

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

RECEIVED

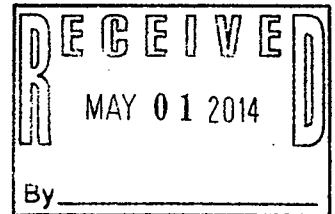
OCT 19 2015

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



of whom

MICHAEL R. BROWN is the Appellant.

RECORD ON APPEAL: VOLUME II

RECEIVED

APR 26 2014

SC Court of Appeals

John Martin Foster
Post Office Box 106
Rock Hill, South Carolina 29731-6106
(803) 324-8100
Attorney for Appellant

James W. Sheedy
Susan E. Driscoll
Driscoll Sheedy, P.A.
11520 N. Community House Rd, Suite 200
Charlotte, N.C. 28277
(704) 341-2102
Attorneys for Respondent



2400 Bull Street
Columbia, SC 29201-1708

Mr. Duncan Laney
Tanner Brother's, Inc.
Route 2, Box 85
Parnock, South Carolina 29584

MAR 24 1997

Re: Tanner Brother's, SC 109 Ruby-Harrisville 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.

ACB-8

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

DATE: 03/24/97

TIME: 10:00 AM

LOCATION: 1000 N. G. 1000

EXHIBIT

6 Clewis
5.6.11
251

Mr. Laney
Page 2

On all correspondence related to this site, please reference Site ID #02214. Questions should be addressed to Kimherly A. Wilson at (803) 734-0726.

Sincerely,

State Lead & Field Services Section
Assessment & Corrective Action Division
Bureau of Underground Storage Tank Management

Kimherly A. Wilson

Kimherly A. Wilson, P.G., Hydrologist

Christopher S. Doll
Christopher S. Doll, P.G., Manager

enc: Report of Investigation

cc: Diane Taggerty, Canandaigua Wine Co., 116 Buffalo St. Canandaigua NY 14624
Technical File

ONLCUSTIC24917611

ACB-9



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

January 8, 2010

Nicole Shortt
111 Market St.
Bennettsville, SC 29512

Re: Underground Storage Tank (UST) Site #02214
Tenner Brothers Inc., Hwy 109, Ruby, SC

Dear Ms. Shortt:

The Division of UST Management received your request for an update on the environmental conditions at the referenced facility.

Our records indicate that eight underground storage tanks were removed from the ground at the above referenced site on December 1, 1990 and an assessment report was received on October 23, 1991. Following assessment, the Division of UST Management closed this file and issued a no further action letter on January 22, 1997. Though further site assessment or rehabilitation was not warranted based on information submitted, the Division may require investigative and/or remedial actions should contamination that could be attributed to a UST system become evident.

Please contact me at (803) 896-6944 if you have any further questions or require additional assistance with this matter.

Sincerely,

Denise M. Place

Denise M. Place
Regulatory Compliance Section
Division of UST Management
Bureau of Land and Waste Management

EXHIBIT

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5-6-11

ACB - 10

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
2600 Bull Street • Columbia, SC 29201 • Phone: (803) 898-3432 • www.scdhec.gov

DOCKETING # 1 R



Note Inquiry - Basic Note Data

Options

- ▶ Print history
- ▶ Participation inquiry
- ▶ Dealer inquiry
- ▶ Inquiry window
- ▶ Restart
- ▶ Ticker inquiry
- ▶ View non-public
- ▶ Payoff inquiry

Favorites

Information

Help

Logoff

▶ Printed jobs...

Note number

710400073 - 010 G 01

Short name

BROWN MICHAEL

Customer Data

MICHAEL BROWN
2217 D MATTHEWS TOWNSHIP PKWY APT 113
MATTHEWS NC 28105

Balance Data

<u>Note amount</u>	150,000.00
<u>Principal bal</u>	.00
<u>Interest bal</u>	.00
<u>P/O</u> 12-31-09	.00
<u>Avail for disb</u>	.00

Contact/Title

Tax ID XXX-XX-5653

Home phone

843-634-5101

Business phone

00-000-0000

Officer

JNC

Interest Data

<u>Int rate</u>	7.2500
<u>Daily int factor</u>	.000000

Next Payment Data

Dates

<u>Note date</u>	12-29-00
<u>Last renewed</u>	
<u>Maturity date</u>	5-10-08
<u>Last active</u>	6-27-08
<u>Last paid installment</u>	
<u>Interest paid-to date</u>	1-15-05

Next due date

Next pmt amount

.00

Total past due amt

.00

Sold Data

Percentage sold

.0000

Total sold

.00

ACB-11

EXHIBIT

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56.11



Note Inquiry - Basic Note Data

Options

- ▶ Print history
- ▶ Participation inquiry
- ▶ Dealer inquiry
- ▶ Inquiry window
- ▶ Restart
- ▶ Ticker inquiry
- ▶ View non-public
- ▶ Payoff inquiry

Favorites

Information

Help

Logoff

ACB - 12

Next Display

2

02 - Codes

Note number

710400073 - 010 G 01

Short name

BROWN MICHAEL

Customer Data

MICHAEL BROWN

2217 D MATTHEWS TOWNSHIP PKWY APT 113

MATTHEWS NC 28105

Balance Data

Note amount150,000.00

Principal bal

.00

Interest bal

.00

P/O

12-31-09

.00

Avail for disb

.00

Contact/Title

Tax ID

XXX-XX-5653

Home phone

843-634-5101

Business phone

00-000-0000

Officer

JNC

Interest Data

Int rate

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Daily Int factor

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Dates

Note date

12-29-00

Last renewedMaturity date

6-10-08

Last active

6-27-08

Last paid installmentInterest paid-to date

1-15-05

Next Payment Data

Next due date

Next pmt amount

.00

Total past due amt

.00

Sold Data

Percentage sold

.0000

Total sold

.00

▶ Printed jobs...



DEED BY CORPORATION

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

NOT ABSTRACTED

005199

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 him in hand paid by Michael R. Brown, 510 Queens Road, Suite 204, Charlotte, NC 28207 in the hereof stated, 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 9 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 621.40 feet to its intersection with the centerline of Highway S-13-657; thence S 26°-32'-03" E along the centerline of Highway S-13-29 for a distance of 881.13 feet to a point; thence S 26°-30'-01" E along the centerline of Highway S-13-29 for a distance of 494.02 feet to a point; thence S 25°-45'-34" 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 172.03 feet to an iron; thence S 73°-28'-41" U for a distance of 261.14 feet to a point; thence S 14°-33'-21" E for a distance of 209.82 feet to a point; thence S 73°-28'-41" U for a distance of 1528.15 feet to an iron; thence N 09°-37'-23" U for a distance of 87.31 feet to a steel fence post; thence N 25°-03'-16" U for a distance of 1292.09 feet to a steel fence post; thence S 53°-13'-40" U along the northern side of an abandoned county road for a distance of 430.16 feet to a point; thence N 02°-52'-37" U for a distance of 308.38 feet to a point; thence N 02°-49'-23" U for a distance of 468.20 feet to a concrete post; thence N 44°-48'-28" E for a distance of 273.74 feet to a point; thence N 12°-24'-36" U for a distance of 764.63 feet to an iron; thence N 84°-15'-47" E for a distance of 1531.38 feet to the point of beginning. Said property is more particularly shown and described as 106.83 ACRES according to a plat of survey prepared by William O. Martin, P.L.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.

000829

A True Copy Attest

Jace J. Sellers

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

EXHIBIT

9 Clewis
5611

ACB-13

This is a portion of that property conveyed to the Grantor by deed of Blacuplin Brothers Wine Co. dated May 20, 1977, and recorded in Deed Book 338, at page 103, 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 on the aforesaid plat.

000870

TOGETHER with all and singular, the rights, claims, 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 do said C. W. Morris Sawmill & Chip Company, Inc.

does hereby bind itself and its successors so 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 whatsoever lawfully claiming, or to claim, the same or any part thereof.

A True
Copy

ACB - 14

In Witness Whereof,

C.W. HORNE SAVILL & CHIP COMPANY, INC.

has caused these presents to be executed in its name by C. W. Horne

by

President and

Darry Hilton

by

Assistant Secretary

and

its corporate seal to its 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 SAVILL & CHIP COMPANY, INC.

Dana H. Threadgill

C. W. Horne
C. W. HORNE

PRESIDENT

Darry Hilton
DARRY HILTON Assistant Secretary

STATE OF

SOUTH CAROLINA

CHESTERFIELD

COUNTY

PERSONALLY appeared before me Dana H. Threadgill

and made oath that she was the within-named C. W. Horne Savill & Chip Company, Inc.

by C. W. Horne

by

President and

by Darry Hilton

by

Assistant Secretary

sign

the within-written Deed and the said corporation, by said officers and said Deed, and, as is duly authorized
me and deed, deliver the same for the uses and purposes therein mentioned and that I, with
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

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 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 Grantor's attorney.

SWORN TO before me this 25th day of September, 1998.

David H. [Signature] (S.)
Notary Public for South Carolina

My commission expires: 12/31/00

copy 4/26/06

**TITLE TO REAL ESTATE
BY A CORPORATION**

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD
C. W. SMITH ESTATE & CHILD CORP., INC.
To

RECORDED L. BOOK

FILED FOR RECORD AT 1:01 P.M. ON SEP 29 DAY OF Sept. '98
RECORDED BY Deed Book 368 AT PAGE 829-831
CLERK OF COUNTY RECORDS OF SOUTH CAROLINA
Deed No. 1622-10-116
of Book 5 of Deed, 116
J. [Signature]
COUNTY CLERK
NOTARY PUBLIC
NOTARY
M. J. [Signature]
COUNTY CLERK

Per Office Rec 29
Chester, South Carolina 29320

FILED
CLERK OF COURT
1998 SEP 29 AM 11 42
CHESTERFIELD COUNTY, SC
BOOK PAGE

Cost of Deed, Deed Book
REVENUE FEE COLLECTED
STATE \$ 6.50-00
COUNTY \$ 275.00
DATE:

0000002
10-18-98
156-2
THIS IS 157-16
CHESTERFIELD COUNTY ASSessor
112-10-18-98

NO 104718
ATLANTIC
TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

Atlantic Title Insurance Company, a South Carolina corporation, herein called the Company, for a valuable consideration, hereby commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the proposed insured named in Schedule A, as owner or mortgagee of the estate or interest covered hereby in the land described or referred to in Schedule A, upon payment of the premiums and charges therefor and upon receipt of attorney's final certificate on the Company's form signed by the examining attorney approved by the Company, showing compliance with and satisfaction of the requirements set forth in Schedule B of this Commitment, all subject to the provisions of Schedules A and B and to the Conditions and Stipulations hereof; provided no liens, encumbrances or objections intervene between the date and time shown on Schedule A and the date and time the instrument creating the estate or interest to be insured is filed for record.

This Commitment shall be effective only when the identity of the proposed insured and the amount of the policy or policies committed for have been inserted in Schedule A hereof by the Company, either at the time of the issuance of this Commitment or by subsequent endorsement.

This Commitment is preliminary to the issuance of such policy or policies of title insurance and all liability and obligations hereunder shall cease and terminate one hundred eighty (180) days after the effective date hereof or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue such policy or policies is not the fault of the Company. This Commitment is valid only if Schedules A and B are attached.

Nothing herein contained shall be construed as a guarantee against the consequences of the exercise and enforcement or attempted enforcement of governmental "police power" over the property described herein.

This Commitment shall not be valid or binding until countersigned by a validating officer or authorized signatory.

IN WITNESS WHEREOF, Atlantic Title Insurance Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers on the date shown in Schedule A.

ATLANTIC TITLE INSURANCE COMPANY

BY:

Patricia D. Davis
President

ATTEST:

John J. North
Secretary

CONDITIONS AND STIPULATIONS ON REVERSE

ATL 116 (804) ALTA Commitment

EXHIBIT

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56.11

ACB - 17

ALTA Commitment - 1996

SCHEDULE A

Commitment
No. 104718

1. Effective date and time: December 21, 2000 at 11:00 a.m.

2. Policy or Policies to be issued:

Amount

(a) ☐ ALTA Owner's Policy

Form B - 1970 (Amended 10-17-70) \$ _____

Residential Policy - 1979 \$ _____

Proposed Insured:

(b) ☒ ALTA Loan Policy - 1970 (Amended 10-17-70) \$ 150,000.00

Proposed Insured: American Community Bank

3. The estate or interest in the land described or referred to in this Commitment and covered herein is a fee simple.

4. Title to the said estate or interest in said land is at the effective date hereof vested in:
Michael R. Brown5. The land referred to in this Commitment is situated in the _____ County _____ of _____
State of _____, and is described as follows:

see attached description

ATLANTIC TITLE INSURANCE COMPANY

by _____

Authorized Signatory

This Commitment void only if Schedule B is attached.

ACB - 18

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'-34" 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'-82" 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'-23" 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 1331.58 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 O. 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.

Commitment No. 104718

LIEN-TO TITLE

THIS INSTRUMENT

ACB - 19

ALTA Commitment — 1963

SCHEDULE B

Commitment
No. 104718

I. The following are the requirements to be complied with:

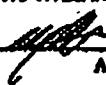
- a. Payment to or for the account of the person entitled thereto of the full consideration for the estate or interest and mortgage thereon covered by said policy or policies of this insurance.
- b. Instruments in legible form creating the estate or interest and mortgage thereon to be insured which must be executed, delivered, and duly filed for record:
Mortgage securing loan.

II. Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date and time hereof but prior to the date and time the proposed insured acquires fee value of record the estate or interest or mortgage thereon covered by this commitment.
2. 95% 2000 taxes and assessments and all subsequent years.
3. Any lien or right to lien, for services, labor, or materials, hereupon or hereafter furnished, imposed by law and not now shown by the public record: (This exception will be deleted in the policy upon submission of a satisfactory Owners and Contractors Affidavit on the Company's form.)
4. 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. (This exception will be deleted in the policy upon submission of a satisfactory Plat of the property subscribed hereto, and a Surveyors Certificate on the Company's Form.)

ATLANTIC TITLE INSURANCE COMPANY

by


Authorized Signatory

Schedule B of this Commitment consists of 1 page.

ACB - 20

SCHEDULE B

No. 104716

5. That certain mortgage to C. W. Horne Sawmill and Chip Co., Inc., dated January 13, 2000, and recorded in Mortgage Book 339, at page 70, in the Office of the Clerk of Court for Chesterfield County.

6. That certain right-of-way easement for existing County Road as shown on plat of survey, and recorded in Plat Book 0, at page 7-X, in the Office of the Clerk of Court for Chesterfield County.

ATLANTIC TITLE INSURANCE COMPANY

by  Authorized Signatory

page two of Schedule B.

ACB - 21

ATLANTIC

TITLE INSURANCE COMPANY

PO Box 8627 - Columbia SC 29202-8627

This all purpose endorsement is an addition or amendment to the policy or commitment of Atlantic Title Insurance Company identified as follows:

INSURED		POLICY/COMMITMENT NO.	
AMERICAN COMMUNITY BANK		104718	
SECTION AMENDED	EFFECTIVE DATE OF ENDORSEMENT	BEING PAGE	OF PAGES
	December 31, 2000	one	one

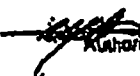
The insurance afforded by this endorsement is only effective if the land is used or is to be used primarily for residential purposes.

The Company insures the insured against loss or damage sustained by reason of lack of priority of the lien of the insured mortgage over:

- (a) any environmental protection lien which, at Date of Policy, is recorded in those records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge, or filed in the records of the clerk of the United States district court for the district in which the land is located, except as set forth in Schedule B; or
- (b) any environmental protection lien provided for by any state statute in effect at Date of Policy, except environmental protection liens provided for by the following state statutes:

This endorsement is made a part of the policy and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements nor does it increase the face amount thereof.

Countersigned:


Authorized Officer or Agent

ALTA ENDORSEMENT — Form 8.1 (Environmental Protection Lien) — to accompany only ALTA loan

ACB - 22

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:


Authorized Officer or Agent

Issued at: Cheraw, South Carolina

ATL-110 (304)

Valid only if attached to ALTA Loan Policy - 1876 Revised

ACB - 23

Miller S. Ingram, Jr.
 Attorney At Law
 Post Office Box 39
 Cheraw, South Carolina 29520

TELEPHONE
 (843) 537-6565
 (843) 537-3838

FAX/TELETYPE
 (843) 537-0770
 204 Market Street

CONFIDENTIAL

The information in this message is intended only for the recipient named below. If you are not the intended recipient, you are hereby notified that any copying, distribution, or dissemination of this message is strictly prohibited. If you have received this message in error, please notify us immediately at (843) 537-6565 or (843) 537-3838 and return the original message to us at P.O. Box 39, Cheraw, South Carolina 29520. Thank you.

DATE: December 21, 2000

SENT TO: Jeff Coley w/ American Community Bank

AT TELECOPIER NUMBER: 1-704-624-1964

RE FILE NUMBER: 1461-A

NUMBER OF PAGES INCLUDING THIS SHEET: 2

Mr. Coley,
 Please find the following commitment for title insurance regarding the closing for Michael R. Brown. If the insured should need to be corrected, please call or fax me the change. Mr. Ingram said that we would need to close our documents here, but you may choose to have all other documents executed at your bank. Please call me to discuss this matter.

Thank you,

Rodine J. Allison

EXHIBIT

11 Clewis
 5.6.11

ACB - 26

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:

Valid only if attached to ALTA Loan or Owner's Policy, 1970 Revised of the Atlantic Title Insurance Company, Policy

Number N-157231

Countersigned: [Signature]
Authorized Officer or Agent

ATL-111 (2-54)

ACB - 27

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-I, in the Office of the Clerk of Court for Chesterfield County.

ATLANTIC TITLE INSURANCE COMPANY

by  _____
Authorized Signatory

page two of Schedule B.

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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°-32'-05" E along the centerline of Highway S-13-29 for a distance of 881.13 feet to a point; thence S 26°-30'-01" E along the centerline of Highway S-13-29 for a distance of 494.02 feet to a point; thence S 25°-45'-34" 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 1528.13 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'-23" 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 106.83 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 7-1, 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 #: N-157931

LIEN-TO TITLE

TITLE INSURANCE AGENCY

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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 term.
Any item above containing "****" has been omitted due to text length limitations.

Lender: American Community Bank
American Community Bank
2583 West Roosevelt Boulevard
PO Box 5035
Monroe, NC 28114-5035

x Michael R Brown (Sign)

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 08-16-2010 BY 60322 UCBAW

ASSIGNMENT OF DEPOSIT ACCOUNT

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
Marshville
Marshville, NC 28103

Grantor: BILLIE W HORNE
7318 E MARSHVILLE BLVD
MARSHVILLE, NC 28103

THIS ASSIGNMENT OF DEPOSIT ACCOUNT dated December 28, 2020, is made and executed among BILLIE W HORNE ("Grantor"); MICHAEL R BROWN ("Borrower"); and American Community Bank ("Lender").

ASSIGNMENT. For valuable consideration, Grantor assigns and grants to Lender a security interest in the Collateral, including without limitation the deposit accounts described below, to secure the indebtedness and agrees that Lender shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which Lender may have by law.

COLLATERAL. The word "Collateral" means the following described deposit account ("Account"):

CD Account Number #10400089 with Lender with an approximate balance of \$149,841.87

together with (A) all interest, whether now accrued or hereafter accruing; (B) all additional deposits hereafter made to the Account; (C) any and all proceeds from the Account; and (D) all renewals, replacements and substitutions for any of the foregoing.

BORROWER'S WAIVERS AND RESPONSIBILITIES. Except as otherwise required under this Agreement or by applicable law, (A) Borrower agrees that Lender need not tell Borrower about any action or inaction Lender takes in connection with this Agreement; (B) Borrower assumes the responsibility for being and keeping informed about the Collateral; and (C) Borrower waives any defenses that may arise because of any action or inaction of Lender, including without limitation any failure of Lender to realize upon the Collateral or any delay by Lender in realizing upon the Collateral; and Borrower agrees to remain liable under the Note no matter what action Lender takes or fails to take under this Agreement.

GRANTOR'S REPRESENTATIONS AND WARRANTIES. Grantor warrants that: (A) this Agreement is executed at Borrower's request and not at the request of Lender; (B) Grantor has the full right, power and authority to enter into this Agreement and to pledge the Collateral to Lender; (C) Grantor has established adequate means of obtaining from Borrower on a continuing basis information about Borrower's financial condition; and (D) Lender has made no representation to Grantor about Borrower or Borrower's creditworthiness.

GRANTOR'S WAIVERS. Grantor waives all requirements of presentment, protest, demand, and notice of dishonor or non-payment to Borrower or Grantor, or any other party to the indebtedness or the Collateral. Lender may do any of the following with respect to any obligation of any Borrower, without first obtaining the consent of Grantor: (A) grant any extension of time for any payment; (B) grant any renewal; (C) permit any modification of payment terms or other terms; or (D) exchange or release any Collateral or other security. No such act or failure to act shall affect Lender's rights against Grantor or the Collateral.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Grantor's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Grantor 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. Grantor 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.

GRANTOR'S REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE COLLATERAL. With respect to the Collateral, Grantor represents and promises to Lender that:

Ownership. Grantor is the lawful owner of the Collateral free and clear of all loans, liens, encumbrances, and claims except as disclosed to and accepted by Lender in writing.

Right to Grant Security Interest. Grantor has the full right, power, and authority to enter into this Agreement and to assign the Collateral to Lender.

No Prior Assignment. Grantor has not previously granted a security interest in the Collateral to any other creditor.

No Defaults. There are no defaults relating to the Collateral, and there are no assets or counterclaims to the same. Grantor will strictly and promptly do everything required of Grantor under this term, conditions, promises, and agreements contained in or relating to the Collateral.

Validity; Binding Effect. This Agreement is binding upon Grantor and Grantor's successors and assigns and is legally enforceable in accordance with its terms.

LENDER'S RIGHTS AND OBLIGATIONS WITH RESPECT TO THE COLLATERAL. While this Agreement is in effect, Lender may retain the rights to possession of the Collateral, together with any and all evidence of the Collateral, such as certificates or passbooks. This Agreement will remain in effect until (a) there no longer is any indebtedness owing to Lender; (b) all other obligations secured by this Agreement have been satisfied; and (c) Grantor, in writing, has requested from Lender a release of this Agreement.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Grantor fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due to any amounts Grantor is required to discharge or pay under this Agreement or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, fees, security interests, encumbrances and other claims, at any time levied or placed on the Collateral and paying all costs for freezing, maintaining and preserving the Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

LIMITATIONS ON OBLIGATIONS OF LENDER. Lender shall use ordinary reasonable care in the physical preservation and custody of any certificate or passbook for the Collateral but shall have no other obligation to protect the Collateral or its value. In particular, but without limitation, Lender shall

EXHIBIT

13 Clewis
5.6.11

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**ASSIGNMENT OF DEPOSIT ACCOUNT
(Continued)**

Page 2

have no responsibility (A) for the collection or protection of any income on the Collateral; (B) for the preservation of rights against seizure of the Collateral or against third persons; (C) for ascertaining any maturities, conversions, exchanges, offers, tenders, or similar matters relating to the Collateral; nor (D) for informing the Grantor about any of the above, whether or not Lender has or is deemed to have knowledge of such matters.

DEFAULT. Each of the following shall constitute an Event of Default under this Agreement:

Payment Default. Borrower fails to make any payment when due under the indebtedness.

Other Defaults. Borrower or Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement 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 or Grantor.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or Grantor or on Borrower's or Grantor's behalf under this Agreement, the 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.

Defective Collateralization. This Agreement or any of the Related Documents cease to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The death of Borrower or Grantor, the insolvency of Borrower or Grantor, the appointment of a receiver for any part of Borrower's or Grantor'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 or Grantor.

Creditor or Foreclosure Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or Grantor or by any governmental agency against any collateral securing the indebtedness. This includes a garnishment of any of Borrower's or Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower or Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or foreclosure proceeding and if Borrower or Grantor 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 occur with respect to Guarantor or any of the indebtedness or Guarantor dies or becomes incompetent or revokes or disputes the validity of, or liability under, any Guaranty of the indebtedness.

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

Insolvency. Lender in good faith believes itself insecure.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of an Event of Default, or at any time thereafter, Lender may exercise any one or more of the following rights and remedies, in addition to any rights or remedies that may be available at law, in equity, or otherwise:

Accelerate Indebtedness. Lender may declare all indebtedness of Borrower to Lender immediately due and payable, without notice of any kind to Borrower or Grantor.

Application of Account Proceeds. Lender may take directly all funds in the Account and apply them to the indebtedness. If the Account is subject to an early withdrawal penalty, that penalty shall be deducted from the Account before its application to the indebtedness, whether the Account is with Lender or some other institution. Any excess funds remaining after application of the Account proceeds to the indebtedness will be paid to Borrower or Grantor as the interests of Borrower or Grantor may appear. Borrower agrees, to the extent permitted by law, to pay any deficiency after application of the proceeds of the Account to the indebtedness. Lender also shall have all the rights of a secured party under the North Carolina Uniform Commercial Code, even if the Account is not otherwise subject to such Code concerning security interests, and the parties to this Agreement agree that the provisions of the Code giving rights to a secured party shall nonetheless be a part of this Agreement.

Other Rights and Remedies. Lender shall have and may exercise any or all of the rights and remedies of a secured creditor under the provisions of the North Carolina Uniform Commercial Code, at law, in equity, or otherwise.

Deficiency Judgment. If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section.

Election of Remedies. Except as may be prohibited by applicable law, all of Lender's rights and remedies, whether evidenced by this Agreement or by any other writing, shall be cumulative and may be exercised separately or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Agreement, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Cumulative Remedies. All of Lender's rights and remedies, whether evidenced by this Agreement or by any other writing, shall be cumulative and may be exercised separately or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Agreement, after Grantor's failure to perform, shall not affect Lender's right to declare a default and to exercise its remedies.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

Assignment. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement 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.

Attorney's Fees and Expenses. Grantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorney's fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Grantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorney's fees and legal expenses whether or not there is a lawsuit, including attorney's 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 activities). Grantor also shall pay all court costs and such additional fees as may be directed by the court.

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

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

Joint and Several Liability. All obligations of Borrower and Grantor under this Agreement shall be joint and several, and all references to Grantor shall mean each and every Grantor, and all references to Borrower shall mean each and every Borrower. This means that each Borrower and

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ASSIGNMENT OF DEPOSIT ACCOUNT
(Continued)

Page 3

Grantor signing below is responsible for all obligations in this Agreement.

No Waiver by Lender. Lender shall not be deemed to have waived any right under this Agreement 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 Agreement 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 Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, 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.

Notice. Any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by teletransmittal (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 addressee shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement 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, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

Power of Attorney. Grantor hereby appoints Lender as its true and lawful attorney-in-fact, irrevocably, with full power of substitution to do the following: (1) to demand, collect, receive, receipt for, use and recover all sums of money or other property which may now or hereafter become due, owing or payable from the Collateral; (2) to execute, sign and endorse any and all claims, instruments, receipts, checks, drafts or warrants due, owing or payable from the Collateral; (3) to execute or complete any and all claims existing under the Collateral, and, in the place and stead of Grantor, to execute and deliver the release and settlement for the claim; and (4) to do any claim or claims or to take any action or business or to be part in any proceedings, either in its own name or in the name of Grantor, or otherwise, which in the discretion of Lender may seem to be necessary or advisable. This power is given as security for the indebtedness, and the authority hereby conferred is and shall be irrevocable and shall remain in full force and effect until announced by Lender.

Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the remaining provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the legality, validity, or enforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

Successors and Assigns. Subject to any limitations stated in this Agreement on transfer of Grantor's interest, this Agreement shall be binding upon and future to the benefit of the parties, their successors and assigns. If ownership of the Collateral becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Agreement and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Agreement or liability under the indebtedness.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Agreement shall survive the execution and delivery of this Agreement, and be continuing in nature, and shall remain in full force and effect until such time as Borrower's indebtedness shall be paid in full.

Time is of the Essence. Time is of the essence in the performance of this Agreement.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Agreement. 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 Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code.

Account. The word "Account" means the deposit accounts described in the "Collateral Description" section.

Agreement. The word "Agreement" means this Assignment of Deposit Account, or this Assignment of Deposit Account may be amended or modified from time to time, together with all exhibits and schedules attached to this Assignment of Deposit Account from time to time.

Borrower. The word "Borrower" means MICHAEL R BROWN, and all other persons and entities signing the Note in whatever capacity.

Collateral. The word "Collateral" means all of Grantor's right, title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.

Default. The word "Default" means the Default set forth in this Agreement in the section titled "Default".

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Agreement in the Default section of this Agreement.

Grantor. The word "Grantor" means BILLIE W HOPKINS.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the indebtedness.

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 the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Borrower is responsible under this Agreement or under any of the Related Documents.

Lender. The word "Lender" means American Community Bank, its successors and assigns.

Note. The word "Note" means the Note executed by Borrower in the principal amount of \$150,000.00 dated December 29, 2000, together with all renewals of, extensions of, modifications of, consolidations of, and substitutions for the note or credit 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.

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ASSIGNMENT OF DEPOSIT ACCOUNT
(Continued)

Page 4

BORROWER AND GRANTOR HAVE READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS ASSIGNMENT OF DEPOSIT ACCOUNT AND AGREE TO ITS TERMS. THIS AGREEMENT IS DATED DECEMBER 28, 1991. THIS AGREEMENT IS GIVEN UNDER SEAL AND IT IS INTENDED THAT THIS AGREEMENT IS AND SHALL CONSTITUTE AND HAVE THE EFFECT OF A SEALED INSTRUMENT ACCORDING TO LAW.

GRANTOR:

x *Blaine W. Horne* (Seal)
BLAINE W. HORNE, individually

BORROWER:

x *Michael R. Brown* (Seal)
MICHAEL R. BROWN, individually

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American Community Bank
Additions or Substitutions to Collateral

Note Number 7100073

Date 08/28/03

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 of the terms and provisions of the Original Note and Security Agreement executed by the undersigned on 12/27/00, covering the personal property originally delivered shall apply to the personal property now delivered and shall continue in full force and effect.

Personal Property Originally Delivered

Year	Make/Model	Serial No	
------	------------	-----------	--

Other Personal Properties ACB CD # 610400089

Personal Property Now Delivered

Year	Make/Model	Serial No	
------	------------	-----------	--

Other Personal Properties ACB CD # 610400526

[Signature]
Witness

[Signature]
Witness

[Signature]
Debtor MICHAEL BROWN

[Signature]
Debtor BILLIE J. HORNE

EXHIBIT

14 Claws
56.11

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American Community Bank
Additions or Substitutions to Collateral

Note Number 710400073

Date 7-25-05

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 of 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 Originally Delivered

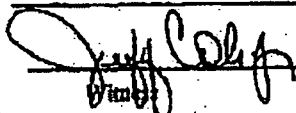
Year	Make/Model	Serial No	

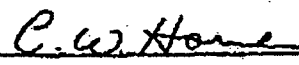
Other Personal Properties _____

Personal Property Now Delivered

Year	Make/Model	Serial No	

Other Personal Properties ACB Certificate 6104014653


Witness


Debtor

Witness

Debtor

EXHIBIT

15 Claws
5-6-11

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American Community Bank
Additions or Substitutions to Collateral

Note Number 710400073

Date 8/28/06

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 of the terms and provisions of the Original Note and Security Agreement executed by the undersigned on 12/29/00, covering the personal property originally delivered shall apply to the personal property now delivered and shall continue in full force and effect.

Personal Property Originally Delivered

Year	Make/Model	Serial No	

Other Personal Properties American Community Bank certificates 6104014653,

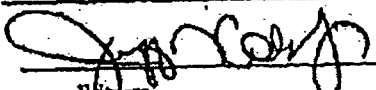
610400524, 610400519

Personal Property Now Delivered

Year	Make/Model	Serial No	

Other Personal Properties American Community Bank certificates 6104016199 and

6104016740


Witness


Debtor

Witness

EXHIBIT

16 Clewis
5611

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PROMISSORY NOTE

Reference to the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "****" has been omitted due to text length restrictions.

Borrower: MICHAEL BROWN
2277 O MATTHEWS TOWNSHIP PARKWAY,
APARTMENT 113
MATTHEWS, NC 28108

Lender: American Community Bank
Marshallville
7003 E. Marshallville Blvd
Marshallville, NC 28102

Principal Amount: \$87,400.00 Interest Rate: 7.250% Date of Note: October 29, 2007

PROMISE TO PAY. MICHAEL 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 Eighty-seven Thousand Four Hundred & 00/100 Dollars (\$87,400.00), together with interest at the rate of 7.250% per annum on the unpaid principal balance from October 29, 2007, until paid in full. The interest rate may change under one term and conditions of the "INTEREST AFTER DEFAULT" section.

PAYMENT. Borrower will pay this loan in one principal payment of \$87,400.00 plus interest on May 10, 2008. This payment due on May 10, 2008, will be for all principal and all accrued interest not yet paid. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest then to principal then to any late charges and then to any unpaid collection costs. The actual 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 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, release Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due. 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, P.O. BOX 2013 MONROE, NC 28111-5003.

LATE CHARGE. If a payment is 15 days or more late, Borrower will be charged 4.000% of the unpaid portion of the regularly scheduled payment. This late charge shall be paid to Lender by Borrower to compensate Lender for Lender's cause costs and expenses caused by the late payment.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, the total sum due under this Note will continue to accrue interest at the interest rate under this Note. If judgment is entered in connection with this Note, interest will continue to accrue after the date of judgment at the rate in effect at the time judgment is entered.

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, stipulation, 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.

Falsified 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 Guarantors. Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the indebtedness of any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note.

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.

Notwithstanding, Lender in good faith believes itself insured.

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

ATTORNEYS' FEES; EXPENSES. Lender may file 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 reasonable attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including reasonable 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 costs provided by law.

GOVERNING LAW. This Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of North Carolina without regard to its conflict of law provisions. 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 AMERICAN COMMUNITY BANK CERTIFICATE OF DEPOSIT NO. 5104010379 WITH A MINIMUM BALANCE OF \$87,400.00.

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.

NOTIFY US OF INACCURATE INFORMATION WE REPORT TO CREDIT REPORTING AGENCIES. Please notify us if we report any inaccurate information about your account to a consumer reporting agency. Your written notice describing the specific inaccuracy should be sent to us at the following address: American Community Bank, Marshallville, 7003 E. Marshallville Blvd, Marshallville, NC 28100.

GENERAL PROVISIONS. If any part of this Note cannot be enforced, this fact will not affect the rest of this Note. Lender may delay or refuse to enforce 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, when payment, demand for payment, and notice of enforcement. Upon any change to 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 this Note and for any length of time this loan or release any party or guarantor or co-maker or co-endorser or guarantor 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.

EXHIBIT

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17 CLEWIS
5.6.11

Loan No: 8104007881

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.

BORROWER:

X 
MICHAEL GRUEN

Continued from Page 1. This document contains information that may be exempt from public release under the Freedom of Information Act, 5 U.S.C. 552.

ACB - 45

18 Clewis
5.6.11

ASSIGNMENT OF DEPOSIT ACCOUNT

ACCOUNT NO.	DATE	AMOUNT	DATE	ACCOUNT NO.	DATE	AMOUNT	DATE	ACCOUNT NO.	DATE	AMOUNT	DATE	ACCOUNT NO.	DATE	AMOUNT	DATE	ACCOUNT NO.	DATE	AMOUNT	DATE
887-400-00	10-28-2007	15,400.00	10-28-2008	887-400-00	10-28-2007	15,400.00	10-28-2008	887-400-00	10-28-2007	15,400.00	10-28-2008	887-400-00	10-28-2007	15,400.00	10-28-2008	887-400-00	10-28-2007	15,400.00	10-28-2008

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

Borrower: MICHAEL BROWN
2217 D MATTHEWS TOWNSHIP PARKWAY,
APARTMENT 113
MATTHEWS, NC 28105

Grantor: CRESSFUL W. HORNE
7318 EAST MARSHVILLE BOULEVARD
MARSHVILLE, NC 28103

Lender: American Community Bank
Marshville
7003 E. Marshville Blvd
Marshville, NC 28103

THIS ASSIGNMENT OF DEPOSIT ACCOUNT dated October 28, 2007, is made and executed among CRESSFUL W. HORNE ("Grantor"); MICHAEL BROWN ("Borrower"); and American Community Bank ("Lender").

ASSIGNMENT. For valuable consideration, Grantor assigns and grants to Lender a security interest in the Collateral, including without limitation the deposit accounts described below, to secure the indebtedness and agrees that Lender shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which Lender may have by law.

COLLATERAL DESCRIPTION. The word "Collateral" means the following described deposit account ("Account"):

AMERICAN COMMUNITY BANK CERTIFICATE OF DEPOSIT NO. 8104018279 WITH A MINIMUM BALANCE OF \$87,400.00

together with: (A) all interest, whether now accrued or hereafter accruing; (B) all additional deposits hereafter made to the Account; (C) any and all proceeds from the Account; and (D) all renewals, replacements and substitutions for any of the foregoing.

In addition, the word "Collateral" includes all of Grantor's property (whether owned or not owned by more than one person or entity), in Lender's possession (or in the possession of a third party subject to Lender's control), whether existing now or later and whether tangible or intangible in character, including without limitation each and all of the following:

- (A) All property to which Lender acquires title or documents of title.
- (B) All property assigned to Lender.
- (C) All promissory notes, bills of exchange, stock certificates, bonds, savings passbooks, time certificates of deposit, insurance policies, and all other instruments and evidences of an obligation.
- (D) All records relating to any of the property described in this Collateral section, whether in the form of writing, microfilm, microfiche, or electronic media.

BORROWER'S WAIVERS AND RESPONSIBILITIES. Except as otherwise required under this Agreement or by applicable law, (A) Borrower agrees that Lender need not tell Borrower about any action or inaction Lender takes in connection with this Agreement; (B) Borrower assumes the responsibility for being and keeping informed about the Collateral; and (C) Borrower waives any defenses that may arise because of any action or inaction of Lender, including without limitation any failure of Lender to realize upon the Collateral or any delay by Lender in realizing upon the Collateral; and Borrower agrees to remain liable under the Note no matter what action Lender takes or fails to take under this Agreement.

GRANTOR'S REPRESENTATIONS AND WARRANTIES. Grantor warrants that: (A) this Agreement is executed at Borrower's request and not at the request of Lender; (B) Grantor has the full right, power and authority to enter into this Agreement and to pledge the Collateral to Lender; (C) Grantor has established adequate means of obtaining from Borrower on a continuing basis information about Borrower's financial condition; and (D) Lender has made no representation to Grantor about Borrower or Borrower's creditworthiness.

GRANTOR'S WAIVERS. Grantor waives all requirements of presentment, protest, demand, and notice of dishonor or non-payment to Borrower or Grantor, or any other party to the indebtedness or the Collateral. Lender may do any of the following with respect to any obligation of any Borrower, without first obtaining the consent of Grantor: (A) grant any extension of time for any payment, (B) grant any renewal, (C) permit any modification of payment terms or other terms, or (D) exchange or release any Collateral or other security. No such act or failure to act shall affect Lender's rights against Grantor or the Collateral.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Grantor's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Grantor 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. Grantor 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.

GRANTOR'S REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE COLLATERAL. With respect to the Collateral, Grantor represents and promises to Lender that:

Ownership. Grantor is the lawful owner of the Collateral free and clear of all loans, liens, encumbrances, and claims except as disclosed to and accepted by Lender in writing.

Right to Grant Security Interest. Grantor has the full right, power, and authority to enter into this Agreement and to assign the Collateral to Lender.

No Prior Assignment. Grantor has not previously granted a security interest in the Collateral to any other creditor.

No Further Transfer. Grantor shall not sell, assign, encumber, or otherwise dispose of any of Grantor's rights in the Collateral except as provided in this Agreement.

No Defaults. There are no defaults relating to the Collateral, and there are no offsets or counterclaims to the same. Grantor will strictly and promptly do everything required of Grantor under the terms, conditions, promises, and agreements contained in or relating to the Collateral.

Proceeds. Any and all replacement or renewal certificates, instruments, or other benefits or proceeds related to the Collateral that are received by Grantor shall be held by Grantor in trust for Lender and immediately shall be delivered by Grantor to Lender to be held as part of the Collateral.

ASSIGNMENT OF DEPOSIT ACCOUNT (Continued)

Loan No: 6104007881

Page 2

Validity; Binding Effect. This Agreement is binding upon Grantor and Grantor's successors and assigns and is legally enforceable in accordance with its terms.

Financing Statements. Grantor authorizes Lender to file a UCC financing statement, or alternatively, a copy of this Agreement to perfect Lender's security interest. At Lender's request, Grantor additionally agrees to sign all other documents that are necessary to perfect, protect, and continue Lender's security interest in the Property. Grantor will pay all filing fees, title transfer fees, and other fees and costs involved unless prohibited by law or unless Lender is required by law to pay such fees and costs. Grantor irrevocably appoints Lender to execute documents necessary to transfer title if there is a default. Lender may file a copy of this Agreement as a financing statement. If Grantor changes Grantor's name or address, or the name or address of any person granting a security interest under this Agreement changes, Grantor will promptly notify the Lender of such change.

LENDER'S RIGHTS AND OBLIGATIONS WITH RESPECT TO THE COLLATERAL. While this Agreement is in effect, Lender may retain the rights to possession of the Collateral, together with any and all evidence of the Collateral, such as certificates or passbooks. This Agreement will remain in effect until (a) there no longer is any indebtedness owing to Lender; (b) all other obligations secured by this Agreement have been fulfilled; and (c) Grantor, in writing, has requested from Lender a release of this Agreement.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Grantor fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Agreement or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, or any time levied or placed on the Collateral and paying all costs for insuring, maintaining and preserving the Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

LIMITATIONS ON OBLIGATIONS OF LENDER. Lender shall use ordinary reasonable care in the physical preservation and custody of any certificate or passbook for the Collateral but shall have no other obligation to protect the Collateral or its value. In particular, but without limitation, Lender shall have no responsibility (A) for the collection or protection of any income on the Collateral; (B) for the preservation of rights against issuers of the Collateral or against third persons; (C) for ascertaining any maturities, conversions, exchanges, offers, tenders, or similar matters relating to the Collateral; nor (D) for informing the Grantor about any of the above, whether or not Lender has or is deemed to have knowledge of such matters.

DEFAULT. Each of the following shall constitute an Event of Default under this Agreement:

Payment Default. Borrower fails to make any payment when due under the indebtedness.

Other Defaults. Borrower or Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement 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 or Grantor.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or Grantor or on Borrower's or Grantor's behalf under this Agreement 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.

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

Death or Insolvency. The death of Borrower or Grantor, the insolvency of Borrower or Grantor, the appointment of a receiver for any part of Borrower's or Grantor'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 or Grantor.

Creditor or Foreclosure Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or Grantor or by any governmental agency against any collateral securing the indebtedness. This includes a garnishment of any of Borrower's or Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower or Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower or Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture 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 occur with respect to any guarantor, endorser, surety, or accommodation party of any of the indebtedness or guarantor, endorser, surety, or accommodation party dies or becomes incompetent or revokes or disputes the validity of, or liability under, any Guaranty of the indebtedness.

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

Insecurity. Lender in good faith believes itself insecure.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of an Event of Default, or at any time thereafter, Lender may exercise any one or more of the following rights and remedies, in addition to any rights or remedies that may be available at law, in equity, or otherwise:

Accelerate Indebtedness. Lender may declare all indebtedness of Borrower to Lender immediately due and payable, without notice of any kind to Borrower or Grantor.

