S obligation to BANK (hereinafter referred to individually and collectively as "THIRD PARTY").

WITNESSETH:

WHEREAS, BORROWER is indebted to BANK in the original principal sum of:

One hundred fifty thousand (\$ 150,000).

which Note has a current principal balance of:

One hundred forty nine thousand three hundred forty three and 55/100 (\$ 149,343.55).

as evidenced by a:

☐ Note dated _____, made payable to _____

☒ Note and Security Agreement dated 12/29/00, which Note is made payable to _____

☒ Note and Deed of Trust dated 12/29/00, which Note is made payable to _____

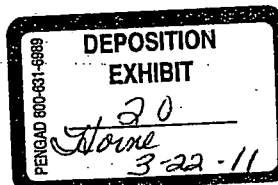
and which Deed of Trust is recorded in Book _____, Page _____, in the _____ County Registry and relates to the real property described therein;

said Note, Note and Security Agreement, or Note and Deed of Trust, including any renewals, extensions, or modifications thereof, being hereinafter referred to as "CONTRACT," and said CONTRACT being incorporated and made a part hereof by reference; and

WHEREAS, BORROWER and BANK mutually desire to modify and amend the provisions of the CONTRACT in the manner hereinafter set forth, it being specifically understood that, except as herein modified and amended, the terms and provisions of the CONTRACT shall remain unchanged and continue in full force as therein written; and

WHEREAS, THIRD PARTY, if different from BORROWER, and TRUSTEE have agreed to the terms of this modification;

NOW, THEREFORE, by mutual agreement of the parties and in mutual consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree that said CONTRACT by modified and amended to provide as follows:



Date: _____ Type of agreement: _____ From: _____

Collateral: _____

Date: _____ Type of agreement: _____ From: _____

Collateral: _____

☐ If marked, the collateral hereinafter described shall be and hereby is deleted as security for payment of the aforesaid

CONTRACT: _____

However, it is understood and agreed that BANK shall not be required or obligated to take any further steps to release said collateral from any lien or security unless BANK determines, in its sole discretion, that it may do so without consequence to its secured position and relative priority in other collateral, and unless BORROWER bears the reasonable cost of such action.

OTHER:

If the CONTRACT being modified by this Agreement is signed by more than one person or entity, the modified CONTRACT shall be the joint and several obligation of all signers, and each provision of the CONTRACT as modified shall apply to each and all of the signers and to the property and liability of each and all of them.

This Modification and Extension Agreement shall bind and inure to the benefit of the successors in interest hereto, and it is expressly understood and agreed that this Agreement is a modification only and not a novation. The original obligation of the BORROWER, as evidenced by the above-described CONTRACT is not extinguished hereby. It is also understood and agreed that, except for the above indicated modifications, said CONTRACT, and/or any other loan documents or agreements and all singular terms and conditions thereof, shall be and remain in force and effect and that this Modification and Extension Agreement shall not release or affect the liability of any co-makers, guarantors, obligors, or endorser of said CONTRACT. BORROWER specifically consents to the terms of this Modification and Extension Agreement and waives any objection thereto, and further affirms any obligation to BANK previously created. BANK expressly reserves all rights as to any party with right of recourse on the aforesaid CONTRACT.

IN WITNESS WHEREOF, this instrument has been executed by the parties hereto and delivered on the day and year first above written.

Attest:

ASSISTANT SECRETARY

(CORPORATE SEAL)

American Community Bank

By: _____

VICE PRESIDENT

BORROWER

BORROWER - INDIVIDUAL

(Seal)

BORROWER - INDIVIDUAL

(Seal)

NAME OF CORPORATION OR PARTNERSHIP

By: _____

TITLE

By: _____

TITLE

TRUSTEE:

(Seal)

THIRD PARTY (Guarantor, Endorser, Etc.):

(Seal)

(Seal)

(Seal)

(Seal)

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ and
_____ each personally appeared before me and acknowledged
the due execution of the foregoing instrument.

Witness my hand and notarial seal, this _____ day of _____, 20 _____.

My commission expires: _____

NOTARY PUBLIC

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally came
before me this day and acknowledged that _____ is _____
Secretary of _____, a corporation, and that, by
authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its

_____, sealed with its corporate seal, and attested by
_____ as its _____ Secretary.

Witness my hand and notarial seal, this _____ day of _____, 20 _____.

My commission expires: _____

NOTARY PUBLIC

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally appeared
before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this _____ day of _____, 20 _____.

My commission expires: _____

NOTARY PUBLIC

STATE OF NORTH CAROLINA, COUNTY OF _____

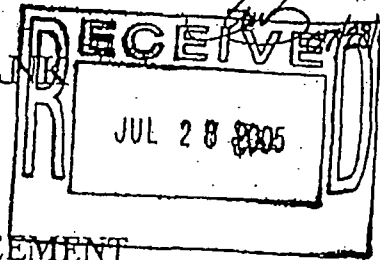
I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally appeared
before me and acknowledged that _____ he is _____
Secretary of American Community Bank, a corporation, and that by authority duly given and as the act of the corporation, the foregoing
instrument was signed in its name by its _____ Vice President, sealed with its corporate seal, and attested
by _____ as its _____ Secretary.

Witness my hand and notarial seal, this _____ day of _____, 20 _____.

My commission expires: _____

NOTARY PUBLIC

AMERICAN COMMUNITY BANK



Account Number: 710400073

MODIFICATION AND EXTENSION AGREEMENT

STATE OF NORTH CAROLINA

COUNTY OF: Union

Effective Date: July 25 2005

This Modification and Extension Agreement is made and entered into, this 25 day of July, 2005, by and between American Community Bank (hereinafter referred to as "BANK");

Michael Brown (hereinafter referred to as maker(s) or co-maker(s) on the Note describe below individually and collectively as "BORROWER");

C. W. Horne the trustee or successor trustee under the Deed of Trust described below (hereinafter referred to as "TRUSTEE"); and C. W. Horne the guarantor(s), endorser(s), or other obligor(s) (if any) on the Note described below, or the owner(s) other than the BORROWER (if any) of any property pledged to secure performance of BORROWER'S obligation to BANK (hereinafter referred to individually and collectively as "THIRD PARTY").

WITNESSETH:

WHEREAS, BORROWER is indebted to BANK in the original principal sum of: One Hundred fifty thousand (\$150,000), which Note has a current principal balance of:

One hundred forty-nine thousand three hundred forty three (\$149,343) as evidenced by a:

☐ Note dated _____, made payable to _____

☒ Note and Security Agreement dated 12/29/00, which Note is made payable to _____

☒ Note and Deed of Trust dated 12/29/00, which Note is made payable to _____

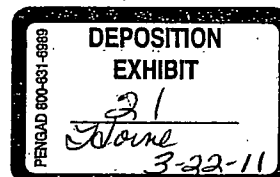
and which Deed of Trust is recorded in Book _____, Page _____, in the _____ County Registry and relates to the real property described therein;

said Note, Note and Security Agreement, or Note and Deed of Trust, including any renewals, extensions, or modifications thereof, being hereinafter referred to as "CONTRACT," and said CONTRACT being incorporated and made a part hereof by reference; and

WHEREAS, BORROWER and BANK mutually desire to modify and amend the provisions of the CONTRACT in the manner hereinafter set forth, it being specifically understood that, except as herein modified and amended, the terms and provisions of the CONTRACT shall remain unchanged and continue in full force as therein written; and

WHEREAS, THIRD PARTY, if different from BORROWER, and TRUSTEE have agreed to the terms of this modification;

NOW, THEREFORE, by mutual agreement of the parties and in mutual consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree that said CONTRACT by modified and amended to provide as follows:



INTEREST RATE

- ☐ Interest will be paid at the rate of _____% per annum. This rate will be effective the date this CONTRACT is executed.
- ☐ Interest will be paid at a variable rate of interest known as the "Contract Rate." This rate will be effective the date this CONTRACT is executed. BORROWER acknowledges that the Contract Rate may increase or decrease based on changes in the Prime Rate published by BANK.
- The Contract Rate will be the BANK'S Prime Rate plus _____ Percentage Points (the "Margin"). The initial Contract Rate is _____%. The Minimum Contract Rate shall be _____%, and the Maximum Contract Rate shall be _____%, provided that at no time shall the Contract Rate exceed the maximum interest rate allowed by law to be charged by BANK. Increases or decreases in the Contract Rate of interest will: ☐ increase or decrease the amount of each payment due thereafter; ☐ increase or decrease the final payment due. The Contract Rate will ☐ be the Prime Rate in effect on the last day of the preceding month, plus the Margin and changes in the Contract Rate during a month will take effect as of the first business day of the following month; OR ☐ change daily assuming there is a change in the Prime Rate; OR ☐ as often _____, The BANK'S Prime Rate is not intended or represented to be the lowest or most favorable rate of interest charged or offered by the BANK to its customers.
- ☐ Other: _____

PRINCIPAL AND INTEREST PAYMENT TERMS:

- ☒ Principal and Interest is payable in full at maturity on 17/15, 2005.
- ☐ Payable in consecutive _____ installments of: ☐ principal, or ☐ principal and interest, commencing on _____, 20____; and continuing on the same day of each calendar period thereafter, in _____ equal payments of \$_____, with one final payment of all remaining principle and interest due on _____.
- ☐ Interest is payable _____, commencing on _____, 20____ and continuing on the same day of each calendar period thereafter, with one final payment of all remaining principal and interest due on _____.
- ☐ Other: _____

In the event periodic accruals of interest shall exceed any periodic fixed payment amount described above, the fixed payment amount shall be immediately increased, or additional supplemental interest payments required on the same periodic basis as specified above (increased fixed payments or supplemental payments to be determined in the BANK'S sole discretion), in such amounts and at such times as shall be necessary to pay all accruals of interest for the period and all accruals of unpaid interest from previous periods. Such adjustments to the fixed payment amount or supplemental payments shall remain in effect for so long as the interest accruals shall exceed the original fixed payment amount and shall be further adjusted upward or downward to reflect changes in the variable interest rate. In no event shall the fixed payment amount be reduced below the original fixed payment amount specified above.

COLLATERAL:

Unless otherwise provided herein, it is expressly understood and agreed by the parties hereto that any and all collateral given as security to insure faithful performance by BORROWER and any THIRD PARTY of any and all obligations to BANK, however created, whether now existing or hereafter arising, shall remain as security for the previously described CONTRACT as modified hereby.

It is expressly understood and agreed by and between the parties hereto that any security agreement, deed of trust, chattel mortgage, trust receipt, assignment, contract or other writing granting BANK security for performance of any obligation to BANK is, to the extent inconsistent herewith, modified and changed to be consistent with the terms of this Modification and Extension Agreement.

- ☐ If marked, the aforesaid CONTRACT, as herein modified, and the performance of any loan agreement between the parties shall be additionally secured by collateral hereinafter described, and a new security instrument shall be executed by the BORROWER and/or THIRD PARTY:

Date: _____ Type of agreement: _____ From: _____

Collateral: _____

Date: _____ Type of agreement: _____ From: _____

Collateral: _____

☐ If marked, the collateral hereinafter described shall be and hereby is deleted as security for payment of the aforesaid

CONTRACT:

However, it is understood and agreed that BANK shall not be required or obligated to take any further steps to release said collateral from any lien or security unless BANK determines, in its sole discretion, that it may do so without consequence to its secured position and relative priority in other collateral, and unless BORROWER bears the reasonable cost of such action.

OTHER:

If the CONTRACT being modified by this Agreement is signed by more than one person or entity, the modified CONTRACT shall be the joint and several obligation of all signers, and each provision of the CONTRACT as modified shall apply to each and all of the signers and to the property and liability of each and all of them.

This Modification and Extension Agreement shall bind and inure to the benefit of the successors in interest hereto, and it is expressly understood and agreed that this Agreement is a modification only and not a novation. The original obligation of the BORROWER, as evidenced by the above-described CONTRACT is not extinguished hereby. It is also understood and agreed that, except for the above indicated modifications, said CONTRACT, and/or any other loan documents or agreements and all singular terms and conditions thereof, shall be and remain in force and effect and that this Modification and Extension Agreement shall not release or effect the liability of any co-makers, guarantors, obligors, or endorser of said CONTRACT. BORROWER specifically consents to the terms of this Modification and Extension Agreement and waives any objection thereto, and further affirms any obligation to BANK previously created. BANK expressly reserves all rights as to any party with right of recourse on the aforesaid CONTRACT.

IN WITNESS WHEREOF, this instrument has been executed by the parties hereto and delivered on the day and year first above written.

Attest:

ASSISTANT SECRETARY

(CORPORATE SEAL)

American Community Bank

By: _____
VICE PRESIDENT

BORROWER: _____ (Seal)
MICHAEL BRUCE

BORROWER - INDIVIDUAL

NAME OF CORPORATION OR PARTNERSHIP

By: _____
TITLE

By: _____
TITLE

TRUSTEE:

(Seal)

THIRD PARTY (Guarantor, Endorser, Etc.):

① _____ (Seal)
CRESFUL W. HOLME

(Seal)

(Seal)

(Seal)

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ and
_____ each personally appeared before me and acknowledged
the due execution of the foregoing instrument.

Witness my hand and notarial seal, this _____ day of _____, 20 _____.

My commission expires: _____

NOTARY PUBLIC

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally came
before me this day and acknowledged that _____ is _____

Secretary of _____, a corporation, and that, by
authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its

_____, sealed with its corporate seal, and attested by
_____ as its _____ Secretary.

Witness my hand and notarial seal, this this _____ day of _____, 20 _____.

My commission expires: _____

NOTARY PUBLIC

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally appeared
before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this _____ day of _____, 20 _____.

My commission expires: _____

NOTARY PUBLIC

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally appeared
before me and acknowledged that _____ he is _____

Secretary of American Community Bank, a corporation, and that by authority duly given and as the act of the corporation, the foregoing
instrument was signed in its name by its _____ Vice President, sealed with its corporate seal, and attested

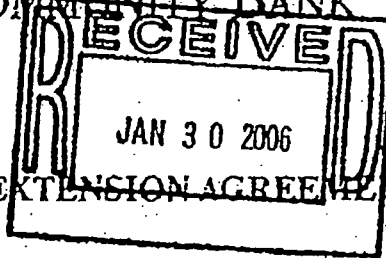
by _____ as its _____ Secretary.

Witness my hand and notarial seal, this _____ day of _____, 20 _____.

My commission expires: _____

NOTARY PUBLIC

AMERICAN COMMUNITY BANK



OK to book As
CD-secured
(including accrued
interest)
- ENC to forward
summary memo to file. 01/30/06
[Signature]

Account Number: 710400073

MODIFICATION AND EXTENSION AGREEMENT

STATE OF NORTH CAROLINA

COUNTY OF: Union

Effective Date: January 30 2006

This Modification and Extension Agreement is made and entered into, this 30 day of January, 2006
by and between American Community Bank (hereinafter referred to as "BANK"):

Michael Brown (hereinafter referred to as maker(s) or co-makers)

on the Note describe below individually and collectively as "BORROWER"):

_____ the trustee or successor trustee under the Deed of Trust described below (hereinafter referred to as
"TRUSTEE"); and Careful W. Hone the guarantor(s), endorser(s),
or other obligor(s) (if any) on the Note described below, or the owner(s) other than the BORROWER (if any) of any property pledged
to secure performance of BORROWER'S obligation to BANK (hereinafter referred to individually and collectively as "THIRD PARTY").

WITNESSETH:

WHEREAS, BORROWER is indebted to BANK in the original principal sum of:

One Hundred fifty thousand & no/100 (\$ 150,000).

which Note has a current principal balance of:

One Hundred forty nine thousand three hundred forty three & 55/100 (\$ 149,343.55).

as evidenced by a:

☒ Note dated 12/29/00, made payable to _____

☐ Note and Security Agreement dated _____, which Note is made payable

to _____

☒ Note and Deed of Trust dated 12/29/00, which Note is made payable

to _____

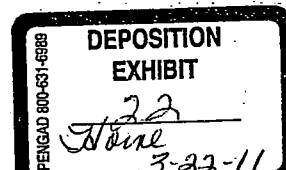
and which Deed of Trust is recorded in Book _____, Page _____, in the _____ County
Registry and relates to the real property described therein:

said Note, Note and Security Agreement, or Note and Deed of Trust, including any renewals, extensions, or modifications thereof, being
hereinafter referred to as "CONTRACT," and said CONTRACT being incorporated and made a part hereof by reference; and

WHEREAS, BORROWER and BANK mutually desire to modify and amend the provisions of the CONTRACT in the manner
hereinafter set forth, it being specifically understood that, except as herein modified and amended, the terms and provisions of the
CONTRACT shall remain unchanged and continue in full force as therein written; and

WHEREAS, THIRD PARTY, if different from BORROWER, and TRUSTEE have agreed to the terms of this modification;

NOW, THEREFORE, by mutual agreement of the parties and in mutual consideration of the premises and other good and valuable
consideration, the receipt of which is hereby acknowledged, the parties hereto agree that said CONTRACT by modified and amended
to provide as follows:



INTEREST RATE

- ☐ Interest will be paid at the rate of _____ % per annum. This rate will be effective the date this CONTRACT is executed.
- ☐ Interest will be paid at a variable rate of interest known as the "Contract Rate." This rate will be effective the date this CONTRACT is executed. BORROWER acknowledges that the Contract Rate may increase or decrease based on changes in the Prime Rate published by BANK.
- The Contract Rate will be the BANK'S Prime Rate plus _____ Percentage Points (the "Margin"). The initial Contract Rate is _____ %. The Minimum Contract Rate shall be _____ %, and the Maximum Contract Rate shall be _____ %, provided that at no time shall the Contract Rate exceed the maximum interest rate allowed by law to be charged by BANK. Increases or decreases in the Contract Rate of interest will: ☐ increase or decrease the amount of each payment due thereafter; ☐ increase or decrease the final payment due. The Contract Rate will ☐ be the Prime Rate in effect on the last day of the preceding month, plus the Margin and changes in the Contract Rate during a month will take effect as of the first business day of the following month; OR ☐ change daily assuming there is a change in the Prime Rate; OR ☐ as often _____. The BANK'S Prime Rate is not intended or represented to be the lowest or most favorable rate of interest charged or offered by the BANK to its customers.
- ☐ Other: _____

PRINCIPAL AND INTEREST PAYMENT TERMS:

- ☒ Principal and Interest is payable in full at maturity on 7/15, 2006.
- ☐ Payable in consecutive _____ installments of: ☐ principal, or ☐ principal and interest, commencing on _____, 20____; and continuing on the same day of each calendar period thereafter, in _____ equal payments of \$_____, with one final payment of all remaining principal and interest due on _____.
- ☐ Interest is payable _____, commencing on _____, 20____, and continuing on the same day of each calendar period thereafter, with one final payment of all remaining principal and interest due on _____.
- ☐ Other: _____

In the event periodic accruals of interest shall exceed any periodic fixed payment amount described above, the fixed payment amount shall be immediately increased, or additional supplemental interest payments required on the same periodic basis as specified above (increased fixed payments or supplemental payments to be determined in the BANK'S sole discretion), in such amounts and at such times as shall be necessary to pay all accruals of interest for the period and all accruals of unpaid interest from previous periods. Such adjustments to the fixed payment amount or supplemental payments shall remain in effect for so long as the interest accruals shall exceed the original fixed payment amount and shall be further adjusted upward or downward to reflect changes in the variable interest rate. In no event shall the fixed payment amount be reduced below the original fixed payment amount specified above.

COLLATERAL:

Unless otherwise provided herein, it is expressly understood and agreed by the parties hereto that any and all collateral given as security to insure faithful performance by BORROWER and any THIRD PARTY of any and all obligations to BANK, however created, whether now existing or hereafter arising, shall remain as security for the previously described CONTRACT as modified hereby.

It is expressly understood and agreed by and between the parties hereto that any security agreement, deed of trust, chattel mortgage, trust receipt, assignment, contract or other writing granting BANK security for performance of any obligation to BANK is, to the extent inconsistent herewith, modified and changed to be consistent with the terms of this Modification and Extension Agreement.

- ☐ If marked, the aforesaid CONTRACT, as herein modified, and the performance of any loan agreement between the parties shall be additionally secured by collateral hereinafter described, and a new security instrument shall be executed by the BORROWER and/or THIRD PARTY:

Date: _____ Type of agreement: _____ From: _____

Collateral: _____

Date: _____ Type of agreement: _____ From: _____

Collateral: _____

☐ If marked, the collateral hereinafter described shall be and hereby is deleted as security for payment of the aforesaid

CONTRACT:

However, it is understood and agreed that BANK shall not be required or obligated to take any further steps to release said collateral from any lien or security unless BANK determines, in its sole discretion, that it may do so without consequence to its secured position and relative priority in other collateral, and unless BORROWER bears the reasonable cost of such action.

OTHER:

If the CONTRACT being modified by this Agreement is signed by more than one person or entity, the modified CONTRACT shall be the joint and several obligation of all signers, and each provision of the CONTRACT as modified shall apply to each and all of the signers and to the property and liability of each and all of them.

This Modification and Extension Agreement shall bind and inure to the benefit of the successors in interest hereto, and it is expressly understood and agreed that this Agreement is a modification-only and not a novation. The original obligation of the BORROWER, as evidenced by the above-described CONTRACT is not extinguished hereby. It is also understood and agreed that, except for the above indicated modifications, said CONTRACT, and/or any other loan documents or agreements and all singular terms and conditions thereof, shall be and remain in force and effect and that this Modification and Extension Agreement shall not release or affect the liability of any co-makers, guarantors, obligors, or endorser of said CONTRACT. BORROWER specifically consents to the terms of this Modification and Extension Agreement and waives any objection thereto, and further affirms any obligation to BANK previously created. BANK expressly reserves all rights as to any party with right of recourse on the aforesaid CONTRACT.

IN WITNESS WHEREOF, this instrument has been executed by the parties hereto and delivered on the day and year first above written.

Attest:

ASSISTANT SECRETARY

(CORPORATE SEAL)

Attest:

SECRETARY

(CORPORATE SEAL)

American Community Bank

By: _____

BORROWER

X _____ (Seal)

Michael B. Brown

(Seal)

BORROWER - INDIVIDUAL

NAME OF CORPORATION OR PARTNERSHIP

By: _____

TITLE

By: _____

TITLE

TRUSTEE:

(Seal)

THIRD PARTY (Guarantor, Endorser, Etc.):

X _____ (Seal)

Crescent Home

(Seal)

(Seal)

(Seal)

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ and
_____ each personally appeared before me and acknowledged
the due execution of the foregoing instrument.

Witness my hand and notarial seal, this _____ day of _____, 20____.

My commission expires: _____

NOTARY PUBLIC

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally came
before me this day and acknowledged that _____ is _____

Secretary of _____, a corporation, and that, by
authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its

_____, sealed with its corporate seal, and attested by
_____ as its _____ Secretary.

Witness my hand and notarial seal, this this _____ day of _____, 20____.