Application of Account Proceeds. Lender may take directly all funds in the Account and apply them to the indebtedness. If the Account is subject to an early withdrawal penalty, that penalty shall be deducted from the Account before its application to the indebtedness, whether the Account is with Lender or some other institution. Any excess funds remaining after application of the Account proceeds to the indebtedness will be paid to Borrower or Grantor as the interests of Borrower or Grantor may appear. Borrower agrees, to the extent permitted by law, to pay any deficiency after application of the proceeds of the Account to the indebtedness. Lender also shall have all the rights of a secured party under the North Carolina Uniform Commercial Code, even if the Account is not otherwise subject to such Code concerning security interests, and the parties to this Agreement agree that the provisions of the Code giving rights to a secured party shall nonetheless be a part of this Agreement.

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PROMISSORY NOTE

DATE OF NOTE	27 JUN 2008	PRINCIPAL AMOUNT	\$248,208.00	INTEREST RATE	5.700%
References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or term. Any item above containing "XXX" has been omitted due to text length limitations.					

Borrower: MICHAEL BROWN
2217 D MATTHEWS TOWNSHIP PARKWAY
APARTMENT 113
MATTHEWS, NC 28105

Lender: American Community Bank
Marshallville
7003 E. Marshallville Blvd
Marshallville, NC 28103

Principal Amount: \$248,208.00

Interest Rate: 5.700%

Date of Note: June 27, 2008

PROMISE TO PAY. MICHAEL 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 Two Hundred Forty-eight Thousand Two Hundred Six & 00/100 Dollars (\$248,208.00), together with interest at the rate of 5.700% per annum on the unpaid principal balance from June 27, 2008, until paid in full. The interest rate may change under the terms and conditions of the "INTEREST AFTER DEFAULT" section.

PAYMENT. Borrower will pay this loan in one principal payment of \$248,208.00 plus interest on December 15, 2008. This payment due on December 15, 2008, will be for all principal and all accrued interest not yet paid. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued interest then to principal and then to any unpaid collection costs. The annual interest rate for this Note is computed on a 360/360 basis; that is, by applying the rate 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 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. 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, P.O. BOX 5008 MARSHVILLE, NC 28103-5008.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, the total sum due under this Note will continue to accrue interest at the interest rate under this Note. If judgment is entered in connection with this Note, interest will continue to accrue after the date of judgment at the rate in effect at the time judgment is entered.

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.

Falsely 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 Tortfeasor Proceedings. Commencement of foreclosure or forfeiture 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 tortfeasor proceeding and if Borrower gives Lender written notice of the creditor or tortfeasor proceeding and deposits with Lender monies or a surety bond for the creditor or tortfeasor proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guaranty. Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the indebtedness of any guarantor, endorser, surety, or accommodation party who is 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.

Insolvency. Lender in good faith believes itself insolvent.

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance under this Note and all accrued unpaid interest immediately due, and then 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 reasonable attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including reasonable 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 federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of North Carolina without regard to its conflicts of law provisions. 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 AMERICAN COMMUNITY BANK CERTIFICATE OF DEPOSIT NO. 0104016278 WITH A MAXIMUM BALANCE OF \$248,208.00.

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.

NOTIFY US OF INACCURATE INFORMATION WE REPORT TO CONSUMER REPORTING AGENCIES. Please notify us if we report any inaccurate information about your account(s) to a consumer reporting agency. Your written notice describing the specific inaccuracy(ies) should be sent to us at the following address: American Community Bank, Marshallville, 7003 E. Marshallville Blvd, Marshallville, NC 28103.

GENERAL PROVISIONS. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forego 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 its period and for any length of time the loan or release any party or guarantor or collateral; or breach, 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.

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EXHIBIT

19 CLEWIS
5-6-11

Loan No: 5104008024

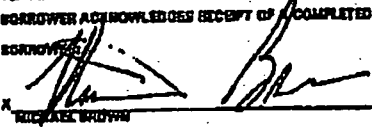
PROMISSORY NOTE
(Continued)

Page 2

BEFORE 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.

SIGNATURE



MICHAEL BROWN

ACB - 53

ASSIGNMENT OF DEPOSIT ACCOUNT

Principal	Loan Date	Maturity Date	Interest Rate	Collateral	Assignment	Office	Initials
\$248,206.00	06/27/2008	12/15/2008	5.99400802%	CD	CD	ING	

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

Borrower: MICHAEL BROWN
2217 D MATTHEWS TOWNSHIP PARKWAY,
APARTMENT 113
MATTHEWS, NC 28105

Lender: American Community Bank
Marshville
7003 E. Marshville Blvd
Marshville, NC 28103

Grantor: CRESFUL W. HORNE
7318 EAST MARSHVILLE BOULEVARD
MARSHVILLE, NC 28103

THIS ASSIGNMENT OF DEPOSIT ACCOUNT dated June 27, 2008, is made and executed among CRESFUL W. HORNE ("Grantor"); MICHAEL BROWN ("Borrower"); and American Community Bank ("Lender").

ASSIGNMENT. For valuable consideration, Grantor assigns and grants to Lender a security interest in the Collateral, including without limitation the deposit accounts described below, to secure the indebtedness and agrees that Lender shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which Lender may have by law.

COLLATERAL DESCRIPTION. The word "Collateral" means the following described deposit account ("Account"):

AMERICAN COMMUNITY BANK CERTIFICATE OF DEPOSIT NO. 6104016279 WITH A MINIMUM BALANCE OF \$248,206.00

together with: (A) all interest, whether now accrued or hereafter accruing; (B) all additional deposits hereafter made to the Account; (C) any and all proceeds from the Account; and (D) all renewals, replacements and substitutions for any of the foregoing.

In addition, the word "Collateral" includes all of Grantor's property (however owned if owned by more than one person or entity), in Lender's possession for in the possession of a third party subject to Lender's control, whether existing now or later and whether tangible or intangible in character, including without limitation each and all of the following:

- (A) All property to which Lender acquires title or documents of title.
- (B) All property assigned to Lender.
- (C) All promissory notes, bills of exchange, stock certificates, bonds, savings passbooks, time certificates of deposit, insurance policies, and all other instruments and evidences of an obligation.
- (D) All records relating to any of the property described in this Collateral section, whether in the form of writing, microfilm, microfiche, or electronic media.

BORROWER'S WAIVERS AND RESPONSIBILITIES. Except as otherwise required under this Agreement or by applicable law, (A) Borrower agrees that Lender need not tell Borrower about any action or inaction Lender takes in connection with this Agreement; (B) Borrower assumes the responsibility for being and keeping informed about the Collateral; and, (C) Borrower waives any defenses that may arise because of any action or inaction of Lender, including without limitation any failure of Lender to realize upon the Collateral or any delay by Lender in realizing upon the Collateral; and Borrower agrees to remain liable under the Note no matter what action Lender takes or fails to take under this Agreement.

GRANTOR'S REPRESENTATIONS AND WARRANTIES. Grantor warrants that: (A) this Agreement is executed at Borrower's request and not at the request of Lender; (B) Grantor has the full right, power and authority to enter into this Agreement and to pledge the Collateral to Lender; (C) Grantor has established adequate means of obtaining from Borrower on a continuing basis information about Borrower's financial condition; and (D) Lender has made no representation to Grantor about Borrower or Borrower's creditworthiness.

GRANTOR'S WAIVERS. Grantor waives all requirements of presentment, protest, demand, and notice of dishonor or non-payment to Borrower or Grantor, or any other party to the indebtedness or the Collateral. Lender may do any of the following with respect to any obligation of any Borrower, without first obtaining the consent of Grantor: (A) grant any extension of time for any payment, (B) grant any renewal, (C) permit any modification of payment terms or other terms, or (D) exchange or release any Collateral or other security. No such act or failure to act shall affect Lender's rights against Grantor or the Collateral.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Grantor's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Grantor 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. Grantor 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.

GRANTOR'S REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE COLLATERAL. With respect to the Collateral, Grantor represents and promises to Lender that:

Ownership. Grantor is the lawful owner of the Collateral free and clear of all loans, liens, encumbrances, and claims except as disclosed to and accepted by Lender in writing.

Right to Grant Security Interest. Grantor has the full right, power, and authority to enter into this Agreement and to assign the Collateral to Lender.

No Prior Assignment. Grantor has not previously granted a security interest in the Collateral to any other creditor.

No Further Transfer. Grantor shall not sell, assign, encumber, or otherwise dispose of any of Grantor's rights in the Collateral except as provided in this Agreement.

No Defaults. There are no defaults relating to the Collateral, and there are no offsets or counterclaims to the same. Grantor will strictly and promptly do everything required of Grantor under the terms, conditions, promises, and agreements contained in or relating to the Collateral.

Proceeds. Any and all replacement or renewal certificates, instruments, or other benefits or proceeds related to the Collateral that are received by Grantor shall be held by Grantor in trust for Lender and immediately shall be delivered by Grantor to Lender to be held as part of the Collateral.

EXHIBIT

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20 CLEWIS
56.11

**ASSIGNMENT OF DEPOSIT ACCOUNT
(Continued)**

Page 2

Loan No: 5104008024

Validity; Binding Effect. This Agreement is binding upon Grantor and Grantor's successors and assigns and is legally enforceable in accordance with its terms.

Financing Statements. Grantor authorizes Lender to file a UCC financing statement, or alternatively, a copy of this Agreement to perfect Lender's security interest. At Lender's request, Grantor additionally agrees to sign all other documents that are necessary to perfect, protect, and continue Lender's security interest in the Property. Grantor will pay all filing fees, this transfer fees, and other fees and costs involved unless prohibited by law or unless Lender is required by law to pay such fees and costs. Grantor irrevocably appoints Lender to execute documents necessary to transfer title if there is a default. Lender may file a copy of this Agreement as a financing statement. If Grantor changes Grantor's name or address, or the name or address of any person granting a security interest under this Agreement changes, Grantor will promptly notify the Lender of such change.

LENDER'S RIGHTS AND OBLIGATIONS WITH RESPECT TO THE COLLATERAL. While this Agreement is in effect, Lender may retain the right to possession of the Collateral, together with any and all evidence of the Collateral, such as certificates or passbooks. This Agreement will remain in effect until: (a) there no longer is any indebtedness owing to Lender; (b) all other obligations secured by this Agreement have been fulfilled; and (c) Grantor, in writing, has requested from Lender a release of this Agreement.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially effect Lender's interest in the Collateral or if Grantor fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Agreement or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Collateral and paying all costs for insuring, maintaining and preserving the Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. This Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

LIMITATIONS ON OBLIGATIONS OF LENDER. Lender shall use ordinary reasonable care in the physical preservation and custody of any certificate or passbook for the Collateral but shall have no other obligation to protect the Collateral or its value. In particular, but without limitation, Lender shall have no responsibility (A) for the collection or protection of any income on the Collateral; (B) for the preservation of rights against issuers of the Collateral or against third persons; (C) for ascertaining any maturities, conversions, exchanges, offers, tenders, or similar matters relating to the Collateral; or (D) for informing the Grantor about any of the above, whether or not Lender has or is deemed to have knowledge of such matters.

DEFAULT. Each of the following shall constitute an Event of Default under this Agreement:

Payment Default. Borrower fails to make any payment when due under the indebtedness.

Other Defaults. Borrower or Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement 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 or Grantor.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or Grantor or on Borrower's or Grantor's behalf under this Agreement 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.

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

Death or Insolvency. The death of Borrower or Grantor, the insolvency of Borrower or Grantor, the appointment of a receiver for any part of Borrower's or Grantor'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 or Grantor.

Creditor or Foreclosure Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or Grantor or by any governmental agency against any collateral securing the indebtedness. This includes a garnishment of any of Borrower's or Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower or Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or foreclosure proceeding and if Borrower or Grantor 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 Guarantors. Any of the preceding events occur with respect to any guarantor, endorser, surety, or accommodation party of any of the indebtedness or guarantor, endorser, surety, or accommodation party dies or becomes incompetent or revokes or disputes the validity of, or liability under, any Guaranty of the indebtedness.

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

Insecurity. Lender in good faith believes itself insecure.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of an Event of Default, or at any time thereafter, Lender may exercise any one or more of the following rights and remedies, in addition to any rights or remedies that may be available at law, in equity, or otherwise:

Accelerate Indebtedness. Lender may declare all indebtedness of Borrower to Lender immediately due and payable, without notice of any kind to Borrower or Grantor.

Application of Account Proceeds. Lender may take directly all funds in the Account and apply them to the indebtedness. If the Account is subject to an early withdrawal penalty, that penalty shall be deducted from the Account before its application to the indebtedness, whether the Account is with Lender or some other institution. Any excess funds remaining after application of the Account proceeds to the indebtedness will be paid to Borrower or Grantor as the interests of Borrower or Grantor may appear. Borrower agrees, to the extent permitted by law, to pay any deficiency after application of the proceeds of the Account to the indebtedness. Lender also shall have all the rights of a secured party under the North Carolina Uniform Commercial Code, even if the Account is not otherwise subject to such Code concerning security interests, and the parties to this Agreement agree that the provisions of the Code giving rights to a secured party shall nonetheless be a part of this Agreement.

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**ASSIGNMENT OF DEPOSIT ACCOUNT
(Continued)**

Loan No: 6104008024

Page 3

Transfer Title. Lender may effect transfer of title upon sale of all or part of the Collateral. For this purpose, Grantor irrevocably appoints Lender as Grantor's attorney-in-fact to execute endorsements, assignments and instruments in the name of Grantor and each of them (if more than one) as shall be necessary or reasonable.

Other Rights and Remedies. Lender shall have and may exercise any or all of the rights and remedies of a secured creditor under the provisions of the North Carolina Uniform Commercial Code, at law, in equity, or otherwise.

Deficiency Judgment. If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section.

Election of Remedies. Except as may be prohibited by applicable law, all of Lender's rights and remedies, whether evidenced by this Agreement or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Agreement, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Cumulative Remedies. All of Lender's rights and remedies, whether evidenced by this Agreement or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Agreement, after Grantor's failure to perform, shall not affect Lender's right to declare a default and to exercise its remedies.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

Amendments. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement 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. Grantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's reasonable attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Grantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's reasonable attorneys' fees and legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Grantor also shall pay all court costs and such additional fees as may be directed by the court.

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

Governing Law. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of North Carolina without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of North Carolina.

Joint and Several Liability. All obligations of Borrower and Grantor under this Agreement shall be joint and several, and all references to Grantor shall mean each and every Grantor, and all references to Borrower shall mean each and every Borrower. This means that each Borrower and Grantor signing below is responsible for all obligations in this Agreement.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement 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 Agreement 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 Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, 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.

Notices. Any notice required to be given under this Agreement 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 Agreement. Any party may change its address for notices under this Agreement 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, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

Power of Attorney. Grantor hereby appoints Lender as its true and lawful attorney-in-fact, irrevocably, with full power of substitution to do the following: (1) to demand, collect, receive, receipt for, sue and recover all sums of money or other property which may now or hereafter become due, owing or payable from the Collateral; (2) to execute, sign and endorse any and all claims, instruments, receipts, checks, drafts or warrants issued in payment for the Collateral; (3) to settle or compromise any and all claims arising under the Collateral, and in the place and stead of Grantor, to execute and deliver its release and settlement for the claim; and (4) to file any claim or claims or to take any action or institute or take part in any proceedings, either in its own name or in the name of Grantor, or otherwise, which in the discretion of Lender may seem to be necessary or advisable. This power is given as security for the indebtedness, and the authority hereby conferred is and shall be irrevocable and shall remain in full force and effect until renounced by Lender.

Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

Successors and Assigns. Subject to any limitations stated in this Agreement on transfer of Grantor's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Collateral becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Agreement and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Agreement or liability under the indebtedness.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Agreement shall survive the execution and delivery of this Agreement, shall be continuing in nature, and shall remain in full force and effect until such time

ASSIGNMENT OF DEPOSIT ACCOUNT
(Continued)

or Borrower's indebtedness shall be paid in full.

Time is of the Essence. Time is of the essence in the performance of this Agreement.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Agreement. 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 Agreement shall have the meanings ascribed to such terms in the Uniform Commercial Code:

Account. The word "Account" means the deposit account described in the "Collateral Description" section.

Agreement. The word "Agreement" means this Assignment of Deposit Account, as this Assignment of Deposit Account may be amended or modified from time to time, together with all exhibits and schedules attached to this Assignment of Deposit Account from time to time.

Borrower. The word "Borrower" means MICHAEL BROWN and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Collateral. The word "Collateral" means all of Grantor's right, title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.

Default. The word "Default" means the Default set forth in this Agreement in the section titled "Default".

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

Grantor. The word "Grantor" means CRESSUL W. HORNE.

Guaranty. The word "Guaranty" means the guaranty from guarantor, endorser, surety, or accommodation party to Lender, including without limitation a guaranty of all or part of the Note.

Indebtedness. The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Borrower is responsible under this Agreement or under any of the Related Documents.

Lender. The word "Lender" means American Community Bank, its successors and assigns.

Note. The word "Note" means the Note executed by MICHAEL BROWN in the principal amount of \$248,208.00 dated June 27, 2008, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.

Property. The word "Property" means all of Grantor's right, title and interest in and to all the Property as described in the "Collateral Description" section of this 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.

BORROWER AND GRANTOR HAVE READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS ASSIGNMENT OF DEPOSIT ACCOUNT AND AGREE TO ITS TERMS. THIS AGREEMENT IS DATED JUNE 27, 2008.

GRANTOR:


CRESSUL W. HORNE

BORROWER:


MICHAEL BROWN

14222 First Lending, Inc. 615.800.0000. Equal Housing Lender. Member FDIC. All rights reserved. - 02 BACKFORMS/ASSIGNMENT OF DEPOSIT ACCOUNT

Grantor: CRESFUL W. HORNE
7318 EAST MARSHVILLE BOULEVARD
MARSHVILLE, NC 28103

Instructions for Returning Collateral and
Disposition of Coupons:

LA 118 PRO Lumber, Vol. 1, 1974-1980. Copy, 1974-1980. Printed in the U.S.A. by the U.S. Forest Service. © MC Graw-Hill, Inc. 1974. 118 (1974-1980)

EXHIBIT

21 Clewis
5611

ACB - 58

PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No.	Call	Collateral	Signature	Initial
\$150,000.00	12-29-2000	12-29-2005	710900073			JMC	

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 loan.
Any item above containing "****" has been omitted due to text length limitations.

Borrower: MICHAEL R BROWN
1020 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 actual interest rate over a year of 365 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, 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 forfeiture 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 forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture 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.

Insolvency. 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 108.65 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.

EXHIBIT

22 Clewis
5-6-11

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

SLATCH AND LINDSEY, INC. (U.S. Pat. & TM OFF., Inc.) MEMBER OF CONSUMER CREDIT, INC. All Rights Reserved. © 2010 SLATCH AND LINDSEY, INC.

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

000028

To All Whom These Presents May Concern:

EXHIBIT

23 Clewis
5611

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. ~~xxxxxx~~

~~xxxxxx(\$xxxxxxxxxxxxxx)~~

~~xxxxxxxxxxxxxxxxxxxx~~

~~xxxxxx~~

~~xxx~~

~~xxxx~~

~~xxxxxxxxxxxxxx~~

~~xxxxxxxxxx~~

~~xxxx~~

~~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, is 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:

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.

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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 not be determined, 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.

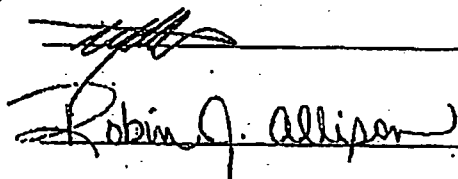
my Hand and Seal 29th day of December

in the year of our Lord ~~two~~ ^{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

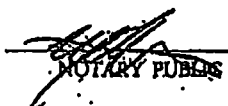
STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

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 93-516-9 P. 11-20-00
Chesterfield County 2000

Form 93

COUNTY OF CHESTERFIELD

MICHAEL R. BROWN

To

AMERICAN COMMUNITY BANK

MORTGAGE OF REAL ESTATE

FILED FOR RECORD AT 1:53 PM ON

THE 29th DAY OF Dec. 2001 AND

RECORDED IN BOOK 346 AT PAGE 431-432

CLERK OF COURT / REGISTERED / AGENT / CONVEYANCE

01/11/07
PAGE

FILED
CLERK OF COURT
IN 2 PM 2 33
CHESTERFIELD COUNTY, SC

MILLER S. INGRAM, JR.
ATTORNEY AT LAW, P.C. D-22057
POST OFFICE BOX 89
CHERRY, SOUTH CAROLINA 29520
(843) 551-5555

COMMERCIAL GUARANTY

Principal	Loan Date	Maturity	Loan No.	Collateral	Account	Office	Initials
References in the shaded areas 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
American Community Bank
2593 West Roosevelt Boulevard
PO Box 5035
Monroe, NC 28111-5035

Guarantor: C W HORNE
7318 E MARSHVILLE BLVD
MARSHVILLE, NC 28103

EXHIBIT

24 CLEWIS
56-11

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, its 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 other than 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) effect 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 unperfected 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 guaranty 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, link or divide 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 rights 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 at law or in equity other than actual payment and performance of the Indebtedness. If payment is made by Borrower, whether voluntarily or otherwise, or by any third party, on the Indebtedness and thereafter Lender is forced to remit the amount of that payment to Borrower's trustee in bankruptcy or to any similar person under any federal or state bankruptcy law or law for the relief of debtors, 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 28-7 to Section 28-9, 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 liquidation 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 the 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 parol 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 teletransmittal (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 addressee 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 duty 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
C W HORNE, Individually

(894)

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. SINKOVICH - INDIVIDUAL

BORROWER - INDIVIDUAL (Seal)

NAME OF CORPORATION OR PARTNERSHIP

Attest:

SECRETARY

(CORPORATE SEAL)

By: _____
TITLE

By: _____
TITLE

TRUSTEE:

(Seal)

THIRD PARTY (Guarantor, Endorser, Etc.):

Crestful W. Hoene (Seal)
CRESTFUL W. HOENE

(Seal)

(Seal)

AMERICAN COMMUNITY BANK

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 (\$150,000.00)

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 hereby 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 promises 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 -

AC001

EXHIBIT

25 Clowis
56.11

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 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:

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

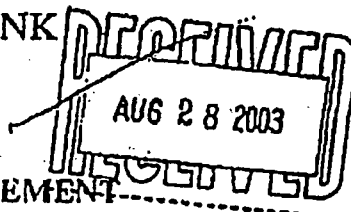
STATE OF NORTH CAROLINA, COUNTY OF _____
I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally appeared
before me this day and acknowledged the due execution of the foregoing instrument.

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: 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 three (\$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)

American Community Bank

By: _____

ON THE PRESIDENT

BORROWER

Borrower - Individual

(Seal)

(Seal)

Borrower - Individual

NAME OF CORPORATION OR PARTNERSHIP

Attest:

SECRETARY

(CORPORATE SEAL)

By: _____

TITLE

By: _____

TITLE

TRUSTEE:

(Seal)

THIRD PARTY (Guarantor, Endorser, Etc.):

Crestful W. Hoene

(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 _____

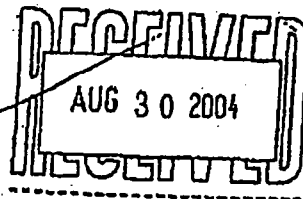
Secretary of American Community Bank, a corporation, and that by authority duly given and as the act of the corporation, the foregoing
instrument was signed in its name by its _____ Vice President, sealed with its corporate seal, and attested

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: 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");

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 (\$149,343⁵⁵/₁₀₀)

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 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 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:

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)

MICHAEL BROWN
BORROWER - INDIVIDUAL (Seal)

Attest:

SECRETARY

(CORPORATE SEAL)

NAME OF CORPORATION OR PARTNERSHIP

By: _____

TITLE

By: _____

TITLE

TRUSTEE:

(Seal)

THIRD PARTY (Guarantor, Endorser, Etc.):

Crescent 41 Home
(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.

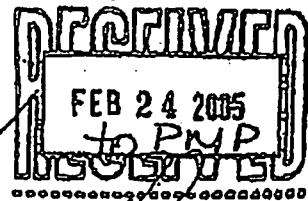
Witness my hand and notarial seal, this _____ day of _____, 20 _____.

My commission expires: _____

NOTARY PUBLIC

AMERICAN COMMUNITY BANK

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 Crescent W. House 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 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:

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)

American Community Bank

By: _____

VICE PRESIDENT

BORROWER

BORROWER - 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.):

(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 _____

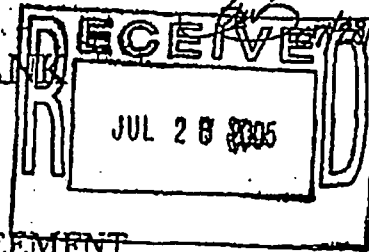
Secretary of American Community Bank, a corporation, and that by authority duly given and as the act of the corporation, the foregoing
instrument was signed in its name by its _____ Vice President, sealed with its corporate seal, and attested
by _____ as its _____ Secretary.

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

My commission expires: _____

NOTARY PUBLIC

AMERICAN COMMUNITY BANK



Account Number: 710400673

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. Hoewe the trustee or successor trustee under the Deed of Trust described below (hereinafter referred to as "TRUSTEE"); and C. W. Hoewe 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 33/100 is 149,343.33.

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 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: _____ (Seal)

MICHAEL L. BROWN (Seal)

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 _____

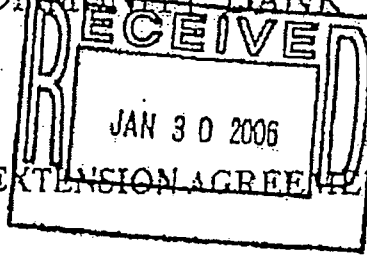
I, _____ a Notary Public of _____ County,
North Carolina, certify that _____ personally appeared
before me and acknowledged that _____ he is
Secretary of American Community Bank, a corporation, and that by authority duly given and as the act of the corporation, the foregoing
instrument was signed in 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)
- JNC 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 Cecil 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 & 57/100 (\$ 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 be 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 such 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 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)

American Community Bank

By: _____

BORROWER

X _____ (Seal)

Michael B. Moore (Seal)

BORROWER - INDIVIDUAL

NAME OF CORPORATION OR PARTNERSHIP

By: _____

TITLE

By: _____

TITLE

TRUSTEE:

(Seal)

THIRD PARTY (Guarantor, Endorser, Etc.):

X _____ (Seal)

Cecilia Moore (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:

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 principal 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:

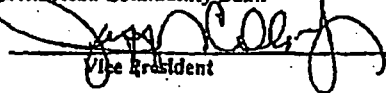
OTHER:

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.

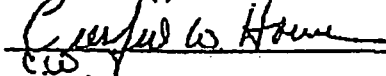
This Modification and Extension Agreement shall bind and inure to the benefit of the successors in interest hereto, and it is expressly understood and agreed that this Agreement is a modification only and not a novation. The original obligation of the BORROWER, as evidenced by the above described CONTRACT 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.

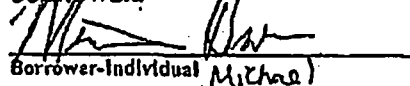
American Community Bank


Vice President

GUARANTOR (s)


C.W. Howe

BORROWER:


Borrower-Individual Michael

Borrower-Individual

Name of Corporation or Partnership

By _____
Title

By _____
Title

American Community Bank

Account Number: 710400073

Package Reviewed & Booked:
1 0 1 0

12/2/07 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 12/29/00, 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 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

[Signature]
Vice President

GUARANTOR (s)

Crescent W. Howe

[Signature]
BORROWER:

[Signature]
Borrower-Individual

Borrower-Individual

Name of Corporation or Partnership

By
Title

By
Title

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

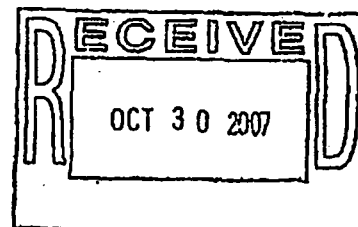
WHEREAS, THIRD PARTY, if different from BORROWER, and TRUSTEE have agreed to the terms of this modification;

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



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.

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.

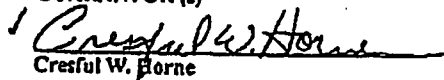
This Modification and Extension Agreement shall bind and inure to the benefit of the successors in interest hereto, and it is expressly understood and agreed that this Agreement is a modification only and not a novation. The original obligation of the BORROWER, as evidenced by the above described CONTRACT 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

									Payment	Balance
AMERCOBANK 70000000710400073	Opened 12/00	Reported 10/07	High balance 150,000	Reviewed 69 mos	30 2	60 0	90+ 0	Paid due	Payment	Balance
	Last active 10/07	8Q1 [Joint]	High limit —	Install (1) Installment loan	03/07			-0-	Paid	-0-
	Single payment loan									

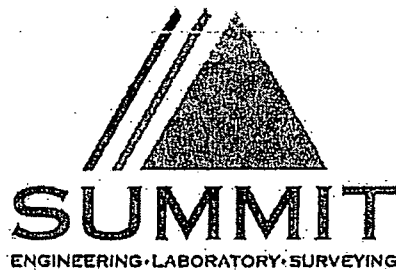
☐ CORRECTED (if checked)

LENDER'S name, address, and telephone number AMERICAN COMMUNITY BANK P O BOX 5035 MONROE, NC 28111 (704) 225-8444		OMB No. 1545-0047 2007 Form 1098	10Z 237697 000001234 1 Mortgage interest received from payer(s)/borrower(s) \$ 87,400.00	COPY B FOR PAYER The information in boxes 1, 2, and 3 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 the IRS determines that an underpayment of tax results because you overstated a deduction for this mortgage interest or for these points or because you did not report this refund of interest on your return.
BORROWER'S Federal Identification no. 56-2073258	PAYER'S social security number 473-60-5653	2 Points paid on purchase of principal residence \$		
BORROWER'S name, street address, city, state, and ZIP code MICHAEL BROWN 2217 MATTHEWS TOWNSHIP PKWY D MATTHEWS, NC 28105-4819		3 Refund of overpaid interest \$		
12221700000710400073		4 Mortgage insurance premiums \$		
12221700000710400073		5 \$		

1098
(Keep for your records)
Department of the Treasury - Internal Revenue Service

EXHIBIT

26 Clewis
5-6-11



PHASE I ENVIRONMENTAL SITE ASSESSMENT

**105 ACRE CHESTERFIELD COUNTY TRACT
PATRICK
CHESTERFIELD COUNTY
SOUTH CAROLINA
SUMMIT PROJECT NO. E-1755-10**

**Prepared For:
Mr. Michael W. Hinshaw, Jr.
423 South Sharon Amity Road
Charlotte, North Carolina 28211**

**Prepared By:
SUMMIT Engineering and Construction Services, Inc. (SUMMIT)
3575 Centre Circle
Fort Mill, South Carolina 29715
704-504-1717**

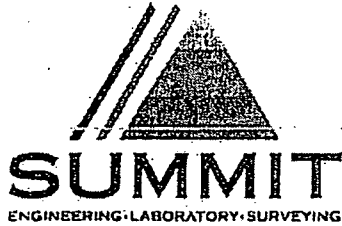
July 2, 2010

**ENGINEERING • LABORATORY • SURVEYING
3575 Center Circle Drive | Fort Mill, South Carolina 29715 | (704) 504-1717 | (704) 504-1125 (Fax)
www.summit-engineering.com**

EXHIBIT

*27 Clevins
5-6-11*

ACB - 62



SUMMIT Engineering and Construction Services, Inc. (SUMMIT)
3575 Centre Circle
Fort Mill, South Carolina 29715
www.summit-ecs.com
Phone: (704) 504-1717
Fax: (704) 504-1125

July 2, 2010

Mr. Michael W. Hinshaw, Jr.
423 South Sharon Amity Road
Charlotte, North Carolina 28211

Subject: Phase I Environmental Site Assessment
105 Acre Chesterfield County Tract
Patrick, South Carolina
SUMMIT Project No. E-1755-10

Dear Mr. Hinshaw:

SUMMIT ENGINEERING AND CONSTRUCTION SERVICES, INC. (SUMMIT) is pleased to submit the following report of our Phase I Environmental Site Assessment (ESA) of the 105 Acre Tract in Patrick, Chesterfield County, South Carolina. The property is currently a closed winery along Hartsville-Ruby Road, with two (2) large buildings, several Aboveground Storage Tanks. The assessment was performed in general accordance with ASTM Standard Practice E 1527-05: *Phase I Environmental Site Assessment Process*.

This report includes a description of the methodology of our investigation and a summary of our findings and conclusions. If you have any questions regarding our assessment of the subject property or our conclusions, please do not hesitate to call us at (704) 504-1717.

Sincerely,
SUMMIT

Michael D. Zavislak, NRCC-EAC, CHMM, PE (NC)
Environmental Manager

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1.0 EXECUTIVE SUMMARY

SUMMIT ENGINEERING AND CONSTRUCTION SERVICES, INC. (SUMMIT) has completed a Phase I Environmental Site Assessment (ESA) performed in general accordance with ASTM Standard E 1527-05 of the 105 Acre Tract in Patrick, Chesterfield County, South Carolina. The property is currently a closed winery along Hartsville-Ruby Road, with two (2) large buildings, several Aboveground Storage Tanks. SUMMIT personnel (Michael Zavislak) conducted the site reconnaissance on June 30, 2010.

A review of the public record for the site and immediate vicinity was conducted to characterize environmental features of the site and to identify past and present land use activities, on or in the vicinity of the site, which may indicate a potential for recognized environmental conditions. A site reconnaissance was performed to identify visual signs of past or existing contamination on or adjacent to the site, and to evaluate any evidence found in the review of the public record that might be indicative of activities resulting in hazardous substances or petroleum products being used or deposited on the site. Interviews with individuals familiar with the site were conducted to consider any local knowledge of hazardous substances or petroleum products on the subject properties or on adjacent properties. The collected data was evaluated and the preliminary findings and conclusion of our investigation are summarized below. Additional information can be found within the report that is not included in the executive summary.

- The property consists of several parcels and contains two (2) large buildings previously used as a winery, located along Hartsville-Ruby Road in Patrick, South Carolina
- Visual reconnaissance of the subject site revealed the site to be comprised two (2) large vacant buildings, several Aboveground Storage Tanks (ASTs) on 105-acres of partially wooded and partially cleared land. According to the current property owner (Michael Brown), there is a landfill on the western side of the property that has contaminated the groundwater. During the site visit, SUMMIT personnel could not locate the landfill area, nor did we get access to the buildings.

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This assessment has revealed the following conditions in connection with the properties:

- We have performed a Phase I Environmental Site Assessment in conformance with the scope and limitations of ASTM E 1527-05 of the 105 Acre Tract in Patrick, Chesterfield County, South Carolina. The property is currently a closed winery along Hartsville-Ruby Road, with two (2) large buildings, several Aboveground Storages Tanks. Any exceptions to, or deletions from, this practice are described in Section 9.0 of this report. This assessment has revealed evidence of one (1) Recognized Environmental Condition (REC) in connection with the property.
- According to the current property owner (Michael Brown), there is a landfill on the western portion of the property that has contaminated the groundwater. During the site visit, SUMMIT personnel could not locate the landfill area. SUMMIT recommends additional environmental assessment to determine the contents of the landfill and impacts on the surrounding soils and groundwater.

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2.0 INTRODUCTION

2.1. PURPOSE

SUMMIT was retained to complete a Phase I Environmental Site Assessment (ESA) of the 105 Acre Tract in Patrick, Chesterfield County, South Carolina. The property is currently a closed winery along Hartsville-Ruby Road, with two (2) large buildings, several Aboveground Storage Tanks. The purpose of this Phase I ESA is to identify, to the extent feasible pursuant to the processes described herein, recognized environmental conditions in connection with the subject property. This Phase I ESA was prepared in general accordance with the standard developed by the American Society for Testing and Materials (ASTM) entitled "E 1527-05 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process".

2.2. SCOPE OF SERVICES

This Phase I ESA consists of four components: records review, site reconnaissance, interviews and report preparation. SUMMIT's approach to performing this Environmental Site Assessment consisted of four major tasks in general accordance with the ASTM Standard Practice E 1527-05.

Task 1 - A review of the public record for the site and the immediate vicinity was conducted to characterize environmental features of the site and to identify past and present land use activities, on or in the vicinity of the site, which may indicate a potential for recognized environmental conditions. The review of the public record included:

1. Examination of reasonably ascertainable public records which are practically reviewable and made available to SUMMIT by regulatory personnel regarding past, present, and pending enforcement actions and investigations at the site and within the immediate vicinity.
2. Examination of readily available aerial photographs, fire insurance maps, street directories and topographic maps of the site and vicinity for evidence suggesting past uses that might have involved hazardous substances or petroleum products. The extent of the review of these resources was limited to information that was practically reviewable within the time and feasibility constraints of this ESA.

Task 2 - A site reconnaissance was performed to identify visual signs of past or existing contamination on or adjacent to the site, and to evaluate any evidence found in the review of the public record that might be indicative of activities resulting in hazardous substances or petroleum products being used or deposited on the site. The site reconnaissance included the following activities:

1. A visual reconnaissance of the site and adjacent property was performed to observe signs of spills, stressed vegetation, buried waste, underground or above ground

- storage tanks, subsidence, transformers, or unusual soil discoloration which may indicate the possible presence of contaminants on the property.
2. The periphery of the property was viewed.
 3. Areas of the site were photographed to document the current use(s) of the property as well as significant conditions such as unusually discolored soil, stressed vegetation, or other significant features associated with the property.
 4. The interior of the property that was accessible was observed and visual observations documented.

Task 3 - Interviews with appropriate local officials were conducted to consider any local knowledge of hazardous substances or petroleum products on the subject property or on adjacent property.

Task 4 - The collected data was evaluated and this report was prepared.

2.3. SIGNIFICANT ASSUMPTIONS

SUMMIT has made no significant assumptions pertaining to evaluation of recognized environmental conditions or potential recognized environmental conditions during this Phase I Environmental Site Assessment.

2.4. LIMITATIONS AND EXCEPTIONS

The findings of this report are limited to conditions observed at the time of the site reconnaissance, interviews with the landowners, and review of obtained public documents and may not represent conditions at a later date. The site reconnaissance was conducted by walking select portions of the property boundaries and interior of the subject property.

Much of the information provided in this report based upon personal interviews and review of available public documents, records and maps held by government and private agencies. This report is subject to the limitations of historical documentations, availability and accuracy of pertinent records, and the personal recollection of those persons contacted.

2.5. SPECIAL TERMS AND CONDITIONS

All materials and information used on this project were obtained by SUMMIT. The resulting report is provided for use by the Michael W. Hinshaw, Jr.

2.6. USER RELIANCE

The resulting report is provided for the sole use by the Michael W. Hinshaw, Jr. Use of this report by any third parties will be at such party's sole risk, and SUMMIT disclaims liability for any use or reliance by third parties.

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3.0 SITE DESCRIPTION

3.1. LOCATION AND LEGAL DESCRIPTION

The site consists of 105 Acre Tract in Patrick, Chesterfield County, South Carolina. The property is currently a closed winery along Hartsville-Ruby Road, with two (2) large buildings, several Aboveground Storage Tanks. The subject property is odd shaped and borders Hartsville-Ruby Road to the east. Refer to the Site Plan shown in Figure 3 of Appendix I for the location of the subject property.

3.2. SITE AND VICINITY GENERAL CHARACTERISTICS

Wooded, undeveloped and light residential land is to the north, east, south and west. There is a dirt race track and grassed airport runway to the east. The vicinity of the property can be generally described as wooded undeveloped. Refer to the Aerial Photograph shown in Figure 2 of Appendix I.

3.3. CURRENT USE OF PROPERTY

The subject property is currently a vacant winery.

3.4. DESCRIPTIONS OF STRUCTURES, ROADS, OTHER IMPROVEMENTS ON THE SITE

Visual reconnaissance of the subject site revealed the site to be comprised two (2) large vacant buildings, several Aboveground Storage Tanks (ASTs) on 105-acres of partially wooded and partially cleared land. According to the current property owner (Michael Brown), there is a landfill on the western side of the property that has contaminated the groundwater. During the site visit, SUMMIT personnel could not locate the landfill area, nor did we get access to the buildings.

3.5. CURRENT USES OF ADJOINING PROPERTY

Wooded, undeveloped and light residential land is to the north, east, south and west. There is a dirt race track and grassed airport runway to the east. The vicinity of the property can be generally described as wooded undeveloped. Refer to the Aerial Photograph shown in Figure 2 of Appendix I.

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4.0 USER PROVIDED INFORMATION

4.1. TITLE RECORDS

The client did not provide copies of the deed and chain-of-title to the property. Copies of the recent deeds for the subject properties are located in Appendix IV.

4.2. ENVIRONMENTAL LIENS OR ACTIVITY AND USE LIMITATIONS

The client did not provide any information regarding any environmental liens or judgments against the subject property.

According to a review of Chesterfield County Register of Deeds, the current owner of the subject property is: Michael Brown. According to the current property owner (Michael Brown), there is a landfill on the western side of the property that has contaminated the groundwater. During the site visit, SUMMIT personnel could not locate the landfill area. SUMMIT recommends additional environmental assessment to determine the contents of the landfill and impacts on the surrounding soils and groundwater.

4.3. SPECIALIZED KNOWLEDGE

SUMMIT had no specialized information regarding the site related to the present owner, property manager and/or occupants of the subject property.

4.4. OWNER, PROPERTY MANAGER AND/OR OCCUPANT INFORMATION

According to a review of Chesterfield County Register of Deeds, the current owner of the subject property is: Michael Brown. .

4.5. REASON FOR PERFORMING PHASE I

SUMMIT understands that the Phase I ESA is being performed in association with due diligence of the proposed purchase of the property.

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5.0 RECORDS REVIEW FINDINGS

5.1. STANDARD ENVIRONMENTAL RECORD SOURCES

Environmental Data Resources (EDR) of Southport, Connecticut was contacted to perform a regulatory database search of state and federal records using ASTM standard search guidelines. The database records reviewed included the federal and state records for which review is required by ASTM (ASTM records). The review also included several federal and state non-ASTM records:

- a. NPL: National Priorities List
- b. CERCLIS: Comprehensive Environmental Response, Compensation, and Liability Information System
- c. CORRACTS: Corrective Action Report
- d. RCRIS: Resource Conservation and Recovery Information System
- e. ERNS: Emergency Response Notification System
- f. SHWS: States Hazardous Waste Sites
- g. SWF/LF: Solid Waste Facilities/Landfill Sites
- h. UST: Underground Storage Tank Database
- i. LUST: Leaking Underground Storage Tank List

The search of the state and federal database records did not reveal the presence of regulated facilities within the specified ASTM search radii of the subject property. The specified search parameters and mapped locations are included in the Appendix.

5.1.1. Federal ASTM Records

The NPL, a subset of CERCLIS, identifies over 1,200 sites for priority cleanup under the Superfund Program. A review of the database search indicated that the subject property is not included on the NPL list, and there are no documented sites within 1.0 mile of the subject property.

The CERCLIS database contains information on sites identified by the Environmental Protection Agency as abandoned, inactive, or uncontrolled hazardous waste sites which may require cleanup. A review of the database search indicated that the subject property is not included on the CERCLIS list, and no documented sites are located within 0.5 miles of the of the subject site.

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The **CORRACTS**, Corrective Action Report, identifies hazardous waste handlers with Resource Conservation and Recovery Act (RCRA) corrective action activity. The review of the database search indicated that the subject properties are not included on the CORRACTS list, and there are no documented sites within 1.0 mile of the subject property.

The **RCRIS** includes selective information on sites which generate, transport, store, treat and/or dispose (TSD) of hazardous waste as defined by the RCRA. A review of the TSD database search indicated that the subject properties are not included on the TSD list, and there are no documented sites within 0.5 miles of the subject property. A large quantity generator regulated under RCRA is a generator that produces more than 1,000 kilograms of hazardous material per month. A small quantity generator regulated under RCRA is a generator that produces between 100 and 1,000 kilograms of hazardous waste per month. A conditionally exempt small quantity generator regulated under RCRA is a generator that produces less than 100 kilograms of hazardous waste per month, or less than 1 kilogram of acutely hazardous waste per month. A review of the RCRIS generator databases indicated that the subject is not included on the RCRIS generators lists, and there are no documented sites within 0.25 miles of the subject property.