My commission expires: _____

NOTARY PUBLIC

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally appeared
before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this _____ day of _____, 20____.

My commission expires: _____

NOTARY PUBLIC

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally appeared

before me and acknowledged that _____ he is _____
Secretary of American Community Bank, a corporation, and that by authority duly given and as the act of the corporation, the foregoing
instrument was signed in its name by its _____ Vice President, sealed with its corporate seal, and attested

by _____ as its _____ Secretary.

Witness my hand and notarial seal, this _____ day of _____, 20____.

My commission expires: _____

NOTARY PUBLIC

American Community Bank

Account Number: 710400073

MODIFICATION AND EXTENSION AGREEMENT

State of North Carolina

County of: Union County

Effective Date: August 28, 2006

This Modification and Extension Agreement is made and entered into, this 28 day of August, 2006 by and between American Community Bank (hereinafter referred to as "BANK"); and Michael Brown (hereinafter referred to as maker (s) or co-maker (s) on the Note described below individually and collectively as "BORROWER"); Trustee or successor trustee under the Deed of Trust described below (hereinafter referred to as "TRUSTEE"); and Cresful W. Horne (the guarantor(s), endorser(s), or obligor(s) (if any) on the Note described below, or the owner(s) other than the BORROWER (if any) of any property pledged to secure performance of BORROWER'S obligation to BANK (hereinafter referred to individually and collectively as "THIRD PARTY").

WITNESSETH:

WHEREAS, BORROWER is indebted to BANK in the original principal sum of: One hundred fifty thousand and no/100 (\$150,000.00). which Note has a current principal balance of: One hundred forty-nine thousand three hundred forty-three and 55/100 (\$149,343.55). is evidenced by a:

Note dated , made payable to American Community Bank.

Note and Security Agreement dated 12/29/00 , which Note is made payable to American Community Bank.

Note and Deed of Trust dated 12/29/00 , which Note is made payable to American Community Bank and which Deed of Trust is recorded in Book Page 431, in the Chesterfield County Registry and relates to the real Property described therein;

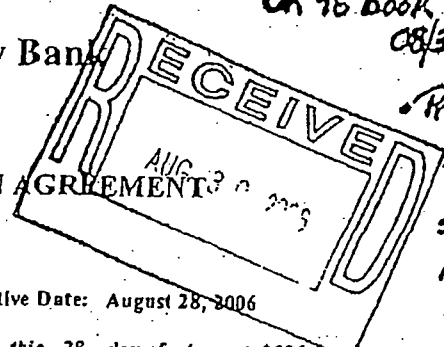
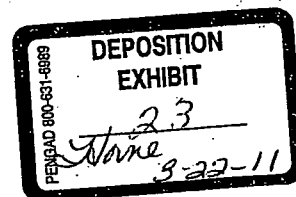
said Note, Note and Security Agreement, or Note and Deed of Trust, including any renewals, extensions, or modifications thereof, being hereinafter referred to as "CONTRACT," and said CONTRACT being incorporated and made a part hereof by reference; and

WHEREAS, BORROWER and BANK mutually desire to modify and amend the provisions of the CONTRACT in the manner hereinafter set forth, it being specifically understood that, except as herein modified and amended, the terms and provisions of CONTRACT shall remain unchanged and continue in full force as therein written; and

WHEREAS, THIRD PARTY, if different from BORROWER, and TRUSTEE have agreed to the terms of this modification;

NOW, THEREFORE, by mutual agreement of the parties and in mutual consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree that said CONTRACT by modified and amended to provide as follows:

- 1 -



Kinged by Kelly Moon
OK to book As
08/30/06
Principal and Interest
100%
secured by
ACB CD

Date:
Collateral:
Date:
Collateral:

Type of agreement:
Type of agreement:

From:
From:

____ If marked, the collateral hereinafter described shall be and hereby is deleted as security for payment of the aforesaid.

CONTRACT:

However, it is understood and agreed that BANK shall not be required or obligated to take any further steps to release said collateral from any lien or security unless BANK determines, in its sole discretion, that it may do so without consequence to its secured position and relative priority in other collateral, and unless BORROWER bears the reasonable cost of such actions.

____ The undersigned acknowledged receipt from you of the personal property described below in substitution for or in addition to the personal property originally delivered. It is understood that all the terms and provisions of the Original Note and Security Agreement executed by the undersigned on _____, covering the personal property originally delivered shall apply to the personal property now delivered and shall continue in full force and effect.

Personal Property Now Delivered:

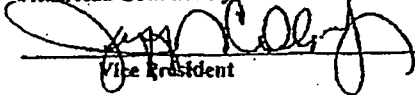
OTHER:

If the CONTRACT being modified by this Agreement is signed by more than one person or entity, the modified CONTRACT shall be the joint and several obligation of all signers, and each provision of the CONTRACT as modified shall apply to each and all of the signers and to the property and liability of each and all of them.

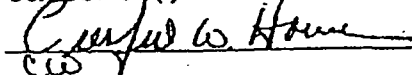
This Modification and Extension Agreement shall bind and inure to the benefit of the successors in interest hereto, and it is expressly understood and agreed that this Agreement is a modification only and not a novation. The original obligation of the BORROWER, as evidenced by the above described CONTRACT is not extinguished hereby. It is also understood and agreed that, except for the above indicated modifications, said CONTRACT, and/or any other loan documents or agreements and all singular terms and conditions thereof, shall be and remain in force and effect and that this Modification and Extension Agreement shall not release or affect the liability of any co-makers, guarantors, obligors, or endorser of said CONTRACT. BORROWER specifically consents to the terms of this Modification and Extension Agreement and waives any objection thereto, and further affirms any obligation to BANK previously created. BANK expressly reserves all rights as to any party with right of recourse on the aforesaid CONTRACT.

IN WITNESS WHEREOF, this instrument has been executed by the parties hereto and delivered on the day and year first above written.

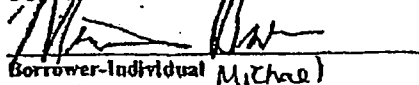
American Community Bank


Vice President

GUARANTOR (s)


C.W. Home

BORROWER:


Borrower-Individual (Michael)

Borrower-Individual

Name of Corporation or Partnership

By _____
Title

By _____
Title

710400073

American Community Bank

Account Number: 710400073

Package Reviewed & Booked

12/29/07 3-29-07

MODIFICATION AND EXTENSION AGREEMENT

State of North Carolina

County of: Union County

Effective Date: March 15, 2007

This Modification and Extension Agreement is made and entered into, this 15th day of March, 2007 by and between American Community Bank (hereinafter referred to as "BANK"); and Michael Brown (hereinafter referred to as maker (s) or co-maker (s) on the Note described below individually and collectively as "BORROWER");

Trustee or successor trustee under the Deed of Trust described below (hereinafter referred to as "TRUSTEE"); and Cresful W. Horne (hereinafter referred to as the guarantor(s), endorser(s), or obligor(s) (if any) on the Note described below, or the owner(s) other than the BORROWER (if any) of any property pledged to secure performance of BORROWER'S obligation to BANK (hereinafter referred to individually and collectively as "THIRD PARTY").

WITNESSETH:

WHEREAS, BORROWER is indebted to BANK in the original principal sum of: One hundred fifty thousand and no/100 (\$150,000.00). which Note has a current principal balance of: One hundred forty-nine thousand three hundred forty-three and 55/100 (\$149,343.55). is evidenced by a:

Note dated _____, made payable to American Community Bank.

Note and Security Agreement dated 12/29/00, which Note is made payable to American Community Bank.

Note and Deed of Trust dated 12/29/00, which Note is made payable to American Community Bank and which Deed of Trust is recorded in Book Page 431, in the Chesterfield County Registry and relates to the real Property described therein;

said Note, Note and Security Agreement, or Note and Deed of Trust, including any renewals, extensions, or modifications thereof, being hereinafter referred to as "CONTRACT," and said CONTRACT being incorporated and made a part hereof by reference; and

WHEREAS, BORROWER and BANK mutually desire to modify and amend the provisions of the CONTRACT in the manner hereinafter set forth, it being specifically understood that, except as herein modified and amended, the terms and provisions of CONTRACT shall remain unchanged and continue in full force as therein written; and

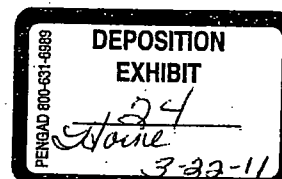
WHEREAS, THIRD PARTY, if different from BORROWER, and TRUSTEE have agreed to the terms of this modification;

NOW, THEREFORE, by mutual agreement of the parties and in mutual consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree that said CONTRACT by modified and amended to provide as follows:

received

MAR 29 2007

BY:



INTEREST RATE

Interest will be paid at the rate of ☒ % per annum. This rate will be effective the date of this CONTRACT is executed.

Interest will be paid at a variable rate of interest known as the "Contract Rate." This rate will be effective the date this CONTRACT is executed. BORROWER acknowledges that the Contract Rate may increase or decrease based on changes in the Prime Rate published by BANK.

The Contract Rate will be the BANK'S Prime Rate plus Percentage Points (the "Margin"). The Initial Contract Rate is %. The Minimum Contract Rate shall be %, and the Maximum Contract Rate shall be %, provided that at no time shall the Contract Rate exceed the maximum interest rate allowed by law to be charged by BANK. Increases or decreases in the Contract Rate of interest will: increase or decrease the amount of each payment due thereafter; increase or decrease the final payment due. The Contract Rate will change daily assuming there is a change in the Prime Rate. The BANK'S Prime Rate is not intended or represented to be the lowest or most favorable rate of interest charged or offered by the BANK to its customers.

Other:

PRINCIPAL AND INTEREST PAYMENT TERMS:

Principal and interest is payable in full at maturity on September 15, 2007. ☒

Payable in consecutive installments of: principal, or principal and interest, commencing on , 2004 and continuing on the same day of each calendar period thereafter, in equal payments of \$, with one final payment of all remaining principle and interest due on .

Interest is payable , commencing on , 2004 and continuing on the same day of each calendar period thereafter, with one final payment of all remaining principal and interest due on .

In the event periodic accruals of interest shall exceed any periodic fixed payment amount described above, the fixed payment amount shall be immediately increased, or additional supplemental interest payments required on the same periodic basis as specified above (increased fixed payments or supplemental payments to be determined in the BANK'S sole discretion), in such amounts and at such times as shall be necessary to pay all accruals of interest for the period and all accruals of unpaid interest from previous periods. Such adjustments to the fixed payment amount or supplemental payments shall remain in effect for so long as the interest accruals shall exceed the original fixed payment amount and shall be further adjusted upward or downward to reflect changes in the variable interest rate. In no event shall the fixed payment amount be reduced below the original fixed payment amount specified above.

COLLATERAL:

Unless otherwise provided herein, it is expressly understood and agreed by the parties hereto that any and all collateral given as security to insure faithful performance by BORROWER and any THIRD PARTY of any and all obligations to BANK, however created, whether now existing or hereafter arising, shall remain as security for the previously described CONTRACT as modified hereby.

It is expressly understood and agreed by and between the parties hereto that any security agreement, deed of trust, chattel mortgage, trust receipt, assignment, contract or other writing granting BANK security for performance of any obligation to BANK is, to the extent inconsistent herewith, modified and changed to be consistent with the terms of this Modification and Extension Agreement.

The aforesaid CONTRACT, as herein modified, and the performance of any loan agreement between parties shall be additionally secured by the collateral hereinafter described, and a new security instrument shall be executed by the BORROWER and/or THIRD PARTY.

From:
From:

207

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ and

_____ each personally appeared before me and acknowledged
the due execution of the foregoing instrument.

Witness my hand and notarial seal, this _____ day of _____, 20____.

My commission expires: _____

NOTARY PUBLIC

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally came

before me this day and acknowledged that _____ is _____

Secretary of _____, a corporation, and that by
authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its

_____, sealed with its corporate seal, and attested by

_____ as its _____ Secretary.

Witness my hand and notarial seal, this this _____ day of _____, 20____.

My commission expires: _____

NOTARY PUBLIC

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally appeared

before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this _____ day of _____, 20____.

My commission expires: _____

NOTARY PUBLIC

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally appeared

before me and acknowledged that _____ he is _____
Secretary of American Community Bank, a corporation, and that by authority duly given and as the act of the corporation, the foregoing
instrument was signed in its name by its _____ Vice President, sealed with its corporate seal, and attested

by _____ as its _____ Secretary.

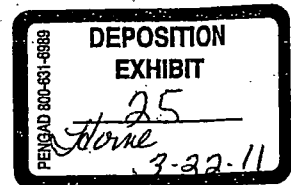
Witness my hand and notarial seal, this _____ day of _____, 20____.

My commission expires: _____

NOTARY PUBLIC

710400073

American Community Bank

Account Number: 710400073

MODIFICATION AND EXTENSION AGREEMENT

State of North Carolina

County of: Union County

Effective Date: October 29, 2007

This Modification and Extension Agreement is made and entered into, this 29th day of October, 2007 by and between American Community Bank (hereinafter referred to as "BANK"); and Michael Brown (hereinafter referred to as maker (s) or co-maker (s) on the Note described below individually and collectively as "BORROWER"):

Trustee or successor trustee under the Deed of Trust described below (hereinafter referred to as "TRUSTEE"); and Cresful W. Horne the guarantor(s), endorser(s), or obligor(s) (if any) on the Note described below, or the owner(s) other than the BORROWER (if any) of any property pledged to secure performance of BORROWER'S obligation to BANK (hereinafter referred to individually and collectively as "THIRD PARTY").

WITNESSETH:

WHEREAS, BORROWER is indebted to BANK in the original principal sum of: One hundred fifty thousand and no/100 (\$150,000.00). ✓
 which Note has a current principal balance of:
 One hundred forty-nine thousand three hundred forty-three and 55/100 (\$149,343.55). ✓
 is evidenced by a:

Note dated _____, made payable to American Community Bank.

Note and Security Agreement dated 12/29/00, which Note is made payable to American Community Bank.

Note and Deed of Trust dated 12/29/00, which Note is made payable to American Community Bank and which Deed of Trust is recorded in Book 00028 Page 431, in the Chesterfield County Registry and relates to the real Property described therein;

said Note, Note and Security Agreement, or Note and Deed of Trust, including any renewals, extensions, or modifications thereof, being hereinafter referred to as "CONTRACT," and said CONTRACT being incorporated and made a part hereof by reference; and

WHEREAS, BORROWER and BANK mutually desire to modify and amend the provisions of the CONTRACT in the manner hereinafter set forth, it being specifically understood that, except as herein modified and amended, the terms and provisions of CONTRACT shall remain unchanged and continue in full force as therein written; and

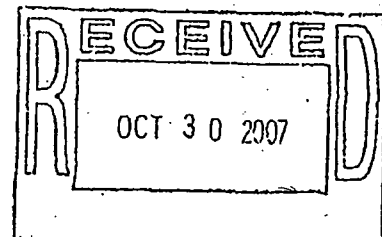
WHEREAS, THIRD PARTY, if different from BORROWER, and TRUSTEE have agreed to the terms of this modification;

NOW, THEREFORE, by mutual agreement of the parties and in mutual consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree that said CONTRACT by modified and amended to provide as follows:

- 1 -

Package Reviewed & Booked

10/30/07
 Input Checked
 11-2-07



Date:
Collateral:
Date:
Collateral:

Type of agreement:
Type of agreement:

From:
From:

____ If marked, the collateral hereinafter described shall be and hereby is deleted as security for payment of the aforesaid.

CONTRACT:

However, it is understood and agreed that BANK shall not be required or obligated to take any further steps to release said collateral from any lien or security unless BANK determines, in its sole discretion, that it may do so without consequence to its secured position and relative priority in other collateral, and unless BORROWER bears the reasonable cost of such actions.

____ The undersigned acknowledged receipt from you of the personal property described below in substitution for or in addition to the personal property originally delivered. It is understood that all the terms and provisions of the Original Note and Security Agreement executed by the undersigned on _____, covering the personal property originally delivered shall apply to the personal property now delivered and shall continue in full force and effect.

Personal Property Now Delivered:

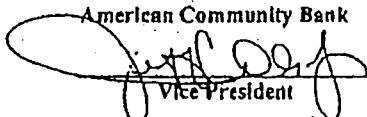
OTHER:

If the CONTRACT being modified by this Agreement is signed by more than one person or entity, the modified CONTRACT shall be the joint and several obligation of all signers, and each provision of the CONTRACT as modified shall apply to each and all of the signers and to the property and liability of each and all of them.

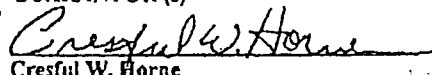
This Modification and Extension Agreement shall bind and inure to the benefit of the successors in interest hereto, and it is expressly understood and agreed that this Agreement is a modification only and not a novation. The original obligation of the BORROWER, as evidenced by the above described CONTRACT is not extinguished hereby. It is also understood and agreed that, except for the above indicated modifications, said CONTRACT, and/or any other loan documents or agreements and all singular terms and conditions thereof, shall be and remain in force and effect and that this Modification and Extension Agreement shall not release or affect the liability of any co-makers, guarantors, obligors, or endorser of said CONTRACT, BORROWER specifically consents to the terms of this Modification and Extension Agreement and waives any objection thereto, and further affirms any obligation to BANK previously created. BANK expressly reserves all rights as to any party with right of recourse on the aforesaid CONTRACT.

IN WITNESS WHEREOF, this instrument has been executed by the parties hereto and delivered on the day and year first above written.

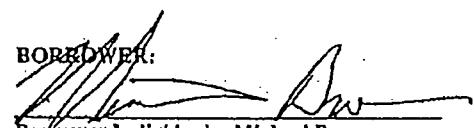
American Community Bank ✓


Vice President

GUARANTOR (s)

✓ 
Cresful W. Horne

BORROWER:

✓ 
Borrower-Individual Michael Brown

Borrower-Individual

Name of Corporation or Partnership

By _____
Title

By _____
Title

STATE OF SOUTH CAROLINA]
COUNTY OF CHESTERFIELD]

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

AMERICAN COMMUNITY BANK,]
a division of Yadkin Valley Bank & Trust,]

Plaintiff(s)]

v]

MICHAEL R. BROWN,]
C.W. HORNE,]
SHORTT AUCTION & REALTY CO., Inc.]
BANK OF AMERICA, N.A. and]
JAGUAR PORTFOLIO, LLC.,]

Defendant(s)]

SECOND AMENDED

NOTICE OF TAKING DEPOSITION

C.A. No. 10-CP-13-0164

TO: Harry R. Easterling, Jr.
Attorney for Defendant HORNE
116 North Liberty Street
P.O. Drawer 655
Bennettsville, S.C. 29512-0655

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 30 of the Rules of Civil Procedure, the undersigned, as Attorney for the Defendant MICHAEL R. BROWN, will take the oral deposition of the following witness(es):

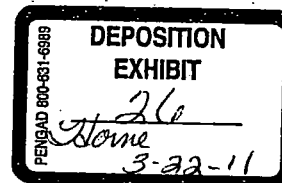
C.W. Horne
c/o Harry R. Easterling, Jr.
116 North Liberty Street
P.O. Box 655
Bennettsville, S.C. 29512-0655

on the following date:

Tuesday, March 22, 2011

at the following time:

11:00 A.M.



at the following location:

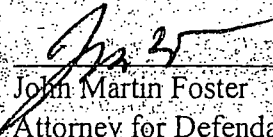
Harry R. Easterling, Jr.
Goldberg & Easterling, P.A.
116 North Liberty Street
P.O. Drawer 655
Bennettsville, S.C. 29512-0655

before a Notary Public, continuing from day to day, if necessary, until completed or at such other time thereafter as may be agreeable to counsel.

If attached hereto, Supoena(s) *duces tecum* will be served on the witness(es) named above and will direct the production of those materials indicated thereon.

This deposition is for the purpose of discovery or for use as evidence in the above action.

You are invited to be present and participate in accordance with Rule 30.


John Martin Foster
Attorney for Defendant BROWN
223 East Main Street, Suite 520
Post Office Box 106
Rock Hill, SC 29731-6106
803 324-8100
803 324-8109: Fax
jmfoster@comporium.net

Rock Hill, South Carolina

March 10, 2011

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

AMERICAN COMMUNITY BANK,
a division of Yadkin Valley Bank & Trust,

AMENDED

Plaintiff(s),

CERTIFICATE OF MAILING

v.

C.A. No. 10-CP-13-0164

MICHAEL R. BROWN,
C.W. HORNE,
SHORTT AUCTION & REALTY CO., Inc.
BANK OF AMERICA, N.A. and
JAGUAR PORTFOLIO, LLC.,

Defendant(s).

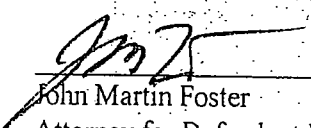
The undersigned hereby certifies that he is the attorney for the Defendant, MICHAEL R. BROWN in the within matter and that the attached second amended Notice of Taking of Deposition was served upon the attorney for Defendants, by depositing a copy of same in the United States Mail with sufficient postage annexed thereto, addressed as follows:

Harry R. Easterling, Jr.
Goldberg & Easterling, P.A.
Attorney for Defendant HORNE
116 N. Liberty Street
P.O. Drawer 655
Bennettsville, SC 29512-0655

James W. Sheedy
Susan B. Driscoll
Driscoll Sheedy, P.A.
Attorneys for Plaintiff
11520 N. Community House Road
Suite 200
Charlotte, N.C. 28277

William Spencer, Jr.
Guardian Ad Litem for
John Doe & Richard Roe
P.O. Box 190
Chesterfield, S.C. 297-0

on this March 10, 2011.


John Martin Foster
Attorney for Defendant Brown
223 East Main Street, Suite 520
Post Office Box 106
Rock Hill, SC 29731-6106
803 324-8100
803 324-8109: Fax
jmfoster@comporium.net

Rock Hill, South Carolina
March 10, 2011

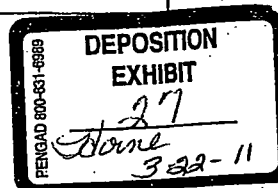
COMMERCIAL GUARANTY

Principal	Loan Date	Maturity	Loan No.	Coll.	Collateral	Account	Officer	Initials
References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing ***** has been omitted due to text length limitations.								

Borrower: MICHAEL R BROWN
1620 A EAST 4TH ST PMB #132
CHARLOTTE, NC 28204

Lender: American Community Bank
American Community Bank
2693 West Roosevelt Boulevard
PO Box 5035
Monroe, NC 28111-5035

Guarantor: C W HORNE
7318 E MARSHVILLE BLVD
MARSHVILLE, NC 28103



AMOUNT OF GUARANTY. This is a guaranty of payment of the Note, including without limitation the principal Note amount of One Hundred Fifty Thousand & 00/100 Dollars (\$150,000.00).

GUARANTY. For good and valuable consideration, C W HORNE ("Guarantor") absolutely and unconditionally guarantees and promises to pay to American Community Bank ("Lender") or its order, in legal tender of the United States of America, the indebtedness (as that term is defined below) of MICHAEL R BROWN ("Borrower") to Lender on the terms and conditions set forth in this Guaranty.

MAXIMUM LIABILITY. The maximum liability of Guarantor under this Guaranty shall not exceed at any one time the amount of the indebtedness described herein, plus all costs and expenses of (A) enforcement of this Guaranty and (B) collection and sale of any collateral securing this Guaranty.

The above limitation on liability is not a restriction on the amount of the indebtedness of Borrower to Lender either in the aggregate or at any one time. If Lender presently holds one or more guaranties, or hereafter receives additional guaranties from Guarantor, Lender's rights under all guaranties shall be cumulative. This Guaranty shall not (unless specifically provided below to the contrary) affect or invalidate any such other guaranties. Guarantor's liability will be Guarantor's aggregate liability under the terms of this Guaranty and any such other unexpired guaranties.

INDEBTEDNESS GUARANTEED. The indebtedness guaranteed by this Guaranty includes the Note, including (a) all principal, (b) all interest, (c) all late charges, (d) all loan fees and loan charges, and (e) all collection costs and expenses relating to the Note or to any collateral for the Note. Collection costs and expenses include without limitation all of Lender's attorneys' fees.

DURATION OF GUARANTY. This Guaranty will take effect when received by Lender without the necessity of any acceptance by Lender, or any notice to Guarantor or to Borrower, and will continue in full force until all indebtedness shall have been fully and finally paid and satisfied and all of Guarantor's other obligations under this Guaranty shall have been performed in full. Release of any other guarantor or termination of any other guaranty of the indebtedness shall not affect the liability of Guarantor under this Guaranty. A revocation Lender receives from any one or more Guarantors shall not affect the liability of any remaining Guarantors under this Guaranty.

GUARANTOR'S AUTHORIZATION TO LENDER. Guarantor authorizes Lender, without notice or demand and without lessening Guarantor's liability under this Guaranty, from time to time: (A) to make one or more additional secured or unsecured loans to Borrower, to lease equipment or other goods to Borrower, or otherwise to extend additional credit to Borrower; (B) to alter, compromise, renew, extend, accelerate, or otherwise change one or more times the time for payment or other terms of the indebtedness or any part of the indebtedness, including increases and decreases of the rate of interest on the indebtedness; extensions may be repeated and may be for longer than the original loan term; (C) to take and hold security for the payment of this Guaranty or the indebtedness, and exchange, enforce, waive, subordinate, fail or decide not to perfect, and release any such security, with or without the substitution of new collateral; (D) to release, substitute, agree not to sue, or deal with any one or more of Borrower's sureties, endorsers, or other guarantors on any terms or in any manner Lender may choose; (E) to determine how, when and what application of payments and credits shall be made on the indebtedness (F) to apply such security and direct the order or manner of sale thereof, including without limitation, any nonjudicial sale permitted by the terms of the controlling security agreement or deed of trust, as Lender in its discretion may determine; (G) to sell, transfer, assign or grant participations in all or any part of the indebtedness; and (H) to assign or transfer this Guaranty in whole or in part.

GUARANTOR'S REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants to Lender that: (A) no representations or agreements of any kind have been made to Guarantor which would limit or qualify in any way the terms of this Guaranty; (B) this Guaranty is executed at Borrower's request and not at the request of Lender; (C) Guarantor has full power, right and authority to enter into this Guaranty; (D) the provisions of this Guaranty do not conflict with or result in a default under any agreement or other instrument binding upon Guarantor and do not result in a violation of any law, regulation, court decree or order applicable to Guarantor; (E) Guarantor has not and will not, without the prior written consent of Lender, sell, lease, assign, encumber, hypothecate, transfer, or otherwise dispose of all or substantially all of Guarantor's assets, or any interest therein; (F) upon Lender's request, Guarantor will provide to Lender financial and credit information in form acceptable to Lender, and all such financial information which currently has been, and all future financial information which will be provided to Lender is and will be true and correct in all material respects and fairly present Guarantor's financial condition as of the dates the financial information is provided; (G) no material adverse change has occurred in Guarantor's financial condition since the date of the most recent financial statements provided to Lender and no event has occurred which may materially adversely affect Guarantor's financial condition; (H) no litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Guarantor is pending or threatened; (I) Lender has made no representation to Guarantor as to the creditworthiness of Borrower; and (J) Guarantor has established adequate means of obtaining from Borrower on a continuing basis information regarding Borrower's financial condition. Guarantor agrees to keep adequately informed from such means of any facts, events, or circumstances which might in any way affect Guarantor's risks under this Guaranty, and Guarantor further agrees that, absent a request for information, Lender shall have no obligation to disclose to Guarantor any information or documents acquired by Lender in the course of its relationship with Borrower.

GUARANTOR'S WAIVERS. Except as prohibited by applicable law, Guarantor waives any right to require Lender (A) to continue lending money or to extend other credit to Borrower; (B) to make any presentment, protest, demand, or notice of any kind, including notice of any nonpayment of the indebtedness or of any nonpayment related to any collateral, or notice of any action or nonaction on the part of Borrower, Lender, any surety, endorser, or other guarantor in connection with the indebtedness or in connection with the creation of new or additional loans or obligations; (C) to resort for payment or to proceed directly or at once against any person, including Borrower or any other guarantor; (D) to proceed directly against or exhaust any collateral held by Lender from Borrower, any other guarantor, or any other person; (E) to give notice of the terms, time, and place of any public or private sale of personal property security held by Lender from Borrower or to comply with any other applicable provisions of the Uniform Commercial Code; (F) to pursue any other remedy within Lender's power; or (G) to commit any act or omission of any kind, or at any time, with respect to any matter whatsoever.

Guarantor also waives any and all rights or defenses arising by reason of (A) any "one action" or "anti-deficiency" law or any other law which may prevent Lender from bringing any action, including a claim for deficiency, against Guarantor, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale; (B) any election of remedies by Lender which destroys or otherwise adversely affects Guarantor's subrogation rights or Guarantor's rights to proceed against Borrower for reimbursement, including without limitation, any loss of effects Guarantor may suffer by reason of any law limiting, qualifying, or discharging the indebtedness; (C) any disability or other defense of Borrower, of any other guarantor, or of any other person, or by reason of the cessation of Borrower's liability from any cause whatsoever, other than payment in full in legal tender, of the indebtedness; (D) any right to claim discharge of the indebtedness on the basis of unjustified impairment of any collateral for the indebtedness; (E) any statute of limitations, if at any time any action or suit brought by Lender against Guarantor is commenced, there is outstanding indebtedness of Borrower to Lender which is not barred by any applicable statute of limitations; or (F) any defenses given to guarantors by law or in equity other than actual payment and performance of the indebtedness. If payment is made by Borrower, whether voluntarily or otherwise, at law or in equity other than actual payment and performance of the indebtedness, the indebtedness shall be considered unpaid for the purpose of the enforcement of this Guaranty. In addition to the waivers set forth above, Guarantor expressly waives, to the extent permitted by North Carolina law, all of Guarantor's rights under (1) North Carolina General Statute Section 26-7 to Section 26-9, or any similar or subsequent laws, (2) North Carolina General Statute Section 25-3-608 relating to impairment of collateral, and (3) North Carolina General Statute Section 25-9-501 with respect to the "commercial reasonableness" of any sale of collateral.

Guarantor further waives and agrees not to assert or claim at any time any deductions to the amount guaranteed under this Guaranty for any claim of setoff, counterclaim, counter demand, recoupment or similar right, whether such claim, demand or right may be asserted by the Borrower, the Guarantor, or both.

GUARANTOR'S UNDERSTANDING WITH RESPECT TO WAIVERS. Guarantor warrants and agrees that each of the waivers set forth above is made with Guarantor's full knowledge of its significance and consequences and that, under the circumstances, the waivers are reasonable and not contrary to public policy or law. If any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the extent permitted by law or public policy.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Guarantor's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Guarantor may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Guarantor authorizes Lender, to the extent permitted by applicable

COMMERCIAL GUARANTY
(Continued)

Page 2

law, to hold these funds if there is a default, and Lender may apply the funds in these accounts to pay what Guarantor owes under the terms of this Guaranty.

SUBORDINATION OF BORROWER'S DEBTS TO GUARANTOR. Guarantor agrees that the indebtedness of Borrower to Lender, whether now existing or hereafter created, shall be superior to any claim that Guarantor may now have or hereafter acquire against Borrower, whether or not Borrower becomes insolvent. Guarantor hereby expressly subordinates any claim Guarantor may have against Borrower, upon any account whatsoever, to any claim that Lender may now or hereafter have against Borrower. In the event of insolvency and consequent liquidation of the assets of Borrower, through bankruptcy, by an assignment for the benefit of creditors, by voluntary liquidation, or otherwise, the assets of Borrower applicable to the payment of the claims of both Lender and Guarantor shall be paid to Lender and shall be first applied by Lender to the indebtedness of Borrower to Lender. Guarantor does hereby assign to Lender all claims which it may have or acquire against Borrower or against any assignee or trustee in bankruptcy of Borrower; provided however, that such assignment shall be effective only for the purpose of assuring to Lender full payment in legal tender of the indebtedness. If Lender so requests, any notes or credit agreements now or hereafter evidencing any debts or obligations of Borrower to Guarantor shall be marked with a legend that the same are subject to this Guaranty and shall be delivered to Lender. Guarantor agrees, and Lender is hereby authorized, in the name of Guarantor, from time to time to execute and file financing statements and continuation statements and to execute such other documents and to take such other actions as Lender deems necessary or appropriate to perfect, preserve and enforce its rights under this Guaranty.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Guaranty:

Amendments. This Guaranty, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Guaranty. No alteration of or amendment to this Guaranty shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys' Fees; Expenses. Guarantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Guaranty. Lender may hire or pay someone else to help enforce this Guaranty, and Guarantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Guarantor also shall pay all court costs and such additional fees as may be directed by the court.

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

Governing Law. This Guaranty will be governed by, construed and enforced in accordance with federal law and the laws of the State of North Carolina. This Guaranty has been accepted by Lender in the State of North Carolina.

Integration. Guarantor further agrees that Guarantor has read and fully understands the terms of this Guaranty; Guarantor has had the opportunity to be advised by Guarantor's attorney with respect to this Guaranty; the Guaranty fully reflects Guarantor's intentions and parcel evidence is not required to interpret the terms of this Guaranty. Guarantor hereby indemnifies and holds Lender harmless from all losses, claims, damages, and costs (including Lender's attorneys' fees) suffered or incurred by Lender as a result of any breach by Guarantor of the warranties, representations and agreements of this paragraph.

Interpretation. In all cases where there is more than one Borrower or Guarantor, then all words used in this Guaranty in the singular shall be deemed to have been used in the plural where the context and construction so require; and where there is more than one Borrower named in this Guaranty or when this Guaranty is executed by more than one Guarantor, the words "Borrower" and "Guarantor" respectively shall mean all and any one or more of them. The words "Guarantor," "Borrower," and "Lender" include the heirs, successors, assigns, and transferees of each of them. If a court finds that any provision of this Guaranty is not valid or should not be enforced, that fact by itself will not mean that the rest of this Guaranty will not be valid or enforced. Therefore, a court will enforce the rest of the provisions of this Guaranty even if a provision of this Guaranty may be found to be invalid or unenforceable. If any one or more of Borrower or Guarantor are corporations, partnerships, limited liability companies, or similar entities, it is not necessary for Lender to inquire into the powers of Borrower or Guarantor or of the officers, directors, partners, managers, or other agents acting or purporting to act on their behalf, and any Loan Indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed under this Guaranty.

Notices. Any notice required to be given under this Guaranty shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Guaranty. Any party may change its address for notices under this Guaranty by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Guarantor agrees to keep Lender informed at all times of Guarantor's current address. Unless otherwise provided or required by law, if there is more than one Guarantor, any notice given by Lender to any Guarantor is deemed to be notice given to all Guarantors.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Guaranty unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Guaranty shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Guaranty. No prior waiver by Lender, nor any course of dealing between Lender and Guarantor, shall constitute a waiver of any of Lender's rights or of any of Guarantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Guaranty, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Successors and Assigns. Subject to any limitations stated in this Guaranty on transfer of Guarantor's interest, this Guaranty shall be binding upon and inure to the benefit of the parties, their successors and assigns.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Guaranty. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural; and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Guaranty shall have the meanings attributed to such terms in the Uniform Commercial Code:

Borrower. The word "Borrower" means MICHAEL R BROWN, and all other persons and entities signing the Note in whatever capacity.

Guarantor. The word "Guarantor" means each and every person or entity signing this Guaranty, including without limitation C W HORNE.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Indebtedness. The word "Indebtedness" means Borrower's indebtedness to Lender as more particularly described in this Guaranty.

Lender. The word "Lender" means American Community Bank, its successors and assigns.

Note. The word "Note" means the promissory note dated December 29, 2000, in the original principal amount of \$150,000.00 from Borrower to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

GUARANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS COMMERCIAL GUARANTY AND GUARANTOR AGREES TO ITS TERMS. THIS COMMERCIAL GUARANTY IS DATED DECEMBER 29, 2000. THIS GUARANTY IS GIVEN UNDER SEAL AND IT IS INTENDED THAT THIS GUARANTY IS AND SHALL CONSTITUTE AND HAVE THE EFFECT OF A SEALED INSTRUMENT ACCORDING TO LAW.

GUARANTOR:

x C W Horne (Seal)
C W HORNE, Individually

Date: _____ Type of agreement: _____ From: _____

Collateral: _____

Date: _____ Type of agreement: _____ From: _____

Collateral: _____

☐ If marked, the collateral hereinafter described shall be and hereby is deleted as security for payment of the aforesaid

CONTRACT: _____

However, it is understood and agreed that BANK shall not be required or obligated to take any further steps to release said collateral from any lien or security unless BANK determines, in its sole discretion, that it may do so without consequence to its secured position and relative priority in other collateral, and unless BORROWER bears the reasonable cost of such action.

OTHER:

If the CONTRACT being modified by this Agreement is signed by more than one person or entity, the modified CONTRACT shall be the joint and several obligation of all signers, and each provision of the CONTRACT as modified shall apply to each and all of the signers and to the property and liability of each and all of them.

This Modification and Extension Agreement shall bind and inure to the benefit of the successors in interest hereto, and it is expressly understood and agreed that this Agreement is a modification only and not a novation. The original obligation of the BORROWER, as evidenced by the above-described CONTRACT is not extinguished hereby. It is also understood and agreed that, except for the above indicated modifications, said CONTRACT, and/or any other loan documents or agreements and all singular terms and conditions thereof, shall be and remain in force and effect and that this Modification and Extension Agreement shall not release or affect the liability of any co-makers, guarantors, obligors, or endorser of said CONTRACT. BORROWER specifically consents to the terms of this Modification and Extension Agreement and waives any objection thereto, and further affirms any obligation to BANK previously created. BANK expressly reserves all rights as to any party with right of recourse on the aforesaid CONTRACT.

IN WITNESS WHEREOF, this instrument has been executed by the parties hereto and delivered on the day and year first above written.

Attest:

ASSISTANT SECRETARY

(CORPORATE SEAL)

By: _____
American Community Bank
VICE PRESIDENT

BORROWER:

MICHAEL S. BURTON - INDIVIDUAL (Seal)

BORROWER - INDIVIDUAL (Seal)

NAME OF CORPORATION OR PARTNERSHIP

Attest:

SECRETARY

(CORPORATE SEAL)

By: _____
TITLE

By: _____
TITLE

TRUSTEE:

(Seal)

THIRD PARTY (Guarantor, Endorser, Etc.):

CRESFUL W HORNE (Seal)

(Seal)

(Seal)

(Seal)

1 Deposition of William Clewis, taken before me,
2 Kelly Reiter, a Notary Public for the State of North
3 Carolina, at the law office of Driscoll Sheedy, PA,
4 11520 North Community House Road, Suite 200, Charlotte,
5 North Carolina, commencing at 10:33 a.m. on May 6, 2011
6 in accordance with the South Carolina Rules of Civil
7 Procedure.

8 It was stipulated by and between Counsel for the
9 Plaintiff and Counsel for the Defendants that this
10 deposition is taken for any purpose allowed under the
11 South Carolina Rules of Civil Procedure;

12 That the signing of the transcript of deposition by
13 the witness is not waived.

14 * * * * *

15 William Clewis, first being duly sworn, deposes and says
16 as follows:

17 Mr. Foster - Gentlemen, I assume there are no
18 special stipulations we want to go into before
19 we go forward.

20 Mr. Sheedy - Objections will be handled in
21 accordance with the rules.

22 Mr. Foster - Precisely. I am handing up - - -

23 Mr. Sheedy - The witness will reserve the
24 right to read and sign and make a decision at
25 the end of the deposition. (To the witness) -

1 Q How long have you been that, sir?

2 A Two-and-a-half years.

3 Q Okay, sir. Sir, I assume you have given
4 depositions before?

5 A I have.

6 Q And I assume you've had the chance to go over this
7 one or talk about what we're doing with Mr. Sheedy
8 and Ms. Driscoll?

9 A Yes.

10 Q And on that basis, sir, I'm not going to go through
11 my usual talk about what a depo is. Safe to say,
12 the usual thing. If you need a break, just let us
13 know.

14 A Right.

15 Q Now, sir, your lawyers in this case have invoked,
16 as they have the right, Rule 30(b)(6). They have
17 required Mr. Brown, and me as his attorney, to
18 describe in our notice with reasonable
19 particularity the matters on which this deposition
20 is conducted. In response, sir, your bank through
21 its attorneys have designated you as the officer or
22 agent or other person who consents to testify on
23 its behalf. Now, I have not received anything from
24 bank's counsel commenting upon, objecting to, or
25 limiting the terms of the notice that we sent in.

1 You have the right to read and sign this
2 deposition. In reading and signing this
3 deposition, you may make notes on an errata
4 sheet with respect to any testimony that you
5 believe has either been incorrectly
6 transcribed or was incorrect. I've just said
7 on your behalf that you'll reserve that right
8 until the deposition has been completed.

9 A Okay.

10 Mr. Foster - First, I just wanted to put in
11 the notice of the depo. I assume without
12 objection.

13 Mr. Sheedy - No objection.

14 Mr. Easterling - No objection.

15 Whereupon - Document was marked as Deposition
16 Exhibit Number 1.

17 EXAMINATION - (By Mr. Foster)

18 Q Sir, I may have already asked this, but would you
19 state your name for the record?

20 A William Clewis.

21 Q And, sir, I understand, according to the card
22 you've been kind enough to give us, that you are a
23 senior vice president and a regional credit officer
24 with Yadkin Valley Bank?

25 A That is correct.

1 On that basis, we are proceeding. It is our
2 understanding, sir, that you will be testifying as
3 the person so designated as to the matters set out
4 in the notice. Do I state anything, sir, that you
5 are unaware of or have any argument with?

6 A No.

7 Q Thank you, sir. And precisely, sir, or
8 imprecisely, what does your job with Yadkin Valley
9 Bank consist of?

10 A I am a regional credit officer and special assets
11 officer.

12 Q And in that capacity, the matter in this case, the
13 subject matter of this case has come under your
14 purview?

15 A Exactly.

16 Q Okay, sir. Sir, one thing I need to say here.
17 Although, this may be unneeded. In this
18 deposition, I may say you or the bank. Obviously,
19 sir, in practical terms, we have you as the human
20 being, we have Yadkin Valley Bank, and we have,
21 what I understand, is your merged entity or your
22 partner, American Community Bank. When I ask a
23 question, I'm going to assume that you are
24 responding on behalf of all three of those
25 entities.

1 A Yes.

2 Mr. Sheedy - Object to the form. For clarity
3 of the record, American Community Bank is a
4 division of Yadkin Valley Bank.

5 Mr. Foster - I thank counsel for his
6 clarification.

7 Q If, sir, for any reason there is an answer that is
8 not on behalf of all three of those entities, to
9 the extent we're talking about entities, I will
10 have to rely upon you, sir, to make that
11 distinction. I really don't know why there would
12 be a distinction, but I need to say that.

13 Mr. Sheedy - For the record, I just wanted you
14 to appreciate, American Community Bank post-
15 merger is not a separate financial
16 institution. As Wachovia is a division of
17 Wells, American Community Bank is a division
18 of Yadkin Valley.

19 Mr. Foster - Thank you, sir.

20 Q And, sir, I am assuming that you have knowledge of
21 the background of the documentation of the mortgage
22 foreclosure that this case involves?

23 A Yes.

24 Q Thank you. Sir, I am going to go through a series
25 of documents that have been supplied to me by your

1 counsel, and I need you to identify those and
2 answer some questions about them. I am handing you
3 a document marked ACB-1. Sir, can you identify
4 that as connected with the subject mortgage loan?

5 A Yes.

6 Q And, sir, this I believe names Mr. Miller Ingram as
7 the trustee in this mortgage?

8 A That is correct.

9 Q Sir, can you explain to me what the meaning of the
10 term on this document - - - Well, let's stop for a
11 moment.

12 Mr. Foster - Is there an objection for getting
13 this marked as 2?

14 Mr. Sheedy - No objection.

15 Mr. Easterling - No objection.

16 Mr. Foster - Let's get that marked.

17 Whereupon - Document was marked as Deposition
18 Exhibit Number 2.

19 Q Sir, to go forward, can you explain to me what the
20 terms on that document, purchaser's copy, would
21 indicate, if you know?

22 A I'm not sure what purchaser's copy would mean.

23 Q I take it, that would not be a term your current
24 bank would use?

25 A I'm not familiar with that term on a check.

1 Q Can you tell me, sir, what the phrase, L/P Michael

2 R. Brown, would mean?

3 A An individual.

4 Q And L/P, sir?

5 A I don't know.

6 Q Sir, I'm showing you another document. To your
7 knowledge, sir, is that connected with the subject
8 mortgage loan? This is ACB-2.

9 A It's missing something. I don't see any names or
10 see an account number.

11 Q Without supplying an answer to this, it is my
12 assumption, because this was given to us in
13 discovery, that it represents an internal record of
14 American Community Bank showing the existence of
15 the check that was paid out in response to the
16 subject mortgage loan.

17 A I - - -

18 Q That's what I took it for.

19 A I see a hundred and fifty thousand dollar check
20 transaction on this. I just can't identify a name
21 and an account number. I don't know what it is.