The **ERNS** records and stores information on reported releases of oil and hazardous substances. The subject property is not included on this list.

The Facility Index System (**FINDS**) contains both facility information and "pointers" to other sources of information that contain more detail. A review of the database search indicated that the subject property is not included on the FINDS list.

5.1.2. State of South Carolina ASTM Records

The **SHWS** database is a list of sites in South Carolina that are known or suspected of having had a release of a regulated substance above a reportable quantity. A review of this database indicated that the subject property is not included on the SHWS list, and there are no documented sites within 1.0 mile of the subject property.

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The SWF/LF database is an inventory of solid waste disposal facilities or landfills in a particular state. The review of the database search indicated that the subject property is not included on the SWF/LF list, and there are no documented sites within 0.5 miles of the subject property.

The Leaking Underground Storage Tank (LUST) Incidents Management Database lists sites in South Carolina that have reported suspected or confirmed releases to the South Carolina Department of Health and Environmental Control (SCDHEC). The review of the database search indicated that the subject property is not included on the LUST list, and there are no documented LUST sites within 0.5 miles of the subject property.

The Underground Storage Tank (UST) database contains registered UST's which are regulated under Subtitle I of RCRA. The review of the database search indicated that the subject property is not included on the SCDHEC UST list and there are no documented UST sites within 0.5 miles of the subject property.

The Groundwater Contamination Inventory Cases (GWIC) lists any site that has groundwater contamination over a federal MCL. The Environmental Data Resources (EDR) report located in appendix III indicates that the subject property is not included on the GWIC list and there are no documented GWIC sites within 0.25 miles of the subject property.

The Drycleaners Facility Restoration Trust Fund database is used to access, prioritize and cleanup contaminated registered dry-cleaning sites. A review of the Drycleaners list revealed there are no drycleaners sites within 0.25 miles of the subject property.

5.1.3. Non-Federal and State ASTM Records

In addition to Federal and State ASTM Standard Database Records, several supplemental databases were also searched by EDR. The review of the database searches indicated that the subject property is not included on the additional Non-Federal and State ASTM Records lists, and there are no documented sites within the specified database search parameters. For the list of Non-Federal and State ASTM Databases searched and the specified search radii, please refer to Appendix III.

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The Manufactured Gas Plants (MGP) database contains records of coal gas plants (compiled by EDR). The review of the database search indicated that the subject property is not included on the Manufactured Gas Plants list, and there are no Manufactured Gas Plant sites within 1.0 mile of the subject property.

SUMMIT contacted Ms. Bridget Hackler (SC DHEC UST Section) about the subject property. Ms. Hackler stated the subject property previously contained eight (8) USTs that had leaked and based on the assessment performed in 1991; a no further action letter was issued for the subject site in 1997. This site is not currently ranked in SCDHEC UST system for risk. SUMMIT recommends additional environmental assessment to determine the extent of the contamination from the former UST system.

5.1.4. Orphan Sites

Seventeen (17) orphan sites were identified by EDR's environmental database search. Orphan sites do not contain sufficient geographical information such as street address to accurately determine their location. SUMMIT determined that none of the orphan sites identified in EDR's search were within the specified search parameters. Based on the distance, relative topographic elevation and incident information of the listed orphan sites, they would not appear to be a concern to the subject site.

5.2. Additional Environmental Record Sources

SUMMIT was unable to locate any other environmental records associated with the subject property.

5.3. PHYSICAL SETTING SOURCES

5.3.1. Topography

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The 1983 United States Geological Survey (USGS) "Campbell Crossroads, North Carolina, United States" topographic quadrangle map was reviewed. According to the contour lines on the topographic maps, the elevation of the subject property ranges from approximately 370 feet (along eastern property boundaries) to approximately 320 feet (along western property boundaries) above Mean Sea Level (MSL). The contour lines indicate the general direction of downward slope is to the west towards Black Creek. Black Creek flows into the Atlantic Ocean (Winyah Bay).

5.3.2. Geology and Hydrogeology

The property is located in Chesterfield County, South Carolina, which is located in the Sandhills of South Carolina. The Sandhills are hilly, unconnected bands of sand left from the ocean dunes during the Miocene Epoch. Elevation ranges from 250 to 450 feet above sea level and is almost always higher than either the adjacent Piedmont or Coastal Plain regions. The topography is generally rolling to moderately hilly, but in places local relief can be as much as 200 feet. The region varies in width from 5 to 30 miles, however, it is technically absent along some large river systems. The Sandhills region, covering 12% of South Carolina, runs diagonally through South Carolina in a band parallel to the Piedmont. Elevation ranges from 250 to 450 feet above sea level and is almost always higher than either the adjacent Piedmont or Coastal Plain regions. The topography is generally rolling to moderately hilly, but in places local relief can be as much as 200 feet. The region varies in width from 5 to 30 miles; however, it is technically absent along some large river systems.

Based on a review of the 1983 USGS "Campbell Crossing, South Carolina, United States" quadrangle topographic map, the inferred groundwater flow direction based on topography appears to be to the west towards Black Creek. Refer to Figure 1 in Appendix I for a topographic map for the subject property.

5.4. HISTORICAL USE INFORMATION ON THE PROPERTY

5.4.1. Historical Use of Property Records Review

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There was no fifty-year chain of title review conducted. This information was not provided to SUMMIT for review. Copies of the current warranty deeds are included in Appendix IV.

5.4.2. Historical Aerial Photographs

The 1994 USGS aerial photographs and the 1963 USDA-NRCS aerial photographs were reviewed on June 30, 2010. The 1963 aerial photographs show the subject properties as wooded, undeveloped land. The 1994 aerial photographs show the site with the existing winery in place. There was no evidence on the reviewed aerial photographs indicating that open dumping or hazardous material storage had ever occurred on the subject property. However, the scales and clarity of the aerial photographs, combined with the small size of the subject site prohibit the identification of any open dumping or hazardous material storage.

5.4.3. Historical Sanborn Fire Insurance Maps

Environmental Data Resources (EDR) of Southport, Connecticut was contacted to perform a database search of Sanborn Fire Insurance maps. EDR maintains the largest library of Sanborn Fire Insurance maps available. Sanborn Maps of the subject site were not available.

5.4.4. City Directories

Patrick City Directories were not reviewed for this report.

5.5. HISTORICAL USE INFORMATION ON ADJOINING PROPERTIES

5.5.1. Historical Aerial Photographs

The 1994 USGS aerial photographs and the 1963 USDA-NRCS aerial photographs were reviewed on June 30, 2010. The 1963 and 1994 aerial photographs show the surrounding properties much as they are today, wooded undeveloped land.

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5.5.2. City Directories

Patrick City Directories were not reviewed for this report.

5.6. PURCHASE PRICE

5.6.1 Significantly Lower Purchase Price

The subject property was purchased for \$250,000.00 on September 25, 1998. SUMMIT could not determine if the purchase price for this property is consistent with other purchases in the area.

5.7. DATA GAPS

As per ASTM E1527-05 section 3.2.20, a data gap is defined as a lack of or inability to obtain information required by this practice despite good faith efforts by the environmental professional to gather such information.

The aerial photograph collection at the USDA-NRCS Chesterfield Office was a haphazard collection of remaining aerial photographs. It appears that there were aerial photographs for the site for the years 1949, 1950, 1963, 1975 and 1990.

The aerial photograph data gaps would not change the findings of this report.

No other data gaps were encountered during the completion of this Phase I ESA.

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6.0 RECONNAISSANCE FINDINGS

- SUMMIT personnel (Michael Zavislak) conducted a visual reconnaissance of the site and the immediate vicinity on June 30, 2010. Photographs of the site were taken to represent conditions on and around the site, and are included in Appendix II.

6.1. METHODOLOGY AND LIMITING CONDITIONS

The site reconnaissance was conducted by SUMMIT personnel (Michael Zavislak) by walking the property boundaries and accessible portions of the interior of the property.

6.2. GENERAL SITE SETTING

The subject properties are located within an area of undeveloped wooded land

6.3. OBSERVATIONS

A site reconnaissance on June 30, 2010 was performed by walking property boundaries and accessible portions of the interior of the property. Reconnaissance of adjacent property was limited to parts that were readily observable from accessible portions of the subject property and public areas.

6.3.1. Subject Property Reconnaissance

Visual reconnaissance of the subject site revealed the site to be comprised two (2) large vacant buildings, several Aboveground Storage Tanks (ASTs) on 105-acres of partially wooded and partially cleared land. According to the current property owner (Michael Brown), there is a landfill on the western side of the property that has contaminated the groundwater. During the site visit, SUMMIT personnel could not locate the landfill area, nor did we get access to the buildings.

6.3.2. Adjacent Property Reconnaissance

Wooded, undeveloped and light residential land is to the north, east, south and west. There is a dirt race track and grassed airport runway to the east. The vicinity of the property can be generally described as wooded undeveloped. Refer to the Aerial Photograph shown in Figure 2 of Appendix I.

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7.0 INTERVIEWS

As part of the Phase I ESA, SUMMIT interviewed persons familiar with the history of the subject properties and representatives of local and state agencies where possible.

7.1. INTERVIEW WITH OWNERS

According to a review of Chesterfield County Register of Deeds, the current owner of the subject property is: Michael Brown. According to the current property owner (Michael Brown), there is a landfill on the western side of the property that has contaminated the groundwater. During the site visit, SUMMIT personnel could not locate the landfill area. SUMMIT recommends additional environmental assessment to determine the contents of the landfill and impacts on the surrounding soils and groundwater.

7.2. INTERVIEW WITH PREVIOUS OWNERS

The previous owners could not be located.

7.3. INTERVIEW WITH OCCUPANTS

The property is currently unoccupied.

7.4. INTERVIEWS WITH LOCAL GOVERNMENT OFFICIALS

Personnel with the South Carolina Department of Health and Environmental Control (SCDHEC) were contacted for interview concerning knowledge of any releases of hazardous substances or petroleum products on the property.

SUMMIT contacted Ms. Bridget Hackler (SC DHEC UST Section) about the subject property. Ms. Hackler could not locate any additional environmental information regarding the subject site.

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8.0 SUMMARY AND CONCLUSIONS

- We have performed a Phase I Environmental Site Assessment in conformance with the scope and limitations of ASTM E 1527-05 of the 105 Acre Tract in Patrick, Chesterfield County, South Carolina. The property is currently a closed winery along Hartsville-Ruby Road, with two (2) large buildings, several Aboveground Storages Tanks. Any exceptions to, or deletions from, this practice are described in Section 9.0 of this report. This assessment has revealed evidence of one (1) Recognized Environmental Condition (REC) in connection with the property.
- According to the current property owner (Michael Brown), there is a landfill on the western portion of the property that has contaminated the groundwater. During the site visit, SUMMIT personnel could not locate the landfill area. SUMMIT recommends additional environmental assessment to determine the contents of the landfill and impacts on the surrounding soils and groundwater.

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9.0 DEVIATIONS

This Phase I ESA was prepared in general accordance with the standard developed by the American Society for Testing and Materials (ASTM) entitled "E 1527-05 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process".

The findings of this report are limited to conditions observed at the time of the site reconnaissance, interviews with the landowners, and review of obtained public documents and may not represent conditions at a later date. The site reconnaissance was conducted by walking select portions of the property boundaries and interior of the subject properties.

Much of the information provided in this report based upon personal interviews and review of available public documents, records and maps held by government and private agencies. This report is subject to the limitations of historical documentations, availability and accuracy of pertinent records, and the personal recollection of those persons contacted.

Visual observations during the site reconnaissance were limited due to dense vegetation and ground cover along the edge of the property and interior of the property.

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10.0 ADDITIONAL SERVICES

ASTM Standard Practice E 1527-05 does not typically include the identification of asbestos-containing material (ACM), asbestos containing building materials (ACBM), lead-based paint, mold, and wetlands within its scope of work when identifying environmental conditions associated with commercial property. However, there issues can present a liability to the owner or prospective purchaser.

No additional services were provided.

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11.0 REFERENCES

1983 United States Geological Survey (USGS) Topographic Map of "Campbell Crossroads, North Carolina, United States." www.terraser.com

1994 USGS Aerial Photograph of "Campbell Crossroads, North Carolina, United States." www.terraser.com.

1963 Aerial Photographs, Chesterfield County USDA NRCS Office

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12.0 QUALIFICATION(S) OF ENVIRONMENTAL PROFESSIONALS

The environmental professionals for this project are listed below:

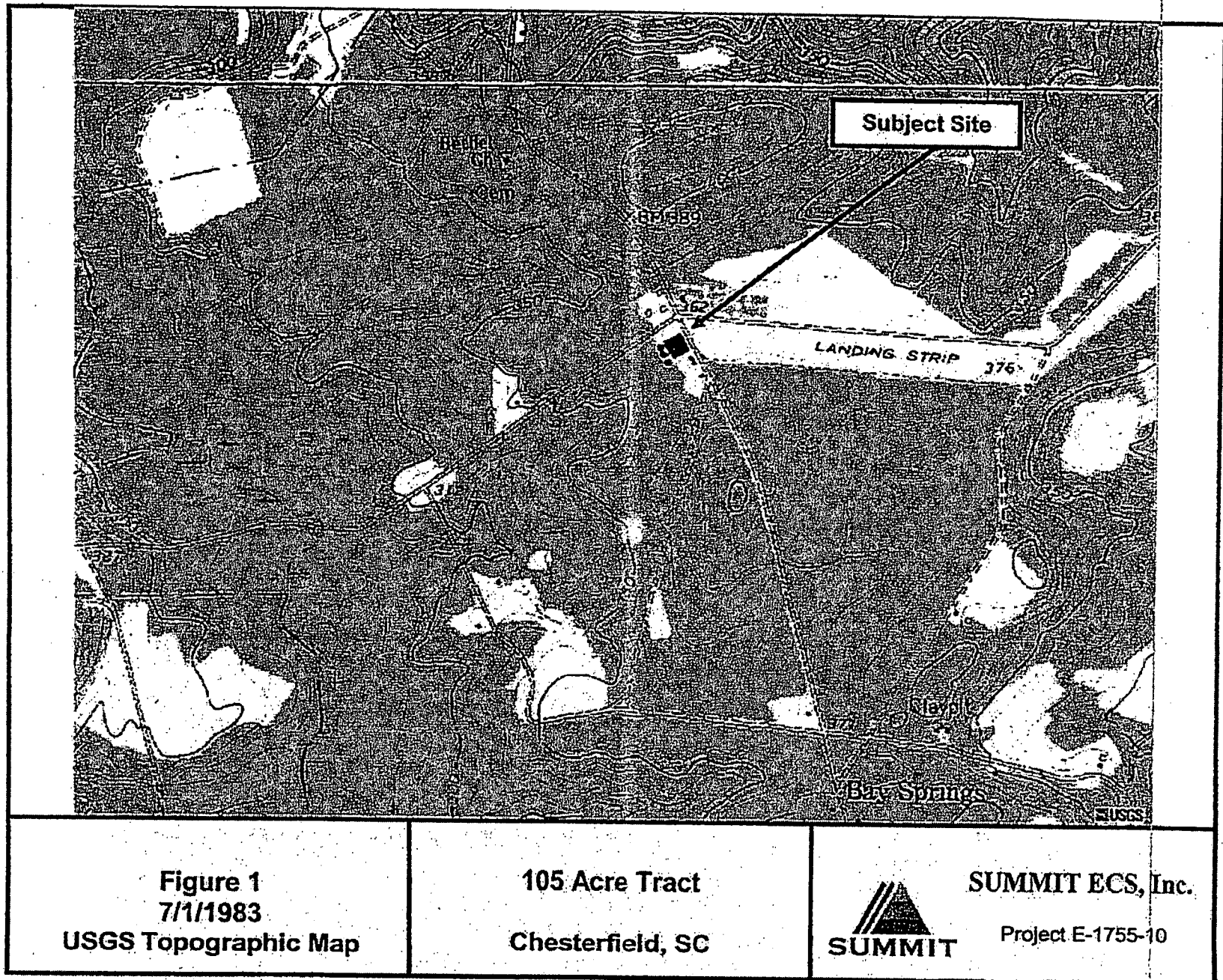
Mr. Zavislak is a registered Professional Engineer (PE) in the States of North Carolina, Georgia and Virginia, a certified Environmental Analytical Chemist (NRCC-EAC), a Certified Hazardous Materials Manager (CHMM) and the Environmental Manager for SUMMIT. Mr. Zavislak has over fifteen years experience in the environmental field. Previous environmental experience includes managing and operating several environmental laboratories, performing numerous environmental research projects, and managing and performing a multitude of environmental projects that include asbestos, lead-based paint, Phase I/II Environmental Site Assessments (ESA), Polychlorinated Biphenyl's (PCBs), hazardous waste, industrial hygiene, mold, indoor air quality, wetlands, storm water, Spill Prevention Control and Countermeasure (SPCC) Plans, Underground Storage Tank (UST) closures, soil and groundwater contamination monitoring and remediation, and construction management.

We declare that the best of our professional knowledge and belief, we meet the definition of Environmental Professional as defined in §312.10 of 40 CFR 312 and we have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property. We have developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312.

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**APPENDIX I
FIGURES**

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G:\Michael\SUMMIT\E-1755-10\105 Acre Tract Chesterfield County\Report Files\AR-Ph I - Figure 1 Topo.doc

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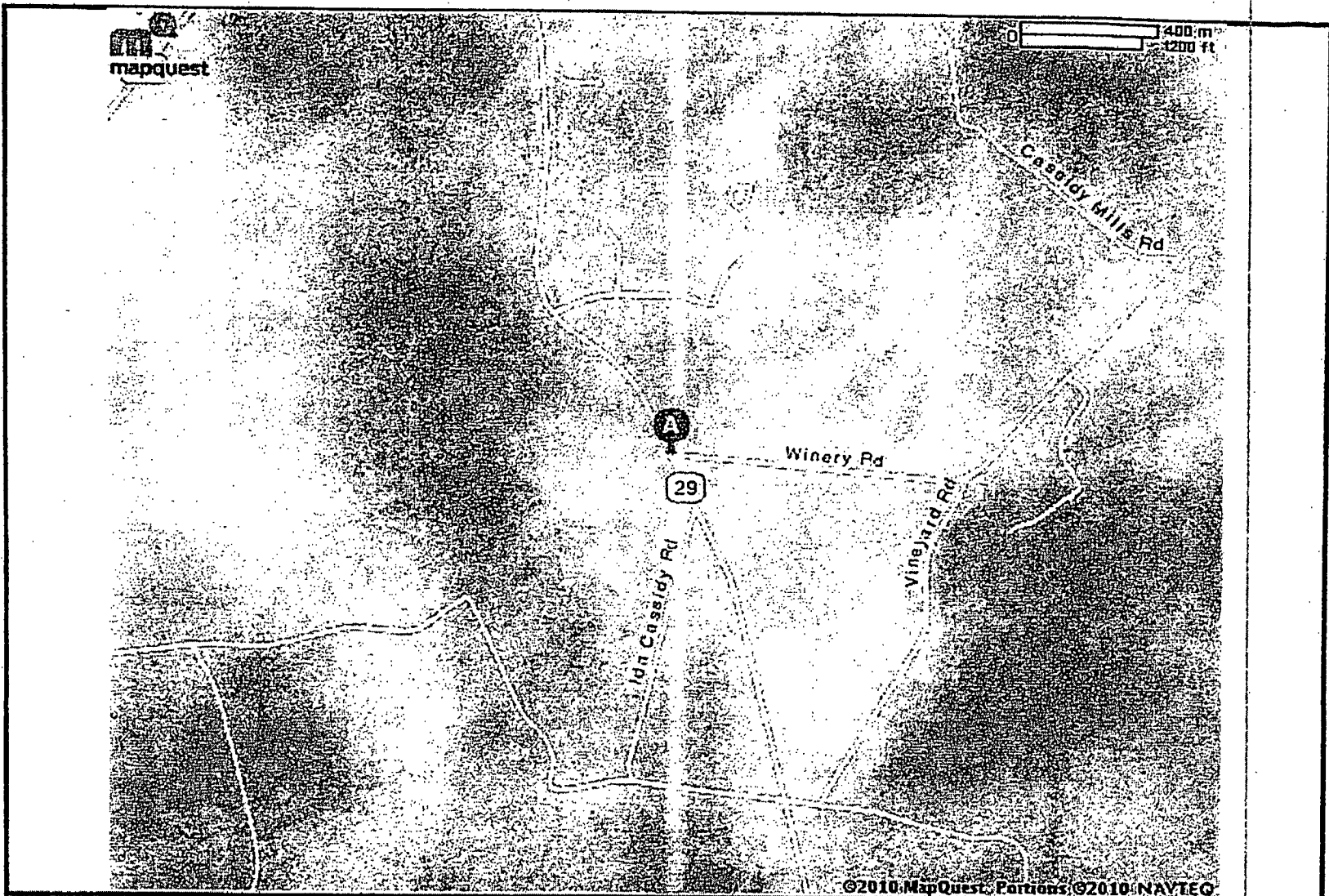
Figure 2
2010
Aerial Photograph

105 Acre Tract
Chesterfield, SC



SUMMIT ECS, Inc.

Project: E-1755-10



©2010 MapQuest, Portions ©2010 NAVTEQ

Figure 3
Site Location Map

105 Acre Tract
Chesterfield, SC



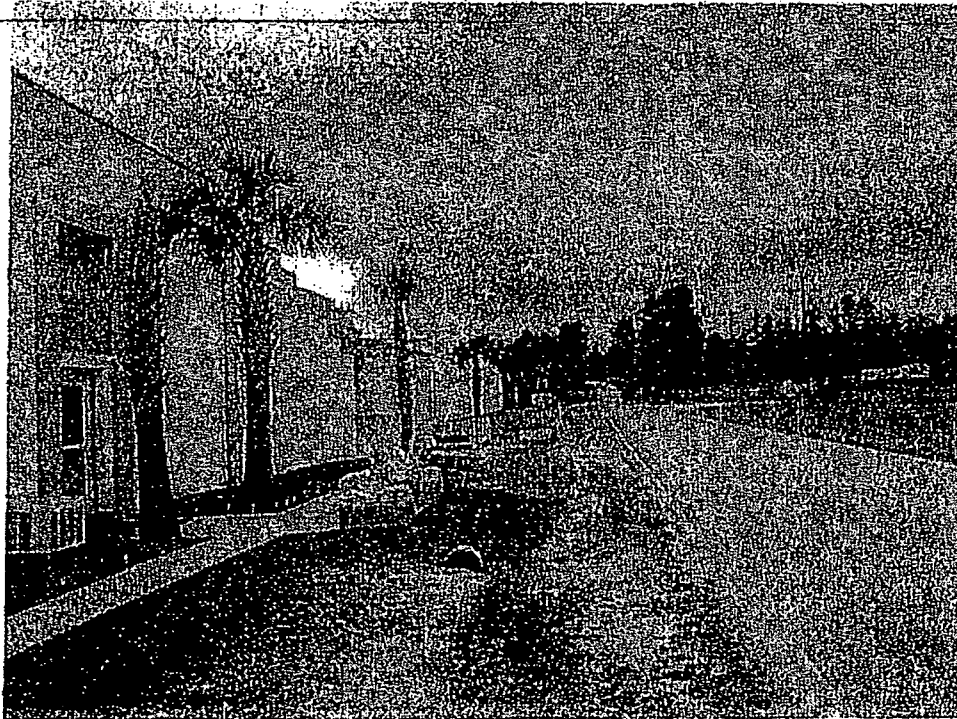
SUMMIT ECS, Inc.

Project: E-1755-10

APPENDIX II
SITE PHOTOGRAPHS

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SITE PHOTOGRAPHS



Front of property, looking north on Hartsville-Ruby Road.



Front of property, looking south on Hartsville-Ruby Road.

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Southern side of building.

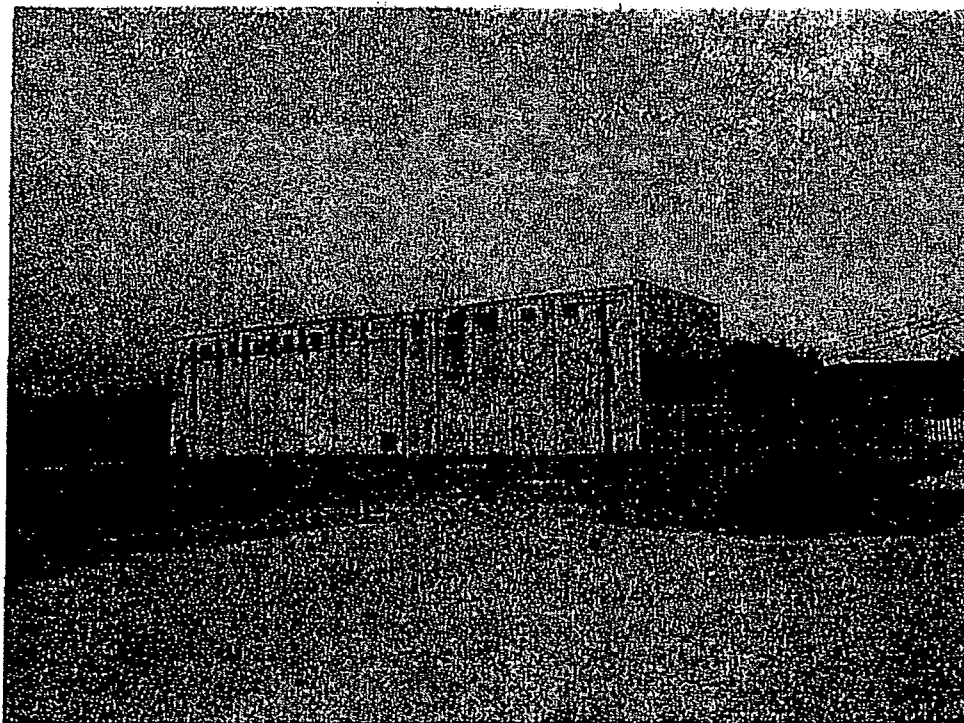


Rear of building.

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Rear of building.



Warehouse building.

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APPENDIX III

ENVIRONMENTAL DATABASE SEARCH

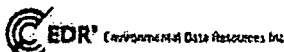
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~~Inquiry Number: 2805317:1a~~
~~June 29, 2010~~

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Thank you for your business.
Please contact EDA at 1-800-252-0052
with any questions or comments.

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Printed and online

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LETTER 14

EXECUTIVE SUMMARY

A search of available environmental records was conducted by Environmental Data Resources, Inc. (EDR). The report was designed to assist parties seeking to meet the search requirements of EPA's Standards and Practices for Air Appraisals including 40 CFR Part 121, the ASTM Standard Practice for Environmental Site Assessments (E 1527-05) or other requirements developed for the evaluation of environmental risk associated with a project or real estate.

FAST FACTS ABOUT INFORMATION

Abstract

RUBY HARTSVILLE ROAD
PATRICK, SC 29364

ΕΛΛΗΝΙΚΗ ΔΗΜΟΚΡΑΤΙΑ

Latitude (40-02) 34.879000 - 34° 37' 8" N
Longitude (170-07) 89.150000 - 89° 9' 30.0" W
Universal Transverse Mercator Zone 17
UTM X (Meters) 577007.9
UTM Y (Meters) 5430817.3
Elevation 342 ft. above sea level

USIS TOPCORPORATE HOLD ASSOCIATES WITH TARGET PROPERTY

Target Property Map:	3-000-F1 LEDDENDORF, SO
Sheet Record Number:	1962
Sheet Map:	3-000-F2 BLBY, SC
Sheet Record Number:	1962

TARGET PROPERTY SEARCH RESULTS

The listed property was not listed in any of the databases searched in EDR.

PARADIGMS WITH NO MARKED RUTS

Its proposed sites were found in EPA's search of available ("reasonably ascertainable") government records either on the target property or within the search radius around the target property for the following information:

STANDARD CHRONOLOGICAL RECORD

Federal NPL Site List
NPL
Proposed NPL
NPL List

National Priority List
Proposed National Priority List Sites
Federal Superfund Sites

Order of Deleted NPIs, 2010-2011
Deleted NPIs, 2010-2011, National Priority List Deletions

EXECUTIVE SUMMARY

Federal CIRCUS 341
CIRCUS Comprehensive Environmental Response, Compensation, and Liability Information System
FEDERAL FACILITY Federal Facility Site Information Listing

Federal CERCLES INFRAP: 4/12/82
CERC-FERAP..... CERCLES No Further National Action Planned

Federal RCRA CONTRACTS (as of 1/1/81)
CONTRACTS, and ... Corrective Action Report

Federal ACRA non-CONTRACTS YTD Inquiries Met
ACRA-TEDE, www.acra-ede.com, ACRA + Treatment, Storage and Disposal

Federal RCRA generators file!

RCRA-100.....	RCRA - Large Quantity Generators
RCRA-500.....	RCRA - Small Quantity Generators
RCRA-CE900.....	RCRA - Conditional: Exempt Small Quantity Generators

Federal Institutional controls / engineering controls registered
US ENG CONTROLS..... Engineering Controls Sales Unit
US INST CONTROL..... Sales with Institutional Controls

Federal ERMIS Initiative
ERMIS Emergency Response Management Information System

Info and EMail - equivalent **CARELY**
 IPSTE www.ipste.com **530 Argusmont Baden Project Ltd**

Size and other landfill transfer until waste disposal site data
SNTAF..... Potential Landfills List

State and Tribal Leaking Storage Tank Lists

State and Tribal registered storage tank lists

UST	Comprehensive Underground Storage Tanks
AET	Aboveground Storage Tank List
INDIA/UST	Underground Storage Tanks on Indian Land
FLMA UST	Underground Storage Tank Listing

Earth and Infrastructural Control / Engineering Control Register
RCA Factory of Conditional Remedies

EXECUTIVE SUMMARY

State and local government sites

Local Greenfield Sites
112 GREENFIELD RD. A Listing of Greenfield Sites

Local / Item of Interest: water / Contaminated Site

Lien # _____ CERCLA Lien Information
 Lien # _____ Land Use Control Information System

Order & consultable Records

RESEARCH IN EXERCISE PHYSIOLOGY 3

EXECUTIVE SUMMARY

EDA PROPRIETARY RECORDS

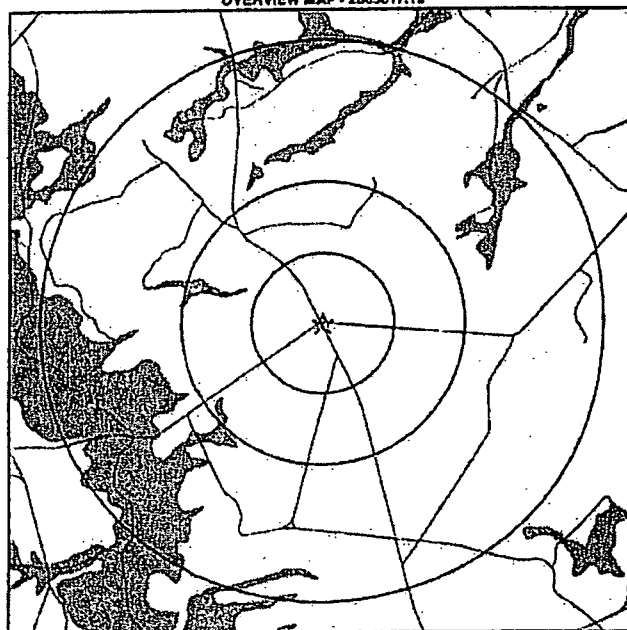
ECR Proprietary Records
Manufactured Gas Plants..... ECR Proprietary Manufactured Gas Plants

Surrounding sites were not identified.

Uninsurable (orphan) cases are not considered in the foregoing analysis.

EXECUTIVE SUMMARY

Bill Morris
 MICHELOS F ANGLES
 PA-CONCRETE
 FORMER RED & WHITE
 RT 3
 MAY 1
 A N WRECKER BOO
 AUTOMOBILE PEACH F ANGLES BAC
 MICHELOS F ANGLES
 US DEPT OF INTERIOR
 MARSHALLS BUREAU
 MARSHALLS PERIODIC
 BANG HILLS STATE FOREST
 GRANTFORD GROCERY
 GRANTFORD ORANGEY
 TYNERS GEN MERCH
 PATRICK GENERAL STORE
 TREASURY 1

[illegible]

- Target Property
- Size of planning: higher than or equal to the target property
- Size of elections: lower than the target property
- Manufactured Gas Plants
- National Policy List Sites
- Civil Defense Sites

- Indian Reservations BSA
Oil & Gas pipelines
National Wetland Inventory
State Wetlands

CLIENT: Sunsoft Engineering & Cons. Inc.
CONTACT: Michael Zerkow
INQUIRY #: 2605477.19
DATE: June 20, 2010 3:23 pm

- Indian Reservation Bill**
CR & CA syllabus
National Human Rights
Bill 2019

CLIENT: Dumas Engineering & Cons. Svc.
CONTACT: Michael Emswiler
SECURITY #: 1900817.19
DATE: June 06, 2010 3:22 pm

Database	Target Property	Search Distance (files)	< 1/8	1/8 - 1/4	1/4 - 1/2	1/2 - 1	> 1	Total Picked
----------	-----------------	-------------------------	-------	-----------	-----------	---------	-----	--------------

STANDARD ENVIRONMENTAL RECORDS									
<u>Partially NPL site list</u>									
NPL	1,000	0	0	0	0	NR	0		
Proposed NPL	1,000	0	0	0	0	NR	0		
NPL LCLMS	TP	NR	NR	NR	NR				
<u>Federal Debarred NPL site list</u>									
Debarred NPL	1,000	0	0	0	0	NR	0		
<u>Federal CERCLA list</u>									
CERCLA	0,500	0	0	0	NR	NR	0		
FEDERAL FACILITY	1,000	0	0	0	0	NR	0		
<u>Federal CERCLA NSRNP site list</u>									
CERCLA-NSRNP	0,500	0	0	0	NR	NR	0		
<u>Federal RCRA CORRELATE facilities list</u>									
CORRELATE	1,000	0	0	0	0	NR	0		
<u>Federal RCRA Non-CORRELATE TSD facilities list</u>									
RCRA-TSD	0,500	0	0	0	NR	NR	0		
<u>Federal RCRA generators list</u>									
RCRA-IG	0,250	0	0	NR	NR	NR	0		
RCRA-SQG	0,250	0	0	NR	NR	NR	0		
RCRA-CESQG	0,250	0	0	NR	NR	NR	0		
<u>Federal Institutional controls /</u> <u>enforcing controls registries</u>									
US EIS CONTROL	0,500	0	0	0	NR	NR	0		
US DDT CONTROL	0,500	0	0	0	NR	NR	0		
<u>Federal ERMS list</u>									
ERMS	TP	NR	NR	NR	NR	NR	0		
<u>State and tribal - institutional CERCLA</u>									
STATES	1,000	0	0	0	0	NR	0		
<u>State and tribal facilities under</u> <u>solid waste cleanup site lists</u>									
SWFLS	0,500	0	0	0	NR	NR	0		
<u>State and tribal existing storage tank lists</u>									
LUST	0,500	0	0	0	NR	NR	0		
SDMAN LUST	0,500	0	0	0	NR	NR	0		
<u>State and tribal registered storage tank lists</u>									
UST	0,250	0	0	NR	NR	NR	0		

REPRODUCTION: Page 4

Database	Target Property	Search Distance (Å)	1-16	16-32	32-64	64-128	128-256	Total Placed
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[illegible]

Database	Target Property	Search (Seconds)	4-10	10-100	100-1000	1000-10000	10000-100000	Total Picked
----------	-----------------	------------------	------	--------	----------	------------	--------------	--------------

GAUTRA	0.500	0	0	0	NR	NR	0
LOCKE	0.250	0	0	NR	NR	NR	0
TR23	TP	NR	NR	NR	NR	NR	0
TR24	TP	NR	NR	NR	NR	NR	0
TT19	TP	NR	NR	NR	NR	NR	0
HOST TT19	TP	NR	NR	NR	NR	NR	0
AST8	TP	NR	NR	NR	NR	NR	0
CC23	TP	NR	NR	NR	NR	NR	0
PA25	TP	NR	NR	NR	NR	NR	0
ML78	TP	NR	NR	NR	NR	NR	0
RAIDPO	TP	NR	NR	NR	NR	NR	0
PA20	TP	NR	NR	NR	NR	NR	0
GAAT5	TP	NR	NR	NR	NR	NR	0
CPVCI							
LC2	0.200	0	0	0	NR	NR	0
TP	NR	NR	NR	NR	NR	NR	0
POPCAMER1	0.200	0	0	NR	NR	NR	0
TP	NR	NR	NR	NR	NR	NR	0
AR23	TP	NR	NR	NR	NR	NR	0
NR25	0.100	0	0	0	NR	NR	0
NR20 DRYCLEANERS	0.000	0	0	0	NR	NR	0
CDAL ASH EPA	0.500	0	0	0	NR	NR	0
CDAL ASH DOE	TP	NR	NR	NR	NR	NR	0
CDAL ASH	0	0.000	0	NR	NR	NR	0
PCR TRANSFORMER	TP	NR	NR	NR	NR	NR	0

CONFIDENTIALITY RECORD

2011 Proprietary Records						
Manufactured Gas Plants	1,000	0	0	0	0	0

1997年:

19 = Target Property
 001 = Not Requested at the Search Station
 002 = May be listed in more than one database

Document ID: 17.4 Page: 1

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GOVERNMENT RECORDS SEARCHED / DATA CURRENCY TRACKING

Date of Government Version: 04/01/2008
Date Data Arrived at EDR: 05/02/2008
Date Made Active in Report: 05/16/2008
Number of Days to Update: 36

Source: EPA Region 7
Telephone: 617 618 1315
Last EDR Contact: 04/02/2008
Next Scheduled EDR Contact: 04/16/2008
Data Release Frequency: Varies

RCRA-UST 02: Underground Storage Tanks on Indian Land
The Indian Underground Storage Tank (UST) database provides information about underground storage tanks on Indian land in EPA Region 9 (Alaska, Minnesota and Wisconsin and Tribal Lands).

Date of Government Version: 02/10/2008
Date Data Arrived at EDR: 03/11/2008
Date Made Active in Report: 04/16/2008
Number of Days to Update: 60

Source: EPA Region 9
Telephone: 213 864 4130
Last EDR Contact: 03/03/2008
Next Scheduled EDR Contact: 04/16/2008
Data Release Frequency: Varies

RCRA-UST 06: Underground Storage Tanks on Indian Land
The Indian Underground Storage Tank (UST) database provides information about underground storage tanks on Indian land in EPA Region 6 (Louisiana, Arkansas, Oklahoma, New Mexico, Texas and 56 Tribes).

Date of Government Version: 03/03/2008
Date Data Arrived at EDR: 03/20/2008
Date Made Active in Report: 05/16/2008
Number of Days to Update: 12

Source: EPA Region 6
Telephone: 214 654 7221
Last EDR Contact: 03/03/2008
Next Scheduled EDR Contact: 04/16/2008
Data Release Frequency: Semi-Annually

RCRA-UST 04: Underground Storage Tanks on Indian Land
The Indian Underground Storage Tank (UST) database provides information about underground storage tanks on Indian land in EPA Region 4 (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee and Tribal Lands).

Date of Government Version: 03/03/2008
Date Data Arrived at EDR: 03/11/2008
Date Made Active in Report: 04/16/2008
Number of Days to Update: 37

Source: EPA Region 4
Telephone: 404 625 8624
Last EDR Contact: 03/03/2008
Next Scheduled EDR Contact: 04/16/2008
Data Release Frequency: Semi-Annually

RCRA-UST 08: Underground Storage Tanks on Indian Land
The Indian Underground Storage Tank (UST) database provides information about underground storage tanks on Indian land in EPA Region 10 (Idaho, Alaska, Oregon, Washington, and Tribal Lands).

Date of Government Version: 03/03/2008
Date Data Arrived at EDR: 03/20/2008
Date Made Active in Report: 05/16/2008
Number of Days to Update: 12

Source: EPA Region 10
Telephone: 206 614 2413
Last EDR Contact: 03/03/2008
Next Scheduled EDR Contact: 04/16/2008
Data Release Frequency: Quarterly

RCRA-UST 05: Underground Storage Tanks on Indian Land
The Indian Underground Storage Tank (UST) database provides information about underground storage tanks on Indian land in EPA Region 5 (Illinois, Indiana, Michigan, Minnesota, Wisconsin, and Tribal Lands).

Date of Government Version: 03/03/2008
Date Data Arrived at EDR: 03/20/2008
Date Made Active in Report: 04/16/2008
Number of Days to Update: 37

Source: EPA Region 5
Telephone: 414 973 0566
Last EDR Contact: 03/03/2008
Next Scheduled EDR Contact: 04/16/2008
Data Release Frequency: Quarterly

RCRA-UST 01: Underground Storage Tanks on Indian Land
The Indian Underground Storage Tank (UST) database provides information about underground storage tanks on Indian land in EPA Region 1 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont and Tribal Lands).

Date of Government Version: 03/03/2008
Date Data Arrived at EDR: 03/20/2008
Date Made Active in Report: 04/16/2008
Number of Days to Update: 37

Source: EPA Region 1
Telephone: 617 618 1315
Last EDR Contact: 03/03/2008
Next Scheduled EDR Contact: 04/16/2008
Data Release Frequency: Varies

GOVERNMENT RECORDS SEARCHED / DATA CURRENCY TRACKING

Date of Government Version: 04/01/2008
Date Data Arrived at EDR: 05/02/2008
Date Made Active in Report: 05/16/2008
Number of Days to Update: 36

Source: EPA Region 1
Telephone: 617 618 1315
Last EDR Contact: 04/02/2008
Next Scheduled EDR Contact: 04/16/2008
Data Release Frequency: Varies

FEAR-UST: Underground Storage Tank Listing
A listing of all FEAR (Federal Emergency Response Act) storage tanks.

Date of Government Version: 03/04/2008
Date Data Arrived at EDR: 03/13/2008
Date Made Active in Report: 04/16/2008
Number of Days to Update: 36

Source: FEAR
Telephone: 202 406 6392
Last EDR Contact: 04/02/2008
Next Scheduled EDR Contact: 04/16/2008
Data Release Frequency: Varies

State and Tribal Hazardous Waste / Engineering General Liability

RCRA: Registry of Conditional Releasees

The Bureau of Land and Waste Management established this Registry to help monitor and maintain sites that have conditional releases. A Conditional Release is an environmental remedy that requires certain qualifications. These qualifications are divided into two major categories: Remedial Action and Conditional Release.

Date of Government Version: 03/03/2008
Date Data Arrived at EDR: 03/20/2008
Date Made Active in Report: 05/16/2008
Number of Days to Update: 60

Source: Department of Health & Environmental Control
Telephone: 617 618 1315
Last EDR Contact: 03/03/2008
Next Scheduled EDR Contact: 04/16/2008
Data Release Frequency: Varies

ALA: Land Use Controls

The Land Use Controls or "LUCs" encompass institutional controls, such as those involving site and estate interests, environmental monitoring, zoning, public education, deed restrictions, and other land use controls. The LUCs also include restrictions on activities, whether initiated by means of regulatory action (e.g., laws or executive order) or by human action (e.g., the presence of security guards). Additionally, the LUCs include both proactive measures to achieve the desired results (e.g., right to know or audit and public disclosure of site information) and reactive measures to deal with the effects of the activities (e.g., conditional releasees, the LUCs for a hazardous waste site that have been placed under a conditional release in order to maintain the level of protection) that are or may become active under the LUCs.

Date of Government Version: 04/16/2008
Date Data Arrived at EDR: 04/23/2008
Date Made Active in Report: 05/16/2008
Number of Days to Update: 36

Source: Department of Health & Environmental Control
Telephone: 617 618 1315
Last EDR Contact: 04/16/2008
Next Scheduled EDR Contact: 04/16/2008
Data Release Frequency: Varies

State and Tribal Voluntary Cleanup Act

VCP: Voluntary Cleanup Act
This participating in the Voluntary Cleanup Program. Once staff and a non-responsible party have agreed upon an approved scope of work for a site investigation and/or remediation, the party enters into a voluntary cleanup contract. Once approved by the state, the party enters into a voluntary cleanup contract. The contract outlines the scope of the investigation and/or remediation, the non-responsible party's obligations, and the state's obligations.

Date of Government Version: 03/20/2008
Date Data Arrived at EDR: 03/27/2008
Date Made Active in Report: 05/16/2008
Number of Days to Update: 60

Source: Department of Health & Environmental Control
Telephone: 617 618 1315
Last EDR Contact: 03/20/2008
Next Scheduled EDR Contact: 04/16/2008
Data Release Frequency: Varies

GOVERNMENT RECORDS SEARCHED / DATA CURRENCY TRACKING

RCRA-UST 07: Voluntary Cleanup Priority Listing

Date of Government Version: 03/03/2008
Date Data Arrived at EDR: 03/20/2008
Date Made Active in Report: 05/16/2008
Number of Days to Update: 37

Source: EPA Region 7
Telephone: 617 618 1315
Last EDR Contact: 03/03/2008
Next Scheduled EDR Contact: 04/16/2008
Data Release Frequency: Varies

RCRA-UST 04: Voluntary Cleanup Priority Listing

Date of Government Version: 03/03/2008
Date Data Arrived at EDR: 03/20/2008
Date Made Active in Report: 05/16/2008
Number of Days to Update: 37

Source: EPA Region 4
Telephone: 404 625 8624
Last EDR Contact: 03/03/2008
Next Scheduled EDR Contact: 04/16/2008
Data Release Frequency: Varies

State and Tribal Hazardous Waste / Engineering General Liability

RCRA-UST 01: Voluntary Cleanup Priority Listing
The Voluntary Cleanup Program allows a non-responsible party to achieve a conditional release by entering into a voluntary cleanup contract. The contract outlines the scope of the investigation and/or remediation, the non-responsible party's obligations, and the state's obligations.

Date of Government Version: 03/03/2008
Date Data Arrived at EDR: 03/20/2008
Date Made Active in Report: 05/16/2008
Number of Days to Update: 36

Source: Department of Health & Environmental Control
Telephone: 617 618 1315
Last EDR Contact: 03/03/2008
Next Scheduled EDR Contact: 04/16/2008
Data Release Frequency: Varies

RCRA-UST 05: Voluntary Cleanup Priority Listing

Date of Government Version: 03/03/2008
Date Data Arrived at EDR: 03/20/2008
Date Made Active in Report: 05/16/2008
Number of Days to Update: 36

Source: EPA Region 5
Telephone: 414 973 0566
Last EDR Contact: 03/03/2008
Next Scheduled EDR Contact: 04/16/2008
Data Release Frequency: Varies

RCRA-UST 06: Voluntary Cleanup Priority Listing
The Voluntary Cleanup Program allows a non-responsible party to achieve a conditional release by entering into a voluntary cleanup contract. The contract outlines the scope of the investigation and/or remediation, the non-responsible party's obligations, and the state's obligations.

Date of Government Version: 03/03/2008
Date Data Arrived at EDR: 03/20/2008
Date Made Active in Report: 05/16/2008
Number of Days to Update: 36

Source: EPA Region 6
Telephone: 214 654 7221
Last EDR Contact: 03/03/2008
Next Scheduled EDR Contact: 04/16/2008
Data Release Frequency: Varies

RCRA-UST 08: Voluntary Cleanup Priority Listing

Date of Government Version: 03/03/2008
Date Data Arrived at EDR: 03/20/2008
Date Made Active in Report: 05/16/2008
Number of Days to Update: 36

Source: EPA Region 10
Telephone: 206 614 2413
Last EDR Contact: 03/03/2008
Next Scheduled EDR Contact: 04/16/2008
Data Release Frequency: Varies

Local Limits of Liability / State Waste Disposal / EDR

OS: Open Dump Inventory
An open dump is defined as a disposal facility that does not comply with one or more of the Part 127 or Part 128 criteria of RCRA.

GOVERNMENT RECORDS SEARCHED / DATA CURRENCY TRACKING

Date of Government Version: 03/03/2008
Date Data Arrived at EDR: 03/20/2008
Date Made Active in Report: 05/16/2008
Number of Days to Update: 36

Source: Environmental Protection Agency
Telephone: 202 406 6392
Last EDR Contact: 03/03/2008
Next Scheduled EDR Contact: 04/16/2008
Data Release Frequency: No Update Planned

RCRA-UST 09: Voluntary Cleanup Priority Listing
The Voluntary Cleanup Program allows a non-responsible party to achieve a conditional release by entering into a voluntary cleanup contract. The contract outlines the scope of the investigation and/or remediation, the non-responsible party's obligations, and the state's obligations.

Date of Government Version: 03/03/2008
Date Data Arrived at EDR: 03/20/2008
Date Made Active in Report: 05/16/2008
Number of Days to Update: 37

Source: EPA Region 9
Telephone: 213 864 4130
Last EDR Contact: 03/03/2008
Next Scheduled EDR Contact: 04/16/2008
Data Release Frequency: Varies

RCRA-UST 04: Voluntary Cleanup Priority Listing

Date of Government Version: 03/03/2008
Date Data Arrived at EDR: 03/20/2008
Date Made Active in Report: 05/16/2008
Number of Days to Update: 36

Source: Department of Health & Environmental Control
Telephone: 617 618 1315
Last EDR Contact: 03/03/2008
Next Scheduled EDR Contact: 04/16/2008
Data Release Frequency: Varies

RCRA-UST 05: Voluntary Cleanup Priority Listing

Date of Government Version: 03/03/2008
Date Data Arrived at EDR: 03/20/2008
Date Made Active in Report: 05/16/2008
Number of Days to Update: 37

Source: Environmental Protection Agency
Telephone: 202 406 6392
Last EDR Contact: 03/03/2008
Next Scheduled EDR Contact: 04/16/2008
Data Release Frequency: Varies

Local Limits of Liability / State Waste Disposal / EDR

US 02: Conditional Disposal
A listing of conditional disposal (CD) locations. The U.S. Department of Justice (DOJ) Department of Justice (DOJ) is a public service to provide information about conditional disposal (CD) locations. The purpose of this database is to provide information about conditional disposal (CD) locations. The database is updated regularly and is available to the public.

Date of Government Version: 03/03/2008
Date Data Arrived at EDR: 03/20/2008
Date Made Active in Report: 05/16/2008
Number of Days to Update: 36

Source: Department of Justice
Telephone: 202 406 6392
Last EDR Contact: 03/03/2008
Next Scheduled EDR Contact: 04/16/2008
Data Release Frequency: Varies

ALIST: Air Assessment / Remediation Public Record Database
The Air Assessment / Remediation Public Record Database is a public service to provide information about air assessment and remediation. The database is updated regularly and is available to the public.

Date of Government Version: 03/03/2008
Date Data Arrived at EDR: 03/20/2008
Date Made Active in Report: 05/16/2008
Number of Days to Update: 37

Source: Department of Health & Environmental Control
Telephone: 617 618 1315
Last EDR Contact: 03/03/2008
Next Scheduled EDR Contact: 04/16/2008
Data Release Frequency: Varies

Spills and releases of petroleum and hazardous chemicals reported to the Oil Chemical Emergency Response Center

Technology 17.4 Page 28 of 32

Submit: EPA/Crisis Prevention, Prevention and Test Supervisor
Telephone: 202-545-1567
Last EDR Contact: 06/10/95
Next Scheduled EDR Contact: 09/13/95
Data Release Frequency: Quarterly

Headquarters Department of Justice, Criminal
Telephone, Vagos
1201 ECH Center 0405/2010
Jury Scheduled ECH Center 04/20/2010
ECH Release Frequency, Vagos

Technology 17.4 Page 28 of 32

Energy Conservation/Protection Agency
Telephone: 800-644-6586
Last EDR Contact 08/16/00:14
Next Scheduled EDR Contact 10/16/00:14
Date Richard Presbury, Chairman

157617-11 Aug 04

GOVERNMENT RECORDS SEARCHED / DATA CURRENCY TRACKING

Date of Government Version: 12/11/2008
Date Data Added to EDR: 12/11/2008
Date Data Added to EDR: 12/11/2008
Number of Days to Update: 12

Source: Department of Environmental Protection
Telephone: 717-432-1000
Fax: 717-432-1000
Email: EDR@DEP.PA.gov
Data Release Frequency: Annually

DE MINISTRIE - Maritime Information

Date of Government Version: 11/13/2008
Date Data Added to EDR: 11/13/2008
Date Data Added to EDR: 11/13/2008
Number of Days to Update: 10

Source: Department of Environmental Management
Telephone: 401-752-3750
Fax: 401-752-3750
Email: EDR@DEM.RI.gov
Data Release Frequency: Annually

DE MINISTRIE - Shortland Information

Date of Government Version: 12/11/2008
Date Data Added to EDR: 12/11/2008
Date Data Added to EDR: 12/11/2008
Number of Days to Update: 12

Source: Department of Natural Resources
Telephone: 603-281-1000
Fax: 603-281-1000
Email: EDR@DNR.NH.gov
Data Release Frequency: Annually

OSHA Pesticides: This data was obtained by EDR from the OSHA in 1996. It is a summary by OSHA of all OSHA Pesticide Use Reports from 1992 to 1995. Data was collected from the transportation category including commercial, but primarily not pesticides.

Electric Power Transmission Line Data
Source: American Electric Power
Telephone: (614) 759-2222
US Electric Transmission and Power Plants Systems Dept at EDR Data

Antenna Receptors: There are individuals who use sensitive receptors due to their fragile immune systems and special sensitivity to environmental challenges. These sensitive receptors typically include the elderly, the sick, and children. While the location of all sensitive receptors cannot be determined, EDR indicates their buildings and facilities - schools, daycares, hospitals, medical centers, and nursing homes - where individuals who are sensitive receptors are likely to be located.

ASHA Hospital

Source: American Hospital Association, Inc.
Telephone: 312-960-0911
The database includes a listing of hospitals based on the American Hospital Association's annual survey of hospitals.
Source: Centers for Medicare & Medicaid Services
Telephone: 410-786-3000
A listing of hospitals and their primary services, prepared by Centers for Medicare & Medicaid Services, a federal agency within the U.S. Department of Health and Human Services.

Marine Mammals

Source: National Center for Education Statistics
Telephone: 202-444-6100
Information on Marine and Mammal related nursing homes in the United States.

Public Schools

Source: National Center for Education Statistics
Telephone: 202-444-6100
The National Center for Education Statistics primary database on elementary and secondary public education in the United States. It is a comprehensive, annual, national statistical database of all public elementary and secondary schools and school districts, which includes data that are comparable across all states.
Source: National Center for Education Statistics
Telephone: 202-444-6100
The National Center for Education Statistics primary database on private school education in the United States.

TC280117 to Page 08-10

GOVERNMENT RECORDS SEARCHED / DATA CURRENCY TRACKING

Source: Center for Disease Control
Source: Department of Social Services
Telephone: 800-955-1145

Flood Area Data: This data is available in both current and historical form, was obtained by EDR in 1993 & 1999 from the Federal Emergency Management Agency (FEMA). Data covers 100 year and 500 year flood zones as defined by FEMA.

1992 - National Wetlands Inventory: This data, available in both current and historical form, was obtained by EDR in 1992 and 2003 from the U.S. Fish and Wildlife Service.

State Wetlands Data: National Inventory
Source: Department of Natural Resources
Telephone: 603-281-1000

STREET AND ADDRESS INFORMATION

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TC280117 to Page 08-10

GEOCHECK® - PHYSICAL SETTING SOURCE ADDENDUM

TARGET PROPERTY ADDRESS

CHESTERFIELD TRACT
RUSBY LANE (SKELE ROAD)
PATRICK, SC 29364

TARGET PROPERTY COORDINATES

Latitude (County): 34.61800, 34° 37' 0" N
Longitude (County): 82° 18' 00" W 34° 37' 0" N
Universal Transverse Mercator: Zone 17
UTM X (County): 677000.0
UTM Y (County): 3230117.2
Elevation: 342 ft. above sea level

USES TOPOGRAPHIC MAP

Target Property Map: 14280-02 USGS/EDGAR, SC
Most Recent Revision: 1993
North Map: 14280-02 RUSBY, SC
Most Recent Revision: 1988

EDR's GeoCheck Physical Setting Source Addendum is provided to assist the environmental professional in making an opinion about the impact of potential contamination migration.

Assessment of the impact of contaminant migration generally has two primary investigative components:

1. Groundwater flow direction, and
2. Groundwater flow velocity.

Groundwater flow direction may be impacted by surface topography, hydrology, hydrogeology, characteristics of the soil, and nearby walls. Groundwater flow velocity is generally impacted by the nature of the geologic strata.

TC280117 to Page A-1

GEOCHECK® - PHYSICAL SETTING SOURCE SUMMARY

GROUNDWATER FLOW DIRECTION INFORMATION

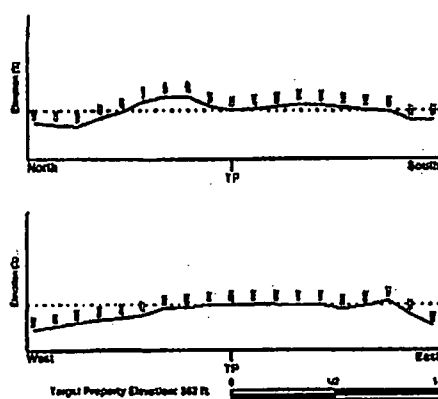
Groundwater flow direction for a particular site is best described by a qualified environmental professional using site-specific data. If such data is not reasonably obtainable, it may be necessary to rely on other sources of information, such as surface topographic information, hydrologic information, hydrogeologic data collected on nearby properties, and regional groundwater flow information from deep aquifers.

TOPOGRAPHIC INFORMATION

Surface topography may be indicative of the direction of surface groundwater flow. This information can be used to assist the environmental professional in forming an opinion about the impact of nearby contaminated properties or, should contamination exist on the target property, what downgradient sites might be impacted.

TARGET PROPERTY TOPOGRAPHY
General Topographic Gradient: General SWW

GROUNDWATER TOPOGRAPHIC ELEVATION PROFILES



Source: Topography has been determined from the USGS 7.5' Digital Elevation Model and should be evaluated on a relative (not an absolute) basis. Relative elevation information between sites of close proximity should be field verified.

TC280117 to Page A-2

GEOCHECK® - PHYSICAL SETTING SOURCE SUMMARY

Soil Layer Information							
Layer	Upper	Lower	Soil Texture Class	Classification	Estimated hydraulic conductivity (cm/sec)	Soil Reaction (pH)	Soil Reaction (pH)
1	4 inches	10 inches	loam	COARSE GRAINED SOLS, Sand, Clayey sand	Max 14 Min 4	Max 6.5 Min 4.5	
2	10 inches	18 inches	loam	COARSE GRAINED SOLS, Sand, Clayey sand	Max 14 Min 4	Max 6.5 Min 4.5	
3	18 inches	24 inches	loam	COARSE GRAINED SOLS, Sand, Clayey sand	Max 14 Min 4	Max 6.5 Min 4.5	

Soil Map ID: 1

Soil Component Name: ALPS

Soil Surface Texture: sand

Hydrologic Group: Class A - High infiltration rates. Soils are deep, well drained to excessively drained sands and gravels.

Soil Drainage Class: Excessively drained

Hydro Status: Partially hydric

Corrosion Potential - Unsat. Soil: Low

Depth to Bedrock Min: > 0 inches

Depth to Water Table Min: > 0 inches

1C280547.1a Page A.7

GEOCHECK® - PHYSICAL SETTING SOURCE SUMMARY

Soil Layer Information							
Layer	Upper	Lower	Soil Texture Class	Classification	Estimated hydraulic conductivity (cm/sec)	Soil Reaction (pH)	Soil Reaction (pH)
1	0 inches	0 inches	loam	Not reported	Not reported	Max 4.5 Min 4.5	Max 6.5 Min 4.5
2	0 inches	0 inches	loam	Not reported	Not reported	Max 4.5 Min 4.5	Max 6.5 Min 4.5
3	0 inches	0 inches	loam	Not reported	Not reported	Max 4.5 Min 4.5	Max 6.5 Min 4.5

Soil Map ID: 2

Soil Component Name: ENFORCA

Soil Surface Texture: sandy loam

Hydrologic Group: Class C - Slow infiltration rates. Soils with layers impeding downward movement of water, or soils with moderately fine or fine textures.

Soil Drainage Class: Well drained

Hydro Status: Partially hydric

Corrosion Potential - Unsat. Soil: Moderate

Depth to Bedrock Min: > 0 inches

Depth to Water Table Min: > 0 inches

Soil Layer Information							
Layer	Upper	Lower	Soil Texture Class	Classification	Estimated hydraulic conductivity (cm/sec)	Soil Reaction (pH)	Soil Reaction (pH)
1	0 inches	0 inches	loam	Not reported	Not reported	Max 4.5 Min 4.5	Max 6.5 Min 4.5
2	0 inches	0 inches	loam	Not reported	Not reported	Max 4.5 Min 4.5	Max 6.5 Min 4.5
3	0 inches	0 inches	loam	Not reported	Not reported	Max 4.5 Min 4.5	Max 6.5 Min 4.5
4	0 inches	0 inches	loam	Not reported	Not reported	Max 4.5 Min 4.5	Max 6.5 Min 4.5
5	0 inches	0 inches	loam	Not reported	Not reported	Max 4.5 Min 4.5	Max 6.5 Min 4.5

1C280547.1a Page A.8

GEOCHECK® - PHYSICAL SETTING SOURCE SUMMARY

Soil Layer Information							
Layer	Upper	Lower	Soil Texture Class	Classification	Estimated hydraulic conductivity (cm/sec)	Soil Reaction (pH)	Soil Reaction (pH)
1	0 inches	0 inches	loam	Not reported	Not reported	Max 4.5 Min 4.5	Max 6.5 Min 4.5

Soil Map ID: 3

Soil Component Name: ALPS

Soil Surface Texture: sand

Hydrologic Group: Class A - High infiltration rates. Soils are deep, well drained to excessively drained sands and gravels.

Soil Drainage Class: Excessively drained

Hydro Status: Partially hydric

Corrosion Potential - Unsat. Soil: Low

Depth to Bedrock Min: > 0 inches

Depth to Water Table Min: > 0 inches

Soil Layer Information							
Layer	Upper	Lower	Soil Texture Class	Classification	Estimated hydraulic conductivity (cm/sec)	Soil Reaction (pH)	Soil Reaction (pH)
1	0 inches	0 inches	loam	Not reported	Not reported	Max 4.5 Min 4.5	Max 6.5 Min 4.5
2	0 inches	0 inches	loam	Not reported	Not reported	Max 4.5 Min 4.5	Max 6.5 Min 4.5
3	0 inches	0 inches	loam	Not reported	Not reported	Max 4.5 Min 4.5	Max 6.5 Min 4.5

Soil Map ID: 4

Soil Component Name: CANOON

Soil Surface Texture: sand

Hydrologic Group: Class A - High infiltration rates. Soils are deep, well drained to excessively drained sands and gravels.

Soil Drainage Class: General excessively drained

1C280547.1a Page A.9

GEOCHECK® - PHYSICAL SETTING SOURCE SUMMARY

Hydro Status: Partially hydric

Corrosion Potential - Unsat. Soil: Low

Depth to Bedrock Min: > 0 inches

Depth to Water Table Min: > 0 inches

Soil Layer Information							
Layer	Upper	Lower	Soil Texture Class	Classification	Estimated hydraulic conductivity (cm/sec)	Soil Reaction (pH)	Soil Reaction (pH)
1	0 inches	0 inches	loam	COARSE GRAINED SOLS, Sand, Clayey sand	Max 14 Min 4	Max 6.5 Min 4.5	
2	0 inches	0 inches	loam	COARSE GRAINED SOLS, Sand, Clayey sand	Max 14 Min 4	Max 6.5 Min 4.5	
3	0 inches	0 inches	loam	COARSE GRAINED SOLS, Sand, Clayey sand	Max 14 Min 4	Max 6.5 Min 4.5	
4	0 inches	0 inches	loam	COARSE GRAINED SOLS, Sand, Clayey sand	Max 14 Min 4	Max 6.5 Min 4.5	
5	0 inches	0 inches	loam	COARSE GRAINED SOLS, Sand, Clayey sand	Max 14 Min 4	Max 6.5 Min 4.5	
6	0 inches	0 inches	loam	COARSE GRAINED SOLS, Sand, Clayey sand	Max 14 Min 4	Max 6.5 Min 4.5	

1C280547.1a Page A.10

GEOCHECK® - PHYSICAL SETTING SOURCE SUMMARY

Soil Map No: 6

Soil Component Name:

OGECHKE

Soil Surface Texture:

loamy clay loam

Hydrologic Group:

Class B-0 - Drained/undrained hydrologic class of soils that can be drained and are somewhat

Soil Drainage Class:

Poorly drained

Hydric Status: All hydric

Corrosion Potential - Uncorrected Sest: High

Depth to Bedrock Mtr: > 0 inches

Depth to Waterable Mtr: > 0 inches

Soil Layer Information							
Secondary		Soil Texture Class	Classification	Unfilled Soil	Estimated Hydraulic Conductivity (cm/sec)	Soil Reaction (pH)	Soil Reaction (pH)
Layer	Upper						
1	1 inches	25 inches	Loam Clay Material (more than 25 pct passing No. 200, Clayey Silty)	Not reported	Max 14 Min 4	Max 6 Min 4.5	
2	8 inches	7 inches	Loam Clay Material (more than 25 pct passing No. 200, Clayey Silty)	Not reported	Max 14 Min 4	Max 6 Min 4.5	
3	37 inches	25 inches	Loam Clay Material (more than 25 pct passing No. 200, Clayey Silty)	Not reported	Max 14 Min 4	Max 6 Min 4.5	
4	14 inches	24 inches	Loam Clay Material (more than 25 pct passing No. 200, Clayey Silty)	Not reported	Max 14 Min 4	Max 6 Min 4.5	

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GEOCHECK® - PHYSICAL SETTING SOURCE SUMMARY

Soil Map No: 7

Soil Component Name:

ALPHA

Soil Surface Texture:

sand

Hydrologic Group:

Class A - High infiltration rates. Soils are deep, well drained to excessively drained with low plasticity.

Soil Drainage Class:

Excessively drained

Hydric Status: Perfectly hydric

Corrosion Potential - Uncorrected Sest: Low

Depth to Bedrock Mtr: > 0 inches

Depth to Waterable Mtr: > 0 inches

Soil Layer Information							
Secondary		Soil Texture Class	Classification	Unfilled Soil	Estimated Hydraulic Conductivity (cm/sec)	Soil Reaction (pH)	Soil Reaction (pH)
Layer	Upper						
1	8 inches	8 inches	Sand	Not reported	Not reported	Max 4.5 Min 4.5	Max 6.5 Min 4.5
2	1 inches	25 inches	Sand	Not reported	Not reported	Max 4.5 Min 4.5	Max 6.5 Min 4.5
3	25 inches	25 inches	Sand	Not reported	Not reported	Max 4.5 Min 4.5	Max 6.5 Min 4.5

LOCAL/REGIONAL WATER AGENCY RECORDS

CDR Local/Regional Water Agency records provide water well information to assist the environmental professional in assessing sources that may impact ground water flow direction, and in forming an opinion about the impact of contaminant migration on nearby drinking water wells.

WELL SEARCH DISTANCE INFORMATION

DATABASE	SEARCH DISTANCE (miles)
Federal WELLS	1000
Federal PWSS PWS	1000
State Database	1000

FEDERAL WSCA WELLS INFORMATION

MAP ID: No Wells Found

LOCATION FROM TP

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GEOCHECK® - PHYSICAL SETTING SOURCE SUMMARY

FEDERAL PWSS FILLING WATER SUPPLY SYSTEM INFORMATION

MAP ID: No Wells Found

WELL ID:

LOCATION FROM TP:

State PWSS System Found

Note: PWSS System location is not always the same as well location

STATE DATABASE WELL INFORMATION

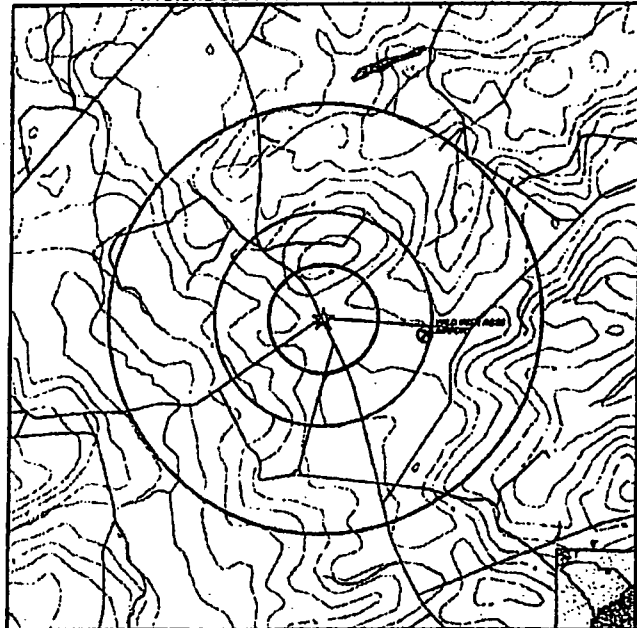
MAP ID: No Wells Found

WELL ID:

LOCATION FROM TP:

No Wells Found

PHYSICAL SETTING SOURCE MAP - 2805917.16



- County Boundary
- Major Roads
- Contour Lines
- Algae
- Contingent operations, Pictorial Soil Profile
- Water Wells
- Public Water Supply Wells
- Cluster of Multiple Wells

- Groundwater Flow Direction
- Indeterminate Groundwater Flow at Location
- Groundwater Flow Turbulence at Location

ACB - 106

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DATE: 06/18/2016 ADDRESS: 2450 Highway 101 LAT/LONG: 34.5182 / -85.1000	CLIENT: Dupont Engineering & Const. Inc. CONTACT: Michael Ziskind PROJECT #: 2805917.16 DATE: June 18, 2016 2:22 pm
--	---

GEOCHECK® - PHYSICAL SETTING SOURCE MAP FINDINGS RADON

AREA RADON INFORMATION

Federal EPA Radon Plans for On-Set RADON (LO County, 3)

- State Zone 1 radon average level ≤ 4 pCi/L
- Zone 2 radon average level ≤ 8 pCi/L, and ≤ 4 pCi/L
- Zone 3 radon average level ≤ 8 pCi/L

Federal Area Radon Information for Zip Code: 32004

Number of area radon: 2

Area	Radon Activity	% of pCi/L	% of pCi/L	% of pCi/L
Living Area - 1st Floor	0.280 pCi/L	100%	0%	0%
Living Area - 2nd Floor	Not Reported	Not Reported	Not Reported	Not Reported
Basement	Not Reported	Not Reported	Not Reported	Not Reported

PHYSICAL SETTING SOURCE RECORDS SEARCHED

TOPOGRAPHIC INFORMATION

USGS 1:50,000 Digital Elevation Model (DEM)
Source: United States Geological Survey
USGS prepared the USGS 1:50,000 Digital Elevation Model in 1990 and updated it in 1995. The 1:50,000 DEM corresponds to the USGS 1:50,000 and 1:25,000 scale topographic quadrangle maps. The DEM provides elevation data with coordinate elevation units and projections.

HYDROLOGIC INFORMATION

Flow Zone Data This data, available in select counties across the country, was obtained by USGS in 1993 and 1995 from the Federal Emergency Management Agency's (FEMA) Flood Insurance Study (FIS) maps. The FIS maps show the flood hazard areas and the flood insurance rates.

USGS National Wetlands Inventory This data, available in select counties across the country, was obtained by USGS in 1993 and 1995 from the U.S. Fish and Wildlife Service.

Water Wetlands Data: National Inventory
Source: Department of Natural Resources
Telephone: 803-334-5555

TOPOGRAPHIC INFORMATION

ACQUISITION

Source: USGS provides a variety of geospatial data information. USGS has developed the ACQUIS (Acquisition Information System) to provide data on the general location of geospatial data of specific topics. USGS has removed many restrictions on regulatory activities at state and local levels and has introduced the use of the region hydrogeological environment geospatial data (elevation and depth to water table information).

TOPOGRAPHIC INFORMATION

Geographic Area and Data Characteristics:
Source: P.D. Schindler, R.E. Smith and W.J. Bennett, County of the Commonwealth U.S. at 1:500,000 Scale. A digital representation of the USGS 1:50,000 and 1:25,000 scale topographic quadrangle maps. USGS Digital Data Series (DDS) - 11 (1994).

STATSO: State Statistical Database
Source: Department of Agriculture, Natural Resources Conservation Service (NRCS)
The U.S. Department of Agriculture's (USDA) Natural Resources Conservation Service (NRCS) is the national Conservation Land Survey (NCLS) and is responsible for collecting, storing, maintaining and distributing soil survey information to provide needed data in the United States. A soil map is a soil survey in a representation of soil patterns in a landscape. Soil maps for STATSO are compiled by processing more detailed (STATSO) soil survey maps.

STURDO: Soil Survey Geographic Database
Source: Department of Agriculture, Natural Resources Conservation Service (NRCS)
Telephone: 800-533-6333
STURDO is the most detailed level of mapping data by the National Resources Conservation Service, mapping soils generally scale from 1:50,000 to 1:10,000. Field mapping methods using national standards are used to construct the soil maps in the Soil Survey Geographic (STURDO) database. STURDO displays the original soil survey maps. This level of mapping is designed for use by landowners, landowners and county natural resource planning and management.

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PHYSICAL SETTING SOURCE RECORDS SEARCHED

LOCAL WATER SUPPLY RECORDS

FLORIDA WATER SUPPLY

FWIS: Public Water Systems

Source: Florida Office of Drinking Water

Telephone: 321-464-5750

Public Water Systems data from the Federal Reporting Data System. A FWIS is any water system which provides water to at least 15 people for at least 15 days annually. FWISs provide water from wells, springs, and other sources.

FWIS (E): Public Water Systems Violations and Enforcement Data

Source: Florida Office of Drinking Water

Telephone: 321-464-5750

Violations and Enforcement data for Public Water Systems from the Early Drinking Water Information System (EDWIS) after August 1995. Prior to August 1995, the data came from the Federal Reporting Data System (FRDS).

USGS Water Data: USGS National Water Inventory System (NWIS)

This database contains descriptive information on sites where the USGS collects or has collected data on surface water and groundwater. The geospatial data includes information on wells, springs, and other sources of groundwater.

STATE RECORDS

Water Well Database

Source: Department of Natural Resources

Telephone: 813-724-6400

Water wells include General Purpose/Drinking of South Carolina

Water Well Database

Source: Department of Natural Resources

Telephone: 864-256-1879

A listing of water wells in the Piedmont Aquifer/Drinking of South Carolina

OTHER STATE DATABASE INFORMATION

RADON

State Database: GE Radon

Source: Department of Health & Environmental Control

Telephone: 864-261-4333

Radon Test Results by Zip Code

Area Radon Information

Source: GEIS

Telephone: 864-261-4333

The National Radon Database has been developed by the U.S. Environmental Protection Agency (EPA) and is a compilation of the EPA/USGS Residential Radon Survey and the USGS/USGS Residential Radon Survey. The study covers the years 1980 - 1992. Where necessary data has been supplemented by information collected at private sources such as universities and research institutions.

EPA Radon Data

Source: EPA

Telephone: 800-556-4836

Sections 307 & 309 of RCRA directed EPA to set and identify areas of U.S. with the potential for elevated indoor radon levels.

OTD&S

Altered Landmark Topology: Pressure and points are timing facilities

Source: Federal Radon Information, 800-437-6216

Collection: World wide map of radon, Radon 6 at greater

Source: Department of Commerce, National Oceanic and Atmospheric Administration

PHYSICAL SETTING SOURCE RECORDS SEARCHED

STREET AND ADDRESS INFORMATION

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TC200017.1a Page A-18

Chesterfield Tract
Ruby-Hartsville Road
Patrick, SC 29584

Inquiry Number: 2805817.2
June 29, 2010

Certified Sanborn® Map Report

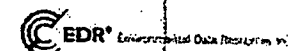


440 Wheelers Farm Road
Milford, CT 06461
800.352.0050
www.edrnet.com

Certified Sanborn® Map Report

6/29/10

Site Name: Chesterfield Tract Ruby-Hartsville Road Patrick, SC 29584	Client Name: Summit Engineering & Cons. P O Box 7384 Charlotte, NC 28241
EDR Inquiry # 2805817.2	Contact: Michael Zaytsak



The complete Sanborn Library collection has been searched by EDR, and fire insurance maps covering the target property location provided by Summit Engineering & Cons. Svc. were identified for the years listed below. The certified Sanborn Library search results in this report can be authenticated by visiting www.edrnet.com/sanborn and entering the certification number. Only Environmental Data Resources Inc. (EDR) is authorized to grant rights for commercial reproduction of maps by Sanborn Library LLC, the copyright holder for the collection.

Certified Sanborn Results:

Site Name: Chesterfield Tract
Address: Ruby-Hartsville Road
City, State, Zip: Patrick, SC 29584
Cross Street:
P.O. # NA
Project: NA
Certification # B441-4F54-B853



Sanborn Library Search Results
Certification # B441-4F54-B853

UNMAPPED PROPERTY

This report certifies that the complete holdings of the Sanborn Library, LLC collection have been searched based on client supplied target property information; and fire insurance maps covering the target property were not found.

The Sanborn Library includes more than 1.7 million Sanborn fire insurance maps, which track historical property usage in approximately 12,000 American cities and towns. Collections searched:

- ✓ Library of Congress
- ✓ University Publications of America
- ✓ EDR Private Collection

The Sanborn Library, LLC Since 1987

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ACB-108

APPENDIX IV DEED AND TAX INFORMATION

ACB - 109

DEED BY CORPORATION

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

NOT ABSTRACTED

005194

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°-32'-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 261.16 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 7-1, in the Office of the Clerk of Court for Chesterfield County, is by reference incorporated herein as a part of this description.

000829

A True Copy Attest

Jaye J. Sellers

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

ACB - 110

This is a portion of that property conveyed to the Granter by deed of Biscaglia 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 on 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.

ACB-111

In Witness Whereof,

C.W. HORNE SAWMILL & CHIP COMPANY, INC.

has caused these presents to be executed in its name by C. W. Horne

Barry Hilton

its Assistant Secretary

President 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

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

C.W. Horne

C. W. HORNE

PRESIDENT

Barry Hilton
AND: 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
an and deed, deliver the same for the uses and purposes therein mentioned and that a be, 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

000831

ACB - 112

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

AFFIDAVIT

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 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 Grantor's attorney.

SWORN TO before me this 25th day of September, 1998.

James H. Hudgins, Jr. (S.)
Notary Public for South Carolina

My commission expires: 03/01/00

TITLE TO REAL ESTATE
BY A CORPORATION

MICHAEL R. BROWN

To

C. W. BOWNE SAMPSON & CRIP COMPANY, INC.

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

NOT ABSTRACTED

FILED
CLERK OF COURT
'98 SEP 28 AM 11 42
CHESTERFIELD COUNTY, SC
BOOK PAGE

0
Clerk of Court, Chesterfield County
REVENUE FEE COLLECTED
STATE \$ 650.00
COUNTY \$ 275.00
DATE

000832

RECORDED FOR RECORD AT
THE 29 DAY OF Sept. 19 98 AND
RECORDED IN DEED BOOK 368 AT PAGE 829-832
CLERK OF COURT, COUNTY OF CHESTERFIELD
RECORDED THIS 16th DAY OF Oct. 1998
BY BOOK 5 OF DEED, AT PAGE 116
James H. Hudgins, Jr.
COUNTY CLERK
RECORDED AS PAGE NUMBER
THIS DAY OF . 19
COUNTY ASSESSOR
HULLER S. Ingman, Jr.
Notary Public

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOURTH JUDICIAL CIRCUIT
COUNTY OF CHESTERFIELD)

AMERICAN COMMUNITY BANK,)
A DIVISION OF YADKIN)
VALLEY BANK AND TRUST,)

) PLAINTIFF,)
))

VS)

) CASE 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,)

) DEFENDANTS.)
_____)

DEPOSITION OF MICHAEL R. BROWN
CHARLOTTE, NORTH CAROLINA
MAY 6, 2011

REPORTER: KELLY REITER

REPORTING

DALLAS

SERVING THE CAROLINAS FOR OVER TWENTY-FIVE YEARS
ROCK HILL, SOUTH CAROLINA
803-328-9640/TOLL FREE 1-877-871-6363

Page 3

1 Deposition of Michael R. Brown, 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 1:31 p.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 Michael R. Brown, first being duly affirmed, deposes and
16 says as follows:

17 Mr. Sheedy - Mr. Foster, have you explained to
18 the deponent the reading and signing?

19 Mr. Foster - We will read and sign.

20 Mr. Sheedy - I take it, that's a yes.

21 EXAMINATION - (By Mr. Sheedy)

22 Q Mr. Brown, my name is Jim Sheedy. I am here today
23 on behalf of American Community Bank, a division of
24 Yadkin Valley Bank and Trust. You are here today
25 for your deposition by agreement, as opposed to

Page 2

Appearances: For the Plaintiff -
James W. Sheedy, Esquire
Susan E. Driscoll, Esquire
Driscoll Sheedy, PA
11520 North Community House Road
Suite 200
Charlotte, North Carolina 28277

For the Defendant, Michael Brown -
J. Martin Foster, Esquire
Attorney at Law
223 East Main Street, Suite 520
Post Office Box 106 (29731)
Rock Hill, South Carolina 29730

For the Defendant, C.W. Horne -

Harry R. Easterling, Sr., Esquire
Goldberg & Easterling, PA
116 North Liberty Street
Post Office Drawer 655
Bennettsville, South Carolina 29512

Also Present -
Mr. C.W. Horne

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EXHIBITS

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**Deposition Exhibits 1 - 27 previously marked in
William Clewis' deposition.

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1 subpoena. Is that correct?

2 A That is correct.

3 Q Have you had your deposition taken before?

4 A Yes, I have.

5 Q How many times have you had your deposition taken?

6 A Maybe a couple of times.

7 Q I'm sorry?

8 A A couple of times, if I recall.

9 Q I think of a couple as two.

10 A (Indicating yes)

11 Q Does that sound right?

12 A I can't give the exact number over the years, but I
13 would say a couple.

14 Q Okay. Even though you've had your deposition taken
15 a couple of times, I'm going to share some
16 instructions and definitions with you. Please
17 answer the question. I know there's a great
18 temptation to answer the question that you would
19 prefer to have heard, but listen carefully to the
20 question and then please answer it. As I'm sure
21 you are aware, you need to answer the question
22 audibly. You need to say something. The court
23 reporter can only transcribe words, not nods or
24 winks or un-huhs. Do you understand so far those
25 instructions?

1 A Understood.

2 **Q Please answer based on your personal knowledge, as**
 3 **opposed to what some third party may have said that**
 4 **somebody else said. If you're going to engage in**
 5 **speculation or conjecture or assumption, I would**
 6 **appreciate it if you would indicate to me what**
 7 **you're basing that speculation or conjecture or**
 8 **assumption on. If you can't hear me, ask me to**
 9 **speak louder. I do have a tendency, and a personal**
 10 **preference, to be soft-spoken, and I would be happy**
 11 **to turn up the volume. If you don't understand a**
 12 **question, don't answer it. Make me rephrase it**
 13 **until you understand it. Unless your lawyer**
 14 **instructs you not to answer, and that would be on**
 15 **matters involving attorney/client privilege - - -**
 16 **Attorney/client privilege is where you had sought**
 17 **advice from him or he has given advice to you.**
 18 **Unless he instructs you not to answer, even if you**
 19 **hear the lawyers objecting to the form of the**
 20 **question, you have to answer the question. Now**
 21 **that we have started this deposition, you may not**
 22 **be coached by your lawyer. If we adjourn or take a**
 23 **break, please do not talk about this testimony with**
 24 **any of the lawyers who are present here today. I**
 25 **don't view this as an endurance contest. If we**

1 need to take a break, indicate that. We'll
 2 adjourn, and then reconvene at everyone's
 3 convenience. If you would, ask me rather than Mr.
 4 Foster for any clarifications, definitions, or
 5 explanations of any words, questions, or documents
 6 that you may see during this deposition. Are you
 7 taking anything today, Mr. Brown, that would affect
 8 your ability to understand questions or respond?

9 A No.

10 **Q Okay. I'm curious because I think I heard**
 11 **something just a moment ago. Where are you**
 12 **originally from?**

13 A California.

14 **Q Where in California?**

15 A Hawthorne.

16 **Q Where is Hawthorne?**

17 A It's by Los Angeles. It's where I was born.

18 **Q Is that Orange County, or is that LA County?**

19 A I don't know for sure, but it's on my birth
 20 certificate.

21 **Q How long have you lived in South Carolina?**

22 A South Carolina, since - - - Let's see here. 2000.

23 **Q State your full name for the record.**

24 A Michael Robert Brown.

25 **Q Where do you currently live?**

1 A 8608 Hartsville-Ruby Road, Patrick, South Carolina.

2 **Q Is there a telephone there at that address?**

3 A That is correct.

4 **Q What is the telephone number?**

5 A 843-634-5101 and -3898.

6 **Q So there are two telephone numbers there?**

7 A That is correct.

8 **Q Are both of those your telephone numbers?**

9 A That is correct.

10 **Q I'm just curious. Why do you have two telephone**
 11 **numbers at that address?**

12 A One for the fax machine, and one that's not for the
 13 fax machine.

14 **Q Are you currently employed?**

15 A Not right now.

16 **Q What was the last job that you held?**

17 A I work for myself in carpet repair and renovation.
 18 The last job I had was doing some work down in
 19 Charlotte at the Westin Hotel.

20 **Q Is the fax number at Patrick used in connection**
 21 **with your business?**

22 A It's used in connection with any business or any
 23 personnel contact I have. They'll send a fax to
 24 me, so I can receive information.