22 Q Okay, sir.

23 A But it appears to be an internal document.

24 Q Yes, sir. It does say, official checks, American
25 Community Bank, at the top?

1 A Yes.

2 Mr. Foster - Okay. Let's get that marked.

3 Without objection, I assume?

4 Mr. Sheedy - No objection.

5 Whereupon - Document was marked as Deposition
6 Exhibit Number 3.

7 Q And, sir, I have here documents which seem to be
8 duplicative. These are, for the sake of
9 identification, ACB-3, -3, -4, and -30. Can you
10 look those over, sir, and identify if you can those
11 as being connected with the subject mortgage loan?

12 A Yes. It appears to be a settlement statement.

13 Q Okay, sir. Can you look it over, sir? Because it
14 would seem to me there are two copies, and I just
15 wish to be sure whether, in your mind, there's an
16 intention there to - - -

17 Mr. Foster - Perhaps the simple way to do
18 this, can we go off the record?

19 Whereupon - A brief discussion was held off
20 the record which was not reported.

21 FURTHER EXAMINATION - (By Mr. Foster)

22 Q Let's go back on the record. You just stated they
23 appear to be the same. Thank you. Sir, is that
24 the HUD involved in the same subject mortgage loan?

25 A It appears to be.

1 Q Yes, sir. Sir, according to the bank records,
2 according to the knowledge of the bank, is there
3 anything that would indicate that the figures or
4 the information on those documents is incorrect?
5 A I don't see anything that would be - - - appear to
6 be incorrect.
7 Mr. Foster - Okay, sir. Let's get those
8 marked, with everyone's permission. This will
9 be 4?
10 Court Reporter - Four, yes.
11 Mr. Sheedy - Let the record reflect the two
12 settlement statements are being marked
13 collectively.
14 Whereupon - Document was marked as Deposition
15 Exhibit Number 4.
16 Q Sir, does the bank have any knowledge or documents
17 indicating that - - - Let me strike that and go on.
18 This may come back later. Sir, let me hand you
19 this document, which is marked ACB-5 and -6, and
20 ask you if you can identify that.
21 A It appears to be a transaction history on this
22 particular loan number.
23 Q And by this loan number, I presume that is the
24 subject mortgage loan we are talking about in this
25 lawsuit?

1 A It appears to be. Mr. Brown's name is on it.
2 Q Sir, are you capable of explaining to me the item
3 on, let me see if I can point it out to you, 12-29-
4 2000, loan fee increase, and the amount that's
5 stated is fifteen hundred dollars? Can you explain
6 to me what that would be?
7 A It would appear to be a one percent origination fee
8 of the loan amount.
9 Q Is that normal terminology to designate a loan
10 origination fee?
11 A Yes.
12 Q And, sir, in this history on the last page, ACB-7,
13 which I should mention, too, there is a notation on
14 6-27-08, payoff. Does that indicate, sir, that
15 according to the records of, I assume, American
16 Community Bank, this loan was paid off?
17 A Well, which transaction are you referencing?
18 Q The very last one, sir. I'm pointing here with my
19 finger.
20 A Okay. Transaction one fifty-six - - - It says
21 payoff beside it.
22 Q Okay, sir. Sir, remind me, what date was American
23 Community Bank, I will say as a layperson would,
24 taken over with, by, or did it become a division of
25 Yadkin Valley Bank?

1 A March of '09.
2 Q So this would be prior to that time?
3 A Yes.
4 Q Assuming the time period to be correct?
5 A Right.
6 Q Do you have any knowledge, sir, as to whether the
7 term payoff would be used for any other transaction
8 besides literally what is known as a payoff of the
9 mortgage?
10 A It could be a payoff from a subsequent loan, or a
11 modification, or a refinancing.
12 Q Is there an indication on the document, sir?
13 A It just says payoff.
14 Q Would I be correct in assuming, sir, that it is
15 something different from the loan renewal, which is
16 used as a different term in the earlier notations?
17 A I don't understand the question.
18 Q I'm sorry. In the earlier notations on this loan,
19 there are dates on which the term, loan renewal, is
20 used. I assume that whatever happened on 6-28, if
21 I remember correctly, '08 is different than a loan
22 renewal, according to this document?
23 A I - - - I couldn't answer that. I don't know what
24 their terminology was in their system.
25 Mr. Foster - Let's get this marked, with - - -

1 I assume without objection?
2 Mr. Sheedy - No objection.
3 Mr. Easterling - No objection.
4 Mr. Foster - Number 5.
5 Whereupon - Document was marked as Deposition
6 Exhibit Number 5.
7 Q Sir, do you have any documentation or knowledge as
8 to whether there was any particular or special use
9 of the term payoff when it was used on this
10 document in June of '08 by American Community Bank?
11 A That precedes my time with the company. I don't
12 know what their terminology was for that particular
13 - - - (No further response)
14 Q And specifically, the bank - - -
15 A Term.
16 Q Doesn't have anything like an index of terminology
17 that they would use to indicate - - -
18 A Not that I'm aware of.
19 Q What that would mean? Sir, I'm handing you this
20 document. Can you identify that, sir, as being
21 connected with this subject mortgage action?
22 A Yes.
23 Q Sir, what does that document, to you, appear to be?
24 A It's from DHEC. I'm assuming it's around some
25 environmental issues that were questionable at some

1 point in time. This is dated March of 1997.

2 **Q And that is, I believe, ACB-8 through -9 on the**

3 **terms that it was sent to us. Sir, do you have any**

4 **knowledge of when the bank received that document?**

5 A I have no idea.

6 **Q Are you capable of telling me, sir, whether that**

7 **document was in the file when American Community**

8 **Bank became a division of Yadkin?**

9 A I would not know that.

10 Mr. Foster - Let's get that marked without, I

11 assume - - -

12 Mr. Sheedy - No objection.

13 Mr. Easterling - No objection.

14 Mr. Foster - Six.

15 Whereupon - Document was marked as Deposition

16 Exhibit Number 6.

17 **Q Sir, I also assume that there - - - Well, let me**

18 **not assume. Do you have, sir, any knowledge or any**

19 **documentation about the circumstances in which that**

20 **document was received by the bank?**

21 A At the time it was received?

22 **Q At any time, sir.**

23 A I don't know. I don't know of anything regarding

24 this. I know there was discussion about some

25 possible contamination, and it's a DHEC report.

1 That's all I know.

2 **Q Sir, I'm showing you this document. Can you**

3 **identify that as connected with this subject**

4 **mortgage and the loan?**

5 A That appears to be referencing the property in

6 Ruby, South - - - Highway 109, Ruby, South

7 Carolina, around the removal of storage tanks.

8 **Q Sir, we can agree that this is sent to one Nicole**

9 **Shortt?**

10 A (Indicating yes)

11 Mr. Foster - Let's get this marked without, I

12 assume, objection.

13 Mr. Sheedy - No objection.

14 Mr. Easterling - No objection.

15 Whereupon - Document was marked as Deposition

16 Exhibit Number 7.

17 **Q Sir, can you tell me how the bank acquired that**

18 **document?**

19 A In digging through the file, at one time, the

20 Shortt real estate company attempted to sell the

21 property and subdivide it into lots. I do know

22 that. I think this was an issue at the time of the

23 sale.

24 **Q This was from 2010? Or on the face of it?**

25 A Yeah.

1 **Q Do you know anything, sir, as to the circumstances**

2 **under which this document came to the bank?**

3 A I have no idea.

4 **Q Does the bank have any understanding about whether**

5 **any further action by DHEC is required or needed on**

6 **the property?**

7 A We did have a Phase I performed on the property. A

8 company did a Phase I, and they gave us a clean

9 bill on it, that there was no obvious

10 contamination. So that's why we rested comfortably

11 with taking ownership of the property, based on the

12 Phase I.

13 **Q And when was this Phase I done, sir?**

14 A A year ago.

15 **Q Okay. Would - - -**

16 A Right, yeah, approximately.

17 **Q Would that be before this action was filed?**

18 A Yes.

19 **Q Did that Phase I test specifically for mercury**

20 **contamination?**

21 A Phase I, it's my understanding, is just a review of

22 the property for any above-ground problems. There

23 were no soil tests performed, that I'm aware of.

24 **Q Did the people conducting the Phase I, Mr. Clewis,**

25 **contact Mr. Brown or anyone on his behalf as to any**

1 **known contamination on the property?**

2 A I'm sure they would have had to contact him to gain

3 premises to the property - - - to go on the

4 property and look for contamination.

5 **Q Is that stated in their agreement, sir, to your**

6 **knowledge?**

7 A I don't know. I'm not sure.

8 **Q Do you happen to have a copy of that document, sir?**

9 A I would have it in the file somewhere.

10 Mr. Foster - Is there a problem with us

11 getting a copy of that?

12 Mr. Sheedy - I thought you had already been

13 furnished a copy of it.

14 Mr. Foster - I may have done - - - And let's

15 go off.

16 Whereupon - A brief discussion was held off

17 the record which was not reported.

18 Mr. Foster - What happened off the record is,

19 we've been told we'll be getting a copy of

20 that. Let's see. Unless I'm stating it

21 badly, which please correct me.

22 Mr. Sheedy - In the event that you do not

23 already have it, we would be happy to furnish

24 you with a copy.

25 Mr. Foster - In the event I have it, I would

1 appreciate it being pointed out.

2 **FURTHER EXAMINATION - (By Mr. Foster)**

3 **Q Sir, let me show you these documents marked ACB-11**
 4 **and -12. Can you identify those as having a**
 5 **connection with the subject matter of this lawsuit?**

6 **A** Yes. This is our operating system that --- the
 7 database for our loans, and this is Michael Brown's
 8 one hundred and fifty thousand dollar loan.

9 Mr. Foster - Let's get this marked, if we may.
 10 Again, I assume without objection?
 11 Mr. Sheedy - No objection.
 12 Mr. Easterling - No objection.
 13 Whereupon - Document was marked as Deposition
 14 Exhibit Number 8.

15 **Q Sir, on the second page here of this, what I**
 16 **presume to be the second screen, there is a marking**
 17 **that indicates that this matter was last active 6-**
 18 **27-08?**

19 **A** (Indicating yes)

20 **Q Which, I believe, is the date on Exhibit 5, Page**
 21 **ACB-7, which is the date that is marked by the**
 22 **statement, payoff?**

23 **A** That would have been some sort of transaction. I
 24 have no idea what it was, but that would have been
 25 some sort of transaction on the account.

1 **Q Okay. So now what you have there, sir, in this**
 2 **exhibit, which is 8, that is your record, sir?**

3 **A** Right.

4 **Q And are you able to tell us what the transaction**
 5 **would be that resulted in that date being put in?**

6 **A** I can't tell you what the transaction was. I can
 7 just tell you there was a transaction on the
 8 account for it to show last active. There was
 9 something that happened on the account on June 27th
 10 of '08. It could have been a number of things. I
 11 don't know what it was.

12 **Q Okay, sir. Would there be documentation in the**
 13 **bank's records that would show what it was?**

14 **A** I would think you could tie it back to that
 15 transaction history.

16 **Q Which would be the payoff?**

17 **A** If that's the date on the payoff. I don't know
 18 what that --- I can't remember that date. Was
 19 that the date of the payoff?

20 **Q I will show it to you, sir, but at least that's**
 21 **what I read it as. There is 8, and here is 5.**
 22 **It's the last page on that.**

23 **A** And the same account numbers?

24 **Q I am assuming.**

25 **A** (Indicating yes) - Those are the same dates and the

1 same account number. Yes.

2 **Q So is there any other documentation, sir, that**
 3 **you're aware of that would indicate what happened**
 4 **on that date?**

5 **A** I would not have anything, and I doubt there's
 6 anything in the file.

7 **Q Okay, sir. Let me get those. I believe this one,**
 8 **I can simply state --- This seems to be ACB-13**
 9 **through -16. It would seem to be a copy of the**
 10 **deed into, what I'll briefly call, Home Company**
 11 **for this property as well as other property. Sir,**
 12 **are you aware of when the bank acquired a copy of**
 13 **that deed?**

14 **A** I have no idea.

15 **Q Are you aware, sir, of what circumstances under**
 16 **which it might have acquired that deed?**

17 **A** I would not know that.

18 **Q I should say, a copy. Thank you, sir.**
 19 **Mr. Foster - For identification, I guess we'll**
 20 **get that marked. Without objection?**
 21 **Mr. Sheedy - No objection.**
 22 **Mr. Easterling - No objection, but I just want**
 23 **to be sure that that's the deed ---**
 24 **Mr. Foster - Into Mr. Home's company.**
 25 **Mr. Easterling - No, that's not ---**

1 **Mr. Foster - I'm sorry, my fault, my fault.**
 2 **That is, in fact, the deed out of Mr. Home's**
 3 **company --- Thank you, sir --- into Mr.**
 4 **Brown. My mistake.**
 5 **Mr. Easterling - With that correction, no**
 6 **objection.**
 7 **Mr. Foster - By all means.**
 8 **Whereupon - Document was marked as Deposition**
 9 **Exhibit Number 9.**

10 **Q Perhaps I --- Go ahead. Mr. Sheedy is looking at**
 11 **it. Just to be sure, sir, after I've been properly**
 12 **corrected. Given the fact this is the deed into**
 13 **Mr. Brown, does that make a difference in terms of**
 14 **your answer as to when the bank received it or the**
 15 **circumstances under which it received it?**

16 **A** No.

17 **Q Okay, sir. Sir, I'm handing you what I assume to**
 18 **be described as the commitment and title policy on**
 19 **Atlantic Title Insurance Company. Can you identify**
 20 **this, sir, as being connected to the subject**
 21 **transaction? For the record, I believe that's ACB-**
 22 **17 through -23.**

23 **A** It appears to be a title insurance policy, insuring
 24 the Michael Brown loan to American Community Bank.

25 **Q Sir, do you have any knowledge about whether it is**

1 the policy of the bank, or was the policy of the
 2 bank in 2000, to review its title policies?
 3 A I don't know. Banks do that. Whether they did or
 4 not, I don't know.
 5 Q Does the bank have any knowledge or any
 6 documentation to reflect why this title policy to
 7 American Community Bank has no mention of any
 8 environmental problems on the property?
 9 A I have no idea.
 10 Mr. Sheedy - Object to the form.
 11 Q Sir, does the bank have any knowledge or any
 12 documentation that would explain the fact that on
 13 the page marked ACB-22, in this paragraph that I'm
 14 indicating - - - And I'm going to read it for the
 15 record. It states, the insurance afforded by this
 16 endorsement is only effective if the land is used
 17 or to be used primarily for residential purposes.
 18 A That is a true statement, yes.
 19 Q Does the bank have any knowledge or documents as to
 20 why that document exists in this case?
 21 A No.
 22 Q Does the bank have any knowledge, sir, or
 23 documentation to indicate whether or not the
 24 property in question was residential for Mr. Brown?
 25 A I've not seen any documentation referencing that.

1 Q In this case, according to the bank's knowledge or
 2 according to its documentation, did the bank give
 3 Mr. Brown a required three-day notice right of
 4 counsel on the refinance of residential property?
 5 Mr. Sheedy - Object to the form, use of the
 6 word required. You may answer it over the
 7 objection.
 8 A So restate the question.
 9 Q I'm asking you, sir, whether you have any knowledge
 10 - - - You, again, is you and the bank.
 11 A Right.
 12 Q Do you and the bank have any knowledge or any
 13 documentation indicating why Mr. Brown was or was
 14 not given a three-day notice of right to rescind?
 15 A I don't know the answer to that.
 16 Mr. Foster - Did we get that - - - We have not
 17 yet marked - - - I trust without objection - -
 18 -
 19 Mr. Sheedy - No objection.
 20 Mr. Easterling - No objection.
 21 Mr. Foster - Number 11 (sic).
 22 Whereupon - Document was marked as Deposition
 23 Exhibit Number 10.
 24 Q Sir, I'm handing you this. Can you identify that
 25 as connected with the subject transaction? That

1 is, in the terms of what was given to us, ACB-26
 2 through -29.
 3 Ms. Driscoll - Martin, I'm sorry. Did you say
 4 that was Exhibit 11?
 5 Court Reporter - 10.
 6 Ms. Driscoll - 10, okay.
 7 A It appears to be from the Miller Ingram office in
 8 Cheraw. It's the commitment for title insurance
 9 regarding the property.
 10 Q And that is directed to Mr. Jeff Coley - - -
 11 A (Indicating yes)
 12 Q From the first page?
 13 A That's correct.
 14 Mr. Foster - I hope, without objection, we can
 15 go ahead and get that marked.
 16 Whereupon - Document was marked as Deposition
 17 Exhibit Number 11.
 18 Q Sir, I'm handing you this document. Can you
 19 identify that as connected with this transaction?
 20 This is ACB-36, if I'm right.
 21 A Disbursement request and authorization. Business,
 22 real estate investment. A hundred and fifty
 23 thousand. Paid in cash. Signed by Michael Brown.
 24 I'm not familiar with a form like this. I don't
 25 know what it is.

1 Q Are you aware, sir, whether this was a standard
 2 form with American Community Bank in 2000?
 3 A I don't know that. I'm not familiar with it.
 4 Mr. Foster - Let's get that marked, if there's
 5 no objection.
 6 Whereupon - Document was marked as Deposition
 7 Exhibit Number 12.
 8 Q So this document does state the primary purpose of
 9 the loan is business?
 10 A It does.
 11 Q Sir, do you have any knowledge or documentation to
 12 indicate why that document would state that this
 13 is, what I will refer to, as a business loan, and
 14 the title policy makes reference to residential
 15 purposes?
 16 A I have no idea why they're different.
 17 Q Sir, does the bank have any knowledge or any
 18 documentation of any attempt to amend the Atlantic
 19 Title Insurance policy to reflect that this was a
 20 business loan?
 21 A I'm not aware of any documentation that would do
 22 that.
 23 Q Sir, I'm handing you what's previously marked ACB-
 24 37 to -40. Can you identify that document as
 25 connected with this loan?

1 A It appears to be an assignment of deposit account
2 on Michael Brown's loan. Grantor, Billie Horne of
3 Marshville.

4 Q And by his loan, you were talking about the one
5 that's the subject of this suit?

6 A (No response)

7 Q If you know, sir.

8 A I can see the loan number. The loan number is on
9 there. Yes.

10 Mr. Foster - Let's get that marked, if there's
11 no objection.

12 Mr. Sheedy - No objection.

13 Mr. Easterling - No objection.

14 Whereupon - Document was marked as Deposition
15 Exhibit Number 13.

16 Q Sir, I understand this to be, on its face, an
17 assignment of a CD account belonging to Billie
18 Horne for the purpose of collateral on this
19 mortgage loan?

20 A It's pretty shaded at the top, but that's what it
21 appears to be. I mean, you can barely read the
22 account number and the loan origination, which
23 matches up with this, and the principal amount.
24 That's apparently what it is.

25 Q Okay, sir. Does the bank understand the signatures

1 on this document to be original?

2 A (No response)

3 Q Let me say that again. That's incorrect.

4 Mr. Sheedy - I think you mean authentic.

5 Mr. Foster - Well, I was going to say genuine,
6 but I'll accept that.

7 Q Does the - - -

8 A I'm not a - - - I'm not a signature expert. I
9 couldn't tell you that. It was apparently signed
10 by Michael Brown and Billie Horne, but I don't
11 know.

12 Q Billie?

13 A Billie. Yes, Billie W. Horne.

14 Q To your knowledge, sir, who is Billie W. Horne?

15 A I don't know.

16 Q Sir, does this CD still exist as collateral for
17 this particular claimed mortgage and loan that is
18 the subject - - -

19 A No.

20 Q Of this action?

21 A No.

22 Q The CD does not exist?

23 A I don't know whether the CD exists, but it's not a
24 part of the loan. It's not an assignment to the
25 loan.

1 Q I apologize. I'm not quite understanding. Do you
2 have knowledge of whether this CD account still
3 exists?

4 A I do not.

5 Q Okay, sir. Can you tell me, sir, whether the bank
6 has any knowledge or any documentation to indicate
7 that it has tried to learn whether that CD account
8 still exists?

9 A I have no documentation as to whether it still
10 exists or whether it's assigned - - - still
11 assigned to the loan itself.

12 Whereupon - A brief discussion was held off
13 the record which was not reported.

14 FURTHER EXAMINATION - (By Mr. Foster)

15 Q Sir, this is very dark, but if I'm reading this
16 correctly, can we agree that this recites a loan
17 date of 12-29-2000 and a maturity date of 12-30 - -
18 - I believe this says '03, but I'll ask your
19 opinion.

20 A I'd say 12-29-2000. Maturity, 12-30-something. I
21 can't tell either what the date is. The year, I
22 can't tell the year.

23 Q Sir, in this suit, I presume it's undisputed that
24 the bank has not proceeded against Ms. Billie
25 Horne?

1 A We have not.

2 Q Are you capable of telling me whether there is any
3 collateral for this action that still exists in the
4 name of Billie Horne?

5 A My review of the file would indicate there is no
6 collateral. This is not collateral on our loan.

7 Q And I'm not trying to be argumentative, sir, but
8 would you tell me why?

9 A I have no idea. It was obviously released at some
10 point.

11 Q Is there a document releasing it?

12 A I could not find one in the file.

13 Q Well, again, I'm not attempting to be
14 argumentative, sir. How then do you know it's been
15 released?

16 A I had no record in the file where it exists any
17 longer. It's not tied to the loan. We searched
18 the collateral records, and it's not part of the
19 loan itself.

20 Q Now, when you say it does not exist, the CD does
21 not exist?

22 A The CD does not exist as collateral on our loan.

23 Q What documentation would exist to tell you that it
24 does not exist as collateral on the loan?

25 A I don't have any documentation that tells me it

1 does not, it's not collateral, but I don't have any
 2 documentation that says it is collateral on the
 3 loan, either.
 4 **Q Is that not what this purports to be, sir?**
 5 A Well, it did at the time the loan was made, or when
 6 it --- when this was signed in 2007 --- or
 7 excuse me, 2000.
 8 **Q Well, let me ---**
 9 A It apparently was.
 10 **Q And again, I'm not attempting to be argumentative,**
 11 **sir. Perhaps you have something on there that can**
 12 **tell me. I don't see anything to indicate when**
 13 **this document was signed. I see a reference to a**
 14 **loan. I see a reference to maturity. Can you**
 15 **instruct me as to anything on there that indicates**
 16 **when it was signed?**
 17 A You are correct. I cannot tell you when it was
 18 signed.
 19 Mr. Sheedy - May I gently suggest, for clarity
 20 of the record, that it is rather evident from
 21 the next stack of documents that you have the
 22 chain of substitutions of CDs. That may
 23 provide you with the answer that you are
 24 seeking. Do you follow what I'm saying to
 25 you?