25 **Q Do you have a cell phone number?**

1 A No.

2 **Q Do you have an email address?**

3 A Pumpcity2626 hotmail dot com.

4 **Q So it's pumpcity2626 at hotmail dot com?**

5 A That is correct.

6 **Q State briefly your educational background for the**
 7 **record.**

8 A Grade school, high school, and a few months of
 9 college.

10 **Q Grade school and high school were in California?**

11 A No. Minneapolis, Minnesota.

12 **Q How long did you live in Minneapolis?**

13 A I don't - - - I came to North Carolina in '79 or
 14 '80, I believe it was, before I came to South
 15 Carolina.

16 **Q So I'm guessing then that you are a product of the**
 17 **Hennepin County schools?**

18 A I would think so, and went to high school.

19 **Q In the Greater Minneapolis/St. Paul - - -**

20 A St. Louis - - -

21 **Q Oh, in St. Louis?**

22 A Park. St. Louis Park.

23 **Q Oh, St. Louis Park, which is near - - -**

24 A Right.

25 **Q Minneapolis?**

- 1 A Correct.
- 2 **Q Okay. Why did you come to North Carolina in 1979**
- 3 **or 1980?**
- 4 A To invest in a restaurant.
- 5 **Q Was that a restaurant here in Charlotte?**
- 6 A That was here in Charlotte.
- 7 **Q What was the name of that restaurant?**
- 8 A MTM Presents.
- 9 **Q Where was that?**
- 10 A Across from the hospital, the main hospital.
- 11 **Q Across from Carolinas Medical?**
- 12 A Yes.
- 13 **Q How long were you in that restaurant business?**
- 14 A Probably for about a year, year-and-a-half.
- 15 **Q What did you do - - - And I may not have these**
- 16 **dates right, but what did you do from 1981 to 2000,**
- 17 **when you apparently moved to Patrick, South**
- 18 **Carolina?**
- 19 A The same thing. I was doing carpet.
- 20 **Q And again, that's installation related?**
- 21 A Installation and sales.
- 22 **Q So you were a distributor for some lines of carpet?**
- 23 A No. I would pretty much represent myself. I would
- 24 design the carpet, and then go to the mill and have
- 25 it made. I did The Park Hotel out here for Smokey

- 1 Bissell, The Guest Quarters Hotel. That's the way
- 2 it worked.
- 3 **Q Is that something that you were doing in**
- 4 **Minneapolis before you came here?**
- 5 A That is correct.
- 6 **Q And for what company did you do that in**
- 7 **Minneapolis?**
- 8 A For my company.
- 9 **Q You had your own company in the - - -**
- 10 A Yes.
- 11 **Q Minneapolis area? What was the name of that**
- 12 **company?**
- 13 A American Carpet Design.
- 14 **Q And did American Carpet Design do essentially what**
- 15 **you just described that you were doing here in the**
- 16 **Carolinas?**
- 17 A I wasn't doing the big hotels there. I started
- 18 that here.
- 19 **Q So your competition in Minneapolis would have been**
- 20 **companies like the Pink companies, MCI, Cellular**
- 21 **Warehouse Distribution - - -**
- 22 A No.
- 23 **Q Companies?**
- 24 A No. I had a business that I started, and I had a
- 25 statue business and a carpet business I was running

- 1 out of there, as well as investing in real estate
- 2 properties. At that time, I was twenty-two,
- 3 twenty-three.
- 4 **Q From 1981 to the year 2000, while you were here in**
- 5 **the Carolinas, were you doing anything other than**
- 6 **this carpet business that you just described?**
- 7 A Yes.
- 8 **Q What were you doing?**
- 9 A Motion pictures.
- 10 **Q What were you doing in motion pictures?**
- 11 A Because I enjoyed doing it.
- 12 **Q No, no. What were you doing? What - - -**
- 13 A Actor, I'm sorry.
- 14 **Q Kind of - - -**
- 15 A Actor.
- 16 **Q Okay. Did you appear in any films?**
- 17 A Yes, I did.
- 18 **Q What films did you appear in?**
- 19 A House of Death.
- 20 **Q Any others?**
- 21 A That was it.
- 22 **Q Beginning in the year 2000, you moved to South**
- 23 **Carolina. Is that right?**
- 24 A That is correct.
- 25 **Q And in the year 2000 when you moved to South**

- 1 **Carolina, where did you live?**
- 2 A At the winery.
- 3 **Q And when you say the winery, that would be the**
- 4 **property in - - -**
- 5 A The property I'm at - - -
- 6 **Q Patrick?**
- 7 A Right now.
- 8 **Q Which is the property in Patrick?**
- 9 A That is correct.
- 10 **Q The 106.85 acres, which is in dispute in this case?**
- 11 A That is correct.
- 12 **Q And that would be property that you purchased from**
- 13 **Mr. Home in September of 1998?**
- 14 A That is correct.
- 15 **Q In September of 1998, you were living in North**
- 16 **Carolina, according to your testimony?**
- 17 A Yes.
- 18 **Q So you didn't move onto the property until sometime**
- 19 **later?**
- 20 A It was in 2000 when I moved onto the property.
- 21 **Q When in 2000?**
- 22 A It was around June of 2000.
- 23 **Q Were you also conducting any business from that**
- 24 **property in June of 2000, when you moved there?**
- 25 A I was still doing my carpet installation.

- 1 Q From that location?
- 2 A No, not from that location. I would go to the
- 3 hotels and do the work.
- 4 Q Was any business being conducted from that
- 5 location? Were you receiving faxes, sending faxes,
- 6 making phone calls, doing anything related to your
- 7 carpet business from the Patrick - - -
- 8 A You mean calling the hotels, when they call me up
- 9 and say they need me to come there?
- 10 Q Sure.
- 11 A Is that correct in your questioning?
- 12 Q (Indicating yes)
- 13 A Yes.
- 14 Q Okay. So if someone were to correspond with you
- 15 about your carpet business at that time, it would
- 16 have gone to the Patrick address?
- 17 A That is correct.
- 18 Q And if someone were to receive an invoice from you
- 19 during that time, it would have been for payment to
- 20 have been made to the Patrick address?
- 21 A That is correct.
- 22 Q Did you employ anyone in your carpet business?
- 23 A No, I didn't.
- 24 Q So it was just you?
- 25 A That is correct.

- 1 Q Do you have any family in Chesterfield County?
- 2 A No, I don't.
- 3 Q Are you currently married?
- 4 A No, I'm not.
- 5 Q Between the year 2000 and today, were you married
- 6 at any time?
- 7 A No, I wasn't.
- 8 Q During the time that you lived in North Carolina,
- 9 were you married?
- 10 A No, I wasn't.
- 11 Q I'm going to show you some documents and ask you a
- 12 few questions about them. Let the record reflect
- 13 I'm showing you a promissory note dated December
- 14 29, 2000 in the amount of a hundred and fifty
- 15 thousand dollars. Take a second, if you would, and
- 16 review that.
- 17 A (Peruses document)
- 18 Q That is your signature which appears on Page 2 of
- 19 the promissory note, isn't it?
- 20 A That is correct.
- 21 Q By signing that promissory note, you promised to
- 22 repay to American Community Bank the sum of a
- 23 hundred and fifty thousand dollars, didn't you?
- 24 A That is correct.
- 25 Q And pursuant to that promissory note, you received

- 1 a hundred and fifty thousand dollars as a part of a
- 2 real estate closing, didn't you?
- 3 A Do you mean the net - - -
- 4 Q No, no.
- 5 A Proceeds?
- 6 Q No, no. I mean a hundred and fifty thousand
- 7 dollars went into an attorney's trust account in
- 8 order to enable you to purchase 106.85 acres from
- 9 Mr. Horne?
- 10 A This wasn't to purchase the property.
- 11 Q Oh, that's right. The property was actually
- 12 purchased in 1998, wasn't it?
- 13 A That's correct.
- 14 Q Okay. A part of this money was used to repay a
- 15 loan to Mr. Horne?
- 16 A That is correct.
- 17 Q And I really shouldn't be doing this from memory.
- 18 I should be doing it from the closing statement.
- 19 So let me grab this closing statement, Mr. Brown,
- 20 or settlement statement. Let the record reflect I
- 21 am showing the witness what was previously marked
- 22 as Exhibit 4.
- 23 Mr. Foster - In Mr. Clewis' deposition.
- 24 Mr. Sheedy - Of Mr. Clewis' deposition of
- 25 earlier today.

- 1 Q Okay. Mr. Horne received - - - Well, let me just
- 2 ask the general question. You signed the last page
- 3 of this closing statement, didn't you?
- 4 A That is correct.
- 5 Q And by signing it, you agreed with the entries
- 6 which appeared on this closing statement, didn't
- 7 you?
- 8 A And that is correct.
- 9 Q So to the best of your knowledge, this closing
- 10 statement accurately reflects the disbursement of
- 11 the hundred and fifty thousand dollars?
- 12 A This is my signature, so I approved of this.
- 13 Q And your signature appears right below the
- 14 following language, I have carefully reviewed the
- 15 HUD-1 settlement statement, and to the best of my
- 16 knowledge and belief, it is a true and accurate
- 17 statement of all receipts and disbursements on my
- 18 account or by me in this transaction. I further
- 19 certify that I have received a copy of the HUD-1
- 20 settlement statement. Do you see that language?
- 21 A Yes, I see the language.
- 22 Q And you signed, indicating that you agree with that
- 23 language, didn't you?
- 24 A And let me ask you a question, is this a - - -
- 25 Before I answer that.

- 1 **Q (Indicating yes)**
 2 **A** Is this a HUD-1 statement here?
 3 **Q** Yes, it's a HUD-1 settlement statement.
 4 **A** Yes, I do agree with that.
 5 **Q** Okay. Thank you, sir.
 6 **A** (Indicating yes)
 7 **Q** Now, what you intended to do with the 106.85 acres
 8 was to subdivide and sell that property, isn't that
 9 correct?
 10 **A** That is not correct.
 11 **Q** Oh. So the answer that Mr. Foster filed on your
 12 behalf in this case, which says that, is in error?
 13 **A** No.
 14 **Q** Well, which is it?
 15 **A** Would you like me to bring it forth?
 16 **Q** Yes, I would love for you to answer the question.
 17 **A** Okay.
 18 **Q** Which is it? You were going to subdivide and sell,
 19 or you weren't going to subdivide and sell?
 20 **A** When I received the loan, it was to fix the
 21 property up because it was in such disrepair. Then
 22 as time went on, the property was going to be
 23 subdivided to help pay the loan off.
 24 **Q** Okay.
 25 **A** The original intent of the loan was to fix the

- 1 property up.
 2 **Q** For residential and business occupancy?
 3 **A** This was for residential, because I lived there and
 4 I made thirty thousand square feet into my own
 5 place.
 6 **Q** But as you testified earlier, you were also
 7 conducting your carpet business from this location?
 8 **A** This was according to your questioning regarding
 9 the faxes, receiving and sending.
 10 **Q** Right.
 11 **A** And that is correct, what I've said.
 12 **Q** Okay. And therefore, the assertion in the
 13 complaint that you intended to repay the mortgage
 14 from subdivision and sale of the property is also
 15 correct, isn't it?
 16 **A** Yes. That is correct.
 17 **Q** At no point in time, including through today, Mr.
 18 Brown, as we sit here, have you repaid the sum of a
 19 hundred and fifty thousand dollars to American
 20 Community Bank, have you?
 21 **A** No. The one fifty was not paid.
 22 **Q** Let me state for the record that rather than
 23 cluttering up the record with yet another copy of
 24 this promissory note, I showed the witness
 25 Deposition Exhibit 22 from Clewis. I am correct,

- 1 aren't I, Mr. Brown, that Deposition Exhibit 22 and
 2 the promissory note to the left of you are the same
 3 document?
 4 **A** It appears to be the same document.
 5 **Q** Okay. Thank you, sir. I'm now going to show you,
 6 Mr. Brown, a copy of the mortgage granting a lien
 7 against 106.85 acres. In particular, I'll ask you
 8 whether that is your signature which appears on the
 9 last page?
 10 **A** That is correct.
 11 **Q** But that is the instrument, to your knowledge,
 12 which gave the bank a lien on the 106.85 acres that
 13 you owned in Chesterfield?
 14 **A** Right, in December of 2000.
 15 **Q** On the 29th, if memory serves. Does that sound
 16 correct?
 17 **A** Correct.
 18 **Q** Again, this was marked in the earlier deposition,
 19 and I'll mark it if counsel desires. In Clewis, it
 20 was 23.
 21 Mr. Foster - Are we stipulating, as I assume
 22 we can, that the referenced exhibits from
 23 Clewis are going to be included in his
 24 deposition?
 25 Mr. Sheedy - To the extent - - -

- 1 Mr. Foster - No problem here.
 2 Mr. Sheedy - Mentioned during the examination.
 3 Mr. Foster - No problem here.
 4 Mr. Sheedy - Are you okay with that, Harry?
 5 Mr. Easterling - Yes, sir.
 6 **FURTHER EXAMINATION - (By Mr. Sheedy)**
 7 **Q** So you understood, didn't you, Mr. Brown, that in
 8 the event that you did not repay the hundred and
 9 fifty thousand dollar promissory note, that one of
 10 the things the bank could do is foreclose on the
 11 property described in this mortgage?
 12 **A** That is what it stipulates in the contract.
 13 **Q** I don't want to put words in your mouth, and I may
 14 not remember this correctly, but I think you said
 15 that when you were a young man first starting your
 16 career, that you invested in real estate?
 17 **A** That is correct.
 18 **Q** So by the time of the year 2000, how much real
 19 estate investment had you done? And by that, I
 20 mean in terms of numbers of transactions, where you
 21 bought or sold something.
 22 **A** Perhaps a million.
 23 **Q** In value?
 24 **A** Yeah.
 25 **Q** How many properties would that be?

- 1 A At that time, probably about seventeen properties.
- 2 Q Were any of these properties in which you invested
- 3 for development purposes?
- 4 A No.
- 5 Q So Chesterfield, the 106.85 acres there, would have
- 6 been your first venture into subdivision and
- 7 resale?
- 8 A Yes. That would have been my first venture into
- 9 it, if I was to do it there.
- 10 Q You mentioned a winery earlier, too. Was it ever
- 11 your intention to be a vintner on the 106.85 acres?
- 12 A No.
- 13 Q Had you ever been in the wine business prior to
- 14 2000?
- 15 A No.
- 16 Q As I'm sure you recall, Miller Ingram was the
- 17 closing attorney for purposes of this one hundred
- 18 and fifty thousand dollar loan. Did you have any
- 19 conversations with Mr. Ingram about your purchasing
- 20 an owner's policy of title insurance?
- 21 A Explain that to me.
- 22 Q I would be happy to. On a loan transaction, a bank
- 23 will often get a lender's policy, which insures the
- 24 lien of the bank's mortgage. It is also common
- 25 that the owner of the property will get a policy of

- 1 title insurance that insures against any defects in
- 2 the title. Does that explanation make sense to
- 3 you?
- 4 A Yes, what you're saying now.
- 5 Q Okay. Now, did you have - - - Well, let me ask it
- 6 this way. Was Miller Ingram your lawyer, in part,
- 7 for purposes of the closing of the hundred and
- 8 fifty thousand dollar loan?
- 9 Mr. Foster - I think I need to say something
- 10 here about whether that's a legal conclusion.
- 11 Having said which, as we've talked about
- 12 before, you can answer, sir.
- 13 Mr. Sheedy - Okay. Well, then let me ask it
- 14 this way.
- 15 Q Mr. Brown, did you consider Miller Ingram to be
- 16 your lawyer for purposes of closing the hundred and
- 17 fifty thousand dollar loan?
- 18 A I considered Miller Ingram to be C.W.'s lawyer,
- 19 that I was referred to, to work this transaction
- 20 out together.
- 21 Q Did you have any separate lawyer who was giving you
- 22 advice in connection with this hundred and fifty
- 23 thousand dollar loan?
- 24 A No, I did not.
- 25 Q Given that Mr. Ingram may or may not have been your

- 1 lawyer, in your opinion, can you state why it is
- 2 that you did not acquire an owner's policy of title
- 3 insurance on the 106.85 acres?
- 4 A I was not that versed on it and did not realize
- 5 that, at that time.
- 6 Q In the other real estate transactions in which you
- 7 had been involved, I think you said seventeen
- 8 having a value of roughly a million dollars, had
- 9 you ever purchased owner's title insurance?
- 10 A I can't give you an answer on that. That was back
- 11 in 1972, '73, '74. So back then, I can't say
- 12 because I - - - This is when I really began to come
- 13 aware of it, here.
- 14 Q So if I understand your testimony, you may have,
- 15 you may not have. You just don't recall?
- 16 A Yes, I can't give an honest assessment of it.
- 17 Q At the time that you purchased the 106.85 acres - -
- 18 - And by the way, if my memory serves, that was in
- 19 September of 2008. Does that sound right to you?
- 20 Ms. Driscoll - I think it was '98.
- 21 A '98.
- 22 Q '98, I'm sorry. Does that sound right?
- 23 A I think it was in May, if I recall. Maybe it was
- 24 September of 1998.
- 25 Q Well, let's look at this, and see if I'm - - -

- 1 Yeah. I show September 25, 1998. Let the record
- 2 reflect I'm showing the witness a copy of the deed
- 3 from C.W. into Brown.
- 4 A I believe the purchase agreement was in May, and
- 5 then this is when we came into the closing, I
- 6 believe.
- 7 Mr. Foster - Exhibit 9.
- 8 Q Yes, Exhibit 9 from Clewis' deposition. When you
- 9 bought this property, do you know if you had the
- 10 title checked?
- 11 A No.
- 12 Q So as you sit here today, you don't know if you had
- 13 the title checked?
- 14 A No, I know it wasn't checked.
- 15 Q Oh, you know that you didn't?
- 16 A I asked C.W. Home. He said he had just had it
- 17 done.
- 18 Q So the title was not checked for purposes of your
- 19 purchase?
- 20 A No.
- 21 Q I probably should have asked this earlier. How did
- 22 you come to know Mr. Home?
- 23 A Through a real estate transaction we did in
- 24 Charlotte.
- 25 Q And what was that real estate transaction?

1 A That involved a refinancing of a couple of
2 properties on Morehead.
3 **Q Did you own the properties, or did he?**
4 A I owned the properties.
5 **Q And what role, if any, did Mr. Horne have in the**
6 **refinancing of those two properties that you owned?**
7 A I was buying the winery, and he put up the money to
8 finance everything. The three properties included
9 the winery that I had at the time, and the total
10 note was seven hundred and fifty thousand.
11 **Q When you speak of the winery, again, that's the**
12 **106.85 ---**
13 A That is the ---
14 **Q Acres in Patrick?**
15 A Yeah. I'll refer to it as the address, 8608
16 Hartsville-Ruby Road.
17 **Q And correct me if I'm mischaracterizing this, when**
18 **did you purchase the winery?**
19 A In 1998.
20 **Q So in 1998, you borrowed seven hundred and fifty**
21 **thousand dollars to purchase the winery from Mr.**
22 **Horne?**
23 A It wasn't just for the purchase of the winery. It
24 was a loan to get the winery and to refinance the
25 two properties I had on Morehead and Cedar.

1 **Q And you borrowed the money from Mr. Horne?**
2 A That is correct. We wrapped it into one loan for
3 three properties.
4 **Q So Mr. Horne loaned you seven hundred and fifty**
5 **thousand dollars?**
6 A Correct.
7 **Q And you then granted, as security for the repayment**
8 **of that loan, a mortgage on the Patrick property?**
9 A All of that was tied in.
10 **Q And the deed of trust on the two properties on**
11 **Morehead Street?**
12 A Correct.
13 **Q Okay. Then two years later in December of 2000,**
14 **you paid off the loan that Mr. Horne still had on**
15 **the Patrick property. Is that true?**
16 A I need you to clarify yourself more, where you're
17 coming with this.
18 **Q Sure. Remember the closing statement I showed you**
19 **a few minutes ago, Exhibit 4 from Clewis?**
20 A Correct.
21 **Q And you may also remember --- If you don't, don't**
22 **let me put words in your mouth. I'll produce the**
23 **document for you. There was an entry on that**
24 **closing statement of a payment to Mr. Horne out of**
25 **the hundred and fifty thousand proceeds. Do you**

1 remember that?
2 A That is correct.
3 **Q And if my memory serves, and yours is probably**
4 **better than mine, that amount was seventy-two or**
5 **seventy-three thousand dollars?**
6 A It was in that range.
7 **Q Sure. When that seventy-two or seventy-three**
8 **thousand dollars was paid, Mr. Brown, was that the**
9 **end of your debt to Mr. Horne related to any**
10 **mortgage that Mr. Horne may have on the South**
11 **Carolina Patrick property?**
12 A That was the hundred thousand dollar loan that he
13 had made, and that was the end to that particular
14 debt.
15 **Q Okay. But ---**
16 A Not of the seven fifty.
17 **Q Ah, thank you, thank you. So the seven hundred and**
18 **fifty thousand dollars wasn't reduced by that**
19 **payment of seventy-two or seventy-three thousand?**
20 A No. That was paid in full with interest.
21 **Q Prior to 2000?**
22 A That is correct.
23 **Q Okay. So in 2000 then, you had paid Mr. Horne in**
24 **full the seven hundred and fifty thousand dollars?**
25 A I'm not saying that was in 2000. Remember, it was

1 before.
2 **Q Before two ---**
3 A (Indicating yes)
4 **Q But by 2000 ---**
5 A Yes.
6 **Q By 2000, you had paid him the seven fifty in full,**
7 **but there was another loan that he had made to you**
8 **for roughly a hundred thousand dollars, which you**
9 **then paid in full out of the hundred and fifty?**
10 A Which pertains to that statement that you had
11 showed me, the HUD.
12 **Q Yes.**
13 A Correct.
14 **Q Deposition Exhibit 4 from Clewis?**
15 A That is correct.
16 **Q Okay. So after December 29, 2000, after the**
17 **closing on the hundred and fifty thousand dollar**
18 **loan, did you owe Mr. Horne any money?**
19 A Explain again how you --- Tell me about that.
20 **Q Well, at this point in time, December 29, 2000, Mr.**
21 **Brown, you didn't owe Mr. Horne anything on the**
22 **seven hundred and fifty thousand dollars, right?**
23 A That is correct.
24 **Q And you didn't owe him anything on the hundred**
25 **thousand because you had paid that off with that**

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1 **seventy-two thousand dollar payment that was made**
 2 **at closing on the hundred and fifty thousand dollar**
 3 **loan?**
 4 A That is correct.
 5 Q **So were there any other debts that you had to Mr.**
 6 **Horne after December 29, 2000?**
 7 A No.
 8 Q **Okay. So December 29, 2000, you were ---**
 9 A When we did the ---
 10 Q **Clear of him?**
 11 A When we did the hundred and fifty thousand, which
 12 was the last one.
 13 Q **Thank you. We spoke earlier about subdivision and**
 14 **sale of the 106.5 acres. Do you recall that ---**
 15 A Correct.
 16 Q **Discussion?**
 17 A Yes.
 18 Q **Exactly what were you planning to do with the 106.5**
 19 **acres? When you say subdivide, for example,**
 20 **subdivide into how many lots to be used for what**
 21 **purpose?**
 22 A That was ---
 23 Q **What was your thought?**
 24 A Shortt Auction had brought up that idea of doing
 25 that, and so ---

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1 Q **Yes, sir.**
 2 A Which was a friend of C.W. Horne's. He said the
 3 best way to market the land, because I wanted to
 4 keep the buildings, at that time was to cut it in
 5 parcels. So this was on the advice of Shortt
 6 Auction Company.
 7 Q **So what was going to be subdivided and sold was**
 8 **just the raw land?**
 9 A Just the raw land.
 10 Q **Any improvements on the 106.85 acres were intended**
 11 **to be kept by you?**
 12 A Explain that again.
 13 Q **Any improvements, by that I mean above-ground**
 14 **buildings ---**
 15 A Well, the buildings that were already there, the
 16 main --- I think it was about sixty thousand
 17 square feet, the main building that I was living
 18 in, and the other warehouse was not to go into the
 19 auction. So the intent, if I may explain myself,
 20 was to pay the loan at the bank with what the land
 21 was going to sell at that time.
 22 Q **And keep the buildings?**
 23 A Correct.
 24 Q **There have been some discussions --- And I'm**
 25 **going to make an effort, Mr. Brown, which may not**

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1 **work, to expedite it. I'm going to show you what**
 2 **was marked as Deposition Exhibit 25 to Clewis. I**
 3 **want you to take a second and go through this stack**
 4 **of modifications and extensions. Here's my**
 5 **question for you. Am I correct that all of the**
 6 **Michael Brown signatures, which appear on these**
 7 **modifications and extensions, are not your**
 8 **signature?**
 9 A None of the signatures pertaining to Exhibit 25 are
 10 my signatures.
 11 Q **Okay, I think that's what I asked. Now, the**
 12 **original promissory note, Mr. Brown, if you'll look**
 13 **at Paragraph 2, payment, called for payment to be**
 14 **due in full on December 30, 2001?**
 15 A That is correct.
 16 Q **Now, the last maturity date by modification and**
 17 **extension agreement --- And again, I'll try and**
 18 **move this along by pointing it out to you. This**
 19 **would be the modification and extension agreement**
 20 **dated October 29, 2007. On Page 2, this is dated**
 21 **May 10, 2008. Do you see that?**
 22 A I see it.
 23 Q **Now, at any time between December 30, 2001 and May**
 24 **--- When did I say it was? 10 of 2008?**
 25 A Yes.

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1 Q **Did you come into the bank and say that you didn't**
 2 **want this loan extended, and you wanted to pay it**
 3 **in full?**
 4 A I didn't come into the bank and say this.
 5 Q **Okay. Thank you. Again, for clarity of the**
 6 **record, he was reviewing Deposition Exhibit 25 from**
 7 **Clewis. Now, Mr. Brown, in your fourth defense and**
 8 **counterclaim in this case, there are allegations of**
 9 **a civil conspiracy between the bank and certain ---**
 10 **- excuse me, a civil conspiracy among the bank, Mr.**
 11 **Horne, and certain third parties. Can you tell me**
 12 **who those third parties are that were a part of**
 13 **this conspiracy, this alleged conspiracy?**
 14 A I can't answer that question.
 15 Q **Is there a reason that you can't?**
 16 A I just --- What is your theory of a conspiracy?
 17 Q **Well, actually, it's your theory, Mr. Brown. It**
 18 **has been alleged in your answer in this case. Now,**
 19 **I don't want to put words in your mouth, so I'll**
 20 **show you the document.**
 21 A I need to get a better understanding of the
 22 question.
 23 Q **Okay. I'm looking for names. In fact, rather than**
 24 **show you this twenty-page document, you are aware,**
 25 **are you not, that Mr. Foster on your behalf has**

1 alleged in this case that the bank and Mr. Horne
 2 knew in December of 2000 that there was
 3 environmental contamination on the 106.85 acres and
 4 neglected to tell you that. Are you aware that you
 5 have asserted that in this case?
 6 A That is correct.
 7 Q Okay. Now, as a part of that allegation, it is
 8 said that Mr. Horne and the bank, along with
 9 certain third parties, knew of this and didn't tell
 10 you. Do you understand that allegation?
 11 A I see what you're saying. Now, I understand the
 12 question better.
 13 Q Okay. So my question to you then is, can you name
 14 for me who these other people are?
 15 A I would say the one who did the title insurance,
 16 who I believe was Miller Ingram. Am I correct on
 17 that?
 18 Q He is - - -
 19 A Was that not his signature?
 20 Q I will stipulate for the record that he, as title
 21 agent, issued the lender's policy of title
 22 insurance on this property, yes.
 23 A And it was my understanding that he had closed many
 24 of these properties for C.W. Horne before. Is that
 25 not correct?

1 Q I don't know the answer to that.
 2 A Okay.
 3 Q If I knew it, I would agree to it for the record.
 4 A All I know is, it was never revealed to me about
 5 the environmental easement at the time of purchase
 6 on this property or the closing, when we went into
 7 the closing on this hundred and fifty thousand
 8 dollar loan.
 9 Q Let's hold the easement discussion for just a
 10 moment, because I understand what you're saying,
 11 and let's talk about the environmental condition.
 12 A Okay.
 13 Q You were here during Mr. Clewis' deposition,
 14 weren't you?
 15 A That is correct.
 16 Q And you were also here during Mr. Horne's
 17 deposition in Bennettsville?
 18 A That is correct.
 19 Q So you've seen the letters from DHEC that are no-
 20 action letters that predated your purchase of the
 21 property in 1998 that say there was no
 22 environmental contamination on the property, right?
 23 A I saw the letters through the attorney, that wrote
 24 the letter about it being - - - a problem with
 25 being marketable.

1 Q Well, I'm not asking you that. I'm asking you
 2 about the 1997 letter, and I said we're going to
 3 talk about the easement in just a moment.
 4 A Okay.
 5 Q Here's the March 24, 1997 letter, Mr. Brown,
 6 Deposition Exhibit 6 from Clewis.
 7 A Okay.
 8 Q It says, no further action will be required at this
 9 time. Do you see that?
 10 A Let me read this, sir. Is that all right?
 11 Q Oh, absolutely. Take your time.
 12 A If, however, any contamination becomes evident
 13 which could be attained (sic) to the UST system,
 14 this office will - - - under authority established
 15 in the South Carolina Underground Storage Tank
 16 Regulations R.61-92. This is specifically
 17 referring to only one thing, and one thing only,
 18 and that is the storage tanks - - -
 19 Q That's right.
 20 A That were capped for the monitoring wells.
 21 Q Do you see the language, no further action is
 22 required at this time?
 23 A At that time.
 24 Q Do you see that language?
 25 A That's correct.

1 Q And when it says, at this time, it's referring to
 2 March 24, 1997, isn't it?
 3 A That is correct.
 4 Q Now, on January 8, 2010, Deposition Exhibit 7 from
 5 Clewis, DHEC again said no further action, didn't
 6 it?
 7 A That is correct, according to this letter.
 8 Q And you don't have anything from DHEC in writing
 9 that would suggest otherwise, do you?
 10 A Not yet.
 11 Q Okay.
 12 A Not yet.
 13 Q So as you sit here today, you don't have anything
 14 different from these two letters that I've shown
 15 you?
 16 A Not that I'm aware of, sir.
 17 Q Now, let's talk about the easement. You
 18 understand, of course, what an easement is?
 19 A Go ahead, explain it to me.
 20 Q For purposes of my questions, an easement is a
 21 right of entry and exit, in this case, on your
 22 106.85 acres. Do you understand that definition?
 23 A That's what the easement says that was put on the
 24 property.
 25 Q Okay. Now, this particular easement was in favor

1 of a winery that had operated on the property
 2 previously, right?
 3 A Yes. That's correct.
 4 Q And I'm going to call that winery - - - And I'll
 5 mispronounce this, so help me. Is it Bisceglia?
 6 A I - - - That's good enough.
 7 Q Okay, good.
 8 A That's close enough, in New York.
 9 Q Well, I don't speak New York. Bisceglia kept an
 10 easement in order to enter upon and exit from the
 11 property in order to accomplish any environmental
 12 cleanup that may have been required. Do you recall
 13 that?
 14 A Yes. I believe that was C.W. Horne and Bisceglia
 15 that had that easement put on the property.
 16 Q And the limited use of that easement was for
 17 environmental cleanup, wasn't it?
 18 A I believe - - -
 19 Q As you understand it?
 20 A I believe, yeah, as I understand this.
 21 Q Sure.
 22 A I'm not an expert like you are in this, but - - -
 23 Q Well, and don't - - - Please don't assume that
 24 either. But as you understand it, Bisceglia
 25 retained an interest or a right to enter upon and

1 exit from the property in order to clean up any
 2 environmental condition?
 3 A That's what I found out after the problems with the
 4 property, yes.
 5 Q Now, from the time that you owned the property in
 6 1998 through today's date, whatever that is, May 6,
 7 2011, you are not aware, are you, of any instances
 8 where Bisceglia has entered upon and exited from
 9 the 106.85 acres to engage in any environmental
 10 cleanup?
 11 A I'm not aware of that. No one has told me or
 12 notified me.
 13 Q But during this period of time, September of 1998
 14 to the present, you have been the record owner of
 15 the property, the 106.85 acres?
 16 A That is correct.
 17 Q So if they were on the property, it wasn't with
 18 your permission, was it?
 19 A I - - - As again - - - Again, I was never notified.
 20 Q Right.
 21 A I have no knowledge of that.
 22 Q You have no knowledge - - -
 23 A Because it was never disclosed to me.
 24 Q You were - - -
 25 A All I know is that they sent me letters, wanting me

1 to sign off on the easement. That's the only thing
 2 I know.
 3 Q Right. But you don't know that they ever entered
 4 upon the property and engaged in any environmental
 5 remediation while you owned it?
 6 A Again, no.
 7 Q Okay. Now, do you have any letters or documents
 8 from American Community Bank where the bank agreed
 9 to forgive the hundred and fifty thousand dollars?
 10 Mr. Foster - I need to make the same noise
 11 about legal conclusions, but having made that,
 12 sir, answer as best you can.
 13 A All I have is when the bank sent me a 1098 for
 14 eighty-nine thousand, plus the loan is paid off.
 15 That's what I have from your bank.
 16 Q Well, where's the notice that the loan was paid
 17 off? Did you get something from the bank?
 18 A You sent me this. Your bank sent me that, sent the
 19 - - - Where's that paper?
 20 Q The 1098?
 21 A Yeah. I made copies of it.
 22 Q Oh, okay. Well, let's look at the 1098. Is that -
 23 - -
 24 A That's not the paid off.
 25 Q No, it's not.

1 A That is the interest statement.
 2 Q Correct.
 3 A But this is on - - - what they sent me on the
 4 credit report.
 5 Q Okay. That - - -
 6 A That's what I had saw at that time, when I had
 7 received that.
 8 Q But you don't dispute that you never paid the
 9 hundred and fifty thousand dollars - - -
 10 A I didn't pay - - -
 11 Q In principal?
 12 A The hundred and fifty thousand.
 13 Q Okay. Now, for your taxes for the year 2007, did
 14 you submit a Schedule A, if you know? You know
 15 what a Schedule A is on your taxes, don't you?
 16 A Well, this is what we would call fraud, so I don't
 17 go ahead and put that on my taxes.
 18 Q That's what I'm going to ask you is, whether on
 19 your Schedule A for 2007, did you deduct eighty-
 20 seven thousand four hundred?
 21 A Again, I said it's fraud, so I wouldn't do that.
 22 So it's not on there.
 23 Q So it's not on there?
 24 A Correct.
 25 Q Okay. Did you ever get anything in writing from

1 the bank saying that if the hundred and fifty
2 thousand wasn't paid, the bank wasn't - - - or
3 would waive its right to foreclose on the mortgage?
4 A Nothing in writing.
5 Q And let me go back to this interest statement for
6 just a moment. It is true according to your
7 testimony, Mr. Brown, that you did not pay eighty-
8 seven thousand four hundred dollars in interest for
9 the calendar year 2007?
10 A If I did, it would be on my tax statement, so it is
11 correct - - -
12 Q And it wasn't on your tax statement, so you didn't?
13 A Again, let me say again to you, yes, sir. It's not
14 on there.
15 Q Which means you didn't pay eighty-seven thousand
16 four hundred in interest?
17 A Again, if something is fraud and I see that, then
18 it's not going to be on my statement.
19 Q And it wasn't on your statement because you didn't
20 pay it? You're not answering the question, is what
21 I'm driving at.
22 A Let me say this for the third time. No, it wasn't.
23 Q Okay. Thank you.
24 A Okay.
25 Q As you sit here today, do you have any

1 documentation, anything in writing from anybody,
2 that would suggest that the 106.85 acres is
3 currently contaminated?
4 A No, I don't have documentation, but I do have a
5 letter.
6 Q Well, that's a writing. Who do you have a letter
7 from that says it's contaminated?
8 A This is just part of the - - - from the dump in the
9 back, from the individual who moved in behind me.
10 Q Oh, I see.
11 A That said there was a problem with the water.
12 Q This would be a tenant?
13 A No, no. This is someone who bought the property
14 behind me and moved in.
15 Q Who is claiming that the drinking water - - -
16 A Who has had DHEC come out and - - -
17 Q Oh, okay. And is claiming there's some migration
18 of contaminants from your property to his?
19 A I believe the letter is in your discovery, as far
20 as where that letter was.
21 Q Well, I'll show you the two letters again, and I
22 will represent to you that - - -
23 Mr. Foster - Off the record.
24 Whereupon - A brief discussion was held off
25 the record which was not reported.

1 FURTHER EXAMINATION - (By Mr. Sheedy)
2 Q Have you spoken to DHEC about this property, your
3 property, the 106.85 acres?
4 A In what regards? Just - - -
5 Q As to whether there's any environmental
6 contamination on it?
7 A I didn't know about that until the problem with the
8 bank had risen. I had spoken to DHEC about the
9 water, when I had the water tested. I think it was
10 in 2000 or 2001. It was either before the loan or
11 after the loan, that they had tested the water on
12 the property at the wells.
13 Q Who is they? DHEC?
14 A It was, I think, Brown and Glenn, which is a
15 testing company in - - -
16 Q I see.
17 A And what they did is, I had - - - was working on
18 trying to get a tenant or do something to perhaps
19 see if the water was clean enough.
20 Q My language, not your language. Were groundwater
21 monitoring wells dug on the property?
22 A The only - - -
23 Q Do you know what I mean by that term?
24 A Go ahead and explain it to me.
25 Q When I say groundwater monitoring wells, I mean

1 someone came onto the property, they dug a hole,
2 they dropped a PVC pipe, and they're testing the
3 water quality periodically for the presence or
4 absence of contaminants. Do you understand that
5 definition?
6 A Yes. Now, I understand. No, it hasn't been. The
7 only thing I'm aware of is the monitoring well
8 capped.
9 Q What does that mean?
10 A There was a monitoring well that they had requested
11 to have capped. In 2002, I had it capped as part
12 of whatever this was.
13 Q Okay. Returning to my question I asked you, have
14 you had any communications with DHEC about whether
15 there was or wasn't an environmental problem on
16 this property?
17 A The - - - I haven't personally had the
18 communications, that I recall.
19 Q Have you personally, Mr. Brown, hired an
20 environmental site assessor to do either a Phase I,
21 II, or III assessment of this property?
22 A I had spoken with Jeff Coley. You're familiar with
23 him.
24 Q Yes.
25 A In regards to doing this. At that point, he had

1 pretty much cut me off and said he makes all the
2 decisions, so he never got back to me. That's
3 where it stands.

4 **Q What pieces of paper do you have - - - I don't care**
5 **if it's a letter or an agreement or some document -**
6 **- - dated prior to December 29, 2000, that you know**
7 **that the bank had in its possession that showed the**
8 **property was contaminated?**

9 A I had no - - - I had no recollection of that. No -
10 - - Nothing was told to me about that. I have no
11 papers.

12 **Q The same question, except as to Mr. Horne. What**
13 **pieces of paper or other documents do you have in**
14 **your possession that would have shown that C.W.**
15 **Horne knew, prior to December 29 of 2000, that the**
16 **property was contaminated?**

17 A I believe that - - - Wasn't it - - - And correct me
18 if I'm wrong, because I know you've studied this
19 case. Was it not Mr. Horne and Bisceglia that had
20 put the easement that dealt with hazardous waste on
21 there in the subject language of that easement?

22 **Q I honestly don't remember.**

23 A Okay.

24 **Q I thought that the grantor on that easement was**
25 **actually a reservation by the seller, Bisceglia,**

1 **when it sold to Mr. Horne, but don't hold me to**
2 **that.**

3 A All right.

4 **Q Other than that document, are you aware of anything**
5 **else that would tend to suggest that Mr. Horne**
6 **knew, prior to December 29, 2000, that there was**
7 **some environmental contamination on the property?**

8 A Well, if the easement was put on before I bought
9 it, he had to know about it, with Miller Ingram.

10 Mr. Foster - Can I stop you for just a minute?

11 A Yes.

12 Mr. Foster - Can you hand me my other file?

13 A Sure.

14 FURTHER EXAMINATION - (By Mr. Sheedy)

15 **Q But you would agree, would you not, that's surmise**
16 **on your part?**

17 A Can you explain the word surmise, please?

18 **Q Sure. That is something that you believe to be**
19 **true, but have never asked Mr. Ingram point-blank**
20 **that question, have you?**

21 A No, I haven't.

22 **Q Okay. And you haven't actually seen any documents**
23 **or letters or anything in writing that would show**
24 **that Mr. Horne knew of the environmental**
25 **contamination, other than the easement?**

1 A Just the easement, after the sale of this property.

2 Mr. Foster - If I am allowed - - - And do you
3 want to go off the record on this?

4 Mr. Sheedy - (Indicating yes)

5 Whereupon - A brief discussion was held off
6 the record which was not reported.

7 FURTHER EXAMINATION - (By Mr. Sheedy)

8 **Q Let's go back on the record. There's been some**
9 **assertion by Mr. Foster on your behalf, Mr. Brown,**
10 **that the bank should be making a claim against its**
11 **title company. Are you familiar with that**
12 **assertion?**

13 A That is correct. I made that.

14 **Q Now, that claim would be related to the fact that**
15 **the property is environmentally contaminated,**
16 **right, or are you saying that's a claim because of**
17 **the easement? I'm trying to get that clear in my**
18 **mind.**

19 A You see - - - Can I explain this?

20 **Q I want you to. That's why I'm asking.**

21 A All right. I had met with C.W. Horne and had shown
22 him the interest statement, the payoff on the loan.
23 I said, did the title insurance pay this off? And
24 that's how that came about. Because it was my
25 understanding that if there was a problem on the

1 property, that that's why the insurance was taken
2 out, to cover the mortgage or the note.

3 **Q I apologize for jumping around, but Mr. Foster, I**
4 **guess, has found this letter from Canandaigua Wine**
5 **Company. But this letter, which is Deposition**
6 **Exhibit 4 from Horne, makes reference to the**
7 **easement, doesn't it? Take whatever time you need.**

8 A Okay. So explain to me the difference between an
9 easement - - -

10 **Q An easement is a - - -**

11 A And a - - -

12 **Q An easement is a right to enter upon or exit from**
13 **the property. This letter that you have in front**
14 **of you, Deposition Exhibit - - - Is it 4 from**
15 **Horne?**

16 A (Indicating yes)

17 **Q It doesn't say there's an environmental**
18 **contamination on the property, does it?**

19 A It talks about groundwater monitoring wells.

20 **Q And the easement for purposes of entering and**
21 **exiting from the property, right?**

22 A Where is that?

23 **Q Well, it says right here, doesn't it, in the title**
24 **deed, Bisceglia expressly reserved an easement and**
25 **pursuant to the easement, DHEC may enter to abandon**

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1 wells. Do you see that?

2 A Right.

3 Q Okay.

4 A And that is where - - - only where the diesel tanks

5 are.

6 Q Sure, but - - -

7 A That I understand.

8 Q This is not a statement that the property is

9 contaminated, is it?

10 A (No response)

11 Q Do you understand my question?

12 A Let's see. The - - -

13 Q It's a statement that Bisceglia has reserved an

14 easement for DHEC to abandon a monitoring well?

15 A That is correct.

16 Q Okay. Mr. Foster also, and I don't know if we were

17 on the record or off the record, talked about a

18 letter from Miller Ingram in 2002, asserting that

19 the property might be unmarketable because of this

20 easement. Do you remember that letter?

21 A That was - - - I don't think that was from Miller

22 Ingram. I think that was from another law firm,

23 was it not? Correct? In 2002, in - - -

24 Q Well, you know, actually you are right, and now

25 that - - -

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1 A I think that's just a little mixed up there, but

2 that's all right.

3 Q No, I think you are right, so let me rephrase the

4 question.

5 A Okay.

6 Q It is true, is it not, that a law firm in Charlotte

7 wrote a letter to Mr. Ingram about an easement

8 across the property that may have rendered the

9 property unmarketable? Do you remember that?

10 A That letter did not come from Charlotte. That

11 letter came from Camden. DuBose, that I recall,

12 Camden, South Carolina. Is it all right to still

13 speak?

14 Q Oh, sure.

15 A Okay.

16 Q Well, Mr. Brown, I'm going to show you a letter

17 from Buckley, McMullen, and Buie dated February

18 12th, 2002 to Miller Ingram. This is the letter

19 that I was thinking of.

20 A Okay. So I had the other letter than came from the

21 DuBose law firm that - - -

22 Q I don't have that letter.

23 A That is in - - - That is in Camden, that the reason

24 why everything was stopped because of the problem

25 in there. This also - - - This was my attorney

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1 that I had here. So, yes, I am familiar with this

2 letter, and there is a - - - I think, two other

3 letters involving the same opinion from two

4 different other attorneys.

5 Q This letter really talks about the easement and the

6 fact that the easement was not disclosed and,

7 therefore, rendered the property unmarketable. Do

8 you remember that?