1 Mr. Foster - I understand.
 2 **FURTHER EXAMINATION - (By Mr. Foster)**
 3 **Q So let me show you this, following Mr. Sheedy's**
 4 **suggestion. This is ACB-41. Can you identify**
 5 **that, sir?**
 6 A It looks like a substitution of collateral on this
 7 loan.
 8 **Q Yes, sir.**
 9 A It's moving --- the substitution of one CD, and a
 10 new CD being placed. Different account numbers.
 11 **Q Okay, sir. In fact, I think, if you can hold onto**
 12 **that for a minute, the one that apparently is**
 13 **marked as substituted or being substituted is 6104,**
 14 **followed by three zeros, 89?**
 15 A That's being substituted, yes.
 16 **Q That's being substituted for, I believe?**
 17 A The new number is -00526.
 18 **Q Okay, sir. This bears the purported signatures of**
 19 **Mr. Brown and Ms. Billie Home?**
 20 A That is correct.
 21 **Q I am assuming, with an -le, it is Ms.?**
 22 A Yes.
 23 Mr. Foster - Okay. Let's get that marked, if
 24 we can.
 25 Whereupon - Document was marked as Deposition

1 Exhibit Number 14.
 2 **Q Sir, can you identify this, ACB-43, I believe? No,**
 3 **-42.**
 4 A This appears to be a new CD number on this loan,
 5 signed by C.W. Home.
 6 **Q And what is the number on that one, sir?**
 7 A CD number?
 8 **Q (Indicating yes)**
 9 A -14653, the last numbers.
 10 Mr. Foster - Let's get that marked.
 11 Whereupon - Document was marked as Deposition
 12 Exhibit Number 15.
 13 **Q And, sir, can you identify this, ACB-43?**
 14 A Yes. Another substitution.
 15 **Q And does this --- I should have asked, sir. Do**
 16 **all of these that we've discussed, the**
 17 **substitutions, connect back to the subject mortgage**
 18 **and loan?**
 19 A It has the same account number on them, each one.
 20 **Q Which would mean yes?**
 21 A I would think.
 22 **Q Yes, sir.**
 23 **Mr. Foster - Let's get this last one marked.**
 24 **Again, I assume without objection?**
 25 **Mr. Sheedy - No objection.**

1 **Mr. Easterling - No objection.**
 2 **Whereupon - Document was marked as Deposition**
 3 **Exhibit Number 16.**
 4 **Q The last is signed by Mr. C.W. Home?**
 5 A That appears to be ---
 6 **Q Purportedly.**
 7 A Signed by C.W. Home.
 8 **Q All three of these items, sir, Exhibits 14 through**
 9 **16, are witnessed by Mr. Jeff Coley, according to**
 10 **the signatures thereon?**
 11 A That is correct.
 12 **Q Sir, we've been supplied with this document, ACB-44**
 13 **through -45. Can you identify that, sir?**
 14 A That's a promissory note, dated 10-29-07.
 15 **Q And what signature is apparently on that, sir?**
 16 A Michael Brown.
 17 **Q Sir, to your knowledge or according to your**
 18 **documentation of the bank, is this note intended to**
 19 **be in substitution for or partial payment on the**
 20 **subject mortgage note that we're discussing in this**
 21 **case?**
 22 **Mr. Sheedy - Object to the form.**
 23 A I don't know what it pertains to. It's a different
 24 account number, apparently, from what I can see.
 25 **Q Does the bank have documentation indicating the**

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1 payment of eighty-seven thousand four hundred to
 2 Mr. Brown on this date, the date of that document?
 3 A Unless you can tie - - - I wouldn't know - - -
 4 would not know that, unless you can tie it back to
 5 that transaction history.
 6 Q Well, sir, part of my question is whether it is
 7 tied back to the transaction history.
 8 A I'd have to see the transaction history to tell you
 9 that.
 10 Q Can I pull that out for you?
 11 A Sure.
 12 Q This is Exhibit 5, which I believe would be within
 13 that period, sir.
 14 A There's a transaction on October 29, '07 for
 15 eighty-seven thousand four hundred dollars. It
 16 says, interest payment. Apparently, it was an
 17 extension of credit to pay the interest on the
 18 loan.
 19 Q Okay, sir. Does the bank - - -
 20 Mr. Foster - Well, let's get that marked, to
 21 begin with. I assume without objection?
 22 Mr. Sheedy - No objection.
 23 Mr. Easterling - No objection.
 24 Whereupon - Document was marked as Deposition
 25 Exhibit Number 17.

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1 Q So does the bank have any documentation or grounds
 2 to believe this is not the genuine signature of Mr.
 3 Brown?
 4 A I don't have any way to know that.
 5 Q Is that note, in fact, being sued on in this suit?
 6 A Apparently, this loan was made to pay the interest
 7 on the one hundred and fifty thousand dollar loan
 8 that was in '00, 2000. This was made in October of
 9 '07, apparently to pay the interest.
 10 Q Sir, I'm showing you this document that we've been
 11 given, which is ACB-46 and -47. There seems to be
 12 no signature here, and perhaps, yourself or counsel
 13 can tell me what this document is.
 14 Mr. Sheedy - It's the same document you had
 15 before. It's just not the full one.
 16 Mr. Foster - Oh, so this is a part of - - -
 17 A The signature page may be missing on that.
 18 Mr. Sheedy - Yes.
 19 Q Well, the document before, I'll note for the
 20 record, states on the signature page, Page 2. This
 21 document, ACB-47, also states Page 2. So I suggest
 22 there's some misnumbering, if it's the same
 23 document.
 24 Mr. Foster - Do you want to go off?
 25 Ms. Driscoll - Yes, we can go off.

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1 Mr. Foster - Let's go off the record.
 2 Whereupon - A brief discussion was held off
 3 the record which was not reported.
 4 FURTHER EXAMINATION - (By Mr. Foster)
 5 Q We can go back on the record. Sir, off the record,
 6 Mr. Sheedy suggested that ACB-46 and -47 is a later
 7 assignment of deposit account document related to
 8 the promissory note we discussed, Exhibit 17, and
 9 that the signature page is missing. Would that
 10 seem, to you, to be a reasonable explanation, sir?
 11 A That is correct.
 12 Q Do we know where the signature page is?
 13 A I have no idea.
 14 Q Would it be fair to say that, if we knew where it
 15 was, it would be here?
 16 A It would be there. We've given you the complete
 17 file.
 18 Mr. Foster - Let's go ahead and mark that one.
 19 I presume without objection?
 20 Mr. Sheedy - No objection.
 21 Mr. Easterling - No objection.
 22 Whereupon - Document was marked as Deposition
 23 Exhibit Number 18.
 24 Q Sir, I'm handing you ACB-52, -53. Can you identify
 25 this, sir?

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1 A That appears to be a promissory note dated June of
 2 '08 for two hundred and forty-eight thousand two
 3 hundred dollars - - - two hundred and six dollars
 4 on June 27, '08, signed by Michael Brown.
 5 Q Now, sir, that is, as I recall, the same date we've
 6 been discussing as the, quote, payoff on Exhibit 5?
 7 A (No response)
 8 Q Does the bank understand or have documentation to
 9 indicate that this is Mr. Brown's present note on
 10 this obligation?
 11 A I have no reason to believe it isn't, but I don't
 12 have any reason to believe it is. I don't know
 13 what this transaction is. Now, the transaction,
 14 was it dated in '07 or '08? The principal - - -
 15 Q The original or - - -
 16 Mr. Sheedy - 2000.
 17 A I know the original, but then when the payoff - - -
 18 What was the date on the payoff?
 19 Q The payoff, I believe - - -
 20 Mr. Sheedy - 6-27-08.
 21 Q I agree.
 22 A 2-27-08?
 23 Mr. Sheedy - 6-27-08.
 24 Q 6-27-08.
 25 A Yeah, okay.

1 Q Which is the same as this?

2 A Yes.

3 Q Does the bank have any grounds, sir, to doubt the originality of the signature - - -

4

5 A No.

6 Q Let me finish, just to be sure I've gotten it out. To doubt the originality of the signature on this document?

7

8

9 A I have no reason to doubt it.

10 Q Okay, sir. Sir, does this document form the basis of any claims under this suit, to your knowledge?

11

12 Mr. Sheedy - Object to the form. Let me annotate that. As you know, Martin, we have sued for a hundred and fifty thousand dollars. The promissory note on which we are suing is attached to the complaint.

13

14

15

16

17 Mr. Foster - Okay, sir. Thank you. Let me go ahead and get that marked. I assume, without objection?

18

19

20 Whereupon - Document was marked as Deposition Exhibit Number 19.

21

22 Mr. Sheedy - But if you would like for us to sue on that note, we certainly would be happy to reconsider it.

23

24

25 Mr. Foster - I assume, Jim, that at some

1 point, this note will have to be explained to someone. Shall we leave it at that?

2

3 **FURTHER EXAMINATION - (By Mr. Foster)**

4 Q Sir, let me hand you this. This is ACB-54 through -57. Can you identify this document, sir?

5

6 A It appears to be an assignment of deposit account, dated June of '08. The principal is two forty-eight. It's signed by C.W. Home and Michael Brown.

7

8

9

10 Mr. Foster - Let's go ahead and get that marked - - - Well, go ahead, if you wish to look at it. Give counsel the - - -

11

12

13 A Okay.

14 Mr. Foster - Okay?

15 Mr. Sheedy - (Indicating yes)

16 Mr. Foster - Without objection - - -

17 Mr. Sheedy - No objection.

18 Mr. Easterling - No objection.

19 Mr. Foster - We'd like to get this marked.

20 Whereupon - Document was marked as Deposition Exhibit Number 20.

21

22 Q Sir, among the documents that we have been given, this would seem to be on its face the last assignment of deposit, being marked, as I think you indicated, 6-27-08. Does the certificate of

23

24

25

1 deposit recited on the face of this document exist?

2 A I have no idea.

3 Q Does the bank understand itself to have the right to draw against or to claim as collateral that certificate of deposit?

4

5

6 A If that exists, the certificate of deposit exists, we would have that right to claim that certificate of deposit.

7

8

9 Q Have you done so, sir - - -

10 A No.

11 Q In this lawsuit?

12 A No.

13 Q If I've asked this, sir, before, forgive me. I'm not trying to be repetitive. Does the bank have any grounds to doubt the genuineness of either signature on this document, sir?

14

15

16

17 A No.

18 Q And that is Exhibit 20 that we're referring to. Sir, can you identify this document?

19

20 A It appears to be a collateral receipt of a CD that was dated - - - for two hundred and forty-eight thousand two hundred and six dollars in it, dated June of '08.

21

22

23

24 Q Okay, sir. Does the bank presently use this form?

25 A No.

1 Mr. Foster - Let's go ahead and get that marked.

2

3 Whereupon - Document was marked as Deposition Exhibit Number 21.

4

5 Q Sir, is this document, Exhibit 21, is that a separate document, to your knowledge, from Exhibit 20, or is this perhaps an additional page?

6

7

8 A This would be the assignment of a CD deposit account. That would be receipt of the CD itself.

9

10 Q Do I understand you to be saying - - -

11 A They'd be different.

12 Q Okay. They'd be different documents. This one is dated, I think we can agree, 6-27-08?

13

14 A That is correct.

15 Q If I've asked this again, sir, forgive me. Does the bank have any grounds to doubt the genuineness of the signatures on that document?

16

17

18 A I do not.

19 Q Sir, the witness on this document is again - - - or appears to be Mr. Jeff Coley?

20

21 A That is correct.

22 Q Okay, sir. Sir, I'm handing you what I believe to be the original promissory note in this case. Can you identify that as such?

23

24

25 A Yes. It appears to be the original promissory note

1 dated 12-29-2000 for a hundred and fifty thousand
2 dollars.

3 **Q And signed apparently by - - -**

4 **A By Michael Brown.**

5 Mr. Foster - And let's get that marked.

6 Whereupon - Document was marked as Deposition
7 Exhibit Number 22.

8 **Q Sir, would I be correct in my assumption that when
9 a bank takes a note to satisfy an earlier note, the
10 later note would then be the one upon which further
11 action would have to proceed?**

12 **Mr. Sheedy - Object to the form, calls for a
13 legal conclusion.**

14 **Q And if it calls for a legal conclusion, sir, I'm
15 not asking you to make one. But as a banker, to
16 the extent you can answer, I'll ask you to do so.**

17 **A You can have an original note with subsequent
18 modifications to the original note and terms. If
19 the original note was completely paid, there could
20 be a new note drawn and signed.**

21 **Q And that would seem to be what the documentation
22 indicates, does it not?**

23 **A It does.**

24 **Q Thank you, sir. Sir, this would appear to be - - -
25 Again, I'm not exactly asking you, but this would**

1 **appear to be the original mortgage in the case. Is
2 that correct?**

3 **A It does. A hundred and six acres.**

4 Mr. Foster - Let me get that marked. Again, I
5 assume without objection?

6 Mr. Sheedy - No objection.

7 Mr. Easterling - No objection.

8 Whereupon - Document was marked as Deposition
9 Exhibit Number 23.

10 **Q And, sir, this was - - - As I trust you've noticed
11 since we've stopped using ACB numbers - - -**

12 **A Right.**

13 **Q These are no longer one of the things I've received
14 recently from your folks, but they have been, I
15 believe, used in the case before. Can you identify
16 this document, sir?**

17 **A It appears to be a commercial guaranty. Borrower,
18 Michael Brown. Guarantor, C.W. Horne. To American
19 Community Bank.**

20 **Q Sir, is that document - - - Let's leave that aside
21 for a moment. Strike that. Thank you.**

22 **Mr. Foster - Without objection, I assume we
23 can get that marked.**

24 **Mr. Sheedy - No objection.**

25 **Mr. Easterling - No objection.**

1 **Whereupon - Document was marked as Deposition
2 Exhibit Number 24.**

3 **Q Sir, I'm going to hand you I trust, for time's
4 sake, a series of documents entitled modification
5 and extension agreements, which date from 01-23-02;
6 8-28-03, all of these on their face; August 20,
7 '04; February 22nd, '05; July 25th, '05; January
8 20th, '06 - - - Pardon, January 30th, '06; August
9 28th, '06; and October 29th, '07. I'm handing
10 those to you as one document, sir. Take as much
11 time as you wish to go through those.**

12 **A Okay. I've reviewed them.**

13 **Q Okay, sir. Sir, I don't know whether you've had
14 time to notice, but all of those documents, those
15 extension agreements, have what purports to be Mr.
16 Brown's signature on them, I believe.**

17 **A I don't find any signatures on that one.**

18 **Q Okay.**

19 **A This one has - - -**

20 **Q The first one, sir?**

21 **A Yes. Yes.**

22 **Q Okay.**

23 **A That is correct.**

24 **Q Does the bank have any grounds to doubt the
25 genuineness of those signatures?**

1 **A We do not.**

2 **Q I'm sorry?**

3 **A I do not.**

4 **Q Okay, sir. I believe these documents also bear,
5 sir, what appears to be the counter signature of
6 Mr. Horne. Let me check first to be sure I'm
7 correct. The first one apparently has no signature
8 page. With that caveat, his name also appears, I
9 believe, on each one, sir?**

10 **A That's correct, with the exception of the first
11 one, which does not have a signature page.**

12 **Q And that may be, I will state for the record,
13 because I made a mistake in making a copy of the
14 same. Sir, as to those signatures as well, does
15 the bank have any reason to doubt the genuineness
16 of those signatures?**

17 **A No.**

18 **Q Does the bank have any knowledge, sir, or
19 documentation to indicate who prepared those
20 extension agreements?**

21 **A Who prepared those?**

22 **Q Yes, sir.**

23 **A We do not.**

24 **Q Okay, sir. Sir, as to all of these documents that
25 I will refer to generically as internal bank**

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1 documents - - - I think that's just about
 2 everything we've been through, except possibly the
 3 deed - - - where are the originals of those
 4 documents?
 5 A There probably are not any originals. They're
 6 probably on microfilm. A lot of these internal
 7 documents are microfilmed.
 8 Q Well, now, sir, in making that response to - - -
 9 Mr. Sheedy - I'm going to object to the form
 10 of - - - Object to the use of the words,
 11 internal documents, to the extent that it
 12 suggests the documents that have been signed
 13 by people not employed by the bank are still
 14 internal.
 15 Mr. Foster - Okay. I will clarify then.
 16 Q Sir, with the exception of the notice here and I
 17 believe the deed into Mr. Brown and the DHEC
 18 statements - - - letters, and the title insurance -
 19 - - Well, I'm not going to exclude the title
 20 insurance policies. Would it be fair to describe
 21 those as parts of the bank's records?
 22 A The deed?
 23 Q No, sir. Excepting the deed and the notice.
 24 A You mean Internal records? Is that what you're - -
 25 -

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1 Q What we've been discussing this morning - - -
 2 A Yes.
 3 Q With those exhibits?
 4 A These would be internal records, with the exception
 5 of the deed and the original note.
 6 Q Where are the originals of these documents, sir?
 7 The ones that I just referred to.
 8 A They would be in Elkin, North Carolina in the loan
 9 op center.
 10 Q Sir, are you capable of telling me which of these
 11 documents exist as originals?
 12 A I would have to look, but I assume the deed of
 13 trust and the original note should be in - - - in
 14 our possession.
 15 Q And what about the others?
 16 A The others would be - - -
 17 Q If you need to go through them one-by-one, please
 18 do so.
 19 A The internal documents, they typically would be
 20 filmed and shredded.
 21 Q Would that include the guaranties?
 22 A The guaranties should be an original.
 23 Q And how about the assignments of collateral?
 24 A Those would be internal documents. They would be
 25 filmed and shredded.

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1 Q Okay, sir. Would it be fair to say that the
 2 originals, or as close as now exists, would be in
 3 Elkin?
 4 A I would think they would be.
 5 Q Sir, is there any reason to your knowledge why
 6 those are not available for examination?
 7 A I don't know.
 8 Q Okay, sir.
 9 Mr. Sheedy - You're asking why documents that
 10 have been shredded are not available for
 11 examination?
 12 Mr. Foster - No, no, no.
 13 A The originals?
 14 Mr. Foster - No. I think I was being more
 15 generic. I was asking, was there anything
 16 that was available to the bank that would not
 17 be available? I think that's what the
 18 gentleman answered.
 19 Mr. Sheedy - Okay.
 20 A I mean, this is off the record - - -
 21 Whereupon - A brief discussion was held off
 22 the record which was not reported.
 23 FURTHER EXAMINATION - (By Mr. Foster)
 24 Q Sir, referring back to the Atlantic Title
 25 commitment and policy, Exhibit 10 - - -

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1 A Right.
 2 Q Which I have previously - - -
 3 Mr. Foster - Oh, let me stop. I don't think
 4 we got the bundle of modification and
 5 extension agreements put in as an exhibit. I
 6 trust without objection?
 7 Mr. Sheedy - Are the documents being marked
 8 collectively?
 9 Mr. Foster - Unless you wish otherwise.
 10 Mr. Sheedy - That's fine.
 11 Mr. Easterling - No objection.
 12 Whereupon - Document was marked as Deposition
 13 Exhibit Number 25.
 14 Q Sir, again, going back to what I was starting with
 15 with Exhibit 10, has the bank made a claim under
 16 the Atlantic Title insurance policy on this
 17 property?
 18 A No.
 19 Q Does the bank have a position as to whether there
 20 is a claim under that policy?
 21 A We don't feel there is a claim on the policy.
 22 Q Would I be fair in stating that is because of the
 23 results of the Phase I you received?
 24 A Exactly.
 25 Q Okay, sir. Sir, there are reports, as I understand

1 it, of funds that have gone missing between the
2 time the bank did its due diligence on American
3 Community Bank and their later discovery of missing
4 funds. Would that be a fair statement?

5 Mr. Sheedy - Object to the form.

6 A I'll say there's been newspaper publicity regarding

7 ---

8 Q Yes, sir.

9 A Regarding your statement.

10 Q Yes, sir. I believe some 4.3 million dollars?

11 A I think that was in the newspaper. I can't
12 validate that, either way.

13 Q Were there funds missing from the American
14 Community Bank - - -

15 A I don't know that.

16 Q Accounts?

17 A I have no idea.

18 Q None, sir?

19 A I'm a loan - - - I only do the loans. That was
20 another part of the bank. That was the deposit
21 side, so - - - (No further response)

22 Q Okay.

23 A That's supposedly what was reported.

24 Q Well, sir, do you have any knowledge or does the
25 bank have any documentation to indicate whether

1 those missing funds had some connections with Mr.
2 Jeff Coley?

3 A I would think somewhere between the bonding company
4 and the bank, they would have that, the audit
5 group.

6 Q Okay, sir. I am obliged to ask, sir, whether the
7 bank has any knowledge of any other persons
8 involved in those funds going missing?

9 A Not that I'm aware of.

10 Q I suppose I also need to ask, sir, insofar as it
11 may have relevance to this case, does the bank have
12 any knowledge or any documentation of the
13 destination or final payment of those funds? Where
14 they went?

15 Mr. Sheedy - Object to the form. This entire
16 line of questioning has no relevance to this
17 case.

18 Mr. Foster - Well, it may do. But
19 unfortunately, it is in our notice, and we
20 don't know that until he answers.

21 A I have no idea.

22 Mr. Sheedy - He just told you it's on the
23 deposit side.

24 A It's on the deposit. The audit - - - You'd have to
25 have the audit group come in and do the same, do a

1 deposition. I have no idea where that is.

2 Q Okay.

3 A That's an entirely separate department.

4 Q Sir, is the bank aware that a 1099 was issued on
5 this loan to Mr. Brown for the debt?

6 A When?

7 Mr. Sheedy - Object to the form, for the debt.

8 Q Well, for any debt.

9 Mr. Sheedy - Same objection. 1099s aren't
10 issued for debt, Martin.

11 Mr. Foster - I'm asking.

12 A Is a 1099 forgiveness of debt?

13 Mr. Sheedy - No.

14 Mr. Foster - I don't - - -

15 A Interest paid?

16 FURTHER EXAMINATION - (By Mr. Foster)

17 Q I realize we're being very loose here, but - - -

18 A Yeah.

19 Q My question is rather simple, not what Mr. Sheedy
20 thinks it is or not - - - Are you aware that a 1099
21 was issued to Mr. Brown?

22 Mr. Sheedy - Same objection.

23 A No.

24 Q Is a copy of that 1099 within the bank's records?

25 A If we issued it, it should be there.

1 Mr. Foster - Okay, sir. May we go off?

2 Whereupon - A brief discussion was held off
3 the record which was not reported.

4 FURTHER EXAMINATION - (By Mr. Foster)

5 Q Back on the record. Sir, does the bank have any
6 knowledge or documentation to indicate any dealings
7 between the parties to this mortgage loan, other
8 than the actual loan documents?

9 A I have no evidence. I'm not aware of anything.

10 Q Does the bank have any documentation or knowledge
11 to indicate whether or not Mr. Brown was living on
12 the property at the time the loan was made?

13 A I have no idea.

14 Q Now, let me be clear. When I say the loan was
15 made, I should be more specific. At the time the
16 loan was closed, 12-29, as I recall, 2000.

17 A I see no documentation to say that.

18 Mr. Foster - Okay, sir. If I can have five
19 minutes with my client, I think we may be
20 about done.

21 Whereupon - A brief recess was taken.

22 FURTHER EXAMINATION - (By Mr. Foster)

23 Q Mr. Clewis, does the bank have any knowledge or
24 documentation to indicate that claims of forgery
25 have been made against Mr. Jeff Coley?

1 A I would have to refer you to the audit group.
 2 That's not my area. I don't know.
 3 **Q Sir, we are agreed that Mr. Coley is the man who**
 4 **closed this loan?**
 5 A That is correct.
 6 Mr. Sheedy - Object to the form. Miller
 7 Ingram closed this loan.
 8 **Q What is your understanding, sir, of Mr. Miller**
 9 **Ingram's place in the closing of this loan? What**
 10 **did he do?**
 11 A Well, typically in a mortgage loan closing, he
 12 would do the title work and do the closing, and
 13 then have all of the bank documents signed at a
 14 loan closing.
 15 **Q Do I understand your testimony to be, sir, that I**
 16 **would be required to ask the audit group of Yaddin**
 17 **Valley to find out whether there has been any**
 18 **charges of forgery against Mr. Coley?**
 19 A That is correct. I would have no knowledge of
 20 that.
 21 **Q Well, by that, sir, I assume you mean you**
 22 **personally have no knowledge of that?**
 23 A I have no knowledge personally, but people in the
 24 bank, or in the internal audit group, would be
 25 handling all of those matters.

1 Mr. Sheedy - By charges, do you mean criminal
 2 charges?
 3 Mr. Foster - Just charges, claims.
 4 Mr. Sheedy - Which?
 5 Mr. Foster - Which of what, sir?
 6 Mr. Sheedy - Charges, or claims?
 7 Mr. Foster - Both. I'm not using charges in a
 8 technical sense. Claims or charges.
 9 **FURTHER EXAMINATION - (By Mr. Foster)**
 10 **Q To be sure that I've asked the question, sir, on**
 11 **the point that Mr. Sheedy has properly raised, are**
 12 **you aware of any civil claims that have been made**
 13 **that Mr. Coley has engaged in any forgery?**
 14 A I am not.
 15 **Q Are you aware, sir, of the bank being sued on**
 16 **behalf of a fellow named, I believe, Eric Hunts?**
 17 A I do not have anything to do with that. I have no
 18 knowledge of any of that.
 19 **Q Well, I take it by your answer, sir, you're aware**
 20 **of his suit?**
 21 A I am not.
 22 **Q Okay, sir. You're not aware of the suit?**
 23 A I am not aware of the suit.
 24 **Q So you don't know whether he is or is not suing the**
 25 **bank?**

1 A I do not.
 2 Mr. Foster - I believe I need to make some
 3 noise at this point, though. I'm going to
 4 leave the point, but I believe the bank
 5 institution's knowledge or documentation of
 6 whether there is any claim, civil or criminal,
 7 of forgery against Mr. Coley does fall within
 8 the parameters of our notice. To that extent,
 9 I believe that Mr. Clewis should have been
 10 apprised of that in coming here today.
 11 Mr. Sheedy - Mr. Coley is deceased.
 12 Mr. Foster - He is, indeed.
 13 Mr. Sheedy - There are obviously no charges
 14 against him. He is deceased.
 15 Mr. Foster - I am aware of the point. With
 16 the greatest respect to counsel, I don't
 17 believe it answers - - -
 18 Mr. Sheedy - I think the witness - - - Well,
 19 I'll let the testimony speak for itself.
 20 Mr. Foster - Indeed. Those are the questions
 21 I had.
 22 Mr. Sheedy - Harry, do you want to go next?
 23 Mr. Easterling - I'll let you go next.
 24 Whereupon - A brief recess was taken.
 25 **EXAMINATION - (By Mr. Sheedy)**

1 **Q Mr. Clewis, I don't need to introduce myself to**
 2 **you, do I?**
 3 A No, sir.
 4 **Q The same rules that Mr. Foster shared with you**
 5 **apply during my examination of you. In particular,**
 6 **if you or anyone else needs to take a break for any**
 7 **reason, so indicate. We will adjourn and reconvene**
 8 **at the convenience of all. Mr. Clewis, I have made**
 9 **and placed in front of you three stacks of**
 10 **documents. Okay. The first stack consists of**
 11 **Deposition Exhibits 22, 23, 24, 13, 12, 10, 11, and**
 12 **25, 2, and 4. I think I just showed those to you.**
 13 A Yes.
 14 **Q Do you agree that is what is included in Stack 1?**
 15 A Yes.
 16 **Q Okay. Stack 2, Mr. Clewis, consists of Deposition**
 17 **Exhibits 17 and 18. Do you agree that that is**
 18 **what's in Stack 2?**
 19 A Yes.
 20 **Q And Stack 3, which regrettably is closer to me than**
 21 **it is to you, consists of Deposition Exhibits 19**
 22 **and 20. Is that correct?**
 23 A Yes.
 24 **Q The first stack consists of a promissory note for a**
 25 **hundred and fifty thousand, dated 12-29-2000; a**

- 1 mortgage securing that promissory note; a
 2 commercial guaranty; an assignment of deposit
 3 account, also bearing the date of 12-29-2000; a
 4 disbursement request and authorization for a
 5 hundred and fifty thousand; a commitment for title
 6 insurance; a copy of a portion of Miller Ingram's
 7 commitment for title insurance; and a stack under a
 8 clip of modification and extension agreements; a
 9 check for a hundred and fifty thousand made payable
 10 to Miller Ingram as trustee; and a HUD-1. Have you
 11 previously identified all of these documents?
 12 A Yes.
 13 Q Would it be fair to say that these are the
 14 documents that pertain to the original one hundred
 15 and fifty thousand dollar loan?
 16 A That is a true statement. Yes.
 17 Q Okay. To the best of your knowledge, information,
 18 and belief as you sit here today, do you have any
 19 information that would suggest that that's not
 20 Michael Brown's signature which appears on Page 2
 21 of the promissory note?
 22 A No.
 23 Q Do you have any knowledge or information that would
 24 suggest that that is not Michael Brown's signature
 25 which appears on the last page of the mortgage?

- 1 A No.
 2 Q Do you have any knowledge or information that that
 3 is not C.W. Horne's signature which appears on the
 4 commercial guaranty?
 5 A No.
 6 Q Do you have any knowledge or information that that
 7 is not Billie Horne's signature which appears on
 8 the last page of the assignment of deposit account?
 9 A No.
 10 Q Do you have any knowledge, information, or belief
 11 that is not Michael Brown's signature which appears
 12 on the assignment of deposit account?
 13 A No.
 14 Q Do you have any knowledge that is not Michael
 15 Brown's signature which appears on the disbursement
 16 request and authorization?
 17 A No.
 18 Q Deposition Exhibit 2, do you have any information
 19 with respect to Deposition Exhibit 2 that would
 20 enable you to believe that the sum of a hundred and
 21 fifty thousand was not distributed to the closing
 22 attorney, Miller Ingram?
 23 A No.
 24 Q Do you have any reason to believe that any of the
 25 entries which appear on Deposition Exhibit 4, the

- 1 HUD settlement statement, are incorrect in any way?
 2 A No.
 3 Q On the last page, or next to last page - - Well,
 4 actually on the last page and the next to last
 5 page, do you see two signatures?
 6 A I do.
 7 Q Do you have any reason to think that the signature
 8 under the typewritten Michael R. Brown is not
 9 Michael R. Brown?
 10 A No.
 11 Q Do you have any reason to think that the signature
 12 above the typewritten Miller S. Ingram, Junior is
 13 not Miller Ingram's signature?
 14 A No.
 15 Q Are you a manager of the special assets division -
 16 --
 17 A I am.
 18 Q Of the bank?
 19 A I am, yes.
 20 Q As manager of the special assets division of the
 21 bank, is it your responsibility to pursue the
 22 collection of notes that have not been paid as
 23 agreed?
 24 A That is correct.
 25 Q Is it your belief, as you sit here today, that the

- 1 sum of a hundred and fifty thousand dollars
 2 principal has not been paid by Mr. Brown?
 3 A Yes.
 4 Q Do you have any information from the review of your
 5 files where you have a check from Mr. Brown, or a
 6 series of checks from Mr. Brown, for the principal
 7 indebtedness which total a hundred and fifty
 8 thousand dollars?
 9 A No.
 10 Q There has been some conversation about the title
 11 insurance policy. You do recall, don't you, that
 12 Mr. Foster pointed out that the commitment for
 13 title insurance makes reference to the hundred and
 14 fifty thousand dollar loan as residential. Do you
 15 recall that testimony?
 16 A That is correct.
 17 Q Okay. American Community Bank did not sign the
 18 commitment for title insurance, did it?
 19 A No.
 20 Q Are you aware of American Community Bank ever
 21 signing either the commitment or the actual issued
 22 loan policy for title insurance?
 23 A I am not, no.
 24 Q We have gone through certain documents related to
 25 this first stack, which is the hundred and fifty

1 thousand dollar loan. Now, the guaranty,
 2 Deposition Exhibit 24, is what kind of a guaranty?
 3 A Commercial guaranty.
 4 Q And what does the word commercial mean to you as a
 5 banker?
 6 A Well, it's a commercial transaction. It's a
 7 business transaction.
 8 Q Does that mean this was a business loan?
 9 A Not necessarily, no.
 10 Q Does that mean that, to the best of your knowledge,
 11 the proceeds were used for business purposes?
 12 A Not necessarily.
 13 Q Are you aware that, in this case, Mr. Brown - - -
 14 Whereupon - A brief discussion was held off
 15 the record which was not reported.
 16 Q Are you aware that Mr. Brown, in this case, has
 17 asserted that the proceeds of this loan were used
 18 for the purpose of subdividing this property?
 19 A I did not know that.
 20 Q Do you have any reason to suggest that that was not
 21 how the loan proceeds were used?
 22 A No.
 23 Q I will go through your answer in this case, if you
 24 disagree with my characterization of it. In fact,
 25 let me just do that for the purposes of keeping the

1 record clean.
 2 Mr. Foster - If you say that's what we said,
 3 I'm quite sure it's what we said. If you want
 4 to put it in the record, the location of the
 5 allegation, do so.
 6 FURTHER EXAMINATION - (By Mr. Sheedy)
 7 Q Have you ever seen Paragraph Number 12, Mr. Clewis,
 8 in the answer, counterclaims, and cross-claims that
 9 were filed by Mr. Brown in this case?
 10 A (No response)
 11 Q Do you see Paragraph Number 12?
 12 A Yes.
 13 Q Okay. Take a second and read that, if you would,
 14 please.
 15 A Yes, I've read it.
 16 Q Is it your understanding that, according to Mr.
 17 Brown, the intended source of the funds was the
 18 subdivision and sale of the subject real property?
 19 A That's what he says here.
 20 Q Okay. Mr. Clewis, I'm now going to show you the
 21 second stack of documents, but before I ask you
 22 questions about the second stack, I'm showing you a
 23 1098 Form, dated 2007, Copy B for payer. Have you
 24 seen this before?
 25 A I don't recall seeing this before.

1 Q The issuer, or the lender, on this is American
 2 Community Bank?
 3 A That is correct.
 4 Q And I'm sorry, the borrower is shown as Michael
 5 Brown?
 6 A That is correct.
 7 Q And what is the amount of mortgage interest?
 8 A Eighty-seven thousand four hundred dollars paid.
 9 Q At Paragraph Number 1, it says, mortgage interest
 10 received from borrower.
 11 A Right.
 12 Q Is that correct?
 13 A That's correct.
 14 Q Would it be your understanding that the amount of
 15 mortgage interest that was reported for the year
 16 2007 as received from the borrower, Michael Brown,
 17 to the IRS is eighty-seven thousand four hundred?
 18 A That's what was reported.
 19 Mr. Sheedy - Okay. I would ask that this be
 20 marked, please.
 21 Mr. Foster - No objection.
 22 Mr. Sheedy - And unless you folks object, I'm
 23 just going to do this sequentially as opposed
 24 to starting Plaintiff's and Defendants'.
 25 Mr. Foster - I have no problem.

1 Mr. Sheedy - Okay. Thank you.
 2 Whereupon - Document was marked as Deposition
 3 Exhibit Number 26.
 4 Q Now, the amount of mortgage interest received from
 5 payer/borrower on Line 1 of the 1098, how does that
 6 compare to the loan amount on Exhibit 17?
 7 A That is the same amount.
 8 Q And it is the same amount on the assignment of
 9 deposit account as well?
 10 A That is correct.
 11 Q Do these three documents, 17, 18, and 26, suggest
 12 to you that American Community Bank made a loan to
 13 Michael Brown for eighty-seven thousand four
 14 hundred, which was used to catch up the interest on
 15 the hundred and fifty thousand dollar loan?
 16 A That's what it appears to me happened.
 17 Q Okay. Do you know Michael Brown's signature?
 18 A Only on these documents I've seen. I have no way
 19 to know his - - -
 20 Q Apart from these documents - - -
 21 A No.
 22 Q Have you studied his signature to where - - -
 23 A No.
 24 Q As a layperson, you have an opinion as to whether
 25 it would be genuine or authentic?

- 1 A No.
- 2 Q So when you look at these documents, consisting of
- 3 17, 18 - - - Oh, we don't have a signature on 18.
- 4 But 17, do you know for certain that that's Michael
- 5 Brown's signature on Page 2, ACB-45?
- 6 A No.
- 7 Q Okay. I'm going to show you the third stack, but
- 8 before I show you the third stack, I'd like for you
- 9 to do some simple math for me. Okay? The first
- 10 stack, the hundred and fifty thousand dollar loan,
- 11 could you add for me a hundred and fifty thousand
- 12 and eighty-seven thousand four hundred, which is
- 13 the amount on Deposition Exhibit 17?
- 14 A That's two hundred and thirty-seven thousand,
- 15 roughly, two forty.
- 16 Q Two hundred and thirty-seven thousand four hundred
- 17 - - -
- 18 A Yeah.
- 19 Q Does that sound right to you?
- 20 A (Indicating yes)
- 21 Q Okay. This third stack shows a promissory note, an
- 22 assignment of deposit account, and a collateral
- 23 receipt. The amount on the note and the assignment
- 24 of deposit account - - - Well, what is the amount
- 25 shown on the note?

- 1 A Two hundred and forty-eight thousand two hundred.
- 2 Q That is roughly eleven thousand dollars more than a
- 3 hundred and fifty thousand plus eighty-seven
- 4 thousand four hundred?
- 5 A Exactly.
- 6 Q Now, the eighty-seven thousand four hundred was a
- 7 transaction that was done on 10-29-2007?
- 8 A That is correct.
- 9 Q This transaction was done approximately a year
- 10 later?
- 11 Mr. Foster - For the record, and you may have
- 12 said, this transaction is your third pile,
- 13 consisting of, pardon me, 19, 20, and 21. You
- 14 may have said. I just wanted to be sure it
- 15 was in.
- 16 Q Returning to my question, was the third
- 17 transaction, Exhibit 19, 20, and 21, done about a
- 18 year after the eighty-seven thousand four hundred
- 19 dollar note?
- 20 A Yes.
- 21 Q Now, the interest accrual on the eighty-seven
- 22 thousand four hundred was what?
- 23 A Seven-and-a-half percent.
- 24 Q 7.25?
- 25 A 7.25, yeah.

- 1 Q And seven percent on a hundred and - - - I'm sorry.
- 2 Seven percent on eighty-seven thousand is about
- 3 sixty thousand dollars a year, isn't it?
- 4 A Six thousand dollars a year.
- 5 Q Yeah, six thousand. I'm sorry.
- 6 A Yes.
- 7 Q Six thousand. And the interest accrual on the
- 8 original hundred and fifty thousand dollar note,
- 9 what is that rate?
- 10 A That is at ten percent.
- 11 Q And ten percent of a hundred and fifty thousand
- 12 would be what?
- 13 A Fifteen thousand.
- 14 Q Does it seem mathematically possible to you that
- 15 two hundred and forty-eight thousand two oh six
- 16 consists of Loan 1, plus Loan 2, plus the interest
- 17 accrual?
- 18 A Exactly. That's what it would appear to be.
- 19 Q Now, independent of my asking you that, have you
- 20 looked over these documents and formed any opinion
- 21 as to these three transactions and what they
- 22 represent?
- 23 A My opinion is, a hundred and fifty was the loan
- 24 originally. The interest was recapitalized into
- 25 another loan, a renewal of the loan for both loans.

- 1 Q For purposes of this lawsuit that has been filed,
- 2 is the bank pursuing the eighty-seven thousand four
- 3 hundred?
- 4 A No.
- 5 Q Is the bank pursuing the two hundred and forty-
- 6 eight thousand two oh six?
- 7 A No.
- 8 Q Is the bank just pursuing the hundred and fifty
- 9 thousand?
- 10 A The principal amount that was loaned in 2000.
- 11 Q Okay. Now, there is included in this stack of
- 12 documents, the first transaction, the hundred and
- 13 fifty thousand dollar loan, and a number of
- 14 modification and extension agreements. Mr. Foster
- 15 asked you some questions about the signatures. Do
- 16 you recall those questions?
- 17 A I do.
- 18 Q You don't know if that's Michael Brown's signature
- 19 or not - - -
- 20 A I have no idea.
- 21 Q Do you?
- 22 A It says Michael Brown. I have no idea.
- 23 Q Did Michael Brown, during your time at the bank,
- 24 ever come in and suggest to you that he didn't want
- 25 his loan extended, and he would have preferred to

1 have paid it sooner?

2 A No.

3 Q Did anybody at the bank ever suggest that to you?

4 A No.

5 Q The last modification and extension agreement

6 establishes a maturity date. Can you tell what

7 that maturity date is?

8 A May 10 of 2008.

9 Q From May 10 of 2008 until the present, are you

10 aware of whether Mr. Brown has paid the hundred and

11 fifty thousand dollars?

12 A He has not.

13 Q Are you satisfied, after your review of these

14 documents for purposes of bringing this lawsuit,

15 that Mr. Brown received a hundred and fifty

16 thousand dollars as proceeds from this loan?

17 A The money went to Miller Ingram as trustee at the

18 closing.

19 Q And are you satisfied that Mr. Brown has not repaid

20 that principal of a hundred and fifty thousand?

21 A I am satisfied it has not been repaid.

22 Mr. Sheedy - Now, gentlemen, before Mr.

23 Easterling starts his questions, I will

24 represent to you that I will take this deck of

25 cards known as exhibits, and I will put them

1 back in order. So apologies for shuffling

2 that momentarily.

3 Q Earlier, Mr. Foster showed you an internal document

4 generated by the bank that shows on 6-27-08, there

5 was a payoff of a hundred and fifty thousand dollar

6 loan. Now that we have been through these three

7 stacks of documents, can you explain what that

8 entry represents?

9 A It appears to be the proceeds from the two hundred

10 and forty-eight thousand dollar refi of the loan,

11 to pay the proceeds of the principal of the

12 original loan.

13 Q Do you, Mr. Clewis, believe that on June 27, 2008,

14 that Mr. Brown came to the bank and paid off the

15 sum of a hundred and fifty thousand dollars?

16 A No.

17 Q Mr. Foster asked you about Deposition Exhibit 6 and

18 about Deposition Exhibit 7. Mr. Clewis, please

19 take a second - - - And if it takes longer than

20 that, that's fine - - - and review both of those

21 letters, please.

22 A Okay.

23 Q Now, Deposition Exhibit 6 bears what date?

24 A March 24, 1997.

25 Q I'm going to show you Deposition Exhibit 22. What

1 Is the date on Deposition Exhibit 22?

2 A 12-29-2000.

3 Q Would it be fair to say that Deposition Exhibit 6,

4 the letter from DHEC, predates the promissory note,

5 Deposition Exhibit 22 - - -

6 A It does.

7 Q By a full three years?

8 A Yes.

9 Q Almost three-and-a-half years?

10 A Yes.

11 Q Is that true?

12 A (Indicating yes)

13 Q Okay. Now, on March 24, 1997, exactly what did

14 DHEC say about the environmental condition of the

15 property?

16 A They basically said that, based on samples and

17 screening levels and release - - - that they - - -

18 there are no - - - present no significant threat to

19 human environment (sic). Therefore, no further

20 action will be required at this time.

21 Q What do you understand, as a banker, that to mean?

22 A That based on their letter, they give it a clean

23 environmental report.

24 Q Based upon your review of the bank files and any

25 communications you may have had with any bank

1 officers, are you aware of any letters after March

2 24, 1997 prior to December 29, 2000 that would

3 suggest there's an environmental condition on this

4 106.85 acres?

5 A None.

6 Q At the time that the bank made that loan, December

7 29, 2000, did you see any evidence in the file that

8 the bank knew there was an environmental condition

9 on this property?

10 A None.

11 Q Mr. Foster also showed you Deposition Exhibit 7.

12 If you would, take a second and read that, please.

13 A Okay.

14 Q Essentially, what do you understand DHEC to have

15 said in that letter of January 8, 2010?

16 A That there were eight underground storage tanks

17 removed from the ground at the above site on

18 December 1, 1990. An assessment report was

19 received in '91. The Division of Management closed

20 this file and issued a no-further-action letter in

21 January of 1997.

22 Q So in 1997, DHEC issues a no-action letter. Then

23 in 2000, DHEC issues another no-action letter?

24 A Exactly.

25 Q Now, we have been discussing a Phase I done by

1 **Summit Engineering. Who did Summit do that for?**

2 A For our bank.

3 **Q Who is Michael Hinshaw?**

4 A He is a representative that we hired for our bank
5 to do an engineer - - - a land engineer to give us
6 a - - - just to follow up with DHEC and determine
7 there was no environmental issue based on Phase I.