9 A I remember when this letter was done.

10 Q What's the date on that letter?

11 A February 12th, 2002.

12 Q Had you ever seen the prior letter from Miller

13 Ingram dated January 28, 2002?

14 A Yes, I have.

15 Q Now, I don't have the letter in front of me, so I'm

16 doing this from memory.

17 A Here, go ahead.

18 Q The first sentence of that letter says that Mr.

19 Brown declined to have the title to the property

20 examined?

21 A That is correct.

22 Q Is that correct, that you declined to have the

23 title examined?

24 A I don't believe he ever asked. I just let him

25 know. I just said, C.W. already had it examined,

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1 already had the title search done, so C.W. said it

2 was good.

3 Mr. Sheedy - Okay. I would ask that both of

4 these be marked collectively, please.

5 Mr. Foster - Without objection.

6 Whereupon - Document was marked as Deposition

7 Exhibit Number 28.

8 Q Prior to Miller Ingram's January 28, 2002 letter,

9 Mr. Brown, did you know that Bisceglia had an

10 easement that enabled DHEC to enter the property

11 and abandon groundwater monitoring wells?

12 A That became of knowledge to me on January 15th of

13 2002 from DuBose Law Firm. They sent me a letter,

14 saying there was an easement on the property for

15 that.

16 Q Mr. Brown, between January 15th, 2002 - - - I think

17 you called him Mr. DuBose?

18 A It was the DuBose Law Firm out of Camden that

19 Shortt Auction had referred to me to handle the

20 sales of the particular properties.

21 Q Between January 15, 2002 and the time that you

22 filed a pleading in this case, your answer,

23 counterclaim, and cross-claim - - -

24 A (Indicating yes)

25 Q The answer, counterclaim, and cross-claim that you

1 filed in this case is the first time that you took
 2 any legal action, anything like a lawsuit, related
 3 to the environmental easement, isn't it?
 4 A This is upon what Jeff Coley and I had a discussion
 5 about, and nothing ever came back from the bank as
 6 to what to do. So that's how this came about with
 7 me not moving anything, according to Jeff Coley.
 8 Q But regardless of the reason - - -
 9 A Yes.
 10 Q Between January 15, 2002 and the date of your
 11 responsive pleading in this case, which I think was
 12 in 2010 - - - Yes, August 12, 2010. You never
 13 brought any lawsuit or any kind of other legal
 14 proceeding in a court involving environmental
 15 condition or easement on the 106.85 acres, did you?
 16 A No, I hadn't.
 17 Q In the complaint that American Community Bank
 18 brought in this case, the bank asserted that the
 19 amount owed is a hundred and fifty-two thousand
 20 seven ninety-one eighty-nine, plus interest of
 21 forty-one dollars and sixty-seven cents per day,
 22 from May 1, 2010 until the date of payment in full.
 23 Do you have anything in writing, any documents
 24 whatsoever, that contain mathematical or numerical
 25 information that would suggest that that amount is

1 wrong?
 2 A I have no documents.
 3 Q Now, is it Lee Shortt? Do I have his first name
 4 right?
 5 A I believe that's his first name.
 6 Q You gave him a mortgage against this property, too,
 7 didn't you?
 8 A This is because he wanted to make sure that he
 9 would get paid for his auctions fees, so he
 10 estimated what it would be for the sales of the
 11 property. That's how that came about.
 12 Q Okay. But it did come about?
 13 A Yes, it did.
 14 Q And you also gave Bank of America a mortgage
 15 against this property?
 16 A That is correct.
 17 Q So behind American Community Bank's mortgage are
 18 the mortgages of Shortt and Bank of America, as you
 19 understand it, right?
 20 A That is correct.
 21 Q Can you tell me a little bit about Jaguar?
 22 A Jaguar Portfolio was someone that they had, I
 23 believe, sold the original mortgage to and the - -
 24 -
 25 Q Who is they?

1 A Bank of America.
 2 Q Okay.
 3 A But we negotiated it down from - - - I think it was
 4 a debt of a hundred and thirty thousand down to
 5 fifty, and out of the funds from selling some of
 6 the property, that was going to be paid. So the
 7 property never sold.
 8 Q Just help me with the math for a moment.
 9 A Sure.
 10 Q I find three judgments held by Jaguar. One for
 11 sixty-one thousand eight hundred and thirty-six
 12 cents, one for thirty-one thousand four hundred and
 13 fifty-one dollars and forty-two cents, and one for
 14 nineteen thousand eight hundred and thirty-four
 15 dollars and eight cents. So when I total that up
 16 roughly, I see about a hundred and ten thousand
 17 bucks. Now, is that - - -
 18 A Again - - -
 19 Q The amount before the pay down, or after the pay
 20 down that you just referenced?
 21 A This is the exact same judgment that Bank of
 22 America has, that we had agreed on, and then they
 23 went and sold the whole thing to - - -
 24 Q Jaguar?
 25 A Jaguar, right. But it was already agreed on at

1 fifty thousand, and I have the paperwork on that.
 2 Q Okay. So - - -
 3 A But Jaguar - - - So what happened; I think someone
 4 misconstrued it and sold this thing to Jaguar, but
 5 it was already settled.
 6 Q At fifty thousand?
 7 A Yes.
 8 Q Now, of that fifty thousand, how much have you
 9 paid?
 10 A None.
 11 Q So the amount, which is unpaid, junior to Shortt's
 12 mortgage as you understand it, is fifty thousand?
 13 A Correct.
 14 Q And as you sit here today, you don't dispute that
 15 Shortt holds a mortgage for an unpaid debt?
 16 A I do not dispute that.
 17 Q Okay. Nor do you dispute that Jaguar is owed fifty
 18 thousand - - -
 19 A I dispute Jaguar.
 20 Q Of an unpaid debt? Oh, you - - -
 21 A Let's understand this. I dispute - - - Here's
 22 where you're getting a little confused. Jaguar is
 23 not in the picture, even though that might be
 24 there. It's Bank of America for fifty thousand
 25 that I have against the property.

- 1 **Q Well, Jaguar - - -**
 2 **A But Jaguar - - -**
 3 **Q Jaguar now owns and holds the fifty thousand?**
 4 **A I - - - That's news to me, because the second**
 5 **mortgage states it's Bank of America. Jaguar**
 6 **doesn't hold that.**
 7 **Q Okay. Well, then - - -**
 8 **A I'm just sharing that with you. It's - - -**
 9 **Q Then let's look at it this way, if you would**
 10 **prefer, rather than to argue the law with you.**
 11 **Bank of America is owed fifty thousand secured by a**
 12 **mortgage, which is junior to Shortt. Is that**
 13 **correct?**
 14 **A I don't know if it's junior, but I know that the**
 15 **fifty thousand is in there. I think; however it**
 16 **goes, however it works, I just know the fifty**
 17 **thousand is there.**
 18 **Q And you don't dispute that you owe the bank fifty**
 19 **thousand?**
 20 **A No. Why would I, when I had that put on?**
 21 **Mr. Sheedy - Okay. If you could, give us**
 22 **maybe two minutes.**
 23 **Whereupon - A brief recess was taken.**
 24 **FURTHER EXAMINATION - (By Mr. Sheedy)**
 25 **Q Actually, Mr. Brown, I do have one more question.**

- 1 **Do you know an R. Stephen Smith, who is a lawyer?**
 2 **A Can I see the document?**
 3 **Q Sure. This is Deposition Exhibit 28 from Brown.**
 4 **A Okay.**
 5 **Q Do you see the reference in that letter, that you**
 6 **had an R. Stephen Smith review your closing**
 7 **statement before you closed this deal, the hundred**
 8 **fifty thousand dollar loan?**
 9 **A This was in error. R. Stephen Smith was the one**
 10 **who closed and worked on the seven hundred and**
 11 **fifty thousand dollar loan, so - - - And the winery**
 12 **was tied up in it at that time. So when it was all**
 13 **paid off, he was involved with the sale - - - the**
 14 **transaction of the Morehead properties. That's**
 15 **where he came from.**
 16 **Q And he again, for the record, is R. Stephen Smith?**
 17 **A Yes, he is.**
 18 **Mr. Sheedy - Okay. That's all I have. I pass**
 19 **the witness to you, Harry.**
 20 **Mr. Easterling - Thank you.**
 21 **A Can I take one moment here and take a break?**
 22 **Mr. Easterling - Yes, sir.**
 23 **Mr. Sheedy - Oh, absolutely.**
 24 **A Thanks. Appreciate it.**
 25 **Whereupon - A brief recess was taken.**

- 1 **EXAMINATION - (By Mr. Easterling)**
 2 **Q All right, Mr. Brown. As you know, I'm Harry**
 3 **Easterling, and I represent C.W. Horne in this**
 4 **matter. The first question I would have for you,**
 5 **the purchase of the property, this 106-plus acre**
 6 **parcel, that was actually conveyed to you by C.W.**
 7 **Horne's company, was it not?**
 8 **A I think the purchase agreement said C.W. Sawmill**
 9 **and Chip Company, if I recall.**
 10 **Q Yes, sir. The deed - - -**
 11 **A Or is that correct? Do you have a copy of it**
 12 **there?**
 13 **Q In the deed itself - - -**
 14 **A Just to make sure I'm right on that.**
 15 **Q The deed itself, I believe, says that the property**
 16 **is being conveyed to you by C.W. Horne Company, and**
 17 **not C.W. Horne himself.**
 18 **A I think it said C.W. Horne Sawmill and Chip**
 19 **Company, Incorporated, but you can - - -**
 20 **Q Yes, sir.**
 21 **A Refresh me on this, if it's in the - - -**
 22 **Mr. Foster - We'll stipulate to what it says.**
 23 **A Documents. I want to make sure I have that right.**
 24 **Q All right, sir. I'll show you what's been marked**
 25 **Exhibit 9 Clewis, ACB-13, and ask you if that is a**

- 1 **copy of the deed from C.W. Horne Sawmill and Chip**
 2 **Company, Inc. to you individually?**
 3 **A Yes. This is the right one.**
 4 **Q Now, when you acquired this property, Miller**
 5 **Ingram, the attorney in Cheraw, was the closing**
 6 **attorney for the loan, was he not?**
 7 **A Yes.**
 8 **Q Did you ask Miller Ingram to give you a quote or**
 9 **provide for you owner's title insurance?**
 10 **A No.**
 11 **Q What complaint, at this time, do you make against**
 12 **C.W. Horne individually?**
 13 **Mr. Foster - I need to again make my noise**
 14 **about my client being asked to state something**
 15 **that is a legal opinion. Insofar as you can,**
 16 **sir - - -**
 17 **Q Yes, sir. Answer the question, please.**
 18 **A Explain the question more, so I can understand**
 19 **this.**
 20 **Q You have filed an answer and a cross-claim, and the**
 21 **cross-claim includes C.W. Horne individually as a**
 22 **cross-claim defendant. What claims are you making,**
 23 **at this time, against C.W. Horne?**
 24 **A I believe that was filed so he would be disposed**
 25 **(sic) of, of what he had knowledge of on the**

1 property, and to bring forth what he knew about it.
 2 **Q All right, sir. Are you seeking any recovery**
 3 **monetarily from C.W. Horne?**
 4 **A I don't believe that's stipulated in the complaint.**
 5 Now, I'm not --- I don't have it before me, the
 6 complaint.
 7 **Q Based upon your relationship with C.W. Horne during**
 8 **this period of time, do you at this time have any**
 9 **monetary claim that you, individually, are**
 10 **presenting against C.W. Horne?**
 11 **A In what form of monetary claim are you stipulating?**
 12 **Q Do you have a cause of action against him, where he**
 13 **would be required to pay money to you?**
 14 **Mr. Foster - It may be simpler for me to say**
 15 **that my objection continues through this line**
 16 **of questioning. Again, sir, answer as best**
 17 **you can.**
 18 **A I have no problem with C.W. Horne. I just want to**
 19 **get to the truth in this thing.**
 20 **Q So then to the best of your knowledge and belief,**
 21 **you're not seeking any monetary recovery from C.W.**
 22 **Horne?**
 23 **A Again, the question you're asking, monetary**
 24 **recovery entails what? If you could, be specific**
 25 **with me and let me know.**

1 **Q That C.W. Horne has done something adverse to you,**
 2 **which entitles you to gain a monetary recovery from**
 3 **him, a cause of action against him individually.**
 4 **A I would say the one issue for you would be the**
 5 **warranty deed, if it was done right when it was**
 6 **given to me without the knowledge of the**
 7 **environmental easement.**
 8 **Q And when you made this loan and Miller Ingram was**
 9 **the closing attorney, you paid Miller Ingram his**
 10 **fee, did you not?**
 1 **A I believe his fee came out of the funds that were**
 2 **provided for that. So, yes, he was paid out of the**
 3 **funds.**
 4 **Q Yes, sir. Now, state whether or not you are**
 5 **claiming any payment to American Community Bank for**
 6 **the one hundred and fifty thousand dollars that you**
 7 **borrowed.**
 8 **A Now, you're claiming --- or you're asking me**
 9 **particularly what?**
 10 **Q Is there any dispute, on your part, that you**
 11 **borrowed a hundred and fifty thousand dollars and**
 12 **owe something beyond a hundred and fifty thousand**
 13 **dollars on that note and mortgage obligation?**
 14 **A There is no dispute that I had borrowed, at that**
 15 **time, a hundred and fifty thousand from American**

1 Community Bank.
 2 **Q Did you ever pay that money back?**
 3 **A No. That money was not paid back out of my**
 4 **personal account.**
 5 **Q In your responsive pleading to this foreclosure**
 6 **action, your cross-claim regarding civil**
 7 **conspiracy, I believe in your earlier testimony you**
 8 **suggested or testified that Miller Ingram might**
 9 **have been a co-conspirator in this matter?**
 10 **A My understanding is, what you're saying about this**
 11 **conspiracy, is that the easement or this**
 12 **environmental thing was never disclosed when I**
 13 **bought the property, and that Miller Ingram had**
 14 **known about it. It --- I believe it states that**
 15 **in the documents.**
 16 **Q Do you have any evidence to suggest or show that**
 17 **C.W. Horne conspired to prevent a disclosure of**
 18 **this information to you?**
 19 **A Can you rephrase that for me, so I can understand**
 20 **what you're saying?**
 21 **Q You have alleged a civil conspiracy, and you have**
 22 **alleged that C.W. Horne was a part of that civil**
 23 **conspiracy. A conspiracy requires more than one**
 24 **person to be involved.**
 25 **A Correct. Now, I understand.**

1 **Q Who do you say C.W. Horne conspired with?**
 2 **A You mean as far as not revealing the easement that**
 3 **was on the property at the time of purchase? Is**
 4 **that what your question is? Because I have an**
 5 **answer for that, if that's what this means.**
 6 **Q In your allegation, Paragraph Number 23, you say,**
 7 **C.W. Horne knew of the contamination of the subject**
 8 **property with hazardous waste prior to the**
 9 **consummation of the transaction that included or**
 10 **resulted in the note and mortgage, forms the basis**
 11 **of the complaint. I guess it should be, which form**
 12 **is the basis of the plaintiff's complaint.**
 13 **A Yes. He had knowledge of it, yes.**
 14 **Q Are you testifying that C.W. Horne and Miller**
 15 **Ingram conspired to hide from you, failed to**
 16 **disclose to you, the contamination of the subject**
 17 **real property?**
 18 **A I am saying this, that it was known between both of**
 19 **them this property, according to the documents ---**
 20 **Before I bought this property or when I bought**
 21 **this property, it was already known between those**
 22 **two and whoever else it was.**
 23 **Q Are you also testifying that they intentionally**
 24 **failed to disclose that to you?**
 25 **A Let me ask you a question. Am I testifying, or**

1 giving a deposition here?

2 Mr. Foster - You are stating under oath.

3 A Okay, all right. Go ahead again with the question.

4 **Q Are you testifying that Miller Ingram and C.W. Home intentionally avoided disclosing what you allege as contamination of the subject real property with hazardous waste?**

8 A I think, in that question, how would I know they intentionally did this? How would I go about bringing an accusation like that, that they had intent to do this? I believe there's other ways to do this, without involving intent.

13 **Q All right, sir. You've bought other properties prior to buying this 106-acre parcel?**

15 A That is correct.

16 **Q As a matter of the purchase of real property, state whether or not you were aware that a purchaser does have the right to have the title examined prior to closing the transaction.**

20 A Yes, I was aware.

21 **Q And state whether or not you elected to have a title examination done on this property.**

23 A I did not. I went off of C.W.'s word.

24 **Q Now, in your civil conspiracy cross-claim, you are alleging the presence of hazardous waste on this**

1 **property.**

2 A Correct.

3 **Q Is it your belief that there is hazardous waste on this property at this time that must be removed?**

5 A It's my physical observation.

6 **Q If your physical observation is inaccurate - - -**

7 A No. No.

8 **Q Tell me the physical observations you've made.**

9 A When I was tearing down a couple of building, there were broken bottles of mercury. This was probably several years ago or so. I didn't think nothing of it, until I began to - - - This all came up, and then I began to talk to someone about the problem of mercury. So they were like little shiny balls that would break and run around on - - - on the property. So when I tore down those sheds, these broken bottles were down there. There were old wood sheds that I had taken down from the property. That is the observation I had, or have. Plus, the new person that moved in behind me that bought the property had stated about his contaminated well water with oil in it. So that's where it stands right now.

24 **Q Have you had any independent examination of the property at your expense to confirm what you just**

1 **testified to?**

2 A No. The only thing I'm aware of is, some man came out and said I had to sign papers. I said, you need to talk to my attorney. I think this involves what Mr. Sheenan here was saying about this - - -

6 Mr. Foster - Sheedy, Sheedy.

7 A Sheedy, excuse me.

8 Mr. Sheedy - Like Ally, since you're in the movie business.

10 A Sheedy.

11 Whereupon - A brief discussion was held off the record which was not reported.

13 A And he had asked to go on the property, and I said, well, I - - - I said, you need to talk to my attorney, so I gave him the number. This is new to me, that they had gone and, as he says here on that paper, done a Phase I.

18 **Q So in summary on your testimony, you don't have any independent evidence to show existing contamination at this time?**

21 A Not at this time.

22 **Q So then was your conspiracy allegations against Mr. Home and a third party? Would that be speculation?**

25 A Actually, you know, I have to understand conspiracy

1 more on this, because I've never had a problem with C.W. as far as that goes. This is dealing with the warranty deed and the issues at hand that weren't done proper in the beginning, when this thing was handled.

6 **Q All right, sir. Bear with me for just a minute. If a further independent examination should confirm that there is no hazardous waste on the property at this time, would you agree that this civil conspiracy claim should be dismissed?**

11 A Let me ask you a question. Is not that involving what you're saying, that the holding back of this issue from the get-go and not putting it in the title insurance? That was, as I understand, the hundred and fifty thousand insured to the bank. Isn't that what the issue is around, withholding the information that was supposed to be disclosed to me? Have I got that wrong? That's my - - - my question to you.

20 **Q I'll let you leave the question on the record. I will not provide an answer to your question because this process is for me to examine you.**

23 A Correct, but I want to get an understanding of your questioning.

25 **Q For the record, I'll state it again. My question**

1 to you is, if DHEC has found there to be no
2 contamination problem and if a further
3 investigation finds no contamination problem, would
4 you agree that your allegation of the civil
5 conspiracy, third defense, and cross-claim should
6 be dismissed?

7 A I believe the - - - What you're talking about and
8 that issue there involves the first part, of
9 withholding the information when I bought the
10 property. This is like Part 2, what you're going
11 into.

12 Q All right, sir.

13 A That I don't see anything that it has to do with
14 the beginning that we talked about, with not
15 putting the issue in the documents and disclosing
16 it to me at the time of purchase.

17 Q The policy, the mortgagee title insurance policy to
18 American Community Bank, that was a requirement of
19 the bank as a precondition to this loan being made,
20 was it not?

21 A My understanding, because I'm not as versed as you
22 are when it comes to these matters involving title
23 insurance, was that when there was a problem, an
24 issue with the deed and the title as it is, that
25 they were responsible for taking care of the

1 indebtedness to the bank, the hundred and fifty
2 thousand. That was my understanding.

3 Q If that understanding that you have is not correct,
4 then you would concede that the title insurance
5 company does not have that responsibility, would
6 you not?

7 A I had spoken to Jeff Coley, and we had brought the
8 issue up to him. He said, that's an avenue we will
9 pursue, and I never heard anything from him back
10 since. So that's where it stands on that title
11 insurance policy.

12 Q Were you not told when you closed this transaction
13 that the title insurance policy, the mortgagee
14 title insurance policy, is a policy that protects
15 only the lender?

16 A That was not disclosed to me.

17 Q Were you not told at the time you closed this
18 transaction that you had the option to purchase an
19 owner's title policy with a simultaneous issue?

20 A No.

21 Q You were not?

22 A No.

23 Q Okay. If this property by further investigation
24 shows no contamination which would render the
25 property nonmarketable, do you recognize then your

1 obligation to pay this debt?

2 A All I know is, I spoke to some environmental
3 people, and they said that you have to drill in
4 particular areas where the specific problems have
5 happened, when it comes to a Phase II and III. I
6 have a limited knowledge of this. And to where it
7 is, and then see if there's a trail running farther
8 down, if it's been there over the years. That is
9 what I had acquired, as far as understanding, what
10 really entails a Phase II, Phase III, or however
11 far it goes, to see what's really underneath the
12 earth and then how far you go down.

13 Q All right, sir. You say you live on this property
14 now?

15 A That is correct.

16 Q How have you listed this property with the tax
17 assessor's office in Chesterfield County for tax
18 purposes?

19 A As living there.

20 Q Are you aware that for the homeowner's assessment,
21 you're limited to only a five-acre area of land
22 with the building in which you live?

23 A You know, are we going to talk about the specifics
24 on this? Are we going to go into something that I
25 am not even aware of, that doesn't deal with this

1 case?

2 Q Well, you pay taxes on the property, do you not?

3 A Well, what does this got to do with the questioning
4 regarding the hazardous waste and the other things?
5 I just want to understand this, because I don't see
6 where this line of - - -

7 Q This question has to do with other aspects of the
8 cross-complaint that you have brought and your
9 counterclaim that you have brought. You
10 characterize this property as residential property?

11 A That is correct.

12 Q All right. You live in a building which is on a
13 portion of this property?

14 A That is correct.

15 Q If you make application for a four percent
16 assessment for your home activity on a five-acre
17 portion, you're taxed in that manner?

18 A That is correct.

19 Q All right. If you have done that, then the
20 remaining acreage would be taxed separately. Do
21 you get two tax notices for this property, or only
22 one?

23 A I get one tax notice for this property.

24 Q If you intended a division and sale of this
25 property, do you not need to apply for a permit for

1 that purpose?

2 A I have no knowledge of that.

3 Q You made no application in that regard?

4 A No, I haven't.

5 Q What is the area of land where you live, if you had

6 to define the premises upon which the building is

7 located where you occupy your home?

8 A Let me share this with you. I use all of the land.

9 There's not a part I don't use.

10 Q Okay.

11 A As my home. I have a running track around the

12 whole place. I have an outdoor gym. I have wells

13 at the other end of the property that are pumped

14 back in that I use for water. So it's not just

15 four or five acres that I use on this property.

16 Q But some portion of that area that you've

17 described, you've sought to sell in the past, have

18 you not?

19 A That is correct. The portion that was not the

20 buildings.

21 Q Okay. Have you had these wells that you've spoke

22 of in your last couple of statements, have you had

23 those wells tested?

24 A They were tested, I believe, back sometime around

25 2000.

1 Q And ---

2 A The drinking water wells.

3 Q And what were the findings?

4 A Everything was in the perimeters of safety.

5 Mr. Easterling - Thank you. That's all I

6 have.

7 A Okay.

8 Whereupon - A brief discussion was held off

9 the record which was not reported.

10 EXAMINATION - (By Mr. Foster)

11 Q Sir, I'm handing you what's been previously marked

12 as Exhibit 4 ---

13 A Okay.

14 Q In Mr. Clewis' deposition, in which Mister ---

15 Well, both gentlemen have talked to you about. Do

16 you recognize that, sir?

17 A Yes. I believe that's the settlement statement

18 that you showed me.

19 Q This document recites a --- I'm reading, a payoff

20 to C.W. Horne Sawmill and Chip Company, and there's

21 a figure there, if I read it correctly ---

22 A Yes. That is correct.

23 Q Of seventy-two thousand dollars?

24 A That is correct.

25 Q Did you have any other payments relative to this

1 loan with C.W. Horne?

2 A You mean --- Oh, other payments that involved

3 this loan?

4 Q (Indicating yes)

5 A Yeah. I paid him to make the loan for me.

6 Q And how much was that?

7 A I think I offered C.W. ten thousand, and he took

8 eight thousand. So that's the way it went.

9 Q So that was paid how?

10 A Cash. I had to cash a check to do that.

11 Q What services did he render you in making this

12 loan, or getting this loan?

13 A He cosigned on the loan.

14 Q Okay, sir.

15 A Yeah.

16 Q Narrate for us, sir, what you recall of your

17 dealings with the bank and Mr. Horne in getting

18 this loan from American Community Bank.

19 A I had paid him --- I think it was about twenty-

20 some thousand on the hundred thousand loan. I was

21 telling C.W. there was so much work in this

22 property, that I have just got to get --- I've

23 got to have more money to do this thing, and then

24 also to pay him off on the hundred thousand. So I

25 said that I can't --- My credit's no good, and I

1 believe the bank knew that also. So we had talked

2 about cosigning. I asked him if he would cosign.

3 That's how this came about, so I could get the

4 funds to put into the property. Because it was

5 pretty run down, and it was --- I was living

6 there, and it was --- It just --- There was a

7 lot of stuff I had to do to get it fixed up.

8 Q So you were living there prior to getting the loan?

9 A Oh, yeah. I was in there.

10 Q Did you and/or Mr. Horne deal with the bank prior

11 to the closing on this loan?

12 A I think --- I think what happened is, I wasn't

13 familiar with this bank, if I recall, but it was

14 C.W.'s bank. So this is how we went about this.

15 Q Okay.

16 A He knew the bank. I think he knew the people who

17 were on the board of directors or what have you. I

18 could be wrong, but this is to my understanding.

19 It was ten years ago.

20 Q Do you have any recollection specifically of going

21 to the bank, talking with Mr. Coley or anybody else

22 there about getting the loan?

23 A I don't. All I --- What I remember on this is

24 going in there with C.W., and C.W. was going to

25 cosign on the loan. Then he was going to get his

1 other one paid off on this.
 2 **Q His other debt with you, you mean?**
 3 A Yes.
 4 **Q Go ahead.**
 5 A Through this loan, and that's how this statement
 6 came about.
 7 **Q The HUD, you mean?**
 8 A Yes.
 9 **Q And did you close at the bank, or at Mr. Ingram's?**
 10 A I believe we closed at Mr. Ingram's, where this was
 11 done. There was supposed to be twelve months'
 12 worth of payments set in the escrow account.
 13 **Q That would be a holding account containing twelve**
 14 **monthly payments?**
 15 A Yes.
 16 **Q And what was the purpose of that, to your**
 17 **knowledge?**
 18 A That was to pay the loan up for a year, until I
 19 could do something with this place.
 20 **Q You contacted at some point, I believe, Shortt**
 21 **Auctions. Is that correct?**
 22 A (Indicating yes)
 23 **Q And what did they do toward trying to sell the**
 24 **property, if anything?**
 25 A Well, Shortt Auction was the one that had auctioned

1 properties previously for C.W. Horne. So it was a
 2 referral to him, since he had - - - I think when
 3 C.W. bought it, it was five hundred, six hundred
 4 acres that he had sold off. I ended up with a
 5 hundred and six. My first agreement was supposed
 6 to be a hundred - - - over a hundred and - - - I
 7 think a hundred and twenty-one. I ended up with a
 8 hundred and six. So anyway, what happened is, the
 9 - - - What happened was, the property was just in
 10 such disarray. It just needed a lot of money into
 11 it to fix it up.
 12 **Q Did Shortt sell any of the property?**
 13 A He had some of these sections sold, and then he had
 14 referred me to this DuBose Law Firm to handle the
 15 closing and everything. Then DuBose had sent this
 16 letter, saying that we're not going to go ahead and
 17 do anything on this because of the environmental
 18 easement and about it may be unmarketable or could
 19 create a blemish on the property title for the rest
 20 of the life of it. So that's kind of where that
 21 was at.
 22 **Q Did any sales go forward after that?**
 23 A No. No. Everything was canceled at that time.
 24 **Q The modifications - - -**
 25 **Whereupon - A brief discussion was held off**

1 the record which was not reported.
 2 **Q Sir, I'm showing you Exhibit 25, which is clipped-**
 3 **together modifications, or alleged modifications**
 4 **and extension agreements. I note that on the first**
 5 **copy that we have here of the modification and**
 6 **extension agreement of 1-23-02, the pages run 1, 2,**
 7 **and 4. Do you have a recollection, sir, of whether**
 8 **you signed any modification agreement with the**
 9 **bank?**
 10 A There was one year signed, that he told me to come
 11 in and sign, and he said he would send me the
 12 papers. This was like a - - - kind of like a blank
 13 thing. This might have been the one here, this
 14 first one, but then the rest of them weren't. The
 15 one without the signature, I believe had my
 16 signature on it, but the rest, no.
 17 **Q Okay. Those are not yours, is what you're saying?**
 18 A Correct.
 19 **Q Sir, when you say he, is that Mr. Coley?**
 20 A That is Mr. Jeff Coley.
 21 **Q Sir, was there an attempt by Shortt - - - Who did**
 22 **you understand, once you met Shortt, would be**
 23 **dealing with things like permits and platting?**
 24 **Would that be you or them?**
 25 A I - - - All of that, I would think would be Shortt.

1 **Q Is that - - - Do you want this back?**
 2 A Yeah. Because I had no knowledge of that.
 3 **Q Okay. I believe, in fact, there was at least an**
 4 **informal platting out of lots on this property,**
 5 **were there not?**
 6 A Yeah. That's - - - I believe that's what he had
 7 done.
 8 **Q What do you understand needs to be done to this**
 9 **property, if anything, to make it marketable?**
 10 A I - - - I know - - - I think the Phase II and III,
 11 or whatever they call it where they have to do the
 12 scopes going down, I know that needs to be done. I
 13 think that's the main issue.
 14 **Q Do you - - -**
 15 A And have the dump in the back checked.
 16 **Q Okay. Do you have any knowledge, sir, on your**
 17 **behalf, of what would need to be done assuming**
 18 **you're correct in telling us about mercury**
 19 **contamination?**
 20 A If there is any kind of mercury on the property,
 21 from all of the research, the people that I've
 22 spoken to, I think it's - - - They have to dig down
 23 like a thirty feet by four hundred foot wide area
 24 and put all new dirt in.
 25 **Q Now, sir, obviously you're not an expert in that**

1 field?

2 A No.

3 Q Where did you get this information that you've

4 given us, or how did you get that understanding?

5 A There is a company in Jefferson that I had called,

6 and then also the individual behind me that works

7 for the Environmental Protection Agency. He was

8 explaining it to me.

9 Q So this is your understanding based on those

10 conversations?

11 A Yeah. He was saying - - - I think it's two hundred

12 and fifty thousand to start with the first hole.

13 That's to pull the dirt out and bring it in.

14 Q Assuming, again, mercury contamination?

15 A That is correct.

16 Mr. Foster - Okay. Could I see the - - - I

17 can't think of the name. Your Phase I.

18 Mr. Sheedy - (Hands document to Mr. Foster)

19 Q Sir, do you recall talking to anyone - - - I'm

20 showing you, again, this is Clewis, and this is

21 Exhibit 27, the Phase I environmental site

22 assessment by Summit. Sir, do you have any

23 recollection of talking to Summit or anybody from

24 that company?

25 A All I have is, there was a man coming out in a

1 white truck. He said, are you Mr. Brown? And I

2 said, yes. He said, the bank sent me out here to

3 do some work, and he said, I have papers for you to

4 sign. I told him, I said, here's the number to my

5 attorney. You need to call my attorney, and that's

6 how it went about.

7 Q Did that guy identify himself as being from Summit?

8 A I can't remember. I can't recall if he did or not.

9 I just - - - (No further response)

10 Q Other than the conversation you just narrated to

11 us, did he have any conversations with you about

12 the condition of the property?

13 A No.

14 Q When did this happen, that he came out, if you

15 recall?

16 A I - - - I don't know. It was just after, I think,

17 that Clyde Lewis - - - Clewis, is that his name? I

18 think a few months after he had come out with - - -

19 Lee Shortt came with him to my place in January. I

20 had mentioned to him about a neighbor in the back

21 that complained about contamination of his water,

22 something coming from the dump. I think that's all

23 I said to him, but I said to come on the property

24 and do what you're going to do. Call my attorney

25 and make sure I'm doing this thing right.

1 Q This is what you said to whoever it was, whether

2 they were from Summit or wherever?

3 A Yes.

4 Q Okay.

5 A Yeah.

6 Q Did you get a chance to go over the property with

7 them?

8 A No.

9 Q Do you know whether they went over the property?

10 A I don't know. I don't know.

11 Q Did you have any dealings with them after this

12 conversation?

13 A No.

14 Mr. Foster - I have no other questions.

15 Mr. Sheedy - I'm going to try to make this

16 very quick.

17 Whereupon - A brief discussion was held off

18 the record which was not reported.

19 FURTHER EXAMINATION - (By Mr. Sheedy)

20 Q You haven't paid the hundred and fifty thousand to

21 the bank, correct?

22 A That is correct.

23 Q The debt is secured by, to the best of your

24 knowledge, a first lien against the 106.85 acres,

25 correct?

1 A That's what it states on the - - - yes, on the

2 note.

3 Q You have not had any environmental assessment done

4 on the property for you, correct?

5 A That is correct, as I stated earlier.

6 Q You don't have any letter from DHEC indicating

7 there is an environmental condition on the

8 property, correct?

9 A All I have is the letters that you produced.

10 Q Okay. And when you closed on this property, Mr.

11 Ingram did not search the title, to your knowledge,

12 did he?

13 A I think that's why it's nonabstracted.

14 Q And you knew that?

15 A Yeah.

16 Mr. Sheedy - Thank you.

17 Mr. Easterling - I have just one or two

18 questions, please.

19 FURTHER EXAMINATION - (By Mr. Easterling)

20 Q Other than the building in which you live on this

21 property, are there other buildings?

22 A There are - - - The buildings that were around

23 there, Mr. Easterling, I took down the wood ones

24 because they were rotting real bad. Those are the

25 ones where I had found the broken bottles of

- 1 mercury. So those have been taken down.
- 2 **Q Is there any building type structure on this 106-**
- 3 **plus acres that you have leased to a third party?**
- 4 A Yes.
- 5 **Q And who ---**
- 6 A In the past.
- 7 **Q And who did you lease to?**
- 8 A A.O. Smith Water Heaters.
- 9 **Q And they occupied the property as a lessee?**
- 10 A Yeah. I tried to get some kind of income coming
- 11 out of that particular section of the property.
- 12 **Q Was there any hazardous waste discussion with that**
- 13 **party when you entered into that lease agreement?**
- 14 A It wasn't a lease agreement. It was just like
- 15 month-to-month, so ---
- 16 **Q An oral lease, or ---**
- 17 A No. It was --- It was just a one-page agreement,
- 18 month-to-month. It was not like a --- I couldn't
- 19 get anybody in there long term.
- 20 **Q Okay.**
- 21 A Because it was just for storage. There was nothing
- 22 hazardous.
- 23 Mr. Easterling - That's all I have. Thank
- 24 you.
- 25 Mr. Foster - We're done.

SUBSCRIPTION OF DEPONENT

State of _____)
 County of _____)

I, Michael R. Brown, 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: _____

 Michael R. Brown

Sworn to and subscribed before me
 this ____ day of _____, 2011.

 Notary Public

My Commission Expires: _____
 Deposition of Michael R. Brown

1 Whereupon - Deposition was concluded at
 2 3:28 p.m.
 Signing of Transcript Kelly Reiter
 Court Reporter/Notary Public
 of Deposition By

Witness Not Waived

(Recorded deposition tapes retained for fifteen days
 from date of certification or until transcript has been
 signed in cases when signature is not waived)

Deposition of Michael R. Brown

969 PM 01 JAN 29 '92 15:59

MILLER S. INGRAM, JR.

ATTORNEY AT LAW

PO BOX 88

CHURCH, SOUTH CAROLINA 29520

Deception/Chicnet
(843) 557-0770 FAX604 MARKET STREET
(803) 237-6385

January 28, 2002

Mr. William H. McMullen
Attorney at Law
4421 Sharon Road, Suite 200
Charlotte, North Carolina 28211Re: Michael R. Brown
Winery property

Dear Mr. McMullen:

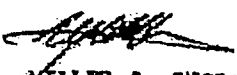
Mr. Brown declined a title examination by my office when he purchased the property in question. If you have examined his deed, you will see that it is stamped in red "not abstracted." I did close the transaction in my office. I don't know if Mr. Brown obtained any other opinion. My correspondence indicates that Mr. Brown was represented at the time by Mr. R. Stephen Smith, Esq., who reviewed his closing statement.

I would suggest that the first step would be to determine if the Biscaglia Brothers Wine Co. has a continuing obligation to monitor any wells that they placed on the property or if they can now relinquish the easement.

I could also point out that a portion of the purchase price was for personalty (stainless steel tanks and related equipment) which I understand have been sold by Mr. Brown.

With best wishes I am,

Yours Truly,


MILLER S. INGRAM, JR.

Michael -

Call me tomorrow



EXHIBIT

28 Brown
5.6.11

Buckley, McMullen & Buie, P.A.

Attorneys at Law
4421 Sharon Road, Suite 200
Charlotte, NC 28211
FAX (704)362-1089

Charles R. Buckley, III
William H. McMullen, Jr.
Craig Pennington Buie
Brian J. Garstka

Telephone
(704)362-1056
e-mail: WHMJR@bellsouth.net
www.lawyers.com/buckleymcmullenbuiepa

February 12, 2002

Mr. Miller F. Ingram, Jr.
Attorney at Law
P.O. Box 39
Cheraw, SC 29520

RE: Michael R. Brown
106.85 Acres
Chesterfield County, SC

Dear Mr. Ingram:

This will acknowledge receipt of and thank you for your letter dated January 28, 2002 regarding the above referenced matter.

After considerable discussion and review of various documents, correspondence etc. with and from counsel for other owners of property formerly owned by Biseglia Brothers Wine Co., and South Carolina counsel familiar with the practice of real property law in the state of South Carolina, it does not appear Mr. Brown was advised as to the availability of owners title insurance coverage at the time of closing his purchase of the subject property. It is our further understanding that South Carolina law requires a formal waiver of owners title insurance coverage. If this is correct, we would appreciate you providing a copy of such waiver signed by Mr. Brown.

With respect to relinquishment of the easement by Biseglia Brothers Wine Co., (or its successor in interest) it is our understanding efforts have been made, without success, in this regard.

Upon review of the Deed prepared for Mr. Brown, we do note the instrument is stamped "not abstracted." However, we also note the Deed does not include an exception for the easement which was set forth in the Deed from Biseglia Brothers

Miller F. Ingram, Jr.
February 12, 2002
Page Two

Wine Co. to C. W. Horn Sawmill and Chip Co., Inc. Review of this Deed also indicates it was prepared by your office.

It would appear the series of events and facts in this matter might be within standard errors and omissions insurance coverage. Prior to recommending South Carolina counsel familiar with handling E & O type cases, we would appreciate the opportunity to discuss this matter with either you and/or your insurance carrier. As a certified mediator, it is my belief this case might be more responsibly handled if formal litigation could be avoided. In this regard, our client is certainly agreeable to negotiate a settlement of damages brought about by virtue of being unable to close on a number of auction sales which were pending in December 2001.

Again, thank you for your prior communication and we look forward to hearing from you again.

Sincerely,



William H. McMullen, Jr.

WHM/sg
cc: Michael R. Brown

1 (The within matter came before the Court for hearing
2 on July 12, 2012)

3 THE COURT: All right, ladies and gentlemen. Let's
4 go forward.

5 First of all, if you would give the Court Reporter
6 your names and who you represent, starting with the Plain-
7 tiff.

8 MR. SHEEDY: Good morning again, Your Honor.

9 I'm Jim Sheedy, here on behalf of the Plaintiff,
10 American Community Bank, a division of Valley Bank and
11 Trust.

12 I am here with Susan Driscoll, who is here as well
13 on behalf of the Plaintiff.

14 MR. FOSTER: John Martin Foster, on behalf of the
15 Defendant, Michael R. Brown.

16 Your Honor, I don't mean to impose on Mr. Sheedy's
17 argument in this proceeding but there are a few points
18 on procedure that I wish to bring up, if I may . .

19 THE COURT: Let's continue with your names at this
20 point before you start. I will hear you after that,
21 Mr. Sheedy.—

22 MR. FOSTER: Thank you, Your Honor.

23 MR. EASTERLING: Your Honor, I'm Harry Easterling,
24 Junior, and I represent Mr. C. W. Horne.

25 We are neither a moving or responding party, but I

1 am here to report back to my client as to the status of
2 the case.

3 THE COURT: All right.

4 MR. EASTERLING: Thank you, Your Honor.

5 THE COURT: Counsel, did you have something you wish
6 to bring to my attention?

7 MR. FOSTER: I believe much of this is based upon
8 the depositions that were taken in the case, and I have
9 two of those depositions, Mr. Brown's and Mr. Horne's.

10 I would assume it is proper to hand these up at
11 this time?

12 THE COURT: Yes, sir.

13 MR. SHEEDY: No objection, Your Honor.

14 THE COURT: Mr. Sheedy, I haven't received a written
15 memorandum from you, or at least it isn't in the file as
16 of this time.

17 Have you filed a written memorandum?

18 MR. SHEEDY: I went to the Clerk's Office yesterday
19 but I don't know whether it has gotten filed at this time.

20 THE COURT: I don't see it here.

21 MR. SHEEDY: Your Honor, I conceded to Mr. Foster's
22 submission of the depositions, but just as a frame of
23 reference in this case with regard to the Defendants in
24 the caption, I want to make it known that Short Auction
25 and Realty Company, Inc., is in default, and the same.

1 holds true for the Defendants, Bank of America and Jaguar
2 Portfolio.

3 So the only counsel present for a Defendant is coun-
4 sel who has actually answered in the case.

5 THE COURT: Thank you. Anything further?

6 MR. FOSTER: Yes, sir. Ms. Driscoll and I have dis-
7 cussed this matter briefly, Your Honor, and I think it is
8 fair to state that the motion for summary judgment for the
9 Bank was on all counterclaims.

10 Your Honor, I see counsel is shaking his head, so I
11 must have mis-read it.

12 We are conceding or not defending against any points
13 that are not discussed in my brief. Those are, briefly,
14 truth in lending, which I understand is not being pursued
15 today.

16 THE COURT: All right.

17 MR. FOSTER: I'm going to go through this as fast
18 as I can.

19 THE COURT: That's fine.

20 MR. FOSTER: Your Honor, the Bank's failure to sat-
21 isfy the mortgage, and I believe the last is unfair and
22 deceptive trade practices.

23 We are not disputing any summary judgments on those
24 matters or on those. Counsel has just added the TIL but
25 that is not before you today.

1 THE COURT: Of course, as you all will remember, this
2 case has been before the Court previously, and an Order
3 was issued in the matter back in August of 2011, and that
4 is my recollection, although it is not recorded in the
5 file. (Portion inaudible)

6 Somehow when that was sent to the Clerk for filing it
7 was not forwarded on to the parties, and I believe that Mr.
8 Sheedy contacted us sometime later to determine what was
9 the status of it.

10 I hope there was no delay occasioned by what may have
11 been mis-communication between this Court, the Clerk and
12 lawyers as well.