8 **Q Well, and that was my question to you. Based on
9 this Phase I, did you understand that any
10 information was uncovered inconsistent with DHEC's
11 1997 or 2010 letters?**

12 A None whatsoever.

13 Mr. Sheedy - Okay. I'm going to mark this,
14 but I'm going to let you keep your copy.

15 Susan will bring another one in to - - -

16 Mr. Foster - Without objection.

17 Mr. Easterling - No objection.

18 Mr. Foster - This is marked, by the way, ACB-
19 62 through, I believe, -114. -113, my
20 apologies.

21 Whereupon - Document was marked as Deposition
22 Exhibit Number 27.

23 **Q Mr. Brown has alleged that American Community Bank
24 and Mr. Horne got together before the hundred and
25 fifty thousand dollar loan was made, discussed that**

1 **the 106.85 acres was environmentally contaminated,
2 and intentionally withheld that information from
3 Mr. Brown. Are you aware, from your knowledge of
4 this file, any such activities having occurred?**

5 A Based on the file and the information from DHEC,
6 there was no such occurrence that I'm aware of or
7 could see.

8 **Q Well, let's separate the DHEC letters for just a
9 moment. Okay. By that, I mean, Mr. Clewis, the
10 DHEC letters would suggest that from DHEC's
11 perspective, there was no environmental condition
12 on this property when the loan was closed on
13 December 29, 2000.**

14 A Correct.

15 **Q My question to you instead is, whether or not there
16 was an environmental condition on the property, are
17 you aware of any information that would tend to
18 suggest that the bank got together with Mr. Horne,
19 knew that this property was environmentally
20 contaminated, and failed to disclose that to Mr.
21 Brown?**

22 A No.

23 Mr. Sheedy - Okay. I believe that is all that
24 I have.

25 Mr. Easterling - All right, sir.

1 Mr. Sheedy - Maybe we'll wait just one second
2 and get the environmental report.

3 Mr. Easterling - That will be fine.

4 Whereupon - A brief recess was taken.

5 EXAMINATION - (By Mr. Easterling)

6 **Q Mr. Clewis, I'm Harry Easterling with the law firm
7 of Goldberg and Easterling in Bennettsville, and I
8 represent Mr. C.W. Horne, who is a party to this
9 foreclosure action as a defendant. Have you had
10 any discussion at all regarding this foreclosure
11 action or prior to the action being brought with
12 Mr. Michael R. Brown?**

13 A I did visit Mr. Brown probably two years ago,
14 eighteen months ago, at his house.

15 **Q And what was the purpose of that visit?**

16 A To discuss the default on the loan, the fact that
17 he had defaulted on the loan.

18 **Q So what did he say to you regarding that
19 discussion?**

20 A That we agreed to try to talk about a repayment
21 arrangement at some point, but primarily, the visit
22 was to see where the property was, what it was, and
23 to make contact. There was no - - - nothing worked
24 out, really.

25 **Q Was there any denial on the part of Mr. Brown that**

1 **he owed the bank the money?**

2 A No.

3 **Q Did he admit that he owed the bank the money?**

4 A Not that I recall.

5 **Q All right. But there was discussion about working
6 the matter out?**

7 A The loan was past due, in default. It was - - -
8 Yes.

9 **Q Was that the only discussion you had with Mr.
10 Brown?**

11 A Yes.

12 **Q Based upon your review of all of the documents and
13 the bank material relating to this loan, do you
14 have any information that would indicate that the
15 indebtedness is not due by Mr. Brown to American
16 Community Bank?**

17 A I have no evidence whatsoever it is not due. It is
18 all due.

19 **Q And for the record, will you state what security
20 the bank has from C.W. Horne in connection with
21 this foreclosure action?**

22 A I could not find any security on this loan, other
23 than the real estate owned by Michael Brown.

24 Mr. Easterling - All right, sir. Thank you.

25 I have nothing further.

Page 81 1 Mr. Foster - Mr. Clewis, I did have a few 2 things in return. 3 FURTHER EXAMINATION - (By Mr. Foster) 4 Q Going to Mr. Easterling's last point, sir, I am 5 correct, I believe, in stating that the last 6 information we have in these documents, which come 7 from your file, indicate there is a CD account 8 which stands as security for this loan. Would I be 9 correct on that, sir? 10 A There is such a document in there. 11 Q To go back over some other ground, sir, does that 12 CD account still exist? 13 A I have no records, can find no records where it 14 still exists, under that last - - - under that CD 15 number. 16 Q Just to be sure we're not using a double negative, 17 do I understand your answer to indicate that you or 18 the bank have looked, and this CD account does not 19 exist? 20 A That is correct. 21 Q Okay, sir. Do you have any indication, sir, of 22 whether it existed at the time of the last 23 purported assignment of the account? 24 A I do not. 25 Q Have you attempted to find out?	Page 83 1 the record which was not reported. 2 FURTHER EXAMINATION - (By Mr. Foster) 3 Q Sir, should I repeat the question - - - 4 A Right. 5 Q Or do you wish me to? 6 A We felt it in our best interest to pursue the 7 original principal balance, based on the fact there 8 were many modifications and the refinance of the 9 interest due is not normal banking practices that 10 I'm accustomed to. 11 Q Well, sir, by saying that they're not normal 12 banking practices, do you believe them to be 13 enforceable? 14 Mr. Sheedy - Object to the form, calls for a 15 legal conclusion. 16 Mr. Foster - Indeed, it does, and we're 17 dealing with a professional banker. 18 Q So to the extent that you can, sir, I know you're 19 not a lawyer, please answer. 20 A Based on my review of the file, ten years passed 21 with no interest paid on this loan by Mr. Brown. 22 Q And what would the effect of that fact be, in your 23 opinion, sir? 24 A Based on all of the documentation, he owes it. 25 Q Well, that's - - - Let me take us back to the
Page 82 1 A No. 2 Q Sir, in response to Mr. Sheedy's questioning, if I 3 characterize this properly - - - And I'm asking you 4 to correct me if I do not. Mr. Sheedy divided 5 these documents, the ones he felt to be relevant, 6 into three parts which I'll characterize as the 7 original loan, an interim note indicating that it 8 was being paid for interest of eighty-seven four 9 hundred, and the final note that you and I had a 10 colloquy about for, I believe, two hundred and 11 forty-seven thousand, and associated documents. 12 A That's correct. 13 Q Yes, sir. I understood your response to a question 14 from Mr. Sheedy to be that the bank was not 15 pursuing the note or the debt indicated by the 16 eighty-seven four, the interim as I call it, nor 17 the note for the two hundred and forty-seven. Am I 18 stating that correctly, sir? 19 A That is correct. 20 Q Sir, why is it not pursuing those notes? 21 A We felt that it's - - - 22 Mr. Sheedy - Let's go off the record for just 23 one second. 24 Mr. Foster - If you wish. 25 Whereupon - A brief discussion was held off	Page 84 1 beginning of this line of questioning. I began by 2 asking you whether you believed what I referred to 3 as the interim note for the eighty-seven four, the 4 interest, and what seems to be the final note for 5 roughly two hundred and forty-seven thousand were 6 enforceable? 7 A Yes. 8 Q You feel they are? 9 A I do. 10 Q And what I am attempting to learn is, if they are 11 enforceable, why is the bank not attempting today 12 to enforce them? 13 A I made that decision because, based on my review, 14 that the normal banking practices, you would not 15 have allowed a loan to be on the books for ten 16 years and recapitalize the interest without any 17 payment. 18 Q What effect, sir, would that determination by you 19 have upon the enforceability of these notes? 20 Mr. Sheedy - Object to the form, calls for a 21 legal conclusion. 22 Mr. Foster - Same comment as before, sir. 23 A None. 24 Q None. Sir, does the fact that these - - - What 25 I'll call these later transactions on paper, in any

1 event the interim note for eighty-seven four and
2 the final note for roughly two hundred and forty-
3 seven, are not normal business practice. Would
4 enforcing those documents subject Yadkin Valley to
5 investigation or censure in any form by the federal
6 regulators?

7 Mr. Sheedy - Object to the form. Not the
8 least of which is, it's not a national bank.

9 Q I'm just asking you as to what you know, sir.

10 A Not today. It could have been during the time if
11 there had been an examination, which I have no
12 record of. That would have been a question asked
13 by federal regulators, why are you recapitalizing
14 interest and adding it back to a note?

15 Q To say that another way, sir, if I understand your
16 answer, American Community Bank might well have
17 been asked that question - - -

18 A Yes.

19 Q By regulators?

20 A That is correct.

21 Q Now, I said federal regulators. Would there be
22 state regulators?

23 A State.

24 Q Would they also have perhaps had problems with this
25 procedure that we've been discussing?

1 A Most likely. As far as being a prudent loan, a
2 prudent decision on a loan.

3 Q If I've asked this before, sir, it is not my
4 intention to harass you, but I need to be sure.
5 Would the enforcement of these later transactions
6 or purported transactions, the eighty-seven four,
7 the two forty-seven, result in a potential censure
8 or investigation in your opinion by any regulator?

9 A Not paying on this particular loan, they would have
10 probably asked the bank to impair the amount they
11 were carrying on the books as an asset.

12 Q And would that affect the enforceability of those
13 loans?

14 Mr. Sheedy - Object to - - -

15 A No.

16 Mr. Sheedy - The form, calls for a legal
17 conclusion.

18 Mr. Foster - Well, I believe he's answered,
19 and with the caveat that we said before.

20 Q Sir, again, if I am re-asking the question, I will
21 say I am not again trying to harass you. I wish to
22 be very clear. Do I understand that your decision
23 about not enforcing these later transactions - - -
24 And again, I think you and I understand which I'm
25 referring to, eighty-seven four and two forty-

1 seven. Does it, sir, have anything to do with any
2 doubts on behalf of the bank as to the validity of
3 the documentation?

4 Mr. Sheedy - Object to the form.

5 A None. None whatsoever.

6 Q Did I understand you correctly, sir, that there is
7 no documentation indicating the final - - - Let me
8 say this in English. Sorry, I'm going to pause.
9 There are documents as late as, I believe, 2008 on
10 their face assigning security by Mr. Home in a CD
11 account. You've testified that that account does
12 not exist at this time.

13 A I don't have any record of that account internally.

14 Q Okay, sir. Do you, sir, have any indication within
15 the records of the bank or to your knowledge of
16 that account being released?

17 A I did not find any records where it had been
18 released or was ever secured in the loan, other
19 than the documents we have here.

20 Q If it had been secured, how would it have been
21 secured? Would there be a procedure other than
22 this document?

23 A There would have been an internal hold placed on
24 the account in the bank.

25 Q And there was no indication of such an internal

1 hold?

2 A I didn't see one.

3 Q Did you go through these other accounts, sir, that
4 - - - Well, that's a modification. Pardon me. I'm
5 holding up the wrong thing. Did you, sir, or did
6 people on your behalf in the bank go through these
7 other accounts to learn whether a hold has ever
8 been placed on any of them?

9 A We did not.

10 Q You just looked at the last one?

11 A Yes.

12 Q Sir, again, if I am re-asking a question - - - Mr.
13 Hinshaw, I take it, is part of Summit that prepared
14 this Phase I?

15 A We hired Mr. Hinshaw to do that work for us.

16 Q And Summit is his company?

17 A Yes.

18 Q Okay, sir.

19 Mr. Sheedy - No, he's with Realty - - -

20 A I'm sorry. He's not. He's - - -

21 Q I'm sorry?

22 Mr. Sheedy - We'll stipulate for the record
23 that Michael Hinshaw works for a company known
24 as Realty Advisory Consultants.

25 Mr. Foster - Okay, okay.

1 **Mr. Sheedy - Realty Advisory Consultants**
 2 **provides consulting services to the bank that**
 3 **Mr. Hinshaw, on behalf of the bank, hired**
 4 **Summit to do a Phase I.**

5 A We have used him on other things to go - - - He's a
 6 land guy that goes - - - (No further response)

7 Mr. Foster - I will stipulate to everything -

8 - -

9 Mr. Sheedy - His corporation.

10 Mr. Foster - I will stipulate to everything

11 Mr. Sheedy has just said.

12 **Q Sir, what communication has the bank had with**
 13 **Summit itself, it or its personnel?**

14 A Through Mr. Hinshaw, we hired them to do the Phase
 15 I environmental study.

16 **Q Do I understand your answer, sir, to indicate that**
 17 **the bank had no direct comment - - - no direct**
 18 **contact with Summit or its personnel?**

19 A That is correct.

20 Mr. Foster - Okay, sir. That's my questions.

21 One thing off the record - - -

22 Whereupon - A brief discussion was held off
 23 the record which was not reported.

24 Mr. Foster - Thank you, Mr. Clewis.

25 Mr. Sheedy - One further question, Mr. Clewis,

SUBSCRIPTION OF DEPONENT

State of _____)

County of _____)

I, William Clewis, do hereby certify that

I have this day read the foregoing deposition and do
 hereby declare that the same is a true and accurate
 transcript of the proceedings had at the time and place
 herein designated (except for the notations as
 indicated on the attached errata sheet, if any).

Dated: _____

 William Clewis

Sworn to and subscribed before me

this ____ day of _____, 2011.

 Notary Public

My Commission Expires: _____
 Deposition of William Clewis

1 in light of Mr. Foster's questions to you just

2 to keep the record clean.

3 FURTHER EXAMINATION - (By Mr. Sheedy)

4 **Q Are you aware of any release, cancellation,**
 5 **satisfaction, or paid-in-full stamp on Deposition**
 6 **Exhibit 24, the commercial guaranty?**

7 A No.

8 **Q Okay. So when Mr. Foster asked you questions about**
 9 **the assignment of deposit account, you cannot find**
 10 **any collateral for this guaranty, but the guaranty**
 11 **hasn't been canceled - - -**

12 A It has not been canceled.

13 **Q To your knowledge?**

14 A Right.

15 Mr. Sheedy - Okay. Thank you. Nothing
 16 further.

17 Mr. Easterling - Nothing further.

18 Whereupon - Deposition was concluded at

19 12:50 p.m.

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

AMERICAN COMMUNITY BANK,
a division of Yadkin Valley Bank & Trust,

Plaintiff(s)

v

MICHAEL R. BROWN,
C.W. HORNE,
SHORTT AUCTION & REALTY CO., Inc.
BANK OF AMERICA, N.A. and
JAGUAR PORTFOLIO, LLC.,

Defendant(s).

SECOND AMENDED

NOTICE OF TAKING DEPOSITION

C.A. No. 10-CP-13-0164

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

A True Copy Attest
Joy D. Williams

2011 APR 29 AM 11 24
FAYE L. COLLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

TO: James W. Sheedy
Susan E. Driscoll
Driscoll Sheedy, P.A.
Attorneys for Plaintiff
11520 North Community House Road, Suite 200
Charlotte, North Carolina 28277

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 30, S.C.R.C.P., the undersigned, as Attorney for the Defendant MICHAEL R. BROWN, will take the oral deposition of the following witness(es):

Yadkin Valley Bank and Trust Company, by its designated officer(s), director(s) or managing agent(s)

on the following date:

Friday, May 6, 2011

at the following time:

9:30 A.M.

at the following location:

Offices of Driscoll Sheedy, P.A.
11520 North Community House Road, Suite 200
Charlotte, North Carolina 28277

EXHIBIT

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before a Notary Public, continuing from day to day, if necessary, until completed or at such other time thereafter as may be agreeable to counsel.

Pursuant to Rule 30(b)(6), S.C.R.C.P., the matter on which the witness is to be examined are as follows:

The existence, identification, and relation to the subject matter of this action, of all items produced in response to Defendant BROWN'S Request for Production of Documents and/or Things for Inspection and Copying dated and served by mail of August 12, 2010, or referenced in that response;

Facts surrounding the closings of the mortgage which is the subject of this action;

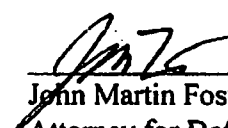
Dealings or communications between the Plaintiff, its agents and employees, and the following persons or entities:

Michael R. Brown
C.W. Horne
C.W. Horne Sawmill and Chip Co., Inc.
Short Auction & Realty Co.
Miller S. Ingram, Jr., Esq.
Atlantic Title Insurance Co.

If attached hereto, Supoena(s) *duces tecum* will be served on the witness(es) named above and will direct the production of those materials indicated thereon.

This deposition is for the purpose of discovery or for use as evidence in the above action.

You are invited to be present and participate in accordance with Rule 30.


John Martin Foster

Attorney for Defendant Michael R. Brown
223 East Main Street, Suite 520
Post Office Box 106
Rock Hill, SC 29731-6106
803 324-8100
803 324-8109: Fax
jmfoster@comporium.net

Rock Hill, South Carolina

April 28, 2011

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

AMERICAN COMMUNITY BANK,
a division of Yadkin Valley Bank & Trust,

Plaintiff(s),

v.

MICHAEL R. BROWN,
C.W. HORNE,
SHORTT AUCTION & REALTY CO., Inc.
BANK OF AMERICA, N.A. and
JAGUAR PORTFOLIO, LLC.,

Defendant(s).

SECOND AMENDED

CERTIFICATE OF MAILING

C.A. No. 10-CP-13164

CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

2011 APR 29 AM 11 24

The undersigned certifies that on the date below he has served the following pleadings or documents in the above-captioned and numbered civil action:

Amended Second Notice of Taking Deposition with attachments (if any); and
This Certificate of Service

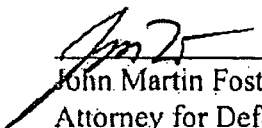
by depositing the same with the United States mail, with sufficient first class postage attached, properly addressed to the clerk of the Court, and with a copy also directed to the respective last known address(es) of those attorney(s) and/or persons set out below.

Harry R. Easterling, Jr.
Goldberg & Easterling, P.A.
Attorney for Defendant HORNE
116 N. Liberty Street
P.O. Drawer 655
Bennettsville, SC 29512-0655

James W. Sheedy
Susan B. Driscoll
Driscoll Sheedy, P.A.
Attorneys for Plaintiff
11520 N. Community House Road
Suite 200
Charlotte, N.C. 28277

Rock Hill, South Carolina

April 28, 2011


John Martin Foster
Attorney for Defendant Michael R. Brown
223 East Main Street, Suite 520
Post Office Box 106
Rock Hill, SC 29731-6106
803 324-8100
803 324-8109: Fax
mfoster@comporium.net

 American Community Bank
700 E. Marshall Blvd
Murfreesboro, NC 28133

Certified Checks

4122
01

400464

December 29, 2000

PURCHASER'S COPY

Amount is Payment for a condition to the holder's payment of this check.
Purchaser agrees to provide no indemnity and shall not be liable for payment of this check until such time as the holder's payment is received.

Purchaser: Real Estate Loans in Process

Operator DRE
Branch 0531

Paid by ☐ Cash

☐ Account

☐ Loan

☒ Other: L.P. Michael R. Brown

Payer: Miller S. Ingram, Jr., Trustee

NOT NEGOTIABLE

Amount \$150,000.00
Fee \$0.00
Total \$150,000.00

Mark: L.P. Michael R. Brown

EXHIBIT

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ACB - 1

OFFICIAL CHECKS
AMERICAN COMMUNITY BANK
HOLD IN OFFICE - OPERATIONS DRP
MONROE 28110

12/31/00

0010100003

1074

CYCLE-032

*** CHECK TRANSACTIONS ***

SERIAL	DATE	AMOUNT
400418	12/12	5,292.65
400419	12/08	5,000.00
400420	12/11	20,000.00
400421	12/11	3,115.00
400422	12/18	1,250.80
400423	12/11	735.00
400424	12/13	140.50
400426	12/26	28.00
400427	12/18	10.00
400428	12/14	613.20
400429	12/15	997.50
400432	12/13	4,000.00
400433	12/15	28,322.78
400434	12/18	17,675.00
400435	12/15	9,985.85
400436	12/15	30,000.00
400437	12/18	23,108.50
400438	12/15	1,400.00
400439	12/10	10,000.00
400440	12/15	22,000.00
400441	12/21	29,600.00
400442	12/20	26,090.71
400443	12/26	200.00
400446	12/26	20.00
400447	12/22	2,213.28
400448	12/22	4,000.00
400449	12/20	13,000.00
400450	12/26	200.00
400451	12/26	20.00
400452	12/19	60.00
400453	12/26	200.00
400454	12/26	28.00
400455	12/28	30.00
400456	12/28	30.00
400457	12/26	24,012.10
400459	12/26	7,749.87
400460	12/28	20.00
400461	12/26	830.07
400464	12/29	150,000.00
400466	12/28	7,000.00

SERIAL	DATE	AMOUNT
400468	12/29	5,414.45
400469	12/29	400.00
500167	12/06	5.75
500229	11/30	1,000.00
500230	11/30	1,000.00
500237	12/01	7,911.68
500238	12/11	1.00
500245	11/30	10.22
500251	12/04	3,125.04
500252	12/18	7,929.22
500253	12/04	3,570.78
500254	12/03	129,297.14
500255	12/06	990.00
500256	12/01	507.24
500257	12/11	1,900.00
500258	12/04	400.00
500259	12/13	100.00
500260	12/08	260.00
500261	12/15	97.03
500262	12/18	2,055.66
500263	12/08	115.00
500266	12/15	131.63
500267	12/14	250.00
500268	12/13	200.00
500269	12/14	50.00
500270	12/14	50.00
500272	12/15	460.00
500274	12/19	1,100.00
500275	12/29	33.75
500276	12/20	22.85
500280	12/27	11,600.00
500281	12/18	100.00
500283	12/22	6,545.00
500284	12/19	3,800.00
500286	12/20	30,000.00
500287	12/27	300.00
500290	12/22	2,500.00
500293	12/27	7,100.00
500294	12/29	34,116.49

*** CHECKING ACCOUNT TRANSACTIONS ***

DATE	DESCRIPTION	DEBITS	CREDITS
12/01	CK#2667		15.00
12/01	CLOSE/210100001/CK3623		25.00
12/01	CC #500256 FRANKIE STONE		507.24
12/01	DEPOSIT		35.00
	NUMBER 0000201918		
12/01	DEPOSIT		39.10
	NUMBER 0000201916		
12/01	DEPOSIT		187.62
	NUMBER 0000003604		
12/01	DEPOSIT		251.78
	NUMBER 0000201917		
12/01	DEPOSIT		252.00
	NUMBER 0000201915		

EXHIBIT

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ACB-2

A. Settlement Statement

U.S. Department of Housing
and Urban Development



OMB No. 2502-0205

B. Type of Loan			C. P/R Number	D. Loan Number	E. Mortgage Insurance Case Number
1. ☐ FHA	2. ☐ FmHA	3. ☐ Conventional	1461-A	710400073	
4. ☐ VA	5. ☐ Conventional				

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.a.c.)" were paid outside the closing; they are shown here for information purposes and are not included in the totals.