13 Obviously that has now been complied with. Very good,
14 I will hear from you. You may go forward.

15 MR. FOSTER: Well, I just want to make sure exactly
16 what is before the Court this morning. As I understand
17 it, unfair trade practices, failure to satisfy the mort-
18 gage, waiver and fraud . .

19 MR. SHEEDY: Not fraud. Truth in lending.

20 MR. FOSTER: Truth in lending is not before the Court
21 because the Plaintiff has not moved for summary judgment
22 on truth in lending.

23 So if I am surmising correctly, it would be UTPA,
24 failing to satisfy the mortgage, waiver and equitable
25 estoppel.

1 MR. SHEEDY: No, sir. Not equitable estoppel.

2 MR. FOSTER: So UTPA, failing to satisfy the mort-
3 gage and waiver. Is that correct?

4 THE COURT: Counsel, something is left out here. We
5 have what you call UTPA, and that's fine. TILA is not
6 ripe for hearing as indicated.

7 MR. FOSTER: So UTPA, failure to satisfy and waiver.

8 MR. SHEEDY: Yes, sir.

9 THE COURT: Let me hear from you.

10 MR. FOSTER: I'm sorry, Your Honor. I just felt ver-
11 ification would be useful.

12 MR. SHEEDY: Let me begin going through this by put-
13 ting the matter in context. This is a mortgage foreclos-
14 ure. The Plaintiff Bank has a first lien on a hundred and
15 five acres in Patton, South Carolina.

16 The property is somewhat (inaudible).

17 Your Honor, if I correctly remember, this case was
18 deemed to be subject to Chief Justice Toal's May 2011 Ad-
19 ministrative Order providing certain supplementary obliga-
20 tions on the part of lenders to apply federal legislation
21 in the mortgage program, but also some mortgage interven-
22 tion requirements unique here in South Carolina.

23 The Court issued an Order and that Order applied to
24 this case. This case was stayed.

25 Subsequent to the entry of that Order, the Plaintiff

1 : complied with the Administrative Order and issued and
2 : filed with this Court a notice of right to foreclosure to
3 : comply with the Court's Administrative Order; engaged in
4 : some discussion with Mr. Foster on behalf of his client,
5 : Michael R. Brown, about the foreclosure intervention.

6 : In some documents indicating ability to pay, there
7 : came a point where the Bank asked Brown what he was pro-
8 : posing to pay, what the sources would be, as the tax returns
9 : did not indicate an ability to make payments which would
10 : amortize the loan.

11 : After some months of not receiving any information
12 : in response to questions, the Bank filed a certification
13 : which was required under that Administrative Order that
14 : modification would not avail the Plaintiff of results in
15 : this case.

16 : So I wanted the Court to understand that we are here
17 : today proceeding because there is no more stay in effect.
18 : Obviously, if the stay were in effect we would not be
19 : here today.

20 : But where we are is here on summary judgment motion,
21 : and, as Your Honor, gathered from exchange between counsel,
22 : no summary judgment is being sought as to the TIL claim,
23 : truth in lending. The TILA claim is for money damages.
24 : It doesn't challenge that the Bank's mortgage is valid
25 : and enforceable.

1 For that reason, there is no jury trial request at-
2 tached to the Complaint. I know the Answer in this case
3 indicates that there is a jury demand, but there is no
4 jury trial request with respect to the TILA claim because
5 it is a permissive rather than a compulsory counterclaim.

6 Let me take just a second to talk about that legal
7 proposition. I'm sure Your Honor is very familiar with
8 it. It starts with a case called Seemass versus
9 Massingale and leads to a case called North Carolina Fed-
10 eral versus DAV, and there have been some recent pronounce-
11 ments in our Appellate Court on this issue, and I would
12 distill that jurisprudence into principles of law.

13 This is no jury trial issue on a foreclosure unless
14 the counterclaim is compulsory. The jury trial only at-
15 taches when there a compulsory counterclaim, and a counter-
16 claim is compulsory if it challenges the validity or enfor-
17 cibility of the underlying note and mortgage which is the
18 subject of the foreclosing party's claim.

19 Otherwise, if it is extrinsic to the validity or the
20 enforcibility of the note and mortgage, then it is permis-
21 sive. The permissive character in a mortgage foreclosure
22 constitutes a waiver of the jury trial.

23 The TILA claim is purely for money damages. To ensure
24 that the Court does not think that I am misrepresenting in
25 any respect, in the averments on this responsive pleading

1 I turn to page eight where I read in paragraph 60 and 61
2 -- these are the paragraphs under the Truth in Lending in
3 the cause of action. (Counsel reading rapidly Paragraphs
4 60 and 61 as indicated).

5 So to focus initially on this, that there really is
6 no jury trial right in this case, and this is not a jury
7 matter. It should be heard on a non-jury basis.

8 The motion before the Court goes to the defenses and
9 claims of the borrower that theoretically relate to the
10 Bank's note and mortgage sought to be foreclosed in this
11 proceeding.

12 The Bank's desire, obviously, Your Honor, in this
13 case is to proceed with its foreclosure, and we are here
14 today on summary judgment motion just to move this case
15 along so that the Bank can proceed with its foreclosure.

16 The summary judgment motion is against the Bank's
17 defenses of a waiver with a defense of a jury trial right
18 attached to it, and the counterclaims for civil conspiracy
19 -- well, actually, I don't think there is a contest as to
20 civil conspiracy. -----

21 The counterclaims are unfair trade practices and the
22 failure to satisfy the mortgage. So, again, it never --
23 to make this as clear as possible in the record, the fol-
24 lowing affirmative defenses are not being contested: Fail-
25 ing to mitigate, equitable estoppel, unconscionability,

1 breach of duty.

2 As I understood a moment ago, the following counter-
3 claims are not being contested: Civil conspiracy and the
4 fraud -- not going forward on those or not contesting our
5 motion on that, we understand.

6 Now, as to the defense of waiver, it falls in the
7 same category as the TILA claims with respect to the jury
8 trial. No right in a mortgage foreclosure to a jury trial
9 on the defense of waiver.

10 There is no right to a jury trial in a mortgage fore-
11 closure on unfair trade practice, and on the failure to
12 satisfy a mortgage, unless those counterclaims are then
13 compulsory and challenge the validity and enforceability
14 of the underlying note and mortgage.

15 Let's go the essence of the UTPA claim. The UTPA
16 claim, Your Honor, in their Answer is broken down into A
17 through N, which appear on pages 12 and 13.

18 All of these claims really fall into one single cate-
19 gory of complaint of wrong entry. It is, as the borrower
20 asserts, that at the time the borrower closed this loan
21 that the borrower was unaware that this property had an
22 environmental condition; that the Bank should have col-
23 lected for that environmental condition with a title policy,
24 and Mr. Brown was told by his own counsel to get a title
25 policy to protect himself for that environmental condition.

10

1 I think that Your Honor has said that Your Honor has
2 before you the memorandum which we submitted electronic-
3 ally on yesterday. Is that correct?

4 THE COURT: No, I don't have it in front of me but
5 I will get it.

6 MR. SHEEDY: If I could approach, Your Honor, I will
7 provide you a copy which lays out the issues for the Court
8 on these points.

9 THE COURT: Yes, sir, and you might want to go into
10 what the environmental condition is.

11 MR. SHEEDY: I have it right here, Your Honor. (por-
12 tion not audible)

13 Your Honor knows from the allegations of the Complaint
14 and from the documents which are attached to the Complaint
15 that the loan in question was dated December of 2000.

16 The first attachment is a letter of March 24, 1997,
17 from DHEC, and I would call your attention to the second
18 paragraph of the letter.

19 Therefore, no further action will be required at this
20 time. This is what DHEC calls for, no further action at
21 this time. DHEC goes out to the property and finds a con-
22 dition, and DHEC may require a deviation, may require ground
23 water monitoring, but at the end of DHEC's regulatory pro-
24 cess DHEC itself said the property no longer poses a threat.

25 DHEC issues what's called a no-action letter. This

1 is a no-action letter, Your Honor, that was three years
2 before this loan was made.

3 If Your Honor goes to the next letter in this series
4 of documents, Your Honor should find a letter dated Jan-
5 uary 8th of 2010, which was about twelve months before the
6 loan closes.

7 In the second paragraph -- Oh, I'm sorry. This loan
8 was closed in 2000, and the more recent letter recites the
9 history, and this letter discloses that the U. S. (inaud-
10 ible) closed its file with no further action required in
11 -- with a no further action letter in 2010.

12 As it relates to the unfair trade practices causes of
13 action, there is no undisputably false practice, and conse-
14 quently there is no issue of material fact to be litigated
15 in the counterclaim under the Unfair Trade Practices Act,
16 and it should be dismissed with prejudice.

17 I really I'm getting a little confused as to what is
18 actually before the Court. Much of this has gone away by
19 consent.

20 But under the Unfair Trade Practices Act, although
21 there are a great many allegations in that cause of action,
22 it all hinges on the environmental condition on the prop-
23 erty.

24 There are some claims that there was a failure to
25 obtain title insurance. Well, the reason that the title

1 insurance company is important to this borrower is that the
2 borrower reportedly is saying that title insurance purport-
3 edly would have protected the borrower against the environ-
4 mental condition.

5 Well, if there is no environmental condition there is
6 nothing to protect the borrower from. No reason he needs
7 protection against that.

8 The failure to obtain the title policy did not injure
9 the Plaintiff and would be without injury to the Plaintiff.
10 That does not come under a UTPA claim. It is a statutory
11 claim because the obligation on the part of the closing
12 attorney or title agent is under South Carolina statutes
13 to make sure a borrower is made aware of the availability
14 of a policy.

15 That is not what they are saying here as a part of
16 their Unfair Trade Practices Act. What they're saying bas-
17 ically is that the issue of injury due to the environmental
18 condition of the property -- that if they had a lawyer who
19 had gotten a policy they would be protected.

20 The same holds true with respect to the selection of
21 counsel. There is a requirement that a client on a resi-
22 dential deal has a right to select their own attorney but
23 the obligation arises under the statute. It doesn't arise
24 under the Unfair Trade Practices Act.

25 The borrower had the right to select his own counsel

1 and get his title policy which would have been a remedy
2 against somebody else because of an environmental condition
3 on the property. Of course, there was no environmental con-
4 dition.

5 Also, on this defense of waiver, it is express and
6 implied waiver, and these are defenses in the pleading.
7 Again, the further defenses are right to jury trial -- I
8 don't want to mis-characterize anything that is pled here.
9 It is a responsive pleading. I was reading the pleading.

10 A part of the waiver claim -- I don't mean to exclude
11 the environmental condition but I don't need to repeat
12 myself, but part of the waiver claim is the Bank didn't
13 sue soon enough. Nowhere in South Carolina jurisprudence
14 is it suggested that if a bank doesn't sue somebody soon
15 that that somehow operates to extinguish the debt.

16 I don't believe that the South Carolina cases so pro-
17 vide, Your Honor.

18 I am sure there are a number of reasons why this bor-
19 rower thinks he shouldn't have to pay this debt. One of
20 them is that if they had sued him sooner that there would
21 have been given to him a manifestation of what the Bank
22 expected him to pay; he would have understood.

23 But he knew it when he closed this loan. He knew he
24 never made a payment on it whatsoever. He never was given
25 anything by the Bank (inaudible) under the statute of

1 frauds. He never received anything that would have indi-
2 cated there had been a discharge of indebtedness and there-
3 fore an ordinary income investment being discharged.

4 There is nothing in the statutes or in the records
5 here to suggest that there is a basis for claiming that
6 this debt has been extinguished.

7 Now, let me turn to solving what shouldn't be a point
8 of confusion. It sort of moves through not only the waiver
9 defense but the counterclaim of failure to satisfy the
10 mortgage.

11 This loan was renewed a bunch of times and interest
12 was accruing. No payment was being made, and as the loan
13 was being renewed thus the unpaid interest was being rolled
14 over into loan. Banks charge their borrowers interest.

15 The interest is shown by borrowers for tax purposes,
16 and the Internal Revenue Code calls on lenders to issue
17 1098s for interest paid. That is interest that is being
18 paid by borrowers for their benefit.

19 I am going to hand this up to the Court, and it shows
20 the borrower is being made aware of interest, and it
21 doesn't say anything about the principal. It doesn't say
22 anything to the effect that the debt has been cancelled or
23 satisfied. It shows the amount of interest for tax pur-
24 poses that is to be paid on that loan in order for it to
25 be financed.

1 The borrower says he thought that number of Eighty-
2 some Thousand Dollars and some change, the Eighty-seven
3 Thousand Five Hundred, which appears on that 1098 I've
4 just shown to the Court is such a significant number that
5 this must mean he paid off the loan, and if he had paid off
6 the loan the Bank should have satisfied the mort-
7 gage.

8 That is a part of the counterclaim and it also is a
9 -- that is the counterclaim of failure to satisfy the mort-
10 gage, and it also (inaudible).

11 But just like the Unfair Trade Practices Act, there
12 is no basis or foundation. The environmental condition --
13 there was none. We again have an undisputably flawed prem-
14 ise upon which this Defendant rests in this counterclaim
15 and in his defense.

16 It is undisputed by the borrower for purposes of this
17 case that he never made a payment on this loan. This loan
18 was extended and interest was charged.

19 Let me turn to the deposition of Mr. Brown, and Your
20 Honor now appreciates that at this point is sworn testi-
21 mony in this case.

22 On page 18 of Mr. Brown's deposition transcript, read-
23 ing, at no point in time, Mr. Brown, as we sit here have
24 you ever repaid this Hundred and Fifty Thousand Dollars
25 to American Community Bank, have you? Answer, no.

(Counsel continuing to read from deposition)

1 Did you come into the Bank and say you didn't want
2 this loan extended and you wanted to pay it in full?

3 I didn't go in the Bank and say that.

4 On page 40 of this deposition transcript, the ques-
5 tion, you concede you didn't pay the Hundred and Fifty
6 Thousand Dollar?

7 Answer, I didn't pay.

8 On page 62 of this deposition transcript, is there
9 any dispute on your part that you borrowed a Hundred and
10 Fifty Thousand Dollars (reading rapidly from deposition).

11 There is no dispute that I borrowed at that time a Hun-
12 dred and Fifty Thousand Dollars from American Community
13 Bank.

14 Page 83, you haven't paid the Hundred and Fifty Thous-
15 and back, correct?

16 That's correct.

17 The debt is secured by a mortgage, a first lien on
18 your property?

19 That's correct.

20 (Continuing to read from deposition rapidly)

21 Your Honor, there is no genuine issue here that the
22 Bank's refinance of the unpaid debt resulted in interest
23 as shown on the 1098 and that the borrower didn't resolve
24 the debt.

25 There was no obligation on the part of the lender

1 to satisfy the debt or the mortgage.

2 There is no right to a jury trial with respect to
3 waiver or under the Unfair Trade Practice Act claim be-
4 cause they are permissive and not compulsory.

5 They are not challenging the note and mortgage, and
6 they are looking to events subsequent to the note and the
7 mortgage and claiming additional damage.

8 There is no claim in the Answer in this case or in the
9 Countclaim that the note and mortgage are invalid and un-
10 enforcible.

11 The Bank should be permitted to go forward with its
12 case, refer this matter to a Special Referee, and to hold
13 a Reference and then proceed with judicial disposal of the
14 property as permitted by statute.

15 Thank you, Your Honor.

16 THE COURT: Yes, sir. Mr. Foster.

17 MR. FOSTER: May I ask to take a short break at
18 this point?

19 THE COURT: Sure, let's take a brief break.

20 (Court stood at ease for a few minutes, after which
21 the matter was resumed)

22 MR. FOSTER: Thank you, Your Honor.

23 Let me go over a few points in the beginning for
24 the sake of efficiency. We received Mr. Sheed's memo-
25 randum by Email last night and today he has spent a great

1 deal of time on the question of is this going to be heard
2 by a jury or non-jury.

3 His motion does not go into that. I grant the fact
4 that as a good lawyer he is going to say, well, A follows B,
5 and B is what I claimed in my motion. However, A, the ques-
6 tion of jury or non-jury was not in the motion, and I feel
7 a bit taken up short to be here today discussing that is-
8 sue which we weren't, in my opinion, directed to go forward
9 with, if that makes any sense.

10 But let me go from there to say one other point. The
11 big question here by my client, and an issue which Mr.
12 Sheedy obviously wishes to discuss with the Court, is the
13 matter of the ecology or lack thereof on the property.

14 Let me say up front, my client has not been financially
15 able to procure the kind of study that can confirm or deny
16 where he stands, and that is the main purpose behind which
17 we have abandoned most of the causes of action we are here
18 concerned about.

19 We do not rely on the matter of ecology or the events
20 of ecology or the events of what he was advised or not ad-
21 vised. Our causes of action rely upon facts.

22 Let me emphasize up front that these are facts because
23 they are in dispute, and I believe that is where counsel is
24 heading.

25 The first has to do with -- this goes to various causes

1 of action. The question of what type of loan did Mr. Brown
2 close on.

3 We allege, and he has stated without contradiction in
4 deposition, that because he lives on the property and because
5 he fixed it up as his home, the old warehouse, that it was
6 intended to be a residential . .

7 THE COURT: Let me stop you right there. There is a
8 large warehouse out on this property?

9 MR. FOSTER: Yes, there is.

10 THE COURT: Mr. Brown's position is that he lives in
11 that structure.

12 MR. FOSTER: Yes, sir, and I understand that is un-
13 disputed, and, if I may, sir, that it was a part of your
14 Order that you referred to and Mr. Sheedy referred to.

15 THE COURT: Well, actually, that is a huge building,
16 and I am just curious. Does he live in the entire building
17 or some part of it?

18 MR. FOSTER: I believe it is a portion of it. I believe
19 that is also in the deposition.

20 THE COURT: I didn't mean to interrupt.

21 Maybe I should pause for a minute and ask Mr. Brown
22 to hand up the deposition.

23 MR. FOSTER: My point being that we are not relying
24 simply upon his assertion that it was. We are also handing
25 up a document to the Court which is an insurance commitment

1 on the property. That title insurance commitment -- it is
2 a copy, and it says this is a residential loan. So that
3 from that, we are on that point, on that dispute -- we are
4 hanging most of the claim we have as to that matter.

5 Their failure to obtain his permission as to the law-
6 yer to use, their failure to make proper truth in lending
7 disclosures which -- to the extent those are still open,
8 and so forth.

9 We are also including that in our claim as to Unfair
10 and Deceptive Trade Practices. That is a fact that we
11 have disputed and continued to dispute, Your Honor. It is
12 still in dispute.

13 The other facts that we are disputing are character-
14 ized in disgust by counsel, which is a question of what
15 went down in the case. The original loan on the note and
16 mortgage was closed in December of 2000. It was for a
17 period of one year. .

18 This is on the record, and I know it is certainly in
19 the depositions. There is also the fact that a certain sum
20 was escrowed, so we assume that was paid.

21 After that what the Court will find, and this is at-
22 tached in somewhat of a summary form to the Complaint in
23 this case, is a series of extensions, each of them pur-
24 portedly signed by either Mr. Brown and Mr. Moore as co-
25 signer, and/or Mr. Moore's wife.

1 Both Mr. Brown and Mr. Moore have testified that the
2 signatures on those documents purporting to extend the
3 mortgage loan; that is, specifically modification agree-
4 ments and assignments of security, are forgeries. That is
5 in the depositions.

6 I believe they have both stated -- this is set out
7 in my brief, sir, with the portions of depositions -- they
8 have both stated, I believe, that they acknowledge -- let
9 me be clear.

10 Mr. Brown acknowledges the first extension. Mr. Moore
11 believes the first extension was accurate.

12 So what we have, sir, in response to Mr. Sheedy's com-
13 ment that there is no question as to the validity of the
14 note and mortgage and that we continued to grant extens-
15 ions on the mortgage -- the question is are these extens-
16 ions or modifications valid.

17 We have a specific challenge to the authenticity of
18 these documents, a challenge that was set out in our Com-
19 plaint.

20 I went over this to the extent I am allowed, to point
21 out that the signatures, and I mean in every instance --
22 there might be one exception -- neither Mr. Moore or Mr.
23 Brown, except for the first one possibly, acknowledge them.
24 Mr. Brown denies them, and Mr. Jeff Coley.

25 The only proof of these documents to my knowledge

1 before this Court is that a designee of the Bank has said
2 they are a part of the record, a Mr. Corliss.

3 I do not understand that to be competent to prove
4 their authenticity. The reason I bring up the issue of
5 who is the signor on this matter, Mr. Jeff Coley, is that
6 I understand -- speaking now only for myself -- I under-
7 stand him to be an officer of American Community Bank who
8 took his life after a shortage was discovered.

9 I assume Mr. Coley will not be appearing to verify
10 the documents, so we clearly have a factual dispute on
11 some of these matters, some of the evidence.

12 Counsel discussed waiver. Here is what happened pre-
13 sumably in 2007. I would tell the Court we also handed up
14 a 1098 form from 2007. It states there was payment of
15 interest and also states that the balance is dash zero dash,
16 and we have hammered this point in our brief.

17 Mr. Brown has testified that that indicates the mort-
18 gage should have been paid by whatever party, Mr. Moore or
19 whoever.

20 That is a factual point, and it is also the point on
21 which we hang our case as to that matter.

22 If, as any reasonable person might assume, this was
23 a waiver of the mortgage or a claim of the mortgage as to
24 Mr. Brown, he had a right to expect the mortgage to be
25 satisfied, so that is factual question before this Court

1 or for the finders of fact.

2 THE COURT: Counsel, let me ask you to back up and
3 let me ask you some questions to help me understand, if I
4 may, as to the factual background.

5 Was there more than one occupant of this property, or
6 were there multiple people responsible, with Mr. Brown man-
7 aging the structure?

8 MR. FOSTER: I cannot testify to that myself but I
9 would rely on his deposition as to Mr. Brown's intent and,
10 as he confirmed in both his Answer and his deposition,
11 it was ultimately to subdivide the property to sell it.

12 The property, of course, was subject to the environ-
13 mental situation and this could not be solved.

14 It is my understanding that the persons who sued Mr.
15 Brown and obtained judgments are, as to Shortt Auction,
16 someone who was supposed to be helping him at the same
17 time.

18 Of course, when that could not be done, they turned
19 to try to sue him, and I don't believe he was represented
20 in that case.

21 I understand the Bank's argument that that was a pri-
22 vate judgment that may or may not be related to this matter,
23 and those people obviously have not attempted to execute
24 the judgment.

25 Have I answered the Court's question?

1 THE COURT: Yes, sir. Well, you called the name of
2 someone, Mr. Moore. What was his relationship to this
3 business?

4 MR. FOSTER: Mr. Moore or his saw mill company was
5 the seller of the property to Mr. Brown. He was also the
6 co-signer on the note. Obviously, he is the Codefendant.

7 I don't know whether it is in the record that he has
8 paid some money, being the co-signer in the case between
9 private parties.

10 THE COURT: Mr. Moore, you say, is a co-signer on the
11 promissory note that underlies this mortgage?

12 MR. FOSTER: That is my recollection, yes, sir. That
13 is my recollection.

14 MR. SHEEDY: If I may, Your Honor, on page two of
15 the note -- you will see on page two of the note the one
16 signature, Michael R. Brown.

17 On the mortgage, there is one mortgagor, Michael R.
18 Brown.

19 THE COURT: All right.

20 MR. FOSTER: I stand corrected, Your Honor. Obviously
21 what he signed were the extensions, and that was the basis
22 . . .

23 THE COURT: Well, let me ask you this. How would your
24 client reasonably assume, based on that, that some other
25 -- that someone else would have come in to pay on this

1 mortgage?

2 MR. FOSTER: It is my understanding that it was not
3 the note. That the first year's extension was admittedly
4 signed, and that Mr. Moore signed it.

5 THE COURT: All right. Well, as to the extensions or
6 modifications, if those are thrown out as forgeries, does
7 the fact that the original note was admittedly signed by
8 your client put you back in the same position?

9 MR. FOSTER: That depends on the status in which the
10 Court would view this tax notice. We maintain the tax no-
11 tice represents a statement that your debt is paid, and
12 that is the way any reasonable man would take it.

13 They have abandoned the ability to pursue the note
14 or the mortgage.

15 THE COURT: Did your client then report income of what-
16 ever the amount of money was on his following year tax
17 return?

18 MR. FOSTER: He did not, and he stated that fact in
19 his deposition, believing it to be a mistake.

20 Waiver, which is what we rely upon, does not require
21 any matter of trust or action on the part of the person
22 by whom the waiver was made.

23 If the party made the waiver, we are allowed to have
24 the benefit thereof.

25 THE COURT: So, as I understand it, what did Mr.

1 Moore do?

2 Is it your defense in the motion for summary judgment
3 that there are two factual disputes for the tryer of facts,
4 whether it be the Court or a jury or a Referee?

5 MR. FOSTER: Yes, sir. On the basic facts.

6 THE COURT: And those basic facts are, number one,
7 whether these modifications are forged, and, secondly,
8 whether the tax notice gave him a reasonable expectation
9 that the mortgage was paid?

10 MR. FOSTER: Well, the first question would be whe-
11 ther it was a residential loan, to begin with.

12 THE COURT: All right. You may continue.

13 MR. FOSTER: Beyond that, sir, and I want to be brief
14 unless the Court has other questions.

15 We have submitted our brief and there is documenta-
16 tion. I'll be happy to answer anything further.

17 THE COURT: All right, let me hear you in reply and I
18 may have further questions after that.

19 MR. SHEEDY: What I hear Mr. Foster on behalf of the
20 Bank saying as to the facts in dispute is whether the
21 transaction was consumer or commercial. Very interesting,
22 his representation of the purpose for the loan.

23 If it was to subdivide the property, that means it
24 wasn't a consumer loan, but commercial.

25 But for Your Honor's purposes today, whether or not

1 the loan was consumer or commercial does not fly on the
2 narrow summary judgment issues that are before the Court.

3 If there is no environmental issue, which has been
4 conceded -- if there is no environmental condition, the
5 Unfair Trade Practices Act fails, although it is wrapped
6 or supported by all these other assertions about title in-
7 surance and securing his own counsel -- those are support-
8 ing rather than standing alone as a separate cause of
9 action under the statutes that impose such duties.

10 And if it is a consumer loan or a commercial loan it
11 doesn't change if there is no environmental condition and
12 under the Unfair Trade Practices Act they fail.

13 Whether it is a consumer or commercial, it makes no
14 difference in terms of the failure to satisfy the mortgage.
15 There is no genuine dispute that the original loan was not
16 paid that was secured by a mortgage, and I read those ex-
17 cerpts from Mr. Brown's deposition transcript into the
18 record just a few minutes ago.

19 Whether or not this is consumer or commercial has no-
20 thing to do with whether the debt has been waived and there-
21 fore the Bank has no right to pursue the collection of that
22 debt from the borrower.

23 It doesn't really go to the affirmative defense, and
24 Your Honor made a very interesting observation as to the
25 Plaintiff's position in this case.

1 Returning to the question of the forged extensions or
2 modifications, or which are supposedly forged, if Your
3 Honor looks on page six of the Complaint, paragraphs 23
4 24, they accepted their loan for payment of a Hundred and
5 Fifty Thousand Dollars -- a Hundred and Fifty Thousand Dol-
6 lars plus interest, based on the original note, and indi-
7 cated that it was only going to charge interest at a per
8 diem rate if the Hundred and Fifty Thousand wasn't paid
9 within the time to cure, and it wasn't done.

10 In Paragraph 24, the same point is made as to the sum
11 of a Hundred and Fifty-two Thousand Ninety-one Eighty-nine
12 which includes the interest that accrued once the cure
13 period expired.

14 The Bank is not here today trying to collect any in-
15 terest accrued on any of these extensions or modifications
16 whatsoever.

17 So whether or not they are forged has nothing to do
18 with the validity of the original note secured by the
19 mortgage.

20 I read to Your Honor earlier Mr. Brown's testimony.
21 He doesn't dispute that he received the Hundred and Fifty
22 Thousand Dollars on the loan. This case is really that
23 simple. The loan was secured by the mortgage.

24 THE COURT: Let me ask you this if I may. What dif-
25 ference does it make if it is consumer versus commercial?

1 MR. SHEEDY: It makes a difference in two respects as
2 to the position the borrower takes.

3 If it were a commercial loan, there would be no at-
4 torney preference. As I have mentioned to Your Honor be-
5 fore, with Justice Toal's Administrative Order applied,
6 that is no longer relevant.

7 We had the foreclosure intervention process but were
8 unable to achieve a successful loan modification under
9 that process.

10 For purposes of what is actually before the Court to-
11 day, the Unfair Trade Practices Act, is purely to satisfy
12 the mortgage and waiver. I think consumer versus commercial
13 is long gone.

14 If Your Honor looks at the actual pleadings, there is
15 no basis in those pleadings for consumer versus commercial
16 if it were disputed in fact.

17 If it were a disputed fact it would necessarily lead
18 to denial of summary judgment on the waiver claim. Look-
19 ing on page 15 of the Answer, and starting with paragraph
20 (inaudible), and I'm characterizing it. The allegation is
21 that because of this 1098 they thought the note had been
22 paid, and we had failed to satisfy the mortgage.

23 THE COURT: Let me ask a very simple question. If
24 the Court granted your relief today, where does that leave
25 the parties, the Court having struck the defenses that

1 would require further proceedings before the Court?

2 MR. SHEEDY: I think it would leave the case procedur-
3 ally in the following posture, and, by the way, I need to
4 make a point to respond to Mr. Foster's comments.

5 The mortgage collection would necessarily be severed,
6 referred to be heard by a Special Referee, and I think
7 there are a number of cases that call for severance of the
8 equitable from the legal if in fact there is a legal basis.

9 The remaining claims would have to be heard, we think
10 non-jury, so that that can be adjudicated. If it is non-
11 jury, by a Special Referee. If it is jury, then the natural
12 jury process. That's my understanding in this case.

13 Let me comment on the 1098 form. I tend to agree that
14 -- if the Court still has the 1098 form in front of it --
15 I tend to agree with Mr. Foster that it is pretty plain on
16 its face. If payment was made, then the balance on the
17 payment is zero.

18 It doesn't say the balance on the loan is zero. It
19 says if payment was made then the balance is zero, and that
20 is indicating an amount of Seven Thousand Four Hundred,
21 which is shown as mortgage interest. This form doesn't
22 have anything to do with the principal. The 1098 is all
23 about interest.

24 THE COURT: Tell me how it would be that in the year
25 2007 all of a sudden there comes a 1098, when every year

1 they would tell how much interest would be waived by addi-
2 tion to principal?

3 MR. SHEEDY: I can tell your Honor this, that that
4 was not a fact that was pursued in discovery in this case.
5 My instinct about that is that the Banks generate 1098s
6 just like they do with 1099s by computer. They are spun
7 out of the computer and sent to the Internal Revenue and
8 are sent to the borrower.

9 In time, it is common for banks to go through mergers
10 and changes in their software system, and some things are
11 not retrievable. I don't know if that's the case here but
12 this Bank did go through a merger and there were some sys-
13 tem integrations.

14 If the parties are disputing how many 1098s were is-
15 sued, as I understand it, and 1098 that shows a payment
16 of zero, I have a right to rely that that means that the
17 loan was paid in full, even though I know the principal was
18 not paid in full, or that I haven't paid the principal in
19 full, or I know I haven't made any payments on this loan,
20 then my position would be -- if the borrower is saying he
21 never repaid the Hundred and Fifty Thousand Dollars, then
22 it is undisputed for purposes of summary judgment that we
23 have a mortgage for a Hundred Fifty Thousand and we have a
24 right to foreclose.

25 THE COURT: All right, let's do this. I'm going to

1 step in the back for a moment and review and consider the
2 matter.

3 We'll be in recess for a few minutes.

4 (Court stood in recess for a short period, after which
5 the matter was continued)

6 THE COURT: Let me go back for a moment, and I will
7 ask Mr. Sheedy to prepare an Order.

8 In the Court's Order of August of 2011, it was the de-
9 cision pursuant to Chief Justice Toal's Administrative
10 Order regarding some of the protections -- I'll state it
11 that way -- available to a debtor were available to Mr.
12 Brown.

13 It was not intended, and I believe there was language
14 as to that, that the Chief Justice's Order was to be liber-
15 ally construed and advise only. The Court did not intend
16 by issuing that decision to foreclose any other issues about
17 whether this is a consumer loan or commercial loan; didn't
18 intend to make dispositive findings as opposed to something
19 that may be later found to be another issue. I just want
20 to make that clear.

21 The Order did not intend in any way to establish a,
22 quote, law with regard to other issues that may arise or
23 to issues that may become fair game as to whether there is
24 some protection on residential or consumer loan versus a
25 commercial loan.

1 The Court would leave that to be decided by whoever
2 may be the deciding party.

3 I just wanted to make it clear that that Order was
4 for the limited purpose of whether or not Mr. Brown should
5 be entitled to the protection of certain intervention.

6 I note -- I can't help but note from reading the
7 pleadings that the debtor has come in with multiple coun-
8 terclaims and affirmative defenses, and given up several
9 causes of action where there is no evidence to support the
10 defense.

11 I find that -- I make the same findings with regard to
12 the issues that are today the subject of the motion for
13 summary judgment and the attached documents which involve
14 whether or not there has been a satisfaction of waiver, the
15 documents that are attached to the motion, waiver for lack
16 of suit filed or laches if you wish to call it that.

17 I simply do not find that the 1098 form, which is
18 the subject of this suit, creates a genuine issue of mate-
19 rial fact for the Defendant to raise an affirmative defense
20 of payment waiver or failure to satisfy or whatever defense
21 may arise from it.

22 To simply insist that payment was made because it shows
23 nothing due on that balance, that doesn't say that the
24 loan has a zero balance or that payment was made. The
25 Defendant's interpretation of it is self-serving, and the

1 Court finds that it does not create or rise to the level
2 of being a genuine issue of material fact or that those
3 affirmative defenses based upon it should survive.

4 Thus, I'm going to grant summary judgment.

5 As to the others, I think environmental issues were
6 withdrawn or, as Mr. Foster called it -- he used the word
7 ecology.

8 On the other issues the Court has failed to mention . .

9 MR. SHEEDY: UTPA.

10 THE COURT: Yes, that has to do with the continuing
11 modifications and Mr. Foster has listed them in his brief.
12 I will try to summarize them, or if you would.

13 MR. FOSTER: The commercial nature or lack thereof on
14 the transaction, obtaining legal counsel. You've gone into
15 the extension documents on some level. The first paragraph . .

16 MR. SHEEDY: Your Honor, on page eleven.

17 THE COURT: On page eleven, let me call out which
18 ones still apply.

19 I understand number one goes to the question of resi-
20 dential or commercial. I understand that number two follows
21 from that, the requirement with residential, and that cer-
22 tain matters be taken into account under South Carolina
23 law as to unfair and deceptive trade practices which is
24 allowable.

25 Title insurance, I believe, is connected with the

1 environment, and that would be out, of course.

2 Number four on the forged documents, that is part of
3 the UTPA.

4 MR. FOSTER: Yes, sir.

5 THE COURT: And number six would go to notification
6 after the debt was satisfied, and that is thrown out.

7 As is number seven and as to number eight.

8 Let's take four and five first which have to do with
9 the extension agreement. The Court does not find -- the
10 allegations of forgery, if indeed they are true, the orig-
11 inal claim of the Bank on the promissory note which is what
12 is asserted here -- I do not find that four and five reach
13 the level of an affirmative defense so that the Bank would
14 not be entitled to summary judgment. They are entitled to
15 summary judgment, in other words.

16 There is not relevance to that underlying claim of the
17 mortgage.

18 Mr. Brown was given the benefit of the intervention
19 measures that would have accrued to him if it were a resi-
20 dential loan.

21 I simply do not find sufficient evidence that would
22 rise to the level on the UTPA claim, or that there was some
23 switch from a residential loan to a commercial loan. He
24 was given protections he would have been entitled to on a
25 residential loan.

1 You need only go to look at the property to see if
2 it were a house or a commercial property. Thus, I believe
3 what has happened here is that the loan was originally
4 taken for subdivision purposes, and Mr. Brown expected that
5 to happen and didn't make the payment.

6 He has raised certain defenses, none of which the Court
7 finds to have validity. For this reason, I will grant sum-
8 mary judgment on the affirmative defenses.

9 I will ask you to go forward, Mr. Sheedy, with the
10 Order and set forth the status of this case. I think it
11 would be appropriate for anything that follows to have a
12 statement in the Order as to the status now that this decis-
13 ion has been entered as to where we find ourselves.

14 I would ask you to prepare that Order and send it to
15 Mr. Foster for review. If he doesn't agree with it, he
16 should state his position, and then all of that would be
17 forwarded to the Court.

18 I will then review it and make whatever changes may be
19 necessary

20 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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.)

**MEMORANDUM ON APPLICATION OF
ADMINISTRATIVE ORDER 2011-05-02-01 TO THIS CASE**

At the request of the Honorable J. Michael Baxley, by and through his law clerk Erin O'Neal, Plaintiff hereby submits this Memorandum addressing the Application of Administrative Order 2011-05-02-01 (the "Foreclosure Stay Order" at Tab A) to this case.

I. Background

This case was filed on May 4, 2010. There is one cause of action in the Complaint, viz., for entry of judgment, including of foreclosure, on a *matured* \$150,000 promissory note secured by a mortgage against 106.85 acres. The note was signed by Michael R. Brown. C. W. Horne was named because he guaranteed the note (although so far no judgment is sought against him in this action). Shortt, B of A and Jaguar are named because of their liens of record against the mortgaged property.

It is undisputed that Michael R. Brown resides on the mortgaged property. (Depos. Tr. Brown, pp.6-7, 11-12, 18 and 71-72).¹ It is disputed whether the loan was made for commercial purposes in connection with development of the mortgaged property, or if the loan proceeds were used to upfit a portion of the mortgaged property for residential occupancy. (Id., p.17).

II. Discussion

For purposes of this Memorandum, Plaintiff assumes the mortgaged property is an "Owner-Occupied Dwelling" as defined in the Foreclosure Stay Order.

However, Plaintiff denies that the obligor, Michael R. Brown, has a right to Foreclosure intervention under the Foreclosure Stay Order. Therefore, the five certifications set forth in the Foreclosure Stay Order are inapplicable.

First, the obligor, Michael R. Brown, says that he "lacks any other financial ability to repay the subject mortgage loan," aside from a subdivision and sale of the mortgaged property. (Answer, p.3, ¶11; Depos. Tr. Brown, pp.17 and 30). He testified that he is unemployed. (Id., p.7). He has no plans or ability to subdivide and sell the mortgaged property. He claims the mortgage should be satisfied. (Answer at p.18, ¶110). He has never made a payment on this loan. Thus, there is admittedly on the face of the pleadings no potential for loan modification or other means of loss mitigation. Plaintiff is not required to make a home affordable by forgiving the debt and giving the property to the borrower. Michael R. Brown does not qualify for the Home Mortgage Affordable Program if he has no intention of paying back any of the sums due under the note, yet he expects the mortgage to be satisfied by Plaintiff.

¹The transcript of the deposition appears at Tab B.

Second, Plaintiff has no policy, process or procedure for resolution of a foreclosure action by loan modification or other means of loss mitigation. See Plaintiff's verification at **Tab C**.

Third, this is a matured loan, not a payment default. Consequently, a reinstatement by loan modification is inapplicable here. The conceivably applicable programs, Home Affordable Foreclosure Alternatives, South Carolina Hardest Hit Fund and SC HELP, do not apply where the loan is matured, not guaranteed by either Fannie Mae or Freddie Mac and not in default as a result of catastrophe to the borrower. No foreclosure assistance is available to a borrower claiming that the lender must forgive the debt and satisfy the mortgage.

III. Conclusion

Plaintiff is not able to give the obligor, Michael R. Brown, a notice of right to Foreclosure intervention. Brown is not eligible for Foreclosure intervention because he lacks an intention to pay anything on the note. This is not a case of a residential borrower who has fallen on hard times and needs a loan payment reduction. Plaintiff obviously has no policy, process or procedure by which a borrower may keep the mortgaged property without having to pay the debt. This case should not be held in abeyance subject to the Foreclosure Stay Order.

Plaintiff has verified the facts in this Memorandum. It is now up to the obligor, Michael R. Brown, to provide a counter-affidavit that he intends to repay the note secured by the mortgage and wishes to be considered for a loan modification or other eligible loss mitigation. Ex parte Federal National Mortgage Association, 2009 WL 1249751 (2009) at **Tab D**.

Date: 7/15/11

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

Telephone - (704) 341-2101

Facsimile - (704) 341-2105

jimsheedy@driscollsheedy.com

susandriscoll@driscollsheedy.com

ATTORNEYS FOR PLAINTIFF

2011-05-02-01

The Supreme Court of South Carolina

Re: Mortgage Foreclosure Actions

ADMINISTRATIVE ORDER

On May 22, 2009, I issued an Administrative Order (Order No. 2009-05-22-01) applicable to mortgage foreclosure actions subject to the Home Affordable Modification Program ("HMP") instituted by the United States Treasury Department ("Treasury"). The program applied to residential loans owned, securitized or guaranteed by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac).

Subsequently, Treasury issued, by directive, additional guidance to servicers for adoption and implementation of the HMP for residential mortgage loans that are not owned, securitized or guaranteed by Fannie Mae or Freddie Mac. However, the HMP is only applicable to such loans if the lender or servicer has agreed to participate in the HMP. Not all lenders or servicers have so agreed.

Since imposition of my prior order, the number of foreclosure actions filed in this State have continued to increase. The trial courts having jurisdiction over such actions have reported to this Court difficulty in making final disposition of these actions as a result of failed or delayed loss mitigation efforts between lender-servicers and mortgagor-debtors. As a result, the number of unresolved foreclosure actions has increased, with a resulting burden on the resources of the Court before which the action is pending.

The courts have reported that these failures are the result of a breakdown of loss mitigation efforts that all parties find to be in their best interests, if possible. The trial courts report that such breakdowns are largely the result of difficulty in communication between lender-servicers and debtors, and the fact that foreclosure actions are proceeding to conclusion without regard to ongoing loss mitigation efforts by the parties.

I further take judicial notice of the actions of courts in other jurisdictions describing a similar breakdown in the efforts of parties to foreclosure actions to reach a resolution of defaults in payment of mortgage loans.

Therefore, based on the foregoing, and in order to insure that eligible homeowners and lender-servicers have been afforded the benefits of loan modification or other loss mitigation where possible, and to insure that the procedures for handling issues relating to such efforts are handled uniformly throughout the State, so that mortgage foreclosure actions are not unnecessarily dismissed, delayed or inappropriately concluded while loan modification or other loss mitigation efforts are being pursued, it is ordered as follows:

A. Definitions:

For the purposes of this administrative order, the following definitions shall apply:

- (1) "Mortgagor" shall include every owner, mortgagor, and debtor under the note and mortgage at issue.
- (2) "Mortgagee" shall include the owner and holder of the note and mortgage, any party acting on behalf of the owner and holder of the note and mortgage for the purpose of receiving payments, dealing with the mortgagor, or administering the loan evidenced by the note and mortgage, and any party seeking foreclosure of the subject mortgage, or otherwise acting as the agent of the owner and holder of the note in connection with the loan or the foreclosure of the note and mortgage, except for the mortgagee's attorney.
- (3) "Owner-Occupied dwelling" is defined as mortgaged real property that is the principal residence of any mortgagor.
- (4) "Court" shall include any judicial officer having jurisdiction over the foreclosure action, including any Circuit Court Judge, Master-In-Equity or Special Referee.
- (5) "Foreclosure intervention" shall include any policy, process or procedure employed by a Mortgagee for the purpose of seeking a resolution of a foreclosure action by loan modification or other means of loss mitigation.

B. Procedure in Foreclosure Actions:

The terms and conditions of this order shall apply to all mortgage foreclosure proceedings concerning Owner-Occupied dwellings in this State.

(1) Actions pending on May 9, 2011.

In all mortgage foreclosure actions pending on May 9, 2011, before any merits hearing in the case, or if an order of foreclosure has been entered, before any foreclosure sale, the Mortgagee shall, through its attorney of record, file with the court and serve upon every Mortgagor a notice of the Mortgagor's right to foreclosure intervention. All proceedings in the foreclosure action shall be stayed until completion of such foreclosure intervention.

No foreclosure hearing or foreclosure sale may be held in the foreclosure action until the Mortgagee's attorney certifies the following:

- (a) that the Mortgagor has been served with a notice of the Mortgagor's right to foreclosure intervention for the purpose of seeking a resolution of the foreclosure action by loan modification or other means of loss mitigation;
- (b) that the Mortgagee, or its designated agent, has received and examined all documents and records required to be submitted by the Mortgagor to evaluate eligibility for foreclosure intervention;
- (c) that the Mortgagor has been afforded a full and fair opportunity to submit any other information or data pertaining to the Mortgagor's loan or personal circumstances for consideration by the Mortgagee;
- (d) that after completion of the foreclosure intervention process, the Mortgagor does not qualify for loan modification or other means of loss mitigation, in accordance with any standards, rules

or guidelines applicable to the mortgage loan, and the parties have been unable to reach any other agreement concerning the foreclosure process; and,

(e) that notice of the denial of loan modification or other means of loss mitigation has been served on the Mortgagor by mailing such notice to all known addresses of the Mortgagor; provided, that such notice shall also state that the Mortgagor has 30 days from the date of mailing of notice of denial of relief to file and serve an answer or other response to the Mortgagee's summons and complaint.

If within thirty days after having been served with notice of the Mortgagor's rights, the Mortgagor has failed, refused, or voluntarily elected not to participate in any foreclosure intervention process, the Mortgagee, through its attorney, shall certify that fact to the Court, and the foreclosure action may proceed.

(2) Actions filed after May 9, 2011.

In all mortgage foreclosure actions filed after May 9, 2011, the Mortgagee's attorney shall serve on the Mortgagor, along with the summons and complaint, a notice of the Mortgagor's right to foreclosure intervention.

No foreclosure hearing may be held in the foreclosure action until the Mortgagee's attorney certifies that the Mortgagee has complied with the requirements of paragraphs B (1) (a) through (e) above.

If within thirty days after having been served with notice of the Mortgagor's rights, the Mortgagor has failed, refused, or voluntarily elected not to participate in any foreclosure intervention process, the Mortgagee, through its attorney, shall certify that fact to the Court, and the foreclosure action may proceed.

C. General Conditions.

Throughout the foreclosure intervention process and the foreclosure action, the Mortgagee shall communicate with and otherwise deal with the Mortgagor through the Mortgagee's attorney, and the Mortgagor shall have the right to deal with the Mortgagee through the Mortgagee's attorney. This includes, without limitation, submission of all required information, negotiations, and consummation of any loan modification or other loss mitigation agreement. If the Mortgagor is represented by an attorney, then the Mortgagee shall communicate with and otherwise deal with the Mortgagor through the Mortgagor's attorney.

No document, statement or evidence of any kind shared, released or exchanged exclusively for purposes of foreclosure intervention pursuant to this order shall be admissible as evidence in any subsequent proceeding. The provisions of Rule 8 of the Court Annexed Alternative Dispute Resolution Rules ("ADR Rules") shall apply to all such documents, statements or evidence, as well as to all discussions, disclosures and negotiations occurring in any foreclosure intervention process.

A Mortgagee's attorney, by proceeding with a foreclosure, represents to the Court that the Mortgagee has fully complied with all provisions of this Order.

In the event that the Mortgagor and Mortgagee agree on any loan modification or other loss mitigation plan ("Agreement"), such Agreement shall be reduced to writing, executed by the Mortgagor and Mortgagee, and served on all parties in the case. Any pending case shall be stayed, and no hearing or foreclosure sale held for 90 days following the entry of any

Agreement, unless the Mortgagor shall not comply with the terms of the Agreement.

Upon any failure by Mortgagor to comply with the terms of the Agreement before the expiration of 90 days from the date of the Agreement, the Mortgagee, through its attorney, shall file and serve on all parties a "Notice of Breach of Agreement". Upon filing and service of such notice, the foreclosure action may proceed in the ordinary course.

If the Mortgagor shall be in compliance with the terms of the Agreement after 90 days, the Mortgagee's attorney shall promptly file a notice of dismissal of the action without prejudice, and the case will be dismissed. Such notice of dismissal shall be served on all parties to the action.

The Court having jurisdiction over the foreclosure action shall hear and determine any dispute concerning any party's compliance with this order, including without limitation, the failure of any party to act in good faith in complying with the terms of this order. In the event the Court determines that any party to the foreclosure action, or their acting agent, has failed to comply with the terms of this order, or has not attempted to reach an agreement for foreclosure intervention in good faith, the Court may, in its discretion, impose such sanctions as it determines to be reasonable and just under the circumstances, including without limitation, the assessment of reasonable attorneys' fees and costs against the culpable party.

The Court having jurisdiction over the action shall have the authority, and may in its discretion, order the parties to submit to mediation. In such event, the mediation shall proceed in accordance with the ADR Rules.

This order remains in effect unless amended or rescinded by the Chief Justice.

IT IS SO ORDERED.

s/Jean H. Toal
Jean H. Toal
Chief Justice of South Carolina

Columbia, South Carolina
May 2, 2011

IN THE COURT OF COMMON PLEAS

Plaintiff,

VS.

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

Defendants.

To: Defendant Michael R. Brown and his attorney, John Martin Foster, Esq.

Borrower's affirmative defenses addressed by this Motion consist of failure to mitigate, equitable estoppel, waiver (express and implied), unconscionability and breach of the duty of good faith. Borrower's counterclaims are for civil conspiracy, fraud (actual and constructive), UTPA and failure to satisfy a mortgage.

These affirmative defenses and counterclaims of Borrower hinge on just a few allegations. Borrower says Bank failed to disclose the mortgaged property was environmentally contaminated. He wants Bank to recover its debt from its title insurance policy. He says he should not have to pay his loan because Bank did not advise him of the availability of owner's title insurance. He claims Bank should not have given him statements of interest paid on his mortgage loan. He asserts such statements prove Bank was required to satisfy his mortgage.

In addition to being illogical, the foregoing allegations have no merit. Even if any of these allegations have merit, Borrower would still not be entitled as a matter of law to relief on any of his affirmative defenses and counterclaims that concern the validity or enforceability of Bank's loan.

In support of this Motion, Bank hereby provides for filing the deposition transcripts (including all exhibits attached thereto) of Borrower, Plaintiff's Rule 30(b)(6) designee and defendant C.W. Horne. In reply to any response of Borrower to this Motion, Bank may offer additional evidence and will provide a memorandum in support of this Motion prior to or at the hearing.

WHEREFORE, Bank asks that the Motion be granted and an order be entered dismissing with prejudice the affirmative defenses and counterclaims of Borrower against Bank in this matter.

Charlotte, N.C.

Date: 5/10/12

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)
Jaguar Portfolio, LLC,)

Defendants.)

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

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

In support of its Motion for Summary Judgment¹ against Defendant Brown on His Affirmative Defenses and Counterclaims Against Plaintiff (Motion), Plaintiff (Bank) respectfully submits the following. Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Complaint.

Undisputed Facts

Although Borrower alleged in his Answer, Counterclaims and Cross-Claims (Answer), that at the time of the closing on the Note and Mortgage the Subject Property was environmentally contaminated, nothing in the record supports that allegation. South Carolina Department of Health

¹ The standard for granting summary judgment is well-settled and set forth clearly in Rule 56, SCRPC. A party may move with evidence for entry of summary judgment in its favor. *Id.* at (a). If the motion is supported as provided in the rule, summary judgment will be granted unless the adverse party offers into evidence specific facts showing that there is a genuine issue for trial. *Id.* at (e). Where there is no genuine issue as to any material fact, the moving party is entitled to a judgment as a matter of law. *Id.* at (c).

and Environmental Control (SC DHEC) issued a no further action letter regarding the Subject Property on March 24, 1997, more than three years before the loan was made. (Depos. Tr. Brown, pp. 35-36; Depos. Tr. Clewis, p. 76.) See also Tab A. A subsequent no action letter was issued on January 8, 2010, about one year before the loan was made. (Depos. Tr. Brown, pp. 35-36; Depos. Tr. Clewis, p. 76.) See also Tab B. Borrower had both of these letters in his possession. (Depos. Tr. Brown, p. 84.) The Subject Property was not contaminated in December 2000 when the loan was made, nor is it contaminated now.

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.) The Note was secured by the Mortgage which granted Bank a first lien against the Subject Property. (Depos. Tr. Brown, pp. 18-19.) Both the Mortgage and the Note were executed December 29, 2000. (Depos. Tr. Brown pp. 14, 19.) Upon default by Borrower, Bank has the right to "declare the entire unpaid principal balance on the Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount." (Depos. Tr. Clewis, Ex. 22, p.1.) The Mortgage also states that upon default of Borrower, Bank may "declare all sums secured by this mortgage immediately due and payable and proceed with foreclosure thereof." (Depos. Tr. Clewis, Ex. 23, p.2, ¶6.) Borrower admits he has not paid the principal amount owed under the Note upon demand by Bank. (Depos. Tr. Brown, pp. 18, 40, 62-63, 83.) Bank 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.)

Discussion

A. The majority of Borrower's defenses and counterclaims are rooted in his unfounded and unproven allegation that the Subject Property is contaminated.

Borrower's affirmative defenses of failure to mitigate and unconscionability, as well as his counterclaims of civil conspiracy, fraud (both actual and constructive)², and the SC UTPA claim are all based on allegations of environmental contamination. The Subject Property was not contaminated at the time of closing, nor is it contaminated now. As stated above, SC DHEC issued two no further action letters related to the Subject Property. (Depos. Tr. Brown, pp. 35-36; Depos. Tr. Clewis, p. 76.) Borrower has both of these letters in his possession. (Depos. Tr. Brown, p. 84.) Without any evidence of environmental contamination, these affirmative defenses and counterclaims cannot go forward and should be dismissed.

Even if the counterclaims are not dismissed, they do not challenge the validity and enforceability of the Note and Mortgage. Each of these counterclaims, civil conspiracy, fraud (both actual and constructive), and the SC UTPA claim, seeks damages. (Answer, p. 7, ¶¶ 48-49, p. 10, ¶ 63(h), p. 11, ¶ 68(g), p. 14, ¶¶ 75-77.) These claims do not impair Bank's enforcement of the Note

² An essential element of any fraud claim is the right to rely. *Regions Bank v. Schmauch*, 354 S.C. 648, 672, 582 S.E.2d 432, 444-45 (Ct. App. 2003). A party's "right to rely must be determined in light of the plaintiff's duty to use reasonable prudence and diligence under the circumstances in identifying the truth with respect to the representations made to him." *Id.* Without a confidential or fiduciary relationship, there is no right to rely. *Id.* In "an arm's length transaction between mature, educated people", there is no right to rely. *Id.* "This is especially true in circumstances where one should have utilized precaution and protection to safeguard his interests." *Schmauch*, 354 S.C. at 672, 582 S.E.2d at 445. Under South Carolina law, "the normal relationship between a bank and its customer is one of creditor-debtor and not fiduciary in nature." *Id.* at 671, 582 S.E.2d at 444. The only way that relationship changes is if the bank "undertakes to advise a depositor as part of the services the bank offers." *Id.* "[N]o fiduciary relationship between a bank and its depositor exists when the bank is unaware of any special trust reposed in it." *Id.* See also *Burwell v. South Carolina Nat'l Bank*, 288 S.C. 34, 340 S.E.2d 786 (1986). There was no fiduciary relationship between Borrower and Bank.

and Mortgage. As a result, nothing in these permissive counterclaims³ affects Bank's right to foreclose the Mortgage. Even if this Court does not dismiss these claims, Bank still has the right to move forward with its foreclosure, because doing so will not impact Borrower's claims for damages. Any such damages could just be set off from the amount awarded to Bank as a judgment on the Note.

B. Borrower's defense of equitable estoppel fails because he knew he had not paid the Note in full.

A "party asserting equitable estoppel bears the burden of establishing all the elements."

Kelly v. Logan, Jolley & Smith, L.L.P., 383 S.C. 626, 682 S.E.2d 1, 7 (Ct. App. 2009).

To establish equitable estoppel, the party claiming estoppel must prove that he or she (1) lacked knowledge and means of obtaining knowledge of the truth of the facts in question; and (2) relied upon the conduct of the party to be estopped. The party claiming estoppel must also establish that the party to be estopped (1) acted in a way amounting to a false representation or concealment of material facts; (2) intended such conduct to be acted upon by the other party; and (3) possessed knowledge, either actual or constructive, of the true facts.

Id.

Borrower bases his defense of equitable estoppel on a 1098 form given to Borrower by Bank that indicates receipt of \$87,500 in interest payments from Borrower. (Answer, p. 14, ¶ 79.) Borrower knew at the time he received the 1098 form that 1) it was an interest statement for the Note, not a statement marking the Note paid in full (Depos. Tr. Brown, pp. 39-41.); 2) he had not paid Bank \$87,500 in interest on the Note (Depos. Tr. Brown, pp. 40-41.); and 3) that if he did not

³ A counterclaim is only permissive if it "arises out of the same transaction or occurrence as the opposing party's claim." *N.C. Fed. Sav. and Loan Ass'n v. DAV*, 298 S.C. 514, 517, 381 S.E.2d 903, 905 (1989). Because Borrower's counterclaims do not address the enforceability of the Note and Mortgage, the counterclaims are permissive. *Id.* at 518, 381 S.E.2d at 905. By asserting permissive counterclaims in an equitable action, Borrower has waived his right to a jury trial on each of these counterclaims. See *Keels v. Pierce*, 315 S.C. 339, 433 S.E.2d 902 (Ct. App. 1993). These claims could be determined by the Master-in-Equity during the foreclosure hearing.

pay the Note in full, Bank had the right to foreclose the Mortgage. (Depos. Tr. Brown, p. 20.) Because Borrower never lacked knowledge that the Note had not been paid in full, Bank should not be equitably estopped from foreclosing the Mortgage and receiving a judgment against Borrower.

C. There is no evidence that Bank waived its right to enforce the Note and foreclose the Mortgage.

"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). Borrower never received anything in writing from Bank that if he failed to repay the \$150,000 that Bank would waive its right to foreclose on the Mortgage. (Depos. Tr. Brown, p. 40-41.) Nothing in Bank's records indicate that it ever marked the Note paid in full. (Depos. Tr. Clewis, pp. 74.) Nothing in the record supports Borrower's affirmative defense of waiver, because Bank never waived its right to collect the Note and foreclose the Mortgage.

D. Bank's enforcement of its rights under the Note and Mortgage does not constitute a breach of the duty of good faith.

Although there "exists in every contract an implied covenant of good faith and fair dealing" ... there is no breach of [that covenant] where a party to a contract has done what the provisions of the contract expressly gave him the right to do." *Adams v. G.J. Creel and Sons, Inc.*, 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995). See also *First Federal Sav. & Loan Ass'n of South Carolina v. Dangerfield*, 307 S.C. 260, 414 S.E.2d 590 (Ct. App. 1992) (Lender did not breach the duty of good faith by pursuing guarantors without first pursuing collection against other collateral, because guaranties gave lender the right to seek payment from guarantors first.)

Bank has not breached any duty of good faith to Borrower. Bank is simply trying to enforce the terms of the Note and Mortgage, as it is allowed to do thereunder. Upon default by Borrower, Bank was entitled to "declare the entire unpaid principal balance on the Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount." (Depos. Tr. Clewis, Ex. 22, p.1.) The Mortgage also states that upon default of Borrower, Bank may "declare all sums secured by this mortgage immediately due and payable and proceed with foreclosure thereof." (Depos. Tr. Clewis, Ex. 23, p.2, ¶6.) Borrower admits he has not paid the principal amount owed under the Note upon demand by Bank. (Depos. Tr. Brown, pp. 18, 40, 62-63, 83.) Bank's effort to enforce its rights under the Note and Mortgage is not a breach of the duty of good faith.

E. Bank had no obligation to satisfy the Mortgage, because Borrower never paid the Note.

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.

The first step in the process set forth under S.C. Code Ann. § 29-3-310 is actual payment of 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 first actually be paid.

During his deposition, Borrower admitted repeatedly that he had not paid the \$150,000 he owned to Bank. (Depos. Tr. Brown, p. 18-19, 40, 62-63, 83-84.) He also admitted that he had nothing from Bank showing that the Note had been paid in full. (Depos. Tr. Brown, p. 39-40.)

Bank's representative testified at his deposition that the Note had not been paid in full by Borrower. (Depos. Tr. Clewis, p. 63-64, 73.) All of the evidence shows that the principal amount of the Note is still due and owing by Borrower and that he has not made any attempt to pay the Note. Because Borrower has not paid the Note in full, Bank has no obligation under S.C. Code Ann. § 29-3-310 to satisfy the Mortgage. Borrower's counterclaim for failure to satisfy a mortgage should be dismissed.

Conclusion

There is no dispute of material fact. Borrower executed the Note in favor of Bank, which was secured by the Mortgage given against the Subject Property. The Subject Property is not environmentally contaminated. Borrower failed to pay the Note in accordance with the provisions thereof and Bank is within its rights to foreclose the Mortgage. The factual evidence presented does not support any of Borrower's affirmative defenses or its counterclaims for which summary judgment is sought. Even if there were any evidence supporting Borrower's claims, none of them affect Bank's right to enforce the Note and Mortgage. Each of Borrower's counterclaims are permissive, rather than compulsory, and each seek damages, but do not prohibit enforcement of the loan documents. As a result, the Motion should be granted and an order be entered dismissing with prejudice those affirmative defenses and counterclaims of Borrower which are the subject of the Motion.

Charlotte, N.C.

Date: 7/11/12

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 BANK

Driscoll Sheedy, P.A.
Attorneys at Law

00097466.4

-8-

TAB A



Mr. Duncan Lantry
Tanner Brothers, Inc.
Route 2, Box 35
Pawnee, South Carolina 29584

MAR 24 1997

Re: Tanner Brothers, SC 109 Ruby-Hartsville Highway
Site ID 202214
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.

ACB-8

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

EXHIBIT

6 Clewys
5-6-11

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

cc: Report of Investigation

cc: Diane Taggart, Canadigua Wine Co., 116 Buffalo St, Canadigua NY 14424
Technical File

ONCUSTC247000

ACB-9

25 12 1998

10:00 AM

10:00 AM

TAB B



C. Earl Hargett, Commissioner

Promoting and protecting the health of the public and the environment

January 8, 2010

Nicole Shortt
111 Market St.
Bennettsville, SC 29512

Re: Underground Storage Tank (UST) Site #02214
Tanner Brothers Inc., Hwy 109, Ruby, SC

Dear Ms. Shortt:

The Division of UST Management received your request for an update on the environmental conditions at the referenced facility.

Our records indicate that eight underground storage tanks were removed from the ground at the above referenced site on December 1, 1990 and an assessment report was received on October 23, 1991. Following assessment, the Division of UST Management closed this file and issued a no further action letter on January 22, 1997. Though further site assessment or rehabilitation was not warranted based on information submitted, the Division may require investigative and/or remedial actions should contamination that could be attributed to a UST system become evident.

Please contact me at (803) 896-6944 if you have any further questions or require additional assistance with this matter.

Sincerely,

Denise M. Place

Denise M. Place
Regulatory Compliance Section
Division of UST Management
Bureau of Land and Waste Management

EXHIBIT

7 Clewis
5611

ACB - 10

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
2600 Bull Street • Columbia, SC 29201 • Phone: (803) 898-9439 • www.scdhec.gov

DOCKETING # _____ R

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,]

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.]

MEMORANDUM IN OPPOSITION

TO PLAINTIFF'S MOTION

FOR SUMMARY JUDGMENT

ON DEFENDANT BROWN'S

AFFIRMATIVE DEFENSES

AND COUNTERCLAIMS

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

As a FIFTH DEFENSE and SET-OFF, the Defendant MICHAEL R. BROWN has alleged Truth-in-Lending violations. This defense rests on the Plaintiff Bank's failure as follows:

- a. It failed 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. It failed 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. It failed to allow a three day rescission period for the transaction, as required by TILA.

1. The dispute over the Bank's failure to give the required disclosures rests upon the Defendant BROWN's use of the subject real property as his home (Para. 55. of the Defendant's ANSWER, COUNTERCLAIMS AND CROSSCLAIM, hereafter referenced as "the ANSWER"), and the Plaintiff Bank's knowledge of this fact (Para. 56 of the ANSWER).
2. The Reply of the Plaintiff denies Paragraphs 55 and 56 of the Answer, while characterizing the allegations as to its duty under the Truth in Lending Act, 15 U.S.C. § 1602 *et seq.* and Regulation Z § 226.
3. BROWN spends no space in this Memorandum discussing the legal effect of the Truth in Lending Act and Reg Z. He maintains that the language of that Statute and Regulation are clear that if the allegations of Paragraphs 55 and 56 can be proven, the Bank is in default for failure to make the proper disclosures.
4. The FIFTH DEFENSE is characterized as a Set-Off. BROWN acknowledges that that the one-year period allowed for an independent TILA claim has elapsed since the execution of the note and mortgage in December, 2000. The Act is clear, however, that such claims are allowable in response to an attempt to collect a debt. 15 U.S.C. § 1640(e) states:

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

[*Id.*]

5. State law has also determined that a TILA claim may be raised as a recoupment defense, *i.e.* as

one arising from the same transaction on which the Lender's action is based. This State has recognized that right. *Tuloka Affiliates, Inc. v. Moore*, 275 S.C. 199, 268 S.E.2d 293 (1980).

6. Evidence exists showing that Mr. BROWN used the subject real property as his residence at the time of the December, 2000 transaction. In his deposition on May 6, 2011, Mr. BROWN testified as follows (Pages 17-18):

18 Q which is it? You were going to subdivide and sell,
19 or you weren't going to subdivide and sell?

20 A When I received the loan, it was to fix the
21 property up because it was in such disrepair. Then
22 as time went on, the property was going to be
23 subdivided to help pay the loan off.

24 Q Okay.

25 A The original intent of the loan was to fix the

Deposition of Michael R. Brown

1 property up.
2 Q For residential and business occupancy?
3 A This was for residential, because I lived there and
4 I made thirty thousand square feet into my own
5 place.
6 Q But as you testified earlier, you were also
7 conducting your carpet business from this location?
8 A This was according to your questioning regarding
9 the faxes, receiving and sending.
10 Q Right.
11 A And that is correct, what I've said.
12 Q Okay. And therefore, the assertion in the
13 complaint that you intended to repay the mortgage
14 from subdivision and sale of the property is also
15 correct, isn't it?
16 A Yes. That is correct.

7. In his Deposition on May 6, 2011, Mr. William Clewis as the designated deponent under Rule 30(b)(6), S.C.R.C.P. and officer of the Plaintiff, testified as follows (Page 25):

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.

Deposition of William Clewis

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.

9. The argument of the Plaintiff, in light of the evidence above, must therefore reduce to a question of the what the primary use of the property was intended to be as of the time of the sale. 15 U.S.C. § 1603(1); Reg. Z § 226.3(a)(1).
10. The OFFICIAL STAFF COMMENTARY in Reg. Z § 226.3(a)(1) notes that whether the Lender in fact made the disclosures is not controlling on the question of whether the transaction is, in fact, exempt. *See Gombosi v. Carteret Mortgage Corp.*, 894 F.Supp. 176 (E.D.Pa. 1995), *aff'd without opinion*, 91 F.3d 1234 (3d Cir. 1996).
11. TILA precedent makes it clear that "primary" use is not synonymous with "exclusive" use. In, *e.g.*, *Palmer v. Statewide Group*, 134 F.3d 378 (1998), the consumer's use of their home for a child care business did not make the debt a "business". *See, also, Quinn v. A.I. Credit Corp.*, 615 F.Supp. 151 (E.D.Pa. 1985); *Toy Nat'l Bank v. McGarr*, 286 N.W.2d 376 (Iowa 1979).
12. Precedent has, in fact held, that one determinant is the use made of more than one half of the transaction proceeds. *Semar v. Platte Valley Fed. Sav. & Loan Ass'n*, 791 F.2d 699 (9th Cir. 1986); *Gombosi, supra*; *Federal Land Bank of Jackson v. Kennedy*, 662 F.Supp. 787

(N.D.Miss. 1987); *Bokros v. Associates Finance, Inc.*, 607 F.Supp. 869 (N.D.Ill. 1984); *CIT Financial Services v. Bowler*, 537 So.2d 4 (Ala. 1988); *Stillman v. First Nat'l Bank of Idaho*, 117 Idaho 642, 791 P.2d 23 (Ct.App. 1990); *Levites v. Chipman*, 30 Mass.App.Ct. 356, 568 N.E.2d 639 (1991).¹

13. In this case, the evidence as to the use, or intended use, of the transaction proceeds is that of Mr. BROWN quoted above in his Deposition, page 17, l.25 to page 18, line 5. The intended use of the transaction proceeds was residential.
14. Mr. BROWN also notes that this Court has, by its Order Deeming the Toal Administrative Order Applicable, filed August 22, 2011, acknowledges the status of the subject real property as residential. This Order has not been appealed.

In the NINTH, TENTH AND ELEVENTH DEFENSES, BROWN has alleged Equitable Estoppel, Express Waiver and Implied Waiver. These defenses rest on the following facts:

1. In or about October, 2007 or thereafter, the Bank furnished Mr. 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 mortgage debt which forms the basis of its present foreclosure action. (Copy attached hereto and incorporated herein; copy attached to Deposition of Clewis as Exhibit 26.)
2. The said Form 1098 states the payment of interest in the amount of \$87,400.00 as received by the Plaintiff Bank from the borrower on the said Note and Mortgage. It also states that the balance on the designated, mortgage account is "-0-".
3. As confirmed by Mr. Clewis in his Deposition at Page 68, lines 4 thru 10, the recited amount received represents the entire remaining amount due as of the date of the said Form 1098.
4. Exhibits 17 and 18 to Mr. Clewis' Deposition purport to be a Promissory Note and Assignment of Deposit Account executed by Mssrs. BROWN and his co-Defendant C.W. HORNE on October 28, 2007. (Copies of these Exhibits are attached hereto and incorporated herein.)
5. Mr. Clewis' relevant testimony is as follows:

1 BROWN acknowledges the existence of a "Disbursement Request and Authorization" purportedly signed by him which lists the "primary purpose" as "Business". A copy of this document is attached. Counsel for the Bank did not deal with this document in his Deposition of BROWN.

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.

6. The Promissory Note (Exhibit 17 to Clewis) contains no mention of security for itself other than the CD belonging to Defendant HORNE and referenced in Exhibit 18 to CLewis, the purported Assignment of Deposit Account.
7. The Mortgage signed by Mr. BROWN (Exhibit 23 to Clewis) contains no language extending its effect past a payoff.
8. In order to maintain that a Mortgage Lien still exists on the subject real property, the Bank must rely on the last of the Modification and Extension Agreements, dated October 29, 2007, a copy of which is attached to its unverified Complaint.
9. In his Deposition, Mr. Clewis characterizes the October 29, 2007 Modification and Extension Agreement as follows (from Pages 38 to 39 of his Deposition):

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.

The relevant testimony (excluding lawyer's comments) continues:

38

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. Both Mr. BROWN (Deposition of BROWN, page 79, line 2 thru 16) and Mr. HORNE (Deposition of HORNE, page 46, line 20 thru page 47, line 11) have denied the signatures on the Modification and Extension Agreements after 2001 to be theirs.
11. Mr. Clewis has testified that he cannot testify as to the validity of the signatures on the Modification following the 1098 Tax Form.
12. Mr. BROWN has specifically denied his signature on the relevant Modification and Extension Agreements in his pleading. (Para. 70(e) and (f) of the Answer, Counterclaims and Crossclaim.)
13. No other proof of the the October 29, 2007 Modification and Extension Agreement has been made, even as to its existence as a part of the Plaintiff's regularly kept business records.
14. This brings us to the existence of estoppel or waiver under the facts above. BROWN concedes that no special reliance by himself has been shown. On this basis, he does not argue estoppel

based upon the Tax Form 1098.

15. A waiver, according to the generally accepted definition, is the voluntary and intentional relinquishment of a known right, claim or privilege. *Stubbs v. Philadelphia L. Ins. Co.*, 151 S.C. 326, 149 S.E. 2 (1929); *Davis v. Milady*, 92 S.C. 135, 75 S.E. 363 (1912); 28 AM.JUR.2D *Estoppel and Waiver* § 197 (2002).
16. Waiver, unlike estoppel, is unilateral in character, and one party acting alone who abandons its rights is sufficient to create a waiver. *Stubbs v. Philadelphia L. Ins. Co.*, *supra*; 28 AM.JUR.2D *Estoppel and Waiver* § 197 (2002).
17. In the case at hand, the mortgage lien and its attendant rights existed in 2007. The 1098 Tax Form was issued by American Community Bank, the holder of the Mortgage. (Deposition of Clewis, p.66, line 230 thru p. 67, l.3) That form, which was delivered to Mr. BROWN, recites a “-0-” balance. Barring proof that the Defendants BROWN and HORNE executed the Modification and Extension Agreement in 2007, there is clear waiver of the Plaintiff's mortgage and collection rights.
18. The question of the authenticity of the Defendant's signatures is one of fact.

The THIRTEENTH DEFENSE AND COUNTERCLAIM deals with the Bank's failure to satisfy the mortgage.

1. This Defense and Counterclaim again deal with the existence and circulation of the 1098 Tax Form. In the absence of proof of the validity of the Defendant HORNE and BROWN's signatures to the Modification and Extension Agreement of October, 2007, there is no document continuing the Mortgage lien on the subject real property.
2. 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.
3. BROWN maintains, and has alleged, that by its actions, 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.
4. In the alternative to the argument above, BROWN, by his counsel, has demanded that the Plaintiff deliver a satisfaction or certificate of the discharge of the subject mortgage to BROWN for recordation.
5. The Plaintiff has not delivered a satisfaction to Defendant BROWN or entered or caused such satisfaction to be made of record.

As an EIGHTH DEFENSE AND AS A SET-OFF, the claim of UNFAIR AND DECEPTIVE TRADE PRACTICES, the following matters are alleged as actions in violation of Title 39, Chapter 5 of the South Carolina Code of Laws, among others::

- i. 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;
- ii. 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 § 37-10-102(a) (West);
- iii. Failing to insure that BROWN was offered the opportunity to obtain owner's title insurance in connection with the transaction;
- iv. Forging or negligently accepting as authentic forged Extension Agreements or other documents in connection with the transaction;
- v. Forging, negligently accepting, or representing as authentic additional documents purporting to evidence other loans of the Defendant BROWN owed to the Plaintiff;
- vi. Attempting to enforce its claim against BROWN after notification to him that the debt in question had been satisfied;
- vii. Attempting to foreclose its mortgage lien against BROWN after notification to him that the debt in question had been satisfied; and
- viii. Failing to satisfy its mortgage lien of record after notification to BROWN that the debt in question had been satisfied.

1. The actions and inactions of Plaintiff and its agents, servants, and employees, are plead as having an impact, either direct or indirect, upon the public interest as defined by S.C. Code § 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.
2. The actions and inactions of Plaintiff (as referenced above) are plead as showing a pattern of behavior by Plaintiff consistent with a deliberate pattern of such actions both in the past and planned in the future.

3. 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*, 94 Wash.2d 40, 614 P.2d 184 (1980).
4. The Plaintiff's actions and inactions are plead as constituting 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).
5. BROWN has attempted above to set out or cite the factual basis for the majority of the alleged actions of the Bank.

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.

Deposition of William Clewis

6. No document exists showing BROWN's acquiescence in the attorney used to close the loan. Its duty under S.C. Code § 37-10-102(a) (West); exists when the loan purpose is for a personal, family or household use. That use is confirmed here by the language of the Atlantic Title Commitment stating the land had a residential use. (Exhibit 10 to Clewis Deposition, attached). In response to questioning on this point, Mr. Clewis, for the bank, stated (Page 25 of the

Deposition):

8. Again, BROWN has testified of his intention to use the loan proceeds for residential purposes. (BROWN Deposition, *supra*: p.17, l.18 thru p.17,l.16). There is no contrary evidence on this point.
9. In response to questioning on attorney preference, Mr. Clewis testified (Page 26 of his Deposition):

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.

10. By all indications available as evidence, the transaction in question was residential in nature. The Bank did not provide a form for choice of attorney. It did not furnish the required TILA disclosures. It did not furnish a three-day notice of right to rescind.
11. On the basis of its Reply, BROWN understands that it is the intent of the Bank to invoke, as a defense, the doctrine of preemption. It is true that the FTC Act (15 U.S.C. § 44 *et seq.*) does not apply to banks. It is also true that State Courts are to be guided by the FTC Act in interpreting state UDAP Statutes. S.C. Code § 39-5-20(b) (West).
12. Among the matters exempted from the UDAP Statutes are “[a]ctions or transactions permitted under laws administered by any regulatory body . . . ” (S.C. Code § 39-5-40(a)). In *State ex rel McLeod v. Rhodes*, 275 S.C. 104, 267 S.E.2d 539 (1980), our Supreme Court held that the exemption for “permitted” practices exempted all regulated transactions. (In *McLeod*, these were securities transactions.) In *Anderson v. Citizens Bank*, 294 S.C. 387, 365 S.E.2d 26 (Ct.App. 1987), the Court of Appeals applied this holding, and this reasoning, to exclude banking practices from UDAP.
13. In *Ward v. Dick Dyer & Assocs., Inc.*, 304 S.C. 153, 403 S.E.2d 310 (1991), our Supreme Court faced the fact that its reading of “permitted” as the equivalent of “regulated” would exclude many consumer transactions that were obviously intended to be within the scope of the UDAP Statutes. It specifically held:

We believe the exemption is intended to exclude those actions or transactions which are

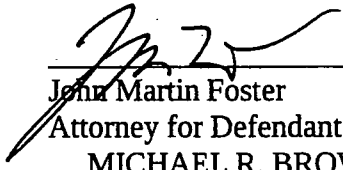
allowed or authorized by regulatory agencies or other statutes. . . . While our statutory exemption used the word "permitted", we believe the intent of our legislature was to exclude activities which would otherwise be allowed or authorized.

...

The purpose of the exemption is to insure that a business is not subjected to a lawsuit under the [UDPA] Act when it does something required by law, or does something that would otherwise be a violation of the Act, but which is allowed under other statutes of regulations. It is intended to avoid conflict between laws, not to exclude from the Act's coverage every activity that is authorized or regulated by another statute or agency.

[*Id.*, 304 S.C. at 155-156; 403 S.E.2d at 312.]

14. Thus, while the Plaintiff may argue the holding of *Anderson, supra*, the fact is that the precedent for that holding no longer exists. The standard for preemption, or exclusion, is that of *Ward*, cited and quoted above. The actions and inactions attributed to the Bank are not required by any law, nor are they allowed by other statutes or regulations. They are subject to the South Carolina Statutes forbidding unfair or deceptive trade practices. Testimony and documentary evidence exists for each point referenced above as violating the UDAP Statutes. Mr. BROWN is entitled to go to trial on this issue.



John Martin Foster

Attorney for Defendant

MICHAEL R. BROWN

The Guardian Building
223 East Main Street, Suite 520
Rock Hill, S. C. 29730

Post Office Box 106
Rock Hill, S. C. 29731-6106

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

Rock Hill, South Carolina

July 11, 2012

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,

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,

Cross-Defendants.

A True Copy Attest

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

NOTICE and MOTION:

TO ALTER OR AMEND JUDGMENT

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

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

To: James W. Sheedy
Susan E. Driscoll
Driscoll Sheedy, P.A.
11520 N. Community House Rd, Suite 200
Charlotte, N.C. 28277
Attorneys for Plaintiff and Cross-Defendant

Harry R. Easterling, Jr.
Goldberg and Easterling, P.A.
Post Office Drawer 655
Bennettsville, S.C. 29512
Attorneys for Defendant and
Cross-Defendant Horne

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

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

PLACE: Chesterfield County Courthouse
200 West Main Street
Chesterfield, South Carolina 29709,
or at such other place as the Court may designate

Pursuant to Rule 59(a) and (e), S.C.R.C.P., the Defendant MICHAEL R. BROWN, through his attorney, moves this Court:

For an Order reopening the Order of this Court dated July 27, 2012 and entered August 6, 2012, a copy of which was received by the Movant on August 18, 2012, take (as necessary) new testimony, amend the findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new Order; and

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

on the grounds that the Order of the Court is contrary to law and on the following bases:

1. The Movant restates by this reference his arguments and positions as set forth in his Memorandum and argument before this Court on July 12, 2012.

PRIMARY USE OF THE SUBJECT REAL PROPERTY

2. At least since South Carolina's adoption of Civil Rules based upon those of the Federal Courts, our precedent has been clear that summary judgment can be granted only where there is no genuine issue of material fact and the moving party is, thus, entitled to judgment as a matter of law. *See, e.g., Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *D.R. Horton, Inc. v. Wescott Land Co., LLC*, (Ct.App. No. 4998, July 11, 2012).

3. Our Court of Appeals has made it clear that:

In determining whether a genuine issue of fact exists, a court must consider everything in the record, pleadings, depositions, interrogatories, admissions on file, affidavits, etc.

[*Gilmore v. Ivey*, 290 S.C. 53, 58, 348 S.E.2d 180, 183 (Ct.App. 1986).]

4. Whether a "genuine issue" of material fact exists has been defined by the United States Supreme Court as being whether "the evidence is such that a reasonable jury could return a

verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S.Ct. 2505, 2511, 91 L.Ed.2d 202 (1986). No discussion of the term exists under our State precedent. The Movant argues that the *Anderson* definition is controlling and that a genuine issue of fact as to the primary use of the subject real property exists. A reasonable jury may return a verdict for Mr. BROWN based upon a finding that the primary use of the subject premises was residential.

5. It is manifest in this case that a genuine issue of material fact exists as to the use of the subject real property. Mr. BROWN has testified as to his intended use of the premises as a residence. [DEPOSITION OF BROWN, May 6, 2011, p.17, l.18 – p.18, l.16.]
6. In the transaction in question, the assignor of the Plaintiff received a Title Policy stating that the intended use was residential. The designated Deponent for the Plaintiff Bank had no explanation for this fact. [DEPOSITION OF CLEWIS, May 6, 2011, p.25, l.5-25.]
7. As argued in the Movant's MEMORANDUM, the TILA disclosures are required when the primary use of the property was intended to be residential as of the time of the sale. 15 U.S.C. § 1603(1); Reg. Z § 226.3(a)(1). In this case, there is no evidence of the "primary" use beyond the various evidence describing its use.
8. Summary Judgment on this point, and upon any causes of action dependent thereon, cannot be granted.

ALTERATION OF THE ORIGINAL NOTE AND MORTGAGE

9. The last Promissory Note herein [Exhibit 17 to DEPOSITION OF CLEWIS] contains no mention of security for itself other than the CD belonging to Defendant HORNE and referenced in Exhibit 18 to the DEPOSITION OF CLEWIS, the purported Assignment of Deposit Account.
10. The Mortgage signed by Mr. BROWN [Exhibit 17 to DEPOSITION OF CLEWIS] contains no language extending its effect past a payoff.
11. In order to maintain that a Mortgage Lien still exists on the subject real property, the Plaintiff Bank must rely on the last of the Modification and Extension Agreements, dated October 29, 2007, a copy of which is attached to its unverified Complaint.
12. Both Mr. BROWN [DEPOSITION OF BROWN, May 6, 2012, p.79, l. 2- 16.] and Mr. HORNE [DEPOSITION OF HORNE, March 22, 2012, p.46, l. 20 – p.47, l.11.] have denied the

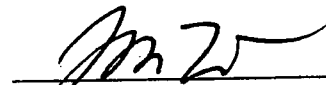
signatures on the Modification and Extension Agreements after 2001 to be theirs.

13. Mr. BROWN has specifically denied his signature on the relevant Modification and Extension Agreements in his pleading. (Para. 70(e) and (f) of the Answer, Counterclaims and Crossclaim.)
14. No other proof of the the October 29, 2007 Modification and Extension Agreement has been made, even as to its existence as a part of the Plaintiff's regularly kept business records.
15. The rule, both at common law and as recognized by the precedent of this State, is that an unauthorized material alteration of an executory instrument effectively destroys the instrument and the completed transaction. *Brown v. Mims*, 250 S.C. 546, 159 S.E.2d 247 (1968); 1 AM.JUR.2D *Alteration of Instruments* § 7 (2002).
16. The clear indication of the evidence cited above is the existence of a genuine issue of material fact as to the alteration of the original Note and Mortgage exists. The Movant argues that the U.S. Supreme Court *Anderson* definition is controlling and that a genuine issue of fact as to the primary use of the subject real property exists. A reasonable jury may return a verdict for Mr. BROWN based upon a finding that the subject documents have been altered.
17. The law is also clear that such alteration by an agent of a party to the instrument is deemed to be the act of the agent's principal, if within his express or implied authority. Mr. BROWN has alleged the alteration to be the work of the agent of the Plaintiff's assignor, based upon his signature on the altering documents and his later suicide.
18. The Movant would clarify his position: he has never denied receiving the loaned amount, nor has he asserted that it has been paid back. The Plaintiff could plead, or may maintain it has plead, a cause for *quantum meruit*. Subject to the Defendant's counterclaims, the Plaintiff would have the right to pursue that claim. The effect of the common law doctrine as to altered instruments, and waiver, have ended the Plaintiff's ability to enforce the original Note and Mortgage as executory documents.
19. Summary Judgment on the question of the altered instruments, and upon any causes of action dependent thereon, cannot be granted.

Pursuant to Rule 11, S.C.R.C.P., counsel for the Movant is not required to consult with opposing Counsel or attempt in good faith to resolve the matter contained in this Motion by reason of the dispositive nature thereof.

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

Respectfully submitted,



John Martin Foster
Attorney for Defendant MICHAEL R. BROWN

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

Post Office Box 106
Rock Hill, SC 29731-6109

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

August 20, 2012

Rock Hill, South Carolina

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

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

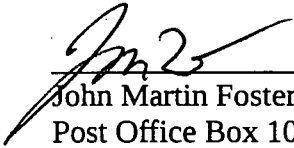
of whom

MICHAEL R. BROWN is the Appellant.

CERTIFICATE OF APPELLANTS

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

April 24, 2014



John Martin Foster
Post Office Box 106
Rock Hill, South Carolina 29731-6106
(803) 324-8100
Attorney for Appellants

STATE OF SOUTH CAROLINA
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of whom
MICHAEL R. BROWN is the Appellant.

PROOF OF SERVICE

I certify that I have served the Record on Appeal, dated April 24, 2014, on the following
counsel of record:

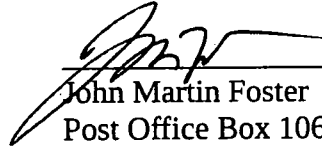
James W. Sheedy
Susan E. Driscoll
Driscoll Sheedy, P.A.
11520 North Community House Road, Suite 200
Charlotte, N.C. 28277

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 addressees) of those attorney(s) and/or persons set out below; or

by hand delivering copies of the same to the following persons, or by leaving the same at
that person's office with that person's clerk or some other person in charge thereof, or by leaving

it in a conspicuous place therein; of if the office was closed or the person to be served has no office, by leaving a copy at that person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein, all pursuant to Rule 233(b), S.C.A.C.R.

April 25, 2014



John Martin Foster
Post Office Box 106
Rock Hill, South Carolina 29731-6106
(803) 324-8100
Attorney for Appellants