D. Name and Address of Borrower	E. Name and Address of Seller	F. Name and Address of Lender
MICHAEL R. BROWN 1620-A EAST 4TH STREET PMB # 132 CHARLOTTE, NC 28204	REFINANCE	AMERICAN COMMUNITY BANK 7003 E. MARSHVILLE BOULEVARD MARSHVILLE, NC 28103

G. Property Location	H. Settlement Agent	I. Settlement Date
WHEAT PROPERTY / 106.85 ACRES HIGHWAY 109 PATRICK, SC 29584	MILLER S. INGRAM, JR. Place of Settlement: 204 MARKET STREET CHEROKEE, SC 29520	DECEMBER 29, 2000

J. Summary of Borrower's Transaction		K. Summary of Seller's Transaction	
100. Gross Amount Due From Borrower		400. Gross Amount Due To Seller	
101. Contract sales price		401. Contract sales price	
102. Personal property		402. Personal property	
103. Settlement charges to borrower (line 1400)	4,485.69	403.	
104. PAYOFF TO C.W. MORRIS	72,000.00	404.	
105. SAWHILL & CHIP COMPANY		405.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110. HOLDING ACCOUNT CONTAINING		410.	
111. 12 MONTHLY PAYMENTS	16,567.80	411.	
112.		412.	
120. Gross Amount Due From Borrower	93,053.49	420. Gross Amount Due To Seller	
200. Amounts Paid By or In Behalf of Borrower		500. Reductions in Amount Due To Seller	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)	150,000.00	502. Settlement charges to seller (line 1400)	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. City/town taxes to		510. City/town taxes to	
211. County taxes to		511. County taxes to	
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid By/For Borrower	150,000.00	520. Total Reduction Amount Due Seller	
300. Cash At Settlement From/To Borrower		600. Cash At Settlement To/From Seller	
301. Gross Amount due from borrower (line 120)	93,053.49	601. Gross amount due to Seller (line 420)	
302. Less amounts paid by/for borrower (line 220)	150,000.00	602. Less reductions in amt. due seller (line 520)	
303. Cash ☐ From ☒ To Borrower	56,946.51	603. Cash ☐ To ☐ From Seller	

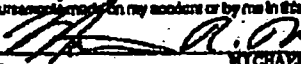
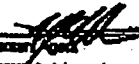
ACB-3

Previous Edition Is Obsolete
FHEO 844-0014

HUD-1 (2-86)
RESPA, HB 4303.2
Equal Lender Settlement Form, Inc. III
1600 17th St., N.W., Washington, D.C. 20036-4000
Tel: (202) 755-1234 Fax: (202) 755-1235

EXHIBIT

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L. Settlement Charges				Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
700. Total Sales/Broker's Commission based on price \$	0	% =			
Division of Commission (line 700) as follows:					
701. \$	to				
702. \$	to				
703. Commission paid at Settlement					
704.					
800. Items Payable in Connection With Loan					
801. Loan Origination Fee	%	to AMERICAN COMMUNITY BANK	1,500.00		
802. Loan Discount	%				
803. Appraisal Fee	to				
804. Credit Report	to				
805. Lender's Inspection Fee					
806. Mortgage Insurance Application Fee to					
807. Assumption Fee					
808.					
809.					
810.					
811.					
812.					
813.					
814.					
815.					
900. Items Required By Lender To Be Paid In Advance					
901. Interest from	to	¢/	day		
902. Mortgage Insurance Premium for			months to		
903. Hazard Insurance Premium for			years to		
904.			years to		
905.					
1000. Reserves Deposited With Lender					
1001. Hazard insurance	months @ \$		per month		
1002. Mortgage insurance	months @ \$		per month		
1003. City property taxes	months @ \$		per month		
1004. County property taxes	months @ \$		per month		
1005. Annual assessments	months @ \$		per month		
1006.	months @ \$		per month		
1007.	months @ \$		per month		
1008.	months @ \$		per month		
1100. Title Charges					
1101. Settlement or closing fee	to				
1102. Abstract or title search	to				
1103. Title examination	to				
1104. Title insurance binder	to				
1105. Document preparation	to				
1106. Notary fees	to				
1107. Attorney's fees	to	MILLER S. INGRAM, JR.	500.00		
(Includes above items numbers:)					
1108. Title insurance	to	LIBB-TO-TITLE AGENCY	372.50		
(Includes above items numbers:)					
1109. Lender's coverage	\$				
1110. Owner's coverage	\$				
1111.					
1112.					
1113.					
1200. Government Recording and Transfer Charges					
1201. Recording fees: Deed \$		Mortgage \$10.00	Relates \$5.00	15.00	
1202. City/county tax/stamps: Deed \$		Mortgage \$			
1203. State tax/stamps: Deed \$		Mortgage \$			
1204.					
1205.					
1300. Additional Settlement Charges					
1301. Survey	to				
1302. Post inspection	to				
1303.					
1304. 2000 PROPERTY TAXES TO CHESTERFIELD COUNTY TREASURER			2,098.19		
1305.					
1306.					
1307. Total Settlement Charges (enter on lines 102, Section J and 602, Section K)			4,485.69		
I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements on my account or by me in this transaction. I hereby certify that I have received a copy of HUD-1 Settlement Statement.					
 MICHAEL H. BROWN					
Borrowers					
The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.					
 MILLER S. INGRAM, JR.					
Date					
DECEMBER 29, 2000					
WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine or imprisonment. For details see Title 18 U.S. Code Section 1007 and Section 1010.					

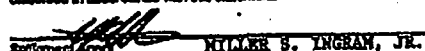
ACB-3

L. Settlement Charges				Paid From	Paid From
700. Total Sales/Broker's Commission based on price \$				Borrower's	Seller's
Division of Commission (line 700) as follows:				Funds at	Funds at
				Settlement	Settlement
701. \$	to				
702. \$	to				
703. Commission paid at Settlement					
704.					
800. Items Payable in Connection With Loan					
801. Loan Origination Fee	% to	AMERICAN COMMUNITY BANK	1,500.00		
802. Loan Discount	%				
803. Appraisal Fee	to				
804. Credit Report	to				
805. Lender's Inspection Fee					
806. Mortgage Insurance Application Fee to					
807. Assumption Fee					
808.					
809.					
810.					
811.					
812.					
813.					
814.					
815.					
900. Items Required By Lender To Be Paid In Advance					
901. Interest from	to	\$	/day		
902. Mortgage Insurance Premium for			months to		
903. Hazard Insurance Premium for			years to		
904.			years to		
905.					
1000. Reserves Deposited With Lender					
1001. Hazard Insurance	months @ \$		per month		
1002. Mortgage Insurance	months @ \$		per month		
1003. City property taxes	months @ \$		per month		
1004. County property taxes	months @ \$		per month		
1005. Annual assessments	months @ \$		per month		
1006.	months @ \$		per month		
1007.	months @ \$		per month		
1008.	months @ \$		per month		
1100. Title Charges					
1101. Settlement or closing fee	to				
1102. Abstract or title search	to				
1103. Title examination	to				
1104. Title insurance binder	to				
1105. Document preparation	to				
1106. Notary fees	to				
1107. Attorney's fees	to	MYLLER S. INGRAM, JR.	500.00		
(Includes above items numbers:					
1108. Title insurance	to	LYNN-TO-TITLE AGENCY	372.50		
(Includes above items numbers:					
1109. Lender's coverage	\$				
1110. Owner's coverage	\$				
1111.					
1112.					
1113.					
1200. Government Recording and Transfer Charges					
1201. Recording fees: Deed \$		Mortgage \$ 10.00	Releases \$ 5.00	15.00	
1202. City/county tax/stamps: Deed \$		Mortgage \$			
1203. State tax/stamps: Deed \$		Mortgage \$			
1204.					
1205.					
1300. Additional Settlement Charges					
1301. Survey	to				
1302. Pest inspection	to				
1303.					
1304. 2000 PROPERTY TAXES TO CHESTERFIELD COUNTY TREASURER				2,098.19	
1305.					
1400. Total Settlement Charges (enter on lines 102, Section J and 602, Section K)				4,483.69	

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of HUD-1 Settlement Statement.


MICHAEL R. BROWN

Borrower
The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.


MYLLER S. INGRAM, JR.

Seller
Date
DECEMBER 29, 2000

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine or imprisonment. For details see: 18 U.S. Code Section 1001 and Section 1010.

ACB - 4

A Settlement Statement .11

U.S. Department of Housing
and Urban Development



OMB No. 2502-0265

B. Type of Loan				4. FHE Number	7. Loan Number	8. Mortgage Insurance Date Number
1. ☐ FHA	2. ☐ FmHA	3. ☐ Coast Union	4. ☐ VA	5. ☐ Com. Ins.	1461-A	710400073
C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "I.p.a.c." were paid outside the closing; they are shown here for information purposes and are not included in the totals.						
G. Name and Address of Borrower		H. Name and Address of Seller		F. Name and Address of Lender		
MICHAEL E. BROWN 1620-A EAST 4TH STREET PHB # 132 CHARLOTTE, NC 28204		REFINANCE		AMERICAN COMMUNITY BANK 7003 E. MARSHVILLE BOULEVARD MARSHVILLE, NC 28103		
G. Property Location				H. Settlement Agent		I. Settlement Date
WINERY PROPERTY / 106.85 ACRES HIGHWAY 109 PATRICK, SC 29584				MILLER E. INGRAM, JR. Place of Settlement 804 MARKET STREET CHERAW, SC 29520		DECEMBER 29, 2000
J. Summary of Borrower's Transaction				K. Summary of Seller's Transaction		
100. Gross Amount Due From Borrower				400. Gross Amount Due To Seller		
101. Contract sales price				401. Contract sales price		
102. Personal property				402. Personal property		
103. Settlement charges to borrower (line 400) 4,485.69				403.		
104. PAYOFF TO C.W. HORNE 72,000.00				404.		
105. BARNHILL & CRIP COMPANY				405.		
Adjustments for items paid by seller in advance				Adjustments for items paid by seller in advance		
106. City/town taxes to				406. City/town taxes to		
107. County taxes to				407. County taxes to		
108. Assessments to				408. Assessments to		
109.				409.		
110. HOLDING ACCOUNT CONTAINING				410.		
111. 12 MONTHLY PAYMENTS 16,567.80				411.		
112.				412.		
120. Gross Amount Due From Borrower 93,053.49				420. Gross Amount Due To Seller		
200. Amounts Paid By or In Behalf of Borrower				500. Reductions in Amount Due To Seller		
201. Deposit or earnest money				501. Excess deposit (see instructions)		
202. Principal amounts of new loan(s) 150,000.00				502. Settlement charges to seller (line 400)		
203. Existing loan(s) taken subject to				503. Existing loan(s) taken subject to		
204.				504. Payoff of first mortgage loan		
205.				505. Payoff of second mortgage loan		
206.				506.		
207.				507.		
208.				508.		
209.				509.		
Adjustments for items unpaid by seller				Adjustments for items unpaid by seller		
210. City/town taxes to				510. City/town taxes to		
211. County taxes to				511. County taxes to		
212. Assessments to				512. Assessments to		
213.				513.		
214.				514.		
215.				515.		
216.				516.		
217.				517.		
218.				518.		
219.				519.		
220. Total Paid By/For Borrower 150,000.00				520. Total Reduction Amount Due Seller		
300. Cash At Settlement From/To Borrower				600. Cash At Settlement To/From Seller		
301. Gross Amount due from borrower (line 120) 93,053.49				601. Gross amount due to seller (line 420)		
302. Less amounts paid by/for borrower (line 220) 150,000.00				602. Less reductions in amt. due seller (line 520)		
303. Cash ☐ From ☒ To Borrower 56,946.51				603. Cash ☐ To ☐ From Seller		

ACB - 30

Previous Edition is Obsolete
1999 2000 2001

HUD-1 (3-88)
RESPA, 125 C.F.R.
Check Lender Business Practices, Inc. (CLBP)
To Order Call: 1-800-533-0265 (T) FAX: 410-233-1334

000710400073
LOAN NUMBERREAL ESTATE LOAN
HISTORY STATEMENT06/29/08
STATEMENT DATEMICHAEL DROWN
2217 D MATTHEWS TOWNSHIP PKY
APT 113
MATTHEWS NC 28105STRT REASON PAID OPT LOAN
PHONE 843-634-5101
OFFICER JNC
TYPE BUSINESS FIXED
CLASS COMMERCIAL MFG
BRANCH 0001 M

LOAN BALANCE	0.00	ORIG CONTRACT	12/29/00	LOAN STATUS	CLOSED
INTEREST DUE	0.00	CURR CONTRACT	12/29/00	PROCESS STAT	NORMAL
REBATE INT	0.00	ADVANCE DATE	12/29/00	NON-ACCRUAL	ACCRUING
INSURANCE DUE	0.00	MATURITY DATE	05/10/08	INTEREST TYPE	SIMPLE RUN-TO
REBATE INS	0.00	LAST TRAN DATE	06/27/08	INT RATE CODE	FIXED SINGLE
ESCRROW BAL	0.00	LAST MAINT	10/30/07	BALANCE BASIS	ACTUAL BAL
LATE FEES	0.00	LAST PRIN TRAN	06/27/08	REVOLVE CODE	NON-REV SHGL
LOAN FEES	0.00	PRIN PAID TO	01/15/05	REFYMT METHOD	SUMMARY BILL
PREPYMT PEN	0.00	INT PAID TO	01/15/05	CLOSE CODE	NORMAL PAYOFF
PAYOFF 1	0.00	ACCRUED THRU	06/27/08	DIRECT/INDIR	DIRECT
PAYOFF 2	0.00	PAYOFF CHANGE	00/00/00	RENEGOTIATED	NO
PAST DUE AMT	0.00	PYMTS PAID TO	01/15/05	SDA CODE	NO
NEXT DUE AMT	0.00	NEXT PAYMENT	05/10/08	TAX FREE	NO
LAST PAYMENT	156,546.47	LAST PAYMENT	06/27/08	FHA SECTION	000
PARTIAL PAID	0.00	CLOSED DATE	06/27/08	FHA CASE NBR	0000000000
SUBSIDY PYMT	0.00	RIGHT TO CURE	00/00/00	INT DUE OPT	EFF
LOAN AMOUNT	150,000.00	NON-ACCRUAL	00/00/00	NEG AMORT	NO
UNADVANCED	0.00	ACCRUAL BASE	365/360	PAYBACK INDEX	0
YTD INT PAID	7,202.91	INTEREST RATE	7.25000	RENEWALS	10
MINIMUM EARN	0.00	AMR PCT RATE	0.00000	EXTENSIONS	0
RESERVES DUE	0.00	RESERVE RATE	0.00000	PYMTS PAID	0
REBATE RES	0.00	INSURANCE RATE	0.00000	PYMTS REMAIN	1
AMT FINANCED	150,000.00	INDEX NUMBER	0000	***** TIMES LATE *****	
INT PER DIEM	30.07613	IDX VAR/CDE	0.00000	10 20 30 45 60 90	
DAYS PAST DUE	0	PRC VAR/CDE	0.00000	NBR 24 13 10 1 0 0	
		PRC VAR NBR	0000		

COLL DESC 1ST MORTG 106.85 ACRES CHESTERFIELD SC

EFFECTIVE DATE	POSTING DATE	TRAN CODE	MONETARY TRANSACTIONS	
			TRANSACTION AMOUNT	DESCRIPTION AMOUNT
12/29/00	01/22/01	AC59	1,500.00	LOAN FEE INCREASE BATCH SEQ 050950001000014 SUPPLEMENTAL TC 01 LOAN BALANCE 0.00
12/29/00	01/22/01	TC51	150,000.00	FUND LOAN 0710400073 BATCH SEQ 001001043000002 PRINCIPAL 150,000.00 LOAN BALANCE 150,000.00
01/31/01	01/31/01	TC17	1,500.00	LOAN FEE PAYMENT BATCH SEQ 201202101005819 LOAN BALANCE 150,000.00
02/12/01	02/12/01	TC11	1,380.65	TRANS FROM 010400342 BATCH SEQ 001001020000002 INTEREST 1,380.65 OLD PYMT DUE DT 01/30/01 PAYMENT COUNTER 01 LOAN BALANCE 150,000.00
03/14/01	03/14/01	TC11	1,380.65	TRANS FROM CR 10400156 BATCH SEQ 001001025000002 INTEREST 1,380.65 OLD PYMT DUE DT 02/28/01 PAYMENT COUNTER 01 LOAN BALANCE 150,000.00
04/13/01	04/13/01	TC11	1,380.65	PAY FROM 010400342 BATCH SEQ 001001009000002 INTEREST 1,380.65 OLD PYMT DUE DT 03/30/01 PAYMENT COUNTER 01 LOAN BALANCE 150,000.00

*** PLEASE REFER TO NEXT PAGE FOR MORE HISTORY ***

EXHIBIT

S Lewis
5-6-11

ACB-5

00071040007Y
LOAN NUMBERREAL ESTATE LOAN
HISTORY STATEMENT06/29/08
STATEMENT DATE

MICHAEL BROWN

STMT REASON PAID OFF LOAN

MONETARY TRANSACTIONS					
EFFECTIVE DATE	POSTING DATE	TRAN CODE	TRANSACTION AMOUNT	DESCRIPTION	POSTING AMOUNT
05/14/01	05/14/01	TC11	1,380.65	TRANS FROM CK 010400342 BATCH SEQ 001001021000002 INTEREST 1,380.65 OLD PYMT DUE DT 04/30/01 PAYMENT COUNTER 01 LOAN BALANCE 150,000.00	
06/12/01	06/12/01	TC11	1,380.65	LOAN PAYMENT BATCH SEQ 001001015000002 PRINCIPAL 28.25 INTEREST 1,352.40 OLD PYMT DUE DT 05/30/01 PAYMENT COUNTER 01 LOAN BALANCE 149,971.75	
07/12/01	07/12/01	TC11	1,380.65	TRANS FROM CK 010400342 BATCH SEQ 001001019000002 PRINCIPAL 130.89 INTEREST 1,249.76 OLD PYMT DUE DT 06/30/01 PAYMENT COUNTER 01 LOAN BALANCE 149,840.86	
08/14/01	08/14/01	TC11	1,380.65	SCHEDULED PAYMENT - AUTO SPLIT BATCH SEQ 201202101007938 PRINCIPAL 7.11 INTEREST 1,373.54 OLD PYMT DUE DT 07/30/01 PAYMENT COUNTER 01 LOAN BALANCE 149,833.75	
09/19/01	09/19/01	TC11	1,380.65	TRANS FROM CK 010400342 BATCH SEQ 001001048000002 INTEREST 1,380.65 OLD PYMT DUE DT 08/30/01 PAYMENT COUNTER 01 LOAN BALANCE 149,833.75	
10/15/01	10/15/01	TC11	1,380.65	DEBIT LOAN PNT 10400342 BATCH SEQ 001001034000002 PRINCIPAL 180.63 INTEREST 1,199.82 OLD PYMT DUE DT 09/30/01 PAYMENT COUNTER 01 LOAN BALANCE 149,652.92	
11/15/01	11/15/01	TC11	1,380.65	10400342 DEBIT LOAN PNT BATCH SEQ 001001007000002 PRINCIPAL 91.97 INTEREST 1,288.68 OLD PYMT DUE DT 10/30/01 PAYMENT COUNTER 01 LOAN BALANCE 149,560.95	
12/13/01	12/13/01	TC11	1,380.65	LOAN PNT BATCH SEQ 001001031000002 PRINCIPAL 217.40 INTEREST 1,163.25 OLD PYMT DUE DT 11/30/01 PAYMENT COUNTER 01 LOAN BALANCE 149,343.55	
01/23/02	01/23/02	TC14	1,700.86	DEBIT INT PNT 10400342 BATCH SEQ 001001042000002 LOAN BALANCE 149,343.55	
01/29/02				NEXT PAYMENT DUE DATE CHANGE PREV DUE DATE 12/30/01 NEXT DUE DATE 04/23/02	
01/29/02				REPAYMENT SCHEDULE CHANGE	
05/29/02				NEXT PAYMENT DUE DATE CHANGE PREV DUE DATE 04/23/02 NEXT DUE DATE 07/23/02	
05/29/02				REPAYMENT SCHEDULE CHANGE	

*** PLEASE REFER TO NEXT PAGE FOR MORE HISTORY ***

ACB - 6

000718400073
LOAN NUMBERREAL ESTATE LOAN
HISTORY STATEMENT06/29/08
STATEMENT DATE

MICHAEL BROWN

STMT REASON PAID OFF LOAN

MONETARY TRANSACTIONS				***** POSTING *****
EFFECTIVE DATE	POSTING DATE	TRAN CODE	TRANSACTION AMOUNT	DESCRIPTION AMOUNT
08/26/02				NEXT PAYMENT DUE DATE CHANGE PREV DUE DATE 07/23/02 NEXT DUE DATE 10/23/02
08/26/02				REPAYMENT SCHEDULE CHANGE NEXT PAYMENT DUE DATE CHANGE PREV DUE DATE 10/23/02 NEXT DUE DATE 01/23/03
11/22/02				REPAYMENT SCHEDULE CHANGE NEXT PAYMENT DUE DATE CHANGE PREV DUE DATE 01/23/03 NEXT DUE DATE 04/23/03
02/24/03				REPAYMENT SCHEDULE CHANGE NEXT PAYMENT DUE DATE CHANGE PREV DUE DATE 04/23/03 NEXT DUE DATE 07/23/03
05/27/03				REPAYMENT SCHEDULE CHANGE NEXT PAYMENT DUE DATE CHANGE PREV DUE DATE 07/23/03 NEXT DUE DATE 12/15/03
08/29/03				REPAYMENT SCHEDULE CHANGE NEXT PAYMENT DUE DATE CHANGE PREV DUE DATE 12/15/03 NEXT DUE DATE 07/15/04
01/29/04				REPAYMENT SCHEDULE CHANGE NEXT PAYMENT DUE DATE CHANGE PREV DUE DATE 07/15/04 NEXT DUE DATE 01/15/05
08/30/04				REPAYMENT SCHEDULE CHANGE
02/25/05	02/25/05	TC41	0.00	LOAN RENEWAL BATCH SEQ 001001065000001 LOAN BALANCE 149,343.55
02/28/05				NEXT PAYMENT DUE DATE CHANGE PREV DUE DATE 02/25/05 NEXT DUE DATE 06/15/05
07/28/05				REPAYMENT SCHEDULE CHANGE NEXT PAYMENT DUE DATE CHANGE PREV DUE DATE 06/15/05 NEXT DUE DATE 12/15/05
01/30/06				REPAYMENT SCHEDULE CHANGE NEXT PAYMENT DUE DATE CHANGE PREV DUE DATE 12/15/05 NEXT DUE DATE 07/15/06
08/30/06				REPAYMENT SCHEDULE CHANGE NEXT PAYMENT DUE DATE CHANGE PREV DUE DATE 07/15/06 NEXT DUE DATE 02/05/07
03/29/07				REPAYMENT SCHEDULE CHANGE NEXT PAYMENT DUE DATE CHANGE PREV DUE DATE 02/05/07 NEXT DUE DATE 09/15/07
10/29/07	10/29/07	TC14	87,400.00	REPAYMENT SCHEDULE CHANGE INTEREST PAYMENT BATCH SEQ 201006100448922 LOAN BALANCE 149,343.55
10/29/07				FIXED RATE CHANGE OLD RATE 10.00000 NEW RATE 7.25000
10/30/07				NEXT PAYMENT DUE DATE CHANGE PREV DUE DATE 09/15/07 NEXT DUE DATE 03/10/08
10/30/07				REPAYMENT SCHEDULE CHANGE
06/27/08	06/27/08	TC42	156,546.47	pay-off BATCH SEQ 001301032000003 PRINCIPAL 149,343.55 INTEREST 7,202.92 OLD PYMT DUE DT 08/10/08 LOAN BALANCE 0.00

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